

7 Phil. 156

[G.R. No. 2929. December 07, 1906]

**FAUSTA BATARRA, PLAINTIFF AND APPELLEE, VS. FRANCISCO MARCOS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The judgment of the court below commences as follows: "This case is now before the court for trial upon a complaint by the plaintiff to recover damages for breach of promise of marriage by defendant to the plaintiff, the defendant inducing the plaintiff to submit herself to sexual relations with him on account of such promise of marriage."

Judgment was entered in that court in favor of the plaintiff for the sum of 500 pesos. The defendant excepted to such judgment and has brought the case here by bill of exceptions.

The facts appearing in the record do not show the commission of the crime of seduction, as that crime is defined by article 443 of the Penal Code, because it does not appear that the plaintiff was under 23 years of age.

The judgment can not, therefore, be based upon article 449 of that code, which provides for indemnification in cases of rape, seduction, and abduction.

It must rest upon the proposition that the defendant, having failed to perform his promise of marriage, is liable for the breach of that contract and for damages resulting from his seduction of the plaintiff, the carnal connection being the consideration (cause) of the promise. This proposition can not be maintained. If the criminal intercourse between the parties was a crime or misdemeanor, the crime or misdemeanor was common to both parties, and article 1305 of the Civil Code prevents a recovery. The same is true if the act did not constitute a crime or misdemeanor. It was in any event an immoral act and the fault lay with both parties. By the provisions of article 1300 of the same code there can, in such a

case, be no recovery by one against the other.

Nor can there be a recovery under the provisions of article 1902 of the Civil Code, which provides as follows: "A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done;" for the plaintiff voluntarily participated in the act. "*Scienti er volenti nula fit injuria neque dolus.*"

The judgment of the court below is reversed and the defendant is acquitted of the complaint, with the costs of the first instance. No costs will be allowed to either party in this court.

After expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the record be remanded to the court below for proper action. So ordered.

Torres, Mapa, and Carson, JJ., concur.

Tracey, J., concurs in the result.

Johnson, J., did not sit in this case.