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IS THE PROPERTY OF A MARRIED WOMAN LIABLE FOR THE OBLIGATIONS INCURRED BY THE HUSBAND?

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I. INTRODUCTION

1. NATURE AND SCOPE

Marriage in this jurisdiction is a contract entered into in the manner and with the solemnities established by General Order number 68 in so far as its civil effects are concerned requiring the consent of the parties (Garcia vs. Montague, 12 Phil. 61). But it is more than a contract. It is a new relation, the rights, duties and obligations of which rest not upon the agreement of the parties but upon general law which defines and prescribes those rights, duties and obligations. Marriage is an institution, in the maintenance of which in its purity the public is interested. It is a relation for life. The reciprocal obligations arising from time to time so long as it continues as such as the low determine from time to time and none other. When the legal existence of the parties is merged into by marriage the new relation is regulated by the State or Government upon principles of public policy for the benefit of society as well as the parties. (Goitia vs. Campos Rueda, 35 Phil. 245).

These reciprocal obligations between the husband and the wife necessarily involve their property. Thus it is held by our local Supreme Court, that the rendering of medical assistance in case of illness is comprised among the mutual obligations to which spouses must bear by way of mutual support; and when conjugal property is not enough to pay the medical fees, the wife's property has to answer (Pelayo vs. Lauron, 2 Phil. 456). Again in another case the same court states the rule that inasmuch as the fruits of the separate property of the wife becomes conjugal property, the same is liable for debts contracted by the

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husband, which has redound to the benefit of the family. So that an action by the creditors against the fruits and rents of the wife's separate property will lie. (Osmeña vs. Javier, 34 Phil. 336; Art. 1401, Civil Code). These two important cases are but among the many cases decided by our Supreme Court. My purpose is just to illustrate my point namely, that the reciprocal obligations of the spouses involves also their properties.

This dissertation is motivated by a decision of our Supreme Court in a case entitled The Bank of the Philippine Islands vs. Quintos and Ansaldo, 46 Phil. 370, declaring the doctrine that in the cases where the husband and wife have contracted an obligation and the conjugal property is not sufficient to meet them the separate property of the spouses are liable. In other words, if the property of the husband and the conjugal property are not enough the wife's own property is liable for contracts made by the husband. It is striking to note that the court did not cite any authority in arriving at this conclusion.

The court admits that this is a case of first impression in our jurisdiction, and to quote its exact words, the court said, "in this jurisdiction we do not believe that a similar question was heretofore raised or decided, and as far as the research of the writer hereof discloses, it finds no precedent in Spanish jurisdiction." (Bank of the Philippine Islands vs. Quintos, 46 Phil. 370, 377.)

We can see therefore that the decision largely affect the separate property of the wife. The writer will limit his discussion to the question, "Shall the Property of a Married Woman be Made Liable for the Obligations and Liabilities Incurred by the Husband?" The burden of the work will show:

First:—That the separate property of the wife is not liable for obligations contracted by the husband with few exceptions;

Second:—That the doctrine enunciated by our Supreme Court is not justified and is a dangerous one.

2. SEPARATE PROPERTY OF THE WIFE

(a) *What it mainly consists of*

The separate property of a married woman is the dowry and the paraphernal property. The dowry is the capital or mass of property of the wife which is delivered to the husband in order to give the latter means and assistance in bearing the marital expenses on condition that he shall return the property when such charges no longer exist and that he shall guarantee

the return with a mortgage. (Manresa 291; Art. 1346 Civil Code.) The dowry here referred to is the unappraised dowry. The paraphernal property consist of that property of the wife which she brings to the marriage not included in the dowry and whatever she acquires after the constitution of the relation, and this is not added to such dowry. (Article 1381, Civil Code.)

(*b*) *A List of Separate Property*

Thus lands conveyed to a spouse by a third party in exchange of those in the separate estate are paraphernal property and belongs to the wife. (Lim vs. Garcia, 7 Phil. 320; Art. 1396, Civil Code.) That which is brought to the marriage as her own also is separate property of the wife. (Art. 1396, paragraph 1). Property bought from an execution sale by the money of the wife is paraphernal property. (Gefes vs. Saluio, 36 Phil. 221; Arts. 1396-1401, Civil Code). All property given propter nuptias, and property inherited from her parents evidenced by Torrens Title. (Castillo vs. Castillo, 17 Phil. 517; Alvaran vs. Marquez, 11 Phil., 253). And it also includes all other property acquired by right of redemption or by exchange with her property or purchase by her money. (Bank of the Philippine Islands vs. Quintos, 46 Phil. 370; Art. 1396, par. 3).

3. HISTORY

(*a*) *Under the Roman Law*

In Roman Law there is a kind of property known as a Dos (the codes of today call it dowry). Dos was made over to the husband as a kind of contribution toward the expenses of the new household (onera dominii). (As to this part there exists a similarity with the Code of Spain.) The husband enjoyed the income while the marriage lasted and was technically owner (dominus) of the whole dos as well as its income. That part of property which in marriage was brought into settlement as part of the dos was known as parapherna, and of course in relation to this the husband has no rights of any kind. (Roman Private Law, R. W. Leage p. 92).

Couched in different words but of the same meaning, Roby said: Quite distinct from dowry were parapherna (outside dowry) as the Greeks called them, for which the Gaul used peculium i. e. things for the wife's own use which were simply brought into the house with a list which the husband subscribes in recognition of their being the wife's property. (Roman Private Law, Roby).

(b) Is this Recognized under Modern Civil Codes?

This system of property ownership is maintained by all the modern codes. Falcon, the Spanish commentarist, said that paraphernal property as known under the Roman Law exists in almost all modern codes except that they do not strictly concur to its strict technical meaning. It is used by the Italian Civil Code, French Code of Napoleon, and also the codes of Guatemala and Spain.

Under the Roman Law paraphernal property was considered as outside dowry (extra dotal) and it was owned and administered by her. She was not obliged to turn over the same to the husband. She had the complete ownership of the property. Falcon thinks that this was justified in view of the fact that the Roman wife cannot participate in any manner whatever of the conjugal property. This property was under the sole administration of the husband who controls it or exhausts it at will. The wife is but a mere figurehead and because of this, it was necessary to give the wife something to live upon. In Rome marriage subsisted only at the caprice of the husband. In Spain the same conditions do not exist. Separation of property is dependent upon the agreement of the parties. The wife of a Spaniard is considered as a life partner and as such has a say or rather participate in the conjugal partnership property. Another thing is, marriage in Spain is a tie which cannot be broken by the will of either party, and because of this their relationship is strong and binding. In view of these conditions prevailing in Spain, the Spanish Code gives the parties complete liberty to make contracts with regard to their property.

Falcon further states, that the purpose of the Roman legislator in giving the wife absolute dominion over her separate property was to protect her from want when at any time the marriage tie would be broken. Another one was to curve the abuses of the husband, for it might happen, that the husband gambles all his property, conjugal property including, and take the property of the wife besides. He claims that this condition does not avail in Spain for marriage can only be dissolved by judicial decree. However, it cannot be denied that the separation of their properties is for the protection of the wife. (Falcon, Comentarios del Código Civil, Vol. IV, 170-175).

II. THAT THE PROPERTY OF THE WIFE IS NOT LIABLE FOR OBLIGATIONS CONTRACTED BY THE HUSBAND WITH FEW EXCEPTIONS.

The history of the separation of property of husband and wife, in giving the wife a separate property, reveals to us that there are some valid reasons for its being, namely, to protect the wife from indiscretion and abuses of the husband.

Proceeding under this theory which even our Civil Code also agrees, we will now consider the proposition that the separate property of the wife is not liable for obligations incurred by the husband with few exceptions.

(a) Generally

It is generally admitted that the creditors of a husband have no right to subject the wife's separate property to the payment of their claims against the husband. (Buckley vs. Dum, 67 Miss. 710.) The courts of equity will restrain a judgment creditor of a husband from selling under execution property constituting the separate estate of the wife secured to her by an ante-nuptial settlement. (Schifling vs. Hoffman, 62 Am. Doc. 281). The same rule is also enforced in Texas, the court there holding that the creditors of a husband have no right as a general rule to subject the wife's property to the payment of their claim against the husband. (Evans vs. Welborn, 74 Texas 530). For greater reason, when the husband contracted debts for riotous living, is the property of the wife not made liable. (Gabriel vs. Mullen, 111 No. 119; 19810; 1099).

In our jurisdiction our Supreme Court holds that a wife cannot be made responsible for the debts of the husband notwithstanding the power of attorney executed by the wife (Bank of the Philippine Islands vs. de Caster, 47 Phil. 594). And the fact that he has the management of his wife's property will not affect her title in so far as his creditors are concerned. The doctrine laid down in Louisiana is that even if a husband's work in a business owned by his wife should result in increasing the wife's revenue, this would not make her liable for debts contracted by the husband. The property and the business were hers. (Bank of the Philippine Islands vs. De Caster, 47 Phil. 596). And the same court also stated that the wife cannot be held liable for debts contracted by the husband in the management of her business. (Fritzland vs. Huzzel, 14 La. 767.)

The wife retains the ownership of her paraphernal property (Article 1382, Civil Code.) In applying this article the

Supreme Court of the Philippine Islands laid down the doctrine that in no manner could the property of the wife (plaintiff) be attached at the request of creditors (defendants) nor adjudicated to him, inasmuch as no legal reason existed whereby the plaintiff was obliged to make any payment or loan, therefore the proceedings from which it resulted that the plaintiff was unjustly deprived of her property on account of a debt which she was not responsible are entirely null and void (Marcela Alvaran vs. Bernardo Marquez, 11 Phil. 263.) In other words the separate property of the wife cannot be made liable or to answer for debts incurred by the husband. In a decision laid down by the Supreme Court of Spain, the rule is upheld that "no condena a pagar con bienes the esta clase (bienes paraphernales) deudas declaradas como propio de marido." (Casacion numero 49; 10 de Feb. de 1883, tomo 51 p. 184). And this rule also goes as far as to exclude even the fruits of the paraphernal property, which is considered as conjugal partnership property (Art. 1386, Civil Code). Amandi, commentarist of the Argentine Civil Code commenting on Article 1286, which provision is the same as ours, said, "The personal debts of the husband cannot be charged against the fruits of the paraphernal property except as they are used for the provision of the family." (Espiritu de Jurisprudencia Española, Barrios y Morayta p. 183.) To this rule Scaevola the great Spanish jurist also adds the doctrine by saying, "The foreign codes which admit the system of paraphernal property concur to the idea that this part of the property (referring to paraphernal property) belongs to the wife, and can be charged for expenses of the family, only when there is no other property, (i.e. the conjugal property and the husband's.)" The Italian code also concerns itself about this kind of property but states that the wife, shall only be charged a proportionate amount to which the husband is liable. The French code is not so absolute as the Spanish code, for it makes the property of the wife liable indiscriminately when the husband's own property is not enough notwithstanding the obligation is personal or not. However, this is only auxiliary to the property of the husband and the partnership property. (Scaevola, Comentarios de Codigo Civil, Vol. IV p. 189).

The right of the husband over the fruits and rent of the dowry and paraphernal properties are understood to attend to the family expenses and in a subsequent decision affirmed the doctrine when it said, "Any expenses or obligations contracted by the husband which did not redound to the provision of the

conjugal partnership will not make it liable in any way whatever; the fruits of the paraphernal property is for the family alone and for no other purposes." (Sentencia de 7 de Enero de 1883). Note therefore the strictness of the decisions of the Supreme Court of Spain. It does not escape the imagination why this is so. The reason behind the rule is the protection of the wife's property from unlawful charges. The fruits of the paraphernal property, says the Civil Code, cannot be subjected to the personal obligations of the husband unless it be proved that such debts redound to the benefit of the family. (Art. 1386, Civil Code).

"Even if a husband works in a business owned by his wife," the Supreme Court of Louisiana said, "and should result in increasing the revenue this would not make her liable for the debts of the husband. The property and the business were hers." (First Natchez Bank vs. Mors, 52 La. Ann. 1524.) In a subsequent decision the non-amendability of the wife's property was upheld. The wife cannot be held liable for debts contracted by the husband in the management of the business. (114 La. 767; 338 So. 554).

There is a principle in contract recognized by every court of repute which says that no person can be made liable for a debt in which he is not a party. The wife, for our purposes is considered as third person in a contract entered into by the husband. Consequently she cannot be made liable. It can be seen from the numerous decisions of Spain, Louisiana and other courts that they uniformly look through the many disguises in which men shroud their business dealings and save the wife's property from being sacrified for her husband's debts from which she derives no benefit. (Theriet vs. Vorkies, 12 La. Ann. 852.)

"The wife," declares the Civil Code, "retains the ownership of her property," (Art. 1382) and even in an act which was recently passed by the Legislature it was declared that the wife can dispose of her property without the husband's consent. Now what reason then can there be to subject the wife's property to the husband's contract. If we affirm that it could, then she is deprived of her property without due process of law. It would also be contrary to all concept of ownership which bestows upon the owner of a thing, the right to use, abuse, defend and dispose. This is not, of course, absolute.

(*b*) *Exceptions*

To every rule there is an exception, and the rule that the property of the wife is not liable for debts contracted by the husband admits a few of them.

1. *Preservation of the property of the wife.*

The Spanish Supreme Court declared that the property of the wife while it cannot be made liable to obligations incurred by the husband personally must respond when such debts have been contracted for the upkeep and preservation of the wife's property. (Sentencia de 22 de Noviembre de 1888.) In an earlier case the same court said that the fruits are understood to pay for family expenses only but when debts are incurred by the husband to preserve the dowry and paraphernal property the same will be liable. (Sentencia de 1879 y 11 de Julio 1888.) Creditors of the husband who is head of the family and administering the property of the wife can maintain an action for recovery within reasonable limits if it can be shown that the debt contracted by him is for the proper means of preserving the property of the wife. (Sharp vs. Wycliff, 14 Am. Dec. 37).

2. *For obligations contracted by the husband for family use.*

The Civil Code provides, they are liable for the husband's personal obligations if the latter inured to the benefit of the family (Article 1386, Civil Code). The legislature in giving her absolute title to the property owned by her at the date of her marriage and exempting it from the payment of her husband's general indebtedness, but subjecting it to liability for debts contracted for necessaries for the family which the husband is unable to pay is not unreasonable. (Gabriel vs. Mullen, 111 Mo. 119; 19 S. W. 1099). When the fact that the expenses incurred by the husband in his profession and industry was for the family's benefit it cannot be claimed that the debts are purely personal but such amounts which are lawfully due to the creditors of the husband can be paid out of the property of the wife. (Javier vs. Osmeña, 34 Phil. 336).

Necessaries include the immediate needs of the family such as food, clothing, medicine and all other things which sustain life. It cannot be claimed that the medicine used for the cure of the husband of the defendant is merely personal hence chargeable only against the husband's property, but when the property of the husband and the conjugal partnership are not enough, the property of the wife is liable. (Pelayo vs. Lauron et al., 12 Phil. 456). When the husband is engaged in his

profession or in the exercise of an industry contract debts, these debts may not be considered personal, provided they were contributed to the daily use of the family, and as such they are considered as family expenses, and, therefore, the fruits, and if they are not enough, the property of the wife are liable. (Sentencia de 11 de Junio de 1881. See also Arts. 1362, and 1385). But the case in which the wife is bound are exceptional and the party seeking to make her liable should make the proof which renders her liable. The mere fact that the goods furnished are for the family use does not in general render the wife liable although the husband has no separate estate and no property except the revenues of the wife's property. (Lobet and Charpentier vs. Harman, 32 La. Ann. 132). It is also interesting to note, that our supreme court is as strict as that of Louisiana. In its pronouncement relating to the matter it said, "There is no pretense or claim that the debt in question was contracted for usual daily expenses of the family, incurred by the wife or made by her order." (Bank of the Philippine Islands vs. De Caster, 48 Phil. 728.)

The exceptions enumerated can only be availed of, when it can be shown that conjugal property and that of the husband are not enough (Art 1385, Civil Code). These obligations do not really make the property of the wife liable unless they are very urgent. The rights in the dowry and paraphernal fruits or the parapherna itself granted by law to the husband as the head of the family and manager of the conjugal partnership are understood to be subordinate to the preferred obligation of paying the marriage partnership expenses with such fruits and revenues. (Sentencia de 9 de Junio de 1883.)

III. THE EFFECTS OF THE DOCTRINE LAID DOWN IN THE CASE OF BANK OF THE PHILIPPINE ISLANDS VS. QUINTOS AND ANSALDO, 46 PHIL. 370.

Considering the importance of this case the writer thinks that a synopsis of the case is very necessary.

1. *Synopsis.*

The defendants herein are husband and wife, as the finding of the lower court shows. They pledged to the plaintiff bank, certain securities, to obtain credit in the amount of ₱31,284. It appears that the shares and some other securities, which they deposited in the bank as security, depreciated in value so that it was necessary for the plaintiff to demand some more. The de-

fendants failed to comply with the demand of the bank, hence this suit was filed to recover the amount of indebtedness. The judgment of the trial court was for the plaintiff, and the defendant appealed.

There were two decisions rendered in this case one at the first term of the court and the other on motion for reconsideration.

The question presented before the court was: Whether or not the property of the conjugal partnership or the property of the spouses may be held liable?

Held: The partnership does not produce the merger of the properties of each spouse. Each of them notwithstanding the existence of the partnership continues to be the owner of what he or she had before marriage.

Taking into account that the contract of pledge signed by the defendants does not show that they contracted a solidary obligation, the property of the conjugal partnership, being insufficient for the debt owing to the plaintiff, and in default thereof the spouses are jointly liable for the payment thereof. Judgment modified.

2. *Criticism and Comment*

In the first place the court in arriving at this conclusion of joint liability did not cite any authority or if it cited at all they are very meager and out of the point at issue. The writer considers that the conclusion is based upon a mistaken premise. The court should have treated the defendants as debtors merely. There was no need to resort to the relationship of husband and wife and to discuss the question on the basis of partnership. Article 1137 of the Civil Code provides: "The concurrence of two or more creditors or two or more debtors with respect to the same obligation does not imply that each of the former is entitled to demand the fulfilment of the obligation in its entirety and each of the latter is bound to by the term if they so perform it. This shall be the case only when expressly so provided in the obligation and the parties are bound in solido." If the court had applied this article there would have been no need to lay a dangerous doctrine. For if article 1137 was taken into consideration the debtors are jointly liable for debts they contracted together, except when they are solidarily liable. Georgi in his treatise on obligations said, "Each creditor cannot demand more than his part, each debtor cannot be required to pay more than his share. The obligation is in a word *pro rata*

or in parties *viriles.*" (Georgi on Obligation Vol. I p, 83). This rule laid down by Georgi is cited in the case of Agoncillo vs. Javier, 38 Phil. 434. To be sure the wife was only a recipient of only a small sum (₱10,000) and she should not be made liable to more than she was benefited.

In the second place the decision is dangerous for it subjects the property of the wife to losses. Somewhere in the discussion of the subject it is said that the court will look through the numerous disguises in which men shroud their business and save it from being sacrificed. (Theriot vs. Voskies, 12 La. Ann. 852). Even the Supreme Court of Spain is jealous about the levying of liabilities on the property of the married woman, that in no case will the property of the woman be liable except when the debts can be shown as used for the family. The damage will be great by this lax doctrine. It seems that there is no scintilla of evidence which shows that the money owed was used in some way or other for the wife. The only evidence is the pledge. This is not enough. In the case of Carrol vs. Maning, decided in Louisiana, where the husband and wife executed a promissory note these words appearing, "we or either of us promise to pay" and it was proven that the husband had no property, the court held: The wife whether separated in property from her husband or not, cannot bind herself for his debts nor can she bind *her cojointly* with him for debts contracted by him before or after marriage. (Carrol vs. Maning, 24 La. Am. 142.) In an earlier decision the same tribunal said: The wife cannot be made liable for the community debt. Robson vs. Shelter, 14 La. Ann. 712. Still another decision confirm the same rule saying that the wife is not bound by the community of which, while it exists her husband is the head. (10 La. Ann. 305). Wherever it is shown that the consideration of the wife's contract with her husband inured to her use she is liable. However, she does not bind herself as surety or jointly with him in which he alone is interested. (Sowel vs. Cox, 10 Rob. 68).

Really the conclusion of the Philippine Supreme Court in the above entitled case can be interpreted to mean that whether or not the woman has been benefited by the debt contracted by the husband or not she is liable. It is conceded that when she is benefited (or that her property has been enhanced) she is liable, but when she is not benefited the contrary is true. There was evidence tending to show that the wife was only a recipient of (₱10,000.) which the court disregarded because of

the insistence of the counsel for the plaintiff that the word "*and* and *or*" in the pledge should be interpreted that either is liable. But how about the case of Carrol vs. Maning, where the phrase "*we* or *either* of us promise to pay" and even as clear a phrase as the purest crystal, the Court of Louisiana did not make the property of the wife liable. This was true in that case because there was no proof tending to show that the money was used for her benefit or for the improvement of her property. In the case we are commenting upon proof was not introduced as to what extent is the wife benefited or whether her property was made better by the money borrowed.

The condition of family life in the Philippines is conducive for husbands to squander the property of the wife. True it is for the wife that there is a law protecting the property of a married woman. But it may happen as has happened many times before, that a woman influenced by her husband will do will do practically anything for him. Woman is as weak and lithe as the reed that bend at every passing wind. Common experience shows that the husband as head of the family can almost do anything he wants. He can squander the money of the family, gamble and drink unreasonably claiming them to be the right of every man. The Filipino wife is too trusting a creature, and unless our legislature with the cooperation of the highest court in the Philippines do something the wife will be the sufferer. The doctrine laid down in the case rather weakens the protective wall of the law against indiscretions of many husbands.

By this doctrine also, it may happen that by threats of the husband the wife might just sign her name without knowing the consequences of her act. The decision hinges in an instrument wherein the wife and husband signed, and the doctrine of joint liability of the wife was struck without studying whether the same was used solely by the husband or that the wife's property received benefits therefrom.

It may be asked that, suppose a creditor gives credit to the husband, and it so happens that his property is not enough, who will be made responsible? The answer is simple. It is for those who deal with a married man to be on their guard and see to it that he has property rather than reach the wife's property afterwards. No one is compelled to give credit to the husband, so why should they not be on the lookout?

From the above discussion several conclusions can be drawn.

IV. CONCLUSIONS

1. With few exceptions the separate property of the wife is not liable to obligations and liabilities incurred by the husband.

The exceptions are:

(a) Expenses for the preservation of her separate property.

(b) Debts which are incurred for the benefit of the family, for the reason that the wife must mutually contribute to the support of the family.

(c) Obligations contracted because of essential needs of the family are also chargeable to the property of the wife.

All these enumerated exceptions must be proved and unless they are clearly established there can be no recovery. It must be understood too, that the property of the wife is the last one to answer for whatever kind of obligation, whether for the family or for the husband. The order of chargeability is as follows: first, the conjugal property; second, the fruits of the paraphernal property; third, the husband's property; and fourth and last, the separate property of the wife.

2. The doctrine laid down in the case of the National Bank vs. Quintos and Ansaldo should have proceeded in solving the question of joint liability without touching the conjugal property and separate property of each spouse.

3. That the doctrine laid down in that case will subject the property of the wife to obligations that may be contracted by the husband alone by:

(a) Threatenng the wife to affix her signature in a document on pretext of mere formality.

(b) Cajolery or some other means which the husband may wish to do, may convince also the wife to sign her name.

The writer thinks that there should be a law which forces creditors to specify definitely for what purposes an obligation is contracted by a husband. It also must state further that when a wife affixes her signature to an instrument she must under oath testify that it is her free act and deed. The husband must also do the same, with the additional requisite that he did not in any way intimidate his wife or use any means to defraud her.