

## NOTES *and* COMMENT

### Prescription As A Valid Defense In An Action For Alimony

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**A** situation arises where a married couple have been living together for a number of years until on a certain day the wife commits an act of adultery, forcing the husband to seek another abode. To avoid any scandal, the latter refuses to present a criminal action. Since then the former has led a lewd, disreputable life and has been guilty of promiscuous intercourse. She continues to do so for fifteen years when at the end of such period she brings suit against her husband for alimony. Assuming that the defendant fails to allege adultery, may he rely on prescription as a valid defense?

Before answering the question, it is deemed necessary to know the nature of the terms *alimony* and *prescription*.

Alimony means the allowance made to a wife out of her husband's estate for her support, either during a matrimonial suit, or at its termination, when she proves herself entitled to a separate maintenance and the fact of marriage is established (In re Spencer, 83 Cal., 460, 23 Pac., 395, 17 Am. St. Rep. 266). If a wife is forced to live apart from her husband, she may sue for separate maintenance, independent of the existence of divorce or of any cause for divorce, and she may also recover attorney's fees and

other expenses necessary to enforce her rights (Arroyo v. Vazquez, 42 Phil., 56). Marriage entitles each spouse to ask support from the other (Mendoza v. Ibañez, 4 Phil., 666). The separation of the wife from the husband does not extinguish the latter's obligation to support (Goitia v. Campos Rueda, 34 Phil., 252).

There are two kinds of prescription according to the Civil Code: namely, *prescripcion adquisitiva* and *prescripcion extintiva*. The former is a mode of acquiring title by long-continued and uninterrupted possession, use or enjoyment for an immemorial period or period fixed by law. The latter is a mode of losing a right by omitting to assert it within a time determined by custom or statute. (English, Dictionary of Words and Phrases Used in Ancient and Modern Law). The prescription of an action and the acquisitive prescription of ownership cannot and should not be confounded. They are two different and distinct things (Bargayo v. Camunot, 40 Phil., 857). The word "prescription" as used in the Civil Code is used to cover both the idea of acquisition of a right by lapse of time and the time within which an action must be brought after the right of action has accrued (U. S. v. Serapio, 23 Phil., 584).

It is clear that in the case presented it is the extinctive prescription that we are concerned with.

Going back to the question, therefore, does the action for alimony prescribe? It is submitted that it does, and that prescription is a valid defense to such action.

Not only a few but many distinguished members of the bench and the bar are of the opinion that the wife's right to alimony or to receive support from her husband is imprescriptible; that as long as the matrimonial tie exists between them, the wife has the undoubted right to demand support for her separate maintenance. To prove this, Article 143 of the Civil Code is cited in which it is provided that the spouses are mutually obliged to support each other. Where there is separation between the spouses, the marital tie still exists, and with this, the legal obligation. Furthermore, Article 152 of the Civil Code provides for the causes by which the obligation to give support ceases, and prescription is not mentioned among them. From this opinion, the writer, with due respect, begs to differ. Let us analyze and test the strength of such reasoning.

It is true that Art. 152 of the Civil Code does not include prescription as among the causes of the extinguishment of the obligation to give support. But it so provides specifically in a separate article, which is Art. 1966, stating that actions to enforce the performance of the obligation to pay allowances for support prescribe in five years. Of course, it has been held by the Supreme Court of the Philippines that Articles 1968 of the Civil Code have all been repealed by the Code of Civil Procedure (*Pelaez v. Abreu*, 26 Phil. 415). But this does not deprive

us of the explanation why prescription is not included in Art. 152 as among the causes mentioned therein. Neither does this blind us to the intention of the framers of the Civil Code. If it is true that it was their intention that under Art. 143 the spouses are mutually obliged to support each other, that such obligation can be demanded as long as the marriage relation exists, then why the existence of Art. 1966 regarding prescription? Obviously, it must be their intention that the right to alimony is not imprescriptible.

The reason and purpose of Art. 1966 are expounded by Manresa and Bonel as follows:

La indole de esta clase de prestaciones aconseja la reduccion del termino para la prescripcion del derecho a reclamarlas, pues no siendo debidos los alimentos, por regla general, mas que en el caso de ser necesarios para la vida del alimentista, la ley presume que no los necesita para dicho fin aquel que deja transcurrir tanto tiempo sin pedirlos, demostrando asi con sus actos que cuenta con otros medios distintos para atender a las necesidades de su subsistencia (12 Manresa, p. 792).

Sientase aqui uno de los grupos de prescripcion de acciones determinadas, fijandose el plazo de cinco años para que prescriban la de pagar pensiones alimenticias, la de satisfacer al precio de los arriendos, y la de reclamar cualesquier otros pagos que deban hacerse por años o en plazos mas breves; porque como la ley al propio tiempo que castiga abandono de los acreedores que no ejercitan sus acciones con la debida diligencia, presta su proteccion, su apoyo a los deudores, impidiendo sean molestados su pretexto de obligaciones ya satisfechas, cuando por la antigüedad de las mismas no sea facil probar que se cumplieron no podia menos de proveer los casos en que se exija el cumplimiento de obligaciones que se satisfacen anualmente, o mas breves plazos, en los que, por su constancia casi perenne, ni se guarda resguardos, ni es facil se dejen pasar los terminos cortos y precisos, en que han de abonarse, sin su justa reclamacion, pues especialmente las pensiones alimenticias, nadie ha de presumir que dejen de pedirse ni dejan de satisfacerse oportunamente, aunque solo fuese por la necesidad de las

mismas (+ Bonel, Código Civil, pp. 957-958).

The fact that in the separation of the spouses the marital tie exists does not entitle either of them automatically to receive support. There are circumstances which show that no support shall be given notwithstanding the existence of such relation. Thus in the case of Quintana v. Lerma, 24 Phil. 285, our Supreme Court said:

We are of the opinion that the special defense of adultery set up by the defendant in his answer both to the original and the amended complaint is a good defense, and if properly proved and sustained will defeat the action."

Proof by the defendant, therefore, of adultery on the part of his wife entitles him to refuse the giving of any support to her although the marriage tie still exists between them.

As a matter of fact the Civil Code itself provides in Art. 152:

"The obligation to give support shall also cease:

2. When the means of the person bound to give it has been reduced to such a degree that compliance with such obligation will mean the neglect of his own needs and those of his family."

From such provision we may infer that the obligation to give alimony may cease even though the marriage relation continues to exist between the spouses.

What then is the effect of the repeal of Art. 1966 of the Civil Code?

Such repeal does not render imprscriptible the wife's right to alimony. That actions for support prescribe is also recognized by Chapter III of the Code of Civil Procedure (Act No. 190) which is the present law on prescription of actions. According to Section

38 of this Act, the only actions exempted from its operation are:

1. Actions already commenced or cases wherein the right of action has already accrued at the time of its effectivity;

2. Cases of continuing and subsisting trust;

3. Actions by the vendee of real property in possession thereof to obtain conveyance of it.

Since an action to compel support is not among the cases expressly exempted by the statute, it necessarily follows that said action comes within its operation. These specific exceptions exclude all other exceptions, following the rule "that an exception in a statute amounts to an affirmation of the application of its provisions to all other cases not excepted" and of the principle of *inclusio unius est exclusio alterius*. (Black, Interpretation of Laws, p. 427; Chartered Bank v. Imperial, 48 Phil., 931).

Under Section 43 of the Code of Civil Procedure, we find the following provision:

"Civil actions other than for the recovery of real property can only be brought within the following periods, after the right of action accrues:

2. Within six years: \* \* \*, and an action upon a liability created by statute other than a forfeiture or penalty."

If we hold that the husband's obligation to support his wife is a liability created by statute (Art. 143, par. 1, Civil Code), then the action to enforce it prescribes in six years.

Section 44 of the Code of Civil Procedure provides that any other action for relief not provided for in the Code of Civil Procedure can only be brought within ten years after the cause of action accrues. Inasmuch as there is no provision in the said Code which expressly covers claims for support we might

hold that if the action for support does not prescribe in six years then it must necessarily prescribe in ten years.

It is submitted, therefore, that in a case where the husband and his wife have been living separately for fifteen long years without the latter asking for any support from the former, when she is entitled to a separate maintenance, the necessity of receiving support is never felt by the wife, and that her right to support prescribes. It is further

submitted that during the time that the wife has failed or refused to assert her right, circumstances may have occurred that would cause an injustice were said unasserted rights to be enforced by the court, and would convert the sacred state of matrimony into a bargain counter where unscrupulous spouses would seek to turn their privileged matrimonial status into a potent weapon in extorting the most lucrative terms.