Suit On Breach Of Marriage Promise

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SENTIMENTALISM occupies a distinguished vantage point in the shaping of the laws. We hear it said and we read too often a negation of this principle in favor of justice (Evans v. Evans, Hag. Con., 35; Eng. Reprint, 466, 467), yet in no case than in the law of marriage promise are justice and sentimentalism more blended and become as one. This is in fact the fundamental basis on which rests the common law suit on breach of promise to marry. The principles that have been extensively developed on this subject are but the echo of the fine sentiments that man has for honor corroded by fraud and hopes dampened by the searching public eye resulting from an unfulfilled promise to marry. It pleases me to quote Mr. Chief Justice Parker's opinion delivered in 1818, as constituting a beautiful and representative statement on the subject: "A deserted female, whose prospects in life may be materially affected by the treachery of the man to whom she has plighted her vows, will always receive from a jury the attention which her situation requires; and it is not disreputable for one, who may have to mourn for years over lost prospects and broken vows, to seek such compensation as the laws can give her. It is also for the public interest, that conduct tending to consign a virtuous woman to celibacy should meet with that punishment which may prevent it from becoming common. That delicacy of the sex which, happily, in our country gives the man so much advantage over the woman, in the intercourse which leads to matrimonial engagements, requires for its protection and continuance the aid of the laws. When it shall be abused by the injustice of those who would take advantage of it, moral justice, as well as public policy, dictates the propriety of a legal indemnity." (Wightman v. Coates, 15 Mass. 1). My research does not give me a single parallel case in the Philippines except, perhaps, and only by way of analogy from a different legal point, the case of People vs. Guzman, 51 Phil. 105, 111. The Court said: "Considering the extreme modesty and timidity of the Filipino woman, we cannot believe that the herein offended party, whose chastity has not been questioned, could have fabricated, or wished to fabricate facts which would so seriously dishonor her, and much less discuss them at a public trial, thus giving rise to gossip and slander, without a powerful motive that would paralyze all her sense of modesty and shame." (A similar declaration is found in People v. Brocal, 36 O. G. 858, a case decided by the Court of Appeals).

Suits on breach of marriage promise are not at all a modern legal invention, as the roots of this class of actions go back hundreds of years ago into the Roman law. James Bryce (Studies in History 799) says: "The marriage relation rests entirely on the free will of the two parties. If either having promised to enter it refuses to

do so, no liability is incurred. If either desires to quit, he or she can do so. Within it, each retains his or her absolute freedom of action, absolute disposal of his or her property." And Mr. Correa in his article on *A Comparative Study of the Spanish And American Law on Breach of Promise to Marry*, in Philippine Law Journal, December, 1935, says: "Under the Roman law, the action for breach of promise was not known, because it was considered *contra bonos mores*. In no case can a stipulation fixing beforehand the sum to be paid as penalty be enforced in the event that the promise made is not performed." These statements do not seem to be the unanimous verdict of those that have studied this phase of the law earnestly. Corbett tells us that up to 90 B. C. (Corbett, The Roman Law of Marriage, p. 9) the Latin *sponsalia* consisted of bilateral actionable stipulations. The controversy among the authors did not arise on the question of its being actionable, as to which there was agreement, but on whether the action was unilateral or bilateral. (Voigt, Jus Naturale, 2, 234, note 246.) The remedies provided for by the Roman Law varied from time to time. The later developments indicated the validity of agreements to pay damages in case of breach. An action for pecuniary liability, the amount depending upon the good faith or bad faith of the delinquent, was maintainable. The consequences recognized at various times growing out of the *sponsalia* were the following:

"(a) Two simultaneous engagements or marriage with one person in violation of an engagement to another entailed poetorian *infamia* to the responsible parties. (D. 3, 2, 1; 13, 1-4).

"(b) Betrothal set up a sort of affinity, sufficient to render illegal the marriage of one party to the engagement with the parent or child of the other. Thus, according to Ulpian in D. 23, 12, 1-2, a son may not marry his father's *sponsa* nor a father his son's, and Paul in D. 23, 2, 14, 4, reports a decision of Augustus against marriage with the mother of the *sponsa*.

"(c) A rescript of Severus and Caracalla declares that a *sponsus* may prosecute his *sponsa* for infidelity.

"(d) .
"(e) .
"(f) .
"(g) . . " (Corbett, pp. 16-17).

The *arra sponsalicia* appeared in the byzantine period, precisely as a penalty for the breach of promise to marry. It was forfeited by the husband should he refuse to proceed with the marriage and repaid in multiple if the breach came from the woman. Unlike the gifts, of which the lex *Cincia* made mention and required to be restored by Constantine in A. D. 319, in case of breach of promise, springing from a pure act of liberality, the *arra*, although constituting an unessential adjunct of the promise to marry, was given primarily as security for the performance of the marriage and as penalty in case of breach of promise. Under Leo's law any other sort of forfeit than *arra* was declared void. This is the law of the Romans traces of which may be found in the systems of laws of various countries.

The case of Stretch v. Parker, 1 Roll Abr. 22 (1939), laid the earliest foundation of the common law suit on breach of contract to marry. Blackstone informs us that it was given the effect of a civil convenant. It was at first cognizable by ecclesiastical courts which, having no authority to award damages, imposed censures. Jurisdiction gradually came within the orbit of the common law and chancery courts. Here, it is interesting to note how far beyond the Roman Law the early English law had extended. To the Roman specific performance of a contract which derives force from mere volition and mutual affection was unthinkable and preposterous. The ecclesiastical courts arrogated to itself this power which, although taken away by 26 Geo. 11, chap. 33, we find later on transferred, in the reign of Charles the First, to the chancery courts. Similar powers were vested by the Frederician Code, compiled for the king of Prussia (Eicholz, The New Civil Code of Germany, 35 Am. Law Review, 202); and traces of the same may be found in the laws of Spain. (Inst. Civ. Law of Spain, by Drs. Jordan De Asso y Del Rio and Miguel De Manuel y Rodriguez, 6. 1, tit. 6, cited as note to Wightman v. Coates, *supra*). No civilized nation, it seems, at present allows an action for specific performance of a marriage promise.

The American courts entertained doubts on whether the principles developed in England should be transplanted to America. (Virginia Law Review, Vol. 22, December, 1935, pp. 205-318). In the course of time the various jurisdictions adopted the precedents of the mother country, till the present, when it occupies a permanent place in the common law of America. On the security with which this principle finds lodgment in American tribunals, one can easily gather ample evidence on the manner judges of various jurisdictions have, with sentimentalism, eulogized this remedy. Said the New York Supreme Court: "Contracts of marriage are unlike all others. They concern the highest interests of common life and enlist the tenderest sympathies of the human heart, and the acts and declarations done or employed by the parties in negotiating them are often correspondingly delicate and emotional." (Homan v. Earle, 53 N. Y. 267, 272.)

Let us digress a moment to find exactly what the Philippine law on the sugject is. The earliest case decided by our Supreme Court was that of Batarra v. Marcos (7 Phil. 156) decided on Dec. 7, 1906. In this and in those which followed (Tengco v. Sanz, 11 Phil. 163; Insun v. Belzunce, 32 Phil. 342; Dalistan v. Arnas, 32 Phil. 638) the Supreme Court denied the claim for recovery of damages based on an illicit consideration. If the suit be considered as on a contract, articles 1305 and 1306 of the Civil Code declare that no right of action can be maintained on an illegal covenant. Nor does a tortious liability arise under article 1902 as both of the contracting parties participated in the immoral act. *Scienti et volenti nula fit injuria neque dolus.* The case of Garcia v. Del Rosario, 33 Phil. 189 presents a valid contract to marry. The plaintiff bore a child of the defendant. She claimed maintenance, medical fees, damages of ₱5,000, and ₱30 a month lost to her as a teacher, as she was pre-

vailed upon by the defendant to resign. As the plaintiff waived her claim for the first three items before the trial, she was granted only the last item. The plaintiff was granted damages, as for tort under article 1902 of the Civil Code, equivalent to her salary for a year and a half in her former employment as, a teacher. And still quite a different case was that of Domalagan v. Bolifer, 33 Phil. 471. The plaintiff delivered ₱516 to the defendant in consideration of the intended marriage between the defendant's daughter and the plaintiff's son. The defendant's daughter backed out and married another man. The plaintiff instituted an action to recover from the defendant the ₱516 and damages, because he had to sell his real property at a great sacrifice to raise ₱500. The Supreme Court allowed him ₱516 with interest at six *per centum* from the filing of the complaint.

Implicit in the two cases above cited is the decided intention of the Supreme Court to apply the law of damages in tortious liability under article 1902. Actual damages were granted and no more. Almost the only feeble force which attempted to bring into our jurisprudence the common law of America was that of Mr. Justice Moreland who, in his concurring opinion in the Dalistan case, objected to the exclusion of the evidence of sexual relations between the plaintiff and the defendant as being one of the elements aggravating damages where it appears that such relations were induced by the promise to marry. A virtual negation of this suggestion is later announced by the Supreme Court through Mr. Justice Street in the case of De Jesus v. Syquia, 58 Phil. 866. The plaintiff, who bore two children of the defendant, was denied the claim of ₱30,000 damages on breach of promise to marry. The Court did not only find that the promise was not proved but went on to declare further that "the action for breach of promise to marry has no standing in the Civil Law, apart from the right to recover money or property advanced by the plaintiff upon the faith of such promise." (p. 870).

This statement of the Supreme Court introduces no novel principle in Philippine jurisprudence. It was but a confirmation, in bolder language, of that announced in the Domalagan case. The Supreme Court has defined its policy and would rather send one about to the legislature to seek remedy than, by judicial interpretation, afford a substantial relief.

The foregoing statement of our Supreme Court is indeed thought provoking. I came upon the thesis of Mr. Correa who concluded by saying: "It can not be denied that women are always the victims * * * We must not lose sight of the fact that our women are by nature modest, sensitive, and virtuous. She seldom falls in love, but once she accepts a man, she will give everything that is within her just to make that man happy and contented. To them honor is the priceless legacy from their mother. They would prefer a broken head to a broken heart." He continued, "Men are wise. they will not get a rope to tie their necks." (Correa, *supra*, p. 317). Written in 1935, this thesis is a reflection on the Court which rendered the decision in 1933.

It is interesting to observe that our ancestors of the Pre-Spanish

era had evolved a custom similar to that of Rome or Germany. (See 9 Manresa, p. 223). The *arra sponsalia* of Rome, which constituted a punishment for breach of promise to marry, had a parallel here in the form of fines given to atone for a similar breach. (Blair & Robertson, The Philippine Islands, Vol. VII, 184). That sentiment of which Mr. Chief Justice Parker wrote in 1818 was a feeling not foreign to our forbears many years prior. And yet again, in the twentieth century, Mr. Correa may be expressing the view and sentiment of many who feel the urge of protecting the virtues of womanhood.

It is difficult, policy aside, to justify the stand of the Supreme Court in declaring that a suit for breach of contract to marry has no place in the Civil Law, except as stated in the decision referred to. In effect, we are given only one remedy—to seek in the legislature a positive enactment providing for a more substantial remedy. We submit that there is no insurmountable barrier why, by judicial declaration, we cannot accomplish a similar result as by legislation. For although the essential basis of the right of action in breach of promise to marry is contractual the right to recover damages is based on torts under article 1902 of the Civil Code. (Garcia v. Del Rosario, *supra*). The decision of the Supreme Court of Spain of Dec. 6. 1882, which constituted the basis of the case of Marcelo v. Velazco (11 Phil. 287), was superseded by the decision of Dec. 6, 1912, expressly recognizing the right to recover in a civil action under article 1902 of the Civil Code for damages for pain and injured feelings. (Lawyer's Journal, July 31, 1937, p. 636).

In the United States, it is true, an abuse of this common law suit has called the attention of State legislatures to call a halt. (It was initiated by Indiana on March 11, 1935 and followed by New York on March 29, 1935; Illinois on May 4, 1935; Michigan on June 3, 1935; Pennsylvania on June 22, 1935; New Jersey on June 27, 1935). Its abuse has become so widespread, indeed, as to necessitate a translation of the social force into law. The arguments for its abolition are very convincing. (See Brooklyn Law Review, Vol. 5, January, 1936, pp. 196-206; Virginia Law Review, Vol. 22, December, 1935, pp. 205-218; University of Pennsylvania Law Review, Vol. 85, November, 1936). Most notable among them are the abuses committed by the jury in the assessment of damages; the possibility of a woman recovering for loss of a marriage which she does not want; the truly injured person in the last to consider bringing an action for breach of contract to marry; the bringing of the suit is a manifestation of incompatibility of tastes for each other; and that many circumstances, admitted as causes for divorce, are not considered as an excuse from performance of the agreement.

It is perhaps sufficient to say that we have no jury in the Philippines. Recognition of the character of our women by the highest courts of the land (People v. Guzman, *supra;* People v. Brocal, *supra*) furnishes a sufficient argument against the charge of a possible and like abuse of the remedy as in the United States. The ap-

preciation of a social policy, certainly, should be guided and influenced only by conditions peculiar to our country, what the American generation of today calls pure sentimentalism in 1818 might actually have been the correct declaration of what, at that time, should be the law. The change which today exists, and claimed by legislative bodies in the American Union only argues for a corresponding change in the declaration of policy. Is this not after all the life of the law?

It is vain idealism and fine sophistry to say that the judicial function does not permit a contrary declaration to that announced in the case of De Jesus v. Syquia. It is now, I believe, too plain to be contested that courts have higher functions than merely becoming administrative tribunals, to enforce the will of the legislative body. (See Cardozo, Paradoxes of Legal Science). I conceive no reason in law or in policy why the courts should close their doors and point us to the legislature for relief. As the law now stands, we have accomplished a result identical to that of the German Law (E. J. Schuster, The Principles of German Civil Law (1907), pp. 479-480; German Civil Code, First Section, Fourth Book), done by a positive enactment. Mr. Justice Moreland, after all, may be right in his suggestion. We, too, can provide for a stopping place when the remedy is abused: but, I believe, not till then.