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GRANDFATHER'S LITTLE DIVIDENDS ASK FOR ALIMONY

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INTRODUCTION

TAKE a man with money to burn, and a son he cares for. Let the son take the woman of his choice in holy matrimony. That makes the man not only affluent, but also generous. Make the spouses, therefore, the subject of his generosity: let him give them a house wherein to cultivate a home; let him start to teach his son the business, and give the woman employment in his enterprise. The spouses cooperate. They bring up two children and look forward to another one. That makes our original prosperous father a prosperous grandfather now.

Keep your protagonists together for a little while longer. Throw in any one of the numberless differences that can come between any number of people, especially in-laws. That could set your characters at odds. Let the wife gather her family and run to Mama; let the (by this time) slightly disillusioned grandfather strike the wife off the payroll. Charge them with the reasons you wish, but let them do all those. The husband goes with the wife, but keeps on working in his father's business. Soon, he is sent to the United States by his father, and continues to receive his salary of ₱400.00, out of which he sends ₱300.00 to his wife as monthly support.

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The Case

At this point, take your pick of the human vanities, pitch them into the pot, mix well, let your people come to a slow boil, and you have a fine litigatious mess in your hands. Serve while hot; and the wife files a verified complaint for her two children and "the conceived child still unborn", alleging father's abandonment, aided and abetted therein by the grandfather, leaving them no means of support. She prays among other things that, since the spouses and their children had been supported by the multi-millionaire grandfather, a decision be rendered ordering the latter to support the plaintiffs in the amount of ₱1,500.00 from the time the mother was slashed from the payroll, and for attorneys fees and costs. Immediately thereafter, the plaintiffs, in the action for support file an application for Alimony *pendente lite* in the aforementioned case against the grandfather, alleging the same facts contained in their complaint, praying that the court issue an order against the grandfather for monthly *alimony pendente lite* of ₱1,500.00 until further order of said court. The grandfather answers the complaint, answers the application for alimony *pendente lite,* interposing special and affirmative defenses denying the status of his grandchildren to ask for support on the ground that their parents are alive and able to do so, thereby raising the right of said grandchildren for support as one of the questions in issue.

The husband returns and gets into the fray with a motion for intervention on the ground that he is directly interested in the case not only because it involves his rights and obligations as the father of the family, but also because it affects his good name and reputation, the welfare of his children and the best interest of his family. The motion to intervene is granted, and intervenor opposes the application for Alimony *pendente lite,* on the grounds: that he had not abandoned his children since he had gone to the United States with the consent and upon suggestion of his wife in order to study and improve his earning capacity; that he had been supporting them from their birth in accordance with his means; and that he was still employed and had been receiving his salary of ₱400.00 aside from his monthly allowance as *pensionado,* out of which he had been sending his family a monthly allowance of ₱300.00.

After the hearing of the application for Alimony *pendente lite,* upon a finding that the father of the plaintiffs (intervenor in the case) has means of supporting them, the court issues an order holding both intervenor and defendant-grandfather liable for support, ordering said intervenor and defendant to pay ₱300 and ₱900 a month, respectively, as support *pendente lite,* and holding further that in case of intervenor's failure to pay his aforementioned share of ₱300, that defendant-grandfather be subsidiarily liable therefor.

Analysis

The above-given case is not as far-fetched as one would think; the epigram that truth is stranger than fiction is most consistently brought up by lawsuits. Take a case substantially on the same facts decided by the Court of First Instance of Rizal in the following manner:[1]

> "Los autos arrojan como hechos incontrovertibles los siguientes: Los menores Marta Rufino Teodoro, Tomas Teodoro y el nuevo vastago, el cual cae bajo las disposiciones del Art. 108 del Codigo Civil, son hijos legítimos de los esposos Leticia Tabora y Francisco Teodoro, siendo este último hijo del aquí demandado, quién había consentido en la celebración de dicho matrimonio, por no existir ninguna prueba en contrario, y quién a su vez es el abuelo de dichos menores, representados en estas actuaciones por su madre y tutora natural Leticia Tabora de Teodoro, segun se acredita por el contrato matrimonial (Exh. A) y certificados de nacimento y bautismo (Exhs. B. C. D. y H). Aparece asimismo de autos que Toribio Teodoro es el unico y exclusivo dueño de "Ang Tibay" Shoe & Slipper Factory, tal como fué declarado en el asunto de ANG vs. TEODORO (Gac. Of. de 1943, Vol. 2 pp. 674-75) y es también dueño del Grand Opera House y otras numerosas empresas y propisdades.
>
> "Era el mes de Junio de 1948 cuando el tercerista Francisco Teodoro había abandonado, sin justa causa a su esposa e hijos, partiendo después para America, furtivamente, a indicación expresa del aquí demandado, quién obtendrá en su día los frutos de sus estudios como positivo bienestrar de "Ang Tibay", cuyo único propietario es el aquí demandado.
>
> "No debe perderse de vista que los demandantes cuando

[1] Marta Rufino Teodoro et al., contra Toribio Teodoro, Civil Case No. 655, Court of First Instance of Rizal.

vicían con el demandado a base de los ₱800.00 que este los suministraba, de acuerdo con su posición social y economica, todavía se les daba subsistencia y alojamiento; pero he aquí que cuando ya vivieron separados del demandado hacia el mes de febrero de 1948, dicha pensión, sin justa causa, fué luego suspendida, y sólo en 19 de noviembre del año en curso fué cuando dichos demandantes recibieron la cantidad de $150.00 (Exh. 7) remetidos por el tercerista a la demandante Leticia Tabora Teodoro desde America, cuya cantidad es exigue aunque fuera para afrontar sólo los gastos de comida, no estando incluido aun los de alberque, ropas y asistencia medida.

"Pero la cuestión a delucidar en este asunto es la siguiente: ¿Tienen derecho los aquí demandantes a la pensión que solicitan? Contestamos que si por cuatro motivos: 1) Porque se ha presentado la correspondiente solicitud de acuerdo con el Art. 143 del Codigo civil; 2) Consta plenamente establecido la relacion de parentesco que los uno; 3) Fueron abandonados sin justa causa; y, 4) Porque el demandado fué quién patrocino la idea de enviarle a America a Francisco Teodoro (Exh. B.), se capa de un privilegio que se lo ha extendido, de cuyos opimos frutos se beneficiara exclusivamente "Ang Tibay", privándoseles de este modo a los aquí demandantes, acostumbrados a la vida regalona, de lo suficiente para satisfacer sus necesidades perentorias. Por lo que es justo y lógico concluir que el aquí demandado debe suplir dicha falta o deficiencia económica.

"Este Tribunal ha prestado una atención minuciosa a los diferentes aspectos del asunto y halla que tanto los hechos como la ley los tiene la parte demandante a su favor, y, consiguientemente, dicho demandado debe ser indulgente para con los referidos menores que son sangre de su sangre.

"Aun cuando hay algunos que pretenden hacer de la Vida exclusiva propiedad suya, con todo, el Juzgado esta convencido que residen en el demandado, que es un magnate de mayor predicamento, la honradez y la probidad. Si la primera hace que los hombres cumplan con sus deberes, la segunda, empero, es la cualidad del hombre firme y constante que respeta los derechos de otro, y da a cada cual lo que le pertenece. Cierto es que el hombre esta sujeto a error y todo abuso de discrecion puede ser corregido mediante el remedio adecuado; pero jamas debe tolerarse que, dandose maña, se hallan los postulados de la justicia y la equidad, siendo unica regla de la primera cumplir con rigor las leyes positivas, y de la segunda, corregir las malas intenciones y las debilidades de la humanidad. Templemos el derecho con los sentimientos de una piedad humildo, tierna y sincera para que estas disenciones domesticas no lesionen los derechos humanitarios que los demandantes los asisto.

"De conformidad con el precepto aqui enunciado, hay un hecho que se destaca palmariamente y es que, en consonancia con lo previsto en los Articulos 144 y 145 del Codigo Civil, no teniendo el tercerista Francisco Teodoro recursos suficientes, tal como se desprende de los Exhibitos AA y 8 para afrontar dicha pension, recae en el aqui demandado la obligacion de atender los apremios de la pension alimenticia, cuya obligacion se hace mas patente por virtud de una decision de este tenor:

> "La S. de 30 de abril de 1923 (cuya doctrina esta ratificada por la de 24 de noviembre de 1925) resolvio que pueden exigirse los alimentos de un abuelo, cuando la Sala aprecia que el padre no puede prestarlos por carecer de bienes y que, aun no hallandose incapacitado para el trabajo, nunca podria en la actualidad suministrarlos, por no consentir el servicio militar, aceptado por su libre voluntad, dedicar sus asiduidades a una ocupacion lucrativa."

POR LAS CONSIDERACIONES ARRIBA EXPUESTAS, y teniendo en cuenta la relacion de parentesco que los uno, la posicion social y economica del demandado, al alto costo de vida, la urgente necesidad de los demandantes y de la referida tutora, que tampoco cuenta con medios para alimentarlos, y otros gastos parentorios comprendidos en el Art. 142 del Codigo Civil, SE ORDENA al tercerista Francisco Teodoro y al demandado Toribio Teodoro para que, dentro de 48 horas de notificados de esta order, el primero entregue mensualmente a la demandante Leticia Tabora-Teodoro la cantidad de ₱300.00, corriendo por cuenta del demandado Toribio Teodoro la diferencia de ₱900.00 que tambien debera entregar mensualmente a dicha demandante, o sea un total de ₱1,200.00 al mes; y para al caso de que el tercerista Francisco Teodoro dejare de entregar la referida cantidad de ₱300.00 que la corresponde dar, recaera la obligacion de efectuar dicha entrega de ₱300.00 en el demandado Toribio Teodoro, todo ello con efectividad desde el 12 de octubre de 1948, fecha de la interposicion de la presente demanda, mas otra cantidad de ₱1,100.00 que, dadas las circunstancias del caso, asimismo correra por cuenta del demandado Toribio Teodoro, para sufragar en autos, y otros gastos incidentales con motivo del reciente alumbramiento de dicha Leticia Tabora-Teodoro, debiendo entregarsela las correspondientes a los meses siguientes dentro de los primeros cinco (5) dias del mes a que correpondian.

"ASI SE ORDENA."

The dismissal, after stipulation between the parties, of defendant's subsequent petition for certiorari with preliminary injunction before the Supreme Court, peaceful-

ly resolved the unfortunate family squabble; but it has also deprived us of a definite determination of the issues presented by the problem. For it is our humble opinion that there are several points in the above-quoted decision which are open to fair dispute.

When is the grandfather liable for the support of his grandchildren?

Is a grandfather liable for the support of his grandchildren when the father of the latter is living, financially capable of supporting them, and is ready and willing to do so, as in fact he was doing at the time of the action? Upon this point, the Civil Code very clearly says:

> ART. 291. The following are obliged to support each other to the whole extent as set forth in the preceding article:
> (1) The spouses;
> (2) Legitimate ascendants and descendants;
> (3) Parents and acknowledged natural children and the legitimate or illegitimate descendants of the latter;
> (4) Parents and natural children by legal fiction and the legitimate and illegitimate descendant of the latter;
> (5) Parents and illegitimate children who are not natural.
>
> ART. 294. The claim for support, when proper and two or more persons are obliged to give it, shall be made in the following order:
> (1) From the spouse;
> (2) From the descendants of the nearest degree;
> (3) From the ascendants, also of the nearest degree;
> (4) From the brothers and sisters.
>
> Among descendants and ascendants the order in which they are called to the intestate succession of the person who has a right to claim support shall be observed.

In various decisions of the Supreme Court of Spain, the substantial equivalents of the above provisions in the Civil Code were interpreted in the following tenor:

> "La obligacion de alimentos era reciproca entre ascendientes, siguiéndose el orden correlativo; *de modo que el abuelo solo podia reclamarlos al nieto cuando el hijo hubiera fallecido o se hallara en la indigencia, y del mismo modo el nieto no podia pedir alimentos al abuelo viviendo los padres y teniendo estas posibilidades de suministrarlos.* (Sentencia, 4 Sept. 1860 y 27 Junio, 1864; 1 Manresa, 6th Ed., p. 663-664. Underscoring ours.)
>
> "Dada la representacion y autoridad que en el matrimonio y sociedad conjugal corresponden al *marido,* es evidente que a esto, *en primer termino, compete atender a la satisfaccion de las necesidades de su consorte e hijos,* no siendo, por lo tanto, procedente que ni estos ni su madre acudan en *demanda de alimentos a sus abuelos o padres respectivos mientras aquel no esta incapacitado fisica y moralmente para ganar el sustento necesario ejerciendo un oficio, profesion o industria,* a tenor de lo prescrito en el Num. 3 del art. 152 del Codigo Civil. (Sentencia, 10 de Enero, 1906; 5 Sanchez Roman, 2nd Ed., p. 1239, Underscoring ours.)
>
> *"El padre es el obligado en primer termino a la mantenación de sus hijos, sin que puedan ser compelidos a ella los abuelos mientras no se demuestre que aquel puede hacerlo.* (S. 27 Abril, 1911; Leyes civiles de España, por Medina y Marañoñ. 67. Underscoring ours.)
>
> "La obligacion de alimentar a los nietos continua para la abuela, aun cuando el padre regrese a su hogar, *si se demuestra que este carece de toda clase de bienes y no se encuentra capacitado para el ejercicio de alguna profesion e industria.* (Sent. de 24 de noviembre de 1915; 3 Scaevola, 5th Ed. Underscoring ours.)[2]

There can be no doubt, therefore, that the father is the one first called upon by law to support his children. The grandfather can only be held liable for support upon a showing that the father (or in his default, the mother) is incapacitated and absolutely without means of supporting his children. The doctrine is well settled, and the eminent commentator Manresa leaves hardly any room for doubt when he says:

> *"A falta de padres, o cuando estos en absoluto carecen de medios,* pasa a los abuelos la obligacion de alimentar a los descendientes; y lo mismo sucede reciprocamente en esta linea con relacion a los ascendientes, sin que no detengamos en este punto con mayores indicaciones, pues nos basta referirnos a lo dicho en la introduccion del presente titulo, por no haber sufrido alteracion alguna esta materia en nuestro antiguo derecho y a lo que ordenan los arts. 144 y 145 y expondremos en su comentario. (1 Manresa, 6th Ed., p. 686. Underscoring ours.)
>
> *A falta de padres, o cuando estos carecieran de recur-*

[2] See also Sentencias de 6 de Junio de 1917, 1 Manresa, 6th ed., p. 702; Sentencia de 30 de abril de 1923, 3 Scaevola, 5th ed.

sos, la obligacion de prestar alimentos pasaba sucesivamente a los ascendientes por ambas lineas; pero si los hijos o descendientes no eran legitimos ni naturales, sino espureos, la obligación pasaba solo sobre los ascendientes de la madre. (1 Manresa, 6th Ed., p. 663. Underscoring ours.)

A falta de conyugo, o cuando esta carezca de medios para el cumplimiento de dicho deber, la ley llama a los descendientes y despues a los ascendientes *mas proximos,* regulando su gradacion entre si por el orden establecido para la sucesion intestada en los arts. 930 a 938 ambos inclusivo, a cuyo comentario nos remitimos. Asi se explica que mencione a los descendientes antes que a los ascendientes al establecer el orden en que debe cumplirse la obligacion de alimentos *cuando fueron dos o mas los sujetos a ella por ser esta tambien la gradacion marcada en las secciones primera y segunda del cap.* 4 *titulo* 3 *del libro* 3 *de dicho Codigo para la sucesion intestada.* (Manresa, 6th Ed., pp. 698-699. Underscoring ours.)

En efecto, si la razon legal en que descansa la obligacion impuesta por la ley a determinadas personas de suministrar alimentos a sus parientes, estriba principalmente en las exigencias de la naturaleza humana y en los vinculos creados por las relaciones de familia, *lo logico es imponerla, en primer termino, a los que por la misma naturaleza estan mas intimamente relacionadas con el alimentista, y solo a falta de los grados mas proximos de parentesco sera cuando* pueda justificarse su extension a los mas remotos. (1 Manresa, 6th Ed., 698. Underscoring ours.)

The father having been shown physically and morally capable of supporting his children, the only question in respect to the provision as interpreted remains: were the parents in this particular case capable of supporting their children in accordance with their social standing?

The father pleaded and proved that he had not abandoned the respondents; that he has means to support the children in accordance with his standing, as in fact he had been supporting them; that he had been employed in his father's factory at a salary of ₱400 per month, of which he had regularly sent ₱300 a month for the support of his family while he was studying in the United States. Add to all of these the fact that the mother was enrolled and actually studying in a local university at the time, and it becomes clear that she had enough money for the support of their children, and more.

What is the measure of support?

Having determined that the father, and not the grandfather, is liable for support in this case, is the father bound to give support in accordance with his own social standing? Or can he be compelled to keep the children in the ease and comfort commensurate with the social standing of the grandfather who happens to be much better off financially?

Article 290 of the Civil Code says that "Support is everything that is indispensable for sustenance, dwelling, clothing and medical attendance, *according to the social position of the family.*" On this point, Manresa says:

> "* * * *la cuantia en todo caso debe graduarse por la cantidad del caudal de la persona que debe dar los alimentos,* la clase y condicion de quien ha de recibirlas y demas circunstancias que concurran; apreciacion y designacion sometida al recto criterio de los tribunales. En una palabra, no cabe mas que el arbitrio paterno, y, en su defecto, al judicial. (2 Manresa, 2nd Ed., p. 16. Underscoring ours.)
>
> "La obligacion impuesta por la ley a los padres, de criar, educar y alimentar a sus hijos *segun su fortuna,* lleva consigo, como consecuencia precisa, la de reembolsar los gastos, invertidos con ese fin a quien sin un deber exigible legalmente los hubiese suplido. Asi lo ha declarado el Tribunal Supremo en sentencia de 19 de noviembre de 1886, y se previene tambien en el art. 1,894 del presente Codigo. (1 Manresa, 6th Ed., p. 686. Underscoring ours.)

The Honorable Supreme Court has also held that—

> "Temporary maintenance is covered by articles 142 and 143 of the Civil Code, and includes all that is necessary for food, shelter, clothing, and medical attendance *according to the social standing of the family,* but does not include a claim of money loaned to the wife. (*Slade Perkins vs Perkins,* 57 *Phil.* 233. Underscoring ours.)

And again, Article 296 says that the amount of support shall be in proportion to the resources or the means of the giver—the father in this case—and to the necessities of the recipient; while Article 297 provides for the proportionate reduction or increase of such support "according to the reduction or increase of the needs of the recipient and the resources of the person obliged to fur-

nish the same"—the father. And this is as it should be, or we would incur the likelihood of breeding a citizenry of parasites fawning over the richest ascendant, and looking with contempt upon the merely relative poverty of their immediate descendant, making such poverty in effect a ground for the loss of *patria potestas,* and opulence an artificial basis therefor.

Is the grandfather subsidiarily liable for support?

If the liability of the father for the support of his children in this case is exclusive of the grandfather, the liability of the latter being merely contingent upon the incapacity and inability of the former, and their obligation not being joint and concurrent[3], by what stretch of the law or the imagination can the grandfather be held jointly and severally liable with the father for the support of the latter's children? It is true that—

> "La gradacion establecida en el art. 144 del Codigo Civil entre los obligados a prestar alimentos, *dice en uno de sus considerandos la sentencia del Tribunal Supremo de* 5 *de abril de* 1902 no lleva consigo necesidad de que se guarde el mismo orden para pedir el cumplimiento de tal deber, pudiendo dirigirse la accion contra cualquiera de los obligados comprendidos en la escala, *con tal que se justifique que los llamados antes que el carecen de medios para satisfacerlos,* porque ademas de requirirlo así los apremios de la deuda alimenticia, el orden en aquel precepto contenido se halla subordinado a la precedencia de la reclamación. Interpretando de otro modo el Art. 144, se impondría al alimentista el gravemen a la vez dispendiose y esteril de promover una serie de procedimientos escalonados hasta llegar al que, por sus recursos economicos, pudiera levantar la carga. Ahora bien: *si dirigiendose la acción contra un hermano rico, este justifica que el padre tiene lo bastante para prestar los alimentos, sobre este debe recaer la obligación.* Reitera esta doctrina la sentencia de 24 *de noviembre de* 1920 añadiendo que si bien pueden reclamarse los alimentos de cualquiera de las personas que enumera el Art. 144, se hace indispensable, para que la demanda prospere, acreditar en forma que los llamados a *esa prestación antes que el demandado carecen de medios para levantarla.* Esto mismo habían establecido las sentencias de 27 de abril de 1911 y 6 de junio de 1917. (1 Manresa, 6th Ed., p. 702. Underscoring ours.)
>
> "No pueden solicitarse alimentos de los abuelos mientras no se demuestre que el padre esta incapacitado *física o moralmente para ganar el sustento de sus* hijos (sent. de 10 de enero de 1906); pero existe esta imposibilidad, por falta del padre, cuando este se halla en el servicio de las armas. (sent. de 30 de abril de 1923; 3 Scaevola, 5th ed. Underscoring ours.)
>
> "*No es suficiente* para justificar la imposibilidad por parte del padre para atender a sus hijos e imponer la obligación alimenticia el los abuelos *presentar testimonio de sentencia declarandole pobre en sentido legal ni una certificación medica sobre su estado de salud,* cuando la sala estima "que puede el padre proveer a las necesidades de sus hijos." (Sent. de 27 de abril de 1911; 3 Scaevola, p. 454-455, 5a ed. Underscoring ours.)

[3] See Art. 295, Civil Code.

Still, be that as it may, whatever liability the grandfather had was dissipated by the motion for intervention in which the father reiterated the choice to exercise the option granted him by Article 299 of maintaining the respondents in his conjugal home, where they had been living before the family misunderstanding started. The right to elect the manner in which this support shall be given is a right conferred by law upon the person whose duty it is to give such support, and in the case at bar, *this right is coupled with the authority which the father, and in his absence the mother, has over his natural child.*[4]

> "El art. 149 del Codigo Civil dispone que el obligado a prestar alimentos podra, a su elección satisfacerlos, pagando la pension que se fija o recibiendo y manteniendo en su propia casa el que tiene derecho a ellos, *y no siendo licito distingue,* el mencionado articulo concede al obligado, tratandose sólo de la forma de prestar los alimentos, *subsiste, aun cuando lo fuesen con el caracter de provisionales,* y que al no haberlo así estimado la Sala sentenciadora ha infringido el articulo ya citado. (Sentencia, 11 Marzo, 1895; 5 Sanchez Roman, 2nd Ed. p. 1241, Underscoring ours.)

The fact that there is a suit pending between the parties is no impediment to the exercise of the option.

> "No es causa que impida el derecho de opcion el existir, entre alimentante y alimentista, pleitos pendientes. Sents. de 17 de noviembre de 1914 y 13 de noviembre de 1929[5].

[4] Mendoza vs. Ibañez, 4 Phil. 666; author's italics.
[5] 3 Scaevola 467.

In the classic phrases of the Supreme Court, this contention is explained thus:

> "The interest of both parties as well as of society at large require that the courts should move with caution in enforcing the duty to provide for the separate maintenance of the wife, for this step involves a recognition of the de facto separation of the spouses—a state which is abnormal, and fraught with grave danger to all concerned. From this consideration it follows that provision should not be made for separate maintenance in favor of the wife unless it appears that the continued cohabitation of the pair has become impossible and separation necessary from the fault of the husband.
>
> "The humanity of the court has been loudly and repeatedly invoked. Humanity is the second virtue of courts, but undoubtedly the first is justice. If it were a question of humanity simply, and of humanity which confined its views merely to the happiness of the present parties, it would be a question easily decided upon first impressions. Everybody must feel a wish to sever those who wish to live separate from each other, who cannot live together with any degree of harmony, and consequently with any degree of happiness, but my situation does not allow me to indulge the feelings, much less the first feelings of an individual. The law has said that married persons shall not be legally separated from the mere disinclination of one or both to cohabit together [6].

Does the grandfather's consent to the nuptial contract and his subsequent bounty to the spouses create an obligation to support the issue of the marriage?

Assuming, for the sake of argument, that the grandfather consented to the marriage, that he thereafter voluntarily helped his son's family, that he gave them employment, to the extent of sending his son to study advanced methods in the industry in which they were engaged—did any of these acts or their combination create the semblance of the slightest liability on the part of the grandfather to support his grandchildren? There is no provision of law that holds the proposition; neither do those actuations vest any right on the grandchildren, express or implied, of any sort whatever. Besides, the action is not one for the specific performance of an agreement, but for the compliance of the obligation of support under the specific governing provisions of the Civil Code. Being such, the law should be followed.

[6] Arroyo v. Vazquez de Arroyo, 42 Phil. 54.

The case of a soldier cited by the Court is not applicable because that refers to a case where the father, being called to the service of the Army, although living, was absolutely bereft of any means for supporting his family while in the service, because once in the Army he was prohibited from engaging in any lucrative business or calling. Neither can the grandfather now be asked to repair any prejudice wrought, since even after being sent to the United States, the father continued receiving his salary, with an additional allowance besides.

Was the mother, in this case, and the conceived child, before birth, entitled to support?

Since support is only granted when the necessity arises, why was alimony *pendente lite* granted to the child "as yet unborn" from October 12 to December 23, when he was only born on December 24? During all that period before his birth, the child needed no separate sustenance which could be classed as support. This looks like an obvious anomaly.

It is also clear from a cursory examination of the quoted decision that the court considered the mother, who was acting as guardian *ad litem*, in fixing the amount of alimony *pendente lite* granted. Consequently, she too was given support. But the mother never sought support, neither in the complaint for support nor in the application for alimony *pendente lite*. Even had she asked for support, she would not have been entitled to any, for under the law and jurisprudence of our jurisdiction, a daughter-in-law is not entitled to support from the father-in-law. In *Pelayo vs Lauron*, 12 *Phil.* 453, 455-457, Mr. Justice Torres, speaking for the Supreme Court, held that:

> "Assuming that it is a real fact acknowledged by the defendants, that the plaintiff, by virtue of having been sent for by the former, attended as physician and rendered professional services to the daughter-in-law of the said defendants, during a difficult and laborious childbirth, in order to decide the claim of the said physician regarding the recovery of fees, *it becomes*

plaintiff of his right to live, or unjustly confiscate the defendant's property with no guaranty for restitution or indemnity, the court should exercise utmost care in arriving at a correct conclusion on the basis of the limited evidence presented before it. And, to this effect, the above provision, while neither controlling nor fully measuring the courts discretion, directs that the court, "shall render such order to the necessities of the applicant, the means of the adverse party, *the probable outcome of the case,* and such other circumstances as may aid in the proper elucidation of the question involved."[10] (Moran's Comments on the Rules of Court, Vol. 2, p. 97. Underscoring ours).

CONCLUSION

The decision invokes the rule of equity and humanity in support of the granting of alimony pendente lite. The rule, however, is clear and emphatic that equity only finds its place and application in the absence of a provision of law applicable to the issue. Obligations derived from law are not to be presumed. Only those expressly determined in the Code or in special laws are demandable, and shall be regulated by the precepts of the law which established them; and as to what has not been foreseen, by the provisions on Obligations and Contracts[11].

To hold otherwise would be to hold that the courts do not merely apply or interpret the law, but also legislate. Courts cannot create new rights not before existing at law under the guise of equity, and then take jurisdiction to pass on and enforce them because the law affords no remedy[12]. To vindicate the policy of the law is no necessary part of the office of a judge; but if it were, it would not be difficult to show that the law in this respect has acted with its usual wisdom and humanity, with that true wisdom and that real humanity that regards the general interests of mankind[13].

10 Moran's Comments on the Rules of Court, Vol. 2, p. 97. Underscoring ours.
11 Art. 1158, Civil Code.
12 Hall vs. Henderson, 6 L. RLA. 673; Harper vs. Clayton, 35 L. R. A. 211; Holmes vs. Millage, 10 Eng. Rul. Case 604.
13 Evans vs. Evans, 1 Hag. Con., 35; 161 Eng. Reprint, 466, 467.

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