

24th April, 1967.

**Judges**

- S.T.O. Prof. Sir Anthony J. Mamo, O.B.E., C.St.J., Q.C., B.A.,  
LL.D. — President
- Onor. Prof. J.J. Cremona, K.M., LL.D., B.A., D.Litt. (Rome),  
B.A., Hons. (Lond.), Ph.D. (Lond.), F.R.Hist.S. —  
Vice-President
- Onor. J. Flores, B.L. Can., LL.D.

Sylvia wife of Michael Falla, et

*versus*

Ernest Jennings noe

**Mara mizzewga — Zwieg — Kapacita ta' — Kawza — Pro-  
ceduri — Preżenza fil- — Kommunjoni tal-akkwisti.**

*Il-mara mizzewga tista' toqghod f'kawza flimkien mar-ragel tagh-  
ha, bhala atturi fi kwistjoni li tkun tikkoncerna akkwisti min-  
nha magħmula u li jkun jiffurmaw parti mill-kommunjoni  
tal-akkwisti.*

The Court, having seen the Writ of Summons filed before Her Majesty's Commercial Court whereby plaintiffs, having premised that by a private agreement, Exhibit "A", plaintiff Sylvia Falla who at the time was still unmarried, was employed by the firm represented by defendant under the conditions which result from the said agreement, and that she, who meanwhile had married the other plaintiff Michael Falla, was discharged from her employment without any cause, and, contrary to the express agreement, was not paid for the period 10th October, 1965 to the 1st April, 1966, nor was she paid in respect of three weeks leave to which she was entitled nor fifty pounds (£50) bonus due in terms of clause 2 of the said agreement — prayed that the defendant be ordered to pay to the plaintiffs the sum of four hundred and ninety-nine pounds (£499) representing wages due for the period 10th October, 1965 to the 1st April, 1966, and payment in respect of three weeks leave and of the said bonus due in terms of the said agreement — with costs including those of the precautionary garnishee order of the 29th April, 1966;

Having seen the statement of defence (page 10) in which defendant submitted:—

That it does not result for which reason plaintiff Michael Falla is instituting proceedings in his personal capacity;

That plaintiff Sylvia Falla at the time of the discharge of her husband from the office of Manager of the defendant

Company committed several acts against the interest of the Company and she was kept in the employment but expressly without prejudice to the rights of the Company, and in fact she was discharged both on these grounds, which constitute a just cause, as well as because the Company found itself in the position of being unable to function because of lack of funds.

That without prejudice to the foregoing, even if there were not a just cause, only half the salary and not the full salary is due — Saving further pleas.

Having seen the notes of submissions filed by the parties;

Having seen the minute entered in proceedings of the sitting of the 6th October, 1966 whereunder Dr Mifsud Bonnici declared with regard to the first plea by defendant that Michael Falla appears in the writ as head of the community of acquests, and Professor Ganado on behalf of defendant withdrew the second plea regarding the reasons for the termination of the contract of service.

Having seen the judgment of the first Court of the 28th November, 1966, whereby defendant's plea was disallowed with costs and it was ordered that the case be dealt with on the merits, that Court having first considered

Omissis;

Having seen the note of appeal of defendant and his petition wherein he prayed that the judgment appealed from be revoked and his plea allowed and that a "liberatio ad abservantia iudicii" in regard to plaintiff Sylvia Falla be accorded with costs in respect of the proceedings before both Courts against plaintiffs.

Having seen plaintiffs' answer wherein they submitted that the judgment appealed from deserves to be affirmed with costs in respect of the proceedings before both Courts against defendant.

Having seen the record of the proceedings and heard counsel;

Now considers as follows:

The whole question dealt with in this appeal twins on the procedural point whether a married woman may, in an action for the payment of monies due to her by way of salary and bonus under the contract of employment and thus falling within the community of acquests, be associated with the husband, *if the husband so wishes, as plaintiff. It is well settled that the wife alone may not, just as it is equally well settled that the husband alone may, institute such an action.* The question is therefore to be considered on this narrow front, that is to say, whether defendant is legally entitled to obtain a "*liberatio ab observantia iudicii*" in regard to plaintiff Sylvia Falla whose husband has associated her with him in this suit.

In disallowing the plea set up by defendant the first Court relied on various previous judgments of our Courts and an argument derived from a juxta position of section 1362 of our Civil Code and section 1438 of the Italian Code of 1865.

Defendant in the course of his arguments filed a note in which reference was made to Baundry Lacantinerie (Diritto Civile, Contratto di Matrimonio, Vol. I, p. 648 et seq.) Marcade' (Diritto Civile, Vol. VII, pp. 539-540) and the judgment of this Court in re "*Mangion vs. Agius*" (Law Reports, Vol. XXVII, i, 121). These authorities and indeed various

others clearly state that the husband alone may sue or be sued in respect of matters pertaining to the community of acquests.

The first Court referred to the fact that our Civil Code, whilst providing that the husband is the sole administrator of the community of acquests (section 1362) does not state, like the Italian Code of 1865 (section 1438), that the husband alone may sue with regard to the acquests. But in this respect our provision is like section 1421 of the French Code on which it was modelled and it is a fact that, notwithstanding the difference from the Italian provision, there are also French authorities, like those cited above, upholding the aforesaid proposition that the husband alone may sue or be sued in respect of matters pertaining to the community of acquests. It may be added that in "Gaffiero v. Spiteri" determined by this Court on the 25th April, 1958 it was in fact stated that notwithstanding the difference in wording between the Italian provision and our own, the aforesaid proposition holds good also in our own law. This had also been held in "Mangion vs. Agius, supra".

That being so, it is appellant's intention that it should inevitably follow that the wife cannot be associated by the husband with him in an action like the present which concerns matters falling within the community of acquests. He contends that, even in the absence of any prejudice to his own interests deriving from the wife's presence in this suit the question remains one of principle which is to be properly evaluated in the light of the general principles governing the community of acquests in our law. He submits that certain arguments brought forward by the Court in "Libreri v. Coleiro" (Law Reports, Vol. XXXI, i, 266) are not very convincing. The Court remarked there that in such cases as these (that case also concerned a claim for payment in respect of

services rendered by a married woman) the married woman has an interest to sue together with her husband and it is not enough that the husband should be able to call her as a witness for (1) according to our system of the community of acquests the wife's personality is not annihilated in such a way that she may not have dealings with third parties and (ii) the wife's presence in the action as a party and not merely as a witness enables her to assist her husband as well as counsel on matters about which she naturally knows more than her husband. With respect, this Court is not unduly impressed by these arguments and particularly the latter does not deal with a situation which is peculiar to a married woman.

Nevertheless it may be said that the general propositions affirmed in that judgment and since followed (that is to say, that in such actions as these the wife may be associated by the husband with) is not essentially at variance with the law. Italian and French authorities and indeed also Maltese judgments prior to "*Libreri v Coleiro*" (which appears to be the first to deal specifically with the very point at issue), in affirming that the husband alone may appear in actions concerning matters pertaining to the community of acquests are not essentially and necessarily excluding the wife's association as aforesaid, and may well be construed in the sense that none may be substituted for the husband so that if the latter is not in the action (as in both "*Libreri vs. Coleiro*" and "*Mangion v. Agius*", supra) the action will fail. Nor do Italian and French authorities (at least those available to the Court) appear to have dealt specifically with the point of the wife's association with the husband (as distinct from substitution for the husband) in such cases as those as aforesaid.

The Court sees no reason to reverse, on the basis of appellant's arguments, a situation which has been judicially ac-

cepted for a number of years now and which is not intrinsically contrary to law or essentially incompatible with the legal position of the husband as head of the community of acquets and sole administrator of the property thereof. If in such cases as these — and more particularly in a case like the present where the contract on the basis of which the claims are made was entered into before the marriage and questions could conceivably arise concerning this validity and interpretation — the husband associates the wife with him in instituting the action, it is not for the defendant to object. It does not appear that any real prejudice to his rights as suggested by appellant — assuming that such rights are truly competent to him according to law — can arise therefrom. The Court thinks that any defence which defendant would properly have had if the husband were the sole plaintiff remains available and unprejudiced. Appellant suggested in the course of his oral submissions that the question may also be considered from the point of view of what would happen in the event of disagreement between the two plaintiffs as to compromising or withdrawing the case; but the position is really unchanged for if the wife were to remain alone in the action, then, in accordance with the principles set out above she would no longer be able to proceed with it alone.

For the abovestated reasons the Court dismisses defendant's appeal and affirms the judgment appealed from costs against appellant.

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