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COMMENT

THE FORCE AND VALIDITY OF FOREIGN DIVORCES IN THE PHILIPPINES

A. Pertinent Rulings of our Supreme Court.

1. The Case of Ramirez v. Gmur. (42 Phil. 856).

The following facts are established by the court: In the year 1895, Leona Castro was married to Frederick Kauffman, a British subject, born in Hongkong, who had come to live in the city of Iloilo. Three children were born of this marriage. In the month of April, 1899, Leona Castro was taken by her husband from Iloilo to the City of Thun, Switzerland, for the purpose of recuperating her health. She was there placed in a sanatorium, and on August 20th the husband departed for the Philippine Islands, where he arrived on Oct. 10, 1899.

Leona Castro continued to remain in Switzerland, and a few years later informed her husband, whom she had not seen again, that she desired to remain free and would not resume life in common with him. As a consequence, in the year 1904, Mr. Kauffman went to the city of Paris, France for the purpose of obtaining a divorce from his wife under the French laws; and there is submitted in evidence in this case a certified copy of an extract from the minutes of the Court of First Instance of the Department of the Seine, from which it appears that a divorce was there decreed on January 5, 1905, in favor of Mr. Kauffman and against his wife Leona, in default. Though the record recites that Leona was then in fact residing at No. 6, Rue Donezzetti, Paris, there is no evidence that she had acquired a permanent domicile in that City.

The estrangement between the von Kauffman spouses is explained by the fact that Leona Castro had become attracted to Dr. Ernest Mory.

The holding of the court follows:

"We are of the opinion that the decree of divorce upon which reliance is placed by the representation of the Mory children cannot be recognized as valid in the courts of the Philippine Islands. The French tribunal has no jurisdiction to entertain an action for the dissolution of a marriage contracted in these Islands by persons domiciled here, such marriage being indissoluble under the laws then prevailing in this country.

The evidence shows conclusively that Frederick von Kauffman at all times since earliest youth has been, and is now, domiciled in the city of Iloilo in the Philippine Islands; that he there married Leona Castro, who was a citizen of the Philippine Islands, and that Iloilo was their matrimonial domicile; that his departure from Iloilo for the purpose of taking his wife to Switzerland was limited to that purpose alone, without any intention of establishing a permanent residence in that city. The evidence shows that the decree was entered against the defendant in default, for failure to answer, and there is nothing to show that she had acquired, or had attempted to acquire, a permanent domicile in the City of Paris. It is evident of course that the presence of both the spouses in that city was due merely to the mutual desire to procure a divorce from each other.

It is established by the great weight of authority that the court of a country in which neither of the spouses is domiciled and to which one or both of them may resort merely for the purpose of obtaining a divorce has no jurisdiction to determine their matrimonial status; and a divorce granted by such a court is not entitled to recognition elsewhere. (See Note to Succession of Benton, 59 L. R. A., 143.) The voluntary appearance of the defendant before such a tribunal does not invest the court with jurisdiction. (Andrews vs. Andrews, 188 U. S., 14; 47 L. ed., 366.)

It follows that, to give a court jurisdiction on the ground of the plaintiff's residence in the State or country of the judicial forum, his residence must be bona fide. If a spouse leaves the family domicile and goes to another State for the sole purpose of obtaining a divorce, and with no intention of remaining, his residence there is not sufficient to confer jurisdiction on the courts of that State. This is especially true where the cause of divorce is one not recognized by the laws of the State of his own domicile. (14 Cyc., 817, 818.)

As has been well said by the Supreme Court of the United States marriage is an institution in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there could be neither civilization nor progress. (Maynard vs. Hill, 125 U. S., 210; 31 L. ed., 659.) Until the adoption of Act No. 2710 by the Philippine Legislature (March 11, 1917), it had been the law of these Islands that marriage, validly contracted, could not be dissolved absolutely except by the death of one of the parties; and such was the law in this jurisdiction at the time when the divorce in question was procured. The Act to which we have referred permits an absolute divorce to be granted where the wife has been guilty of adultery or the husband of concubinage. The enactment of this statute undoubtedly reflects a change in the policy of our laws upon the subject of divorce, the exact effect and bearing of which need not be here discussed. But inasmuch as the tenets of the Catholic Church absolutely deny the validity of marriages where one of the parties is divorced, it is evident that the recognition of a divorce obtained under the conditions revealed in this case would be as repugnant to the moral sensibilities of our people as it is contrary to the well-established rules of law."

(a) Resultant Rules in the case of Ramirez v. Gmur.

1. A foreign tribunal has no jurisdiction to entertain an action for the dissolution of a marriage contracted in these Islands by persons domiciled here, such marriage being indissoluble under the laws then prevailing in this country. (modified by the enactment of Act No. 2710).

2. The court of a country in which neither of the spouses is domiciled, and to which one or both of them may resort merely for the purpose of obtaining a divorce has no jurisdiction to determine their matrimonial status, and a divorce granted by such a court is not entitled to recognition elsewhere.

3. The voluntary appearance of the defendant before a tribunal where the plaintiff does not have a *bona fide* domicile does not invest the court with jurisdiction, and a decree by such tribunal cannot be recognized here.

4. To give a court jurisdiction on the ground of the plaintiff's residence, in the state or country of the judicial forum, his residence must be *bona fide*. If a spouse leaves the family domicile and goes to another state for the sole purpose of obtaining divorce, and with no intention of remaining, his residence there is not sufficient to confer jurisdiction on the courts of that

state. This is specially true where the cause of divorce is one not recognized by the laws of the state of his own domicile.

2. The Case of *Gorayeb v. Hashim*. (G. R. 25577).

In this case it was found that the defendant appellant, Hashim, in order to evade the effects of a judgment wherein he was required to pay his wife ₱5.00 per month as alimony, left the Philippine Islands for the purpose of securing a divorce in the United States which he could not have obtained here; that he remained in the United States the time necessary under the laws provided to secure a divorce solely for the purpose of using such judgment to relieve him from the effects of the judgment compelling him to pay his wife ₱500 per month.

The Court decided as follows:

"There can be no other reasonable inference from the defendant's acts than that the procuring of the divorce in Nevada was a mere device on the part of the defendant to rid himself of the obligation created by the judgment of the Philippine Court and that his temporary sojourn in the state of Nevada was unaccompanied by any genuine intention on his part to acquire a legal domicile in that state. This being true, the divorce granted by the Nevada Court cannot be recognized by the courts of this country.

In *Ramirez vs. Gmur* (42 Phil. 855), this court held, in conformity with the rule declared by the Supreme Court of the United States, that the court of a country in which neither of the spouses is domiciled and to which one or both of them may resort merely for the purpose of obtaining divorce has no jurisdiction to determine their matrimonial status; and a divorce granted by such a court is not entitled to recognition elsewhere. The voluntary appearance of the defendant before such tribunal does not invest the court with jurisdiction. In the same case this court went on to say: "It follows tht to give a court jurisdiction on the ground of the plaintiff's residence in the state or country of the judicial forum, his residence must be *bona fide*. If a spouse leaves the family domicile and goes to another state for the sole purpose of obtaining a divorce, and with no intention of remaining, his residence there is not sufficient to confer jurisdiction on the courts of that state. This is specially true where the cause of divorce is one not recognized by the laws of the state of his own domicile. (14 Cyc. 817, 818)."

From this it will be seen that a divorce granted in one state may be called in question in the courts of another and its validity determined upon the evidence relating to domicile of the parties to the divorce. This undoubtedly involves a collateral attack

upon the decree of divorce; but as has been said by the Supreme Court of the U. S., it is now too late to deny the right collaterally to impeach a decree of divorce in the courts of another state by proof that the court granting the divorce had no jurisdiction, even though the record purports to show jurisdiction and the appearance of the parties (*German Savings & Loan Society vs. Dormittzer*, 192 U. S. 125).

The rule above referred to has been held by the Supreme Court of the United States to prevail in the court of the various states of the American Union, notwithstanding the existence of the constitutional provision requiring the courts of every state to give full faith and credit to judgments obtained in other states. There is no similar constitutional provision in force in these Islands, but, under section 309 of the C. C. P., the judicial records of the court of the United States have the same force in the Philippine Islands as in the place where the judgment was obtained. But there is nothing in this provision that would require the courts of this country to give any greater consideration to the judgment of the court of an American State than is conceded to it in other States and districts of the United States, in conformity with the doctrine sustained by the Supreme Court of the United States and upheld in the courts of those States where the marriage tie is best guarded.

In the application of the rule above stated the circumstance that the parties to the present action contracted marriage in Syria, instead of the P. I., is not material to the case. The fact that they contracted marriage lawfully, wherever the act may have been accomplished created the status of married persons between them, and the question with which we are here concerned is not as to the marriage, but as to the divorce conceded to the defendant in the state of Nevada.

Section 309 of the C. C. P., declaring that a judgment obtained in an American Court shall have the same effect in the P. I. as in the place where such judgment was obtained, contains a qualification expressed in the following words: "except that it can only be enforced here by an action or special proceeding." Upon this provision the attorneys for the plaintiff plant a proposition to the effect that a Philippine Court cannot recognize the decree of divorce granted by the Nevada Court upon the mere exemplification of a certified copy of the decree, and it is insisted that, in order to get the benefit of said decree, it is necessary for the defendant to institute an independent action or special proceeding in one of our courts for the purpose of obtaining a judicial ratification of the decree of the divorce.

But it will be remembered that the defendant pleaded the decree of divorce by way of defense in his answer; and if the decree of divorce had been such as to have it entitled to recognition here, the defendant could in our opinion have obtained the benefit of it in this action. The provision in question no doubt contemplates primarily the situation where the affirmative action has to be taken in the Philippine Islands to give effect to the foreign judgment as where the plaintiff desires to obtain execution upon property in these Islands to satisfy a judgment obtained abroad. A decree of divorce operates on the marriage status; and if effective at all, it dissolves the marriage tie, without the necessity of any affirmative proceeding in any other court. At any rate, all that was intended to be secured by the provision requiring an action or proceeding here was that the courts of this country should have an opportunity to pass judicially upon the efficacy of the judgment. This purpose is accomplished as well where the foreign judgment is relied upon in an answer and duly proved, as where the original action is actually brought by the holder of the judgment. It could not have been intended by the authors of section 309 that the holder of the foreign judgment must be deprived of the benefit of it merely because he happens to be defendant rather than plaintiff in an action brought in our courts. (Decision rendered Dec. 6, 1926 by Thos. A. Street.)

a. Resultant rules in the Case of Gorayeb v. Hashim.

Aside from the principles enunciated in Ramirez v. Gmur, which are quoted with approval in this case, are added the following:

1. A divorce granted in a foreign state cannot be recognized by the courts of this country where it is shown that the party procuring such a divorce was merely on a temporary sojourn in the divorce forum without any genuine intention on his part to acquire a legal domicile in that state.

2. A divorce granted in one state may be called in question in the courts of another and its validity determined upon the evidence relating to domicile of the parties to the divorce. A decree of divorce may be collaterally impeached in the courts of another state by proof that the court granting the divorce had no jurisdiction, even though the record purports to show jurisdiction and the appearance of the parties.

3. The "full faith and credit clause" of the United States constitution does not apply to the Philippines. There is nothing in the provision of section 309 C. C. P. that would require the

courts of this country to give any greater consideration to the judgment of the court of an American State than is conceded to it in any other states or districts of the United States.

4. So long as the parties are lawfully married, their place of marriage is immaterial.

5. Section 309 C. C. P. declaring that a judgment obtained in an American court shall have the same effect in the P. I. as in the place where such judgment was obtained altho qualified by the words: "except that it can only be enforced here by an action or special proceeding" may be interpreted in cases of divorce to mean "upon the exemplification of a certified copy of the decree." A decree of divorce operates on the marriage status; and if effective at all, it dissolves the marriage tie, without the necessity of any affirmative proceeding.

B. *Local application of rules and principles laid down by the United States Courts.*

1. Why preference to Anglo-American Cases shown.

As may be observed, the cases here cited are practically all Anglo-American. This is due to the scarcity of Philippine cases pertinent to the question under discussion. We have only *Ramirez v. Gmur* and *Gorayeb v. Hashim* among the Philippine cases to guide us. For principles not covered by these two cases we have to seek light in the decisions of the supreme tribunals of other jurisdictions. Among these foreign tribunals we favor the Anglo-American. The reason is obvious. It may be gleaned in the masterly decision of Justice Carson in *Alzua and Arnalot v. Johnson* (21 Phil. 313) thus: "While it is true that the body of the common law is known to Anglo-American Jurisprudence is not in force in these Islands, 'nor are the doctrines derived therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law', (U. S. v. Cuna, 12 Phil. 241.) Nevertheless many of the rules, principles, and doctrines of the common law have to all intents and purposes, been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States or under its authority; for it will be found that many of these laws can only be construed and applied with the aid of the common law from which they are derived, and that to breathe the breath of life into many of the institutions introduced in these Islands under American sovereignty recourse must be had to the rules, principles and doctrines of the common law under

whose protecting acgis the prototypes of these institutions had their birth."

2. A rule of construction and application.

In this case we have a rule of construction to guide us. It recites the doctrine that while Anglo-American jurisprudence is only of persuasive force in the Philippine Islands, its rulings will be binding upon our courts "in so far as they are founded on sound principles applicable to local conditions and are not in conflict with an existing law." Besides, in order to "breathe the breath of life into many of the institutions introduced into these Islands under American sovereignty recourse must be had to the rules, principles and doctrines of the common-law."

How then should our courts decide on questions regarding the force and validity of foreign divorce? We submit the following: If the point to be decided has already been covered by a former decision of our Supreme Court, the rule of precedents should be observed. This is an elementary rule of judicial construction and application. But in case the question brought up has not as yet been touched upon and decided by our Supreme Court, then the doctrines laid down in the Anglo-American jurisprudence should control in a proper case. So that if a question regarding the force and validity of a foreign divorce in the Philippines, not as yet decided by Philippine jurisprudence should arise, the court before which the question is raised, should in applying an Anglo-American doctrine first determine whether such doctrine is (1) founded on sound principles applicable to local conditions and (2) not in conflict with any of our existing laws. Should these two conditions be present, then such Anglo-American doctrine should be binding upon our courts, according to the ruling laid down in the case of *Alzua and Arnalot v. Johnson (supra)*.

The question as to whether or not an Anglo-American doctrine on the force and validity of foreign divorce is in conflict with an existing local law is purely legal in its aspect and may be properly decided after due consultation and study of our existing laws pertinent to the question at issue. The question as to whether or not such doctrine is "founded on sound principles applicable to local condition," may only be answered after a penetrating examination of our distinct social, moral and religious propensities, and their careful comparison with the American.

For instance in this question regarding the validity of foreign divorce, we cannot indiscriminately adopt american

doctrines, even if such are not in conflict with any existing law, for the simple reason that we have as a people a different religion, standard of morality and conception of family sanctity and stability. As an evidence showing that the standard of morality and religion has much to do with deciding whether to enforce a foreign divorce in these Islmads or not, we quote a passage in the decision of our supreme tribunal: "Inasmuch as the tenets of the Catholic church absolutely deny the validity of marriage where one of the parties is divorced, it is evident that the recognition of a divorce obtained under the conditions revealed in this case (the parties temporarily resided at Paris only to be divorced) would be as repugnant to the moral sensibilities of our people as it is contrary to the well-established rules of law." (Ramirez v. Gmur, *supra*).

C. *The conservative policy of our Supreme Courts in civil divorce cases.*

This conservative tone of the ruling of our Supreme Court regarding divorce is further manifested in another passage of the decision just cited where it says: "The enactment of this statute (Act No. 2710) undoubtedly reflects a change in the policy of our laws upon the subject of divorce, the exact effect and bearing of which need not here be discussed." Bearing in mind the strictness, both as to causes and procedure, required by our divorce act before divorce may be granted, we may properly infer from this observation of our Supreme Court the very conservative policy of our courts regarding divorce.

If we are to compare our one and only ground for divorce, not to mention our equally strict divorce procedure, with the recognized causes for divorce in other jurisdictions, it will be observed that we have every reason to be cautious and timid before indiscriminately incorporating doctrines from abroad regarding divorce. For instance let us compare our one ground for divorce with Nevada's more than half a dozen, to wit: (1) Impotency (2) Adultery (3) Willful desertion (4) Conviction of felony (5) Habitual drunkenness (6) Extreme cruelty (7) Neglect of the husband, etc. These grounds for divorce which are recognized in Nevada are by no means unique and extraordinary as judged by the world's moral standard, for as a matter of fact, they are recognized with slight variations by the laws of many civilized countries. But as judged from our conception of family stability and sanctity some of them at least are shocking to our ideals of morality and a violation of the public policy of the state regarding marriage relationship. It

may be alleged that in accordance with a recognized doctrine of international law, (5 R. C. L. p. 1012) it is immaterial whether the laws of the Philippines recognize only one cause of divorce or more because the causes recognized for divorce in the divorce forum govern under the principle of comity.

But it must be remembered that it is a well-settled rule of private international law that no foreign law will be enforced in a sovereign State, if to enforce it will contravene "the express statutory law or an established policy of the forum or is injurious to its interests" (Minor, Conflict of Laws, p. 10). This recognized principle is based upon the proposition that a state has not only to look after "international duty and convenience," but also and primarily, "the preservation of the rights of its own citizens or others under the protection of its laws." (15 R. C. L. 907).

From the foregoing observations we venture the opinion that our Supreme Court, in deciding whether or not to give force and validity to a foreign divorce in the Philippines, will not deviate from our conservative public policy regarding divorce; that because of such it will strictly require the compliance of the essential elements necessary to the decreeing of a valid foreign divorce; and that to preserve the high standard of family life among our people our courts may follow the conservative spirit of our divorce law up to and perhaps even beyond the point where it conflicts with the rules of comity. This conclusion we have inferred from the decisions of our Supreme Court in *Ramirez v. Gmur and Gorayeb v. Hashim*, and from the well-established principles of international law. D... Will our Supreme Court maintain the same conservative attitude in criminal divorce cases?

Whether the same conservative and strict attitude will be maintained by our courts in deciding criminal cases questioning the validity of a foreign divorce in the Philippines is as yet a matter of conjecture. The idea is suggested that our courts may be so impressed by the principle enunciated in criminal cases to be liberal to the accused so as to give him the benefit of every doubt, that it may adopt a more liberal view bordering on leniency in cases where the defense of the accused depends upon the recognition of a foreign divorce decree.

But since no criminal case questioning the validity of a foreign divorce in the Philippines has as yet been the subject of a judicial pronouncement, we may only speculate upon the attitude our Supreme Court will take in this matter.

April, 1927.

Jesus L. Arguelles.