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Conviction for Adultery as Evidence in Divorce Proceedings

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THE CASE OF JUAREZ VS. TURON (51 Phil. 736)

This was a case for divorce brought in the Court of First Instance of Manila, by the husband, Nicolas Juarez, against his wife, Ramona D. Turon, based on the ground of adultery. All the necessary allegations were included in the complaint, which was filed on Feb. 10, 1927, and later amended on Aug. 11, 1927. Among the allegations was that "after legal proceedings, the defendant was convicted of adultery committed with Gregorio Ramos", in a previous criminal case instituted in the same court, and that said judgment for adultery has become final and was executed. The defendant made a default. For the purpose of proving his case, the plaintiff offered in evidence the record in and by which his wife was convicted of adultery, and was called and testified as a witness in his own behalf. The lower court denied plaintiff any relief and dismissed the complaint, from which plaintiff appealed and assigned among three errors, the fact that the lower court erred in holding that the certified copy of the judgment of conviction rendered in the criminal case for the crime of adultery is not an evidence that the defendant wife has committed the said crime.

The Supreme Court on appeal quoted in full the decision of the lower court, and in affirming it made its own the said decision of the court below, notwithstanding the fact that it touched at length on the second ground of the dismissal. We can do no better than quote the pertinent portion of the decision of the lower court which reads as follows: "The plaintiff, however, has not presented any evidence upon the adultery committed by the defendant and which can be the only ground for the action herein brought. He did present the judgment rendered in the aforesaid criminal case for adultery against the

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defendant, proving, moreover, that said judgment has become final; but this being a civil action, completely different from the criminal one for adultery, although in substance the causes of action are the same in the two cases, in the one now before the court for divorce evidence must have been presented that adultery was committed by the defendant, the judgment of conviction rendered in the criminal case not being sufficient, since as evidence it has no effect in this action other than to show that the guilt of the defendant was proven in a final judgment rendered in a criminal case, which is a condition required by section 8 of Act 2710, before divorce can be granted. Where it not for this requirement, said judgment would be inadmissible as evidence in this case, except for the purpose of impeaching the veracity of the defendant as a witness, if she had appeared and testified. (Citing Greenleaf on Evid., Vol. 1, par. 537, and Ocampo vs. Jenkins, 14 Phil. 688.)"

The dissenting opinion of Justices Villamor and Villareal touched on both grounds of the decision, but we are here concerned only with that portion relative to evidence. With respect to this phase of the case, the dissenting opinion, after citing the case of Ocampo vs. Jenkins, (supra), went on to say that the general rule laid down in the case is well founded on justice and authority, but that this general rule is not applicable to the instant case, "wherein the civil action for divorce is so closely linked to the criminal action for adultery that the very life of the former depends upon the success of the latter. While a judgment of acquittal in a criminal case for libel is no bar to the institution of a civil action for damages caused thereby, a judgment of acquittal for adultery kills the action for divorce. While pursuant to Act No. 277, the civil action may be commenced and prosecuted until the judgment becomes final, independently of the criminal action, under Act No. 2710, the action for divorce cannot be prosecuted, although it may be commenced, until judgment is rendered in the criminal action for adultery or concubinage. And this shows the intimate relation established by law between the civil action for divorce and the criminal action for adultery or concubinage." After citing section 3 and 8 of the Divorce Law, the dissenting opinion concluded that the judgment rendered in the criminal case for adultery was conclusive proof of the defendant's guilt in the civil action for divorce, which is an indispensable requisite for the granting of a divorce.

RULE OF EVIDENCE ESTABLISHED BY THE CASE

It will be noted that the doctrine laid down in this case merely followed the general rule of evidence in American jurisprudence to the effect that, save for the purpose of proving its own existence or the fact that it has been so rendered, a judgment in a criminal action is not competent evidence in a subsequent civil action to prove the truth of the facts on which such judgment has been rendered.[1] An adjudication, therefore, in a criminal action has always been held conclusive evidence of the fact of its rendition, or to show that there was a conviction or acquittal, or to establish its own legal consequences.[2] This was the English rule, and as evidenced by numerous adjudications, it has prevailed in American jurisprudence.[3] And our Supreme Court, in turn, has embodied this rule in the aforecited case of *Ocampo* vs. *Jenkins*, supra.

Before going any further, it would be necessary to note first the evidentiary effects of judgments as a general rule of law, and for this purpose we have to touch a little on the doctrine of "res judicata". The rule of res judicata is founded upon the time honored maxim of the law that "a man should not be twice vexed for the same cause" and that it is for the public good that there should be an end to litigation, thereby conducing to peace, repose and morality, without working any injustice.[4] Hence, it is generally held that a judgment in any proceeding is conclusive of all facts determined thereby, and that could have been determined in the proceeding on which the judgment is based. Such a judgment is conclusive not only of the point which it professes to decide, but of matters which it was necessary to decide, which must have been found in order to warrant or uphold the judgment or decree, and which were actually determined as the foundation of the decision.[5] To use the very words of Judge Brewer, "the whole philosophy of the doctrine of res judicata is summed up in the simple statement that a matter once decided is finally decided."[6] But as a prerequisite for the application of this doctrine, and for a judgment to have binding effect, it is absolutely necessary that the

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[1] 15 Ruling Case Law, p. 1000.

[2] 1 Starke on Evid., 278.

[3] 1 Greenleaf on Evid., 575, citing Albreth vs. State, 62 Miss., 516, Doyle vs. Gore, 38 Pac. 939, etc.

[4] State vs. Torinus, 9 N. W., 725; See also 24 S. W. 365.

[5] Smith vs. Auld, 31 Kan. 262.

[6] 4 Jones on Evid., 3343; 2 Wharton, Cri. Evid., 1165.

same identical matter shall theretofore have come in question in a court of competent jurisdiction both of the parties and the subject matter of the action; that the matter shall have been controverted; that it shall have been finally decided; that the concluded parties should have a direct interest in the subject-matter of the action; with the right and opportunity to exercise that right in presenting their defense; with the right to be heard by themselves and their witnesses and to have such control of the action that they could appeal.[7] This doctrine holds true in criminal proceedings as well as in civil actions. Hence, when a judgment is finally entered either in a civil or criminal proceedings, it is on the assumption that the preliminary matters have all been established according to the degree of proof required in either proceeding, so that the judgment in civil proceedings and the judgment in criminal proceedings, *per se* must be accorded the same conclusive and binding character before the law.[8] This follows as a necessary result of the very nature of judgments. A judgment is said to be the end of the law, and that "it finally terminates the disputes and adverse interests of mankind". Lord Coke defines it as "the vouyce of law and right". At common law, a judgment is variously defined as the decision or sentence of the law pronounced by a court or other competent tribunal upon the matter contained in the record; or as the conclussion of the law upon the facts found by the court or the jury; the conclusion of law in a particular case announced by the court; the final consideration and determination of a court of competent jurisdiction upon the matters submitted to it.[9] The doctrine, therefore, as to the evidentiary effects of judgments, is that as a general rule of law, they are admissible in evidence, and are conclusive of facts adjudicated by them, where the parties litigating are the same, where the subjectmatter in dispute is the same, and where the issues involved are the same.[10]

It will be noted that the doctrine enunciated by the case in study is a notable exception to the general rule as to the evidentiary effects of judgments, and the binding conclusiveness of facts adjudicated in such judgments. A great array of authorities can be cited in support of this exception to the rule, and this fact alone would be sufficient to demonstrate the

[7] 4 Jones on Evid., s. 1807; 2 Wharton, Evid., s. 570.
[8] 2 Wharton on Evid., 1166.
[9] 1 Freeman, Judg., 2-5.
[10] Reynolds on Evid., Sec. 36.

justice and reason behind the exception. As a foundation for this exception, it has been pointed out that there is a dissimilarity in objects, issues, results, procedure, and parties in the two actions, and that different rules of evidence apply both as to the weight of the evidence, and the competency of witnesses. "For a conviction may be the result of testimony not admissible in a civil action. And while in a criminal action a defendant may not be compelled to testify, all of the parties may usually be compelled to testify in civil cases. To make the decision of a court in such a case evidence in a criminal proceeding would be to compel the defendant in the criminal case to be a witness against himself." [11] This exception to the general rule rendering prior adjudication conclusive, is not based upon the mere fact that one proceeding is civil and the other criminal but rests upon the essential difference in the nature and object of the two actions, in the issues involved, in the competency of the witnesses, and the rules of decision and procedure.[12] Moreover, in the civil proceeding, the judgment is based upon a mere preponderance of evidence, while in a criminal proceeding, the fact of guilt must be established beyond a reasonable doubt. Then there is the question of presumptions. In the criminal proceedings, the presumption of innocence attends the accused throughout the trial, and has relation to every fact that must be established in order to prove his guilt beyond a reasonable doubt.[13] Another reason advanced is based upon the maxim of the law that no man shall be affected by proceedings to which he is a stranger. Hence, a judgment of conviction in a criminal proceeding can not be admitted in evidence in a civil action. The parties and the issues are not the same; there is want of mutuality, and of mutual estoppel.[14] In order that one may be affected by a proceeding, he must have been directly interested in the subject matter of such proceedings with the right to make a defense, to adduce testimony, to control in some degree the proceedings and to appeal therefrom. Persons not having this right are regarded as strangers to the cause, and hence, are not concluded by the judgment rendered in it. It is obvious that the parties in the criminal action and in the civil one cannot be the same; and hence, judgments rendered in the

[11] 15 Ruling Case Law, 1002; 34 Corp. Juris, 970.

[12] State vs. Adams, 82 Am. St. Rep. 937; State vs. Bradnack, 43 L. R. A., 620; Interstate Dry Goods vs. Williamson, 112 S. E., 301.

[13] 2 Wharton on Crim. Evid., 1166.

[14] Ed. Keller Co. vs. Ellerman, 38 Phil. 520.

former have been excluded in the latter as *res inter alios acta*, when offered to establish the truth of the facts on which they were rendered.[15] According to a noted authority on the subject, the chief reason for excluding the record of a criminal prosecution from evidence in a civil case is that the parties to the two proceedings are different. He points out that one who has been damaged by some criminal act of another has a claim for remuneration, independent of the right of the public to proceed against the offender, and to inflict the penalty prescribed by law. This right to compensation in damages ought not to be and is not, dependent on the success or failure of the prosecution conducted by the people. If it were the party most injured would be precluded by a proceeding to which he was not a party, and which he had no power to control. A person convicted of any offense is not estopped by the conviction from disputing the facts on which it is based in a civil action, because his adversary in the civil action would not have been barred if the prosecution had terminated in an acquittal.[16]

EXCEPTIONS TO THE GENERAL RULE AS TO NON-ADMISIBILITY OF CRIMINAL JUDGMENT IN CIVIL SUITS

Notwithstanding the general rule that a judgment in a criminal case is inadmissible in evidence in a subsequent civil case, there are, however, a number of well-defined exceptions. Here, as in the previous paragraphs where the reasons for the rule have been expounded, much reliance will have to be placed on American authorities, not necessarily due to the absence of local sources, but mainly because these are not sufficiently numerous to support the conclusions which will follow later. One of these exceptions exists where the judgment in the criminal court is the foundation of the subsequent civil suit.[17] Thus, it has been held that where an accused was convicted of keeping a gambling house in violation of law, and condemned to pay a fine to a charity hospital, in a contest between the hospital and the parish as to which was entitled to the fine, the judgment of conviction was evidence of that fact.[18] And again, where the plaintiffs sought to recover, as heirs, upon a policy issued to the ancestor, who was convicted and executed for the crime,

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[15] 2 Black on Judgments, Sec. 529; Corbley vs. Wilson, 22 Am. Rept., 98.

[16] Freeman on Judgments, p. 1379.

[17] 15 Ruling Case Law, 1004; 2 Wharton on Evid., 1172.

[18] Orleans Parish vs. Morgan, 6 Mart. N. S. 3.

the court gave conclusive evidentiary character to the judgment of conviction, upon the ground that the civil action was necessarily founded on the judgment in the criminal action, and could not be maintained except as the result of the criminal action.[19] Then again, it has been held that in an assumpsit against a borough for a reward offered by the burgesses for the conviction of an offender, the record of the conviction of the accused is competent evidence as to his identity because by the very nature of the contract, the result of a proceedings between other persons is appealed to and made the test of the relation of the parties.[20] Also, the record of a conviction of a husband for an assault and battery on his wife is admissible in support of a libel filed by his wife for divorce on the ground of the husband's excessive cruelty.[21]

A second exception to the general rule is where the subsequent action, although civil in form is quasi-criminal in its nature, as in actions to recover penalties or to declare forfeitures, as in such cases, it is regarded as a second prosecution for the same offense, and barred by a prior conviction or acquittal. It is necessary to take note of this exception as recourse will be had to it later when application of the rule is made to divorce cases in this jurisdiction. This exception, however, is not applicable where the object of the civil action is compensation and not punishment; neither is punishment suffered in a criminal action admissible in mitigation of damages in a civil action.[22] A third exception to the rule arises where the defendant in the criminal case pleaded guilty, and the record showing the plea is offered in evidence in a civil action growing out of the same offense. In such cases, it is admissible in evidence upon the issue whether he committed the act on which the criminal charge was based, although the weight of authority is that in such cases, it is admitted not as a judgment establishing the fact, but as a deliberate declaration or admission.[23]

Other exceptions to the rule exist where judgments are available as evidence against third parties by way of inducement or to prove the existence of any collateral fact, as where

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[19] Burt vs. Union Cent. Ins. Co., 59 L. R. A. 393.

[20] York vs. Forscht, 23 Pa. 391.

[21] Bradley vs. Bradley, 11 Me. 367; Birchard vs. Booth, 59 Am. Dec. 285; Green vs. Bedell, 48 N. H. 546.

[22] 15 R. C. L., 1004; 34 C. J., 971-972.

[23] Myers vs. Maryland Casualty Co., 101 S. W., 124.

the record of a conviction is produced to prove the legal infamy of a witness or to show what was known at a trial. A record of a judicial proceeding is also admissible in favor of one not a party to it, when it contains an admission made by the person against whom it is offered in evidence, although in such cases it does have the unimpeachable veracity of a record, and it may be rebutted or explained.[24] Also, the affirmative declarations made by a litigant in his pleadings may be received as evidence against him, having at least as much effect as like statements made in a letter or in ordinary conversation.[25] Judgments may also be admitted in evidence to prove indebtedness; and although not conclusive, they may be admitted for or against third persons in regard to questions which in general are susceptible of being determined mainly by evidence of common repute. The reason in such cases, is that the solemn adjudication of a court based as it is upon testimony properly admitted, is considered better evidence or proof than mere general reputation.[26] Thus, in a case involving the paternity and legitimacy of one Myra Gaines, it was necessary to prove that the father, at the time he imposed himself in marriage upon her mother, was the husband of another woman. The court, in admitting the father's conviction, held that the general rule is that a person cannot be affected, much less concluded by any evidence or judgment to which he was not actually, or in consideration of law, privy; but that this general rule has been departed from so far as that wherever reputation would be admissible evidence, there a verdict between strangers in a former action is evidence also.[27]

Notwithstanding the numerous American cases that may be found in support of the various exceptions to the general rule, it is interesting to note that with the exception of two cases, both decided at an early date, no case directly in point has been found. This fact may speak highly of the soundness of the general rule, but at the same time, it may be utilized in justification of the conclusion to be advanced later. In the first case alluded to, it was held that in an action for divorce on the ground of adultery brought by the wife against her husband a copy of the record of the husband's conviction of the offense of

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[24] 2 Freeman on Judgments, 1040-1043.

[25] Parsons vs. Copeland, 54 Am. Dec. 628; Judd vs. Gibbs, 3 Gray (Mass.) 539.

[26] 2 Freeman, supra.

[27] Patterson vs. Gaines, 6 How. U. S., 598, 12 L. Ed. 573.

adultery is sufficient proof of the marriage of the parties.[28] This was followed by a second case, holding that in a libel for divorce for adultery, the conviction of the defendant is admissible after default as sufficient proof of the crime charged in the libel.[29] A third case, although not directly in point, may be cited. Here, it was held that a plea of guilty to a charge of adultery in a criminal court, is in a suit for divorce based upon the same adultery, substantive evidence against the party pleading it, and is sufficient to prove the charge and support a decree of divorce; because in such a case, the plea of guilty of adultery amounts to a conviction of the defendant making it.[30] And still in another case where the defendant himself offered in evidence, without restriction, a previous judgment of conviction, the court held that such a record of conviction was competent evidence of all facts that appeared on its face, and was sufficient to prove that he was guilty of the crime of which such record shows him to have been convicted.[31]

Moreover, it is consoling to find that even a most noted authority has found inconsistencies in the precedents on this subject. To quote his very words, "notwithstanding the weight of reason and of precedent opposing the admission of any record of a criminal cause as an estoppel in any civil action, it must be admitted that the precedents on this subject are not all consistent with the general rule".[32] And Justice Rapallo in a New York case, although holding that there is a great weight of authority against its being admissible at all, except as evidence of the fact of conviction where that is material, nevertheless, declared that the decisions were not harmonious as to whether, in a civil action, the record of conviction for a crime was admissible as *prima facie* evidence as to the facts, or not competent at all.[33] These are worth remembering when an attempt is made to invoke the general rule in this jurisdiction, especially in divorce cases, where because of peculiar statutory requisites, and because of the general character underlying our penal law, it is doubtful whether the application of such rule is reasonable and proper. Furthermore, it should be noted that the general rule enunciated by this case is purely

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[28] Anderson vs. Anderson, 16 Am. Dec. 237.
[29] Randall vs. Randall, 4 Me. 326.
[30] Stewart vs. Stewart, 114 Atl. 851, 93 N. J. Eq. 1.
[31] Porter vs. Seiler, 62 Am. Dec., 341.
[32] 1 Freeman on Judgments, p. 1380.
[33] Sims vs. Sims, 75 N. Y., 466.

of English origin, and, as has been pointed out, became a rule of American law through subsequent adjudications. Now, conditions obtaining in American jurisdiction, due to the peculiar system of "government within a government" are not existent here. Thus, imbedded in the American constitution, we find the so-called "full faith and credit clause", whereby a judgment of a sister state, if duly authenticated, is entitled to such faith and credit as it has by law in the court of the state from whence the record is taken, except that neither recitals, nor the proof contained in the record of any jurisdictional fact, are conclusive.[34] In this country, where courts of first instance are courts of general jurisdiction, and operate under the very same provisions of the same judiciary law, it is very evident that the necessity for such a "full faith and credit clause" is not warranted. One of the conditions, therefore, under which the general rule sprang up, is non-existent in this jurisdiction.

It should be borne in mind that in American jurisdictions, as a necessary corollary to the general rule enunciated in this case, a judgment of conviction or acquittal in a criminal prosecution constitutes no bar to a subsequent civil action based upon the same act or transaction, for the very same reasons underlying the general rule, and because they are entirely distinct and independent proceedings, having different objects and results in view.[35] The same is not true in this jurisdiction due to certain provisions found in our Penal Code. Article 17 of our Penal Code provides that persons criminally responsible for an offense shall also be made civilly responsible, from which precept, it is a logical consequence that exemption from criminal responsibility carries with it exemption from civil responsibility. Here, therefore, the full and complete acquittal of an accused necessarily implies his innocence and freedom from responsibility for the crime of which he was accused. The judgment which fully acquits the accused persons settles in an explicit manner all the points in question, and the accused, once found by the court to have been the author of an offense and being acquitted of the accusation, under no condition can he be made civilly responsible for the harm caused and for damages suffered thereby.[36] This rule is, of course, applicable only to crimes penalized under the Penal Code. But the fact to be

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[34] 2 Abbot, Trial Evid., 1433.

[35] Seaboard vs. O'Quin, 52 S. E. 247; Van Dyke vs. Van Dyke, 19 Atl., 1061.

[36] Almeida vs. Abaroa, 8 Phil. 178.

noted is that this rule has never been departed from in this jurisdiction, for in a much later case where the defendant in a civil action has been previously acquitted in a former criminal prosecution for estafa based on the same facts, the court in rendering judgment for the defendant, held that where, as here, the facts on which civil liability is based are of such a nature as inevitably to constitute a crime, if anything, acquittal in a criminal prosecution is an insuperable obstacle to the civil proceedings.[1] This fact is reinforced by a decision of the United Supreme Court on an appealed case by an application of purely local substantive law. To quote the very words of the Court, "A civil action for indemnification for the damages resulting from the malicious or unlawful burning may not be maintained in the Philippine courts, where there has been a judgment of acquittal against the same defendant for the same charge, in view of the positive legislation of the Philippine Codes, civil and criminal. * * * *The foregoing considerations* (citing provisions of local codes) *eliminate any question of the effect of such a judgment of acquittal under the principles of the common law,* and require an affirmance of the judgment as properly based upon applicable substantive law of the Philippine Islands, which has not been superseded by legislation since the establishment of the present Philippine Government." [2] Even in the very case relied upon by the decision in this case, this fact is not ignored. In that case, plaintiffs cited the Almeida-Abaroa case, but the court in holding against such reliance decided that the action then was not based upon the provisions of the Penal Code, but on a law of the Philippine commission, and that hence, the Penal Code provisions are not necessarily applicable to crimes created by laws of said Commission.[3] As indicated in the dissenting opinion in this case, the general rule which was applied in the case of Ocampo vs. Jenkins (supra), cannot be relied upon in this case, because that was prosecuted under the provisions of the libel law; and reasoning in the very same manner in which the court reasoned in the aforecited Ocampo-Jenkins case, we cannot escape the conclusion that in crimes not punished under any law of the Philippine Commission, the Penal Code provisions are applicable and consequently the doctrine of the Almeida-Abaroa case can be in-

[1] Wise & Co. vs. Larion, 45 Phil. 320.
[2] Almeida Chan Tanco vs. Abaroa, 218 U. S. 476-486.
[3] Ocampo vs. Jenkins, 14 Phil. 683.

voked. And it should be noted that notwithstanding Act No. 2710, and the provisions of Act 1773 making adultery a public crime, it is none the less essentially a crime punishable under the Penal Code. Moreover, while its applicability now may be doubtful in view of the provisions of our present divorce law, nevertheless, it is illuminating to note that in our Penal Code, there is an article providing that a final judgment in favor of a defendant in an action for divorce upon the ground of adultery shall be conclusive in a criminal prosecution for the same offense; and our Supreme Court, construing this article, has held that a final judgment on the merits in favor of a wife in a civil action for divorce based on her alleged unfaithfulness to her marital vows, is a bar to her subsequent prosecution for adultery, based upon the commission of alleged adulterous acts prior to the institution of the civil suit.[4] No attempt is here made to advocate the total renunciation of the general rule as to the non-admissibility of criminal judgments in subsequent civil suits, but pains have been taken merely to show that we are not necessarily bound by American precedents, and that there are justifiable grounds for deviating from the general rule and to establish an exception, where such a course is proper and necessary. The subsequent discussion will attempt to demonstrate that such a deviation is not only proper and justifiable, but also legally demanded.

DUAL ASPECT OF THE CRIME OF ADULTERY IN THIS JURISDICTION

In as much as almost all crimes, with the exception of those which are purely public in character, such as sedition, rebellion, insurrection, etc., have a dual aspect, as both the interest of the aggrieved party and the authority of the state have to be vindicated, the double aspect of adultery may not seem of much importance. But considering the fact that in this jurisdiction, adultery as a crime is punishable under the Penal Code, which recognizes it as purely a private crime, and the provisions of Act 1773 making it a public one, notwithstanding the abrogating effect of the latter, it is evident that such a double aspect assumes much significance. The question that necessarily arises at this juncture is the extent of the abrogating effect of Act 1773 on the private character of the crime of adultery. Prior to the passage of Act 1773, the crime of adultery was purely a

[4] Art. 436, Penal Code; U. S. vs. Ortega, 37 Phil. 32.

private offense, and could not be prosecuted except upon the complaint of the offended husband. The prosecuting officer had no authority to institute the proceedings at his own instance. There existed then sound reasons of public policy which forbade the prosecution of persons charged with the crime of adultery except upon the complaint of the offended party, and the Philippine Commission in enacting Act 1773 intended that these underlying principles of the Penal Code should remain in force.[5] By Act 1773, adultery was made a public crime, and the control of the prosecution of the same was taken out of the hands of the offended party, once the proceedings were instituted. But there is a proviso tacked to section 1 of said Act, providing that no information can be filed by the prosecuting attorney except upon the complaint of the aggrieved party. Construing this proviso, it has been consistently held that the court acquires no jurisdiction over the person of the defendant and the subject matter of the action, unless this requirement has been complied with; and compliance therewith requires a complaint in writing duly executed by the offended party personally, and the mere signature attached to a complaint which is signed by the fiscal, and the bringing of the complaint merely at the instance of the aggrieved party or at his mere denunciation, are not sufficient compliance with this proviso.[6]

The vital and essential distinction between public and private crimes, as they were known under the former law, was the control which in private crimes the injured person had over the criminal liability and responsibility of the offending person. Therefore, the real intent and purpose of the Legislature in changing all private crimes into public crimes was to abolish this distinction and thereby to take from every person injured the control over the criminal liability and responsibility of the offending person,—in other words, to prevent any person from remitting the criminal responsibility of another.[7] Besides, the real and main object of the Legislature in enacting Act 1773 was no other than that the prosecuting attorney shall appear in such cases and obtain control of the proceedings as in any other crime. Although Act No. 1773 authorizes the fiscal to file the charges, yet the conditions established in Chap. 1, Tit.

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[5] Quintalan vs. Caruncho, 21 Phil. 401.

[6] U. S. vs. Narvas, 14 Phil. 412; U. S. vs. Cruz, 20 Phil. 363; U. S. vs. Ortiz & Regalado, 19 Phil. 174.

[7] U. S. vs. Hernandez, 14 Phil. 640.

9, Book 2 of the Penal Code dealing with adultery have not been altered thereby, and it was intended that the principles underlying them should remain in force.[8] It is very evident therefore, that the private character of the crime of adultery has not only been left untouched by Act 1773, but was also preserved through the tacked proviso in section 1 of said Act. By the very nature of the crime, the Government has naturally no special interest in it; hence, unlike in the case of insults, no criminal proceedings can be instituted against the persons charged with the crime of adultery although the offended person may be a public official, except upon the complaint of the latter.[9] The character of the Government as party plaintiff in a criminal prosecution for adultery is, therefore, limited to the extent that the courts do not acquire jurisdiction over the person of the defendant and the subject matter of the action, unless complaint is duly filed by the aggrieved party. Consequently, one of the reasons underlying the general rule,—that the parties in the two actions are necessarily different,—can hardly be applied in cases of adultery and divorce in this jurisdiction, except perhaps as a pure matter of technicality. More so, when we take into consideration the fact that in this jurisdiction, the practice is allowed for the prosecuting attorney to turn over the active conduct of criminal cases, especially those in which the offenses charged are in the nature of those known as private offenses, to counsel employed as private prosecutor, provided that the fiscal retains control of the prosecution all the time, and assumes full responsibility therefor.[10] While, therefore, the identity of the party interested in the two actions may be veiled by the cloak of technicalities and forms of procedure, that identity is none the less real and apparent. In a criminal prosecution for adultery, the aggrieved party is the person most in interest; it is his complaint duly filed that vests the courts with jurisdiction; and through the provisions of Sec. 107 of the Code of Criminal Procedure, he assumes the actual prosecution of the case; and the interest of the Government assumes but a secondary importance, subordinated to the paramount interest of the aggrieved party. If it were otherwise, there would be absolutely no reason for having added the tacked proviso to section one of Act 1773.

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[8] U. S. vs. Bacas, 14 Phil. 309; Quintalan vs. Caruncho, 21 Phil. 401-403.

[9] Quintalan vs. Caruncho, supra.

[10] U. S. vs. Despabiladeras, 32 Phil. 442.

On the other hand, in a civil suit for divorce, while it may not be apparent, it is none the less a fact that the Government is to some extent a party to the proceedings. This fact is supported by adjudicated cases. Thus, it has been held that in a suit for divorce, the interest of the State is superior to those of the parties; in other words, the parties have no right to relief, if granting it is contrary to public policy.[11] While an action for divorce may appear to be a mere controversy between the parties of record, nevertheless, the public occupies the position of a third party. The state has an interest in all marriages, and it is its duty, in the conservation of the public morality, to guard such a relation and to see to it that all applicants for its dissolution have fulfilled the requirements laid by law.[12] In all actions for divorce, there exists three parties litigant. Not only the parties which appear of record, but the public as well, have an interest in the marriage relation, and in its dissolution. Parting from this double interest, we come to the doctrine that while apparently the proceeding is a mere controversy between the parties litigant, in reality, it constitutes a "triangular action", *sui generis;* the Government occupying the third seat, without being represented by counsel, it being the court's duty to protect its interest.[13] It will be seen, therefore, that in both cases actually, though not apparently, the parties interested are not necessarily different.

SPECIAL STATUTORY REQUISITES UNDER ACT 2710

Prior to the passage of Act No. 2710, the laws on divorce in force were those contained in Titles 2, 9 and 10 of the Fourth Partidas; and judging from the provisions of Art. 436 of the Penal Code, under said laws, it was possible to obtain a decree of divorce, without the previous institution of criminal proceedings for the crime of adultery, a condition which will not obtain under the present divorce law.[14] What then was the legislative intention in embodying in section 8 of Act 2710 the requirement that the guilt of the defendant must have been established by final sentence in a criminal action? According to the majority decision in this case, the judgment had no effect in this action for divorce other than to show that the guilt of the defendant

[11] 1 Nelson, Div. and Sep., par. 8.

[12] People ex rel. Healy vs. Case, 89 N. E. 638.

[13] McYntyre vs. McYntyre, 30 N. Y. Supp. 202; Fischer vs. Fischer, 52 Atl. Rep., 898.

[14] U. S. vs. Flores, 28 Phil. 28.

was proven in a final judgment rendered in a criminal case, which is a condition required by section 8 of said Act,—in other words, its only purpose is to show that such a final judgment has been rendered. If this were the only object of this section, it is evident that it is a mere surplusage; for even without it, following the well established rule of law, a judgment is always conclusive evidence of the fact of its rendition. There was therefore more than a mere requirement behind section 8 of Act 2710.

The present Divorce Law was originally Senate Bill No. 65, but when if came to the lower house, it was so altered that as finally passed, it was nothing more than the whole amendment of Representative Alunan. His remarks, therefore, in support of his amendments are highly indicative of the legislative intention. The whole theory behind his amendments hinges on the paramount interest of the State in divorces as well as on marriages as a social institution; on the fact that the interest of the conjugal parties are subordinated to this interest; and that the parties, once married, become mere instruments of the State. Commenting on the requirements of Sec. 8, he says: "En nuestro caso, el ministerio fiscal representaría al Estado, y aun cuando este no tomaría parte directa en la misma causa de divorcio, su interés no sería ignorada desde el momento que el conyuge inocente habrá acudido al ministerio fiscal antes de presentar la demanda civil de divorcio." This is undoubtedly of little help to the contentions of the author, but it is nevertheless noteworthy to take note of his last words, when he said: "Cuando el *adulterio estuviese probado* y el adúltero sujeto a condena, el conyuge inocente tendrá el derecho de demandar la disolución definitiva de la sociedad conyugal." [15] The italicized phrase above has, no doubt, reference to the proof in the criminal case for adultery, as it is modified by the phrase "el adúltero sujeto a condena". The question that necessarily arises here is as to whether it was the legislative intention that there should be further proof of the adultery in the subsequent civil suit for divorce, and this leads us to a consideration of the question of the quantum of proof required in the civil suit for divorce.

It is now a well established rule of law, found in almost all jurisdictions that where a criminal act is alleged in a civil

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[15] Tomo XII, Diario de Sesiones de la Cámara de Representantes, 665-671.

suit,—civil not in form merely, but in its nature and purpose,—proof of the criminal act beyond a reasonable doubt is not required to warrant a verdict in favor of the party who makes the allegation, and preponderance of the evidence is deemed sufficient.[16] The law does not require a different kind of evidence in criminal prosecutions for adultery from that required in civil actions, but the degree of proof differs. In criminal prosecutions, the fact is required to be established beyond a reasonable doubt, while in civil suits, it is required to be established by a mere preponderance of the evidence.[17] As Chief Justice Cameron has pointed out, to hold in a civil action, where the defendant's liability flows from an act involving a criminal offense, a greater degree of certainty is necessary than would be required where a crime had not been committed, is to place the wrongdoer in a position of greater security, and to deprive the person wronged of the right that would be his against a less criminal defendant.[18] If such is the general rule of law, the conclusion,—which, by the way, seems to be implied in the decision of this case, if no other effect is to be given section 8 of Act 2710,—is inevitable that the plaintiff in a divorce suit will only need to show or prove his case by a mere preponderance of evidence to entitle him to a decree, a conclusion which cannot be accepted in this jurisdiction in view of the express provisions of said section 8 of our divorce law. On the other hand, if this conclusion is untenable, the other alternative left would be to require the plaintiff to prove his case beyond a reasonable doubt, a conclusion which in turn would be subject to the well founded criticisms pointed above by Chief Justice Cameron, and a requirement which is obviously superfluous in view of the provisions contained in said section 8 of the law. The only reasonable way out of this dilemma, therefore, is to impart more probative value to the judgment mentioned in section 8 of the divorce law, and to make the evidentiary effects of such judgment sufficient by itself, without necessity of further proof. Otherwise, there will arise cases in which we shall have the anomalous, not to say ridiculous, situation in which the plaintiff in a civil suit for divorce, after having obtained a final judgment against his wife for adultery, will not be able to obtain the much-coveted decree to

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[16] 1 Moore on Facts, 84.

[17] Abbott, Proof of Facts, p. 151.

[18] U. S. Express Co. vs. Donohoe, 14 On. 352.

which both in man-made law as well as in moral law he is justly entitled, due to the individual peculiarities and turn of mind of the judge sitting in the trial of the suit for divorce, who finds that the fact of adultery has not been established, notwithstanding the existence of a judgment rendered in a tribunal where the accused is clothed with all the possible presumptions in his favor; not to mention cases in which due to the subsequent death of a material witness whose deposition has not been taken, or the subsequent loss of a pertinent document containing relevant declaration, confession or admission, it would not be humanly possible to establish the fact of adultery or concubinage.

IMPLIED NECESSITY OF SUBMITTING FURTHER PROOF

Judging from the wording of the decision of the trial court in this case, and which as we have seen was incorporated by the Supreme Court on appeal, there seems to be implied a necessity of further proving the fact of adultery, since as evidence, the judgment has no effect but to show the guilt of the defendant. There is, therefore, established a distinction between the existence of the fact of adultery, and the guilt of the defendant coming from the commission of the very same adultery, as if these facts could exist independently of each other. Such a distinction, it is believed, is more fruitful of philosophical and theoretical discussions, but of very little practical value. As it is well known, before conviction is made in a criminal prosecution, the guilt of the defendant must be established 'beyond reasonable doubt',—a phrase that has been construed as "that state of facts, which after the entire comparison and consideration of all the evidence in the case, leaves the mind of one in that condition that he can safely say that he feels an abiding conviction, to a moral certainty, of the truth of the charge; a certainty that convinces the understanding, and satisfies the reason and judgment, of one who is bound to act conscientiously upon it".[19] That certainty described above must naturally be predicated upon the facts established in the trial of the crime charged, and as applied to our case, the guilt of the defendant beyond reasonable doubt necessarily presupposes the proof of the commission of the adultery charged. Consequently, therefore, a judgment declaring the guilt of the defendant as having been established beyond reasonable doubt, necessarily carries

[19] U. S. vs. Youtsey, 91 Fed. Rep. 96.

with it, as a concommittant, the fact that the crime charged of which he was found guilty, has also been established beyond reasonable doubt; and if such judgment is admissible to establish the guilt of the defendant in a criminal action, it must also necessarily be conclusive proof of the fact that the crime of which he has been found guilty has actually been established and proved. To require further proof would be to give rise to a situation where an accused is found guilty of a crime, subsequently proven not to have been committed at all, a situation which is repugnant to common sense, and to use the very words of our Supreme Court, to "humanity and justice", two virtues of the courts constantly and repeatedly invoked.[20] Moreover, to countenance the necessity of such further proof of matters already adjudicated, would be to unnecessarily delay the prompt adjudication of cases, contrary to the very precepts of the old saying, "justice delayed is justice denied"; and furthermore, it would mean an unjust imposition of additional burdens on a husband or a wife, who both from the standpoint of moral law as well as man-made law is justly entitled to a judicial renunciation of the marriage vow, notwithstanding the time honored maxim that "what God hath joined together, let no man put asunder".

CONCLUSION

A careful comparison of our present divorce law with those of the different states in the United States,[21] has shown that our law is distinct in the sense that in none of them can there be found in substance at least, any provision identical to section 8 of Act 2710. This reinforces the contention of the writer that we are not necessarily bound by American precedents. Consequently, any deviation from the general rule, in the form of an exception, will not necessarily be a reflection on our jurisprudence. It is therefore submitted that in view of all the foregoing discussions touching the requirements of section 8 of Act 2710, a judgment rendered in a criminal case for adultery, should be made admissible in evidence of the facts found therein to have been established, in a subsequent civil suit for divorce based on the same facts.

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[20] Evans vs. Evans, 161 Eng. Rep. 466; cited in Arroyo vs. Basquez, 42 Phil. 58.

[21] Keezer on Marriage and Divorce, 233-243; Ringrose, Divorce Laws of the World, pp. 148-198.