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FORMALITIES IN MARRIAGE NOT AFFECTING ITS VALIDITY

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A. INTRODUCTION

I. DEFINITION OF TERMS

The author deems it his first duty to define terms in order to clear the objective, so to speak. The word "formalities" has been defined in various ways. It has been used to refer, in its singular, to an established order; a rule of proceeding; a formal mode or method. (Cyc. vol. 19, p. 1431.) It has also been used as synonymous to solemnities. (Seymour's Succession, 48 La. Ann. 993; 20 So. 217.) And still it has been used to refer to conditions which must be observed in making contracts, and the words which the law gives to be used in order to render them valid; it also signifies *the conditions which the law requires to make regular proceedings*. (Bouvier's Law Dict. vol. I, p. 831.) In relation to the present subject, the last portion of the statement by Bouvier appears to be the most appropriate. It should, therefore, be understood that, as far as this thesis is concerned, by "formalities," we refer to the *required conditions* of the law which should be followed in order to make the proceeding regular.

And shall we now proceed to define marriage? It is so old an institution that it even perhaps antedated history. But old though it be, it has not become antiquated. The usefulness that it was yesterday when it led the lives of old to a fruitful and completed achievement is still the same usefulness today while it binds the lives of the present to constructive and refined labor. If the morrow will not take care of itself, marriage will take care of the morrow. So important indeed is marriage to every one concerned that, although definitions have already been quoted by writers, the repetition of such definitions should not be considered as trite and abusive. There can neither be monotony nor abuse where there is importance. And so we start

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by quoting what President Palma once said, that, "Viewed in its divine aspect, marriage is the union of a man and woman to which God has given a creative power; it is the sanctuary of procreation, the intimate home in which is cultivated all that is divine and human. Considered from the standpoint of nature, marriage seems to be a design of which God intended to harmonize in the physical world the dualism caused by the opposite sexes. * * * Marriage is, finally, a juridical or legal society because it is regulated by law and placed under the protection of law."

The German writer, Westermarck, asserts that marriage is a "more or less durable connection between male and female, lasting the mere act or propagation till the birth of offspring."

Marriage, as understood in Christendom, has been defined as the voluntary union for life of one man and one woman, to the exclusion of all others. (Klipfel v. Klipfel, 41 Colo. 40.) In its origin, marriage is a contract of natural law. In all civilized communities it is in its creation contractual, in that it requires capacity and consent on the part of those who enter into the relation, and, so far as its validity is concerned, it is universally treated as a civil contract. (18 R. C. L. p. 383.) But marriage is something more than an ordinary civil contract, for it creates a social status or relation between the contracting parties, in which not only they but the state as well is interested. (Adong v. Cheong Seng Gee, 43 Phil. 43.) It involves a personal union of those participating in it of a character unknown to any other human relation, and having more to do with the morals and civilization of a people than any other institution. (18 R. C. L. p. 384.)

II. BRIEF HISTORY OF CIVIL MARRIAGE AND OUR LAW ON MARRIAGE

According to the "Enciclopedia Juridica Española," vol. 22, marriage, in early times, was purely religious. The Church controlled everything that pertained to marriage. Even its civil effects were governed by the Church.

But with the coming of the Council of Protestant Reform in the 16th century, the Lutherans and the Calvinists denied the purely religious character of marriage, but contended that marriage was an act which is social and civil in nature. In England, the earliest attempt, and a successful one at that, was the Cromwell Act of 1653 which, though passed by the much-abused "Barebone's Parliament," was nevertheless a wise measure, resting on principles which two centuries and a half

of subsequent history had fully sanctioned. With remarkable clearness and brevity, but with adequate fullness of detail, the form of celebration, the exercise of matrimonial jurisdiction, and the machinery of administration were provided for. Its provisions might surprise us for their close similarity to some of the formalities found in our present Marriage Law. For instance, the Cromwell Act provided for obligatory civil ceremony before the justice of the peace; it required due publication of banns; it required that a certificate from the parish register be presented to the justice of the peace before one could get married; it required that marriage could take place only in the locality where publication was made; and it required the consent of parents or guardians in case either of the parties was below 21 years of age. This Act marked the beginning of civil marriage in England. (Howard's, "History of Marital Institutions," vol. 1, p. 418.)

In Continental Europe, the first details of the institution of civil marriage could be traced to Jose II of Austria and the Grand Duke of Tuscany. But for the first time the clear concept of civil marriage was formulated in the Code Napoleon, wherein it was distinguished from the religious marriage just as an accessory is separated from the principal. (*Enciclopedia Juridica Española*, tomo 22, p. 3.)

With respect to the Philippines, its institution of civil marriage (as this is the only form of marriage existing in the Islands) is traceable to the Spanish Marriage Law of 1870, which provided that all marriages must be solemnized before a civil magistrate. This requirement was not welcomed with open arms by the majority of the Spanish people because its effect was to deny legality to Church marriages unless ratified by civil ceremony. However, the objectionable portion of the law was eliminated by the Civil Code, which was promulgated in Spain in 1889, when it recognized in Art. 42 two forms of marriage, namely, the canonical, which all who profess the Catholic religion must contract, and the civil, to be celebrated in the manner provided by the Code. By Royal Decree of July, 1889, the Civil Code of Spain was extended to the Philippines and took effect here on December 8, 1889. This code repealed all marriage laws which were then existing in the Philippines. Civil marriages were then recognized for the first time since the implantation of the Spanish sovereignty here. This did not last long, however, for on December 31, 1889, Governor-General Weyler published in the Official Gazette of Manila a decree

suspending the provisions of the Civil Code concerning marriage and judicial separation. So that the provisions of the Civil Code concerning marriage and judicial separation have been in force here for only 24 days.

On December 18, 1899, Major General Otis promulgated General Orders No. 68, which provided for the solemnization of marriages and the capacity of the contracting parties. All marriages after December 18, 1899, must, therefore, be solemnized in accordance with the provisions of this Order.

A subsequent Order, General Orders No. 70, was issued, modifying G. O. No. 68 to the effect that municipal presidents and alcaldes, in places where there are no justices of the peace, were authorized to solemnize marriage.

In Feb. 5, 1906, the Philippine Commission passed Act 1451, amending Sec. 7, par. 3 of G. O. No. 68 to the effect that parental consent was required in the marriage of males below 20 years and of females below 18 years, instead of 21 years originally.

The year 1928 saw a signal advance in marriage legislation in this country upon the enactment and taking effect of Act 3412 on April 1st of that year. This Act required the parties about to be married to obtain marriage license from the civil official designated in the Act.

Then Act 3613, known as the Marriage Law, was passed, which expressly repealed General Orders No. 68, Act 1451 of the Philippine Commission, Act 3412 of the Philippine Legislature and all other acts and provisions of law inconsistent thereto. This Act was approved December 4, 1929, and took effect on June 5, 1930. Act 3613, as modified by Act 3848 and Sec. 20 of Act 3753, is our present law on marriage.

B. REQUISITES OF MARRIAGE IN THIS JURISDICTION WHICH AFFECT ITS VALIDITY

There are two classes of requisites in marriage, namely, the essential and the formal. The former must always be present in order to have a valid marriage. Section 1 of Act 3613 provides that the essential requisites for marriage are the legal capacity of the contracting parties and their consent. We need not elaborate on this as its further discussion is not necessary in the present subject.

But the latter, i. e., the formal requisites, do not, as a rule, affect the validity of marriage. The only exception is when the person who solemnizes the marriage is not authorized *and*

such fact is known to the contracting parties, in which case, the marriage is void and could be declared invalid. It is necessary that both of the contracting parties know the absence of authority of the person solemnizing at the time of the ceremony in order to render the marriage invalid. Otherwise, even if only one of the parties believed in good faith that the person solemnizing the marriage was actually empowered to do so and that the marriage was perfectly legal, the marriage could not be declared invalid. This is so provided in Sec. 27 of our Marriage Law. This provision is in line with the doctrine that public policy should aid acts intended to validate marriages and should retard acts which tend to invalidate them. (*Gorhen v. Stonington*, 4 Conn. 209; *Baity v. Cranfill*, 91 N. C. 273; *Adong v. Cheng Seng Gee*, 43 Phil. 43.)

Summarizing, therefore, we have the following requisites of marriage in this jurisdiction which affect its validity, which requisites must concur in order that the marriage cannot be declared invalid:

First—Legal capacity of the contracting parties;

Second—Consent of the same; and

Third—Both of the parties, or either of them, believe in good faith that the person solemnizing the marriage is actually empowered to do so and that the marriage is perfectly legal.

C. FORMALITIES IN MARRIAGE IN THIS JURISDICTION WHICH DO NOT AFFECT ITS VALIDITY

With respect to marriages of ordinary character, the following are submitted as the formalities which should be followed, in the order of their sequence:

- (1) The filing of an application for a marriage license in the municipality where the female has her habitual residence;
- (2) The swearing to such application;
- (3) Exhibition of birth certificates or certificates of like import;
- (4) The ten-day publication of banns;
- (5) The payment of the two-peso fee;
- (6) The issuance of the license;
- (7) The entry of license application;
- (8) The consent of parents and guardians;
- (9) The solemnization by persons authorized;

- (10) The place of solemnization;
- (11) The presence of witnesses; and
- (12) The furnishing of copies of the certificate of marriage.

I. THE FILING OF AN APPLICATION FOR A MARRIAGE
LICENSE

The first step that a person desirous to marry should take is to make an application in writing setting forth his intention to marry and that such party has the necessary qualifications for contracting marriage in conformity with Act 3613. Such application shall contain, in so far as possible, the following data:

- (a) Full name of the contracting party.
- (b) Place of birth.
- (c) Age, date of birth.
- (d) Civil status, (single, widow or widower, or divorced).
- (e) If divorced, how and when the previous marriage was dissolved.
- (f) Present residence.
- (g) Degree of relationship of contracting parties.
- (h) Full name of father.
- (i) Residence of father.
- (j) Full name of mother.
- (k) Residence of mother.
- (l) Full name and residence of guardian or person having charge in case the contracting party has neither father nor mother and is under the age of twenty years, if a male, or eighteen years, if a female. (Sec. 7, Act 3613.)

This application shall be filed with the municipal treasurer of the municipality where the female has her habitual residence. or with the Health officer in the City of Manila designated by the Director of Health, if the habitual residence of the female is in Manila. (Sec. 7, Act 3613 as modified by Sec. 20, Act 3753.) By habitual residence of the female is meant the residence of her parents or guardian, if such female is less than eighteen years of age, and if over said age, the place where she lived uninterruptedly for at least one year prior to the date of the application for the marriage license. (Sec. 14, Act 3613.)

So as to avoid annoying repetitions, the effect of non-compliance with this application requirement will be discussed

in connection with license because this requirement is the first condition for the issuance of a license.

II. SWEARING TO THE LICENSE APPLICATION

The municipal treasurer concerned, or the Health officer, as the case may be, or any public official authorized to administer oaths, or any priest or minister authorized to solemnize marriage are the persons before whom each of the contracting parties shall swear separately. The essence of his oath shall be that such party swears to his application in writing which application sets forth that such party has the necessary qualifications for contracting marriage in accordance with the Marriage Law. (Sec. 7, Act 3613.)

What could be the effect on the validity of marriage without this oath? This will be discussed in connection with license as this is the second condition for the issuance of license.

But what could be the effect if the oath turns out to be false? Section 44, Act 3613 provides for a fine of not more than two hundred pesos or an imprisonment for not more than one month, or both, in the discretion of the court, for any violation of any provision of Act 3613 *not specifically penalized*. Does this mean that the party making the false oath be punished under this section? The writer believes that Art. 183 of the Revised Penal Code should govern, i. e., that the party shall be penalized for perjury. The reason is that, although it is a rule that violations under a special law should be punished by the provisions of such law, yet section 44 of Act 3613 itself allows the operation of penal laws under the general criminal law of the land when it says "*not specifically penalized,*" instead of "*not specifically penalized by this Act.*" So that taking into account the elements of the crime of perjury, namely, (a) a statement made under oath; (b) a competent officer to receive and administer such oath; (c) willful and deliberate assertion of a falsehood by the offender; and (d) that the false statement be material to the principal matter under investigation, (21 R. C. L., pp. 257-259; U.S. v. Jurado, 31 Phil., 491), the party making the false oath may be held liable for perjury under Art. 183, Rev. P.C.

III. EXHIBITION OF BIRTH CERTIFICATES OR CERTIFICATES OF LIKE IMPORT

Upon receiving the aforementioned application, the municipal treasurer, or the Health officer, as the case may be, shall require the exhibition of the original baptismal or birth cer-

tificates of the contracting parties or copies of such documents duly attested by the persons having custody of the originals. In lieu of the baptismal certificate, an instrument may be drawn up and sworn to before the municipal treasurer, or the Health officer, as the case may be, or any public official authorized to solemnize marriage, which instrument shall contain the sworn declaration of two witnesses of lawful age, of either sex, setting forth the full name, profession, and residence of such contracting party and of his or her parents, if known, and the place and date of birth of such party.

The exhibition of baptismal or birth certificates shall not be required if the parents of the contracting parties appear personally before the municipal treasurer, or before the Health officer in Manila, as the case may be, and swear to the correctness of the age of said parties. (Sec. 8, Act 3613.)

But if either of the contracting parties is a widowed, or divorced person, the same shall be required to furnish, instead of the baptismal or birth certificate, the death certificate of the deceased spouse, or the decree of the divorce court, as the case may be. (Sec. 9, par. 1, Act 3613.)

The reason for requiring the exhibition of these certificates is to determine the age, in the case of persons who have never been married, and to determine the civil status, in the case of widowed and divorced persons.

This the third condition for the issuance of a license and its effect on the validity of marriage will be dealt with in the discussion of license.

What would be the result if the municipal treasurer, or the Health officer, as the case may be, fails to require the exhibition of the proper certificate? The language of section 8 of the Marriage Law makes it a duty of the officers concerned to require the proper certificate upon receiving the application for license. Failure to comply with this duty subjects the municipal treasurer, or the Health officer, as the case may be, to answer for a fine of not more than two hundred pesos or imprisonment for not more than one month, or both, in the discretion of the court, according to section 44 of the Marriage Law.

IV. THE TEN-DAY PUBLICATION OF BANNS

The publication of banns is the fourth condition for the grant of a marriage license. Sec. 10, Act 3613, as amended, uses the words "banns" and "publication" interchangeably. But Bishop on his "Marriage, Divorce and Separation," Richmond

and Hall on "Marriage and the State," Bouvier's Law Dictionary, and the Encyclopædia Britannica speaks of "publication of banns." In spite of this apparent incongruity in the use of terms, we choose not to lock horns with anyone. We will make it a point to understand the term as circumstances reasonably dictate, with liberality, if demanded, and strictness, if needed. Technically, however, "bann" means an intention to marry (Richmond & Hall on "Marriage and the State), or the intended celebration of the marriage of the parties in pursuance of a contract. The public notice or proclamation of a proposed marriage made in a church, or other place prescribed by law, in order that any person may object if he knows of any impediment to the marriage is called a publication of banns. (Bouvier's Law Dict., vol. 1, p. 219.)

Banns before marriage had been the custom of some Christian countries long before the procedure was required of them all by the Lateran Council of 1215. As certain disqualifications for marriage were recognized, safeguards had to be devised. Charlemagne in 802, for example, checked clandestinity by forbidding the celebration of any marriage until the "bishops, priests, and elders of the people had made diligent inquiry into the question of the consanguinity of the parties." But publication of banns has been customary in France since the 9th century. (Richmond & Hall on "Marriage and the State" and Encyclopædia Britannica, 11th edition, vol. 17, article on "Marriage.")

In the New England States of the Union, the township is responsible for the publication, during which specified period of publication, objections might be filed. If objections seemed valid, no marriage was allowed. For all candidates, who were able to meet the legal requirements, the town clerk or other official issued a "certificate of intention" that authorized a marriage ceremony. In four New England States this document is called a certificate of intention to this day and not a license.

"Publication" was one of custom among the New England States, which they followed till about the middle of the 19th century when the custom fell into disuse. However, the State of Maine passed a law requiring 5 days' notice before license could be issued. Other New England States subsequently enacted a similar law, and now half of the States of the Union which require a 5-day-advance notice are in New England. We might mention here in passing that in California, where Filipinos abound, a law was passed in 1927 requiring a 3-day-ad-

vance notice before marriage license could be issued. (Richmond & Hall on "Marriage and the State," p. 24.)

Our law on banns is found in Section 10, Act 3613, as amended by Act 3848 and as modified by Section 20, Act 3753. The publication is effected by the civil registrar (referring to the municipal treasurer, if in a municipality, or a Health officer, if in the City of Manila) who shall post during ten consecutive days, at the main door of the building where he has his office, a notice, the location of which shall not be changed once it has been placed, setting forth the full names and domiciles of the applicants for marriage licenses, their respective ages, and the names of their parents, if living, or of their guardians or persons in charge, if otherwise.

The rule, therefore, is that no license could be issued without publication for ten consecutive days. As far as marriages of ordinary character are concerned, there are only two exceptions. The *first* is where either of the applicants and a priest or minister, of the religion professed by such applicant, state in writing, and under oath, that the rules and practices of the church, sect, or religion under which the marriage is to be contracted, require banns or publications prior to the solemnization of the marriage, and that said church, sect, or religion complies with said rules and practices, and has obtained the proper certificate from the Director of the National Library. (Sec. 10, Act 3613 as amended by Act 3848.) In the case of *People v. Janssen*, 54 Phil. 176, the Supreme Court held that whenever a marriage is solemnized by a church, sect, or religion whose rules and practices require proclamation or publicity, it is not necessary that said proclamation be made during ten days, unless said rules or practices so require. The *second* is where the father, mother, guardian, or person in charge of each of the contracting parties, whether the latter be over or under twenty, if male, or eighteen years of age, if female, accompanies the same when they apply for the license. (Sec. 10, Act 3613 as amended by Act 3848.)

This provision of banns was not found in any of the marriage legislations, during the American regime, prior to Act 3613. But neither is this provision new in the field of legislation. It has been in vogue in many countries abroad for some considerable length of time already. Even the Marriage Law of 1870 of Spain provided for the publication of marriage in its articles 9 to 19. One of its provisions was that edicts should be published in the municipality, where the marriage was to

take place, for two consecutive periods, each period to last for eight days. (*Enciclopedia Juridica Española*, Tomo 22, pp. 18-19.)

Does non-compliance with this publication requirement render the marriage void? Certainly not. Marriage existed before statutes; it is of natural right; it is favored by the law. (*Meister v. Moore*, 96 U. S., 76.) Hence, in reason, any commands which a statute may give concerning its solemnization should, if the form of words will permit, be interpreted as mere directions to the solemnizing officers and to the parties, not rendering void what is done in disregard thereof. (*Holland v. Osgood*, 8 Vt. 726.)

Although the settled American doctrine, to the effect that a marriage good at common law is good notwithstanding a failure to comply with any other provision, cannot very well apply here in this jurisdiction for the reason that common-law marriage is not recognized in this jurisdiction, as held in the case of *Enriquez v. Enriquez*, 8 Phil., 565, yet section 27 of our Marriage Law expressly disregards the idea of invalidating marriage on the ground of non-compliance with any or several of the formal requirements.

In Scotland, a marriage without banns or license is good. Unless the statute expressly provides otherwise, failure to give due notice of the intention to celebrate a marriage will not invalidate the marriage. In England it was formerly provided by the Act of George II that all marriages solemnized without publication of banns should be null and void. Under a later statute, however, the marriage by banns is void only when both parties knowingly and wilfully intermarry without due publication. (7 C. J. p. 918.)

What is the effect on the civil registrar if he omits the publication of banns? Under Sec. 44 of the Marriage Law, the civil registrar, i. e., the municipal treasurer, or the Health officer, as the case may be, shall be liable to a fine of not more than two hundred pesos or to imprisonment for not more than one month, or both, in the discretion of the court.

And what about the priest? A portion of Sec. 39 of the Marriage Law provides as follows:—"any bishop or officer, priest, or minister of any church, religion or sect, the regulation and practices whereof require banns or publications previous to the solemnization of a marriage in accordance with section ten, who authorized the immediate solemnization of a marriage that is subsequently declared illegal; or any officer, priest

or minister solemnizing marriage in violation of the provisions of this Act, shall be punished by imprisonment for not less than one month nor more than two years, or by fine of not less than two hundred pesos nor more than two thousand pesos."

V. PAYMENT OF TWO-PESO FEE

The fifth condition for the issuance of a marriage license is the previous payment into the municipal treasury of two pesos for each license issued, which the municipal treasurer, or the Health officer in Manila, as the case may be, shall require. (Sec. 11, Act 3613.)

If this payment is not done, the marriage performed cannot be invalidated, but under Sec. 44 of the Marriage Law, the civil registrar concerned may be fined in an amount not more than 200 pesos, or may be imprisoned for not more than one month, or both such fine and imprisonment, in the discretion of the court.

VI. THE LICENSE REQUIREMENT

Under our Marriage Law, a license shall be issued, and it is a matter of ministerial duty on the part of the officer concerned, if the following conditions are complied with, namely,

- (1) the filing of an application for a marriage license in the municipality where the female has her habitual residence;
- (2) the swearing to such application;
- (3) the exhibition of birth certificates, or death certificate of the deceased spouse, or decree of divorce, as the case may be;
- (4) the ten-day publication of banns; and
- (5) the payment of the two-peso fee.

The license so issued shall be valid in any part of the Philippine Islands, but it shall be good for not more than one hundred and twenty days from the date on which it is issued and shall be deemed cancelled at the expiration of said period if the interested parties have not made use of it. (Sec. 11, Act 3613.)

The issuance of the license shall cease to be ministerial in three instances, namely,

- (1) when the aforementioned five conditions are not complied with;
- (2) when the contracting parties are found by the civil registrar to be related to each other in the degrees of relationship specified in section 28, Act 3613, i.e., between ascendants and descendants, between brothers and sisters whether

or not of the full blood (the original saying "entre hermanos y hermanas sean o no de doble vinculo"); between uncles and nieces, and aunts and nephews, by consanguinity to the third civil degree; between stepfathers and stepdaughters and stepmothers and stepsons, between the adopting father or mother and the adopted; between the latter and the surviving spouse of the former; and between the former and the surviving spouse of the latter; between the legitimate children of the adopter and the adopted; and between those who have been condemned as authors, or as the author and accomplice, of the death of the spouse of either of them; and

- (3) when the contracting parties or applicants have not the legal age provided for in section two of the Marriage Law, i. e., below 16 years, if male, and below 14 years, if female.

Section 13 of our Marriage Law further provides that when both contracting parties, or the female, are citizens of the United States or of any of the territories thereof, but not habitual residents of the Islands, or when they are subjects of foreign countries whose habitual residence is not in this country, or when they are members of the United States Army or Navy, it shall be necessary for the contracting parties, before a marriage license can issue, to provide themselves with a certificate of legal capacity to contract marriage from the Governor General, or their respective consuls, or the post commander under whose immediate orders the interested party is serving. The same procedure is followed in all other respects.

License was first required, in this jurisdiction, by section 2 of Act 3412. A substantially identical provision was reenacted in section 10 of Act 3613. On November 11, 1931, Act 3848 was passed, amending section 10, Act 3613. Although marriage license has been required only since 1928, on the passage of Act 3412, yet the idea is not new, for article 31 of the Spanish Marriage Law of 1870 required some kind of authority by providing that the judge would not authorize marriage before the delivery to the Clerk of Court the birth certificates of the parties. However, such a provision was not extended to the Philippines.

What is the result if the license requirement is not complied with? Such non-compliance does not destroy the validity of a marriage contracted because the license requirement is only

directory, unless it is expressly provided that the marriage shall be invalid. (State v. Trull, 147 La. 444; Holmes v. Holmes, 6 La. 463; Sabalot v. Populus, 31 La. Ann. 854.)

If a statute forbids a solemnization without a license, still, in the absence of a clause of nullity, the marriage will be good though no license was had. (Holmes v. Holmes, 6 La. 463.)

If it requires the license to be taken out in a particular county, a marriage under a license from another county will not be invalid. "In any view," said Justice Marshall, "these directory provisions, though prohibitory and even penal with respect to the officers, have not been regarded as affecting the validity of a marriage otherwise legal." (Stevenson v. Gray, 17 B. Monr. 193.) It has been generally held that if a statute simply ordains the performance of specified acts before marriage, still a marriage without the doing of them is good. (Askew v. Dupree, 30 Ga. 173.)

The general rule in those states in which a license is required is that a marriage celebrated without a license is valid. In fact, a ceremony of marriage without license, performed by an unauthorized person, and imposed on a woman by false pretenses, but believed by her to be lawful and bona fide, is valid for all civil purpose, unless and until avoided by the deceived person. (Farley v. Farley, 94 Ala. 501.) In the case of Meister v. Moore, 96 U. S. 76, 24 L. ed. 826, the Supreme Court of the United States adopted the statement of Judge Cooley in the case of Hutchens v. Kimmel, 31 Mich. 126 when he said the following:

"The statutes are held merely directory; because marriage is a thing of common right, because it is the policy of the state to encourage it, and because, as has sometimes been said, any other construction would compel holding illegitimate the offspring of many parents conscious of no violation of law.

"Whatever the form of ceremony, or even if all ceremony was dispensed with, if the parties agreed presently to take each other as husband and wife, and from that time lived together professedly in that relation, proof of these facts would be sufficient to constitute proof of a marriage binding upon the parties, and which would subject them and others to legal penalties for a disregard of its obligations." "This has been the settled doctrine of the American courts," added the United States Supreme Court, through Justice Strong.

But why have we insisted to peer into other worlds without first seeing our own? Our Marriage Law has, in section 27,

a stock argument against invalidating marriage simply because the formal requirements were not observed. If the non-fulfilment of the license requirement cannot invalidate marriage, can any of the constituent requisites of license affect the validity of marriage? Certainly not, for if the whole cannot, how can a part affect the validity of marriage? So, as it has been asked in some of the preceding pages, now it is answered that non-compliance with the requirements for filing of application, swearing to such application, and exhibition of birth certificates or the like, does not affect the validity of marriage.

What liability, if any, does the civil registrar incur? For illegal issuance or for malicious refusal to issue a license to a person entitled thereto, or for failure to issue the same within twenty-four hours after the time when, according to law, it was proper to issue the same, the civil registrar shall be punished by imprisonment for not less than one month nor more than two years, or by a fine of not less than two hundred pesos nor more than two thousand pesos. (Section 38, Act 3613.)

What liability does a priest or minister of the gospel have if he solemnizes marriage without a license? He may be punished by imprisonment for not less than one month nor more than two years, or by a fine of not less than two hundred pesos nor more than two thousand pesos. (Sec. 39, Act 3613.) Besides the foregoing, he may be permanently disqualified to solemnize marriage. (Sec. 45, Act 3613.)

VII. ENTRY OF LICENSE APPLICATION

The Health officer in Manila, designated by the Director of Health, and the municipal treasurers concerned shall enter all applications for marriage licenses filed with them in a register book strictly in the order in which the same shall be received. They shall enter in said register the names of the applicants, the date on which the marriage license was issued, and such other data as may be required by the regulations issued by the Secretary of Justice. (Sec. 18, Act 3613.)

It seems that it is too prosaic now to say that non-compliance with this requirement does not affect the validity of marriage, but the officer concerned may be fined for not more than two hundred pesos or may be imprisoned for not more than one month, or both such fine and imprisonment, in the discretion of the court, under section 44 of the Marriage Law.

VIII. THE CONSENT OF PARENTS OR GUARDIANS

Section 9, paragraph 2, Act 3613, as modified by Sec. 20, Act 3753, provides that in case the contracting parties or either of them, being single, are less than twenty years of age, as regards the male, and less than eighteen years, as regards the female, they shall, in addition to the requirements of the preceding sections, exhibit to the municipal treasurer, or to the Health officer, designated by the Director of Health, in the City of Manila, as the case may be, the consent, to their marriage, of their father, mother, or guardian, or person having legal charge of them, in the order mentioned. Such consent shall be in writing, under oath taken with the appearance of the interested parties before the proper municipal treasurer or the Health officer designated by the Director of Health in Manila, or in the form of an affidavit made in the presence of two witnesses and attested by a priest or minister authorized to solemnize marriage, or before any official authorized by law to administer oaths.

This provision is not new. Even the Institutes of Justinian required that sons and daughters must first obtain the consent of their parents in whose potestas they are. (Inst. 2, 10, as cited by Howe, "Studies in the Civil Law and Its Relation to the Jurisprudence of England and America," p. 312.) In New England, even in the early days, parental consent was required, or in the absence thereof, that of the Governor should be taken first before publication and solemnization. (Palfrey, History of New England, vol. II, p. 20.)

Non-compliance with this requirement does not invalidate the marriage entered into. In the case of *Browning v. Browning*, 89 Kan. 98, it was held that where the statute is merely prohibitory, the consent of parents is not necessary to the validity of the contract. In the cases of *Gibbs v. Brown*, 68 Ga. 803; *Goodwin v. Thompson*, 2 Greene, 329; and *Fitzpatrick v. Fitzpatrick*, 6 New. 63, the following doctrine was laid down, namely, that unless the statute expressly declares a marriage contracted without the necessary consent to be a nullity, it is to be construed as only directory in this respect, so that the marriage will be valid, although the disobedience to the statute may entail penalties on the licensing or officiating authorities.

In this jurisdiction, our Supreme Court, through Justice Willard, laid down the following rule in the case of *Aguilar v. Lazaro*, 4 Phil. 735, namely, that, although sec. 7, G. O. No. 68, declares that a marriage shall not be celebrated in such a

case as the present, i. e., below 21 years of age, without the consent of the parents or guardians, yet, there is nothing in the law which says that such a marriage, if celebrated without such consent, shall be void or voidable. It must, therefore, be valid.

This was the law stated in the Civil Code in those articles which were suspended by the decree of Dec. 29, 1889, and finally repealed by G. O. No. 38. Art. 45 prohibited a marriage in a case like the present, but art. 50 provided that if, notwithstanding that prohibition, the parties should be married, the marriage was nevertheless valid.

Non-compliance with this requirement shall subject the parties to a fine of not more than two hundred pesos, or imprisonment for not more than one month, or both, in the discretion of the court. (Sec. 44, Act 3613.)

Of course, it should be understood that no written consent is necessary if the parents or guardian accompany the parties, who are below the specified ages, in the marriage ceremony, for such act is consent itself. This is too obvious to be written.

IX. THE SOLEMNIZATION BY PERSONS AUTHORIZED

Section 4 of our Marriage Law enumerates the persons who may solemnize marriage, namely:

- (1) The Chief Justice and Associate Justices of the Supreme Court;
- (2) Judges and auxiliary judges of the Courts of First Instance;
- (3) The municipal judges of Manila and justices of the peace; and
- (4) Priests or ministers of the gospel of any denomination, church, sect or religion, and chaplains of the Army or Navy of the United States registered in the National Library.

This was substantially the same provision expressed in sec. 5 of G. O. No. 68, except that formerly the registration of the priest or minister in the National Library was not required, which requirement was only brought about by the enactment of section 2, Act 3412.

The authorization to solemnize marriage for priests and ministers may be obtained by complying with sec. 34 of the Marriage Law.

Any priest or minister is duty bound to exhibit his authorization to the contracting parties, to their parents, grandparents, guardians, or persons in charge, demanding the same. (Sec.

34, Act 3613.) His refusal to exhibit such authorization subjects him to imprisonment for not less than one month nor more than two years, or by a fine of not less than two hundred pesos nor more than two thousand pesos. The same liability is incurred should he solemnize marriage without being authorized, or should he solemnize marriage in violation of the provisions of the Marriage Law. (Sec. 39, Act 3613.) In addition, he may be permanently disqualified to solemnize marriage. (Sec. 45, Act 3613.) If he publicly advertises himself as authorized to solemnize marriage, when in fact he is not, he shall be punished by imprisonment for not less one month nor more than two years, or by a fine of not less than fifty pesos nor more than two thousand pesos, or both, in the discretion of the court, (Sec. 43, Act 3613.), without prejudice to his being permanently disqualified to solemnize marriage.

In this connection, we might state that section 43 of the Marriage Law is not confined to ministers or priests alone, but also to any person who, not being authorized to solemnize marriage, shall publicly advertise himself as authorized. This section refers to false advertisement. A different case is, however, established when a person falsely represents a minister of the gospel and performs a marriage ceremony, in which case, he is guilty of usurpation of authority, punishable now under Art. 177 of the Revised Penal Code. (U. S. v. Hernandez, et al., 29 Phil. 109.)

Even though the person who solemnized the marriage was not in fact so authorized, the marriage cannot be declared invalid if, when the ceremony was performed, the spouses, or one of them, believed in good faith that the person who solemnized the marriage was actually empowered to do so and that the marriage was perfectly legal. (Sec. 27, Act. 3613.)

X. THE PLACE OF SOLEMNIZATION

Marriage, in this jurisdiction, may be solemnized in the following places:

- (1) Office of the Chief Justice, Associate Justice, Judge or auxiliary judge of the Court of First Instance, or of the municipal judges of Manila and justices of the peace;
or
- (2) Church, chapel, or temple of priests or ministers of the gospel of any denomination or religion, and chaplains of the U. S. Army or Navy duly registered in the National Library; or

- (3) At the place designated in the written request made by one of the parents or the guardian of the female or by the female herself if she is over eighteen years of age; (Sec. 5, Act 3613.), or
- (4) At any other place in case of marriages of exceptional character. (Chap. 2, Act 3613.)

After referring to Section 27 of the Marriage Law so often, it would be outrageous now to entertain the idea that the place of solemnization can affect the validity of marriage. However, any officer, minister, or priest solemnizing marriage in a place other than those authorized by the Marriage Law, shall be punished by a fine of not less than twenty five pesos nor more than three hundred pesos, or by imprisonment for not more than one month, or both, in the discretion of the court. (Sec. 40, Act 3613.) The priest or minister may, in addition, be permanently disqualified. (Sec. 45, Act 3613.)

XI. THE PRESENCE OF WITNESSES

In this jurisdiction, there are two witnesses of legal age needed to be present in a marriage ceremony. (Sec. 3, Act 3613.) This provision is identical with article 28 of the Spanish Marriage Law of 1870, which reads as follows:—"El matrimonio se celebrará ante el juez municipal competente y dos testigos mayores de edad." This requirement is not new in this jurisdiction and elsewhere. All our marriage laws have contained provisions to this effect. Even in the old Roman Law, the "confarreatio," a religious form of marriage, consisted in offering a solemn sacrifice to Jupiter in the presence of ten witnesses, and a cake of wheaten bread was divided between the man and the woman as a type of life in common. (Howe's "Studies in the Civil Law and Its Relation to the Jurisprudence of England and America," p. 313.)

As has been said, witnesses must be of legal age, that is, they must be at least twenty-one years of age, according to Act 1891, provided that they are in possession of their bodily senses and are able to perceive and transmit their perceptions to others. (Sec. 383, C.C.P.)

The duties of the witnesses are to be present during the marriage ceremony, and to sign the marriage certificate or the written declaration of the parties to the effect that they take each other as husband and wife.

What is the effect of non-compliance with this provision or requirement? The provision requiring two witnesses to be

present at a marriage and who shall sign on the register is merely directory, and a non-compliance with its directions is no ground for annulling the marriage. (Wing v. Taylor, 7 Jur. N.S. 737, 30 L.J.P. & M. 258, 4 L.T. Rep. N.S. 583, 2 Swab & Tr. 278.) Again, for a more direct and nearer authority, section 27 expressly disregards the possibility of invalidating marriage simply because there were no witnesses. However, the parties and the solemnizing officer, for failure to observe this requirement may incur liability under the general penal clause or section 44 of the Marriage Law.

XII. THE FURNISHING OF COPIES OF THE CERTIFICATE OF MARRIAGE

The certificate of marriage shall be issued in triplicate. One of the copies shall be given to either of the contracting parties by the person solemnizing the marriage. Another shall be forwarded to the Health officer, designated by the Director of Health, in Manila, or the municipal treasurer of the municipality where the marriage was solemnized, as the case may be, within fifteen days after the marriage took place. And the third copy shall be retained by the person solemnizing the marriage. (Sec. 16, Act 3613.)

Non-compliance with any of the duties mentioned in the preceding paragraph evidently does not affect the validity of marriage. Section 27 of the Marriage Law will easily resolve doubts, if any. In the case of Melecio Madrideojo v. Gonzalo de Leon et. al., 29 O.G., No. 107, p. 2520, for September 5, 1931, our Supreme Court, through Justice Villareal, held that failure to send a copy of the marriage certificate to the municipal secretary (now it should be municipal treasurer by virtue of Sec. 20, Act 3753) does not invalidate the marriage in "articulo mortis," it not appearing that the essential requisites required by law for its validity were lacking in the ceremony, and the forwarding of a copy of the marriage certificate is not one of said essential requisites. This decision is just in consonance with section 27 of our Marriage Law, and the principle is not confined only to marriages "in articulo mortis," but to all marriages.

However, for failure to deliver to either of the contracting parties one of the copies of the marriage contract, or to forward the other copy to the authorities within the period fixed by law, the officer or person solemnizing the marriage shall be punished by imprisonment for not more than one month, or by fine of

not more than three hundred pesos, or both, in the discretion of the court. (Sec. 41, Act 3613.)

D. CONCLUSION

The application for a marriage license; the swearing to such application; the exhibition of birth certificates, or death certificate of a deceased spouse, or decree of divorce of a divorced spouse; the ten-day publication of banns; the payment of the two-peso fee; the license; the entry of the license application; the consent of parents or guardians; the solemnization by persons designated by law; the place of solemnization; the presence of witnesses; and the furnishing of copies of the certificate of marriage—let all these be violated and have still a marriage which cannot be declared invalid on the ground of the absence of the foregoing formalities (or any other formalities which I might have overlooked), provided that there are present the legal capacity of the contracting parties, consent of the same, and that both of the parties, or either of them, believed, when the ceremony was performed, in good faith, that the person who solemnized the marriage was actually empowered to do so and that the marriage was perfectly legal. But this rule shall be without prejudice to subjecting the parties or the solemnizing officer to whatever liability the law attaches to non-compliance with the formalities.

Section 27 of our Marriage Law is in fact the subject of this thesis. Reasons of sound public policy must have inspired the enactment of this provision. Marriage, which is "sine qua non" to the formation of a home and a family in a decent and cultured society, must be secured to be as lasting and binding as its nature demands and as its ideal purports it to be. Even in this world of ours, where the double standard of morality apparently exists, yet man has still his self-respectability to protect, and woman, her delicate honor to care for. Once they are proclaimed before God and man to be joined for life, the tie should not be easily put asunder on mere technicalities. Otherwise, homes would be disrupted, social chaos would reign, and the rights of innocent children would be set to naught. The State must, as it has rightly provided in section 27, uphold, as far as possible, the validity of marriage. For if Montesquieu had rightly said that governments should not be changed for light and transient causes, similarly, we could say that marriage should not be rendered invalid for light and formal causes.