A Critical Study Of The Case Of Marcelo Vs. Jason

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IN the vastness of Philippine law, its seeming uncertainty, its overwhelming perplexity, its mutilations, its foreign sources, and the vicissitudes it suffered occasioned by the changes in our political and social conditions, it is not easy to ascertain or ferret out the present state of the law. Consequently, an impartial observer will not be surprised to meet once in a while in the sixty-one volumes of the Philippine Reports a law honestly misapplied.

It is the object of this short comment, to show the effect of such hardship and difficulty, citing the case of *Marcelo vs. Jason* as a trite example, and primarily to determine the present state of the law.

In the case of Marcelo vs. Jason, (60 Phil. 442), Marcelo and Francisco were married in 1896 and thereafter lived together as husband and wife until 1897 when Marcelo was deported to Spain. In 1900 while Marcelo was in exile, Francisco gave birth to a child. Marcelo returned in 1902 and found his wife living with another man. In 1904 Marcelo sued for absolute divorce. The trial court granted absolute divorce which subsequently for lack of appeal became final. In 1906 believing in good faith that he was absolutely divorced from Francisco and while the latter was still living, Marcelo married Jason and lived with her until his death in 1929. In the action brought by Francisco to recover her share of the conjugal partnership property, the following questions, among others, arose: Whether or not the order decreeing the absolute divorce dissolved the marriage between Marcelo and Francisco; whether or not the marriage between Marcelo and Jason was valid; and what are the effects of the decree of absolute divorce on the conjugal partnership formed between the marriage of Marcelo and Francisco.

The Supreme Court answering the first and second questions said that the divorce granted by the court of first instance did not dissolve the marriage because its jurisdiction was limited to divorce *"quoad thorum et mutuam habitationem"*, or relative divorce, on the ground of adultery, because Law II, Title X, Partida IV, which was the only divorce law them in force, did not authorize divorce *"Quoad vinculum"*, or absolute divorce. And inasmuch as the bond of Marcelo's first marriage with Francisco had not been dissolved, his marriage with Jason was illegal and void, under General Orders No. 68.

In solving the third question, the court held:

"Now then, the civil marriage contracted by Marcelo and Jason being void from the beginning, what civil effects does the declaration of nullity thereof produce?

"Article 69 of the Civil Code provides as follows:

" 'Art. 69. A marriage contracted in good faith produces civil effects, although it may be declared void.

" 'If good faith existed on the part of only one of the spouses it shall produce civil effects only wth regard to such spouse and to the children.

" 'Good faith is presumed if the contrary is not shown.

" 'When bad faith has existed on the part of both spouses, the marriage shall produce civil effects only with relation to the children.'

"It will be noted that the above legal provision establishes the presumption of good faith on the part of all the contracting parties, if the contrary is not shown. It is he who desires to prevent its effects who must prove that good faith did not exist. For the good faith to be perfect, it is necessary: (1) That the spouses celebrated their marriage with the prescribed formalities; (2) that they were ignorant of the defects that rendered it void; and (3) that their ignorance is excusable. (Law II, Title XV, Partida IV, IV Escriche, page 49.)"

In the case under consideration the first, second, and third requisites had been complied with. With regard to the second and third requisites, "the evidence shows that said contracting parties as well as the justice of the peace, who married them, believed that said first marriage had been dissolved by virtue of the decree of absolute divorce. Although they should have known that absolute divorce is not permissible, however, inasmuch as the divorce law is not eternal and immutable and the courts of justice are the government agencies wherein the faculty of interpreting the private civil laws reside; and their decisions, although binding only on the parties, deserve to be respected, said contracting parties, in believing the decree of divorce absolute, acted in good faith."

"According to the above quoted article 69 of the Civil Code, a marriage contracted in good faith, although it may be declared void, produces civil effects, among them being the formation of the conjugal partnership and the legitimacy of the children born during the same and before it is declared void. * * *"

As to the effects of the decree of absolute divorce in favor of Benito Marcelo and against his first wife Emilia Francisco on the conjugal partnership formed by their marriage, the court said:

"The undersigned is of the opinion that the decree of absolute divorce, by itself alone, does not produce the separation of property or the dissolution of the conjugal partnership, but it is necessary that there be a judicial decree to that effect (Article 1432, Civil Code; 9 Manresa, page 782); and that the conjugal partnership formed by the marriage of Benito Marcelo and Emilia Francisco continued until the former's death in June 3, 1929, when it was *ipso facto* dissolved (Article 1417, Civil Code), said Emilia Francisco being entitled to the property of the conjugal partnership formed by her marriage with Benito Marcelo, in the proportion prescribed by article 1431 of the Civil Code. The majority, however, do not agree with this opinion and believe that Emilia Francisco is now estopped from claiming the conjugal property on the ground that she let more than twenty-five years elapse from the granting of the decree of divorce until the death of her husband, and twenty-three years from the date on which he contracted a second marriage."

In the case of Benedicto vs. De la Rama, 3 Phili. 34, the Supreme Court traced and outlined the history of the enforcement of the Civil Code in the Philippines and its subsequent mutilation as follows:

"By the royal decree of July 31, 1889, the Civil Code as it existed in the Peninsula was extended to the Philippines. The *"cúmplase"* of the governor-general was affixed to this decree on September 12, 1889. The Code was published in the *Gaceta de Manila* on November 17, 1889 and took effect as a law on December 8, 1889. On December 31, 1889, the following order was published in the *Gaceta de Manila*:

"GENERAL GOVERNMENT OF THE PHILIPPINES,

"SECRETARY'S OFFICE, BUREAU No. 2,

"Manila, December 29, 1889.

"By direction of Her Majesty's Government, until further order, titles 4 and 12 of the Civil Code, extended to these Islands by royal decree of July 31 last, published in the Gazette of this city of the 17th of November last, are suspended in this Archipelago.

"The proper authorties will issue the necessary orders to the end that in lieu of the two titles so suspended the former law may continue in force.

"This order will be communicated and published.

"WEYLER."

"This order purports to have been issued by the governor-general by order of the Government of Madrid, and although it is stated in the *Compilation Legislativa de Ultramar* (vol. 14, p. 2700) that no decree of this kind was ever published in the Gaceta de Madrid and that a copy thereof could not be obtained in any governmental office, yet we can not assume that none was ever issued."

"Moreover, the power of the governor-general, without such order to suspend the operation of the Code, was well settled. A royal order so stating was issued at Madrid on September 19, 1876, and with the *cúmplase* of the governor-general published in the *Gaceta de Manila* on November 15, 1876." (See also Mijares vs. Nery, 3 Phil. 195; Ibañez vs. Ortiz, 5 Phil. 325; Del Prado vs. De la Fuente, 28 Phil. 23.)

It can be readily seen therefore from the latter decision that titles 4 and 12 of the Civil Code was enforce only from December 8 to December 29, 1889.

Considering that Article 69 of the Civil Code is included in title 4, Book I, it therefore became operative only up to December 29, 1889. When the action for divorce in the case of *Marcelo vs. Jason* was filed in 1904, the law then in force was the *Partidas* which authorized only relative divorce. It needs no stretch of the imagination and much reflection or observation to conclude that the law applied in the case of *Marcelo vs. Jason* was non-existent and consequently could have no bearing in the case whatsoever.

If the law then in force was applied the decision as to the third question should have been the following:

Law II, Title X, Partida IV, which was the only divorce law then in force, did not authorize divorce *"quoad vinculum"*, or absolute divorce but only divorce *"quoad thorum et mutuam habitationem"*, or relative divorce, on the ground of adultery. The effects of relative divorce being merely a separation from bed and board without the marriage bond

being dissolved and the parties cannot remarry, therefore the marriage bond between Francisco and Marcelo was never dissolved and the subsequent of Marcelo and Jason could produce no civil effects. (Benedicto vs. De la Rama, 3 Phil., 34; 50 Law. ed., 765; Ibañez vs. Ortiz, 5 Phil., 325; Goitia vs. Campos Rueda, 35 Phil., 252; U. S. vs. Joanino, 27 Phil., 477; Del Prado vs. De la Fuente, 28 Phil., 23; De Jesus vs. Palma, 34 Phil., 483; Garcia Valdez vs. Soteraña Tuason, 40 Phil., 943; Tiffany Sec. 96-b.)

Such marriage producing no civil effects, neither Article 1431 of the Civil Code nor estoppel as believed in by the majority of the Supreme Court will prevent the plaintiff Francisco from recovering her share of the conjugal partnership because as to the doctrine of estoppel, although Francisco "should have known that absolute divorce is not permissible" when absolute divorce was decreed against her, "however, inasmuch as the divorce law is not eternal and immutable and the court of justice are the government agencies wherein the faculty of interpreting the private civil laws reside; and their decisions, although binding only on the parties, deserve to be respected, said contracting parties, in believing the decree of divorce absolute acted in good faith."

This decision may be harsh to the defendant and oppositor Jason, but it is a fundamental rule of statutory construction that if a statute (Partidas) is plain and free from ambiguity and conveys a definite and sensible meaning, courts should not hesitate to give it a literal interpretation merely because they have doubts as to the wisdom or expediency of the enactment, or because it might produce hardship and inconvenience. (Black, pp. 50-53; Thornley vs. U. S., 113 U. S. 999; Velasco vs. Lopez, I Phil. 720.) *Hoc quidem parquam duram est, sed ita lex scripta est.* This is exceedingly hard, but so the law is written.