

# The Status Of The "Husband Without A Wife" And The "Wife Without A Husband"

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OUR Divorce Law expressly provides that "the decree of divorce shall dissolve the community of property as soon as such decree becomes final, but shall not dissolve the bonds of matrimony until one year thereafter. (Act 2710, Sec. 9, first par.) To this general rule, the statute makes a significant exception, to wit: "The bonds of matrimony shall not be considered as dissolved with regard to the spouse who, having legitimate children, has not delivered to each of them or to the guardian appointed by the court, within said period of one year, the equivalent of what would have been due to them as their legal portion if said spouse had died intestate immediately after the dissolution of the community of property." (Act 2710, Sec. 9 second par.)

From the language of the law, it is clear that the divorce decree does not ipso facto dissolve the marriage. In order that this may be accomplished, two requisites are essential: First, the expiration of one year after the decree of divorce has become final; Second, in case there are legitimate children, the delivery of their legal portions to them or their guardians. When there are no children, all that is necessary for the divorce to become *quoad a vinculo matrimonii* is the expiration of the period of one year from the date the decree of divorce has become final. If there are legitimate chil-

dren and the estranged spouses desire to have the decree of divorce perfected so as to effect the dissolution of the marriage, they must, within the period of one year from the date the decree has become final, deliver to their children "the equivalent of what would have been due to them as their legal portion if said spouse had died intestate immediately after the dissolution of the community of property." With respect to the spouse who has complied with this legal duty, the marriage tie is dissolved upon the lapse of the one year period; but with respect to the spouse who has failed to comply with his duty the law imposes an illogical punishment, to wit, "the bonds of matrimony shall not be considered as dissolved." Thus, our Divorce Law, in an effort to compel the spouses to comply with their legal obligation, has created an anomalous status for the defaulting spouse—that of a "husband without a wife" or a "wife without a husband," as the case may be. It is the object of this study to point out the absurdities of this juridical incongruity.

In the first place, it is obvious that the status so created can not stand the test of common sense or logic. "To affirm that a person is married, and yet has no legal husband or wife is manifestly a solecism. In the very nature of things, the marriage contract

under such circumstances can not exist. There can not be a husband without a wife, nor a wife without a husband. The existence of one necessarily and conclusively implies the existence of the other. Husband and wife are correlative terms. Anything, therefore, which destroys that relation as to one party necessarily destroys it as to the other." (*State v. Weatherby*, 43 Me. 248; 69 Am. Doc. 59)

Moreover, it must be noted that the sanction provided for by our law operates with equal effect on both the spouses—the innocent and the guilty—so long as the legal obligation is not complied with. The criterion is not whether the spouse is guilty of the infidelity which gave rise to the divorce because the sanction is not a penalty imposed upon the unfaithful spouse but rather a punishment for the failure of either of the spouses—whether the innocent or the guilty—to deliver the legal portion to their children. Thus, it may come about that the husband, who for the crime of concubinage has been for years confined in the penitentiary and his wife divorced from him for this cause, may, by a compliance with this legal obligation, be deemed a single, and free man, with the privilege of marrying again; whereas, the innocent wife, who initiated the divorce proceedings but failed to deliver the legal portion to the children, is doomed to be a "wife without a husband." We have the anomaly of the guilty spouse in a divorce case freed from the bonds of matrimony while the aggrieved spouse is shackled by an illogical and unnatural marriage tie.

Another absurd situation may arise as a consequence of this

unique status. When only one of the spouses complies with the legal duty mentioned above, the bonds of matrimony shall be deemed dissolved with respect to such spouse alone. The decree of divorce then effectively and fully abrogates the marriage contract and sets such spouse free from all marital relationship and obligations. Will the subsequent remarriage of such spouse in any way change the status of the "husband without a wife" or the "wife without a husband" to that of an unmarried person? Evidently not. The law precisely recognizes the existence of a marriage bond dissolved with respect to one of the spouses but subsisting with respect to the other. The law does not take into consideration, in the imposition of the sanction, the subsequent change of status of the former spouse. Does the death of such former spouse change the status of the "married" person without a husband or wife? No. For the reasons above mentioned the legal freak still remains a "husband without a wife" or a "wife without a husband". In fact, if we follow the ridiculous situation further to its logical conclusion, such a "consort" without a husband or wife can not even be considered a widower or widow, for the simple reason that the marriage bond with respect to the former spouse has been fully abrogated. May the "husband without a wife" or "wife without a husband" secure a divorce? Impossible!—since there is no spouse against whom the marriage bond is sought to be dissolved. With whom then is such a "spouse" married to? Nobody! Such a person is simply deemed by an idiotic fiction of law to be

"married" but without a husband or wife. For sheer stupidity, the Divorce Law is unsurpassed in this respect.

The injustices and inequities that may arise as a consequence of this unique status may be further illustrated. If the "married" person without a wife or husband remarries in the Philippines, there is no question that such subsequent marriage is null and void, for the terms of the statute are explicit and to the point—"the bonds of matrimony shall not be considered as dissolved" with respect to such "spouse." And if children are born of such subsequent marriage, an unenviable plight falls upon them. They may not be considered legitimate because they are not born in lawful wedlock or within a competent time afterwards. From the time of their birth, the law stamps upon them the mark of illegitimacy, of infancy, and of scorn, because of a law which treats one of their parents as a "husband without a wife" or a "wife without a husband" and, hence, incompetent to contract a valid marriage. It is conceded in all civilized countries that public policy, good morals, and the interests of society require that the marriage relation shall be surrounded with every safeguard and its severance allowed only for causes that will insure the well-being of society, the legitimacy of the offspring, and the good customs and morality of the people. An American court, speaking of the importance of the institution of marriage, states: "This contract of marriage is of such a nature so widely differing from ordinary contracts, creating disabilities and conferring privileges between the husband and wife,

personal interests, attachments, and feelings, partly from necessity, but mainly from a principle in our nature, which together form the strongest ligament in human society; without which, perhaps, it could not exist in a civilized state; it is a connection of such a deep-toned and solemn character that society has even more interest in preserving it than the parties themselves. So it has been deemed by all societies, civilized; and not corrupt, in all ages. (*Dickman v. Dickman*, *Yerg. Ten.*, 110; 24 *Am. Dec.* 444). Therefore, when the Divorce Law, upon a preposterous legal fiction, brings about the dissolution of the most sacred of all human institutions, the family, and the consequent bastardization of the children, I believe that it is high time for every student of law, who wishes well to the society in which he lives, to unite in bringing about the repeal of such of an inequitable fiction of law.

In order to evade the serious consequences arising out of the subsequent marriage in the Philippines, the "husband without a wife" or "wife without a husband" may go abroad, and contract the second marriage there. In such a case, the "marriages performed outside the Philippine Islands in accordance with the laws in force in the country where they were performed and valid there as such, shall also be valid in these Islands." (Act 3613, Sec. 19.) This is but a re-statement of the principle of private international law that the capacity to contract marriage is in general to be determined by the law of the place where the contract is to be entered into—the *lex loci celebrationis*. The reason of the law is

obvious. "Marriage is an institution recognized and governed to a large degree by international law, prevailing in all countries and constituting an essential element in all earthly society. The well-being of society, as it concerns the relation of the sexes, the legitimacy of offspring, and the disposition of property, alike demands that one state or nation shall recognize the validity of marriage had in other states or nations, according to the laws of the latter, unless some positive statute or pronounced public policy of the particular state demands otherwise." (*Rennegar, et al. v. State*, 87 *Tenn.* 244, 2 *L. R. A.* 703). The provision of our Divorce Law stating that the "bonds of matrimony shall not be considered as dissolved" with respect to the spouse who fail to deliver the legal portion to the legitimate children can not be given an extra-territorial effect. "Such a disability is generally regarded as penal in its nature, and will not invalidate a marriage celebrated elsewhere, even where the marriage takes place in evasion of the law of the prohibiting State." (*Minor, Conflict of Laws*, p. 25). In the case of *Van Voorhis v. Brinknall*, 86 *N. Y.* 18, 40 *Am. Rep.* 505, the marriage between A and B was dissolved in New York on the ground of B's adultery, and B was forbidden to remarry during A's lifetime, in accordance with the statute declaring a subsequent marriage void. Afterwards and during A's life, B went with X, a resident of New York, to Connecticut and there married X, returning the same day to New York and thereafter living in New York. The marriage in Connecticut was valid there, but was re-

sorted to for the purpose of evading the prohibition in the decree of divorce in New York. The questions were whether the marriage between A and X in Connecticut should also be considered valid in New York and whether the child of A and X subsequently born in New York was legitimate. The Court held: "There is nothing in the statute to indicate an intention of the Legislature to reach beyond the State to inflict a penalty. Nor can I discover an intent so to impress the citizen with the prohibition as to make an act, which is innocent and valid when performed, an offense when he returns to this State and himself a criminal for performing it. Every presumption is against such intention. Penal disqualifications arising, not from the laws of nature, but from positive laws, especially such as are of penal nature, are strictly territorial and can not be enforced in any country other than that in which they originated. Nor are we, in the absence of express words to that effect, to infer that the Legislature of this State intended its laws to contravene the *jus gentium* under which the question of validity of a marriage contract is referred to the *lex loci contractus* and which is made binding by consent of all nations. It professedly and directly operates on all. To impugn it, is to impugn public policy. And while each country can regulate the status of its own citizens, until the will of the State finds clear and unmistakable expression that must be controlling. "Where"—says Marshall, C. J. in *U. S. v. Fisher*, 2 *A.* 389, "rights are infringed, where fundamental principles are overthrown, where the general system of the laws is

departed from, the legislative intention must be expressed with irresistible clearness to induce a court of justice to suppose a design to effect such objects." Hence, the marriage between A and X was held valid and the child of A and X subsequently born in New York was considered as legitimate. There is thus recognized the necessity for express legislation, if the citizen is to be held bound by the laws of his State for acts performed by him outside its limits. Since our Divorce Law does not contain any express provision extending the application of the second paragraph of Section 9 outside the territorial limits of the country, the validity of the marriage contracted abroad by the "husband without a wife" or "wife without a husband" must be tested by the *lex loci celebrationis*. Inasmuch as only those who have the means can go abroad and contract the marriage there for the purpose of evading the pernicious effects of the section in question, it is obvious that we have in effect one law for the rich and another for the poor. The poor is, therefore, unquestionably denied the equal protection and benefits of our law.

Other inconsistencies of the unique status created by the Divorce Law are at once apparent by the provisions of the Revised Penal Code on bigamy, adultery, and concubinage. May the "husband without a wife" or "wife without a husband" commit the crime of bigamy? Under the Revised Penal Code, the crime of bigamy is committed by "any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the ab-

sent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings." (Art. 349). There are four causes which may produce the legal dissolution of the first marriage: "(a) death of one of the contracting parties; (b) judicial decree declaring one spouse presumptively dead; (c) judicial decree granting divorce under Act 2710 of the Philippine Legislature. The first marriage shall be deemed existing until any of the above causes exists." (*Guevarra, Commentaries on the Revised Penal Code, 3rd ed. p. 738.*) In the foregoing discussion, we have already stated that the death of the former spouse does not in any way change the status of the "husband without a wife" or the wife without a husband" to that of an unmarried person. With respect to the divorce granted under Act 2710, we have demonstrated that the decree may produce the dissolution of the marriage bond only with respect to the spouse who has delivered the legal portion to the legitimate children but not with respect to the spouse who has defaulted in this legal obligation. Hence if they follow the strict letter of the law, the "husband without a wife" or "wife without a husband" may be said to have committed the crime of bigamy if such "spouse" contracts the second marriage in the Philippines; and this is so because with respect to such a "married" person, the "bonds of matrimony shall not be considered as dissolved," and, therefore, the subsequent marriage is contracted "before the former marriage has been legally dissolved." In order to avoid the consequences of such a strict and literal interpretation of the law, the "husband without

a wife" or "wife without a husband" may contract the second or subsequent marriage abroad, and the validity of such marriage shall again be tested by the *lex loci celebrationes* in accordance with the general principle of private international law. In such a case, no prosecution for bigamy may be had upon their return to the Philippines. (*Com. v. Putnam*, *Pich Mass.*, 136; *People v. Jovey*, 5 *Bark*, N. Y. 117; *State v. Weatherky*, 43 *Me.*, 248, 69 *Am. Dec.* 59; *Crawford v. State*, 73 *Mass.*, 172, 35 *L. R. A.* 224, 18 *So.* 848). Thus again, the pernicious effects of a strict interpretation of the law may be circumscribed by those who have the means to go abroad, leaving to the poor the hardships and the penalties imposed by law.

May the "wife without a husband" commit the crime of adultery? Adultery is committed by "any married woman who shall have sexual intercourse with a man not her husband and by the man who has carnal knowledge of her, knowing her to be married, even if the marriage be subsequently declared void." (Rev. Penal Code, Art. 333). The crime of adultery shall not be prosecuted except upon a complaint filed by the offended spouse. (Rev. Penal Code, Art. 344). The law, therefore, presupposes the existence of a valid and subsisting marriage tie between two persons. Under our problem, the marital union has already been abrogated with respect to the husband, the marriage bond subsists only with respect to the "wife without a husband." May such former husband still be considered the "offended spouse" for the purpose of prosecuting his former wife for adultery? To answer

the question, it is sufficient to state the reasons adultery is made a crime and a ground for divorce.

The Philippine Supreme Court sufficiently states the reasons, thus: "The gist of the crime of adultery . . . is the danger of introducing spurious heirs into the family, whereby the rights of the real heirs may be impaired and a man may be charged with the maintenance of a family not his own." (*U. S. v. Mata*, 18 *Phil.* 490). Hence, the former husband can not prosecute the "wife without a husband" for adultery inasmuch as he is neither the "spouse" nor may be by any stretch of imagination be in any way "offended." This being the case and the crime of adultery presupposing the existence of a subsisting marriage tie between the husband and the wife, it is obvious that the "wife without a husband" can not commit the crime of adultery.

May the "husband without a wife" commit the crime of concubinage? Concubinage is committed by "any husband who shall keep a mistress in the conjugal dwelling, or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place." (Rev. Penal Code, Art. 334). Like the crime of adultery, the crime of concubinage can only be prosecuted by a complaint filed by the offended spouse (Rev. Penal Code, Art. 344). Since, the crime of concubinage, like the crime of adultery, assumes the existence of a continuing marital bond between the husband and the wife, and since, in our case, the marriage tie is dissolved with respect to the wife, leaving the marriage bond subsisting only with

respect to the "husband without a wife," then it is apparent that such a "husband" can not commit the crime of concubinage.

We have illustrated the absurdities, inconsistencies, and inequities that may arise as a consequence of the illogical status—the "husband without a wife" and the "wife without a husband." We have shown that such a legal freak may be considered as actually "married" under certain provisions of our law and for other purposes as unmarried. We have thus an absurd situation whereby an individual is given the status of a married person for certain purposes and that of an unmarried being for other purposes. We have also demonstrated that the disastrous consequences of such a unique status may easily be evaded by the rich under certain circumstances, thus making a

mockery of that fundamental principle of justice that no one shall be denied the equal protection and benefits of the law by reason of his poverty. Such a masterpiece of contradictions and inequities has no place in our jurisprudence. The President of the Commonwealth, in creating the Code Committee, laid down as a guiding principle in the formulation of the Civil Code that the same must be in harmony with the customs, traditions, ideals, and idiosyncracies of our people. We humbly submit that the Civil Code as formulated should also be in consonance with reason, logic, common sense, and equity. Such attributes can never pervade the Civil Code so long as those juridical abortions—the "husband without a wife" and the "wife without a husband"—are allowed to exist.