

**CHING HUAT, PETITIONER, VS. CO HEONG (ALIAS CO HONG, CO YONG), RESPONDENT.***G.R. No. L-1211. January 30, 1947*

Ponente: HILADO, J.

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Petitioner prays for the issuance of a writ of habeas corpus directing any lawful officer to take from respondent and produce before this Court the person of Maria Ching alias Avelina Ching, allegedly aged 15 years, and requiring the respondent to justify his right to the custody of said minor, and, after hearing, to award said custody to petitioner.

It is alleged in the petition, verified by petitioner's oath, among other things, that the said minor is his legitimate daughter; that up to June 21, 1946, said minor had been living with and had been under the custody of petitioner; that respondent, taking advantage of his confidential and spiritual relation with Maria Ching as her godfather, persuaded and induced her by means of trick, promises and cajolery, to leave the parental home and to elope with him in the night of June 21, 1946, to Plaridel, Bulacan, where they were married on the following day before the Justice of the Peace of said municipality, said Maria Ching being at the time 15 years old; and that ever since respondent has had the minor Maria Ching under his custody in Malolos, Bulacan, and has restrained her of her liberty.

It is further alleged that respondent had been previously married in China to Gue Min, said marriage being said to be subsisting at the time respondent married Maria Ching. Petitioner further avers that Gue Min has never been declared an absentee nor generally considered as dead and believed to be so by respondent at the time he married Maria Ching.

Respondent, in his answer, among other things, asserts that on June 21, 1946, he and Maria Ching alias Avelina Ching were legally married before the Justice of the Peace of Plaridel, Bulacan. He has attached to his answer a certificate (Appendix 1) of the Local Civil Registrar of Plaridel, Bulacan, dated July 9, 1946, attesting the celebration of the marriage above mentioned between the parties above named on June 21, 1946, and alleges that the essential requisites for such marriage were complied with.

The question to be decided is whether petitioner still retains his right to the custody of his minor daughter Maria Ching alias Avelina Ching.

The fact of the civil marriage between respondent and Maria Ching having been solemnized by the Justice of the Peace of Plaridel, Bulacan, on June 21, 1946, is not disputed. Petitioner himself alleges in his petition that respondent is of legal age, meaning 21 years or more old upon the date of the petition, November 28, 1946. June 21, 1946, date of the marriage, was only 5 months and one week earlier. Both man and woman were, therefore, of marriageable age under section 2 of Act No. 3613.

The alleged marriage of respondent to Gue Min in China has not been proven. There is no allegation in the

petition, much less is there evidence, to show that the said supposed marriage was performed in accordance with the laws of China in force at the time of its supposed performance, nor even what those laws were (Act No. 3613, section 19). The cited section of the existing Marriage Law provides:

"SEC. 19. Marriages performed abroad.—All marriages performed outside of 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."

This provision is substantially the same as that contained upon the same subject in the former Philippine Marriage Law, General Orders No. 68, which is as follows:

"SEC. IV. All marriages contracted without these Islands, which would be valid by the laws of the country in which the same were contracted, are valid in these Islands."

In the case of *Adong vs. Cheong Seng Gee* (43 Phil., 43 49), this Court held, after quoting the aforesaid provision of the former Marriage Law:

"\* \* \* To establish a valid foreign marriage pursuant to this comity provision, it is first necessary to prove before the courts of the Islands the existence of the foreign law as a question of fact, and it is then necessary to prove the alleged foreign marriage by convincing evidence."

In the same case of *Adong vs. Cheong Seng Gee*, this Court said (p. 50):

"In the case at bar there is no competent testimony as to what the laws of China in the Province of Amoy concerning marriage were in 1895. As in the *Encarnacion* case (*Sy Joc Lieng vs. Encarnacion*, 16 Phil., 137; 228 U.S., 335), there is lacking proof so clear, strong, and unequivocal as to produce a moral conviction of the existence of the alleged prior Chinese marriage. \* \* \*"

Again in that case the United States Supreme Court (228 U. S., 335, 338-339) held:

"In these circumstances every presumption was in favor of the validity and good faith of the Philippine marriage, and sound reason required that it be not impugned and discredited through the alleged prior marriage save upon proof so clear, strong, and unequivocal as to produce a moral conviction of the existence of that impediment. \* \* \*"

On the other hand, the Philippine marriage between said respondent and Maria Ching before the Justice of the Peace of Plaridel, Bulacan, is undisputed. It is also beyond question that that marriage was contracted by a man much over 16 years old with a girl 15 years old (Act No. 3613, section 2), neither of whom was included in any of the exceptions mentioned in section 28 of the same Act; nor in those stated in section 29 thereof for the reason that the alleged prior Chinese marriage has not been established.

If the supposed prior Chinese marriage had been sufficiently proven, then in order that the subsequent Philippine marriage could be valid, it would have been necessary either (a) that the Chinese marriage should have been previously annulled or dissolved; or (b) that the first wife of respondent should have been absent for 7 consecutive years at the time of the second marriage without the respondent having news of the absentee being alive; or (c) that the absentee should have been generally considered as dead and believed to be so by respondent at the time of contracting the subsequent marriage, in either of which last two cases the subsequent marriage will be valid until declared null and void by a competent court, while in the first it will be valid without this limitation. (Act No. 3613, section 29 [a] and [b]; section 30 [b].) But, as already adverted to, the complete absence of proof of the supposed former Chinese marriage makes sections 29 and 30 of the Marriage Law inapplicable.

Maria Ching having been validly married on June 21, 1946, she became emancipated on that same date (arts. 314 [1] and 315, Civil Code). This emancipation brought about the loss by the father of the parental authority that he

claims. On the other hand, by article 48 of Chapter V of the Spanish Marriage Law of 1870, whose articles 44 to 78 were, and are now partly, in force in the Philippines (*Benedicto vs. De la Rama*, 3 Phil., 34), the wife has the duty, among others, of living in her husband's company and of following him to wherever he transfers his domicile or residence. (*Ibañez vs. Fuster*, 29 Phil., 606, 612.)

For all the foregoing considerations, we are of opinion that the petition should be, as it is hereby, dismissed, with costs to petitioner. So ordered.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, Hontiveros, and Tuason, JJ., concur.

**MORAN, C. J.:**

I certify that Mr. Justice Padilla concurred in this decision.

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