

JUSTO BAPTISTA, PLAINTIFF-APPELLANT, VS. CONSUELO CASTAÑEDA, DEFENDANT-APPELLEE.

C.A.-No. 12. April 06, 1946

Ponente: OZAETA, J.

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OZAETA, J.:

The parties in this case, now over sixty years of age, contracted holy matrimony in Vigan, Ilocos Sur, on February 13, 1914. Since then until about the first day of March 1942 they lived together as husband and wife without any issue.

On March 25, 1943, pursuant to the authority conferred upon him by the Commander-in-Chief of the Imperial Japanese Forces in the Philippines and with the approval of the latter, the Chairman of the Philippine Executive Commission promulgated a "New Divorce Law" (Executive Order No. 141), which repealed Act No. 2710 of the Philippine Legislature and provided eleven grounds for divorce, among which were:

"9. Intentional or unjustified desertion continuously for at least one year prior to the filing of the action.

"x x x"

"11. Slander by deed or gross insult by one spouse against the other to such an extent as to make further living together impracticable."

Taking advantage of that law the plaintiff, Justo Baptista, commenced this action on May 21, 1943, in the Court of First Instance of Ilocos Sur to dissolve the bonds of matrimony between him and the defendant, Consuelo Castañeda, alleging the two statutory grounds above mentioned—desertion and slander by deed by the wife.

The defendant chose not to contest this suit for divorce. After hearing the evidence for the plaintiff, His Honor Manuel Blanco, trial judge, declared that the grounds alleged had not been established; that the most he could deduce from the testimony of the plaintiff was that there was an incompatibility of character between him and his wife. Wherefore he denied the petition for divorce.

From that judgment the plaintiff has appealed and insists that this Court issue a decree of divorce.

Since this action was instituted, much water has passed under the bridge. The Japanese invaders have been driven out and the Commonwealth Government has been restored. Concomitantly with the restoration General MacArthur, as Commander-in-Chief of the Fil-American army of liberation, proclaimed and declared:

"1. That the Government of the Commonwealth of the Philippines is, subject to the supreme authority of the Government of the United States, the sole and only government having legal and valid jurisdiction over the people in areas of the Philippines free of enemy occupation and control;

"2. That the laws now existing on the statute books of the Commonwealth of the Philippines and the regulations promulgated pursuant thereto are in full force and effect and legally binding upon the people in areas of the Philippines free of enemy occupation and control; and

"3. That all laws, regulations and processes of any other government in the Philippines than that of the said Commonwealth are null and void and without legal effect in areas of the Philippines free of enemy occupation and control." (Proclamation of Oct. 23, 1944, 41 O.G. 148.)

Without deciding whether the "New Divorce Law" was validly promulgated, we are prepared to say, and so hold, that even if it were it is no longer of any force and effect. (See opinions rendered in *Peralta vs. Director of Prisons*, 75 Phil., 285, and the authorities therein cited.) Under the proclamation above quoted Act No. 2710 prevails.

Its legal basis having vanished, this case must be dismissed, and it is so ordered.

De Joya, Perfecto, Hilado, and Bengzon, JJ., concur.

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