

VICENTE GARCIA VALDEZ, PLAINTIFF AND APPELLANT, VS. MARIA SOTERAÑA TUASON, DEFENDANT AND APPELLEE.*G.R. No. 14957. March 16, 1920*

Ponente: STREET, J.

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This is a petition for divorce, filed by Vicente Garcia Valdez on April 2, 1918, in the Court of First Instance of the city of Manila against his wife, Maria Soterana Tuason. Upon hearing the cause the trial judge found that the charge of adultery was not sustained by the evidence; and he refused to grant relief. The complaint was accordingly dismissed at the petitioner's costs. From this judgment the petitioner appealed.

On March 11, 1917, Act No. 2710 of the Philippine Legislature, relating to the subject of divorce, became effective in the Philippine Islands. This enactment introduced the radical innovation of causing the divorce to operate, after the expiration of one year from the date of the decree, as a dissolution of the bonds of matrimony. Another feature of the same Act pertinent to the present controversy is a provision to the effect that a petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband and cannot be granted except upon conviction of the guilty party in a criminal prosecution (secs. 1, 8).

The petition in the present case does not allege, nor is it in fact claimed by the petitioner, that the respondent has at any time been convicted of the offense of adultery. It results that the divorce sought in this proceeding, cannot be granted if Act No. 2710 is applicable to the case. It is, however, insisted for the petitioner that supposing the fact of adultery on the part of the respondent to be proved, he is entitled to a divorce of the character recognized by the law prevailing in these Islands prior to the passage of Act No. 2710, that is to say, a divorce a mensa et thoro, or decree of judicial separation, entailing as one of its consequences the dissolution of the ganancial partnership and liquidation of the community assets. In other words it is supposed that the absolute divorce conceded under certain conditions by Act No. 2710 is an additional remedy, and not exclusive of the remedy of the limited divorce formerly allowed. The question thus raised is one of law, and in the view we take of the case it is determinative of the appeal.

The law of divorce as it formerly existed in this jurisdiction was summed up in a few words by Justice Willard, speaking for this Court in *Benedicto vs. De la Rama* (3 Phil. Rep., 34, 45), as follows:

"(1) That Courts of First Instance have jurisdiction to entertain a suit for divorce; (2) that the only ground therefor is adultery; (3) that an action on that ground can be maintained by the husband against the wife, or by the wife against the husband; and (4) that the decree does not dissolve the marriage bond."

Comparing the propositions thus stated with the provisions of Act No. 2710, it is quite manifest that the divorce consisting of judicial separation without the dissolution of the bonds of matrimony, which was formerly granted for the adultery of either of the spouses, has been abrogated and in its place has been substituted the absolute divorce *ex vinculis matrimonii*, obtainable only under the conditions stated in said Act.

We are not oblivious of the well-known rule of law that repeals by implication are not favored. Nevertheless when

there is a plain, unavoidable, and irreconcilable repugnancy between two laws the later expression of the Legislative will must be given effect. It is axiomatic in the science of jurisprudence that two inconsistent statutes cannot co-exist in one jurisdiction with reference to the same subject matter.

The most powerful implication of repeal noted by legal commentators is that which arises when the later of two laws is expressed in the form of a universal negative. The repugnance of two statutes is more readily seen when the later Act is in the form of a negative proposition than when both laws are stated in the affirmative. Indeed most of the discussion found in the books on the question whether one law impliedly repeals another is concerned with the interpretation of affirmative laws. (Sutherland, *Statutory Construction*, 2d ed., sec. 248.) There is a clear distinction between affirmative and negative statutes in regard to their repealing effects upon prior legislation, which may be expressed by saying that while an affirmative statute does not impliedly repeal the prior law unless an intention to effect the repeal is manifest, a negative statute repeals all conflicting provisions unless the contrary intention is disclosed. In *State vs. Commissioners of Washoe County* (22 Nev., 203, 210), the court said:

"One affirmative statute will not repeal another, unless there is an absolute conflict between them, or it can be ascertained in some manner that a repeal was intended. But where the later act is expressed in negative terms, the principle is different. Negative statutes are mandatory, and must be presumed to have been intended as a repeal of all conflicting provisions, unless the contrary can be clearly seen."

Conformably with this idea it will be found that constitutional provisions which are intended to operate with universal force and to permit of no exceptions are commonly expressed in the negative form; as "No person shall be imprisoned for debt;" "No law impairing the obligation of contracts shall be enacted;" "No person shall be held to answer for a criminal offense without due process of law;" "No money shall be paid out of the treasury except in pursuance of an appropriation by law;" etc. (Sec. 3, *Jones Law*.)

The following illustrations of the repealing effects of negative statutes come readily to hand from the decisions of the American and English courts: An Act providing that "no corporation" shall interpose the defense of usury repeals all laws against usury as regards corporations (*Curtiss vs. Leavitt*, 15 N. Y., 1, 85, 228; *Ballston Spa Bank vs. Marine Bank*, 16 Wis., 125, 140); an Act declaring that "no beer" shall be sold without a license, abrogates any previous exemptions from licensing regulations (*Read vs. Story*, 6 H. & N., 423); an Act which absolutely forbids prize fighting repeals a prior act permitting prize fights upon payments of a tax of five hundred dollars (*Sullivan vs. State*, 32 Tex. Crim. App., 50); an Act declaring that "no county officer" in any county of the State shall contract for the expenditure of public money repeals all prior special laws conceding such authority to county officers. (*State vs. Commissioners of Washoe County*, 22 Nev., 203.)

Let us now turn to Act No. 2710 in order to ascertain whether its propositions are stated in an affirmative or negative form. Upon scanning its provisions we at once discover that every section defining the conditions under which a divorce may be granted is expressed either in the form of a negative proposition or in the form of an affirmative proposition qualified by the word "only," which has all the force of an exclusionary negation. These expressions may well be collated for their cumulative effect upon the mind is convincing:

"SECTION 1. A petition for divorce can only be filed for adultery of the wife or concubinage on the part of the husband, etc.

"SEC. 2. No person shall be entitled to a divorce who has not resided, etc.

"SEC. 3. The divorce may be claimed only by the innocent spouse, etc.

"SEC. 4. An action for divorce cannot be filed except within one year, etc.

"SEC. 5. An action for divorce shall in no case be tried before six months, etc.

* * * * *

"SEC. 8. A divorce shall not be granted without the guilt of the defendant being established by final sentence in a criminal action."

It is impossible to hold in the face of these provisions that the divorce allowed by this Act is merely a cumulative and not an exclusive remedy. On the contrary it is evident that this statute contains a definitive and exclusive statement of the effects of adultery considered in its bearing upon the marital status and civil rights of the parties. It results that the only divorce now procurable under our laws is the divorce conceded by this Act. Properly speaking, the situation here does not require the application of any of the artificial canons of interpretation, for the language of the statute is so plain that its meaning is unmistakable. The logical and inevitable force of the words used is such as to override all inconsistent provisions of prior laws.

The conclusion above stated is strengthened by a critical examination of the wording of the entire Act. It is expressed throughout in general terms without the slightest indication of an intention to preserve any provision of the former law. The word "divorce" particularly is used without qualification, in conformity with the usage of civilian authors. Therefore, when this Act declares that a divorce is procurable only under such and such conditions, this means that no divorce of any sort is procurable under other conditions.

It should not escape observation that, under both the present and the prior law, the sole ground of divorce is substantially the same, namely, the conjugal infidelity of one of the spouses; and if the state of the law is as appellant supposes, a single offense against the marital obligation originates two different sets of legal consequences. The practical operation of the statute under this view of the law shows that the Legislature could not possibly have had any such intention. A wife, for instance, commits adultery; and the husband, not desiring to institute a criminal prosecution, files a petition for divorce within the period prescribed by Act No. 2710. He is entitled, upon the theory of the law propounded by the appellant, to a decree of judicial separation, with a dissolution of the community partnership. Again, upon learning of the commission of the act of adultery, the husband institutes a criminal prosecution and the wife is convicted. He then files a petition for divorce within the time limit prescribed by law, being entitled in this case to a decree dissolving the community of property and a divorce absolute at the end of one year. But this is not all: The husband may wait until long after the time limit fixed in Act No. 2710 has expired and obtain the same relief whether the guilty wife was prosecuted or not. Even these inconsistencies apparently do not exhaust the possibilities of the situation. Furthermore, all these alternative courses in the administration of justice are supposedly open to the injured party upon a simple petition for divorce without the slightest disclosure of the particular species of relief to which he deems himself entitled. It takes but little reflection to show that all this is fundamentally opposed both to the letter and the spirit of Act No. 2710.

There is one more point deserving of passing notice, which is that the Act referred to does not contain a clause repealing in general terms all laws and parts of laws in conflict therewith, such as is sometimes found at the end of Legislative Enactments. The question is therefore strictly one of repeal by implication, and as such we have considered it. We may add, however, that the case for repeal would not in our opinion be appreciably stronger even if a repealing clause of the character indicated were found in the Act. Indeed it has been said that such a clause repeals nothing that would not be equally repealed without it. (Great Northern Railway Co. United States, 155 Fed., 945.) Either with or without it the real question to be determined is whether the new statute (No. 2710) is in fundamental and irreconcilable conflict with the prior state of the law on the subject of divorce.

It has been suggested that the question above discussed, namely, whether Act No. 2710 has by necessary implication repealed the provisions formerly in force in this jurisdiction in regards to limited divorces, is not properly raised; and it seems to be supposed that this case might be disposed of without deciding that point. It is true that if we were disposed to examine the proof relative to the charges of adultery and should concur in the

finding of the trial judge, that the acts of adultery charged in the petition are not proved, the judgment would necessarily be affirmed. On the other hand, if we were to find that the charges of adultery are sufficiently proved, we would be confronted by the necessity of determining the exact question of law which we have discussed in this opinion, that is, whether a limited divorce is in any case procurable under the law now prevailing in these Islands. Therefore, in order to abridge the discussion and to get at once to the root of the matter it is desirable to decide, as we have decided, this question.

In this connection it may be stated that immediately after the petition in this case was filed, the attorney for the respondent interposed a demurrer based on the ground that the petition did not allege that the respondent had been convicted of the offense of adultery in a criminal prosecution as required in section 8 of Act No. 2710. The trial judge overruled this demurrer; whereupon the attorney for the respondent duly excepted. Later when the cause came on to be heard upon the proof submitted in support of the charges of adultery, the trial judge found that adultery had not been proved; and the petition was dismissed on this ground. Entertaining that view of the case, it was of course unnecessary for the trial judge further to consider the legal question whether a divorce of any sort could be granted without the fulfilment of the condition specified in section 8 of Act No. 2710. In the end it was the petitioner, and not the respondent, who was forced to appeal, and of course the appellant did not assign error to the action of the trial court in overruling the demurrer, since upon this point the ruling had been favorable to his position. It, therefore, remained for the appellee merely to call the attention of this court, as her attorney has done in the reply brief, to the question of law involved in the overruling of the demurrer. It is not incumbent on an appellee, who occupies a purely defensive position and is seeking no affirmative relief, to make assignments of error. Only an appellant is required to make such assignments. Therefore, when the case occurs, as not infrequently happens, that a trial judge decides a case in favor of one of the parties on a certain ground, it is entirely proper for this court, upon affirming the judgment, to base its decision upon some other point which may have been ignored by the trial court or in respect to which that court may have been entirely in error.

But wholly apart from the point of practice involved, and even supposing that the question of the sufficiency of the complaint had never been raised by demurrer or even suggested in the appellee's brief, no court would in the present state of the law permit a decree of divorce to be entered contrary to the precepts of section 8 of the Act cited. Human society has an interest in the integrity of the marital state, and it is the duty of the courts to apply the proper legal provisions in such matters whether the litigants see fit to invoke them or not.

From what has been said it is evident that the petitioner is not entitled to relief in any aspect of the case, and it is unnecessary for us to consider whether the acts of adultery stated in the complaint have been proved.

Judgment affirmed, with costs. So ordered.

Arellano, C. J., Torres, and Araullo, JJ., concur.

Johnson, J., concurs in the result.

DISSENTING

AVANCEÑA, J., with whom concurs MALCOLM, J.:

I dissent. I believe that Act No. 2710, establishing absolute divorce with the dissolution of the bonds of matrimony, has not repealed the law existing here prior to its enactment and establishing relative divorce, and that the effect of the new law is only the separation of the person and property of the spouses and the dissolution of the community of property. As the new law contains no repealing clause, if it has repealed any law at all, said repeal would be by mere implication. This manner of repealing laws has its basis upon the presumption that the intention

to repeal exists although it is not expressed. Consequently, all that is necessary to do is to find out if the intention of the new law is to repeal the former one. But in principle, when there is no express repeal, the presumption is against the intention to repeal. Wherefore, in order to accept that the intention to repeal exists, it is necessary to infer it from a very clear premise so as to destroy this negative presumption.

The most decisive fact to discover the intention of the law regarding this point is the consistency or repugnancy between the new law and the old. When both laws are consistent with each other the presumption against the intention to repeal must be maintained and the courts should give force to both. It is only when they are repugnant to each other and their effects cannot be harmonized that the former law must be understood to have been repealed.

Although Act No. 2710 and the law prior to it refer, in general, to the same subject-matter, nevertheless they have different specific purposes. The former allows absolute divorce and the latter, relative divorce. They cannot be repugnant to each other when their purposes are distinct and their effects are different. It matters not that conjugal infidelity be the cause of both kinds of divorce. Both are simply cumulative, not contradictory, remedies. For example, according to the laws of the State of Nebraska, one and the same cause, excessive cruelty, will justify an action for absolute divorce or relative divorce. Directly connected with our case, we have the laws of Wisconsin Louisiana and Indiana and, perhaps, other states more, where adultery is a cause to obtain an absolute divorce or a relative divorce at the election of the interested party or at the discretion of the court. At most, similar situation would be the result here if the former legislation on divorce and Act No. 2710 would be considered in force at the same time.

As it is presumed that the law is just and is enacted for the public interest, considerations of justice and public convenience are always very potent in deciding whether a subsequent law repeals a previous one. In the instant case both considerations are against the intention to repeal. Act No. 2710 has been enacted not to restrain but to amplify legislation on divorce. But, under the present conditions in the Philippines, this Act would be restrictive should it be interpreted as repealing the former law on relative divorce. It is a matter of common knowledge that, according to the religious beliefs of the Catholics, conjugal tie created by marriage is indissoluble, and no Catholic who is a faithful believer would ask for the dissolution of the marriage tie which unites him to his wife. When it is taken into consideration that the majority of the Filipino people at present are Catholics, it can be seen that Act No. 2710 is a law only for a few. If, on the other hand, said Act should be interpreted as the only law in force and that it has repealed the old law, it would furthermore be an unjust law for it deprives a great majority of the community of all legislation on divorce, when it is recognized that said legislation is necessary to remedy great evil in society.

The negative form in which the act is written appears of no moment to this case wherein there are other powerful reasons for accepting a conclusion contrary to the intention to repeal.

"A negative statute is one expressed in negative words; as, for example: 'No person who is charged with an offense against the law shall be punished for such offense unless he shall have been duly and legally convicted,' etc. 'No indictment for any offense shall be held insufficient for want of the averment of any matter unnecessary to be proved,' etc. An affirmative statute is one enacted in affirmative terms. Alderson, 6., observed in *Mayor of London vs. The Queen*, that 'the word "negative" and "affirmative" statutes mean nothing. The question is whether they are repugnant or not to that which before existed. That may be more easily shown when the statute is negative than when it is affirmative, but the question is the same.' (1 Lewis' Sutherland Statutory Construction, 470.)

Judgment affirmed.

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