

IN THE MATTER OF THE ESTATE OF CHEONG BOO, DECEASED. MORA ADONG, PETITIONER AND APPELLANT, VS. CHEONG SENG GEE, OPPONENT AND APPELLANT.

G. R. No. 18081. March 03, 1922

Ponente: MALCOLM, J.

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MALCOLM, J.:

The two questions presented for determination by these appeals may be framed as follows: Is a marriage contracted in China and proven mainly by an alleged matrimonial letter, valid in the Philippines? Are the marriages performed in the Philippines according to the rites of the Mohammedan religion valid? As the decision of the Supreme Court on the last point will affect marriages consummated by not less than one hundred and fifty thousand Moros who profess the Mohammedan faith, the transcendental importance of the cause can be realized. We propose to give to the subject the serious consideration which it deserves.

Cheong Boo, a native of China, died intestate in Zamboanga, Philippine Islands, on August 5, 1919. He left property worth nearly P100,000. The estate of the deceased was claimed, on the one hand, by Cheong Seng Gee, who alleged that he was a legitimate child by a marriage contracted by Cheong Boo with Tan Dit in China in 1895. The estate was claimed, on the other hand, by the Mora Adong who alleged that she had been lawfully married to Cheong Boo in 1896 in Basilan, Philippine Islands, and her daughters, Payang, married to Cheng Bian Chay, and Rosalia Cheong Boo, unmarried.

The conflicting claims to the estate of Cheong Boo were ventilated in the Court of First Instance of Zamboanga. The trial judge, the Honorable Quirico Abeto, after hearing the evidence presented by both sides, reached the conclusion, with reference to the allegations of Cheong Seng Gee, that the proof did not sufficiently establish the Chinese marriage, but that because Cheong Seng Gee had been admitted to the Philippine Islands as the son of the deceased, he should share in the estate as a natural child. With reference to the allegations of the Mora Adong and her daughters Payang and Rosalia, the trial judge reached the conclusion that the marriage between the Mora Adong and the deceased had been adequately proved but that under the laws of the Philippine Islands it could not be held to be a lawful marriage; accordingly, the daughters Payang and Rosalia would inherit as natural children. The order of the trial judge, following these conclusions, was that there should be a partition of the property of the deceased Cheong Boo between the natural children, Cheong Seng Gee, Payang, and Rosalia.

From the judgment of the Judge of First Instance both parties perfected appeals. As to the facts, we can say that we agree in substance with the findings of the trial court. As to the legal issues submitted for decision by the numerous assignments of error, these can best be resolved under two heads, namely: (1) The validity of the Chinese marriage; and (2) the validity of the Mohammedan marriage.

1. Validity of the Chinese Marriage

The theory advanced on behalf of the claimant Cheong Seng Gee was that Cheong Boo was married in the city of Amoy, China, during the second moon of the twenty- first year of the Emperor Quang Su, or, according to the

modern count, on February 16, 1895, to a young lady named Tan Dit. Witnesses were presented who testified to having been present at the marriage ceremony.

There was also introduced in evidence a document in Chinese which in translation reads as follows:

One hundred years of life and health for both

Your nephew, Tan Chao, respectfully answers the venerable Chiong Ing, father of the bridgroom, accepting his offer of marriage, and let this document serve as proof of the acceptance of said marriage which is to be celebrated during the merry season of the flowers.

I take advantage of this occasion to wish for you and the spouses much happiness, a long life, and prolific issue, as noble and great as that which you brought forth. I consider the marriage of your son Boo with my sister Llit Chia as a mandate of God and I hope that they treat each other with great love and mutual courtesy and that both they and their parents be very happy.

Given during the second moon of the twenty-first year of the reign of the Emperor Quang Su.

Cheong Boo is said to have remained in China for one year and four months after his marriage during which time there was born to him and his wife a child named Cheong Seng Gee. Cheong Boo then left China for the Philippine Islands and sometime thereafter took to himself a concubine Mora by whom he had two children. In 1910, Cheong Boo was followed to the Philippines by Cheong Seng Gee who, as appears from documents presented in evidence, was permitted to land in the Philippine Islands the son of Cheong Boo. The deceased, however, never returned to his native hearth and seems never to have corresponded with his Chinese wife or to have had any further relations with her except once when he sent her P10.

The trial judge found, as we have said, that the proof did not sustain the allegation of the claimant Cheong Seng Gee, that Cheong Boo had married in China. His Honor noted a strong inclination on the part of the Chinese witnesses, especially the brother of Cheong Boo, to protect the interests of the alleged son, Cheong Seng Gee, by overstepping the limits of truthfulness. His Honor also noted that reliable witnesses stated that in the year 1895, when Cheong Boo was supposed to have been in China, he was in reality in Jolo, in the Philippine Islands. We are not disposed to disturb this appreciation of fact by the trial court. The immigration documents only go to show the relation of parent and child existing between the deceased Cheong Boo and his son Cheong Seng Gee and do not establish the marriage between the deceased and the mother of Cheong Seng Gee.

Section IV of the Marriage Law (General Order No. 68) provides that "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." 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.

A case directly in point is the leading one of *Sy Joc Lieng vs. Encarnacion* ([1910], 16 Phil., 137; [1913], 228 U. S., 335). Here, the courts of the Philippines and the Supreme Court of the United States were called upon to decide, as to the conflicting claims to the estate of a Chinese merchant, between the descendants of an alleged Chinese marriage and the descendants of an alleged Philippine marriage. The Supreme Courts of the Philippine Islands and the United States united in holding that the Chinese marriage was not adequately proved. The legal

rule was stated by the United States Supreme Court to be this: A Philippine marriage, followed by forty years of uninterrupted marital life, should not be impugned and discredited, after the death of the husband and administration of his estate, through an alleged prior Chinese marriage, "save upon proof so clear, strong, and unequivocal as to produce a moral conviction of the existence of such impediment." Another case in the same category is that of *Son Cui vs. Guepangco* ([1912], 22 Phil., 216).

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, there is lacking proof so clear, strong, and unequivocal as to produce a moral conviction of the existence of the alleged prior Chinese marriage. Substitute twenty-three years for forty years and the two cases are the same.

The lower court allowed the claimant, Cheong Seng Gee, the testamentary rights of an acknowledged natural child. This finding finds some support in Exhibit S, the affidavit of Cheong Boo before the American Vice-Consul at Sandakan, British North Borneo. But we are not called upon to make a pronouncement on the question, because the oppositor-appellant indicates silent acquiescence by assigning no error.

2. Validity of the Mohammedan Marriage

The biographical data relating to the Philippine odyssey of the Chinaman Cheong Boo is fairly complete. He appears to have first landed on Philippine soil sometime prior to the year 1896. At least, in the year last mentioned, we find him in Basilan, Philippine Islands. There he was married to the Mora Adong according to the ceremonies prescribed by the book on marriage of the Koran, by the Mohammedan Iman (priest) Habubakar. That a marriage ceremony took place is established by one of the parties to the marriage, the Mora Adong, by the Iman who solemnized the marriage, and by other eyewitnesses, one of whom was the father of the bride, and another, the chief of the rancheria, now a municipal councillor. The groom complied with Quranic law by giving to the bride a dowry of P250 in money and P250 in goods.

The religious rites began with the bride and groom seating themselves in the house of the father of the bride, Marahadja Sahibol. The Iman read from the Koran. Then the Iman asked the parents if they had any objection to the marriage. The marital act was consummated by the groom entering the woman's mosquito net.

From the marriage day until the death of Cheong Boo, twenty-three years later, the Chinaman and the Mora Adong cohabited as husband and wife. To them were born five children, two of whom, Payang and Rosalia, are living. Both in his relations with Mora Adong and with third persons during his lifetime, Cheong Boo treated Adong as his lawful wife. He admitted this relationship in several private and public documents. Thus, when different legal documents were executed, including decrees of registration, Cheong Boo stated that he was married to the Mora Adong, while as late as 1918, he gave written consent to the marriage of his minor daughter, Payang.

Notwithstanding the insinuation of counsel for the Chinese appellant that the custom is prevalent among the Moros to favor in their testimony, a relative or friend, especially when they do not swear on the Koran to tell the truth, it seems to us that proof could not be more convincing of the fact that a marriage was contracted by the Chinaman Cheong Boo and the Mora Adong according to the ceremonies of the Mohammedan religion.

It is next incumbent upon us to approach the principal question which we announced in the very beginning of this decision, namely, Are the marriages performed in the Philippines according to the rites of the Mohammedan religion valid? Three sections of the Marriage Law (General Order No. 68) must be taken into consideration.

Section V of the Marriage Law provides that "Marriage may be solemnized by either a judge of any court inferior to the Supreme Court, justice, of the peace, or priest or minister of the Gospel of any denomination * * *"

Counsel, failing to take account of the word "priest," and only considering the phrase "minister of the Gospel of any denomination" would limit the meaning of this clause to ministers of the Christian religion. We believe this is a strained interpretation. "Priest," according to the lexicographers, means one especially consecrated to the service of a divinity and considered as the medium through whom worship, prayer, sacrifice, or other service is to be offered to the being worshipped, and pardon, blessing, deliverance, etc., obtained by the worshipper, as a priest of Baal or of Jehovah; a Buddhist priest. "Minister of the Gospel" means all clergymen of every denomination and faith. A "denomination" is a religious sect having a particular name. (Haggin vs. Haggin [1892], 35 Neb., 375; In re Reinhart, 9 O. Dec, 441; Hale vs. Everett [1868], 53 N. H., 9.) A Mohammedan Iman is a "priest or minister of the Gospel," and Mohammedanism is a "denomination," within the meaning of the Marriage Law.

The following section of the Marriage Law, No. VI, provides that "No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife." The law is quite correct in affirming that no precise ceremonial is indispensably requisite for the creation of the marriage contract. The two essentials of a valid marriage are capacity and consent. The latter element may be inferred from the ceremony performed, the acts of the parties, and habit or repute. In this instance, there is no question of capacity. Nor do we think there can exist any doubt as to consent. While it is true that during the Mohammedan ceremony, the remarks of the priest were addressed more to the elders than to the participants, it is likewise true that the Chinaman and the Mora woman did in fact take each other to be husband and wife and did thereafter live together as husband and wife. (Travers vs. Reinhardt [1907], 205 U. S., 423.)

It would be possible to leave out of view altogether the two sections of the Marriage Law which have just been quoted and discussed. The particular portion of the law which, in our opinion, is controlling, is section IX, reading as follows: "No marriage heretofore solemnized before any person professing to have authority therefor shall be invalid for want of such authority or on account of any informality, irregularity, or omission, if it was celebrated with the belief of the parties, or either of them, that he had authority and that they have been lawfully married."

The trial judge in construing this provision of law said that he did not believe that the legislative intention in promulgating it was to validate marriages celebrated between Mohammedans. To quote the judge:

"This provision relates to marriages contracted by virtue of the provisions of the Spanish law before revolutionary authorities who believed themselves authorized to solemnize marriages, and it is not to be presumed that the legislator intended by this law to validate void marriages celebrated during the Spanish sovereignty contrary to the laws which then governed."

What authority there is for this statement, we cannot conceive. To our mind, nothing could be clearer than the language used in section IX. Note for a moment the all- embracing words found in this section:

"No marriage"—Could more inclusive words be found? "Heretofore solemnized"—Could any other construction than that of retrospective force be given to this phrase? "Before any person professing to have authority therefor shall be invalid for want of such authority"—Could stronger language than this be invoked to announce legislative intention? "Or on account of any informality, irregularity, or omission"—Could the legislative mind frame an idea which would more effectively guard the marriage relation against technicality? "If it was celebrated with the belief of the parties, or either of them, that he had authority and that they have been lawfully married"—What was the purpose of the legislator here, if it was not to legalize the marriage, if it was celebrated by any person who thought that he had authority to perform the same, and if either of the parties thought that they had been married? Is there any word or hint of any word which would restrict the curative provisions of section IX of the Marriage Law to Christian marriages? By what system of mental gymnastics would it be possible to evolve from such precise language the curious idea that it was restricted to marriages performed under the Spanish law before the revolutionary authorities?

In view of the importance of the question, we do not desire to stop here but would ascertain from other sources the meaning and scope of Section IX of General Order No. 68.

The purpose of the government toward the Mohammedan population of the Philippines has, time and again, been announced by treaty, organic law, statutory law, and executive proclamation. The Treaty of Paris in its article X, provided that "The inhabitants of the territories over which Spain relinquishes or cedes her sovereignty shall be secured in the free exercise of their religion." The President's Instructions to the Philippine Commission imposed on every branch of the Government of the Philippine Islands the inviolable rule "that no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. * * *. That no form of religion and no minister of religion shall be forced upon any community or upon any citizen of the Islands; that, upon the other hand, no minister of religion shall be interfered with or molested in following his calling, and that the separation between state and church shall be real, entire, and absolute." The notable state paper of President McKinley also enjoined the Commission, "to bear in mind that the Government which they are establishing is designed * * * for the happiness, peace, and prosperity of the people of the Philippine Islands" and that, therefore, "the measures adopted should be made to conform to their customs, their habits, and even their prejudices * * *." The Philippine Bill and the Jones Law reproduced the main constitutional provisions establishing religious toleration and equality.

Executive and legislative policy both under Spain and the United States followed in the same path. For instance, in the Treaty of April 30, 1851, entered into by the Captain General of the Philippines and the Sultan of Sulu, the Spanish Government guaranteed "with all solemnity to the Sultan and other inhabitants of Sulu the free exercise of their religions with which it will not interfere in the slightest way, and it will also respect their customs." (See further Decree of the Governor-General of January 14, 1881.) For instance, Act No. 2520 of the Philippine Commission, section 3, provided that "Judges of the Court of First Instance and justices of the peace deciding civil cases in which the parties are Mohammedans or pagans, when such action is deemed wise, may modify the application of the law of the Philippine Islands, except laws of the United States applicable to the Philippine Islands, taking into account local laws and customs. * * *" (See further Act No. 787, sec. 13 [j]; Act No. 1283, sec. 6 [b]; Act No. 114 of the Legislative Council, amended and approved by the Philippine Commission; *Cacho vs. Government of the United States* [1914], 28 Phil, 616.) Various responsible officials have so oft announced the purpose of the Government not to interfere with the customs of the Moros, especially their religious customs, as to make quotation of the same superfluous.

The retrospective provisions of the Philippine Marriage Law undoubtedly were inspired by the governmental policy in the United States, with regard to the marriages of the Indians, the Quakers, and the Mormons. The rule as to Indian marriages is, that a marriage between two Indians entered into according to the customs and laws of the people at a place where such customs and laws are in force, must be recognized as a valid marriage. The rule as to the Society of Quakers is, that they will be left to their own customs and that their marriages will be recognized although they use no solemnization. The rule as to Mormon marriages is that the sealing ceremony entered into before a proper official by members of that Church competent to contract marriage constitutes a valid marriage.

The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society, and if the parties were not

what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. A presumption established by our Code of Civil Procedure is "that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage." (Sec. 334, No. 28.) *Semper pr æsumitur pro matrimonio*—Always presume marriage. (U. S. vs. Villafuerte and Rabano [1905], 4 Phil, 476; *Son Cui vs. Guepangco*, supra; U. S. vs. Memoracion and Uri [1916], 34 Phil., 633; *Teter vs. Teter* [1884], 101 Ind., 129.)

Section IX of the Marriage Law is in the nature of a curative provision intended to safeguard society by legalizing prior marriages. We can see no substantial reason for denying to the legislative power the right to remove impediments to an effectual marriage. If the legislative power can declare what shall be valid marriages, it can render valid, marriages which, when they took place, were against the law. Public policy should aid acts intended to validate marriages and should retard acts intended to invalidate marriages. (*Goshen vs. Stonington* [1822], 4 Conn., 209; *Baity vs. Cranfill* [1884], 91 N. C., 273.)

The courts can properly incline the scales of their decisions in favor of that solution which will most effectively promote the public policy. That is the true construction which will best carry legislative intention into effect. And here the consequences, entailed in holding that the marriage of the Mora Adong and the deceased Cheong Boo, in conformity with the Mohammedan religion and Moro customs, was void, would be far reaching in disastrous result. The last census shows that there are at least one hundred fifty thousand Moros who have been married according to local custom. We then have it within our power either to nullify or to validate all of these marriages; either to make all of the children born of these unions bastards or to make them legitimate; either to proclaim immorality or to sanction morality; either to block or to advance a settled governmental policy. Our duty is as obvious as the law is plain.

In moving toward our conclusion, we have not lost sight of the decisions of this court in the cases of *United States vs. Tubban* ([1915], 29 Phil., 434) and *United States vs. Verzola*, ([1916], 33 Phil., 285). We do not, however, believe these decisions to be controlling. In the first place, these were criminal actions and two Justices dissented. In the second place, in the *Tubban* case, the marriage in question was a tribal marriage of the Kalingas, while in the *Verzola* case, the marriage had been performed during the Spanish regime by a lieutenant of the Guardia Civil. In neither case, in deciding as to whether or not the accused should be given the benefit of the so-called unwritten law, was any consideration given to the provisions of section IX of General Order No. 68. We are free to admit that, if necessary, we would unhesitatingly revoke the doctrine announced in the two cases above mentioned.

We regard the evidence as producing a moral conviction of the existence of the Mohammedan marriage. We regard the provisions of section IX of the Marriage Law as validating marriages performed according to the rites of the Mohammedan religion.

There are other questions presented in the various assignments of error which it is unnecessary to decide. In resume, we find the Chinese marriage not to be proved and that the Chinaman Cheong Seng Gee has only the rights of a natural child, and we find the Mohammedan marriage to be proved and to be valid, thus giving to the widow and the legitimate children of this union the rights accruing to them under the law.

Judgment is reversed in part, and the case shall be returned to the lower court for a partition of the property in accordance with this decision, and for further proceedings in accordance with law. Without special findings as to costs in this instance, it is so ordered.

Araullo, C. J., Johnson, Street, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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