

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. H. JANSSEN, DEFENDANT AND APPELLANT.

G.R. No. 31763. December 27, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

H. Janssen appeals to this court from the judgment of the Court of First Instance of Antique convicting him of a violation of section 2 of Act No. 3412, and sentencing him to pay a fine of P200, with subsidiary imprisonment in case of insolvency at the rate of one day for every 12 1/2 pesetas, and to pay the court costs.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its decision, to wit:

"The trial court erred:

"1. In holding that it is the duty of the accused to inquire into and determine the residence of the bride before solemnizing marriage.

"2. In finding that the habitual residence of the bride, Juana S. del Rosario is the municipality of Banga Province of Capiz, and not the municipality of San Jose, Province of Antique.

"3. In holding that the accused cannot solemnize marriage without publishing or proclaiming such marriage 10 days prior to the celebration thereof.

"4. In holding that the accused has violated section 2 of Act No. 3412.

"5. In convicting the accused."

The following facts were proved at the trial beyond a reasonable doubt:

On December 26, 1928, Pedro N. Cerdana and Juana S. del Rosario appeared before Reverend Father H. Janssen, a Catholic parish priest of the municipality of San Jose, Antique, to have their names inscribed in the marriage registry, Exhibit 3, which was done. On December 30, 1928, the banns were published in his parish in San Jose, Antique.

As the classes opened on January 7, 1929, the contracting parties asked the defendant-appellant to marry them before that date. Upon petition of the defendant-appellant, the Bishop of Jaro issued the following dispensation on December 29, 1928:

"In view of the exposition and petition contained in the foregoing document, and with the understanding that no obstacle has been discovered in the investigation made or to be made of the status and liberty of the contracting parties, Pedro Cerdana, single, of age, a resident of San Jose, Antique, and Juana S. del Rosario, a native of Banga, Province of Capiz, residing in San Jose, Antique, single, of age; dispensation is granted from one call of the banns, as prayed for, subject to alms pesos, to be applied to charitable work and the expenses of divine worship, enjoining the Reverend Parish Priest of San Jose, Province of Antique, to whom a

copy of this decree shall be transmitted, not to solemnize the marriage under consideration, without being certain of the status and liberty of both contracting parties, and that in the realization of said act, no complaint of any kind shall be made, on any legal ground; and that otherwise, it is our will that the dispensation be granted.

"Causes: Urgent business of both parties, who being Government employees, cannot await the last call without serious prejudice."

On the 1st of January, 1929, another proclamation was made to that effect.

On January 4, 1929, the municipal secretary of San Jose, Antique, issued the following authority to solemnize marriage :

"To all those authorized to celebrate marriage:

"You are hereby authorized to solemnize the marriage of Pedro N. Cerdeia and Juana S. del Rosario, in accordance with the rites and ceremonies of your Church, sect, or religion, and with the laws of the Philippine Islands.

"Given this day, January 4, 1929, in the, municipality of San Jose, Antique, P. I.

"Attached hereto is a copy of the petition filed by the contracting parties."

By virtue of the above-quoted dispensation, and in view of said authority of the municipal secretary of San Jose, Antique, the defendant-appellant on January 6, 1929, solemnized the marriage of Pedro N. Cerdeia to Juana S. del Rosario.

The only question to be decided in this appeal is whether or not the defendant-appellant violated section 2 of Act No. 3412, the pertinent part of which reads as follows:

"The municipal secretary or clerk of the municipal court of Manila, as the case may be, shall post during ten days in a conspicuous place in the building where he has his office, a notice setting forth the full names and domiciles of the applicants for marriage licenses, their respective ages, and the names of their parents if living or of their guardians if otherwise. At the expiration of this term, a license shall issue: Provided, however, That in case any such applicant states in writing and under oath that the rules and practices of the church, sect, or religion under which such applicant desires to contract marriage require banns or publications prior to the solemnization of the marriage, it shall not be necessary for the municipal secretary to make the publication required in this paragraph, and in this case the license shall issue immediately after the filing of the application and shall state the church, sect, or religion in which the marriage is to be solemnized."

While it is true that section 2 of Act No. 3412 quoted above, requires the municipal secretary to post a notice for ten days upon a conspicuous place of the building where he has his office, setting forth the names, surnames, and residence of applicants for a license to contract marriage, their age, the names of their parents, if alive, or of their guardians, as the case may be, before issuing the license applied for, the same section contains & proviso to the effect that when the contracting parties desire to marry in a church which requires previous proclamation before the celebration of the marriage, there is no need of said publication. The only doubt is whether said proclamation must be made during ten days, as in the publication in case the marriage is not celebrated in a church. The law simply says that if the marriage takes place in a church whose rules and practices require proclamation, the license applied for shall at once be issued, and it does not say that the proclamation required by said church is to be made during ten days. As section 2 of Act No. 3412 is penal in character, it should be strictly construed. And as said section does not require that the proclamation be made during ten days, but that it is sufficient that the church in which the marriage is to take place requires a proclamation, it is immaterial how many days said proclamation is

made in.

For the foregoing considerations, we are of opinion and so hold that the defendant-appellant did not violate section 2 of Act No. 3412 in solemnizing the marriage of Pedro N. Cerdeia and Juana S. del Rosario after two proclamations, before ten days were up, the third proclamation having been dispensed with by a competent ecclesiastical authority.

The trial court was also of opinion that the defendant-appellant was bound to investigate whether the license was issued by an official duly authorized by law, that is, by the municipal secretary of the municipality where the woman habitually resides.

The law does not impose this duty upon priests or ministers of religion. It is sufficient to know that the license has been issued by a competent official, and it may be presumed from the issuance of said license that said official has complied with his duty of ascertaining whether the woman who desires to get married resides habitually in his municipality. (Act No. 190, sec. 334, No. 14.)

Wherefore, we are of opinion and so hold, that when a marriage is solemnized by a church, sect, or religion whose rules and practices require proclamation or publicity, it is not necessary that said proclamation be made during ten days, unless said rules or practices so require.

By virtue whereof, the appealed judgment is reversed, and the defendant is absolved from the information, with costs de oficio. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, and Johns, JJ., concur.

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