

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JACINTA MATA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6300. March 02, 1911

Ponente: CARSON, J.

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CARSON, J.:

The evidence of record conclusively establishes the performance of the ceremony of marriage between the defendant, Jacinta Mata, and the complaining witness, Marcial Tanedo Tiu Chiu, and leaves no room for doubt of the existence of the alleged carnal relations between this woman and the codefendant, Quiterio Sarmiento. The judgment of the trial court convicting them of the crime of adultery must, therefore, be affirmed, unless it be held, as contended by counsel for the defendants, that the evidence also shows that the marriage between the complaining witness and Jacinta Mata was bigamous, and that in view of this fact, the carnal relations between the defendants should not be adjudged to have constituted the crime of adultery.

There is evidence in the record which undoubtedly tends very strongly to establish the contention of counsel for defendants that at the time when the complaining witness married the defendant, Jacinta Mata, he had a wife in China; but we do not deem it necessary to make an express finding in this regard, because we are of opinion that in the absence of proof of a formal judicial decree declaring the nullity of the second alleged bigamous marriage the acts complained of constitute the crime of adultery.

Article 433 of the Penal Code, defining and penalizing the crime of adultery, is as follows:

"Adultery shall be punished with the penalty of prision correccional in its medium and maximum degrees.

"Adultery is committed by the married woman who lies with a man not her husband, and by him who lies with her knowing that she is married, although the marriage be afterwards declared void."

It is quite clear from the peculiar phrasing of the last paragraph of this article, that the lawmakers intended to declare adulterous the infidelity of a married woman to her marital vows, even though it should be made to appear that she is entitled to have her marriage contract declared null and void, until and unless she actually secures a formal judicial declaration to that effect. The reason for this provision is thus stated by Groizard, in his commentary upon similar provisions contained in article 488 of the Spanish Penal Code of 1870:

"At no time does the bond of matrimony contain a defect which by itself is sufficient to dissolve the union. The marriage must be declared to be null in order that the bond may be severed. "Until it is so declared, until by competent authority in a final judgment the marriage contract is set aside, the offense to the vows taken, and the attack on the family exists - the adultery reunites the essential conditions required for its punishment. This abundantly satisfies the reason and furthermore is expressly set out in our statute."

Counsel for appellants contends that the provision under consideration is intended merely to declare that, notwithstanding the fact that the marriage is subsequently annulled because of the adulterous conduct of the woman, nevertheless the penalty prescribed by the code is to be imposed and enforced. But the language of the

article itself does not justify such a restricted construction, and an examination of the earlier provisions of the Spanish laws upon this subject, from which this article was undoubtedly drawn, disposes of the idea that such could have been the intention of the Spanish lawmaker. Law 81 of Toro, which is law 4, title 28, book 12 of the Novisima Recopilacion, prescribed that it will not serve as an excuse to the adulterers to allege and prove "by divers reasons that the marriage was null on the grounds that the contracting parties were relatives by blood or affinity within the fourth degree, or that either of them was bound by a former marriage, or has taken the vows of chastity, religious vows, or for any other reason whatever, as they ought not to have done that which they had no right to do."

In the discussion of this case among the members of the court, the question arose whether the provision of article 433 under consideration may not have been modified or abrogated by necessary implication by the publication of General Orders, No. 68, December, 1899, whereby "certain provisions respecting marriage" were put in force by the command of the Military Governor during the period of the military occupation of these Islands by the American military forces.

Section III of that Order is as follows:

"A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than the former husband or wife, is illegal and void from the beginning, unless -

"(1) The former marriage has been annulled or dissolved.

"(2) Unless such former husband or wife was absent, and not known to such person to be living for the space of seven successive years immediately preceding such subsequent marriage, or was generally reputed and was believed by such person to be dead at the time such subsequent marriage was contracted; in either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal."

Keeping in mind the conditions under which this order was published, and the objects which were sought to be obtained by its provisions, we are of opinion that it was not intended to have the effect, and that it did not have the effect of abrogating those just and humane provisions of the Spanish law which secure to the innocent party to a bigamous marriage certain rights in the communal property acquired during the existence of the bigamous relations, and which legitimate the offspring of such unions and recognize the right of inheritance of such offspring from the offending spouse. The bigamous marriage, as a marriage, is declared to be illegal and void from the beginning, but this provision is not necessarily in conflict with those statutory provisions of the Spanish law which prescribe the status of the children resulting from the bigamous relations of the party, or the rights of property arising, not as a result of the bigamous marriage but of the communal relations existing thereafter between the parties.

The gist of the crime of adultery under the Spanish law, as under the common law in force in England and the United States in the absence of statutory enactments, is the danger of introducing spurious heirs into the family, whereby the rights of the real heirs may be impaired and a man may be charged with the maintenance of a family not his own. And since, under Spanish law, legitimate heirs may be begotten of a bigamous marriage, the danger of the introduction of spurious heirs is not less real as a result of the infidelity of the wife of a bigamous marriage than it is in the case of a lawful wife; logically, therefore, the incontinence of the wife of a bigamous marriage, as long as the bigamous relations exist, was deemed by the Spanish legislator to constitute the crime of adultery, and penalized in like manner as is the marital faithlessness of a lawful wife.

The fact that the law is otherwise in those jurisdictions where legislation has been largely influenced by the doctrines and principles of the common law of England is a natural consequence of the failure of that system of jurisprudence to recognize the existence of heritable blood of the father in the fruits of a bigamous marriage. But

it would seem in those States where such children are, by-statute, legitimized, a consistent system of penal legislation would demand the penalization of the incontinence of the wife of a bigamous marriage equally with that of a lawful wife. Certainly, in this jurisdiction, a statute declaring bigamous marriages illegal and void from the beginning ought not to be held to repeal by necessary implication the provisions of the Penal Code penalizing as adulterous the incontinence of the wife of a bigamous marriage unless it be held further to repeal by necessary implication the statutes legitimizing the offspring of bigamous marriages; and as we have said no such effect can or should be given to the General Order under consideration.

We conclude, therefore, that the provisions of the code penalizing as adultery the infidelity of the wife of a bigamous marriage continue in full force and effect.

We find no error in the proceedings of the court below prejudicial to the rights of the appellants, and the judgment convicting them of the crime of adultery and the sentence imposed upon them by the trial court should therefore be affirmed.

Arellano, C. J., Mapa, Moreland, and Trent, JJ., concur.

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