

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LEANDRO DE VERA, DEFENDANT AND APPELLANT.

*G.R. No. 9754. September 29, 1914*

Ponente: ARAULLO, C.J.

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### ARAULLO, C.J.:

Leandro de Vera was charged with the crime of illegal marriage, because, according to the complaint, while legally married to Modesta Lamadrid he contracted a second marriage with Guadalupe Samarita, on or about the 21st of June, 1913, in the pueblo of Gasan, Province of Tayabas, and before his previous marriage had been legally dissolved.

Judgment was rendered in the case by the Court of First Instance of Tayabas, on February 12 of the present year, whereby defendant was sentenced, under the charge aforesaid, to the penalty of eight years and one day of prison mayor, to the accessory penalties, and to the payment of the costs. From this judgment defendant has appealed.

The only important question in controversy in this case, according to defendant's counsel, is the following: Did the defendant, Leandro de Vera, contract marriage with Modesta Lamadrid in Indan, Ambos Camarines, before marrying Guadalupe Samarita on June 21, 1913?

Defendant's counsel answers this question in the negative and in support of his contention alleges that the lower court erred, first, in admitting in evidence a certain entry made on page 127 of the marriage register of the parish of Indan, Ambos Camarines, dated January 7, 1907, and the alleged copy of the said entry, Exhibit A of the prosecution; second, in finding that on the said date, January 7, 1907, defendant, Leandro de Vera, was united in marriage to the said Modesta Lamadrid.

The introduction by the prosecution, at the trial, of the entry in the said marriage register as proof of the fact that Leandro de Vera had contracted marriage, in accordance with the ritual of the Catholic Church, with Modesta Lamadrid, in Indan, Ambos Camarines, on January 7, 1907, was effected through Father Salomon Balani, the parish priest of the church in the a forementioned pueblo, who, in such capacity, was charged with the custody and preservation of the books of the said parish. On this occasion Father Balani personally examined the said entry or record and showed it to the court, as well as the page where Father Mariano Bamba had recorded and where there appeared an entry of the solemnization of the said marriage before the acting parish priest of the said pueblo, on the date aforementioned, January 7, 1907, after compliance with the requirements and formalities imposed by the Catholic ritual. At the foot of this entry there appears Father Bamba's signature, identified by the witness, Father Balani, as being that of his predecessor in that parish, who, he testified, married the contracting parties, or, which amounts to the same thing, had solemnized the said marriage. As the book wherein the said entry or record was made was necessarily required for use by the parish of Indan, and as the prosecution had requested to be permitted to attach to the records of the case a certified copy of the said entry in place of the original, the court granted the petition and the copy presented was marked as Exhibit A of the prosecution. The defendant did not assail the authenticity of the said original entry nor that of the book which contained it, nor did

he object to the inclusion of the said certified copy among the records of the case, but merely objected to the presentation of the aforementioned original entry, though he took no exception to its admission.

It is true that section 20 of the Municipal Code, invoked by the defense, prescribes among the duties of the municipal secretaries that of keeping a civil register in which they must record all the marriages that take place in their respective municipalities, and that of issuing certificates of documents under their charge; it further provides, in connection with preceding clauses, that every person residing within the limits of the municipality who is authorized by law to celebrate marriages shall immediately forward to the municipal secretary a notification of every marriage which he celebrates. It is likewise true that section 7 of General Orders No. 68 also prescribes that the person solemnizing a marriage must draw up and sign a certificate containing a record of the same and transmit a copy of such certificate to the justice of the peace court. However, these provisions have not deprived the priests and ministers of the gospel of any religion and other persons authorized by section 5 of the same general orders, amended by General Orders No. 70, of the right nor have they been exempted from the duty of keeping registry or record books of the marriages solemnized by them, or issuing certificates of such data, with respect to these acts, as may appear in their respective registers; nor do such provisions prescribe that only, certificates of marriages recorded by municipal secretaries, in the registers of their respective municipalities and issued by them shall authenticate or be evidence of such facts in such wise that no other proof of those provided for by law may be presented or admitted at trial, when, through the omission or fault either of the municipal secretary himself or of the person who solemnized the marriage, it was not entered or recorded in the register to which these provisions refer.

Civil marriage is not the only form established in these Islands, for, as aforesaid, priests or ministers of the gospel of any religion are empowered to solemnize marriages, according to the laws now in force. This power implies that they may keep registers of the marriages celebrated by them and issue certificates therefrom. On the other hand, no record can be made in the civil register of municipal secretaries but of the marriages reported to them by those who solemnized them, so that the certificates issued by the said officials attest the entry of marriages so reported to them in the book used for the purpose. This registration or formality may sometimes be omitted by the person charged therewith, thus rendering it impossible for the municipal secretary to issue a certificate of the marriage. There is, therefore, no reason whatever why, in the absence of such a certificate, as occurs in the case at bar, the best proof of the solemnization of the marriage should not be the entry or record made in the book kept for the purpose by the priest or minister who solemnized it, or the certificate, issued in due form by a competent person, of such entry or record, in place of the certificate which the municipal secretary could have issued if the marriage had been recorded in the register under his charge, in conformity with the provisions of the said section 20 of the Municipal Code invoked by defendant's counsel.

Bishop, in his work on Marriage, Divorce and Separation, (vol. 1, par. 1009), says: "The statutes of many of our States make it the duty of those to whom the solemnization of marriage is entrusted to keep a record of their marriages, and transmit lists of them from time to time to a general recording officer, to be by the latter recorded. Since, therefore, the first record is made and kept, in pursuance of law, by one who as to marriage solemnization is a public officer, no reason appears why it, or his certificate of its contents, should not be just as good in evidence as the general record, or the certificate thereof."

Moreover, as the marriage register wherein, appears the record of the marriage alleged to have been solemnized between Leandro de Vera and Modesta Lamadrid in the pueblo of Indan, Ambos Camarines, on January 7, 1907, does not belong to Father Mariano Bamba, who, according to that entry, solemnized the said marriage and by whom, as the parish priest of the said pueblo, the said entry appears to have been signed, but belongs to the Roman Catholic Church, which is a juridical entity (*Barlin vs. Ramirez*, 7 Phil. Rep., 41), and of which Father

Bamba was then the representative in the said pueblo, the introduction of the said entry as well as of the book containing it, by Father Salomon Balani, the parish priest of the said pueblo and successor of the said Father Bamba on the date of the trial, and his testimony with respect to the authenticity of the document and the truth of the facts therein set forth, produce the same effects as if such presentation had been made and such testimony had been given by the said Father Mariano Bamba, inasmuch as they relate to an act performed by a representative of that juridical entity in the exercise of his ecclesiastical duties and recorded in a book of the said entity during the course of its business.

In the case of *Blackburn vs. Crawford's Lessee* (3 Wall., 175), where the appellant objected to the admission in evidence of an entry made in a baptismal register because the minister or priest who had made the said entry was still living and was within reach or could be called and should have been examined with regard to the point at issue, the court said:

"They (the appellants) proved that the book was the baptismal register of St. Patrick's Church, in the city of Washington; that the ritual and usage of the church required such a register to be kept, and baptisms to be entered in it; and that this entry was in the handwriting of the Rev. John P. Donelan, who, at this date, was assistant pastor of the church. The plaintiff in error objected to the evidence as inadmissible for any purpose. If admitted, he claimed that it was competent to prove only the fact and date of the baptism. The court overruled both objections and admitted the entry as evidence, 'as well of the fact of the said baptism, and of the date thereof, as of the fact that the said George T. Crawford was baptized as the lawful child of Thomas B. Crawford and Elizabeth Taylor, his wife.'

"The register was admissible upon the ground that the entries in it were made by the writer in the ordinary course of his business."

Bishop, in his aforecited work (vol. 1, par. 1013), added with reference to the decision above mentioned: "The same rule, it was deemed, would be equally applicable to records kept, pursuant to ecclesiastical rule, within any other religious denomination."

In another case, that of *Kennedy vs. Doyle* (92 Mass., 161), where the priest who made the entry of the baptism in the proper register had already died when the said entry was presented as evidence, the court said: "The entry of a baptism, contemporaneously made by a Roman Catholic priest, in the discharge of his ecclesiastical duty, in his church records of baptisms, is competent evidence after his death, of the date of the baptism, if the book is produced from the proper custody; although he was not a sworn officer, and the record was not by law required to be kept."

Lastly, in the case of *Jacobi vs. Order of Germania* (26 N. Y. Sup., 318), where an attempt was made to present a baptismal certificate to prove the age of the person interested in the suit, the court said: "These certificates were proven to have been written in the official records of the church books of Katzhutte, principality of Schwarzburg Rudolstadt. This record is kept by direction of the supervisor of schools and churches, and was kept by the pastor of the parish, and has been kept from time immemorial. At the date of the records a Mr. Kuhne was pastor, and the records are in his handwriting. The books were delivered by him to the successor as pastor of the parish, the Reverend M. Huke, who testifies to the truth of the record, and to the copies from it. The certificates of baptism of the children of the plaintiff, including the deceased son, were made by the pastors Ortloff and Toupell, and are without change or erasure, and are admitted to be true copies, and admissible if the original record be legal evidence. We think the certificates should have been received. If a record is of a public nature, such as this of a church, an examined copy of the entries relied on without production of the original is admissible."

In the case at bar the book or register of marriages which the prosecution presented at the trial, through Father Salomon Balani, and in which, on page 127 thereof, is found the entry or record of the marriage In question, is the

sixth one of its kind of the Roman Catholic parish of Indan, Ambos Camarines. It was opened on June 11, 1899, was authorized by the bishop of the diocese of the same church, was kept in the archives of the said parish and records were therein made in conformity with the rules and precepts of the Roman Catholic religion. The entry in question was made and signed by the then parish priest of the pueblo, Father Mariano Bamba, on the same date on which the marriage referred to was celebrated, in the course and fulfillment of his ecclesiastical duties, in accordance with the ritual and usages of the said Roman Catholic Church and in connection with the duties imposed upon persons authorized to solemnize marriages, pursuant to the provisions of the aforementioned General Orders No. 68, and in due compliance with such duty. The copy introduced at the trial, in substitution of the said entry, is a literal one and was issued and certified by Father Salomon Balani, parish priest of the said pueblo of Indan, successor of Father Mariano Bamba who solemnized the said marriage, and charged in his capacity of parish priest with the custody of the books kept in the archives of the parish, and also of the parish seal. Father Salomon Balani was present at the trial when the prosecution requested that the said copy be attached as evidence to the record of the case, in place of its original which, as aforesaid, was then and there presented with the book that contained it; and the defendant made no objection to that request, but merely to the introduction of the original entry or record shown in the said book.

Taking into account, then, the provisions of the existing laws on marriage, contained in General Orders Nos. 68 and 70 and in the Municipal Code, previously mentioned, as well as the doctrine established in the decisions hereinabove cited, which latter refer to baptismal registers, although they are applicable to the case at bar on account of the similarity between such registers and those of marriages, a doctrine that should be accepted and applied in the courts of these Islands, in view of the present character of the institution of marriage under the said general orders, which differs from that which it possessed under the previous system of legislation; and duly considering the several forms of marriage authorized by the same general orders, in connection with the formalities established by the said new legislation for the purpose of recording marriages in a general register, provided for in an incomplete and deficient manner even by those provisions, there can be no doubt whatever that the entry of a record contained in the said register of the Roman Catholic parish of Indan, Ambos Camarines, and which records the marriage contracted by Leandro de Vera and Modesta Lamadrid on January 7, 1907, before Father Mariano Bamba, is competent evidence of the said fact, and the trial court incurred no error whatever by admitting it as such and likewise, in substitution of the original of the said entry or record, the certified copy of the same, issued by Father Salomon Balani, Exhibit A of the prosecution.

Though the said document constitutes full proof of the facts therein set forth, the defense has alleged, nevertheless, that the Leandro de Vera mentioned in this document, Exhibit A, is not the same accused referred to in Exhibit B of the prosecution, or, in other words, that he is not the same man who contracted marriage with Guadalupe Samarita in Gasan, Tayabas, on June 21, 1913, because in the first exhibit reference is made to one Leandro de Vera who on that date was a bachelor, while in the second exhibit, marked B, it is stated that the person who was united in marriage to Guadalupe Samarita was a widower, and the defendant, according to his testimony at the trial, contracted his first marriage with one named Ana Lirag, in 1894, in the parish of Binondo, and, after her death in 1904, married the aforesaid Guadalupe Samarita, on June 21, 1913, in the pueblo of Gasan.

In the first place, the defendant himself testified on the witness stand that about the year 1906, that is, two years after he became a widower, according to his statement, through the death of his first wife, Ana Lirag, and while he was in Indan, Ambos Camarines, he separated from a woman named Romana Sureta, with whom he had been living, on account of some trouble he had with her, and then united conjugally with Modesta Lamadrid, whom he intended to marry, so much so that he even solicited from the bishop of Nueva Caceres a dispensation of the marriage bans, which was delivered to the said Modesta, and that they thereupon decided to get married the following year; but that witness, having found that Modesta was unfaithful to him, separated from her and,

leaving Indan, went to Gasan, where he married Guadalupe Samarita. So that, by the defendant's own statements, it appears that he was in Indan, Ambos Camarines, after the death as related by him of his first wife, Ana Lirag, and that while he was in the said pueblo he united conjugally with Modesta Lamadrid, although he said that he did not contract marriage with her.

In the second place, Father Salomon Balani, the parish priest of Indan, pointed out the defendant at the trial as being the same Leandro de Vera whom he had known since they had been in Talisay, in the above-mentioned province, in 1902 or 1903, and stated that he knew that this man was married and that he was also personally acquainted with His wife, Modesta Lamadrid, and that the last time that witness had seen her was when he was about to leave Indan, on January 30 of the present year, to appear and testify in this case, on which occasion this same Modesta Lamadrid was in his convent with the sheriff who there subpoenaed her and to whom she then said that she was willing to appear in court, but that she lacked the means wherewith to defray the cost of the trip.

Finally, both from the certificate issued by the justice of the peace of the municipality of Gasan, Tayabas, on June 21, 1913, Exhibit B of the prosecution, relative to the marriage contracted before him on the same date by Leandro de Vera with Guadalupe Samarita, and from the certified copy, Exhibit A of the prosecution, issued by the parish priest Father Salomon Balani on December 23, 1913, concerning the marriage contracted by Leandro de Vera with Modesta Lamadrid in the church of the pueblo of Indan, Ambos Camarines, on June 7, 1907, it appears that the parents of the said Leandro de Vera are Gaspar de Vera and Lorenza Aguilar. So that it has been clearly proved that the same man who in June, 1907, was married to Modesta Lamadrid, in Indan, Ambos Camarines, was the one who afterwards, in June, 1913, contracted marriage with Guadalupe Samarita, in Gasan, Tayabas, and that this man was no other than the defendant in this case, Leandro de Vera. Moreover, it was disclosed by means of these two documents that the defendant, if it was true that, in 1904, he had become a widower by the death of Ana Lirag, pretended to be a bachelor at the time of his marriage with Modesta Lamadrid in 1907 and afterwards pretended to be a widower, while the said Modesta Lamadrid was still living, on his marrying Guadalupe Samarita in 1913, which statements, as we have seen, were made by him for the purpose of alleging at the trial that he was not the same Leandro de Vera who had married Modesta Lamadrid, because he was a widower through the death of his first wife, Ana Lirag, when he married Guadalupe Samarita.

Consequently, the trial court has incurred no error by holding it to have been proved that on January 7, 1907, the defendant, Leandro de Vera, was united in marriage to Modesta Lamadrid, and that, while lawfully married to her and without this marriage having been legally dissolved, he contracted a new marriage with Guadalupe Samarita on June 21, 1913.

The defendant being guilty of the crime of illegal marriage, provided for and punished by article 471 of the Penal Code, with no modifying circumstance to consider in the commission of the said crime, the penalty imposed upon him by the lower court, such as it is in the medium degree, with the accessories of the law that are mentioned in the judgment appealed from, is proper.

We therefore affirm the said judgment, with the costs against the appellant.

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

Carson, J., concurs in the result.

**CONCURRING****MORELAND, J.**

I agree in general with the decision. I hesitate, however, to call a certificate of marriage the "best" evidence of the marriage.

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