

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICTORIANO JOANINO, DEFENDANT AND APPELLANT.***G.R. No. 9762. August 03, 1914*

Ponente: JOHNSON, J.

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This defendant was charged with the crime of bigamy, was arrested, duly arraigned, tried, found guilty, and sentenced by the judge of the Court of First Instance of the Province of Nueva Ecija to be imprisoned for a period of eight years and one day of prison mayor, with the accessories of the law, and to pay the costs. From that sentence the defendant appealed to this court and makes three assignments of error, each of which, however, raises a question of fact only, relating to the sufficiency of the proof adduced during the trial of the cause to support the sentence imposed.

From the evidence it appears that on or about the 22d day of May, 1890, the defendant was joined in the bonds of holy matrimony to one Hipolita Rosario; that he continued to live with the said Rosario as her husband until the year 1896, or 1897, when he was deported by the Spanish Government from the Philippine Islands to the island of Guam; that he remained in the island of Guam until the year 1901 or 1902, when he returned to the Philippine Islands; that while he remained in the island of Guam he acted as a clerk or escribiente in the court of first instance in said island; that when he returned to the Philippine Islands he found that his wife, Hipolita Rosario, had been living and cohabiting with one Gregorio Malinit, and that as a result of such illicit cohabitation the said Hipolita Rosario had given birth to two children during the absence of the defendant; that within a short period after the return of the defendant from the island of Guam, he, being informed of the illicit relations of his wife with the said Gregorio Malinit, commenced proceedings to be divorced from his wife, Hipolita Rosario, in the Court of First Instance of the Province of Pangasinan; that after the trial of the said divorce proceedings, the court found that the facts justified the petition of the plaintiff (the defendant, Victoriano Joanino) and granted the divorce prayed for; that thereafter, on the 9th day of May, 1908, he was joined in wedlock with one Maria Roque; that at the time of the second marriage the said Hipolita Rosario was still living.

During the trial of the cause the defendant admitted all of the foregoing facts. He attempted, however, to justify his second marriage upon the ground that he believed that when a divorce had been granted him he had a right to remarry. He alleged that while he was in the island of Guam he had known some cases in which a divorce had been granted and where the parties had remarried. He admitted, however, that at the time he was granted a divorce from his wife, Hipolita Rosario, he had been informed by the court that the divorce which had been granted him did not permit him to remarry; that the divorce which had been granted him amounted to nothing more or less than a decree of separation—a decree of separation from bed and board simply.

In this court the defendant, through his attorney, has filed a very interesting brief, in which he attempts to justify his second marriage upon the ground of his belief of the fact that when a divorce had been granted to parties under the laws of the Philippine Islands they were permitted to remarry during the life of the former spouse. He presents much argument and many facts which appeal to the sympathy of the court. His arguments and his facts can in no

way influence the decision of the court when there are positive rules of law governing in such cases. His arguments would be proper in asking for clemency from the executive department of the Government. He cites no authorities, either statutory or judicial, in support of his contention that the defendant, having been divorced simply from his former spouse, had a right to remarry.

Under the laws in force in the Philippine Islands, the granting of a divorce does in no way annul the marriage. The divorce does not destroy the marriage vinculum. (Law 3, Title 2, Partida 4.)

Said Law 3, Title 2, of the fourth Partida, among other things, provides the following: "Yet, with all this, they (husband and wife) may separate, if one of them commit the sin of adultery,; or join any religious order, with the consent of the other, after they have known each other carnally. And notwithstanding they separate for one of these causes, no longer to live together, yet the marriage is not dissolved on that ground." (See also Law A, Title 10, Partida 4.)

We find also that Law 7, Title 2, Partida 4, provides, among other things, as follows: "So great is the tie and force of marriage, that when legally contracted it cannot be dissolved, notwithstanding one of the parties should turn heretic, or Jew, or Moor, or should commit adultery. Nevertheless, from any of these causes they may be separated by a judgment of the church, so as to live no longer together, nor to have any carnal intercourse with one another, according to what is said in the title on the clergy, in the law which begins with the words 'otorgandose algunos.' "

In the case of *Benedicto vs. De la Rama* (3 Phil. Rep., 34), and in numerous other cases, this court has held that the above-quoted provisions of the Partidas govern the question of divorce in the Philippine Islands. The change of sovereignty from the Spanish to the American, even though such change had the effect to transfer the power of granting divorces wholly to the civil authorities, did in no way affect or change the effect of divorce. The effect of a divorce granted under the law has not been changed, even though the ecclesiastical courts no longer exercise the power of granting a divorce.

We find nothing either in the record or in the law governing the facts in the present case, which justifies a reversal or a modification of the sentence imposed by the lower court.

The same is, therefore, hereby affirmed, with costs.

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

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