

4 Phil. 735

[G.R. No. 1850. September 06, 1905]

**NATIVIDAD AGUILAR, PLAINTIFF AND APPELLANT, VS. PLACIDO LAZARO,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

This action was brought to secure a declaration of the nullity of a marriage.

Judgment was rendered in the court below against the plaintiff, and he has brought the case here by a bill of exceptions.

The appellant accepts as the facts in the case those stated in the decision of the court below, which so far as the said facts are concerned, is as follows:

“Yo encuentro que en la fecha del matrimonio la demandante tenia diez y nueve anos y tres meses de edad. Ella era hija natural de Julian Aguilar y habia residido a lado de su familia en Molo hasta poco antes de uno o dos dias de su casamiento debiendo haber sido maltratada, abandono ella su casa un dia o dos antes de su matrimonio y se fue a la de una tia en la misma villa de Molo. El demandado era un residente de Molo y habia sido conocido por la demandante desde la ninez y hacia dos o tres anos antes del matrimonio habia estado correspondiendo su especial atencion. Mientras ella estaba en la casa de su tia el se fue alli y sabiendo que ella habia abandonado la casa de su padre y el motivo de ello, informo a ella que el unico camino para evitar volver era ir con el al Cura Parroco y casarse los dos. Ella consintio a esta proposicion y se fueron a la Iglesia y se casaron en forma legal. Volvieron entonces a la casa de la tia de ella donde el

la dejo prometiendo volver por la tarde pero no volvio jamas ni siquiera le visito a ella desde el tiempo del casamiento ni vivio con ella como su esposo. Ella no obtuvo el consentimiento de su padre natural ni de su madre para contraer matrimonio.”

General Orders, No. 68, is dated December 18, 1899, and it is expressly declared that it shall be in force from and after its date. This marriage was celebrated on the 31st of December, 1899, and is accordingly governed by the provisions of this General Order. Section 1 of the Order provides that males of the age of 14 years and females of the age of 12 years are capable of consenting to and consummating marriage. Section 7 provides that the marriage shall not be performed when either of the parties is under the age of 21 years, unless the consent of the parent or guardian of such minor is obtained. Section 10 enumerates the cases in which a marriage may be declared void. Paragraph 1 of that section is as follows:

“That the party in whose behalf it is sought to have the marriage annulled was under the age of legal consent, and such marriage was contracted without the consent of his or her parents or guardian, or person having charge of him or her; unless, after attaining the age of consent, such party for any time freely cohabited with the other as husband or wife.”

The question in the case is whether this marriage can be annulled under section 10, the consent of the parents of the woman not having been obtained. The phrase under the age of legal consent,” used in paragraph 1 of said section 10, has a well-defined meaning in the English and American law. Concerning the meaning of that phrase there can exist no doubt. It means the age at which the parties can give their own consent to the marriage, and it does not mean the age under which they must seek the consent of their parents or guardians. In section 10 the phrase refers to the ages of 12 and 14 years mentioned in section 1. It follows that a case in which the parties were above those ages, but in which one of them was under the age of 21 years, and did not obtain the consent of his or her parents, is not covered by

said paragraph 1. Neither is it covered by any other paragraph of that section. Section 2 enumerates the marriages which are void from the beginning. The case at bar is not mentioned in that section.

The result is that although section 7 declares that a marriage shall not be celebrated in such a case as the present without the consent of the parents or guardian, yet there is nothing in the law which says that such a marriage, if celebrated without such consent, shall be void or voidable. It must therefore be valid. This was the law stated in the Civil Code in those articles which were suspended by the decree of December 29, 1889, and finally repealed by this General Orders, No. 68. Article 45 prohibited a marriage in a case like the present, but article 50 provided that if, notwithstanding that prohibition, the parties should be married, the marriage was nevertheless valid.

The English text of paragraph 1 of section 10 furnishes no room for doubt, but some doubt, perhaps, may have arisen through the official translation of that paragraph. Such translation is as follows:

“Que el conyuge en cuyo favor se pida la nulidad del matrimonio sea menor de la edad marcada por la ley, habiendose contraido el matrimonio sin el consentimiento de los padres, tutor o persona a cuyo cargo este dicho conyuge.”

It will be noticed that the English phrase “age of legal consent” is translated by the phrase “la edad marcada por la ley.” There are two ages referred to in the law; one, in section 7, the age of 21 years, and the other, in section 1, the ages of 12 and 14 years, respectively, and there might be some doubt as to which one reference was made. This doubt, perhaps, would be increased by the statement in said paragraph referring to the consent of the parents. Just what the effect of that provision is we leave to some future case for resolution. It is sufficient to say here that the English text is clear, and under it the marriage in question can not be annulled.

We call attention to the fact that in the translation of this

General Order, as it appears in the Spanish edition of volume 1 of the Public Laws, there have been omitted the last two lines of paragraph 1 of section 10.

The judgment of the court below is affirmed, with the costs of this instance against the appellant, and after the expiration of twenty days judgment should be entered in accordance herewith, and the case remanded to the court below for the execution of the judgment. So ordered.

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