

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

[G.R. No. 34259. March 21, 1931.]

Intestate Estate of the late E. Randolph Hix. ANNIE COUSINS HIX, *Petitioner-Appellant*, v. A. W. FLUEMER, *Opponent-Appellee*.

Harvey & O'Brien and Gibbs & McDonough for *Appellant*.

C. A. Sobral for *Appellee*.

SYLLABUS

1. MARRIAGE AND DIVORCE; RESIDENCE IN BAD FAITH; NULLITY OF DECREE. — The residence acquired in a state of the American Union by a husband, who, for the purpose of obtaining a divorce, abandoned the country wherein he had his matrimonial domicile and his wife, who was living apart him by mutual consent, and then returned to said matrimonial domicile after obtaining a divorce, continued residing therein and engaging in business, was bona fide residence, and did not confer jurisdiction upon the court even if he alleged in the complaint for divorce that it was his intention to reside permanently in said state.

2. D.; ID.; ID.; JURISDICTION; SUMMONS. — The summons by publication in a complaint for divorce, filed in a state by the husband who had gone to said state, abandoning his matrimonial domicile where his wife continued to reside, did not confer jurisdiction upon the court over the person of said wife when she entered no appearance in the case, and the decree issued by said court dissolving the marriage was not binding upon her.

3. ID.; ID.; ID.; ID. —A decree of divorce issued by a court of any state or territory of the American Union, or of a foreign country, may be impeached in another case for lack of jurisdiction of said court over the subject matter, or over the person of the defendant, or for fraud committed by whoever obtained it.

DECISION

VILLA-REAL, J.:

The petitioner, Annie Cousins Hix, appeals from the order issued by the Court of First Instance of Manila in the course of the intestate proceedings of E. Randolph Hix, the dispositive part of which reads as follows: ___

"In view of the foregoing considerations, the court holds: (1) That the divorce decree granted by the Circuit Court of Randolph County of the State of West Virginia awarding the deceased Hix a divorce from his wife, Annie Cousins Hix, is valid in this jurisdiction; (2) that since the latter is legally divorced from her late husband, she is not entitled to the pension she asks as his widow; and (3) that the motion for reconsideration filed by her counsel on September 24, 1929 asking for an allowance for support must be denied."___

The appellant assigns the following alleged errors as committed by the court below in said order, to

wit:___

"1. The trial court erred in assuming that E. Randolph Hix was a bona fide resident of the State of West Virginia at the time he instituted an action for divorce against his wife in the Circuit Court of Randolph County, West Virginia, in the year 1925.

"2. The trial court erred in not finding that E. Randolph Hix was domiciled in, and resident of, the City of Manila, Philippine Islands, he having arrived here in 1910 and died here in 1929, during which period of time he had established his home and had engaged in business here.

"3. The trial court erred in recognizing the decree of divorce secured by E. Randolph Hix from the Circuit Court of Randolph County, West Virginia.

"4. The trial court erred in refusing to apply to this case the jurisprudence laid down by this Honorable Court in the cases of Ramirez v. Gmur (42 Phil., 855) and Gorayeb v. Hashim (50 Phil., 22).

"5. The trial court erred in misapplying section 306 of the Code of Civil Procedure and in not construing the same in relation with sections 309 and 312 of the same Code."___

The relevant facts necessary to decide the questions raised in this appeal are the following: ___

E. Randolph Hix was born in the year 1866 in Union, South Carolina, where he lived with his parents until the age of 15. They then removed to Rye, Westchester County, New York. A few years later, he was sent to the University of Lehigh, and to the Massachusetts Institute of Technology, leaving the latter before graduating, to accept employment with the Edison Company where he worked for about three years. After resigning from his position he opened an office and engaged in private work as consulting engineer and contractor until the year 1895, when he removed to Wheeling, West Virginia, to engage in the general engineering business as a member of the firm of Hogg & Hix, surveyors.

After fifteen years of residence in Wheeling, he took an examination and received an appointment as coal expert for the Philippine Government, arriving at Manila some time during the year 1910. While E. Randolph Hix was living in Manila in 1912, he met the appellant and married her in Shanghai, China, on or about June 24, 1913, returning to Manila where they established their domicile. A son was born of this union in Boston, Massachusetts, on July 1, 1915, named Preston Randolph Hix, while she was in the United States where she had gone on the month of May of the same year to visit her family and the mother and sister of her husband. The appellant returned to Manila in November, 1916, and continued to live with the deceased as husband and wife.

On March 16, 1919, the appellant left for Canada, where she remained with their child until February, 1921, when she returned to Manila in a very precarious condition of health and was given medical treatment in the St. Paul's Hospital at the expense of her husband. After she regained her health, she lived apart from her husband by mutual consent.

On December 7, 1922, the appellant instituted an action in the Court of First Instance of Manila against her husband, E. Randolph Hix, for the purpose of compelling him to provide adequate support for herself and her son, Preston Randolph Hix. In that case and in open court the following stipulation was entered into between the parties: ___

"It is stipulated and agreed that the defendant and plaintiff are both residents of the City of Manila; that they were married on the 24th day of June, 1913, in Shanghai China; that plaintiff is the lawful wife of defendant; that one son named Preston R. Hix was born on July 1, 1915, of the said marriage, who is still living; that plaintiff and defendant are now and have been, since about the middle of December, 1921, living separate and apart from each other by mutual consent, though the greater part of the time since December, 1921, up to November, 1922, they took their meals together; that by mutual consent they will continue to live apart from each other; that as long as the child will remain in the Philippine Islands, the father will have the opportunity to see him twice a week, this without prejudice of Mrs. Hix taking the child to the States. In this case, she will keep the father

informed as to the condition of the child by writing him once a month."___

The trial court adjudicated the case in her favor and ordered the defendant E. Randolph Hix to pay her the sum of P500 in advance on or before the 5th day of each month for the maintenance of herself and her son. The case was appealed to this court, and on February 27, 1924, the judgment of the court below was affirmed. 1 During the month of December, 1922, while the proceedings in said case were pending, the office held by E. Randolph Hix in the Government was abolished, and he went into private practice, acting as coal expert for the Manila Electric Company and other private concerns until March, 1924, when he left for West Virginia, leaving his wife and child in Manila, and his business in the hands of his employee. A. W. Fluemer, the opponent and appellee, for the purpose of residing there and suing for a divorce.

In the month of May, 1925, that is, one year after his arrival at Elkins, West Virginia, the deceased filed a complaint for a divorce with the Circuit Court of Randolph County, West Virginia, alleging, among other things, that he was a citizen of the United States of America, and of the State of West Virginia, and had been for more than one year prior to the date of the institution of the suit, an actual bona fide citizen and resident of Randolph County, West Virginia; that Annie Cousins Hix was a resident of the City of Pekin, China; that on December 1, 1921, his wife had abandoned and deserted him, taking up a separate residence and declining to live or have anything to do with him; that he; Hix, freely, voluntarily, and adequately supported his wife and child, paying her the sum of \$175 per month; that he intended to reside permanently in the United States, and that it was with such intention that he had returned to West Virginia; that he and his wife had been living apart for three years, and that she had rejected his offer of reconciliation. As the appellant was not a resident of the State of West Virginia, she was summoned upon the complaint for divorce by publication, and not having entered an appearance in the case, either personally or by counsel within the term fixed, the Circuit Court of Randolph County, West Virginia, rendered judgment against her in 1925 declaring her marriage with the plaintiff dissolved. Having procured the divorce, E. Randolph Hix returned to Manila in 1927, where he continued to live and engaged in business up to the time of his death in the year 1929.

The first question to decide in this appeal, raised by the first two assignments of error is, whether the Circuit Court of Randolph County in West Virginia acquired jurisdiction to take cognizance of the complaint for divorce filed by E. Randolph Hix and to render a valid and binding judgment against the petitioner and appellant, Annie Cousins Hix.

The pertinent part of section 306 of the Code of Civil Procedure provides as follows:___

"SEC. 306. Effect of Judgment. — The effect of a judgment or final order in an action or special proceeding before a court or judge of the Philippine Islands or of the United States, or of any State or Territory of the United States, having jurisdiction to pronounce the judgment or order, may be as follows:___

"1. In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title of the thing, the will or administration, or the condition or relation of the person:"___

Section 334, No. 15, of said Code states:___

"SEC. 334. Disputable Presumptions. — The following presumptions are satisfactory, if uncontradicted, but they are disputable, and may be contradicted by other evidence:___

x x x

"15. That a court, or judge acting as such, whether in the Philippine Islands or elsewhere, was acting in the lawful exercise of his jurisdiction."___

These provisions show that in order that a judgment of a court or judge of any state of the American Union with respect to the personal or legal condition of a particular person may be conclusive and constitute *res judicata*, it is essential that the court have jurisdiction, and such jurisdiction is presumed in the absence of evidence to the contrary.

Section 312 of the Code of Civil Procedure provides:___

"SEC. 312. How judicial Record May be Impeached. — Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, of collusion between the parties, or of fraud in the party offering the record, in respect to the proceedings."___

One of the conditions for the validity of a decree of absolute divorce is that the court granting it has acquired jurisdiction over the subject matter, and to this end the plaintiff must be domiciled in good faith, and for the length of time fixed by the law, in the state in which it was granted. E. Randolph Hix was domiciled in the City of Manila where he lived apart from his wife and child, by mutual consent, and here he had his business. He removed to the State of West Virginia leaving his aforesaid wife and child and his business behind, for the purpose of obtaining an absolute divorce, which he did in 1925, returning in the year 1927 to reside in the City of Manila, and continuing his business.

Although the opponent and appellee attempted to show that E. Randolph Hix went to West Virginia with the intention of residing there permanently, as alleged in the complaint for divorce, such an intention was contradicted by the fact that before leaving the City of Manila, he did not liquidate his business, but placed it under the management of said opponent, and once having obtained his divorce, he returned to the City of Manila to take up his residence and to continue his aforesaid business, and that his purpose in going to West Virginia was to obtain a divorce.

In *Gorayeb v. Hashim* (50 Phil., 22), this court laid down the following doctrine:___

"3. ID.; ID.; ID.; ID.; NULLITY OF DIVORCE. — Doctrine of *Ramirez v. Gmur* (42 Phil., 855), followed, to the effect that the court of a country in which neither of the spouses is domiciled and to which one or both of them may resort merely for the purpose of obtaining a divorce has no jurisdiction to determine their matrimonial status, and the divorce granted by such a court is not entitled to recognition here.

"4. ID.; ID.; ID.; ID.; ID.; PHILIPPINE RESIDENTS WHO HAVE BEEN MARRIED ABROAD. — The foregoing rule is applicable to married people who are domiciled in the Philippine Islands, although they may have contracted marriage elsewhere."___

This ruling has not been weakened in the present case by the fact that E. Randolph Hix was a citizen of the United States and of the State of West Virginia, since it is not the citizenship of the plaintiff for divorce which confers jurisdiction upon a court, but his legal residence within the State where he applies for a divorce. That E. Randolph Hix himself believed he had relinquished his former legal residence in West Virginia, of which he was a citizen, upon establishing his marriage domicile in the City of Manila, Philippine Islands, is shown by the fact that he had to reestablish his residence in said State for the length of time fixed by the law in order to be able to file his complaint for a divorce.

Since E. Randolph Hix was not a bona fide resident of the State of West Virginia, the divorce decree he obtained from the Circuit Court of Randolph County, is null and void, said court having failed to acquire jurisdiction over the subject matter.

But even if his residence had been taken up in good faith. and the court had acquired jurisdiction to take cognizance of the divorce suit, the decree issued in his favor is not binding upon the appellant; for the matrimonial domicile of the spouses being the City of Manila, and no new domicile having been acquired in West Virginia, the summons made by publication, she not having entered an appearance in the case, either personally or by counsel, did not confer jurisdiction upon said court over her person.

In *Haddock v. Haddock* (201 U. S., 562), the United States Supreme Court laid down the following doctrine: ___

"The husband and wife being domiciled in New York, the husband left the wife, acquired, in good faith, after a lapse of years, a domicile in Connecticut, and obtained in that State, and in accordance with its laws, a judgment of divorce based on constructive, and not actual, service of process, on the wife, who meanwhile remained domiciled in New York and never appeared in the action. The wife subsequently sued for divorce in New York and obtained personal service in that State on the husband who pleaded the Connecticut judgment. Held,

"Without questioning the power of the State of Connecticut to enforce the decree within its own borders, and without intimating any doubt that the State of New York might give it such a degree of efficacy that it might be entitled to in view of the public policy of the State, that the Connecticut decree, rendered as it was without being based on personal service of the process on, and therefore without personal jurisdiction of the court over, the wife, was not entitled to obligatory enforcement in the State of New York by virtue of the full faith and credit clause of the Federal Constitution.

"A suit for divorce brought in a State other than that of domicile or matrimony against a wife who is still domiciled therein is not a proceeding in rem justifying the court to enter a decree as to the res, or marriage relation, entitled to be enforced outside of the territorial jurisdiction of the court." ___

Without deciding whether or not clause IV of the Constitution of the United States, with reference to the full faith and credit to be given to judgments of the courts of the States of the American Union is applicable to the Philippine Islands, we may say that the ruling has the same force and scope as that of international comity, which must in any case be taken into account in considering the recognition to be given in the Philippine Islands to judgments of foreign courts. (Section 311, Act No. 190.)

The divorce decree issued by the Circuit Court of Randolph County, West Virginia, may also be impeached by evidence of fraud, according to section 312 of the Code of Civil Procedure, quoted above.

E. Randolph Hix alleged in his complaint for a divorce filed with the aforementioned court, that on December 1, 1921 his wife had abandoned and deserted him, living separately and declining to live or have anything to do with him; that she was a resident of the City of Pekin, China; and that he freely and voluntarily provided adequately for her and their son, paying her \$175 per month. These allegation, being false, tended to deceive and did in fact deceive the aforesaid Circuit Court of Randolph County in West Virginia into granting the decree of divorce applied for, because, had he alleged in his complaint that his wife lived apart from him by mutual consent, as was a fact, said court would not have granted the divorce, since in the case of *Bacon v. Bacon* (68 W. Va., 747; 70 S. E., 762), the Supreme Court of West Virginia laid down the doctrine that separation by mutual consent does not constitute desertion or abandonment before the law. (See also *Corpus Juris*, vol. 19, page 64.)

For the foregoing considerations, we are of opinion and so hold: (1) That the residence acquired in a state of the American Union by a husband, who, for the purpose of obtaining a divorce, abandons the country wherein are his matrimonial domicile and his wife, who is living apart from him by mutual consent, and then returns to said matrimonial domicile after obtaining a divorce, continues residing therein and engaging in business, is not bona fide residence, and does not confer jurisdiction upon the court even if he alleges in the complaint for divorce that he intends to reside permanently in said state; (2) that the summons by publication in a complaint for divorce, filed in a state by the husband who has gone to said state, abandoning his matrimonial domicile where his wife continues to reside, does not confer jurisdiction upon the court over the person of said wife when she has not entered an appearance in the case, and the decree issued by said court dissolving the marriage is not binding upon her; and (3) that a decree of divorce issued by a court of any state or territory of the American Union, or of a foreign country, may be impeached in another case for lack of jurisdiction in said court over the subject matter, or over the person of the defendant, or for fraud in obtaining it on the part of

the person procuring it.

Wherefore, the judgment appealed from is reversed, and it is held that the decree of divorce issued by the Circuit Court of Randolph County, West Virginia, is null and void in this jurisdiction, with costs against the appellee. So ordered.

Avanceña, *C.J.*, Street, Villamor and Romualdez, *JJ.*, concur.

Malcolm and Ostrand, *JJ.*, concur in the result.

Endnotes:

1. Cousins Hix v. Randolph Hix, G.R. No. 21483, not reported.