Republic of the Philippines
SUPREME COURT
Manila

**EN BANC**

**G.R. No. L-6768 July 31, 1954**

**SALUD R. ARCA and ALFREDO JAVIER JR.,***Plaintiffs-Appellees*, *v.* **ALFREDO JAVIER,***Defendant-Appellant*.

*David F. Barrera for appellant.*
*Jose P. Santillan for appellees.*

**BAUTISTA ANGELO, *J.*:**

Dissatisfied with the decision of the Court of First Instance of Cavite ordering him to give a monthly allowance of P60 to plaintiffs beginning March 31, 1953, and to pay them attorney's fees in the amount of P150 defendant took the case directly to this Court attributing five errors to the court below. This implies that the facts are not disputed.

The important facts which need to be considered in relation to the errors assigned appear well narrated in the decision of the court below which, for purposes of this appeal, are quoted hereunder:

> On November 19, 1937, plaintiff Salud R. Arca and defendant Alfredo Javier had their marriage solemnized by Judge Mariano Nable of the Municipal Court of Manila. At the time of their marriage, they had already begotten a son named Alfredo Javier, Junior who was born on December 2, 1931. Sometime in 1938, defendant Alfredo Javier left for the United States on board a ship of the United States Navy, for it appears that he had joined the United States Navy since 1927, such that at time of his marriage with plaintiff Salud R. Arca, defendant Alfredo Javier was already an enlisted man in the United States Navy. Because of defendant Alfredo Javier's departure for the United States in 1938, his wife, Salud R. Arca, who is from (Maragondon), Cavite, chose to live with defendant's parents at Naic, Cavite. But for certain incompatibility of character (frictions having occurred between plaintiff Salud R. Arca's and defendant's folks) plaintiff Salud R. Arca had found it necessary to leave defendant's parents' abode and transfer her residence to (Maragondon), Cavite - her native place Since then the relation between plaintiff Salud R. Arca and defendant Alfredo Javier became strained such that on August 13, 1940 defendant Alfredo Javier brought an action for divorce against Salud R. Arca before the Circuit Court of Mobile County, State of Alabama, USA, docketed as civil case No. 14313 of that court and marked as Exhibit 2(*c*) in this case. Having received a copy of the complaint for divorce on September 23, 1940, plaintiff Salud R. Arca - answering the complaint - alleged in her answer that she received copy of the complaint on September 23, 1940 although she was directed to file her answer thereto on or before September 13, 1940. In that answer she filed, plaintiff Salud R. Arca averred among other things that defendant Alfredo Javier was not a resident of Mobile County, State of Alabama, for the period of twelve months preceding the institution of the

complaint, but that he was a resident of Naic, Cavite, Philippines. Another averment of interest, which is essential to relate here, is that under paragraph 5 of her answer to the complaint for divorce, Salud R. Arca alleged that it was not true that the cause of their separation was desertion on her part but that if defendant Alfredo Javier was in the United States at that time and she was not with him then it was because he was in active duty as an enlisted man of the United States Navy, as a consequence of which he had to leave for the United States without her. She further alleged that since his departure from the Philippines for the United States, he had always supported her and her co-plaintiff Alfredo Javier Junior through allotments made by the Navy Department of the United States Government. She denied, furthermore, the allegation that she had abandoned defendant's home at Naic, Cavite, and their separation was due to physical impossibility for they were separated by about 10,000 miles from each other. At this juncture, under the old Civil Code the wife is not bound to live with her husband if the latter has gone to ultra-marine colonies. Plaintiff Salud R. Arca, in her answer to the complaint for divorce by defendant Alfredo Javier, prayed that the complaint for divorce be dismissed. However, notwithstanding Salud R. Arca's averments in her answer, contesting the jurisdiction of the Circuit Court of Mobile County, State of Alabama, to take cognizance of the divorce proceeding filed by defendant Alfredo Javier, as shown by her answer marked Exhibit 2(*d*), nevertheless the Circuit Court of Mobile County rendered judgment decreeing dissolution of the marriage of Salud R. Arca and Alfredo Javier, and granting the latter a decree of divorce dated April 9, 1941, a certified copy of which is marked Exhibit 2*(f).* Thereupon, the evidence discloses that some time in 1946 defendant Alfredo Javier returned to the Philippines but went back to the United States.

In July, 1941 - that is after securing a divorce from plaintiff Salud R. Arca on April 9, 1941 - defendant Alfredo Javier married Thelma Francis, an American citizen, and bought a house and lot at 248 Brooklyn, New York City. In 1949, Thelma Francis, defendant's American wife, obtained a divorce from him for reasons not disclosed by the evidence, and, later on, having retired from the United States Navy, defendant Alfredo Javier returned to the Philippines, arriving here on February 13, 1950. After his arrival in the Philippines, armed with two decrees of divorce - one against his first wife Salud R. Arca and the other against him by his second wife Thelma Francis - issued by the Circuit Court of Mobile County, State of Alabama, USA, defendant Alfredo Javier married Maria Odvina before Judge Natividad Almeda-Lopez of the Municipal Court of Manila on April 19, 1950, marked Exhibit 2(*b*).

At the instance of plaintiff Salud R. Arca an information for bigamy was filed by the City Fiscal of Manila on July 25, 1950 against defendant Alfredo Javier with the Court of First Instance of Manila, docketed as Criminal Case No. 13310 and marked Exhibit 2(*a*). However, defendant Alfredo Javier was acquitted of the charge of Bigamy in a decision rendered by the Court of First Instance of Manila through Judge Alejandro J. Panlilio, dated August 10, 1951, predicated on the proposition that the marriage of defendant Alfredo Javier with Maria Odvina was made in all good faith and in the honest belief that his marriage with plaintiff Salud R. Arca had been legally dissolved by the decree of divorce obtained by him from the Circuit Court of Mobile County, State of Alabama,

> USA which had the legal effect of dissolving the marital ties between defendant Alfredo Javier and plaintiff Salud R. Arca. At this juncture, again, it is this court's opinion that defendant Alfredo Javier's acquittal in that Criminal Case No. 13310 of the Court of First Instance of Manila by Judge Panlilio was due to the fact that the accused had no criminal intent in contracting a second or subsequent marriage while his first marriage was still subsisting.

Appellant was a native born citizen of the Philippines who, in 1937, married Salud R. Arca, another Filipino citizen. Before their marriage they had already a child, Alfredo Javier, Jr., who thereby became legitimated. In 1927 appellant enlisted in the U.S. Navy and in 1938 sailed for the United States aboard a navy ship in connection with his service leaving behind his wife and child, and on August 13, 1940, he filed an action for divorce in the Circuit Court of Mobile County, Alabama, U.S.A., alleging as ground abandonment by his wife. Having received a copy of the complaint, Salud R. Arca filed an answer alleging, among other things, that appellant was not a resident of Mobile County, but of Naic, Cavite, Philippines, and that it was not true that the cause of their separation was abandonment on her part but that appellant was in the United States, without her, because he was then enlisted in the U.S. Navy. Nevertheless, the Circuit Court of Mobile County rendered judgment granting appellant a decree of divorce on April 9, 1941.

The issue now to be determined is: Does this decree have a valid effect in this jurisdiction?

The issue is not new. This court has had already occasion to pass upon questions of similar nature in a number of cases and its ruling has invariably been to deny validity to the decree. In essence, it was held that one of the essential conditions for the validity of a decree of divorce is that the court must have jurisdiction over the subject matter and in order that this may be acquired, plaintiff must be domiciled in good faith in the State in which it is granted (Cousins Hix *vs*. Fluemer, 55 Phil., 851, 856). Most recent of such cases is Sikat *vs*. Canson, 67 Phil., 207, which involves a case of divorce also based on the ground of desertion. In that case, John Canson claimed not only that he had legal residence in the State of Nevada, where the action was brought, but he was an American citizen, although it was proven that his wife never accompanied him there but has always remained in the Philippines, and so it has been held that "it is not ... the citizenship of the plaintiff for divorce which confers jurisdiction upon a court, but his legal residence within the State." The court further said: "And assuming that John Canson acquired legal residence in the State of Nevada through the approval of his citizenship papers, this would not confer jurisdiction on the Nevada court to grant divorce that would be valid in this jurisdiction, nor jurisdiction that could determine their matrimonial status, because the wife was still domiciled in the Philippines. The Nevada court never acquired jurisdiction over her person."

It is true that Salud R. Arca filed an answer in the divorce case instituted at the Mobile County in view of the summons served upon her in this jurisdiction, but this action cannot be interpreted as placing her under the jurisdiction of the court because its only purpose was to impugn the claim of appellant that his domicile or legal residence at that time was Mobile County, and to show that the ground of desertion imputed to her was baseless and false. Such answer should be considered as a special appearance the purpose of which is to impugn the jurisdiction of the court over the case.

In deciding the Canson case, this court did not overlook the other cases previously decided on the matter, but precisely took good note of them. Among the cases invoked

are *Ramirez vs. Gmur*, 42 Phil. 855; Cousins Hix *vs*. Fluemer, 55 Phil., 851, and *Barretto Gonzales vs. Gonzales*, 58 Phil., 67. In the cases just mentioned, this court laid down the following doctrines:

> It is established by the great weight of authority 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 a divorce granted by such a court is not entitled to recognition elsewhere. (*See* Note to Succession of Benton, 59 L. R. A., 143) The voluntary appearance of the defendant before such a tribunal does not invest the court with jurisdiction. (Andrews *vs*. Andrews, 188 U. S., 14; 47 L. ed., 366.)
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> It follows that, to give a court jurisdiction on the ground of the plaintiff's residence in the State or country of the judicial forum, his residence must be *bona fide*. If a spouse leaves the family domicile and goes to another State for the sole purpose of obtaining a divorce, and with no intention of remaining, his residence there is not sufficient to confer jurisdiction on the courts of the State. This is especially true where the cause of divorce is one not recognized by the laws of the State of his own domicile. (14 Cyc. 817, 181.)" (Ramirez *vs*. Gmur, 82 Phil., 855.)
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> But even if his residence had been taken up is 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. (Cousins Hix *vs.* Fluemer, 55 Phil., 851.)
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> At all times the matrimonial domicile of this couple has been within the Philippine Islands and the residence acquired in the State of Nevada by the husband for the purpose of securing a divorce was not a bona fide residence and did not confer jurisdiction upon the court of the State to dissolve the bonds of matrimony in which he had entered in 1919. (Barretto Gonzales *vs*. Gonzales, 58 Phil., 67.)

In the light of the foregoing authorities, it cannot therefore be said that the Mobile County Court of Alabama had acquired jurisdiction over the case for the simple reason that at the time it was filed appellant's legal residence was then in the Philippines. He could not have acquired legal residence or domicile at Mobile County when he moved to that place in 1938 because at that time he was still in the service of the U.S. Navy and merely rented a room where he used to stay during his occasional shore leave for shift duty. That he never intended to live there permanently is shown by the fact that after his marriage to Thelma Francis in 1941, he moved to New York where he bought a house and a lot, and after his divorce from Thelma in 1949 and his retirement from the U.S. Navy, he returned to the Philippines and married Maria Odvina of Naic, Cavite, where he lived ever since. It may therefore be said that appellant went to Mobile County, not with the intention of permanently residing there, or of considering that place as his permanent abode, but for the sole purpose of obtaining divorce from his wife. Such residence is not sufficient to confer jurisdiction on the court.

It is claimed that the Canson case cannot be invoked as authority or precedent in the present case for the reason that the Haddeck case which was cited by the court in the course of the decision was reversed by the Supreme Court of the United States in the case of Williams *vs*. North Carolina, 317 U.S. 287. This claim is not quite correct, for the Haddeck case was merely cited as authority for the statement that a divorce case is not a proceeding *in rem*, and the reversal did not necessarily overrule the ruling laid down therein that before a court may acquire jurisdiction over a divorce case, it is necessary that plaintiff be domiciled in the State in which it is filed. (Cousins Hix *vs*. Fluemer, *supra*.) At any rate, the applicability of the ruling in the Canson case may be justified on another ground: The courts in the Philippines can grant divorce only on the ground of adultery on the part of the wife or concubinage on the part of the husband, and if the decree is predicated on another ground, that decree cannot be enforced in this jurisdiction. Said the Court in the Canson case:

> . . . In *Barretto Gonzales vs. Gonzales* (55 Phil., 67), we observed:
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> . . . While the decisions of this court heretofore in refusing to recognize the validity of foreign divorce has usually been expressed in the negative and have been based upon lack of matrimonial domicile or fraud or collusion, we have not overlooked the provisions of the Civil Code now enforced in these Islands. Article 9 thereof reads as follows:
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> "The laws relating to family rights and duties, or to the status, condition, and legal capacity of persons, are binding upon Spaniards even though they reside in a foreign country."
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> "And Article 11, the last part of which reads
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> ". . . prohibitive laws concerning persons, their acts and their property, and those intended to promote public order and good morals shall not be rendered without effect by any foreign laws or judgments or by anything done or any agreements entered into a foreign country."
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> "It is therefore a serious question whether any foreign divorce, relating to citizens of the Philippine Islands, will be recognized in this jurisdiction, except it be for a cause, and under conditions for which the courts of the Philippine Islands would grant a divorce."
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> The courts in the Philippines can grant a divorce only on the ground of "adultery on the part of the wife or concubinage on the part of the husband" as provided for under section 1 of Act No. 2710. The divorce decree in question was granted on the ground of desertion, clearly not a cause for divorce under our laws. That our divorce law, Act No. 2710, is too strict or too liberal is not for this court decide. (Barretto Gonzales *vs*. Gonzales, *supra*). The allotment of powers between the different governmental agencies restricts the judiciary within the confines of interpretation, not of legislation. The legislative policy on the matter of divorce in this jurisdiction is clearly set forth in Act No. 2710 and has been upheld by this court (Goitia *vs*. Campos Rueda, 35 Phil., 252; Garcia Valdez *vs*. Soterana Tuazon, 40 Phil., 943-952; Ramirez *vs*. Gmur, 42 Phil., 855; Chereau *vs*. Fuentebella, 43 Phil., 216; Fernandez *vs*. De Castro, 48 Phil., 123; Gorayeb *vs*. Hashim, *supra*; Francisco *vs.* Tayao, 50 Phil., 42; Alkuino Lim

Pang *vs*. Uy Pian Ng Shun and Lim Tingco, 52 Phil., 571; Cousins Hix *vs*. Fluemer, *supra*; and Barretto Gonzales *vs*. Gonzales, *supra*).

The above pronouncement is sound as it is in keeping with the well known principle of Private International Law which prohibits the extension of a foreign judgment, or the law affecting the same, if it is contrary to the law or fundamental policy of the State of the *forum.* (Minor, Conflict of Laws, pp. 8-14). It is also in keeping with our concept or moral values which has always looked upon marriage as an institution. And such concept has actually crystallized in a more tangible manner when in the new Civil Code our people, through Congress, decided to eliminate altogether our law relative to divorce. Because of such concept we cannot but react adversely to any attempt to extend here the effect of a decree which is not in consonance with our customs, morals, and traditions. (Article 11, old Civil Code; Articles 15 and 17, new Civil Code; Gonzales *vs*. Gonzales, 58 Phil., 67.)

With regard to the plea of appellant that Salud R. Arca had accused him of the crime of bigamy and consequently she forfeited her right to support, and that her child Alfredo Javier, Jr. is not also entitled to support because he has already reached his age of majority, we do not need to consider it here, it appearing that these questions have already been passed upon in G. R. No. L-6706. [1] These questions were resolved against the pretense of appellant.

Wherefore, the decision appealed from is affirmed, with costs.

*Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Labrador, Concepcion and Reyes, J.B.L., JJ.,* concur.

***Endnotes*:**

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[1] Javier *vs*. Lucero, et al., 94 Phil., 634.