



ACTION LINE

CASES — QUERIES — LETTERS

ENTRY OF LEGITIMATION

One of the data to be recorded in the Book of Baptisms is the legitimacy or illegitimacy of the Offspring. What about their legitimation? Is it to be recorded also? Can you give me some guidelines as to how the legitimation of children should be entered in the parochial book of Baptisms?

A PARISH PRIEST

Answer

Both the Codex and the Civil Code of the Philippines have some pertinent provisions that should be borne in mind in recording the legitimacy or illegitimacy of the offspring. Let us discuss them separately.

I. CANONICAL PROVISIONS

Original Entry. Canon 777 § 1 states that "parish priests must enter in the baptismal record the names of the baptized, the minister, the parents and godparents, the place and date of baptism. This record must be made carefully and without delay". It is obvious that in the baptismal register, other data prescribed by the particular law of the diocese or country should also be added. For instance, in the Philippines, express mention of the legitimacy of the offspring should be made. The First Plenary Council of the Philippines says: "According to our legitimate custom the legitimacy of the offspring is to be registered, following the norms of Canon Law" (decr. 320).

As regards to the illegitimate children, canon 777 § 2 states: "In the case of an illegitimate child, the mother's name must be put down if she is publicly known to be the mother or if, on her own accord, she demands it in writing or before two witnesses. The name of the father must be recorded only if he, of his own accord, demands it of the pastor either in writing or in the presence of two witnesses, or if he is known to be the child's father by an authentic public document. In all other cases, the one baptized must be recorded as the offspring of an unknown father or unknown parents".

Accordingly, the name of the mother should be registered: a) when her maternity is publicly known, i.e. known by all parishioners or at least a considerable number, or when it is known by a few through direct information given by herself, without any obligation to keep it secret, or when her maternity can be proved through her registration in the clinic where she gave birth, etc.; b) when she herself asks in writing or before two witnesses that her name be registered. In these cases, there is enough proof of her maternity and the parish priest is safe against possible complaints against her name's entry.

The name of the father should also be registered: a) when he himself spontaneously asks the parish priest either in writing or before two trustful witnesses that his name be registered; b) when his paternity is already known through a public and authentic document, either ecclesiastical or civil (can. 1813, § 2).

Three different situations are possible: a) if the father is unknown, then it should be stated that "the child's father is unknown"; b) if both parents are unknown, then the child should be registered as "child of unknown parents"; c) if the father is known and the mother unknown (a most rare case), he should be registered as "child of N. and of unknown mother".

A query was raised to the Commission of Interpreters as to whether the word "illegitimate" used in canon 777, § 2, means all the illegitimate children, i.e. natural and spurious as well, most especially the adulterous and sacrilegious. The Commission evaded to give a direct answer to the question proposed, and on July 14, 1922¹ declared that the names of the parents should be registered in such a way as to avoid any danger of infamy and in cases of real difficulty the Holy See should be consulted. Accordingly, whenever the registration of the names of the parents imply some kind of

¹ AAS, 14 (1922) p. 528.

infamy or dishonor, the entry of their names is to be omitted. As a rule, the norm established in canon 777, § 2, as above explained, can be safely followed. No infamy whatsoever is inferred to the parents by entering their names in the cases mentioned in said paragraph.

The following samples of registration of this kind can serve the purpose, as the case may be: "I baptized N., son (or daughter) of N. N. who spontaneously asked that her name be registered, and of unknown father"; or "I baptized N. son (or daughter) of N. N. and N. N., who before N. and N. witnesses asked that their names be included in the register"; or finally "I baptized N., whose parents have acknowledged him (or her) as their son (or daughter) through a document extant in the archives of this parish, number . . ."

In case of a foundling, it should be stated in the register when, where and by whom he was found, as well as the approximate date of his birth.

Subsequent entry. The First Plenary Council of the Philippines states in its decr. 322 that "whenever the offspring is legitimated by the subsequent marriage of the parents according to canon 1116 or through the faculties granted to the local Ordinaries, it should always be mentioned in the baptismal certificates."

The entry of the offspring's legitimation in the register of baptisms implies some corrections in the same register, where the baptized appears as illegitimate. This being the case, the norm issued by the First Plenary Council of the Philippines to this effect should be taken into consideration. Its decree 323 states that "no change (alteration, substitution, addition, suppression) may be made in the parochial book, unless it had been examined and approved by the Bishop. Therefore, if any change or alteration is to be made in the register of baptisms, the parish priest must refrain from doing it on his own initiative, but he should bring the matter to the Bishop who, after carefully considering all things, may order through a decree to make the change; mention of the decree should be made in the baptismal register and the decree's copy be kept in the parochial archives.

The procedure to be followed in entering the legitimation of the offspring varies according to the norms given by each local Ordinary. The following steps seem to be in order before making any change in the register:

1. A petition must be sent by the parish priest to the local Ordinary, asking permission to correct the baptismal register of the

person concerned either by writing a new entry or by simply adding a clause to this effect to the existing one. Mention of the illegitimacy recorded in the book should be made and how the person has been legitimated.

2. A copy of the extant baptismal entry and of the register of the marriage contracted (or of the grant of *sanatio in radice*, or of the dispensation from the diriment impediment according to canon 1051, or of the particular rescript granting the legitimation) should accompany the petition.

3. The local Ordinary inquires whether there is enough proof of the legitimation.

4. The Promoter of Justice submits his opinion on the identity of the contracting parties and that of the parents of the person legitimated, and on the legitimation itself as well.

5. After seeing the favorable opinion of the Promoter of Justice, the local Ordinary issues a decree, ordering the correction to be made in the baptismal register.

In some dioceses, the legitimation is recorded at the margin of the extant entry and a reference to the marriage register or to the cause of legitimation, as the case may be, is made. In other places, a new entry is written down, mentioning the Prelate's permission. To this effect the extant entry is nullified and a reference to the page where the new one is to be found is done. It should be stated how the legitimation was effected and how it has been proved, whether through a process or through a public document.²

When the legitimation is effected by the subsequent marriage of the parents, there is no major difficulty in recording the legitimation. It is recorded in the book of baptisms in the way we have explained and at the end of the entry of the celebration of marriage it should be stated that the children they have are legitimated. Only the natural children, not the spurious are benefitted by this legitimation. The legitimation of the latter should be recorded in the book of baptisms and most conveniently also at the end of the matrimonial entry, pointing out how they are legitimated, namely through the *consolidation in radice* of the parents' marriage, dispensation of a diriment impediment according to canon 1051, or a particular rescript.

In the baptismal register, the following form may be used: "N.N. here registered as illegitimate, has been legitimated by the subsequent marriage of his (her) parents (or by the *consolidation in radice* of his (her) parents' matrimony, or by dispensation of the

² Rogatillo, *Ius Sacramentarium*, Santander, 1949, p. 49

diriment impediment according to canon 1051, or by particular rescript granted by... dated...). The legitimation can also be registered in the book of marriages as follows: "The offspring born of them have been legitimated by this marriage in accordance with canon 1116 (or by the dispensation of the diriment impediment, or by the *convallidation in radice* of the parents' marriage, or by particular rescript granted by... dated...)."

Acknowledgement of Parents — When in the baptismal register mention to the unknown parents of the child is made and later on they come out acknowledging the child through a public document, it is necessary that all doubts about the paternity be entirely dissipated before proceeding to change the register. Likewise, when only the registration of the father was omitted in the baptismal entry, it can be remedied even after the father's death, provided that two trustful witnesses bear testimony that the dead father acknowledged the child as his own.²

Before making any change in the register, the following steps should be taken:

1. The parish priest petitions the local Ordinary to be allowed to make the corresponding change. He sends a copy of the extant entry and also a copy of the document where the child is acknowledged by the parents.

2. The local Ordinary makes an inquiry about the identity of the parents and that of the offspring.

3. The Promoter of Justice submits his judgment, especially if the acknowledgement may cause harm to a third person.

4. The local Ordinary, upon the favorable opinion of the Promoter of Justice, issues the decree ordering the change of baptismal entry, to be done by the parish priest as explained before, dealing with legitimation.

The Ritual of Tréveris contains the following form of acknowledgement made by the parents who contract a subsequent marriage. It should be written down immediately after the entry of the celebration of marriage.

"N. N. and N. N., now legitimately married, declare that they acknowledge N. as their own child, who was born on..... and baptized in Furthermore, they ask the undersigned that this declaration of acknowledgment be added to their marriage entry, which they subscribe before us on this day of"

² Knecht, *Derecho Matrimonial Canonico*, Madrid, 1932, p. 542, note (2.798).

II. Civil Provisions

In the Philippines, the local civil registrars keep a birth and death register, which is a public document as well as any certified copy of its contents. In consonance with this, art. 265 of the Civil Code states: "the filiation of legitimate children is proved by the record of birth appearing in the Civil Register, or by an authentic document or a final judgement". Though a baptismal certificate was considered in the old Code as a proof of filiation, it is not acknowledged as such in the new Code after the establishment of a civil registry.

Other provisions regarding the proof of filiation are the following: "Art 266. In the absence of the titles indicated in the precedent article, the filiation shall be proved by the continuous possession of status of a legitimate child". "Art. 267: In the absence of a record of birth, authentic document, final judgment or possession of status, legitimate filiation may be proved by any other means allowed by the Rules of Court and special laws". — "Art 268. The action to claim his legitimacy may be brought by the child during all his lifetime and shall be transmitted to his heirs if he should die during his minority, or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action. The action already commenced by the child is transmitted upon his death to the heirs, if the proceedings has not yet lapsed".

Though the ecclesiastical law does not require for the legitimation of children effected by the subsequent marriage of the parents that the latter acknowledge the former as their own expressly, the Philippine legislation, however, states in clear terms that the subsequent marriage of the parents does not produce the legitimation of the offspring, unless the former acknowledge the latter either before or after the marriage. Marriage itself is not considered as a virtual acknowledgement of the children born of them before its celebration. An act separate from the marriage itself is required by law in order to legitimate the offspring. Article 271 states: "Only natural children who have been recognized by the parents before or after the celebration of marriage or have been declared natural children by final judgment, may be considered legitimated by subsequent marriage".