JURISDICTION IN PERSONAL PARISHES

In this city there is a Chinese parish; the church edifice is situated within the territory of parish A. The Chinese parish is purely personal, the jurisdiction of the parish priest is only to Chinese nationals, he has no territorial jurisdiction.

The question is this: suppose a filipino couple would like to get married in the Chinese parish church, although both belong, for example, to parish B. They approach the parish priest of the Chinese parish, who instructs them to get permission from me, the parish priest of parish B. If I grant them this permission, can the Parish priest of the Chinese parish solemnize the marriage validly?

In discussing this case with my confreres, I gave the opinion that, since a parish priest can not validly delegate another priest to solemnize a wedding outside of his own parish territory, neither can he grant a personal jurisdiction; the parish priest of the Chinese parish would still need authorization either from the Ordinary, or from the parish priest of A, within whose territory the Chinese parish church is situated otherwise the marriage would be invalid.

Please publish your solution to this case in the BOLETIN ECLESIASTICO at your earliest convenience.

A READER

I.—By reason of the faithful (can. 216), parishes are divided into territorial, national, familiar and personal. In general however, it is only with territorial parishes that the legislation of the Code of Canon Law is concerned. As T. Muniz declares: "Las parroquias personales no están sujetas al derecho comun en las relaciones que nacen del lugar en que sus feligreses habitan. Sin embargo, es frequente que para gozar de esta parroquialidad privilegiada sea necesario hallarse en la ciudad, pueblo o territorio en que se halla establecida la parroquia, y que fuera de alli sus feligreses queden sometidos al derecho comun."[1]

The first paragraph of can. 216 is applicable only to merely familiar or simply personal parishes and the second paragraph to other personal parishes. And attending closely to the words of paragraph 3: "Las partes de la diocesis de las cuales se habla en el par. 1 *son paroquias*..." which can be called ordinary or common. They are not called *territorial parishes* even if they are such really and strictly. Concerning these which paragraph 4 of the same canon speaks: "Sin especial indulto apostolico, no pueden constituirse *parroquias* por razon de la diversidad de lengua o nacionalidad de los fieles que viven en una misma ciudad o territorio, ni parroquias meramente familiares o personales...", such parishes can be called extraordinary, special or better still privileged bearing always in mind the observation of the author just cited. It is likewise true that each and everyone of these privileged parishes can be called "personal" although not in strictly the same sense for all of them. In this way, we can clear away from the various contradictory opinions prevalent among canonists concerning the nature of parishes and consequently of the diverse classes of personal parish-priests and their respective jurisdiction.

II.—This problem can also be clarified with reference to a similar case. In 1926 Fr. A. Santamaria, O.P. answered in the negative a similar problem concerning American and Chinese parishes in the city of Manila. His view runs: "Por el contrario, si los Parrocos de Americanos o Chinos solemnizan matrimonios dentro de Manila pero de los que no son subditos suyos, serian validos estos matrimonios? Lo serian los celebraran en la propia iglesia, es decir, el Parroco de

[1] T. Muniz, *Derecho Parroquial*, tom. I, n. 84 (Sevilla, 1923).

Americanos en la Catedral y el Parroco Chino en la iglesia de Binondo... Ad 3 um. Si los Parrocos de Americanos o Chinos solemnizan o dan delegacion para solemnizar los matrimonios de los que son subditos suyos, sin delegacion del propio Parroco, dentro de la Ciudad de Manila, y aunque si en la iglesia destinada a sus funciones parroquiales, dichos matrimonios serian nulos. El tener una iglesia destinada para las funciones parroquiales nada significa respecto del territorio de la parroquia."[2]

The reason for this allegation is based on the ff· citation: "Tambien es de notar que en esta materia el Codigo de Derecho Canonico nada ha cambiado en la legislacion del Decreto *Ne Temere* de 2 de Agosto de 1907 preparado precisamente por los codificadores del Derecho, y por tanto debemos aplicar las resoluciones dadas por la Santa Sede interpretando el mismo Decreto." The following resolutions of the Sacred Congregation of the Council, *Romana et aliarum,* ad 4um., dated February 1, 1908 is cited: "Ubinam et quomodo parochus, qui in territorio aliis parochis assignato nonnulles personas vel familias sibi subditas habet, matrimoniis adsistere valeat?" The answer was affirmative, *quoad suos subditos tantum,* ubique in dicto territorio, facto verbo cum Sanctissimo"[3]

Another canonist Fr. J. Noval, O.P. defends the validity of the matrimony in question. He asserts that the old law should be interpreted according to the norms of can. 6 of the Code, which principle Fr. Santamaria does not deny but uses in defending the same opinion. Thus, he writes: "Ad 3um respondet (P. Santamaria). negative; ex resolutione S.C.C.... Nos (P. Noval) existimamus rationem solutionis esse, ut in praecedentibus, desmendam non ex responsis S.C.C. datis ante promulgationem Codicis, utpote quae sunt fontes potius interpretationis iuris vigentis post Codicem, quam ipsius iuris (can. 6), sed ex praescripto can. 1095, par. 1... ubi nomine *parochus,* cum nulla fiat distinctio a legislatore, venit parochus tum territorialis tum personalis, et nomine territorii venit territorium nedum parochi territorialis, sed etiam parochi personalis quando ejus potestas coarctatur ad aliquod territorium, ut in casu."

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[2] Cf. *Boletin Eclesiastico de Filipinas,* Vol. II, pp. 31-33.
[3] Cf. *Codicis Luris Canonici Fontes,* Vol. VI, n. 4344.

Well then, we are now confronted with two conflicting opinions, the first which asserts that the marriage in question is null and void, and the second, which defends its validity.

There is however, even a third canonist who, seeing a positive and probable doubt (dubium iuris) in the interpretation of the same legislation of the common law concerning the power of jurisdiction of personal parish priests would defend the validity of the matrimony in question by virtue of the second juridical norm of can. 209 and the authentic interpretation of cans. 197-209.[4]

III.—What therefore can be said of the opinion of the consulting parish-priest after the foregoing discussion? The Chinese parish-priest in the present case can answer the consulting parish-priest in the ff.: "Nego suppositum. I have requested for the contracting parties both Filipinos and your parishioners, to ask the permission which can. 1097, par. I speaks, which as a personal parish-priest (not strictly territorial but semi-personal or semi-territorial) I need only *ad liceitatem* to solemnize their marriage in my Church for Chinese. I'm not asking for permission or delegation of the power of jurisdiction to assist validly at the marriage which can. 1095, par. 2 speaks."

Finally, I would advice both the consulting and Chinese parish-priests of the city to study well the terms in the document of erection of the privileged parish and see if really, jurisdiction has been limited to only Chinese faithful in the city excluding even indirectly, the use of the same to those who are not. Only in this way (possibly, but very improbably) can all the opinions described above be clarified and then we can affirm with certainty that the marriage in question solemnized by the Chinese parish-priest (with only delegated power) is null.

We confidently hope that the New Code of Canon Law will have a clearer and more determined legislation concerning personal parish-priests as we have at present with regards military chaplains whom not a few canonists consider simple or merely personal parish-priests.

• **Fr. Agapio Salvador, O.P.**

[4] Cf. *AAS*, 44, 497.