

**MANUEL SOLEE Y MARTINEZ AND FEDERICO SOLER Y MARTINEZ,
BY THEIR GUARDIAN AD LITEM, THOMAS D. AITKEN, PLAINTIFFS
AND APPELLANTS, VS. EMILIA ALZOIJA AND W. H. MITCHELL,
ACTING SHE...**

G.R. No. 3132. September 14, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 14th day of October, 1905, the plaintiffs commenced an action in the Court of First Instance of the city of Manila, praying for a preliminary injunction against the defendants and each of them to prohibit the defendants from selling the property or business known as "The Sport," situated at Nos. 58 to 60 on the Escolta in the city of Manila, or to interfere in any manner with the possession of the plaintiffs in said premises, and that the preliminary injunction, upon the hearing of said cause, be made perpetual, and for damages to the amount of P500, costs.

On the 8th day of November, 1905, the attorneys for the respective parties entered into a stipulation of facts, from which the following, pertinent to the question involved here, were agreed upon:

(1) That the said plaintiffs are minors, aged 19 and 12 years, respectively, and sons of Manuel Soler y Cendra and Visitación Martinez.

(2) That Manuel Soler y Cendra died in Barcelona, Spain, on the 26th day of January, 1901; that he left as heirs a widow, the said Visitación Martinez, and two children, to wit, the plaintiffs.

(3) That the said Manuel Soler y Cendra left a will, under the terms of which his children were to receive one half of all his property, after giving his wife one half of one third of all his property. The will also contains the following provision (par. 4) :

"For the remnant of all his property, shares, and rights, he institutes and appoints as his sole and universal heirs his sons, Manuel and Federico, reserving to his wife the rights which the Civil Code grants to the surviving spouse."

(4) The will provided for executors, giving them full authority, jointly and severally, to take over and into their care the property, with full power to administer, manage, and govern, etc.; to make an inventory, to appraise, to liquidate, to divide, and to adjudge the property of the estate, etc.

(5) That the said executors duly made an inventory of the said estate and found that the value thereof was P23,683.88.

(6) That the property included in said inventory had been acquired during the matrimony of the said Don Manuel Soler y Cendra with Dona Visitación Martinez and that it constituted the credit of the legal conjugal partnership, and therefore one half of it—to wit, 11,841.94—belonged to the wife, Doña Visitación Martinez.

(7) That the share belonging to his sons Manuel and Federico, the plaintiffs herein of said estate was 34,028.57 pesetas.

(8) That on the 17th day of May, 1902, the said Doña Visitación Martinez, being in possession of the property of her husband, formed a copartnership with Joaquín Riu, under the provisions of the articles of which copartnership the capital of the partnership was to consist of P23,683.88 supplied by Doña Visitación Martinez and of P5,239.11 supplied by the said Joaquín Riu.

(9) The said articles of copartnership were duly executed before a notary public and registered in the mercantile registry of Manila, from the terms of which it appears that of the P23,683.88 supplied by the said Doña Visitación Martinez P9,868.29 belonged her sons, Manuel and Federico, being the property left by their father under the said will.

(10) That during the existence of the said partnership, to wit, on the 15th day of April, 1903, the said Doña Visitación Martinez jointly with the other partner, the said Joaquin Riu, borrowed from Emilia Alzoua the sum of P15,000, for which they gave their joint and several promissory note, said sum being used for the benefit of the said partnership business, and on the same day and at the same time the said promissory note was executed for the said sum, the said partners executed a document purporting to give as guaranty of the said note the said business.

(11) On the 7th day of September, 1905, the judge of the Court of First Instance of the city of Manila rendered a judgment against the said partners On the said promissory note for the sum of P12,700, with interest from the 7th day of September, 1905, with costs, declaring that this amount as against the defendants should constitute a first lien upon the business of the said partnership.

(12) That prior to the date of the said judgment against the members of said partnership, to wit, on the 28th day of November, 1904, said partners executed an instrument before a notary public of Manila, Dr. Enrique Barrera y Caldes, dissolving the said partnership, dividing the assets of said partnership in the manner indicated in the said dissolution, the said Visitación Martinez continuing the business of the said partnership and relieving the co-partner, Joaquín Riu, of all responsibility in relation to said partnership.

(13) In one of the paragraphs of the said articles of dissolution there appeared the abovementioned liability in favor of the said" Emilia Alzoua.

(14) From paragraph 7 of the said articles of copartnership it appears that P9,868.29 of the capital of said partnership was the sum left by Manuel Soler y Cendra, deceased, to the plaintiffs herein, which articles contain the following clause:

"But that this participation by no means can ever affect the partner, Mr. Eiu, because all questions which by virtue of such participation may arise will be on account and at the risk of the said Visitación Martinez, with full and complete indemnity of the company formed by the present instrument."

(15) From said stipulation of facts it appears "that during none of the times mentioned has Visitación Martinez been the legal guardian of the said minors," the plaintiffs herein.

After a consideration of the facts included in the stipulation of the parties, the lower court dismissed the complaint of the plaintiffs and dissolved the temporary injunction granted upon the filing of said petition, ordering that the costs be paid by the sheriff of Manila out of the proceeds of the sale of the goods attached. From this conclusion of the lower court the plaintiffs appealed to this court and among other errors assigned:

- "1. That the court erred in deciding that the minors' claim was not preferred to that of Emilia Alzoua; and
- "2. That the court erred in dismissing the complaint and dissolving the injunction."

Under the above first assignment of error the appellant argues that, inasmuch as the partnership formed by the said Doña Visitación Martinez and the said Joaquin Riu had accepted and used the sum of P9,868.29 of the property of these plaintiffs, and had evidenced the same by a public document, which document had been made of record more than a year prior to the date of the indebtedness of the said partnership to the said Emilia Alzoua, the lower court should have applied paragraph 3 of article 1924 of the Civil Code, and should have given the claim of indebtedness of the plaintiffs herein preference Over the indebtedness of the said Emilia Alzoua; and therefore the lower court should have restrained the payment of the claim of the said Emilia Alzoua until the payment of the claim on the part of these plaintiffs.

The public document evidencing the indebtedness of the said plaintiffs was executed May 17, 1902, while the indebtedness in favor of Emilia Alzoua was dated April 15, 1903, the judgment thereon bearing date of September 22, 1905. The indebtedness of the said partnership in favor of the said plaintiffs was duly registered long before the indebtedness of the said partnership was created in favor of the said Emilia Alzoua and long before the sentence in favor of the said Emilia Alzoua was rendered. This court has frequently decided that indebtedness evidenced by a public document and by a final sentence take preference according to their dates. (Martinez vs. Holiday, Wise & Co., 1 Phil. Rep., 194; Olivares vs. Hoskyn & Co., 2 Phil. Rep., 689; Peterson vs. Newberry, 6 Phil. Rep., 260; Gochuico vs. Ocampo, 7 Phil. Rep., 15.)

Many other difficult questions have been suggested by the attorneys in the cause, but in view of the above conclusion that the plaintiffs herein were entitled to be paid out of the funds of the said partnership prior to the payment of the indebtedness in favor of the said Emilia Alzoua, we deem it unnecessary to discuss them. Therefore the judgment of the lower court dismissing the complaint and dissolving the temporary injunction in said cause is hereby reversed and the cause is remanded to the lower court with direction to take such action in the premises, not inconsistent with the views herein before expressed, as may be deemed just and equitable. Without any finding as to costs, it is so ordered.

Arellano, Torres, Carson, and Tracey, JJ., concur.

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