

**LA COMPAÑIA MARITIMA, PLAINTIFF AND APPELLANT, VS.
FRANCISCO MUÑOZ ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 3704. December 12, 1907*

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff brought this action in the Court of First Instance of Manila against the partnership of Francisco Muñioz & Sons, and against Francisco Muñoz de Bustillo, Emilio Muñoz de Bustillo, and Rafael Naval to recover the sum of P28,828.30, with interest and costs. Judgment was rendered in the court below acquitting Entilio Muñoz de Bustillo and Rafael Naval of the complaint, and in favor of the plaintiff and against the defendant partnership, Francisco Muñoz & Sons, and Francisco Muñoz de Bustillo for the sum of P26,828.30 with interest at the rate of 8 per cent per annum from the 31st day of March, 1905, and costs. From this judgment the plaintiff appealed.

On the 31st day of March, 1905, the defendants Francisco Muñoz, Emilio Muñoz, and Rafael Naval formed an ordinary general mercantile partnership under the name of Francisco Muñoz & Sons for the purpose of carrying on the mercantile business in the Province of Albay which had formerly been carried on by Francisco Muñoz. Francisco Muñoz was a capitalist partner and Emilio Muñoz and Rafael Naval were industrial partners.

It is said in the decision of the court below that in the articles of partnership it was called an ordinary, general mercantile partnership, but that from the articles it does not appear to be such a partnership. In the brief of the appellees it is also claimed that it is not an ordinary, general commercial partnership. We see nothing in the case to support either the statement of the court below in its decision or the claim of the appellees in their brief. In the articles of partnership signed by the partners it is expressly stated that they have agreed to form, and do form, an ordinary, general mercantile partnership. The object of the partnership, as stated in the fourth paragraph of the articles, is a purely mercantile one and all the requirements of the Code of Commerce in reference to such a partnership were complied with. The articles of partnership were recorded in the mercantile registry of the Province of Albay. If it should be held that the contract made in this case did not create an ordinary, general mercantile partnership we do not see how one could be created.

The claim of the appellees that Emilio Muñoz contributed nothing to the partnership, .either in property, money, or industry, can not be sustained. He contributed as much as did the other industrial partner, Rafael Naval, the difference between the two being that Rafael Naval was entitled by the articles of agreement to a fixed salary of P2,500 as long as he was in charge of the branch office established at Ligao. If he had left that branch office soon after the partnership was organized, he would have been in the same condition then that Emilio Muñoz was from the beginning. Such a change would have deprived him of the salary of P2,500, but would not have affected in any way the partnership nor have produced the effect of relieving him from liability as a partner. The argument of the appellees seems to be that, because no yearly or monthly salary was assigned to Emilio Muñoz, he contributed nothing to the partnership and received nothing from it. By the articles themselves he was to receive at the end of five years one-eighth of the profits. It can not be said, therefore, that he received nothing from the partnership.

The fact that the receipt of this money was postponed for five years is not important. If the contention of the appellees were sound, it would result that, Avhere the articles of partnership provided for a distribution of profits at the end of each year, but did not assign any specific salary to an industrial partner during that time, he would not be a member of the partnership. Industrial partners, by signing the articles, agree to contribute their work to the partnership and article 138 of the Code of Commerce prohibits them from engaging in other work except by the express consent of the partnership. With reference to civil partnerships, section 1683 of the Civil Code relates to the same matter.

It is also said in the brief of the appellees that Emilio Muñoz was entirely excluded from the management of the business. It rather should be said that he excluded himself from such management, for he signed the articles of partnership by the terms of which the management was expressly conferred by him and the others upon the persons therein named. That partners in their articles can do this, admits of no doubt. Article 125 of the Code of Commerce requires them to state the partners to whom the management is intrusted. This right is recognized also in article 132. In the case of *Reyes vs. The Compañia Maritima* (3 Phil. Rep., 519) the articles of association provided that the directors for the first eight years should be certain persons named therein. This court not only held that such provision was valid but also held that those directors could not be removed from office during the eight years, even by a majority vote of all the stockholders of the company.

Emilio Muñoz was, therefore, a general partner, and the important question in the case is whether, as such general partner, he is liable to third persons for the obligations contracted by the partnership, or whether he is relieved from such liability, either because he is an industrial partner or because he was so relieved by the express terms of the articles of partnership.

Paragraph 12 of the articles of partnership is as follows:

"Twelfth. All profits arising from mercantile transactions carried on, as well as such as may be obtained from the sale of property and other assets which constitute the corporate capital, shall be distributed, on completion of the term of five years agreed to for the continuation of the partnership, in the following manner: Three-fourths thereof for the capitalist partner Francisco Muiioz de Bustillo, and one-eighth thereof for the industrial partner Emilio Muiioz de Bustillo y Carpiso, and the remaining one-eighth thereof for the partner Rafael Naval y Garcia. If, in lieu of profits, losses should result in the winding up of the partnership, the same shall be for the sole and exclusive account of the capitalist partner Francisco Muiioz de Bustillo, without either of the two industrial partners participating in such losses."

Articles 140 and 141 of the Code of Commerce are as follows:

"ART. 140. Should there not have been stated in the articles of copartnership the portion of the profits to be received by each partner, said profits shall be divided pro rata, in accordance with the interest each one has in the copartnership, partners who have not contributed any capital, but giving their services, receiving in the distribution the same amount as the partner who contributed the smallest capital.

"ART. 141. Losses shall be charged in the same proportion among the partners who have contributed capital, without including those who have not, unless by special agreement the latter have been constituted as participants therein."

A comparison of these articles with the twelfth paragraph above quoted will show that the latter is simply a statement of the rule laid down in the former. The articles do not, therefore, clwinge the rights of the industrial partners as they are declared by the code, and the question may be reduced to the very simple one, namely, Is an industrial partner in an ordinary, general mercantile partnership liable to third persons for the debts and obligations contracted by the partnership?

In limited partnerships the Code of Commerce recognizes a difference between general and special partners, but in a general partnership there is no such distinction— all the members are general partners. The fact that some may be industrial and some capitalist partners does not make the members of either of these classes alone such general partners. There is nothing in the code which says that the industrial partners shall be the only general partners, nor is there anything which says that the capitalist partners shall be the only general partners.

Article 127 of the Code of Commerce is as follows:

"All the members of the general copartnership, be they or be they not managing partners of the same, are liable personally and in solidum with all their property for the results of the transactions made in the name and for the account of the partnership, under the signature of the latter, and by a person authorized to make use thereof."

Do the words "all the partners" found in this article include industrial partners? The same expression is found in other articles of the code. In article 129 it is said that, if the management of the partnership has not been limited by special act to one of the partners, all shall have the right to participate in the management. Does this mean that the capitalist partners are the only ones who have that right, or does it include also industrial partners? Article 132 provides that, when in the articles of partnership the management has been intrusted to a particular person, he can not be deprived of such management, but that in certain cases the remaining partners may appoint a comanager. Does the phrase "remaining partners" include industrial partners, or is it limited to capitalist partners, and do industrial partners have no right to participate in the selection of the comanager? Article 133 provides that all the partners shall have the right to examine the books of the partnership. Under this article are the capitalist partners the only ones who have such right? Article 135 provides that the partners can not use the firm name in their private business. Does this limitation apply only to capitalist partners or does it extend also to industrial partners? Article 222 provides that a general partnership shall be dissolved by the death of one of the general partners unless it is otherwise provided in the articles. Would such a partnership continue if all the industrial partners should die? Article 229 provides that upon a dissolution of a general partnership it shall be liquidated by the former managers, but, if all the partners do not agree to this, a general meeting shall be called, which shall determine to whom the settlement of the affairs shall be intrusted. Does this phrase "all the partners" include industrial partners, or are the capitalist partners the only ones who have a voice in the selection of a manager during the period of liquidation? Article 237 provides that the private property of the general partners shall not be taken in payment of the obligations of the partnership until its property has been exhausted. Does the phrase "the general partners" include industrial partners?

In all of these articles the industrial partners must be included. It can not have been intended that, in such a partnership as the one in question, where there were two industrial and only one capitalist partner, the industrial partners should have no voice in the management of the business when the articles of partnership were silent on that subject; that when the manager appointed mismanages the business the industrial partners should have no right to appoint a comanager; that they should have no right to examine the books; that they might use the firm name in their private business; or that they should have no voice in the liquidation of the business after dissolution. To give a person who contributed no more than, say, P500, these rights and to take them away from a person who contributed his services, worth, perhaps, infinitely more than P500, would be to discriminate unfairly against industrial partners.

If the phrase "all the partners" as found in the articles other than article 127 includes industrial partners, then article 127 must include them and they are liable by the terms thereof for the debts of the firm.

But it is said that article 141 expressly declares to the contrary. It is to be noticed in the first place that this article does not say that they shall not be liable for losses. Article 140 declares how the profits shall be divided among the partners. This article simply declares how the losses shall be divided among the partners. The use of the words

se imputaran is significant. The verb means abonar una partida a alguno en su cuenta o deducirla de su debito. Article 141 says nothing about third persons and nothing about the obligations of the partnership.

While in this section the word "losses" stand's alone, yet in other articles of the code, where it is clearly intended to impose the liability to third persons, it is not considered sufficient, but the word "obligations" is added. Thus article 148, in speaking of the liability of limited partners, uses the phrase las obligaciones y perdidas. There is the same use of the two words in article 153, relating to anonymous partnerships. In article 237 the Avord "obligations" is used and not the word "losses."

The claim of the appellees is that this article 141 fixes the liability of the industrial partners to third persons for the obligations of the company. If it does, then it also fixes the liability of the capitalist partners to the same persons for the same obligations. If this article says that industrial partners are not liable for the debts of the concern, it also says that the capitalist partners shall be only liable for such debts in proportion to the amount of the money which they have contributed to the partnership; that is to say, that if there are only two capitalist partners, one of whom has contributed two-thirds of the capital and the other one-third, the latter is liable to a creditor of the company for only one-third of the debt and the former for only two-thirds. It is apparent that, Avhen given this construction, article 141 is directly in conflict with article 127. It is not disputed by the appellees that by the terms of article 127 each one of the capitalist partners is liable for all of the debts, regardless of the amount of his contribution, but the construction which they put upon article 141 makes such capitalist partners liable for only a proportionate part of the debts.

There is no injustice in imposing this liability upon the industrial partners. They have a voice in the management of the business, if no manager has been named in the articles; they share in the profits and as to third persons it is no more than right that they should share in the obligations. It is admitted that if in this case there had been a capitalist partner who had contributed only P100 he would be liable for this entire debt of P26,000.

Our construction of the article is that it relates exclusively to the settlement of the partnership affairs among the partners themselves and has nothing to do with the liability of the partners to third persons; that each one of the industrial partners is liable to third persons for the debts of the firm; that if he has paid such debts out of his private property during the life of the partnership, when its affairs are settled he is entitled to credit for the amount so paid, and if it results that there is not enough property in the partnership to pay him, then the capitalist partners must pay him. In this particular case that view is strengthened by the provisions of article 12, above quoted. There it is stated that if, when the affairs of the partnership are liquidated—that is, at the end of five years—it turns out that there had been losses instead of gains, then the capitalist partner, Francisco Muñoz, shall pay such losses—that is, pay them to the industrial partners if they have been compelled to disburse their own money in payment of the debts of the partnership.

While this is a commercial partnership and must be governed therefore by the rules of the Code of Commerce, yet an examination of the provisions of the Civil Code in reference to partnerships may throw some light upon the question here to be resolved. Articles 1689 and 1691 contain, in substance, the provisions of articles 140 and 141 of the Code of Commerce. It is to be noticed that these articles are found in section 1 of Chapter II [Title VIII] of Book IV. That section treats of the obligations of the partners between themselves. The liability of the partners as to third persons is treated in a distinct section, namely, section 2, comprising articles from 1697 to 1699.

If industrial partners in commercial partnerships are not responsible to third persons for the debts of the firm, then industrial partners in civil partnerships are not. Waiving the question as to whether there can be a commercial partnership composed entirely of industrial partners, it seems clear that there can be such a civil partnership, for article 1678 of the Civil Code provides as follows:

"A particular partnership has for its object specified things only, their use or profits, or a specified undertaking, or the exercise of a profession or art."

It might very easily happen, therefore, that a civil partnership could be composed entirely of industrial partners. If it were, according to the claim of the appellees, there would be no personal responsibility whatever for the debts of the partnership. Creditors could rely only upon the property which the partnership had, which in the case of a partnership organized for the practice of any art or profession would be practically nothing. In the case of *Agustin vs. Inocencio*,^[1] just decided by this court, it was alleged in the complaint, and admitted by the answer—

"That this partnership has been formed without articles of association or capital other than the personal work of each one of the partners, whose profits are to be equally divided among themselves."

Article 1675 of the Civil Code is as follows:

"General partnerships of profits include all that the partners may acquire by their industry or work during the continuation of the partnership.

"Personal or real property which each of the partners may possess at the time of the celebration of the agreement shall continue to be their private property, the usufruct only passing to the partnership."

It might very well happen in partnerships of this kind that no one of the partners would have any private property and that if they did the usufruct thereof would be inconsiderable.

Having in mind these different cases which may arise in the practice, that construction of the law should be avoided which would enable two persons, each with a large amount of private property, to form and carry on a partnership and, upon the bankruptcy of the latter, to say to its creditors that they contributed no capital to the company but only their services, and that their private property is not, therefore, liable for its debts.

But little light is thrown upon this question by the authorities. No judgment of the supreme court of Spain has been called to our attention, and we have been able to find none which refers in any way to this question. There is, therefore, no authority from that tribunal for saying that an industrial partner is not liable to third persons for the debts of the partnership.

In a work published by Lorenzo Benito in 1889 (*Lectones de derecho mercantil*) it is said that industrial partners are not liable for debts. The author, at page 127, divides general partnerships into ordinary and irregular. The irregular partnerships are those which include one or more industrial partners. It may be said in passing that his views can not apply to this case because the articles of partnership directly state that it is an ordinary partnership and do not state that it is an irregular one. But his view of the law seems to be derived from something other than the Code of Commerce now in force. He says:

"* * * but it has not been very fortunate in sketching the characters of a regular collective partnership (since it says nothing conclusive in reference to the irregular partnership) * * *". (p. 127.)

And again:

"This article would not need to be commented upon were it not because the writer entirely overlooked the fact that there might exist industrial partners who did not contribute with capital in money, credits, or goods, which partners generally participate in the profits but not in the losses, and whose position must also be determined in the articles of copartnership." (p. 128.)

And again:

"The only defect that can be pointed out in this article is the fact that it has been forgotten that in collective partnerships there are industrial partners who, not being jointly liable for the obligations of the copartnership,

should not include their names in that of the firm." (p. 129.)

As a logical result of his theory he says that an industrial partner has no right to participate in the administration of the partnership and that his name can not appear in the firm name. In this last respect his view is opposed to that of Manresa, who says (Commentaries on the Spanish Civil Code, vol. 11, p. 330):

"It only remains to us to state that a partner who contributes his industry to the concern can also confer upon it the name or the corporate name under which such industry should be carried on. In this case, so long as the copartnership lasts, it can enjoy the credit, reputation, and name or corporate name under which such industry is carried on; but upon dissolution thereof the aforesaid name or corporate name pertains to the partner who contributed the same, and he alone is entitled to use it, because such a name or style is an accessory to the work of the industrial partner, and upon recovering his work or his industry he also recovers his name or the style under which he exercised his activity. It has thus been decided by the French court of cassation in a decision dated June 6, 1859."

In speaking of limited partnerships Benito says (p. 144) that here are found two kinds of partners, one with unlimited responsibility and the other with limited responsibility, but adopting his view as to industrial partners, it should he said that there are three kinds of partners, one with unlimited responsibility, another with limited responsibility, and the third, the industrial partner, with no responsibility at all. In Estasen's recent publication on mercantile partnerships (Tratado de las Sociedades Mercantiles) he quotes from the work of Benito, but we do not understand that he commits himself to the doctrines therein laid down. In fact, in his former treatise, Instituciones de Derecho Mercantil (vol. 3, pp. 1-99), we find nothing which recognizes the existence of these irregular general partnerships, or the exemption from liability to third persons of the industrial partners. He says in his latter work (p. 186) that according to Dr. Benito the irregular general partner originated from the desire of the partnership to associate with itself some old clerk or employee as a reward for his services and the interest which he had shown in the affairs of the partnership, giving him in place of a fixed salary a proportionate part of the profits of the business: Article 2C9 of the Code of Commerce of 1829 relates to this subject and apparently provides that such partners shall not be liable for debts. If this article was the basis for Dr. Benito's view, it can be so no longer, for it does not appear in the present code. We held in the case of Fortis vs. Gutierrez Herinanos (6 Phil, Eep., 100) that a mere agreement of that kind does not make the employee a partner.

An examination of the works of Manresa and Sanchez Roman on the Civil Code, and of Blanco's Mercantile Law, will show that no one of these mentions in any way the irregular general partnership spoken of by Dr. Benito, nor is there anything found in any one of these commentaries which in any way indicates that an industrial partner is not liable to third persons for the debts of the partnership. An examination of the French law will also show that no distinction of that kind is therein anywhere made and nothing can be found therein which indicates that the industrial partners are not liable for the debts of the partnership. (Fuzier-Herman, Repertoire de Droit Frangcais, vol. 34, pp. 256, 361, 510, and 512.)

Our conclusion is upon this branch of the case that neither on principle nor on authority can the industrial partner be relieved from liability to third persons for the debts of the partnership.

It is apparently claimed by the appellee in his brief that one action can not be maintained against the partnership and the individual partners, this claim being based upon the provisions of article 237 of the Code of Commerce which provides that the private property of the partners shall not be taken until the partnership property has been exhausted. But this article furnishes no argument in support of the appellees' claim. An action can be maintained against the partnership and the partners, but the judgment should, recognize the rights of the individual partners which are secured by said article 237.

The judgment of the court below is reversed and judgment, is ordered against all of the defendants for the sum of

P26,828.30, with interest thereon at the rate of 8 per cent per annum since the 31st day of March, 1905, and for the costs of this action. Execution on such judgment shall not issue against the private property of the defendants Francisco Muñoz, Emilio Muñoz, or Rafael Naval until the property of the defendant Francisco MuQoz & Sons is exhausted. No costs will be allowed to either party in this court. So ordered.

Torres, Johnson, and Tracey, JJ., concur.

DISSENTING

ARELLANO, C.J.:

I consider that the judgment appealed from is entirely in accordance with the law.

The question set up in the majority decision, "In a regular collective commercial company, is an industrial partner liable as to third persons by reason of the debts and obligations contracted by the copartnership?" I decide in a negative sense; he is not; by express provision of the law he can not be held to be liable, save, of course, an agreement to the contrary, which in such case would be a special law, and would set aside the general law.

The basis for the contrary opinion and decision is article 127 of the Code of Commerce:

"All the members of the general copartnership, be they or be they not managing partners of the same, are personally and in solidum liable with all their property for the results of the transactions made in the name and for the account of the partnership, under the signature of the latter, and by a person authorized to make use thereof."

Now, do the words "all the members" found in this article include the industrial partners?

At first sight it would appear that they do. In order to complete such reasoning the following premise will be sufficient : That the industrial partners form the collective partnership; therefore the industrial partners are personally and jointly liable with all their property for the results of the transactions made in the name and for account of the partnership.

But they form the collective partnership in the manner in which our law allows the same to be formed—that is, by contributing with their industry, not with property.

And the word all, in reference to 'property, which is common with the three classes of partnership defined by the code, to wit, collective, limited copartnership (comanditaria), and corporation (anonima), gives the rule for such personal and joint liability, which is the purpose of the provision in the above-quoted article.

The above three classes of partnerships agree in that property must in each of them be contributed. "The articles of general copartnership must state * * * the capital which each partner contributes in cash, credits, or property, stating the value given the latter or the basis on which their appraisal is to be made." (Art. 125.) "The same statements shall be included in articles of limited copartnerships (compañias em comandita) which are required for those of general copartnerships"—that is, among other things, the capital which each partner contributes. (Art. 145.) "The articles of incorporation (of corporations) must include * * * the corporate capital, stating the value at which property, not cash, contributed has been appraised, or the basis on which the appraisal is to be made; and the number of shares into which the corporate capital is divided and represented." (Art. 151.)

Now, then, "The liability of the members of a corporation for the obligations and losses of the same shall be limited to the funds they contributed or bound themselves to contribute to the corporate capital," (Art. 153.) "The liability of special partners for the obligations and losses of the copartnership shall be limited to the funds which

they contributed or bound themselves to contribute to the limited copartnership, with the exception of the case mentioned in article 147"—that is, if any of them include his name or permit its inclusion in the firm name. (Art. 148, par. 3.) However, in a collective partnership the liability is not limited to the funds or property contributed, but extends to all the property which partners may own within or without the copartnership.

In every mercantile copartnership it is the corporate capital that responds for the obligations of the same; this is elemental. The members of a joint stock, a limited, or a collective company respond with their capital for the obligations of the association; in the joint stock concerns, with their shares; in the limited class, with the amount contributed; in the collective, with their constituted capital. An industrial partner, with what principal sum, share, or quota in the corporate capital does he or can he respond for the obligations of the collective partnership? Evidently with none whatever.

If the capital of the association is exhausted, the extreme case of losses incurred by the company arises, and third persons can not recover the amount of the obligations of the company from the corporate capital, because the latter is insufficient to cover them. Shareholders in the case of a joint stock company, beyond the value of their stock, have no longer to think of any ulterior subsidiary responsibility. Neither do the partners of a limited company. In either case the partners are only liable to the extent of their corporate capital. Collective partners have to respond not only with their corporate capital but also with the whole of their property outside of the association. And it is desired that the industrial partner who, in a collective copartnership, did not primarily respond with his corporate capital, because he had none, shall subsidiarily respond with such property as he may have outside of the company, and with which nobody, either within or without the copartnership, had counted upon, since both inside and outside of the company his industry or work only had been reckoned with. Therefore, the word all, of article 127 cited above, simply denoted the extent of the ulterior or subsidiary responsibility, and that which does not appear, which does not materially exist, can hardly be made to apply.

An industrial partner can not engage in transactions of any class whatever, otherwise he would be subject to serious consequences (art. 138), while a capitalist partner, as a rule, may so engage without extending profits or liabilities to the company (arts. 134 and 136); an industrial partner, as regards profits, can only receive in the distribution the same amount as the partner who contributed the smallest amount of capital (art. 140); in the case & t bar, one-eighth goes to each of the two industrial partners, three-fourths being for the capitalist, and even at the expiration of the copartnership they run the risk of having the one-eighth of the profits earned in former years absorbed by a total loss incurred during the last year of the contract of copartnership; and it is claimed that such industrial partner, so much delayed with regard to profits, who has not the same rights, shall be under the same obligations as the capitalist partners and be equally responsible as regards obligations because he is a collective partner? This seems neither just nor logical.

And it is not so. Article 141 reads: "Losses shall be charged in the same proportion among the partners who have contributed capital, without including" the industrial partners (since they have not the same rights), and they should not be included therein nor in the proportion of the partner who contributed the smallest capital, simply for the reason that the industrial partner has nothing to lose, he not having contributed anything which the company may lose when the losses of the copartnership are considered, either among the partners thereof or with regard to third persons.

There need be no distinction made between obligations and losses. During the existence of a company the gains or the losses are set off the one against the other, and the difference is either in favor of or against the concern. As to the industrial partner, in connection with the question submitted, it is not a matter of striking a balance from time to time, but one of the final adjustment of assets and liabilities, because the matter under discussion refers only to his private property, which has nothing to do with the company nor with losses in liquidating the same. Article

127 is affected by article 237: "The private property of the general partners which is not included in the assets of the copartnership when it is established can not be seized for the payment of the obligations contracted by the copartnership until after the common assets have been attached." And such condition is stated in the majority decision. As «long as there is property belonging to the company, obligations in favor of third persons are covered by the primary and direct responsibility of the company; the question arises when the assets of the company are exhausted and it becomes necessary to appeal to the ulterior or subsidiary liability of the private property of the partners; in this case such obligations constitute the extreme losses in the liquidation of the company.

The case at bar could only thus be set forth: Should an industrial partner be responsible for such losses, for such obligations in favor of third persons? Article 141 expressly states that he shall not. In order to state the contrary it would be necessary to appeal to discriminations in the wording of said article; and this is neither permitted where the law does not make them nor would they lead to anything after all. In the aforesaid article 237 the corroboration of the word all of article 127 may be found: "The private property of the general partners which is not included in the assets of the copartnership," differing from such as were included, can not be seized for the payment of obligations contracted by the copartnership, until after the common assets have been attached; after such attachment all the assets, according to article 127, such as were included, and those that were not included, in this order, shall be subject to the results of the transactions of the copartnership. An industrial partner has not contributed any property whatever; he therefore offers no subject for the principal and direct seizure when the assets of the copartnership are attached. How is it possible to conceive any ulterior, subsidiary, indirect responsibility over the property which it was not even thought to be included, since he only contributed to the company his industry and work, not property of any class whatever? It seems very anomalous that one who has not obligated himself in the least should be responsible for the greater part, that he who is not comprehended Avithin the explicit terms should be included by implication, and that he who pledged nothing should be held to respond with his property.

As to the nature of the defendant company in this action, I take it to be:

- That the defendant company is really a collective one such as is described in the Code of Commerce; the firm of "F. Muñoz & Sons" and the terms of the articles of association prove it so beyond all doubt.
- That it is a regular collective company; the word regular means, as employed in the Code of Commerce, that the collective company is the rule, the standard in all commercial associations, the one combining all the effects. which are consequent upon this form of convention; and the limited and the joint-stock companies are the exception.
- That it is not irrelevant in view of the manner in which the present Code of Commerce, like the former one of 1829, has denned the collective company, that such a distinguished professor of law as Doctor Lorenzo de Benito should have established in his "Lessons on Mercantile Law" a difference between the regular collective associations and the irregular collective companies; "regular are those wherein, as article 122 reads, all the members in a collective name and under a firm name bind themselves to participate in the proportion which they may establish with the same rights and obligations." "And irregular, those wherein one or more members who, though not contributing toward the company with anything but their industryt participate in the profits in the manner agreed to in the articles of association or as determined by law, and ordinarily do not share in the losses which the copartnership may sustain. Such members are called industrial partners, and the collective copartnership having a member of said class is also sometimes called an association of capital and industry.

"This is what the law says (he continues), but it has not been very fortunate in sketching the characters of a regular collective partnership (since in conclusion it says nothing in reference to the irregular partnership), because precisely the collective name and the corporate name are applicable to both the collective and the

limited companies; and as to the covenant entered into by the partners to participate in the proportion which they may establish with the same rights and obligations, this is inherent to all partnerships without distinction as to class. What characterizes this partnership is that all the members, 'with the exception of the industrial partners' are jointly responsible and with all their property for the corporate obligations."

- That the code in force, by means of three articles, 138, 140, and 141, among those which regulate collective partnerships, has involved this association of capital and industry; whence irregularity necessarily arises; the irregularity of such an irregular system is that in a collective partnership wherein, besides the element property, common or generic to the three aforesaid classes, there appears this one, to wit, industry, a special feature only in collective partnerships, according to the system of the code.

Had the system adopted by the codes of Portugal, Brazil, and the Argentine Republic been followed, a different classification would have been made of the association of capital and industry which, according to the last of the codes cited, is properly characterized by means of the following articles:

"435. Habilitacion or association of capital and industry is the name given to the partnership formed on the one part by one or more persons who furnish funds for a general business, or for some particular commercial transaction, and on the other part by one or more individuals who join the copartnership with their industry alone.

"438. The obligation of the partners who furnished capital is in solidum, and extends beyond the capital contributed by them to the concern.

"439. The articles of association, besides the requirements contained in article 395, must specify the obligations of the industrial partner or partners and the share in the profits to which they are entitled in the apportionment.

"In the absence of such declaration, the industrial partner shall draw from the profits a share equal to those of the partner who furnished the smallest capital.

"440. An industrial partner can not contract on behalf of the partnership nor is he obligated with his own property toward the creditors of the company.

"Nevertheless, if besides his industry he should contribute some capital toward the company either in money or thing of value, the association shall then be considered as a collective one, and the industrial partner, whatever might have been stipulated, shall respond in solidum."

In my opinion it can not be denied that there is no substantial difference between the three articles of our code and those transcribed from that of the Argentine Republic as regards the rights and obligations of industrial partners in conjunction with partners who furnish capital; there is no difference except in the system, the code of the Argentine Republic dealing with this class of association of capital and industry separately from the only three denominated in our code, all of them of capital only or essentially of partners who furnish capital. Therefore, as said code has an article almost literally identical with article 127 of our code, this question can not possibly arise in that country. That code contains article 454, which reads: "All those who form a collective commercial company, whether managing the corporate funds or not, are obligated in solidum (with all their property, as our code would state) for the results of the transactions made in the name and for account of the partnership," etc. To the question, Do the words "all the partners" found in said article include the industrial partners? undoubtedly the answer would be no.

And it would not suffice to say that the above article of the code of the Argentine Republic, namely, "on collective copartnerships" involves no section which may refer to industrial partners, and that, therefore, there can be no question as to the words "all the members;" it is because, by reason of the nature thereof, whether under one

system or another, the provisions and the principles being identical, the conclusions can not be otherwise than identical. In a copartnership, and as the result of the obligations thereunder, an industrial partner can not lose except what he has actually contributed thereto for a limited or an unlimited purpose, subject ultimately to company or personal obligations; this is all that law and logic may demand of him; anything else would not come under the law, but may be demanded of him by reason of his express covenant, because he has consented to something beyond the character and the effects of the contract of partnership of capital and industry entered into by him, called collective; nothing else has been the subject of his consent and obligation.

Manuel Duran y Bas, a former professor of the University of Barcelona, in his addition to the work of Marti de Eixala, which is so generally and specially consulted in that eminently commercial and industrial city, has offered no remarks to the original text of said work which establish as an elemental doctrine that "When the copartnership is purely a collective one, each of its members is jointly obligated for the result of the transactions which should be charged to the copartnership * * *. From the general rule which we have just set up the industrial partners who contract no obligation to secure the liabilities of the company should be excepted, unless there be an express covenant to the contrary." (Art. 319 of the code of 1829, identical with art. 141 of the code now in force.)

During almost half a century no objection has been raised by the professors of law, the press, or the bar, to this doctrine regarding the exemption, not merely with respect to losses but to company obligations of the industrial partner, on the supposition, which I do not admit, as already shown, that it maybe possible to discriminate between losses and obligations in connection with an industrial partner, for whom there are none but the final losses, such as absorb the assets of the company, which can not be otherwise than outstanding obligations in favor of third parties inasmuch as, so long as there are company assets, no recourse can be had to the private property of any partner.

[1] Page 134, supra.

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