

FRANCISCA PALET Y DE YEBRA ET AL., PLAINTIFFS AND APPELLEES, VS. ALDECOA & CO. IN LIQUIDATION, DEFENDANT AND APPELLANT.

G.R. No. 4320. February 18, 1910

Ponente: JOHNSON, J.

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JOHNSON, J.:

An action by the plaintiffs to recover of the defendant the sum of P17,325.42, with interest at the rate of 5 per cent from the 1st of January, 1907, and costs.

The plaintiff, Francisca Palet y de Yebra, and Agustin Palet y Roca (the latter now deceased) were legally married, and as a result of said marriage there were born to them Rosa, Montserrate, Agustin and Dominga Palet y Palet. Agustin Palet y Roca died at Barcelona in Spain on the 15th of March, 1900.

Agustin Palet y Roca had been a member of the defendant company from the 31st of December, 1896. After the death of Agustin Palet y Roca a liquidation was had of his interests in the defendant company, in accordance with the provisions of the copartnership agreement, dated the 31st of December, 1896, As a result of this liquidation and in accordance with a public document (No. 364) dated the 8th of May, 1900, there was found to be due to the estate of Agustin Palet y Roca from the said defendant company the sum of P115,502.56, which sum the defendant company promised to pay to the heirs of Agustin Palet y Roca, in seven annual installments, in accordance with paragraph 5 of the said liquidation, which paragraph 5 is as follows:

"Fifth. Messrs. Aldecoa & Co., and Mr. Sixto Jesus Alvarez Perez on their behalf, declare that the capital paid into the partnership by Mr. Agustin Palet y Roca, deceased, on January 1, of the present year, amounts to the sum of P100,000, to which the corresponding amount of the reserve fund, belonging to him, and amounting to P15,502.56, must be added. They bind themselves to pay the said sums to the heirs of Palet in yearly installments at the rate of P16,500.36 each, except the last, which will amount to P16,500.40, plus interest at the rate of 5 per cent per annum, from March 16, of the present year; the first installment to be paid on December 31 of the current year, and the other payments on the same date in the years following, and they declare that, according to the agreements entered into in the contract of partnership, the said obligation has a preference over any other obligation which the partnership might assume during the term of its existence, taking into account, for such purpose, the nature and character thereof."

The defendant company, in accordance with said agreement, made the first payment on the 31st of December, 1900, and each of the successive payments or installments up to the one which fell due on the 31st of December, 1906. The installments' or payments which had been made by the defendant company prior to the 31st of December, 1906, had been made to Fernandez Hermanos, as the representative of Francisca Palet y Yebra and her said minor children. The demand for the payment which was due on the 31st of December, 1906, was made by one Joaquin Mustaroz, who represented himself as the "apoderado de Da. Francisca Palet y Yebra de Oliver." By the power of attorney which the said Joaquin Mustaroz presented, showing his authority to collect the said payment or installment, the defendant discovered that the said plaintiff, Francisca Palet y de Yebra had

contracted a second marriage with Jose Oliver y Bauza. The defendant company refused to pay the said agent the said installment (the one due December 31, 1906) upon the ground that he had no authority or right to collect the said sum as the agent of Francisca Palet y Yebra de Oliver, in the name of the heirs of Agustin Palet y Roca.

The second marriage of Francisca Palet y de Yebra with Jose Oliver y Bauza is fully admitted and proved. (See Exhibit A.)

The theory of the defendant upon which it denied the payment of the said sum to the said agent of Francisca Palet y de Yebra is based upon the provisions of the Civil Code, which deprive the mother of her natural guardianship of the minor children by virtue of a second marriage. The defendant does not deny its obligation to the heirs of Agustin Palet y Roca under the contract of liquidation of the 8th of May, 1900. It simply denies that the parties demanding payment now have authority to collect the same. The only reply which the plaintiffs and appellees make to this argument of the defendant is that the defendant had already paid the other installments to the plaintiffs.

Article 159 of the Civil Code provides that "the father, or, in his absence, the mother, is the legal administrator of the estate of the children who are under their authority."

Article 168 of the same code provides that "a mother who contracts a second marriage loses her parental authority over her children unless the deceased husband—the father of the latter - shall have in his will made express provision for the remarriage of his widow, and ordered that in such case she .was to preserve and exercise parental authority over their children."

Together with these provisions of the Civil Code, others of the Code of Civil Procedure are also in force, section 553 of which prescribes that -

"Father or mother natural guardian and to be appointed guardian of the estate, if competent. - The father, or, in case of his death or legal disqualification, the mother, of a minor child, is to be deemed the natural guardian of the child, and as such is entitled to the custody, and care for the education, of the minor, but not of his estate, unless so ordered by the court. It shall be the duty of the judge, in the appointment of a guardian of the estate of a minor child, to appoint the father or mother or near relative of the child, preference being given in the order just named; but the court shall have the power to set aside the order of preference here provided, and to appoint any suitable person as guardian, either of the person or of the estate of the minor, or both, as the best interests of the child may require. The authority of the guardian shall not be extinguished or affected by the marriage of the guardian."

Under the Civil Code in force in these Islands, which is the same as the present code in Spain, Francisca Palet lost the right of guardianship over her children because of her second marriage, unless it be shown that her deceased husband, father of the children, stipulated in his will that his widow, although she married again, should retain and exercise such guardianship over the children by the first marriage; as the existence of such condition is not shown, as prescribed by article 168, it is clear that Francisca Palet, widow of Agustin Palet and mother of the said minor children, has at present no right to represent them as guardian, and therefore she has no authority to collect any money corresponding to the estate of the children.

Even supposing that the provisions of the section of the Code of Civil Procedure above quoted were applicable in her favor, it would still be necessary that she be appointed tutor by a competent judge; in the absence of such appointment she could not be considered as the natural guardian of the said children with the right to represent them personally and judicially before the courts.

It might be argued that the plaintiff, Francisca Palet y de Yebra, in the present action might be permitted to collect that portion of the said indebtedness to which she is entitled, inasmuch as she sues for herself and in

representation of her minor children. There is nothing in the record which shows to what portion of said indebtedness she is entitled.

The plaintiff, Francisca Palet y de Yebra, having lost her power to administer the estate of her minor children, was without authority, conjointly with her second husband, Jose Oliver y Bauza, to confer upon Joaquin Mustaroz y Portell power to administer such estate or to collect moneys due the estate of such minor children, or to collect the same herself, unless she had been duly appointed by the court.

The judgment of the lower court is, therefore, hereby reversed, without prejudice to the right of Francisca Palet y de Yebra, if she is entitled to any portion of said claim, and the proper legal representative of the said minor children, to commence another action against the defendant for the purpose of collecting the said installments, and without any findings as to costs, it is so ordered.

Arellano, C. J., Torres, Mapa, Carson, Moreland, and Elliott, JJ., concur.

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