

JOAQUIN IBAÑEZ DE ALDECOA Y PALET ET AL., PLAINTIFFS AND APPELLANTS, VS. THE HONGKONG & SHANGHAI BANKING CORPORATION ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6889. March 23, 1915

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from the judgment of the Court of First Instance of the city of Manila entered on the 27th day of January, 1911.

This action was commenced in October, 1908, by Joaquin Ibanez de Aldecoa and Zoilo Ibañez de Aldecoa to cancel a certain instrument of mortgage executed by them, jointly with Aldecoa & Co. and Isabel Palet, in favor of the Hongkong and Shanghai Banking Corporation. By this mortgage various properties of Aldecoa & Co., of Isabel Palet, and of the plaintiffs were hypothecated to secure the payment unto the bank of an overdraft of Aldecoa & Co., amounting to P475,000. The judgment of the trial court dismisses the action as to Joaquin Ibañez de Aldecoa and grants the relief sought in favor of Zoilo Ibañez de Aldecoa. Both Joaquin Ibanez de Aldecoa and the bank appealed.

The plaintiffs, Joaquin Ibañez de Aldecoa and Zoilo Ibañez de Aldecoa, were born in the Philippine Islands on March 27, 1884, and July 4, 1885, respectively, the legitimate children of Zoilo Ibañez de Aldecoa and Isabel Palet. Both parents were natives of Spain. The father's domicile was in Manila, Philippine Islands, and he died here on October 4, 1895. The widow, still retaining her Manila domicile, left the Philippine Islands and went to Spain in 1897, because of her health, and did not return until 1902. The two plaintiffs accompanied her on this journey and returned with her. After the death of the father, the firm of Aldecoa & Co., of which he had been a member, was reorganized, and his widow became one of the general, or "capitalistic," partners of the firm. In the public instrument which constitutes the articles of copartnership, the plaintiffs appear as partners.

On July 31, 1903, Isabel Palet, the mother of the plaintiffs, who were then over the age of 18 years, went before a notary public and executed two instruments (Exhibits D and E) wherein and whereby she emancipated her two sons, the plaintiffs, with their consent. No guardian of the person or property of these two plaintiffs had ever been applied for or appointed under and by virtue of the provisions of the Code of Civil Procedure since the promulgation of said Code in 1901. Instead, the plaintiffs had continued from the death of their father under the custody of their mother until the execution of Exhibits D and E.

On February 23, 1906, the firm of Aldecoa & Co. was heavily indebted to the Hongkong and Shanghai Bank, and the latter was desirous of collecting or securing the payment of this indebtedness. The correspondence between Aldecoa & Co. and Isabel Palet, the plaintiffs, and the bank disclosed that the bank would foreclose this account unless the same was sufficiently guaranteed by adequate securities. It was finally proposed that Isabel Palet and her two sons, the plaintiffs, should mortgage, in addition to certain securities of Aldecoa & Co., certain of their real properties as security for the obligations of Aldecoa & Co. So, on February 23, 1906, the mortgage, which is

the subject matter of the present action, was executed. On December 31, 1906, the firm of Aldecoa & Co. expired by limitation of the partnership term, and the firm went into liquidation.

On June 30, 1907, Aldecoa & Co. in liquidation, for the purposes of certain litigation about to be commenced in its behalf, required an injunction bond in the sum of P50,000, which was furnished by the bank upon the condition that any liability incurred on the part of the bank upon the injunction bond would be added to the existing debt of Aldecoa & Co. and would be covered by the mortgage of February 23, 1906. An agreement to this effect was executed by Isabel Palet, by the plaintiff Joaquin Ibañez de Aldecoa, who had then attained his full majority, and by Zoilo Ibañez de Aldecoa, who was not yet 23 years of age. Subsequent thereto, and in 1908, the plaintiffs commenced an action against their mother, Isabel Palet, and Aldecoa & Co., in which the bank was not a party, and in September of that year, procured a judgment annulling the articles of copartnership of Aldecoa & Co., in so far as the plaintiffs were concerned, and decreeing that they were creditors and not partners of that firm.

The question is presented whether Dona Isabel Palet could legally emancipate the plaintiffs under the law in force in this country in July, 1903, and thus confer upon them capacity to execute a valid mortgage on their real property with her consent. The solution of this question involves an inquiry as to the effect of the provisions of the new Code of Civil Procedure relating to guardianship upon certain provisions of the Civil Code relating to the control by parents over the persons and property of their minor children.

Under the Civil Code parents had general control over the persons of their children and also over their property. The following articles of the Civil Code illustrate the extent of the parental authority over the property of their minor children under that code:

"159. The father, or in his absence, the mother, is the legal administrator of the property of the children who are under their authority.

"160. The ownership of property which a child not emancipated may have acquired, or acquires by its work or industry or for any good consideration, is vested in the child, and the usufruct in the father or mother, who has him or her under his or her authority and in his or her company; but if the child, with the consent of the parents, lives independently of them, he or she shall be considered as emancipated for all purposes with regard to said property and shall own it and enjoy the usufruct and administration thereof,

"161. The ownership and usufruct of what the child acquires with the capital of his or her parents is vested in the latter; but should the parents expressly assign to him or her the whole or a part of the profits which he or she may obtain, such profits shall not be chargeable to the latter in the inheritance.

"162. The ownership or usufruct of the property or income donated or left by will to a child not emancipated, to cover the cost of his or her education and instruction, is vested in him or her; but the father or the mother shall have the administration thereof if no other proviso has been made in the gifts or bequest, in which case the will of the donors shall be strictly observed."

Nothing is here said of a bonded guardian appointed by the court and required to account to the court for the property and income of the child's estate. Filiation stood in lieu of those legal safeguards with which the present Code of Procedure envelops the property of a minor child.

Not only this, but the income or usufruct of property inherited by the child or bequeathed to it belonged to the parent unless the child had been formally emancipated or lived apart from his parent with the latter's consent. (Art. 160.) True it is that the law prevented the alienation or incumbrance of real property of the child without permission of the court (Civil Code, art. 164; Mortgage Law, art. 205) and required the parent to give security, binding himself or herself to comply with the obligations imposed upon usufructuaries in case the parent contracted a second marriage. (Civil Code, art. 492; Mort. Law, art. 200.) But restrictions such as these did not

make a parent a guardian. The Civil Code drew a sharp and clearly distinguishable line between guardianship, properly so called, and the patria potestad, or parental authority. They were provided for in separate titles, and the definition of guardianship contained in article 199 of that code provided that it "is the custody of the person and property, or of the property only, of those who, not being under parental authority, are incapable of taking care of themselves."

The contrast between the patria potestad of the Civil Code and guardianship under our present code of procedure is none the less marked. The latter requires a guardian to obtain his appointment from the court; to execute a bond for the faithful performance of his duties; to make an inventory of the property, the management of which he undertakes, and to render accounts at specified intervals; to manage the estate of his ward frugally and without waste and apply the income and profits thereof to the support of the ward so far as may be necessary. A guardian is a court officer, responsible to the court, and dischargeable by the court alone.

There was, however, no conflict between the patria potestad and guardianship under the Civil Code. This was for the reason, as stated above, that the law of guardianship expressly excluded the patria potestad from its operation. But in the enactment of the present code of procedure, no attempt was made, in dealing with the subject of guardianship, to exclude the patria potestad from the operation of the law of guardianship. For the purpose of inaugurating a procedure on the subject of guardianship more in consonance with the remainder of the new procedure, whole sections of the California probate procedure were incorporated almost verbatim in the new code. These borrowed sections comprise practically all of our present law of guardianship. As there is no such institution in the State of California as the patria potestad, it is manifest that no provision saving it from the operation of the law of guardianship would be found in the laws of that State. In other words, the law of guardianship in California extended to and included minor children whose parents were still living. It was this law which was incorporated into the new code of procedure, and the Philippine Commission inserted no exception saving the institution of patria potestad from its operation. The language of the new law is too plain to permit of the courts giving it an interpretation which would permit of the continued existence of the patria potestad with regard to the child's estate, unless language be wholly disregarded; Section 551 provides that the court may appoint a guardian of the person or estate of a minor. Certainly, this language is comprehensive enough to include all minors, whether their parents are living or not. If the law does not command or prohibit, it permits; and where the grant is unrestricted, it reaches all subjects within the grant. Section 553 expressly abolishes the prerogative of the father and the mother, in the order named, of administering the property of their minor children, and gives the court power to appoint another person. Here, the specific language of the law shows that guardianship is meant to include minor children whose parents or one of them are living.

Under section 553, the person appointed guardian of the child's estate is entitled to possession. This is clearly inconsistent with the parent's right of usufruct, for the usufructuary is entitled to possession. Section 569 provides for the sale of real estate and the reinvestment of the proceeds. It is apparent that this section contemplates an absolute sale, and that such a sale is not consistent with a usufructuary interest vested in the parent. These, as well as other specific provisions of the new code, make it clear that the repugnance between the patria potestad and the new law of guardianship is such that the parent, as such, no longer has the power to enjoy the administration and usufruct of the property of his minor children.

Keeping this resume of the repugnance between the patria potestad and the new law of guardianship in mind, let us now notice the argument that the appointment of a guardian under the new law for a minor child whose parents, or one of them, is living is a discretionary duty of the court; and that the patria potestad may still exist, subject only to the power of the court to bring the child and his property under the operation of the new law of guardianship.

It is true that section 551 confers the power of appointment upon the court as a matter of discretion—"when it appears necessary or convenient." But the scope of this discretion is restricted to the question of whether there shall or shall not be appointed a statutory guardian. It does not delegate to the court the power of deciding whether the child and his property shall be governed by the Spanish patria potestad or by the provisions of the present Code of Civil Procedure. It does not leave to the court the power to bestow the usufruct of the child's property upon the parent as a matter of grace. As we have stated above, the new law of guardianship was enacted without the slightest attempt being made to preserve the institution of patria potestad. As we have also seen, the Civil Code selected minor children whose parents or one of them was living as a special class of incompetents for whom a special form of guardianship was provided, and this was recognized as an exception from the operation of the law of guardianship (art. 199). The new law of guardianship, as contained in the Code of Civil Procedure, was enacted without reference to the preexisting law relating to incapacitated persons. It was borrowed almost verbatim, and certainly in all substantial particulars, from the statute of California, where the Spanish patria potestad was unknown. We must interpret and apply that law as it comes to us and allow to it the full vigor of its language. Its application here, in accordance with well known rules of statutory construction and interpretation, should correspond in fundamental points, at least, with its application in the jurisdiction from whence it was taken. It must be taken as the intent of the legislature that the practical application of those provisions of the Code of Civil Procedure relating to guardianship should conform in the main with the practice under the same statute in California. It is obligatory upon the judicial department to follow the intent of the legislative branch of the Government in the application of laws. It is but stating the proposition in different terms to say that our present law of guardianship does not contemplate a reference by the court to the provisions of the Civil Code relating to the patria potestad in resolving the question of whether a guardian ought to be appointed for a minor child whose parents or one of them is living. That the fact of the child's having a parent or parents may be taken into consideration by the court in determining the question may not be disputed. Section 553, as we have seen, recognizes the closest bond of kinship known to nature as a sufficient guaranty for the faithful care of the child's person. But such is not the case with the child's property. The law says that as to the administration of the estate of a minor child a parent shall only have a preferential right; and, when the parent does secure an appointment as guardian of a child's estate, he must qualify as any stranger would, and perform the same duties and accept the same compensation as a stranger. Can anything be more inconsistent with the right which the patria potestad grants the parent of administration and usufruct in the child's property by mere operation of law, and requiring neither appointment nor supervision by the court (except in a very limited sense, Civil Code, art. 160; Mortgage Law, arts. 200 and 205) The truth is that the patria potestad and the present law of guardianship cover the same subject; i. e., the custody and care of the person and property of minor children whose parents or one of them is living. By this, of course, we do not mean to restrict the new law to this class of incompetents alone. The provisions of the two laws are entirely repugnant to each other; they are totally irreconcilable if any proper respect be had for the language used in the latest law, and the evident intent of the legislative department in enacting it. The former must, therefore, yield to the latter.

The provisions of the new code of procedure on guardianship being applicable to minor children whose parents or one of them are still living, it is clear that those articles of the Civil Code relating to emancipation of minors by their parents are also, partially at least, repealed. By reference to these articles (314-319), it will be noted that by emancipating his child the parent surrenders to it the right to the usufruct and administration of his property. This, of course, is based upon the a priori condition of the law of patria potestad that the parent has the usufruct and administration of the child's property to give, which, as we have seen, he no longer has. Not having the right in the first place, and, hence, no authority to concede it to his child, the formal emancipation of a minor child by the parent cannot now have the effect prescribed in articles 314-319 of the Civil Code. For, were this power of emancipating his minor child still retained by the parent, the latter could, by the exercise of it, deprive the court

guardian of the administration and control of the estate, or, in other words, the court proceedings with reference to the person and property of the minor child would, by the parent's act, be annulled.

We have now determined that the right of administration and usufruct of the child's property, granted by the former law to the parent, and the right of the latter to emancipate his child in accordance with the provisions of article 314 et seq., of the Civil Code, whereby the child takes over the administration and usufruct of his own property, have been repealed by the chapter of the new code of procedure relating to guardianship. But we deem it necessary, before proceeding further, to say that there are some provisions of the patria potestad which are not necessarily in conflict with the new code of procedure. Parents are never deprived of the custody and care of their children except for cause. This is a universal rule of all systems of law, as beneficial to the child as it is just to the parent. Indeed, it might well be said to belong to the realm of natural justice. Happily, however, it is unnecessary to resort to generalities to show that the patria potestad of the Civil Code with respect to the persons of minor children is not inconsistent with the new law of guardianship. Section 553 of the new code provides that the father and the mother, in the order named, are considered the natural guardians of the child and as such entitled to the custody and care for the education of the minor. Chapter 41 is devoted to "adoption and custody of minors." Section 768 provides that the effect of adoption shall be to free the child "from all legal obligation of obedience" to his parents. From section 770, it seems clear that parents may not be deprived of the custody of their children because of unworthiness except after hearing. Section 771 provides that in the case of spouses living separate or divorced the court shall determine which of them shall have the care, custody and control of the offspring." The italicized words clearly acknowledge a right in the parents, under normal conditions, to exercise parental authority over the persons of their minor children.

But so far as the property of such children is concerned, the rights of the parent must be subordinated to the efficient working of the new law of guardianship. It is not, of course, true that a guardian for the property of the minor child will be appointed in all cases. It is always within the discretion of the court to do so. We apprehend that no proper case for such an appointment would be presented to the court where a child's work or industry were productive of small earnings which would necessarily be consumed in its own support, and which the parent is required to give. The same might possibly be said with reference to property acquired by the child for a good consideration. The purpose of the law is to protect the estate of the child from the avarice of designing persons be they whom they may. It would hardly seem necessary to carry this doctrine to the point where the parent having the custody of the person of the minor child should not be entitled to its earnings or that portion thereof necessary for its support as compensation for the care and support which such parent is called upon to give. We do not think the repeal of that branch of the patria potestad relating to the child's property carries with it any such a consequence.

But there are other questions the solution of which may be difficult if they are presented to the courts in the present state of the law. Under the Civil Code, a child might be emancipated formally (art. 315) or impliedly (art. 160) by the parent. In either case his contracts with third persons were binding upon him, except when they tended to divest him of his real property. Formal emancipation, as we have stated above, is no longer possible. Is implied emancipation still permissible? If so, to what extent may such a child validly bind himself by contract? May children living apart from their parents and supporting themselves recover money paid for necessities? What control have such children over their own property acquire by their own work or industry or for a good consideration? These are questions which we do not find it now necessary to consider.

Before proceeding to determine what effect the new law of guardianship had upon pending cases of patria potestad, it seems well to note the effect upon the status of a child emancipated by the concession of the parent exercising the patria potestad. Article 167 provides that the patria potestad terminates by the emancipation of the

child. Article 314 provides that emancipation takes place (1) by marriage; (2) by majority; and (3) by the concession of the father or mother exercising the patria potestad. It was by this latter method that Isabel Palet terminated her patria potestad over the appellant children. Article 317 provides that upon emancipation by concession of the parent the child is qualified to control his person and property as if of age, with the exception that until he attains his majority, he cannot borrow money nor encumber or sell his real property without the consent of the parent, or, in the absence thereof, of a guardian. As we have said, that code imposed upon children whose parents or one of them was living the patria potestad in lieu of guardianship imposed upon all other incompetents. By mutual consent of the parent exercising the patria potestad and the child subject to it, it could be terminated after the child reached the age of eighteen, in which case there was substituted therefor a veto power, exercised by the parent, upon the child's capacity to borrow money and to sell or encumber his real property. Under this arrangement, whether the parent emancipated his child or continued exercising the patria potestad over it until it reached the age of majority, the child was subject to a continuing status of dependency upon the parent until it became of age. The parent was permitted to exercise a limited control over the property of his minor child after having emancipated it, for the same reason that he was permitted to exercise the patria potestad before its emancipation. That is to say, the parental love and affection was deemed a safeguard against covetousness, and an incentive to watchfulness over the child's property equivalent to those legal safeguards exacted of an ordinary guardian. In other words, the relationship between the parent and the child was deemed a sufficient reason for intrusting to the former those duties which would have devolved otherwise upon a guardian. In point of strict fact, it would seem that, instead of the patria potestad being terminated by the parent's emancipating his child, there was still a remnant of it left in the parent's absolute veto of the child's right to borrow money or dispose of or encumber his real property. The law gave no sanction to such contracts when entered into without the parent's consent. The parent's control over the estate of his minor child before as well as after emancipation was deemed a sufficient substitute for guardianship, properly so called. This control or supervision of the parent over his minor child's estate began with the occurrence of a mere fact—the acquirement of property by the child, and it terminated with a fact—the complete emancipation (by majority) of the child. It required no judicial sanction for its beginning or ending. While it might be modified by the child's emancipation at the age of eighteen, it was not extinguished. It was a legal status created between the parent and the child continued throughout the infancy of the latter. We conclude, therefore, that the emancipation of the appellant children in 1903 is no sufficient reason, in and of itself, for holding that a statutory guardian ought to have been forthwith appointed under the provisions of the new Code of Civil Procedure. There was no such break in the duties of the parent, the inexperienced child was not so utterly thrown upon the tender mercies of a selfish world as to require the intervention of a guardian appointed under the new law. Unless the new law of guardianship abrogated the rights of those parents administering the estates of their minor children under the patria potestad at the time it went into effect, it did not abrogate the rights of those same parents to subsequently emancipate such children under the provisions of articles 314-317 of the Civil Code. The parent's right of emancipating his child depended upon the antecedent right to exercise the patria potestad. The former was necessarily a consequence of the latter, and if the parent exercising the patria potestad at the time the new law took effect was not molested, neither was he deprived of the right to subsequently emancipate his child and thereby confer upon the latter capacity to contract with third persons.

Having determined that the present Code of Civil Procedure has repealed the patria potestad with reference to the child's estate and the power of emancipation by concession of the parent, the question remains, Does the new order of things apply to a parent who assumed charge of the property of her minor children in 1895? If it does, then the execution of the mortgage which the appellant children now seek to have annulled was an act properly devolving upon a guardian appointed by the court, who must have asked for and received the court's approval to enter into the said contract before it could bind the property of the children. On the other hand, if the new law does not affect estates of minor children whose parents assumed charge thereof prior to the enactment of the new

code, the validity of the mortgage must be determined by the provisions of the Civil Code. To state the proposition in another form, Were all parents administering the property of their minor children by virtue of the provisions of the Civil Code on October 1, 1901 (the date the new law of guardianship became operative), ipso facto deprived of their control over the estates of their minor children? Did it immediately become necessary to bring these estates under the operation of the new law ?

Under cover of procedure a radical departure from the substantive law had been made. The Civil Code provided a method of conserving the estates of minor children through the agency of their parents, without the necessity of judicial intervention (except in a very limited sense). It had, furthermore, endowed the minor child after emancipation by concession of the parent with the capacity to freely contract with third persons, requiring only the parent's approval of contracts in alienation of or encumbering the child's real property and for the borrowing of money. And lastly, it gave to third persons entering into contracts with emancipated children assurance that such contracts were binding and valid upon the children. The new law of guardianship practically placed the parent in the position of a stranger to the child's estate, giving him only a preferential right, other things being equal, to an appointment as guardian of the estate. It brought the child's estate under the control of the court. And finally, the incapacity of the children between the age of 18 and the age of majority to contract with third persons could not be modified in the least by mutual consent of the parent and child, and, hence, contracts made in that manner were no longer binding upon the child. The change was abrupt, it was entire, and, unfortunately, it was not specified but implied. Whether the change was casual or intended, it is unnecessary to determine. That it occurred is the unavoidable conclusion. Under these circumstances the inquiry naturally arises, Does the new law contain any saving provision excepting from its operation those estates of minor children which were being administered either by the parents under the patria potestad or by the children themselves under the provisions of the Civil Code relating to emancipation by concession of the parent? That the authors of the new code recognized a conflict between the new law of guardianship and the existing system of caring for the estates of incompetents is evident from an examination of section 581 thereof. That section reads:

"Pending guardianship to proceed in accordance with Spanish law, with certain exceptions.—All proceedings in cases of guardianship pending in the Philippine Islands at the time of the passage of this Act, shall proceed in accordance with the existing Spanish procedure under which the guardians were appointed: Provided, nevertheless, That any guardian appointed under existing Spanish law may be removed in accordance with the provisions of section five hundred and seventy-four of this Act, and his successor may be appointed as therein provided, and every successor to a guardian so removed shall, in the administration of the person or estate, or either, as the case may be, of his ward, be governed by the provisions of this Act."

This section saves from the operation of the new Act all proceedings in cases of guardianship pending in the Philippine Islands at the time of its passage. Does this refer to and include the administration of the property of minor children by their parents under the provisions of the Civil Code? If it does, then the authority which Isabel Palet exercised over the property of her minor children was not affected by the enactment of the new code of procedure, and she was at liberty to proceed as she did, in accordance with the provisions of the Civil Code, to emancipate her children by a formal declaration, and they thereupon acquired the capacity extended to emancipated children by article 317 of that code.

Examining the section with a view to ascertain the mere literal meaning of the language used, we are at once met with the argument that it refers only to cases of guardianship and that the parent administering the estate of his minor child in accordance with the Civil Code is not a guardian, either under the Civil Code or as that word is used in the Code of Civil Procedure. Hence, according to this argument, the patria potestad and the ancillary right of emancipation pertaining to the parent are not saved from the operation of the new law by section 581. But we are of the opinion that this argument amounts to a play upon words rather than to a reasonable interpretation of the

section. In the first place, the question arises, In what sense were the words "guardian" and its derivative, "guardianship," used in section 581? Were they used in the same sense as in the preceding sections of Chapter 27 of the new Act, the chapter prescribing the new law of guardianship? If so, they include the administration of the estates of all incompetents, including infants whose parents are living, for that is the design of the new law of guardianship. If the argument under examination is sound, it must be held that the authors of the code descended from this all-inclusive meaning of the word when they finally came to the consideration of what ought to be saved, and attempted to deal only with guardianship as that term is understood in the civil law. A careful examination of the entire Act, in the light of the conditions under which it was passed reveals convincing evidence that the authors of the code attempted no such nicety of expression in section 581. With the advent of American sovereignty in 1898 there came an influx of American ideas of administration of justice. A new code of criminal procedure was enacted under authority of the military governor in 1900, and early in 1901 the first Philippine Commission undertook as one of its first tasks the reorganization of the courts and the enactment of a new code of civil procedure. The new legislation did not purport to be an amendment of the Spanish law on the subject. On the contrary, it was a virtual substitution of the one for the other. The various sections of the Code of Civil Procedure were, practically speaking, adopted without material alteration from one or another of the States of the American Union. Both executive and legislative affairs were, at the time, being discharged by a single body—the Philippine Commission—and the pressure of business afforded little opportunity or time to carefully survey the field covered by the new legislation and discover how much of the former law would be affected by the new Act. The only method that could be safely followed, under the circumstances, was to ruthlessly brush aside the Spanish law and inaugurate the new in the form which had withstood the test of time in the United States, and leave the extent of the change to be ascertained by the courts in the actual administration of the new code by determining implied repeals. Hence, the authors of the new code expressed themselves entirely in terms of American law. Instances pointing to this fact are numerous. Thus, "embezzlement" in section 30; "adverse possession" in section 41; "battery" and "slander" in section 43; "corporation" in section 198 and various other sections; many of the terms used in the chapter on evidence; "residuary legatee" in section 644; "heir" as it is used in various sections of the probate procedure; all show quite clearly the extent to which the authors of the new code held to the technical terms of American law in compiling the new code. Bearing in mind such extreme instances of the terms in which the authors of the new code expressed themselves, is it possible that they stopped to make a distinction in section 581 between the administration of a minor's estate by his parent and the administration of the estates of all other incompetents'. They knew that the system they were introducing was applicable to the estates of all incompetents. The fact that they inaugurated this new system of caring for the estates of incompetents clearly show that they disapproved, without distinction, of all the existing law on that subject. The administration of the estate of a minor by his parent was impliedly repealed by the new law. Is it not reasonable to suppose that the saving clause, which it was deemed desirable to insert in the new law, was intended, by implication, to include those pending cases of that nature? A saving clause is enacted to save something which would otherwise be lost. When existing procedure is altered or substituted by another, it is usual to save those proceedings pending under the old law at the time the new law takes effect. This was the purpose of section 581. It was designed to save undisturbed all pending proceedings in guardianship cases; that is, those proceedings already begun and still unfinished, which would otherwise have been affected by the new law, were to be allowed to continue to determination in accordance with the old law. There was no reason for allowing guardianships, so called under the Civil Code, pending at the time the new code went into effect, to continue undisturbed by the new law, while parents who were administering the property of their minor children under the same code must submit to the new regulations. Both were equally favored institutions under the civil law, and both were equally disapproved by the authors of the new code.

But it is said that those pending cases wherein the parents were administering the property of their minor children

do not come within the saving provisions of section 581. because that section refers only to pending cases of guardianship wherein the guardians were appointed in accordance with the Spanish procedure; that is, guardians who were subject to removal by the court in accordance with the provisions of section 524 of the new code, and whose successors could be appointed as therein provided.

Guardianship, so called under the Civil Code, was conferred (a) by will; (b) by law; and (c) by the family council. Guardians thus designated were removable generally by the family council. The right to administer the property of an infant child was conferred upon the parent by law. Under article 169 of the Civil Code the parent lost the authority over his minor child (1) by a final judgment in a criminal case; and (2) by a final judgment in a case for divorce. And under article 171 the courts had the power to deprive parents of the parental authority or suspend the exercise thereof when they treated their children with excessive cruelty, or if they gave them corrupting orders, advice, or examples. The courts could also deprive the parents either totally or partially of the usufruct of the child's property.

All pending cases of testamentary guardianships, legitimate guardianships, and guardianships conferred by family councils fall within the provisions of section 581. The guardians in these cases may be removed by the court in accordance with the provisions of section 574, and their successors appointed as therein provided. What sound reason can be advanced for excluding those pending cases wherein the person and property of the minor child were being cared for by the parent under the patria potestad? The patria potestad was conferred by law. In each instance the law specifically designated in their order the persons who were entitled to the care and custody of the child and the administration of its property. In those particulars both are the same. But how may a court, under the authority conferred upon it by section 581, remove a parent who is exercising the patria potestad over the person and property of his minor child and appoint a guardian in accordance with the provisions of section 574 of the person and property of such child ?

The question might be answered by pointing out that if the probate court was duly informed that a parent had lost the authority over his minor child, or had lost the parental authority over both the child and its property as provided in articles 169 and 171 of the Civil Code, it could proceed to appoint a regular guardian for both the person and property of the child. It may be true that the probate court would not have the power to deprive a parent who was exercising the patria potestad over the person and property of his minor child of either the possession of the child or its property, and appoint a guardian to take charge of either or both. This, if true, is not, in our opinion, a sufficient reason for excluding from the operation of section 581 those pending cases wherein the affairs of minor children were being administered by their parents in accordance with the former law.

In the final analysis, it seems that protection from the effects of the new law is claimed for the Civil Code guardian because he was exercising his duties *eo nomine*, while the parent and parties dealing with that parent are to be denied that protection because the parent acted under the patria potestad or under those provisions of the code relating to emancipation of the child by concession of the parent.

The first premise of the plaintiffs' case rests upon the proposition that the parent's right to administer the property of his child has been abolished by the new law of guardianship. This conclusion is reached by determining that this right and the present law of guardianship cover the same subject, that they are repugnant to each other, that they cannot stand together, and that, therefore, the latter law repeals the former. The second premise of the plaintiffs' case is that pending cases of patria potestad are not within the saving clause of section 581. This conclusion is reached by disregarding the substance of the two methods of caring for the minor children and their property, and clinging to the word forms "patria potestad" and "guardianship." In the first premise the intent of the law is the determining factor. In the second premise, the intent is disregarded.

But it is asked why the plaintiffs were not given the same status when they were emancipated in 1903 as any other incompetents whose Civil Code guardians had died, resigned, or been removed, inasmuch as the plaintiffs and their mother occupied the same position for the purpose of bringing them within the saving provision of section 581 as a Civil Code guardian and his wards. We have attempted to show that the emancipation of the plaintiffs was not an interruption of the dependency of the child upon the parent; that the parent did not thereby divest herself of control over the child's property. Hence, there could not follow any such hiatus in the protection afforded the child as occurs by resignation or removal of a guardian so called under the Civil Code. The difference between the status of the two groups of children is clear and fundamental.

We therefore conclude that it was intended by the saving provision of section 581 to withhold the application of the new law from all those cases which were already being taken care of under the provisions of the Civil Code, and that the plaintiffs had full power to charge their estates with the mortgage which they now seek to disaffirm.

It is urged finally that admitting all else, emancipation of the plaintiffs could not be valid because the admitted emancipation was not contained in a public instrument, as required by article 316 of the Civil Code. This article provides that the emancipation by the concession of the father or mother exercising the patria potestad, shall be granted by a public instrument or by an appearance before a municipal judge. In the case at bar the emancipation documents were acknowledged or duly executed before a notary public in 1903. The notary public exercised his authority not by virtue of the Spanish law, but under authority of Act No. 136.

A document acknowledged before a notary public, in accordance with the provisions of an Act of the Philippine Commission, is a public instrument within the meaning of article 1924 of the Civil Code. (*Gochuico vs. Ocampo*, 7 Phil. Rep., 15; *Soler vs. Alzoua*, 8 Phil. Rep., 539; *De la Rama vs. Robles*, 8 Phil. Rep., 712; *McMicking vs. Kimura*, 12 Phil. Rep., 98.) The phrase referred to in article 1924 of the Civil Code and which was brought in question in these cases reads: "In a public instrument"—"escritura publica." Exactly the same words, "escritura publica" are used in article 316. If a document which was acknowledged before a notary public appointed under an Act of the Commission, was a public document within the meaning of that phrase in article 1924, it certainly must be held to be a public document within the meaning of that phrase in article 316, as both are exactly the same.

The conclusions we have arrived at make it unnecessary to consider the ratification of the mortgage contract by the plaintiff, Joaquin Ibañez de Aldecoa, after having arrived at the age of majority. Nevertheless, we might say that we fully agree with the holding of the trial court upon this point. Whether the plaintiffs were creditors or partners of Aldecoa & Co. is likewise unimportant. Neither relation would prevent them in any way from guaranteeing the payment of the debt owed by the firm.

The judgment of the court below, in so far as it sustains the validity of the mortgage contract as to Joaquin Ibañez de Aldecoa, is affirmed. In so far as that judgment declares the nullity of the mortgage as to Zoilo Ibañez de Aldecoa, it is reversed, and the mortgage is hereby declared binding upon the latter.

No costs will be allowed in this instance.

Arellano, C. J., and Araullo, J., concur.

Johnson, J., dissents.

CONCURRING

TORRES, J.:

I concur in the admirable opinion of the majority of this court, and as it is a matter that concerns the personal rights and obligations of a family of Spanish nationality, some of the former having been exercised and the latter having been enforced in this country, wherein they are aliens, I think it necessary to set down as one more ground for the decision in the present suit that the widow of the deceased Aldecoa, Dona Isabel Palet, and her children, Zoilo and Joaquin Ibanez de Aldecoa, being Spaniards born in what was then Spanish territory and the children of Spanish parents, brought along with them upon coming to these Islands the laws of their personal status with all the effects thereof, for by general agreement of civilized nations, wherein a compact of reciprocity has been established for the greater welfare of society and the benefit of their respective citizens, the law of persons accompanies the individual who moves to a foreign country.

Man's activity is not limited and circumscribed within his native country. His manifold dealings with others sometimes impel him to leave and settle in a foreign land, and as the laws of the other countries to which a person may move in search of work, of improvement, or for other reasons, are varied and diverse, it has been determined by general assent and common agreement among civilized nations that the laws relating to family rights and obligations, and the status, condition, and legal capacity of the persons, accompany a person even when he moves to a foreign country; that he is wholly bound to observe the laws of his native land, although he may reside in another and different country. It has been thus prescribed in article 9 of the Civil Code, under the provisions whereof the citizen of one nation, as for example the Spanish, does not cease to be such by moving his residence to these Islands, and to that end the laws governing his personal rights accompany him in his emigration because they are more suited to his personal affairs.

Although under article 10 of the Code personal property is subject to the laws of the nation of the owner thereof and real property to the laws of the country in which it is situated, still the legal and the testamentary successions, both with respect to the order of succession as to the extent of the rights thereof and the intrinsic validity of their provisions, are regulated by the laws of the nation of the person whose succession is in question, whatever may be the nature of the property and the country where it may be situated.

The positive right in connection with the principle of nationality and the law of persons has been upheld by the Spanish supreme court even before the enforcement of the Civil Code, in its decision of November 6, 1897, wherein the doctrine is laid down that in the absence of a special treaty the law of persons must govern the acts that concern the alien's person in civil matters, being subordinated to the laws in the country of which he is a subject and decisive for him of all the questions of fitness, capacity, and personal rights.

In another decision, January 29, 1875, it is stated that the personal law for the individual is the law of the country to which he belongs, that it accompanies him wherever he may move and regulates his personal rights, his capacity to transmit by testate or intestate succession and the governance of his marriage and family. And in the decision of January 13, 1885, the following was established: It is a principle of private international law that status and capacity accompany a person abroad and the personal laws of his own country must be applied to him.

The exercise of the right of parental authority, based on the provisions of article 154 of the Civil Code, is one of the rights governed by the laws included in the law of persons, to the effect that the father, or in his absence the mother, even though he resides abroad with his children, does not lose such right but carries it along with him to the country where he resides.

The right of granting emancipation on the part of the father or mother who exercise parental authority is another

of the rights that he carries along with him to the foreign country wherein he resides, because it is likewise included in the law of persons, and accompanies him even to the country in which he intends to reside. (Arts. 314-319, Civil Code.)

On these grounds there can be no question that the widow of the deceased Aldecoa, Isabel Palet, exercised parental authority over her children had by her deceased husband Aldecoa and availed herself of a perfectly legal right supported by the regulations of their law of persons, as Spaniards, in granting emancipation to her sons Zoilo and Joaquin, over 18 years old, and in giving them her consent so that they might encumber their respective shares in realty or property which they had inherited from their deceased father, for the purpose of maintaining the credit enjoyed by the commercial firm entitled "Aldecoa & Co.," and to avoid a premature and unnecessary liquidation at the instance of the Hongkong Bank.

MORELAND, J., concurring:

I agree with the judgement in this decision, but reserve my opinion as to the grounds on which it is based and the reasoning adduced in support thereof.

Judgement modified.

DECISION ON MOTION FOR REHEARING.

AUGUST 26, 1915.

TRENT, J.:

A motion for rehearing has been made in this case. It is urged that our decision overlooks the fact that the plaintiff children are citizens of this country, and, hence, governed by the laws thereof. Without determining the political status of the plaintiffs, we have at some length endeavored to show that, clothing them with Philippine citizenship, the present law of guardianship, as contained in our Code of Civil Procedure, does not apply to them by reason of the saving provisions of section 581. The concurring opinion assumes their Spanish citizenship, and, hence, their amenability to the laws of Spain. We might add that the admirable briefs of counsel for the defendant bank contain lengthy and strong arguments to the effect that these children are not citizens of the Philippine Islands, but citizens of Spain. If this be true, then it may be that this case ought to be decided in accordance with the provisions of the Spanish Civil Code, as stated in the concurring opinion. We purposely avoided a discussion of the political status of the plaintiffs, basing our decision entirely upon the existing laws of these Islands, as we understand them.

It is urged that the emancipation of the plaintiffs could not have been validly made for the reason that it was not recorded in a public document. This point was raised in the briefs and has been already answered in our decision.

It is next urged that the mortgage is invalid as to the plaintiffs because the mother's interests as a partner of the firm were directly opposed to the children's interests. Article 165 of the Civil Code is quoted in support of this contention. This article is clearly limited by its own words to children "not emancipated." Article 317 confers full capacity upon an emancipated child to control his person and property with the limitations stated. One of these is the encumbrance of his real property, which may not be done without the consent of the parent or, in his or her absence, of the tutor. The resolutions of the Direccion General de los Registros (Nov. 4, 1896; Jan. 7, 1907; and Jan. 30, 1911) distinctly hold that a formally emancipated child may participate in the division of an inheritance with the parent's consent, even when the latter is also interested. Certainly, the division of an undivided

inheritance between the parent and the emancipated child is as strong as case of conflicting interests as is the case at bar. Manresa endeavors to apply article 165 to article 317 by analogy, and cites the resolution of November 19, 1898, in support of this contention. That case, however, was not one of formal emancipation, but of emancipation by marriage, and the land court expressly held that it was governed by articles 315 and 59 of the Civil Code and not by article 317. The case of November 14, 1896, one of formal emancipation and cited above, was expressly distinguished in the resolution of November 19, 1898, upon which Manresa relies. For that matter, article 165 is nowhere cited or discussed in the last mentioned resolution. We do not feel authorized to add to those limitations upon the capacity of a formally emancipated child in view of the decisions of the highest authorities on the point to which we have referred above.

It is urged, lastly, that the mortgage contract is void as to the plaintiffs by reason of a lack of consideration. It is asserted that they executed the mortgage under the impression that they were partners in the firm of Aldecoa & Co., when, as decided by a final judgement of the Court of First Instance, they were not such partners. Article 1276 of the Civil Code provides:

"A statement of a false consideration in contracts shall render them void unless it be proven that they were based on another real and licit one."

By the same⁴ judgement which released the plaintiffs from their obligations as partners of the firm, they were declared creditors of that firm. Here was a valid and subsisting consideration for the mortgage; the creditor's desire to preserve the firm intact in the hope of recovering from it on due course their total credits. It seems clear that it was the object of the mother and the plaintiff children to thus save the business, and it matters little that the plaintiffs were creditors and not partners.

We see no reason for disturbing the decision heretofore rendered. Motion denied.

Arrelano, C. J., Torres and Araullo, JJ., concur.

Carson, J., reserves his vote.

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