

JOAQUIN IBANEZ DE ALDECOA Y PALET ET AL., PLAINTIFFS AND APPELLANTS, VS. THE HONGKONG & SHANGHAI BANKING CORPORATION ET AL., DEFENDANTS AND APPELLANTS.*G. R. No. 6889. August 26, 1915*

Ponente: TRENT, J.

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A motion for rehearing has been made in this case. It is urged that our decision[1] 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 interest 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 a 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 judgment 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 same judgment 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 creditors' desire to preserve the firm intact in the hope of recovering from it in 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. So ordered.

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

[1] 30 Phil.Rep., 228.

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