Civil Law—*Duty to Render Accounting of Person Charged with Business and His Inability to Acquire an Interest Adverse to that of His Principal.*

DAVID THOMAS v. HERMOGENES PINEDA
G. R. No. L-2411, Prom. June 26, 1951

That a person who has been charged with some business or property to manage or to administer should render an accounting of such property or business is the fixed rule in our jurisdiction. So important and indispensable is such duty to account that it is explicitly declared in our statutes,[1] and clearly embodied in our jurisprudence.[2]

The duty to manage or to administer some business or property arises from various transactions. It will be noted as some of these transactions are considered, that more often than not, a fiduciary relation exists between the parties. Where such a relation exists it will be seen that the duty becomes more implicit. Thus is it in agency[3] where the relation of the parties has always been deemed to be fiduciary in character.[4] The Civil Code obliges an agent not only to render an account of his transactions,[5] but makes, moreover, every stipulation exempting the agent from such obligation void.[6] And he is bound to account not only for what he has received from his principal, but for all that may have come into his hands as a result of the agency.[7] Likewise, in a partnership,[8] a partner is

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[1] See Articles 1807, 1809, 1842 and 1891, Civil Code; Rule 61, 86, 97 of the Rules of Court.

[2] Jackson vs. Blum, 1 Phil. 4; U.S. vs. Kiene, 7 Phil. 736; Ojinaga vs. Estate of Perez, 9 Phil. 185; Aldecoa & Co. vs. Warner, Barnes & Co., 16 Phil. 423; Oria vs. Campbell & Gutierrez Hermanos, 34 Phil. 850; Martinez vs. Grano, 49 Phil. 214; In re Bamberger, 49 Phil. 962; Duhart Freres y Cie. vs. Macias, 54 Phil. 613; Asiatic Petroleum vs. Quey Sim Poo, 40 O.G. (12 S), 44; In re Jose T. Nueno, 47 O.G., No. 1, 143; Thomas vs. Pineda, G.R. L-2411, promulgated, June 28, 1951.

[3] Book IV, Title X, Civil Code.

[4] "The relations of an agent to his principal are fiduciary and it is an elementary and very old rule that in regard to property forming the subject matter of the agency, he is estopped from acquiring or asserting a title adverse to that of the principal." Severino vs. Severino, 44 Phil. 343, 350.

[5] Art. 1891, Civil Code. See also U.S. vs. Kiene, 7 Phil. 736; Ojinaga vs. Estate of Perez, 9 Phil. 185 (Note the dissenting opinion in this case which treats the agent more strictly); Duhart Freres y Cie. vs. Macias, 54 Phil. 613; Asiatic Petroleum vs. Quey Sim Poo, 40 O.G. (12 S), 44.

[6] Art. 1891, par. 2, Civil Code.

[7] "The duty of the agent to account to his principal for all money and property which may have come into his hands during and by virtue of the agency 'embraces not only such money and property as may be received directly from the principal, but also that which comes into the agent's hands as the result of his agency' (Mechem on Agency, Book IV, section 522; see also II Corpus Juris, p. 737)." Asiatic Petroleum vs. Quey Sim Poo, *supra*.

[8] "Above all other persons in business relations, partners are required to exhibit towards each other the highest degree of good faith. In fact the relation between

bound to account to the partnership.[9] He may in turn demand a formal account as to partnership affairs.[10] Of the same view is the holding of our Supreme Court that the manager of a joint-account partnership must, on its termination, render accounts, including inventory of the property in common, so that partition of the assets may be made.[11] And the right to an accounting is not a personal right, for the successor of a partner may demand an accounting from the partnership or from a third person in whose hands the property has passed.[12] It is now expressly declared that the right to an account shall accrue to any partner, or his legal representative.[13] So is an accounting demandable of an executor or administrator[14] not only of all the property of the estate which has come into his possession, but also of all the property which has come to his knowledge.[15] And before any account which he may render may be allowed, notice must necessarily be given to persons interested of the time and place of examining and allowing the same.[16] Likewise, a guardian is bound to render an account of the estate under his guardianship,[17] and a receiver of the subject of the receivership.[18] The refusal of the latter to render such an account has been held to be a ground for removal.[19] It may also be mentioned that the duty to render an accounting likewise devolves upon lawyers in respect of the money or property received by them for their clients.[20]

In the present case, the above doctrines were reiterated when the Court ruled that the defendants was bound to render to the plaintiff an accounting of the business which was entrusted to him to manage. The plaintiff in this case acquired ownership of a bar and restaurant known as Silver Dollar Cafe located at Plaza Santa Cruz, Manila, and defendant was employed as bar-tender until he became

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partners is essentially fiduciary, each being considered in law, as he is in fact, the confidential agent of the other. It is therefore accepted as fundamental in equity jurisprudence that one partner cannot, to the detriment of another, apply exclusively to his own benefit the results of the knowledge and information gained in the character of partner." Pang Lim and Galvez vs. Lo Seng, 42 Phil. 282.

[9] Art. 1807, Civil Code.

[10] See Articles 1809 and 1842, Civil Code.

[11] Aldecoa & Co. vs. Warner, Barnes & Co., 16 Phil. 423.

[12] Jackson vs. Blum, 1 Phil. 4.

[13] Art. 1842, Civil Code.

[14] Rule 86, Rules of Court.

[15] Tan vs. Co Chiong Lee, 46 Phil. 200.

[16] Rule 86, Rules of Court; see Villanueva vs. de Leon, 47 Phil. 780, where the court declared: "It is the right of all creditors and distributees of the estate to be present and, if so disposed, to contest the accounts of the executor or administrator. . . . Administrators and executors, instead of opposing the intervention of interested parties, should welcome the participation of the same for their own protection. In this connection, it has been held that an alleged partner of a deceased person has such interest in the estate of the deceased as to allow him to take part in the approval of the accounts."

[17] Sec. 7, Rule 97, Rules of Court.

[18] Sec. 8, Rule 61, Rules of Court.

[19] Martinez vs. Grano, *supra*.

[20] In re Bamberger, 49 Phil. 962; In re Jose T. Nueno, 47 O.G., No. 1, 143.

the manager, which position he occupied at the outbreak of the war. To prevent the business from falling into enemy hands, the plaintiff being a citizen of the United States, executed a fictitious sale of the property to the defendant, who, during the occupation, operated the business exclusively. On February 3, 1945, the building was destroyed by fire, but the defendant was able to remove some properties therein to a place of safety. Then on May 8, 1945 a bar was opened under the old name of Silver Dollar Cafe, which post-war business the court found to belong still to the plaintiff—with only the defendant as an industrial partner. Due to differences the plaintiff established a new Silver Dollar at Echague, while the defendant remained with the old Silver Dollar, having in the meantime registered the trade name as his own on Sept. 27, 1945. Thereupon, the plaintiff filed an action to compel an accounting of the defendant's operation of the business during the war and immediately after the liberation. The action prospered. The Court in so deciding did not determine the exact legal character of the defendant's relation to the plaintiff, not considering it necessary. It was considered sufficient that it was shown that defendant was entrusted with the possession and management of plaintiff's business. While for the sake of clarity, it would have been desirable if the Court had made a categorical finding on the character of defendant's relation to plaintiff, yet the fact that the Court went no further does not render its conclusion open to doubt since there is no more indispensable duty of a manager than his duty to render an accounting of the property entrusted to his management. For being so entrusted, defendant's character may be considered similar to that of agent, partner[21] or other person of a fiduciary character, in all of which cases it has been seen that an accounting may be lawfully demanded.

The principle that a person occupying fiduciary relations respecting property or persons is utterly disabled from acquiring for his own benefit property committed to his custody for management and is estopped from acquiring or asserting a title adverse to that of his principal is reaffirmed. First lengthily discussed in the case of Severino vs. Severino[22] although already evident in ear-

[21] As to post war business defendant was found to be so.

[22] "The relations of an agent to his principal are fiduciary and it is an elementary and very old rule that in regard to property forming the subject matter of the agency, he is estopped from acquiring or asserting a title adverse to that of the principal. His position is analogous to that of a trustee and he cannot consistently, with the principles of good faith be allowed to create in himself an interest in opposition to that of his principal or cestui que trust. Upon this ground and substantially with the principles of the Civil Law (see sentence of the supreme court of Spain of May 1, 1900), the English Chancellors held that in general whatever a trustee does for the advantage of the trust estate inures to the benefit of the cestui que trust. Greenlaw vs. Kinh, 5 Jur., 18; *Ex parte* Hughes, 6 Ves., 337; Oliver vs. Court, 8 Price, 127. The same principle has been consistently adhered to in so many American cases and is so well established that exhaustive citations of authorities are superfluous and we shall therefore limit ourselves to quoting a few of the numerous judicial expressions upon the subject. The principle is well stated in the case of Gilbert vs. Hewetson, 79 Minn., 326:

"'A receiver, trustee, attorney, agent, or any other person occupying a fiduciary relation respecting property or persons, is utterly disabled from acquiring for his own

liar cases,[23] the question arose in this case since the defendant registered the Silver Dollar Cafe as a trade name in his own name, while still acting as an industrial partner for plaintiff and which

benefit the property committed to his custody for management. This rule is entirely independent of the fact whether any fraud has intervened. No fraud in fact need be shown, and no excuse will be heard from the trustee. It is to avoid the necessity of any such inquiry that the rule takes so general a form. The rule stands on the moral obligation to refrain from placing one's self in positions which ordinarily excite conflicts self-interest at the expense of one's integrity and duty to another, by making it impossible to profit by yielding to temptation. It applies universally to all who come within this principle.'

"In the case of Massie vs. Watts (6 Cranch, 148), the United States Supreme Court, speaking through Chief Justice Marshall, said:

" ' But Massie, the agent of Oneale, has entered and surveyed a portion of that land for himself and obtained a patent for it in his own name. According to the clearest and best established principles of equity, the agent who so acts becomes a trustee for his principal. He cannot hold the land under an entry for himself otherwise than as trustee for his principal.'

"In the case of Felix vs. Patric (145 U.S., 317), the United States Supreme Court, after examining the authorities, said:

" 'The substance of these authorities is that, wherever a person obtains the legal title to land by any artifice or concealment, or by making use of facilities intended for the benefit of another, a court of equity will impress upon the land so held by him a trust in favor of the party who is justly entitled to them, and will order the trust executed by decreeing their conveyance to the party in whose favor the trust was created.' (Citing Bank of Metropolis vs. Guttschlick, 14 Pet., 19, 31; Moses vs. Cedrington, Johns. Ch., 119; Cumberland vs. Codrington, 3 Johns. Ch., 229, 261; Neilson vs. Blight, 1 Johns. Cas., 205; Weston vs. Barker, 12 Johns., 276.)" Severino vs. Severino, 44 Phil. 343, 350-352.

The same principle was applied by the Supreme Court in the case of Barretto vs. Tuason (50 Phil. 888) in view of the court's opinion that a mayorazgo is in essence a trust. And in Palet vs. Teodoro (53 Phil. 790), while the court followed the same principle, a limitation is in a manner declared, as follows: "Whether or not there is bad faith in obtaining a decree with respect to a registered property, the same does not belong to the person in whose favor it was issued, and the real owners would be entitled to recover the ownership of the property *so long as the same has not been transferred to a third person* who has acquired it in good faith and for a valuable consideration. (Italics ours). Likewise the principle was applied in Palma vs. Reyes Cristobal, 44 O.G., No. 1, 67 and in Pacheco vs. Arro, *et al.*, G.R. No. 48090, prom. Feb. 16, 1950.

[23] The earlier cases mostly concerned the admissibility of parol evidence as between the fiduciary and *cestui que* trust to prove that a person in whose name the title to certain property appears has acquired the same for the benefit of another. A discussion of such cases appears in Camacho vs. Mun. of Baliuag (28 Phil. 466, 468-469), as follows: "There have been a number of cases before this court in which a title to real property was acquired by a person in his own name while acting in a fiduciary capacity, and who afterwards sought to take advantage of the confidence reposed in him by claiming the ownership of the property for himself. This Court has invariably held such evidence competent as between the fiduciary and the *cestui que trust*. . . . In Taguinot vs. Municipality of Tanay (9 Phil. 396), the plaintiffs as heirs of their father, sought to recover possession of a parcel of land held by the municipality on

name the plaintiff owned for many years before the war. The Court ruled that the registration by the defendant in his own name of the Silver Dollar Cafe cannot affect the right of the plaintiff because of the fiduciary relation then existing between them. Thus, this case bolster the precedents that tend to render fixed, though implicit, the duties and disabilities arising out of a fiduciary relation.

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the strength of a Spanish patent issued to him. It was proved (largely by parol evidence) that their father acted on behalf and at the expense of the municipality in securing the patent. The patent was retained by the gobernadorcillo, a copy only being issued to the patentee. The latter also drew up a private document engaging to execute a conveyance to the municipality, the same being offered in evidence. The municipality had continuously occupied the land since the issuance of the title. The judgment of the court below dismissing the complaint was affirmed.

"In the following cases of a similar character, parol evidence was held not sufficient to overcome the case made out by the holder of the registered title: Belen vs. Belen, 13 Phil. 202; Garcia vs. Pilar, 17 Phil. 132; Balatbat vs. Agra, 17 Phil. 501. Agoncy vs. Ruiz (11 Phil. 204) and Madariaga vs. Castro (20 Phil. 563) were both cases wherein one person was delegated by a community of property owners to secure in his own name a patent from the Spanish Government covering all their lands, the object being to save the expense of obtaining individual patents in the name of each. After securing these patents, the therein grantees ejected their neighbors from the land covered by the patents and respectively claimed the land as their own. The evidence tending to establish these facts was considered by the court in both cases. Relief by reformation of the patent or a compulsory conveyance to the injured persons was denied in each case, because the rights of an innocent third purchaser intervened. But in the first case the injured persons were held entitled to damages, provided they were able to establish the same. In the second case, however, the court presumed a waiver of their claims by reason of other evidence of record. The fact that the parol evidence relied upon in the cases cited in this paragraph to defeat the documents of title was carefully considered by the court, impliedly admits its competency. It failed in its purpose in these cases merely because it was not sufficiently strong to overcome the case in favor of the holders of the registered titles."

The same doctrine was applied in the case of Uy Aloc vs. Cho Jan Ling (19 Phil. 202) where it appeared that a number of Chinese merchants raised a fund by voluntary subscription with which they purchased a valuable tract of land and erected a large building to be used as a sort of club house for the mutual benefit of the subscribers to the fund. By agreement the title to the property was placed in the name of one of the members who in turn accepted the trust. After the club building was completed, the member in whose name the property was collected some ₱25,000 in rents for which he refused to account. When an action was brought to compel him, he set up the title to the property. The decree of the lower court provided, among other things, for the conveyance of the club house and the land on which it stood from the member in whose name it appeared to the members of the association. In affirming the decree, the Supreme Court said: "In the case at bar the legal title to the holder of their registered title is not questioned; it is admitted that the members of the association voluntarily obtained the inscription in the name of Cho Jan Ling, and that they had no right to have the inscription cancelled; they do not seek such cancellation, and on the contrary they allege and prove but they maintain, that he holds it under an obligation, both express and implied, to deal with it exclusively for the benefit of the members of the association, and subject to their will."

Civil Law—*Right to Custody of a Natural Child Recognized By Both Parents Living Separately.*

GARCIA V. PONGAN
G. R. No. L-4362, Prom. Aug. 31, 1951

The recognition of a natural child produces effects on the right of the recognizing parent to exercise parental authority over it.[1] It is not only a right but also more of a duty on the part of the recognizing parent to have custody of the child[2] in order that the former may be able to comply with the duty to maintain and support the latter.[3] When there is only one parent recognizing such child, no serious problem may arise because the other parent is unknown. The law prohibits investigation of paternity or of maternity in such a case, thus custody of the child may be had by the recognizing parent alone.[4] Such investigation can only be had in case of compulsory recognition for there is really but a confirmation of the existing relation between parent and child.[5] However, recog-

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[1] Parental authority over a natural child is not acquired until after he has been legally recognized. It is the act of recognition which gives rise to parental authority. Legare v. Cuerques, 34 Phil. 221.

Likewise, a natural child is entitled to certain successional and other rights, but but these depend upon the act of recognition The effect of such recognition, however, retroacts to the date of its birth and not merely to the date of the parent's death. The rights of the child only *vest* from the date of the recognition. See Tiamson v. Tiamson, 32 Phil. 62; Dusepec v. Torres, 39 Phil. 760; De Gala vs. De Gala, 51 Phil. 480. See also Art. 282, Civil Code.

[2] Although this *right* of the parents may be expressly or tacitly waived, under no condition can there be a waiver of their *duty*. The principle had been uniformly followed since the decision in the case of Reyes v. Alvarez, 8 Phil. 712.

In the case of Diaz v. Estrera, 44 O.G. 4354, the dissenting opinion seems to express the better view. The opinion explains:

"To have the custody of the unemancipated children is not only a right but also a duty. The obligation of the illegitimate father to support his illegitimate child—which may also be considered a right—is subject to the obligation of the natural mother to have custody of her minor child, a right superior to the obligation of the illegitimate father."

As a *right*, parental authority cannot be transferred to another except in cases of guardianship, adoption, or emancipation by concession. See Arts. 313, 327, 334, and 397, Civil Code; also Rule 93.

As a *duty*, it cannot be waived. Padilla, Civil Code Annotated, Vol. I, p. 406.

[3] Art. 316, par. 1 of the Civil Code imposes upon the parents the duty to support, educate and instruct, and keep in their company their unemancipated children.

[4] It is settled that in case of separate recognition, investigation of paternity or maternity is prohibited if such recognition is voluntary. Infante v. Figueras, 4 Phil. 738; Tengco v. Sanz, 11 Phil. 163; In re Estate of Enriquez, 29 Phil. 167; Borres vs. Panay, 42 Phil. 643; Allarde v. Abaya, 57 Phil. 909. See also Arts. 276, 277, and 280, Civil Code.

[5] Padilla, Civil Code Annotated, Vol. I, p. 369; Arts. 283 and 284. The new Civil Code has relaxed the rule prohibiting investigation of paternity or maternity in order to afford material and moral protection to the mother of an illegitimate child.

nition may also be made by both parents jointly.[6] In that case, both may exercise parental authority over the child.

It is possible that recognition may be made not only separately when the other parent is unknown, but also jointly when both parents are known. It is also possible to have successive separate recognitions by both parents in a contest for the custody of the child.[7] In the latter case, there is a balancing of conflicting interests inasmuch as the parents cannot exercise parental authority or have custody of the child jointly because they are living separately.

In the present case,[8] the problem of resolving conflicting claims to the custody of a natural child was posed before the Supreme Court. Both parents recognized the child not jointly or concurrently, but by separate acts and in different ways. Claiming to have the rightful custody of the child, the father filed a petition for habeas corpus against the mother with whom the child was living. It appeared that the father had recognized the child by judgment of the court, while the mother did so by voluntarily testifying under oath before the trial court that the child was hers.[9] The latter method is a new way of voluntary recognition provided under the new Civil Code,[10] for her statement before a court of record satisfies the law.[11] This kind of voluntary recognition does not require judicial approval even if made incidentally in a court proceeding because the child's status is recognized formally therein.[12]

The present case at bar involves the custody of a natural child who was thirteen years old. She expressed preference to live with her mother, the respondent, with whom she was living prior to the

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Under the old Code, there was always a stigma upon the woman who is prevented from making a disclosure of the identity of the child's father. See Report of the Code Commission, pp. 12-13.

[6] Art. 276, Civil Code.

[7] When a natural child has been acknowledged by its mother, and has been living with the latter since birth, a subsequent acknowledgment by the father will not serve to deprive the mother of her parental uuthority. 5 Sanchez Roman 1134, *et seq.*

The case of Legare v. Cuerques, 34 Phil 221 is almost the same as the present case. In that case, however, the mother of the children had previously acknowledged the children as her own before the action, while the father did so only subsequently in a public instrument to deprive the mother of her custody over them. The present case seems to show a similar situation becausc by merely testifying in court that she recognizes the child as her own, the mother cen defeat the father's rights with the same impunity.

[8] G.R. No. L-4362, prom. Aug. 31, 1951.

[9] *Id.*, p. 2.

[10] Under Art. 131 of the old Civil Code, there were only three ways of voluntary recognition; by means of (1) record of birth, (2) a will, or (3) a public document. Article 278 of the present Code adds "statement before a court of record" as a fourth method ,and the third method above is now any "authentic writing."

In Castellort v. Pasion, 37 O.G. 3049, voluntary recognition was effective even if made in court incidentally in intestate proceedings. Judicial approval is not necessary in such case, the Court ruled.

[11] Castellort v. Pasion, *supra.*

[12] See Donado v. Menendez Donado, 55 Phil. 861. Also Note 10, *supra.*

proceedings.[13] The trial court, therefore, awarded the custody of the child to the mother, in its exercise of the discretion granted by law.[14] There was no showing made by the father of the unfitness of the mother to continue taking charge of the child.[15]

Not contented with the decision of the trial court on his petition for habeas corpus,[16] the father appealed to the Supreme Court. The findings and conclusions of the lower court, however, were not disturbed on appeal. Applying Rule 100, section 6 of the Rules of Court,[17] the Supreme Court sustained the trial court by saying that although said provision applies to legitimate minor children whose parents are living separately, it applied also to the present case of a natural child. Justice Feria noted that the child was legally recognized by both parents and so either of them had the right to its custody by reason of their parental authority.

In affirming the judgment of the lower court, the Supreme Court merely adhered to the settled rule that the determination of the person who is to have custody of the child is a matter within the sound discretion of the court, the exercise of which will not be interfered with unless abuse thereof is shown.[18] It is true that both parents had equal rights to the custody of the child because of their parental authority arising from their recognition. The statement of Justice Feria would apply to a case where both parents are living together and are asserting equality of their rights.[19] In this case,

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[13] *Id.*, p. 2.

[14] Rule 100, section 6 confers such discretion upon the court to consider the best interests of the child, the fitness of the parent, and the choice of the child itself.

Even if the minor child chooses to stay with another, if the latter be a stranger, the parents may recover its custody by habeas corpus. Salvana v. Gaela, 55 Phil. 680.

But the converse is not true. Thus, a fiancee of a minor cannot recover custody of the latter from its parents who object to a proposed marriage of the two. Abbey v. Maneru, 37 O.G. 2252.

[15] If the mother be shown to be unfit, the father may recover custody of the child. See Perkins v. Perkins, 57 Phil. 217.

Abandonment by one parent of the child, neglect, withholding of parental care, or refusal to perform parental duties, are sufficient grounds to render such parent unfit. Castillo v. Castillo, 39 O.G. 968.

[16] Habeas corpus lies only in case of withholding of rightful custody, in cases like this. Rule 102, sec. 1.

This remedy had been availed of in the cases cited herein.

[17] Said provision expressly refers to legitimate minor children. In many ways, however, recognized natural children are treated just like legitimate children, except as to successional rights. See Arts. 264 and 282, Civil Code. See also Art. 895 for legitime of natural child.

[18] The exercise of discretion by the court was specially important in Perkins v. Perkins, *supra*. In that case, the mother used to bring the child to the court where there were pending proceedings in which it could hear charges and counter-charges, all involving its parents. So the custody of the child was given to the father so that the latter would send her to a school in Switzerland.

[19] Justice Feria who penned the decision stated that: "either the father or the mother has a preferred right to such care, custody and control in the exercise of parental authority they have over the person of their unemancipated children. In the present

however, the parents were asserting their rights against each other, *inter se*. They were litigating for the exercise of custody by either of them to the exclusion of the other, not for an equal exercise of such custody.

Where there is joint recognition by both parents who are living together although unmarried, there may be no problem. Should they subsequently marry each other to legalize their relations, the child would be legitimated and raised from the status of a natural child to one akin to a legitimate child.[20] The present case, however, present difficulties for parents living separately.

In this case, the father had recognized the child by judgment of the court. The mother did so voluntarily by testifying before the lower court under oath. The Supreme Court, however, seems to have overlooked the fact, that there was in effect not a *joint* recognition but one made by both parents *separately in different ways*. It is apparent from the decision that in point of time, the father probably was first to recognize the child because the mother did so only during the proceedings in the trial court.[21]

It is to be observed that the Supreme Court seems to have applied the rule of "preferred rights" of the parents erroneously in this case. The parents were not suing a stranger. They were suing each other. But whatever error may have been committed, the Court appreciated the rule that the best interests of the child are of paramount importance in determining who is entitled to the custody thereof.[22] In cases of this kind, to transfer such custody from the mother to the father would only run counter to the expressed choice of the child who, after all, is also entitled to a voice.[23] Thus, as to the question of preference in favor of parents and against all others, the Supreme Court stated the correct rule. In applying such rule, however, to this case, there seems to be no justification. Nevertheless, the Court acted correctly in sustaining the exercise of discretion by the lower court in the absence of a showing that it has been abused. What the court failed to consider is the question as to who between the father or the mother has a greater right to the custody of the child, independently of the exercise of discretion by the court.

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case, the minor Teofila Garcia having been legally recognized by both the appellant the appellee as their natural child, either one of them has the right to have the care, control and custody of said minor by virtue of their parental authority over her." *Id.*, pp. 2-3.

The statement does not seem to dispose directly of the issue as between father and mother, for it refers to a case where the parents assert better rights against strangers.

[20] Cosio v. Pili, 10 Phil. 72; Serrano v. Aragon, 22 Phil. 10; De Torres v. De Torres, 28 Phil. 49.

[21] *Id.*, p. 3. Whether the father's recognition was by judgment of the lower court or by another judgment in a different action is not, however, clear from the decision.

[22] Pizarpo v. Vasquez, 36 O.G. 449; Perkins v. Perkins, *supra*.

[23] The child, if over ten years old, is permitted to make a choice, and it is usually followed unless the parent chosen is unfit to have its custody. Rule 100, sec. 1, as applied in the case of Perkins v. Perkins, *supra*. See also Moran, Rules of Court Annotated, Vol. II, pp. 443-444.