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[G.R. No. 20392. November 20, 1923]

ANDREA UY COQUE ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN NAVAS L. SIOCA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

STREET, J.:

This action was instituted in the Court of First Instance of the Province of Samar by the plaintiffs, in the character of collateral heirs of Geronima Uy Coque, deceased, against Juan Navas L. Sioca, husband of the said Geronima Uy Coque, and his codefendants, for the purpose of securing a decree declaring fictitious certain transfers of property made by Juan Navas L. Sioca to his various codefendants and to have the same set aside as a fraud upon the plaintiffs; to compel the said Navas to effect a division of the ganancial property which had pertained to himself and Geronima Uy Coque during her life; to declare the plaintiffs owners of the half of said property which pertained to Geronima; to require the said Navas to deliver such half to the plaintiffs; to compel him further to pay to the plaintiffs a sum of money as damages, together with costs of suit; and to obtain such further and general relief as might be appropriate in the premises.

In due time the defendants answered, admitting the character and heirship of the plaintiffs as heirs of Geronima Uy Coque, deceased, as well as certain other points alleged in the complaint. By way of special defense the defendants set forth in their answer that the transfers made by Juan Navas L. Sioca and which are the subject of attack in the complaint were made by him to his respective codefendants for a good consideration and in the lawful exercise of his powers as manager of the conjugal partnership, composed of himself and his wife, Geronima Uy Coque, deceased. Other matters involved in the complaint were for the most part made subject of general denial; but by way of counterclaim the

defendants prayed the court to compel one of the plaintiffs, namely, Andrea Uy Coque, to return to the defendant Navas certain jewelry and money pertaining to the community estate, alleged to have been appropriated by her.

At the hearing the trial judge entered a judgment in favor of the plaintiffs, comprising the following features, namely, (1) a declaration of the nullity of the transfers in question; (2) a declaration that certain property specified in the opinion pertained to the ganancial partnership composed of the defendant Navas and his wife Geronima, and that the same should be divided equally between said Navas and the heirs of Geronima, with the exception of a certain portion, to wit, lot No. 1 of paragraph D, declared to be paraphernal property of Geronima; (3) requiring the defendants to surrender to the plaintiffs, as heirs of said Geronima Uy Coque, or to her administrator, the sum of P152,800, which the court found to be one-half the value of a quantity of hemp which had pertained to the community estate and which constituted part of the property found to have been fraudulently transferred by Navas to one of his codefendants, also requiring the defendants to surrender one-half of certain other property described in the complaint, or its equivalent; (4) and, finally, requiring the defendants to pay the costs of the action. From this judgment the defendants brought the cause to this court by means of a bill of exceptions, signed by the judge of the lower court in response to an order from this court obtained in an action for the writ of mandamus.

At the outset it should be noted that the attorney for the appellees challenges the jurisdiction of this court over the appeal on substantially the same grounds and considerations that were urged in opposition to the application for the writ of mandamus in the case of Juan Navas L. Sioca et al., *vs*. Honorable N. Capistrano, as Judge of the Court of First Instance of Samar, G. R. No. 19903.[1] However, a majority of the justices participating in the decision of this case are of the opinion now, as in the mandamus case, that the court has jurisdiction. Upon this point the writer of the present opinion and Mr. Justice Avanceña are not in accord with the court, but in conformity with the resolution of the majority, we now proceed to deal with the case upon its merits as appearing upon the record on appeal.

In the year 1883 a Chinese boy, named Lim Sioca, then of the age of about

seventeen years, arrived in the Philippine Islands and found his way to Catbalogan, in the Province of Samar. Originally without means, he contrived in course of time to get a start as keeper of a *tienda*, a business which was conducted by him for a time upon a petty scale. He says that he had a Chinese wife whom he had left behind in China, but this was no obstacle to the formation of an irregular matrimonial alliance with Geronima Uy Coque, a woman apparently of Chinese ancestry but born in this country. In the year 1904 the wife in China died; and soon thereafter Lim Sioca, who had by this time adopted the Christian name of Juan Navas, in addition to his original patronymic, was united in Christian marriage with Geronima. No children were born to the pair, and they lived together harmoniously untill the death of Geronima which occurred on August 21, 1919.

It appears that Geronima Uy Coque, with her brothers and sisters, had inherited a respectable property, the management of which had fallen to her, as the eldest of the children. She was thus able to furnish a home for herself and her husband and apparently a place in which to do business. The testimony for the plaintiffs also tends to show that the capital used in the business thenceforth conducted by the conjugal partnership came in great part, if not entirely, from Geronima Uy Coque; but Juan Navas Lim Sioca, whom we shall hereafter designate by the shorter name of Sioca, says that he had about P1,500 of his own money at the time he entered into relations with Geronima. However this may be, it is evident that the business conducted by him received a notable impulse from the alliance with her, and her resources and intelligence supplied one of the bases of the success which followed. The evidence shows that, throughout the joint lives of the spouses, as means were accumulated and money was available to let out at interest, the management of loans was confided to her, and apparently she otherwise took an intelligent and helpful part in the conduct of business.

In the course of years, owing to the intelligence and economical mode of life of the pair, the invested capital continued to grow, and the business was extended, with the result that by the time of the death of Geronima Uy Coque a great wholesale business had been established in Catbalogan. Dependent upon and contributory to this establishment was a retail *tienda* in Catbalogan and numerous other stores which Sioca had acquired or established in various small ports on the Island of Samar accessible by water to Catbalogan. To keep in touch

with these Sioca maintained a fleet, from the home port of Catbalogan, of more than a half dozen motor boats, launches and lorchas. By means of this admirable apparatus of commerce, Sioca did a business of a varied character, but he specialized in the buying and selling of hemp; and upon one of his lots in Catbalogan he maintained a press for the baling of hemp, where great quantities of this commodity, purchased in the local market or brought in by his boats from other ports and places, were baled and prepared for export through the Manila market. Under the conditions described it is evident that when the prolonged and phenomenal rise in the price of hemp occurred several years ago, owing to conditions brought about by the World War, Sioca was in possession of a business which, if properly managed, could not fail to make him rich.

In the peak year of 1918 the sales of the wholesale establishment alone were reported to the Collector of Internal Revenue for purposes of taxation at more than P572,000, without reference to the business done in the different stores contributory to that establishment; and Sioca admits that at the time he sold out the main business to Marcelo Navas there was on hand in Manila and Catbalogan, and included in the sale, sufficient hemp to realize the gross amount of P253,152.25.

In the period of fifteen or twenty years during which the business of Sioca and his wife was expanding in the manner stated, they came to feel the need of finding some Chinese youths whom they might bring up according to their own system and whom they might prepare for the larger duties incident to the conduct of the business. This desire was felt no doubt the more for the reason that the pair were childless. Moreover, they were rather close and sparing in their expenditures, and it seemed to them that Chinese boys brought in from China would be less expensive than native help. On one occasion Geronima complained that their employees who were natives of this country were extravagant because they smoked cigarettes so much and were accustomed to throw away the stubs before they were half smoked up. In conformity with this idea, a Chinese boy named Tiu Quim Chiu was brought to the Islands in the year 1907. This boy claims to be the son of one Tiu Sin Set, who had been associated with Sioca in business. Nevertheless after the boy arrived in the Islands he went into the establishment of Sioca in Catbalogan and was brought up in Sioca’s household in all respects as if he were Sioca’s son.

On March 14, 1910, Tiu Quim Chiu was taken to the parish priest in the *pueblo* of Tarangan and was there baptized with the Christian name of Marcelo Navas. The certificate of baptism recites that the boy was then thirteen years of age and that he was the son of natives from the City of Amoy. The certificate upon which he was passed through the Customs by the immigration authorities indicates that he is somewhat older than appears from the certificate of baptism. The testimony of witnesses for the plaintiffs is to the effect that the baptism of Marcelo was done at the instance of Sioca and wife. However this may be, in the family circle Marcelo was always treated as a child of said spouses; and he called Geronima mother. Moreover, he ate at their table, and was educated at the expense of the same persons.

Between the years 1913 and 1918, three other boys were brought in at intervals and became likewise members of the Sioca circle. These youths are Tan Cao, Lim Isiu and Tan Siu. As these boys got big enough to do anything, they were set to different appropriate duties by Sioca, when not in school; and they grew up as if a part of Sioca's establishment. Sioca claims that one of these boys, Lim Isiu, is his own son, having been born to Sioca's Chinese wife in China about the year 1900. If this is true it supposes that in the year 1899 Sioca was in China, and he claims to have made a visit to China during that year. Other testimony tends to show that Sioca was in Samar during the whole of the year 1899 and his presence at that time in the province is fixed with considerable certainty by one of the witnesses, supposing the witness to speak the truth, by the circumstance that Sioca was arrested that year for dealing in contraband opium, and that he further acted as an informer to the Americans during that year, giving them valuable information concerning the activities of the *insurrectos* in that province. The trial judge, upon considering the evidence, came to the conclusion that Lim Isiu is not in fact a son of Sioca but a nephew, being in fact the son of one of Sioca's brothers. The point whether Lim Isiu is the son or the nephew of Sioca is of no importance; and it is sufficient to record that he was treated as an actual or adopted son by Sioca—very much as the other three of whom mention has been made.

As Sioca's business began to expand in the early years, he had around him more than one native of China who assisted in different capacities in the conduct of the business; and in the year 1909 the internal-revenue license was taken out in such form as to show that the business of Sioca was a partnership

conducted, under the style of “Tiong Juat,” by four persons, to wit, Sioca himself and three others, namely, Tiu Sin Set, Tan Yengco (Yana), and Ignacio Tan Ingco; and oral testimony given by witnesses for the defendants shows that such a partnership had existed from 1907. However, no scrap of writing has ever existed proving the formation of any such partnership. The trial judge found as a fact that this partnership was purely fictitious, and we do not hesitate to say that in our opinion this conclusion is an irresistible inference from the evidence. It is a matter of common knowledge that persons having the status of Chinese merchants are freely passed through the customhouse by the immigration authorities when they wish to go to China and return upon visits to their native land, and they are allowed to bring into this country the members of their Chinese families,—a privilege not conceded to Chinese laborers. As a consequence of this Chinese residents here have a strong desire to become certified as merchants; and where a man like Sioca has around him a number of faithful helpers, not infrequently of kin, the temptation to admit such persons into the fictitious relation of partners is too strong to be resisted by persons of the clannish character of the Chinese people. It is believed therefore that in order to permit the three persons above mentioned to have the status of merchants and to visit China from time to time Sioca became party to the fictitious declaration of partnership referred to.

An additional incentive undoubtedly was that Sioca wanted to get in more boys from China, and more than one of the three who came in later were, if we mistake not, brought in by some one or another of the titular partners in the “Tiong Juat.” The business, it is needless to say, in all its ramifications and details continued under the guidance of Sioca, without the least external indication that any interest in the business whatever was vested in any other person beside himself, and so the situation remained until the climax came in 1919.

That the partnership was a mere figment of imagination and made little or no impression upon the mind of Sioca, is indicated by the circumstance that when he was called as a witness and asked when “Tiong Juat” was established, he said that it was created in 1904, when all other witnesses who had testified about the matter placed it in 1907; and it was only after careful questioning on the part of his skillful and discerning attorney that he was brought around to modify his statement and declare, in conformity with his other witnesses, that this partnership had been created in 1907.

In 1915 one of the supposed partners died in China, and later still another died; and in the latter part of 1917 Sioca thought it desirable to take out the internal-revenue license in the future exclusively in his own name. However, the authorities of the Bureau of Internal Revenue in that province required some sort of a showing to the effect that the other three in whose names the license had appeared from 1909 to that date no longer had any interest in the business. In order to meet this requirement four persons got together in Catbalogan in January of the year 1918 in order to put an end to the supposed partnership. These four persons were Sioca himself and Tan Yengco (Yana), as original members, and two other persons, Tan Tiongco, assuming to act as representative of his deceased brother, Ignacio Tan Ingco, and Tiu Quim Chiu (Marcelo Navas) assuming to act in representation of his father Tiu Sin Set. Upon this occasion a document, dated January 24, 1918, was drawn up and acknowledged before a notary public, purporting to put an end to the "Tiong Juat," or partnership to which reference has been made. The material recitals and statements contained in this document are these:

> "1st. That by a verbal agreement between us made on the first of January of the year 1907, we have formed a general mercantile partnership under the name and style of 'Tiong Juat' for the purchase and sale of merchandise from Europe and of this country, doing business in the first avenue in the populated part of Catbalogan, Samar, P. I.
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> "2d. That the partners Ignacio Tan Yengco and Tiu Sin Set having died in their respective towns in China, we have by mutual agreement appointed Mr. Juan
> Navas Lim Sioca to make an inventory and a liquidation of the partnership.
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> "3d. That in view of the fact that the inventory and liquidation have already been finished, said partnership known as 'Tiong Juat' is hereby declared dissolved, and the aforementioned agreement void and of no effect, each receiving the share corresponding to him, as found in the liquidation.
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> "4th. And in order that each of us may freely engage in his respective trade and business without any difficulty, we have executed these presents for such purposes as may be proper."

Among recitals contained in the document from which we have quoted two are especially noteworthy, namely, first, the statement that the partnership in question was created by *verbal* agreement on January 1, 1907; and, secondly, the acknowledgment that each member thereof, or his representative, was receiving, contemporaneously with the execution of the document, the part in the assets of the partnership which pertained to him according to the result of a liquidation already effected by Sioca. Armed with this paper, Sioca caused the internal-revenue license to be changed and thereafter the business appeared in the office of the Bureau of Internal Revenue as being conducted in the name of Sioca alone.

The next incident important to be noted consists in the execution by Geronima Uy Coque of the document Exhibit 15, dated March 11, 1918, and acknowledged on the same date before a notary public. This document is a gratuitous deed of transfer by which Geronima Uy Coque transfers, or purports to transfer, to her husband her entire half interest in the community property pertaining to herself and husband. Said document is in terms as follows:

> "I, Geronima Uy Coque, wife of the Christian Chinaman Juan Navas Sioca, both residents of the municipality of Catbalogan, Province of Samar, P. I., and his legitimate heir of all the property acquired or to be acquired during his marriage, by these presents make known, that I convey and transfer one-half of the interest I may have in the aforesaid property to my aforesaid husband Juan Navas Sioca, who may dispose as absolute owner of all said property, whether personal or real, and of the business in which he is engaged, and he may exercise his right to transfer the same to other persons and make its distribution among his children as he pleases. Be it also known that I stand responsible to my said husband Juan Navas Sioca, his heirs and successors in interest, for all the aforesaid property which corresponds to me by inheritance, the title to which I bind myself to defend now and forever against air lawful claims that may be presented."

Considered with reference to its juridical effects, this document is of course a patent nullity, being in direct contravention of two explicit provisions of the Civil Code, namely, article 1334, which declares that all

donations between spouses made during the marriage shall be void; and article 1458, which expressly prohibits the husband and wife from selling their property to each other except under certain conditions not material to be here noted. Worthless, therefore, as this document is for the purposes for which it was intended, it is nevertheless important as affording indubitable proof of the motives that actuated the parties; for we find it there stated that the transfer was made in order that the transferee, Juan Navas Sioca, might have absolute power of disposal, not only of the real estate but of the business in which he was engaged, "and that he might exercise his right to transfer the same to other persons and *make its distribution among his children as he pleases*." (Italics ours.)

The word children as used in this document can refer to no other persons than the four Chinese boys whom Sioca and his wife had informally adopted; and the design evidently was to enable Sioca the more freely to dispose of the property for the purpose, among others, of the division of it among those boys. Subsequent developments were in complete harmony with this design.

About a year after the document last above mentioned was executed, the health of Geronima Uy Coque began rapidly to fail, and she died on August 21, 1919, after having been helpless for several weeks or months. In evident anticipation of this event, and as we believe with the purpose of getting practically all of his property beyond the reach of the collateral heirs of his wife, Sioca executed a series of documents, by which he stripped himself of nearly everything he possessed. The transferees in these several documents were the four Chinese boys who had been brought up, or were being brought up, by Sioca in his household and in his business. In addition to these, one other Chinese, one Tan Po, is named. One of these documents (Exhibit D) appears to have been executed on June 27, 1919, and it was acknowledged on June 30 of the same year, before a notary public. The other conveyances here referred to (Exhibits A, B, C, E, and F) were executed upon various dates between July 2, 1919, and July 11 of the same year. Taking them up in order, we find that by the conveyance Exhibit A Sioca transferred to Tan Siu for the stated consideration of P4,000 two lots in Catbalogan, with the residential house standing on one and a warehouse located on the other. By the conveyance Exhibit B Sioca transferred to Tan Cao for the stated consideration of P1,000 a lot in the municipality of Tarangnan. By the conveyance Exhibit C the same Sioca, for the recited

consideration of P2,500, transferred to the same Tan Cao all the interest which Sioca possessed in a *tienda* belonging to Sioca in the municipality of Tarangnan. By the conveyance Exhibit D Sioca transferred to Lim Isiu, for the recited consideration of P10,000, a parcel of land with the buildings and improvements thereon in the town of Catbalogan. By the conveyance Exhibit E, the same Sioca, for a recited consideration of P18,000, transferred to Marcelo Navas (Tiu Quim Chiu), all of Sioca's right, title and interest in the business located in Catbalogan. In this sale is included all of the furniture and all credits pertaining to Sioca and relating to the business which he had previously conducted in Catbalogan, with the exception of the boats. By the conveyance Exhibit F, the same Sioca, for a recited consideration of P12,000, transferred to the Chino Tan Po, resident of the municipality of Wright, in the Province of Samar, the seven boats which were being used by Sioca in the conduct of his business.

By the documents above mentioned Sioca disposed, on paper at least, of nearly everything of value that he and his wife had possessed; and there was included in one of these transfers certain paraphernal property of the wife. To make it perfectly clear that he had no further interest in the properties thus conveyed, he caused to be drawn up an affidavit (Exhibit G), in which he enumerated the few remaining pieces of property, of comparatively small value, which he still owned. This document was acknowledged before a notary public on August 18, 1918, or three days before Geronima Uy Coque died.

Notwithstanding the changes thus made in the nominal ownership of the various properties conveyed by Exhibits A to F, inclusive, Sioca remained in possession of all of said properties and continued to do business as before. Publicity was not given in any way to these changes of ownership, and the very existence of said transfers was unknown to the heirs of Geronima Uy Coque for several months.

In the second paragraph of article 1413 of the Civil Code it is declared that no alienation in fraud of the wife which the husband may make of property belonging to the conjugal partnership shall prejudice her or her heirs; and in conformity with that precept this action was primarily instituted to set aside the conveyances above mentioned as fraudulent. That the action is in this respect well founded and that said conveyances were made with a view to putting

these properties beyond the reach of Geronima Uy Coque and her heirs is in our opinion clearly apparent from the proof and capable of most complete demonstration. In this connection we shall quote a lengthy passage from the appealed decision which supplies an unanswerable argument against the good faith and honesty of the transactions in question. In the brief for the appellants in this court some of the details stated in this excerpt have been challenged, but a careful perusal of the evidence will show that the more important facts herein stated are proved by a clear preponderance of the evidence, and even the minor details are supported by testimony at least as credible as the denials and assertions contained in the testimony for the appellants.

Says the trial judge in the appealed decision:

> "The defendant Juan Navas Sioca sold the properties in question for the price of forty-eight thousand two hundred and seventy pesos (P48,270). On the date of the sale, he had two thousand nine hundred ninety-nine (2,999) bales of hemp stored in Manila, and six hundred thirty six (636) bales and one thousand piculs of loose hemp in Catbalogan, making a total of eight thousand two hundred eighty-five piculs, which, at the rate of twenty-four pesos and fifty centavos (P24.50) per picul, are worth two hundred two thousand nine hundred eighty-two pesos and fifty centavos (P202,982.50).
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> "The eight thousand two hundred eighty-five (8,285) piculs of hemp were included in the sale for the aforesaid price of P48,270.
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> "Juan Navas Sioca, in explaining why he sold all his business, together with all the properties and goods pertaining thereto, says that he owed the purchaser, Tan Po, seventeen thousand pesos (P17,000); that he owed the Chinaman Tiu Sin Set, father of the purchaser, Tiu Quim Chiu, fifteen thousand ninety-nine pesos and ninety-three centavos (P15,099.93); that he owed the same purchaser, Tiu Quim Chiu, the sum of eight hundred pesos (P800); that he owed the purchaser, Lim Isiu, a youth nineteen years old, the sum of one thousand five hundred pesos (P1,500) for his salaries; that he owed the purchaser, Tan Siu, a youth eighteen years of age, the sum of four thousand pesos (P4,000) for his salaries.

“The purchasers are members of the household of the vendor, and dependents upon him for support.

“Said Tan Po, a resident of Wright, is the purchaser of the seven vessels mentioned in paragraph ‘A’ for the price of twelve thousand pesos (P12,000). The deed of sale executed on July 2, 1919, is Exhibit F of the plaintiff and Exhibit 3 of the defense. This purchaser Tan Po had a small retail store of cigars, pots, etc., in the municipality of Wright. His business was of such a nature and in such a condition as not to require the acquisition of any vessel. This Tan Po bought the seven vessels for a large business, such as that of Juan Navas, and the vessels being of no use for the purchaser, were left at the vendor’s place.

“According to the testimony of the. vendor Juan Navas and the purchaser, Tan Po, the former owed the latter the sum of seventeen thousand pesos (P17,000), and the seven vessels were sold for twelve thousand pesos (P12,000), as payment on account of the seventeen thousand pesos (P17,000). But no document or competent proof was introduced to establish this debt.

“There is, besides, the circumstance that, after the sale of the vessels, the vendor Juan Navas Sioca has been using them as formerly.

“In the month of June, 1920, after the execution of said deed of sale, this purchaser Tan Po made a voyage from Catbalogan to Wright on board the launch *Biri* one of the vessels sold, and paid as freight for said voyage the sum of twenty pesos (P20) to the engineer Martin Banasta who made that voyage by order of Juan Navas Sioca, to whom the engineer turned over, later, the twenty pesos (P20).

“In the months of September and October of the year 1919, and June of 1920, the vendor Juan Navas Sioca carried timbers from Tacloban to the Catbalogan Trade School on board the launches sold, under a contract with the principal teacher of the Trade School, named Vicente Macasiran, who paid Juan Navas Sioca,
through the provincial treasurer, the sum of four hundred twenty pesos (P420) for the transportation of said timbers.

“The Chinaman Tan Siu is the purchaser of the properties described in

paragraph B for four thousand pesos (P4,000), Exhibit A of the plaintiffs and 4 of the defense, which is the deed of sale executed on July 11, 1919. This purchaser, Tan Siu, is eighteen years old; he came to the Philippines in 1915 at the age of thirteen years.

"According to the evidence of the plaintiffs, Tan Siu was bought for five hundred pesos (P500) by Juan Navas and his wife, and taken to the Philippines by the Chinaman Yana Tan Yengco, whose child he appears to be in the certificate issued to him when he landed in this country. And according to the evidence of the defense, Tan Siu is the son of said Tan Yengco. But now the undisputed fact is that, since his arrival, Tan Siu has resided always in the house of Juan Navas Sioca and never in that of Tan Yengco, from whom he did not receive a parental treatment.

"According to Juan Navas Sioca, he sold the three properties in question to Tan Siu, who on the date of the sale was seventeen years of age, because he owed him the sum of four thousand pesos (P4,000) as salaries for his services. So that this young man, who did not yet know how to work when he arrived, being then but thirteen years old, earned the sum of four thousand pesos (P4,000) from 1915 to the date of the sale, that is, during three years approximately. Just what specific salary per month Juan paid to this young man, it does not appear. Nor was any mention made in the evidence of the amount or amounts this young employee had taken during those three years on account of his salaries.

"This debt of four thousand pesos (P4,000) was not proven by any documentary evidence. About this debt there is nothing but the mere testimony of the seller Juan Navas Sioca.

"The Chinaman Tan Cao is the purchaser of the properties mentioned in paragraph C for three thousand five hundred pesos (P3,500) Exhibits B and C of the plaintiffs, which are the deeds of sale executed on July 8, 1919. This purchaser, Tan Cao, is in China, and was there prior to the commencement of this action. According to the evidence of the plaintiffs, he was also bought by Juan Navas Sioca and his wife. His age does not appear. According to the deeds of sale in his favor, Exhibits B and C, he is of age; but the attorney and notary

who prepared Exhibits B and C, is the same author of the deeds of sale in favor of Tan Siu and Lim Isiu, Exhibits A and D, wherein he made it appear that they were of age when they were, in fact, only seventeen and eighteen years old.

"It is a fact, about which there is no question, that this purchaser Tan Cao never resided in any other place than the store and house of Juan Navas Sioca.

"In the document Exhibit B, the vendor Juan Navas Sioca admits having received, at the execution thereof, one thousand pesos (P1,000), which was the price of the lot mentioned in Exhibit B; and in Exhibit C, that is the deed of sale of the store, the vendor, Juan Navas Sioca, states that he had previously received two thousand five hundred pesos (P2,500), which was the purchase price
of the business or store.

"Lim Isiu is the purchaser of the properties mentioned in paragraph D for the price of ten thousand pesos (P10,000), the deed of sale of which, Exhibit D of the plaintiffs and Exhibit 6 of the defense, was executed on June 27, 1919. This purchaser was nineteen years old at the time of the execution of said document. He came from China to Catbalogan in 1913 when he was thirteen years of age.

"According to the evidence of the defense, that is, according to the testimony of Juan Navas Sioca and Lim Isiu himself, the latter is a son of Juan Navas Sioca. But the court finds that the preponderance of evidence is to the effect that Lim Isiu is not Juan Navas Sioca's child, but his nephew. Lim Isiu was born of a Chinawoman in China in 1900, and the supposed father was in Catbalogan, without having left the Philippines in the years 1898 to 1901. The very treatment which Lim Isiu received from Juan Navas Sioca in these transactions is a corroboration of the fact that Lim Isiu is not a son of Juan Navas Sioca.

"According to the document Exhibit D, the payment was made in two instalments; five thousand pesos (P5,000) prior to the execution of the document and the balance of five thousand pesos (P5,000) at the signing thereof. But according to the purchaser, the payment was made as follows: For the first payment the purchaser borrowed two thousand pesos (P2,000) from Nicolas Tan,

and
one thousand five hundred pesos (P1,500) from a Chinaman named Simo. Both amounts, which, together with the one thousand five hundred pesos (P1,500), due
from the vendor to the purchaser for the latter's salaries, as found in the liquidation made at the execution of the deed, constituted full payment of the five thousand pesos (P5,000), were furnished or lent by the father-in-law of the purchaser named Tan Po.

"These loans, apparently unconditional and without any security, are not shown by any document.

"This purchaser began to live with the vendor in the year 1913, upon his arrival from China at the age of thirteen years. According to Navas Sioca, this Lim Isiu began to earn, as employee, four hundred pesos (P400) in the first year, and five hundred pesos (P500) thereafter. This Lim Isiu went to China in 1917, where he married, and returned to Catbalogan a few days prior to this transaction. So that Lim Isiu could not have served as an employee for more than three years computed from 1913, when he was thirteen years old, until the date of the sale. Aside from the fact that the amount of the salary given is not in proportion to the small service which this youth could have rendered, if the expenses for the round trips, the marriage, and other personal expenses are taken into consideration, which Lim Isiu had to pay with money from his master, Juan Navas, on account of his salaries, the amount of one thousand five hundred pesos (P1,500), found as balance in the liquidation made of such salaries upon his return from China, cannot be justified.

"This purchaser has been, for the last two years, in charge of the store in Wright referred to in paragraph G. He bought for ten thousand pesos (P10,000), without any money of his own, the *camarin* (shed) and the hemp press, which had nothing to do with his business, and required a large capital to operate, which he did not have. This purchaser did not take possession of said properties, which continued in the hands of the vendor Juan Navas Sioca.

"The defendant Tiu Quim Chiu, known also as Marcelo Navas, is the purchaser of the properties mentioned in paragraph 'E' under numbers 1, 2, and 3, for nineteen thousand five hundred ninety pesos (P19,590), the documents of which

were executed on June 7, 1919, Exhibit E of the plaintiffs and 11 of the defense, as to property No. 1, and on February 16, 1920, Exhibit 14 of the defense, as to property No. 2. No document was presented concerning the purchase
of property No. 3. This purchaser is a young man twenty-three years of age. According to the evidence of the plaintiffs, he was, like Tan Siu and Tan Cao, bought by Juan Navas Sioca. And according to the evidence of the defense, Tiu Quim Chiu is a son of a Chinaman Tiu Sin Set. But it is a fact, proven and undisputed, that this Tiu Quim Chiu arrived at Catbalogan from China in 1907; that the spouses Juan Navas Sioca and Geronima Uy Coque had him baptized on March 14, 1910, in the parish church of Tarangnan, Samar, giving him the name of
Marcelo Navas Sioca, which they caused to appear in the baptismal certificate; that since his arrival from China he has been living in the house of the spouses as adopted child, enjoying a treatment and consideration as such until the date of the transaction in question; that during the said period of time he was studying in the public schools of the Government, wherein he reached the second year of High School in 1918, when he stopped due to sickness; that while in the house and store of Juan Navas Sioca, his status was that of a real child, performing duties of trust and confidence.

“An examination of all of the transactions involved in this case clearly shows that this Tiu Quim Chiu has won Juan Navas’ great distinction and confidence to such a degree that their interests can be said to have become identified.

“According to the explanation given by the purchaser, the payment was made as follows: Fifteen thousand ninety-nine pesos and ninety-three centavos (P15,099.93) was the debt due from the vendor to Tiu Sin Set, father of the purchaser, and eight hundred pesos (P800) was the value of the house in Tarangnan, built by the purchaser on the lot of the vendor. Both amounts were applied on the payment of the nineteen thousand five hundred ninety pesos (P19,590). Nothing was said about the three thousand six hundred ninety pesos and seven centavos (P3,690.07) lacking to complete the payment of nineteen thousand five hundred ninety pesos (P19,590).

“No competent evidence was presented of the aforesaid debt of fifteen

> thousand ninety-nine pesos and ninety-three centavos (P15,099.93).
>
> "The sale of the business, the gross receipts of which amounted to five hundred seventy-two thousand five hundred fifteen pesos and twenty-six centavos (P572,515.26) in 1918, and to three hundred nineteen thousand five hundred seventy-eight pesos and eighteen centavos (P319,578.18) in 1919 (property No. 1 of paragraph E), included the furniture, all the debts and credits in favor of, and against, said business, with all the hemp and rice in stock in the warehouse and stores, as well as the books of the business, specially the eight thousand two hundred eighty-five (8,285) piculs of hemp in the warehouse, appraised at two hundred two thousand nine hundred eighty-two pesos and fifty centavos (P202,982.50), a part of the goods in stock, that were sold for the price of eighteen thousand pesos (P18,000). The purchaser Tiu Quim Chiu immediately after the execution of the deed of sale, Exhibits E and 11, went to China to get married, or to take his wife to Catbalogan in October, 1919, free from all cares about the large business and properties which he had just bought, as if he had acquired nothing, leaving the properties purchased in the hands of the vendor himself. If Tiu Quim Chiu were the real owner of the properties in question, he could not have left in the manner he did.
>
> "A very important circumstance is to be noted. The purchase of the business by Tiu Quim Chiu did not include the basis of said business, that is, the hemp press and the *camarin* (shed) in which it was installed, which properties appear to have been purchased by Lim Isiu (Exhibits D and 6). The press and the *camarin* were bought by Lim Isiu, who did not need them, while Tiu Quim Chiu, who needed them for his business, did not purchase them. But in spite of this division of the ownership of these properties which should not be separated, the important fact is that the business and the hemp press continued to operate, united to each other, as if they belonged to one single owner, in the same way they did before the transaction."

We entirely agree with the trial judge that these conveyances are fictitious, in the sense that they were made upon fictitious considerations; and they were without a doubt executed for the purpose of defrauding Geronima Uy Coque and

defeating the rights of her heirs. Most preposterous of all, perhaps, is to suppose that the sale of the fleet of boats to Tan Po was made in good faith—something for which he had no possible use and over which he has at no time exercised the slightest dominion. And it is not pretended that he paid any cash consideration whatever, the supposed consideration consisting of a preexisting debt concerning which there is not the slightest documentary evidence. The three boys, Tan Siu, Tan Cao, and Lim Isiu, could not possibly have commanded the resources necessary to make the purchases attributed to them, and as to two, consideration is claimed to be, in whole or in part, the value of their unpaid salaries for past services. Of course the conveyances to these three, as well as that made in favor of Marcelo Navas, were merely made in furtherance of the design, already revealed in Exhibit 5, of making a division among Sioca's "sons." Neither of these three boys has at any time exercised any of the external indicia of ownership over the property which they claim to have purchased, their pretense being that they leased the properties back forthwith after purchasing them to Sioca, or let them to his successor, Marcelo Navas.

This last named person acquired the wholesale business in Catbalogan with all the property and outstanding credits pertaining thereto, but no steps were taken by him at the time of the transfer to assert ownership or obtain possession. It is true that after he had made two trips to China, coming back in the autumn, he began to take a more intimate part in the conduct of business, and he claims that his vendor Sioca had now become his agent in the management of things. Also at the end of the year the internal-revenue license for the conduct of the business was taken out in the name of Marcelo Navas, and an important business house in Manila with whom Sioca had business relations was informed of the change.

It is not claimed that Marcelo gave present value for what he received; the consideration is said to consist in part of a debt owing to Marcelo's father, Tiu Sin Set, from the liquidation of the famous partnership "Tiong Juat," of which something has already been said. One would suppose that after that fictitious entity had been wiped completely off the slate by the document executed in January, 1917, nothing more would have been heard of it, especially as it was stated in that document that each of the partners was receiving his share in the proceeds as per the liquidation effected by Sioca. But the memory of that fictitious entity has been revived for the purpose of serving as a

justification of these transfers by Sioca; and it is asserted that Sioca did not pay the amounts due his former partners upon liquidation as stated in the document Exhibit 15, which indebtedness remained outstanding until they began to press him in 1919. It was for this reason, so Sioca asserts, that it became necessary for him to sell out everything so hurriedly in June and July, 1919, in order to satisfy those claims, which being accomplished, Sioca was left with little or nothing and dependent upon Marcelo Navas even for employment. It is impossible, upon a careful examination of the evidence before us, to give credence to such a pretension.

We do not question the power of the defendant Sioca to make a valid conveyance, disposing of any property belonging to the conjugal partnership, either during the life of his wife or afterwards. That power Sioca undoubtedly had, as is fully established in numerous decisions of this court, beginning with the case of Nable Jose *vs*. Nable Jose (41 Phil., 713). But the proper exercise of the husband's power as administrator of the community estate supposes that he acts in good faith, and where a transfer is made upon a fictitious consideration and for the purpose of defrauding the wife and her heirs, the transaction is devoid of validity, not because of any lack of power on the part of the husband, but because of the inherent nature of the transaction itself.

Much of the oral proof submitted in this case has reference to the point whether "Tiong Juat" was a real association in the nature of the partnership between four persons mentioned as participants therein, or whether it was a purely artificial arrangement conceived for the purpose of enabling its alleged members freely to make trips back and forth to China in the character of merchants and incidentally to enable them to import young Chinamen as members of their respective families. This proof relative to "Tiong Juat" is of course pertinent to the question whether the sales which are under attack in this case were made in good faith and as a result of a necessity imposed upon Sioca by the liquidation of said association; but it does not otherwise affect the case, for it is to be remembered here that the supposed partnership had been dissolved before the conveyances in question were made, and all of its property had, by such dissolution, become vested exclusively in Sioca and in his hands was community property.

The foregoing exposition of the facts of the case, as we see them, renders unnecessary any elaborate discussion of the numerous assignments of error made in this court by the appellants, and a few words will suffice to dispose of the greater part of said errors. The first assignment is directed to an error of the court in admitting certain testimony objected to by the attorney for the appellants in the lower court. The objection is based upon the relevancy of the testimony referred to; and in the analysis of the case, we have ignored said testimony as immaterial. Its admission therefore does not constitute reversible error, if error in any sense.

The second assignment is directed to the error of the court in refusing, over the offer made by the appellants' attorney, to permit the introduction of certain proof concerning the constitution of "Tiong Juat," the names of the associates who created it, and the amount due from Sioca to the alleged partners at the time of its dissolution. We believe that the testimony thus offered was legally relevant as bearing upon the good faith of the subsequent sales which were made by Sioca, and the trial judge was technically in error in rejecting it. Nevertheless, we note that his Honor did not consistently maintain his position with respect to the exclusion of the items of proof offered; and at a later stage of the trial the same facts which the court had excluded, as indicated in this assignment, were developed from the same and other witnesses with abundant iteration. It results that whatever error may have been committed in connection with the exclusion of the testimony to which this assignment is directed is not reversible error.

Assignments Nos. 3 to 7, inclusive, are directed to supposed errors of the court in sustaining objections to certain testimony or in striking out evidence upon the points mentioned in said assignments. The testimony thus ruled out is before us in the record, and has been considered by this court for what it is believed to be worth. With respect to the eighth assignment practically the same observation may be made as noted above concerning the second. Assignments Nos. 9 to 13, inclusive, are directed to supposed erroneous findings of the court upon points of fact which in our opinion are either immaterial or sustained by a preponderance of the evidence. The same is true of the errors assigned under Nos. 16, 17, 19, 20, 21, 22, 23 and 24. Assignments Nos. 15, 18 and 25 are directed to questions of law, or mixed questions of law and fact, which are disposed of adversely to the appellants' contention as a consequence of the

conclusions stated in this opinion upon the main issues.

Assignments Nos. 14 and 26 in our opinion are meritorious, and the errors therein suggested will be pointed out, but for purposes of convenience our plan of treatment will follow the order of the dispositive part of the appealed decision.

The trial judge first pronounces the several conveyances made by Sioca to Tan Po, Tan Siu, Tan Cao, Lim Isiu, and Tiu Quim Chiu to be of no effect. The declaration of the nullity of these instruments is correct; but it will be noted that when this declaration is taken in relation with subsection (3) of the last paragraph of the decision, the practical effect is that the conveyances referred to are nullified only to the extent of the one-half interest of Geronima Uy Coque in those properties.

The trial judge next declares that all of the properties described in paragraphs A to G, inclusive, of the decision, with the exception of lot No. 1 of paragraph D, is community property of Sioca and wife. The property thus declared to be community property includes everything that had been transferred by Sioca to his codefendants, except lot No. 1 of paragraph D, as well as several parcels of little value which were retained by Sioca unsold; and we are of opinion that no reversible error prejudicial to the defendants was committed in this pronouncement. With the sole exception of lot 1 of paragraph D, everything here declared to be community property, so far as appears, was acquired by Sioca after he entered into marital relations with Geronima Uy Coque and the whole must be presumed to be community property (art. 1407, Civ. Code). It is true that Sioca says that he had a capital of P1,500 when he married Geronima, but this point cannot be considered as established; and no question is made upon it in the appellants' brief.

Concerning lot 1 of paragraph D, it appears that this property originally belonged in common to Geronima Uy Coque and her brothers and sisters, having descended to them from their parents. There were six of these heirs, four of whom, Juan, Geronima, Andrea and Segundo Uy Coque, were each entitled to one-fourth of one-half and one-sixth of the other half, and two of whom, Valentina Tingzan and Teodoro Tingzan, were entitled to one-sixth of one-half. Now, Andrea Uy Coque, Valentina Tingzan, and Teodoro Tingzan assigned their

portions to Geronima Uy Coque, which gave her seven-twelfths, and the other five-twelfths were purchased by Sioca. It results that, in addition to the seven-twelfths which pertained to Geronima as her separate (paraphernal) property, she was entitled to one-half of the remainder as her ganancial interest. The exact extent of her participation in this lot was therefore nineteen twenty-fourths; and in declaring her to be owner of only three-fourths (or eighteen twenty-fourths) the trial judge erred indeed, but the error was prejudicial to the heirs of Geronima Uy Coque (who have not appealed) rather than to the appellants. The argument submitted in this court against the correctness of the finding that Geronima was the owner of the portion of this lot just stated is rested mainly, if not entirely, upon the supposed effects of the document Exhibit 5, by which Geronima attempted to convey all her interest in the community property to Sioca. But apart from the fact that the separate property of Geronima was not included in that transfer, it is evident that said document would, as already demonstrated, be legally ineffective, as being in contravention of the express provisions of law.

The defendant Sioca disclaims any interest whatever in the item of property noted in subdivision 9 of paragraph F of the appealed decision and which was declared by the trial judge to be community property, consisting of a *tienda* located in the barrio of Silanga, Samar. Sioca says that this *tienda* belongs to Tan Suico, Suya, in partnership with Tima. From acts of ownership exercised by Sioca with respect to this *tienda* it might be inferred that it is his property and pertains to the community estate. Supposing, however, that the Chinos mentioned by Sioca are its real owners, the judgment in this case will not be binding upon them since they are not parties. The same observation holds good with respect to item No. 7, a *tienda* in the municipality of Villareal, of which Sioca says that he owns only one-half, the other half belonging to one Siwa. None of the parties mentioned by Sioca as owners or coowners with him in connection with these properties have intervened to assert their claims in this case; and the situation must be left with the observation that as they are not parties they will not be absolutely bound by the decree.

After having made his pronouncement as to the nullity of the conveyances made by Sioca to his codefendants and as to the ganancial character of the properties above referred to, the trial judge proceeds to give effect to the legal

consequences of his findings; and to this end he orders Sioca and his codefendants to pay to the plaintiffs, or to administrator of Geronima Uy Coque as their representative, the sum of P152,800, being one-half of the proceeds of the hemp included in the sale made by Sioca to Marcelo Navas. This order is in our opinion incorrect not only as regards the persons upon whom this obligation is placed but as regards the amount due.

The legal effect of requiring Sioca and his codefendants to pay the sum of money mentioned is to make all of the defendants jointly liable for said sum, whereas the liability for this money cannot properly be extended beyond the two persons (Sioca and Marcelo Navas) who made away with the proceeds of the hemp. There is no proof that Tan Po, Tan Cao, Lim Isiu, and Tan Siu had anything to do with that act; and there is nothing to indicate that there was any general conspiracy such as should make all of the defendants equally liable for the proceeds of the hemp.

The court estimated the total value of the hemp which was on hand at the time of the sale of the business to Marcelo Navas at P305,600, one-half of which, or P152,800, represented the share of Geronima Uy Coque, We are of the opinion that the data contained in the proof is not adequate to sustain this estimate in its entirety; and we think it safer to fix the value of this hemp at the precise amount which Sioca admits having received for it in money, or P253,152.25. That the amount of money so received by him could not have been less is proved not only by his admission, but by the statistics irrefutably showing that hemp in a quantity sufficient to realize that sum, or more, was deposited in Manila or Catbalogan at the time of the sale.

While it is undeniable that Sioca converted into money hemp of the value stated, he says that there were debts outstanding in Manila against him to the extent of P235,152.25 and that as he had to pay off these debts, there was a net balance of only P18,000 for Marcelo Navas. And this is the breath of air by which this despoiler of his wife’s estate would dissipate responsibility for this large sum of money. Not one scratch of paper, such as a receipt or old statement of account from any creditor whatever, from which the existence of a debt of any sort could be even remotely inferred, has been introduced in evidence. Yet it is certain that if there had been any such debts paid off by him, he could readily have produced documents in support of such fact. We

believe him to be a fraudulent spoliator of a large fortune against whom everything is to be presumed, in accordance with the maxim *omnia praesumuntur contra spoliatorem*.

A single circumstance suffices to show the purely false and artificial character of Sioca's pretense to have paid debts to the extent claimed. It will be remembered that in the document of July 7, 1919, executed by Sioca in favor of Marcelo Navas, the consideration was stated to be P18,000, paid to the entire satisfaction of the vendor. Now, the hemp was not all sold for weeks, or even months, after that document was executed, yet it will be noted that when the sale was finally effected the hemp brought precisely such an amount that when debts to the amount of P235,152.25 were paid off, there remained a balance of exactly P18,000 to be turned over to the new owner. In other words it is apparent that the amount of the supposed debts was arbitrarily fixed to tally with the consideration stated in the prior conveyance of July 7, 1919, and this was done, oddly enough, in total disregard of other elements of value in the property sold.

Estimating the value of the hemp, or its proceeds, at P253,152.25, the half-interest of Sioca therein will be found to be P126,576.13, leaving an equal amount for the estate of Geronima Uy Coque. This, and not the amount found by the trial judge, constitutes the portion pertaining to her collateral heirs in the proceeds of the hemp, subject, however, to the usufructuary interest of Sioca, concerning which more will be said further on in this opinion.

Subsections 2 and 3 of the dispositive parts of the appealed decision are concerned with the disposition of the real property involved in the litigation; and the effect of this part of the decision is to require the defendants to surrender to the administrator of Geronima Uy Coque three-fourths of lot 1 of paragraph D and one-half of the other parcels. A more correct way of wording the judgment with respect to these lands would have been to declare the collateral heirs of Geronima Uy Coque to be the owners in her right of the portions of property indicated and to require the defendants to respect the rights of said heirs as coowners; and in so far as the appealed decision disposes, or seems to dispose, otherwise, it must be modified.

Furthermore, though the point has not been brought into discussion in the

assignments of error, it is necessary to point out that Sioca's usufructuary interest in the property which he transferred to the several defendants undoubtedly passed to each transferee respectively. (Art. 480, Civ. Code.) The result is that each transferee named in the several deeds became the lawful owner of the properties conveyed in those deeds to the extent of the one-half interest which lawfully pertained to Sioca, plus his usufructuary interest in one-half of the remainder; and said deeds can be declared fraudulent against the plaintiffs only in so far as relates to what is left.

At this point it becomes desirable to say a few words concerning the character of the action. The complaint states a complex cause of action, namely, first, to set aside various conveyances as having been executed by the defendant Sioca in fraud of his wife and her heirs; and, secondly, to compel Sioca to account for and surrender the deceased wife's share in the community property or, as we take it, to enforce a liquidation of the community estate. That an action in each of these aspects is maintainable goes without saying, and there was no impropriety in joining the two in a single proceeding, as was desirable and even necessary in this case.

The defendants interposed an answer to the merits in the court below, and no objection was there made at any time by demurrer or otherwise to the form of the proceeding. Furthermore, no error has been assigned in this court directed to any defect either of form or substance in the proceeding. Nevertheless it is suggested in the lengthy discussion under assignment No. 26 that if the plaintiffs desired to call Sioca to account for the property pertaining to his wife, they should have proceeded against him as her administrator; and it is stated in the brief that Sioca was administrator of his wife at the time this action was instituted. Our attention has not been called to any proof in the record showing the fact to be as stated, but we may doubtless take judicial notice of it, as the records of this court show, in a former proceeding that came to us upon appeal, that the same Sioca had been removed as administrator of his wife and another person appointed in his stead. If the defendants had desired to invoke the supposed rule of law discapacitating the plaintiffs from maintaining this action so long as Sioca occupied the position of administrator of his wife, the question should have been presented in their answer. As no objection was made in the Court of First Instance to the maintenance of the action in its aspect of a proceeding to compel the defendants to account for the

deceased wife’s share in the community property, the objection will not now be entertained in this court.

But we think there is another sound and sufficient reason why it was proper for the court to entertain the present action not only for the purpose of decreeing the nullity of the questioned deeds but for the purpose of compelling Sioca and his codefendants to surrender the property which had been appropriated by them. It is an accepted doctrine of equity jurisprudence that when a court acquires jurisdiction over a controversy for one purpose it will retain it for all purposes, to the end that the litigation may be completely concluded. In this connection the maxim is applicable that equity does nothing by halves. There can be no question that the court could properly take cognizance of the action in its aspect of a proceeding to set aside the fraudulent deeds, and having thus acquired jurisdiction over the subject-matter for that purpose, no error was committed in giving complete relief. It is quite obvious that if the court had stopped short of the requirement that the defendants should pay over and surrender money and property to the extent allowed by us in the present judgment, the ends of justice would have been frustrated. A husband who has turned spoliator of his wife’s estate and who has been removed as administrator may be required to pay over the wife’s share to her proper legal representative and to account for such portion thereof as he may have squandered.

The preceding discussion conducts us to the point where it is necessary to confront the practical problem presented by the existence of the usufructuary right of Sioca in the estate of his deceased wife and the final liquidation of the estate into whose hands soever the property may have come; and it is evident at once that the case is not now in a condition where we can say the last word, and there are certain steps in the liquidation which will require further proceedings in the court of origin.

As the spouses comprising the community partnership with which we are concerned left neither ascendants nor descendants, the surviving husband is, or was, entitled to one-half of the deceased wife’s property in usufruct (art. 837, Civ. Code; Sarita *vs*. Candia, 23 Phil., 443). And as we have already seen, this right of the husband undoubtedly passed by his transfer to his several codefendants.

Furthermore, the wife's share in the proceeds of the hemp amounts, according to our previous computation, to the sum of P126,576.13. One-half of this amount is P63,288.06, which represents the unencumbered portion pertaining to the collateral heirs, the plaintiffs in this action, and which should be immediately paid by Sioca and his codefendant Navas to the administrator of the deceased wife. If not duly paid, execution therefor should be issued jointly and severally against these two only.

As to the remaining sum of P63,288.06, which pertained to Sioca in usufruct, the plaintiffs are in law entitled to the capital, subject to the usufructuary right now vested in Marcelo Navas. A specific portion of said sum should either be fixed, as representing the shares of the respective parties, or other adjustment should be attained compatible with the purposes contemplated by the law; but in any event the parties are privileged, under article 838 of the Civil Code, to come to an amicable agreement, if they see fit, in default of which the adjustment will be made by judicial decision.

Again, the various defendants (except Sioca) who assert title to different pieces of real property conveyed by him to them respectively likewise acquired his usufructuary interest in said respective parcels, in addition to the undivided half that pertained to Sioca as member of the community partnership. It is impossible for us in the present state of the case to determine the value of said usufructuary interest or to assign any specific piece of property to any of said claimants in satisfaction thereof. This problem therefore also remains for future solution in the ultimate liquidation of the whole estate.

By way of abbreviation of the foregoing, it is our judgment: (1) That the deeds Exhibits A to F, inclusive, whose validity have been impugned in this cause, were properly declared void by the trial court, as having been made in evident fraud of the rights of the plaintiffs as collateral heirs of Geronima Uy Coque; (2) that the defendants Juan Navas L. Sioca and Marcelo Navas (Tiu Quim Chiu) are jointly and severally liable for the sum of P63,288.06, which they are required to pay to the representative of Geronima Uy Coque, and in default thereof execution for said sum may issue jointly and severally against them in due course; (3) that the defendant Marcelo Navas (Tiu Quim Chiu) is entitled to the usufructuary right of Juan Navas L. Sioca in another equal sum of P63,288.06, the corpus, or capital, of which belongs to the plaintiffs; (4) That

the various transferees mentioned in the deeds Exhibits A, B, C, E and F severally acquired by those deeds an undivided one-half interest in the several properties therein conveyed, plus the usufructuary right of Juan Navas L. Sioca therein, and that Lim Isiu, as transferee in the deed Exhibit D, thereby acquired an undivided one-eighth interest in the property therein conveyed, plus the usufructuary right of Juan Navas L. Sioca in the whole; and, finally, that the remaining interest in each of said properties belongs to the plaintiffs; (5) that the cause be remanded for further proceedings in which the usufructuary interest will be determined and division of the properties in question effected in conformity with the law and consistently with the principles settled in this decision.

Wherefore, affirming the appealed decision in so far as the same is in harmony herewith and reversing the same in so far as the same is inconsistent herewith, the cause is remanded for execution and further proceedings, without special pronouncement as to costs of this instance. So ordered.

Malcolm,
Avanceña, Villamor, and *Romualdez, JJ.,* concur.

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[1] By resolution of December 29, 1922.

DISSENTING

JOHNS, J., with whom concurs **JOHNSON, J.:**

The majority opinion is learned and exhaustive, and, yet, upon the important questions, I think it is fundamentally wrong.

The facts leading up to, and surrounding, the execution of what is known in the record as Exhibit 15, executed March 11, 1918, are well stated, and there is

no question as to its authenticity. It reads as follows:

> "I, Geronima Uy Coque, wife of the Christian Chinaman Juan Navas Sioca, both residents of the municipality of Catbalogan, Province of Samar, P. I., and his legitimate heir of all the property acquired or to be acquired during his marriage: Be it known by these presents that I convey and transfer one-half of the interest I may have in the aforesaid property to my aforesaid husband Juan Navas Sioca, who may dispose as absolute owner of all said property, whether personal or real, and of the business in which he is engaged, and he may exercise his right to transfer the same to other persons and make its distribution among his children as he pleases. Be it also known that I stand responsible to my said husband Juan Navas Sioca, his heirs and successors in interest for all the aforesaid property which corresponds to me by inheritance, the title to which I bind myself to defend now and forever against all lawful claims that may be presented."

It is also true that at the time it was executed, neither Geronima Uy Coque nor Juan Navas Sioca had any children, and that any property which either of them then had was largely the result of their combined efforts as husband and wife. It is also true that they lived together as husband and wife for some little time after Exhibit 15 was executed, and that any and all conveyances to any of the other defendants, of which the plaintiffs now complain, were made by Juan Navas Sioca during the lifetime of Geronima Uy Coque, and that she must have known and been fully advised of the nature of every one of the transactions which her husband made.

In legal effect, the majority opinion finds as a fact, which is true, that the defendants to whom the conveyances and transfers were made by Juan Navas Sioca had been raised and treated by the husband and wife as their own children, and to all intents and purposes, they recognized and dealt with them as such. They took them in their own home, educated and trained them in their business, and clearly indicated by their treatment and conduct that it was the purpose and intent of the husband and wife that the boys, whom they had raised and educated, should succeed them in the business which had grown and become established with their aid and assistance. It was in this situation and under such conditions

that Exhibit 15 was executed by Geronima Uy Coque, now deceased.

It is contended, and the majority opinion holds, that Exhibit 15 is void under article 1334 of the Civil Code, which reads as follows:

> "All donations between spouses made during the marriage shall be void."

That depends upon the construction which is placed upon the exhibit. It should be construed with reference to the surrounding facts and circumstances, and the conditions under which it was executed. The instrument was signed by Geronima Uy Coque in the presence of two witnesses, and was duly acknowledged before a notary public. There is no claim or pretense that she signed it through any fraud or undue influence, or that she did not know or understand the nature and contents of the instrument.

The transfers and conveyances of which plaintiffs now complain were all made immediately after the execution of Exhibit 15 and during the lifetime of Geronima Uy Coque, and presumably with her knowledge and consent, as the record shows that after the execution of the instrument, she continued to live in the house with Juan Navas Sioca up to the time of her death.

For aught that appears in the record, they shared each other's marital secrets and enjoyed each other's confidence and respect. Based upon such undisputed facts, Exhibit 15 is more in the nature of a power-of-attorney from the deceased to her husband, and it empowered and authorized him to do exactly what he did do. In other words, the conveyances, which were made by the husband through and under Exhibit 15, were, in legal effect, the joint conveyances of husband and wife, and were made with the knowledge, consent, and approval of the wife. In the very nature of things, both of them wanted and would naturally prefer that their joint property should go and descend to the boys whom they had raised and educated in their own home, and who had aided and assisted them in the establishing and conduct of the business, in preference to unknown and collateral heirs whom they had never seen.

In other words, Exhibit 15 was executed by the deceased wife to her husband

to enable him to transfer their joint property to the boys whom they had raised and educated, and to authorize him to do the identical thing which he did do, and it should not be construed as a donation between spouses under article 1334 of the Civil Code. It should rather be construed as a power-of-attorney or a conveyance in trust for certain specific purposes which were carried out and perfected by the husband in the manner understood and agreed upon between him and his wife in her lifetime. That is a reasonable construction and gives legal force and effect to that portion of Exhibit 15, which reads: “And makes its distribution among his children as he pleases,” which would otherwise be a nullity, for the simple reason that neither the husband ndr the wife ever had any children, unless the defendants here should be deemed and treated as their children.

The stubborn fact remains that Exhibit 15 was executed by the wife, and that by virtue of it, the transfers were made by the husband to the defendants, and that they were made during the lifetime of the wife and under conditions which clearly imply that they were made with her knowledge and consent. If so, there was not and could not be any fraud in the sales or transfers, and the wife would be estopped to defeat or set them aside. If she would be estopped to set them aside, with much stronger reason her collateral heirs should be estopped.

It is said that the conveyances were fraudulent. How and in what way were they fraudulent? Who was defrauded, and by whom was the fraud committed? The alleged acts were committed during the lifetime of the wife and with her apparent knowledge, consent and approval. There is no claim or pretense that it was a fraud upon her or her rights. If not, how could it be a fraud upon her collateral heirs and unknown kindred, who now seek to set aside and annul settlements of property rights, which were made by the deceased wife, through whom plaintiffs now claim title as her collateral heirs? Who has been defrauded? When and by whom was the fraud committed? The real fraud in this case is on the part of the plaintiffs, who seek to set aside and annul settlements of property rights, which were made to carry out the wishes and respects of the living to dispose of their property to the four boys whom they had raised and educated in their own home which was made in preference to unknown and collateral heirs. Suppose, as the majority opinion finds, the sales and transfers were made for an inadequate consideration, who was defrauded? The husband, who made the conveyances, was at the time the owner of one-half of the property conveyed, and

his wife then living was the owner of the other half, and Exhibit 15 expressly recites that it was made, so that the husband could make the disposition of the property "among his children as he pleases," who must be construed as the defendants in this action.

Legally speaking, he made a disposition of the joint property not only among his children as he pleased, but he made it among his children as pleased his wife, who authorized him to make the distributions and transfers to the four boys whom they deemed and treated as their children.

The evidence is conclusive, and the defendant Sioca admits, that he received P253,152.25 from the sale of hemp, and the majority opinion finds that is the base of his liability. It ignores and overlooks the fact that under oath Sioca testified that he used all of the money to pay the debts of the business, and that his testimony upon that point is not disputed or denied. In the absence of any proof, the majority opinion holds that, because he did not give a list of the creditors, his testimony is false and unworthy of belief. That is a novel principle of law. When Sioca testified that he used that amount of money with which to pay the debts, he was under oath, and that would be at least *prima facie* evidence of the truth of his statement. The burden would then devolve upon the plaintiffs to show that Sioca's testimony was false, and on cross-examination they would have a right to have him testify as to whom he paid the money, and when it was paid and for what it was paid, and to require him to furnish a list of the creditors, and a detailed statement of all the facts. This was not done. Plaintiffs did not cross-examine Sioca upon that point, and because he was not cross-examined and his testimony is not disputed in the record, the majority opinion holds that the evidence as to the amount of money which Sioca received is true, but as to the amount of the debts, it is false and unworthy of belief. That is truly a novel legal principle, and, yet, the whole majority opinion is founded upon that legal principle.

We have been taught, and the authorities hold, that where a witness testifies to a fact, which is not disputed or denied, that it is at least *prima facie* evidence of the truth of that fact.

Again, the record shows that there has never been any administration of the partnership estate of the deceased wife, and that her husband is still living

and a defendant in this action. As the surviving husband of the conjugal estate, and under numerous decisions of this court, he is legally entitled to the possession and control of the partnership estate pending a settlement of the affairs of the partnership even as against the administrator of the estate. Yet, in the face of those decisions, a personal judgment is rendered against the surviving husband for the value of the property without any administration, or even an attempt to have an administrator appointed for the estate of his deceased wife. In such an administration, the debts, if any, of the deceased would be paid out of the assets of the estate, after which a final distribution would be made among the legal heirs.

In re Estate of Amancio (13 Phil., 297), this court held:

> " 'The husband is by law the manager of the conjugal partnership. (Art. 1412, Civil Code.) His debts, contracted during marriage, are its debts. (Art. 1408.) Upon the death of the wife he becomes the surviving partner, and we do not doubt that he is the person called upon to settle the affairs of the partnership. It could not have been intended that, upon the death of the wife, leaving the husband surviving, the property which the husband had administered and in which he was directly interested, should be taken out of his hands and delivered over to an administrator appointed in proceedings for the settlement of his wife's estate, and we hold that, where a conjugal partnership is dissolved by the death of the wife, the surviving husband is the administrator of the affairs of the conjugal partnership until they are finally settled and liquidated.'
>
> "For the purpose of settling the affairs of a dissolved partnership the surviving husband is entitled to the possession not only of all the property belonging to the partnership, but also to the *bienes parafernales* of the wife.
>
> "* * * The proceeding for the settlement of the estate of the wife could not be terminated until the husband had liquidated the affairs of the partnership and delivered to the administrator of the wife's estate the part belonging to it, all in accordance with articles 1418 to 1426 of the Civil Code, and section

685 of the Code of Civil Procedure."

This decision has been followed and approved in 17 Phil., 479;[1] 31 Phil., 157;[2] 40 Phil., 569;[3] and 41 Phil., 717.[4] Yet, in the face of those decisions a personal judgment is rendered here against the surviving husband for the full value of the estate of the deceased wife, and without an administration of her estate, and which, in legal effect, deprives him of his right "to the possession of the property of the conjugal partnership until he has liquidated its affairs." If, as the above authorities hold, the surviving husband is entitled to the control and possession of the partnership estate pending a final settlement by him of the business of the partnership, even as against the administrator of the estate of the deceased partner, how and upon what legal principle can the collateral heirs of the deceased partner maintain an action against the surviving partner to recover the value of the estate of the deceased partner and obtain a money judgment therefor until such time as there has been a settlement of the partnership affairs and an administration of the estate of the deceased partner, or at least a demand and a petition therefor? The majority opinion deprives the surviving husband of that legal right, and takes the estate of the deceased partner out of the jurisdiction of the probate court, and gives it to the collateral heirs of the deceased partner before the surviving partner has settled the business of the partnership, or even the filing of a petition to have an administrator appointed for the estate of the deceased partner.

The legal right, if any. of the plaintiffs should be confined and limited to their respective interests in the property of the deceased wife after there has been a full, final, and complete settlement of the conjugal partnership, and an administration of the estate of the deceased wife. Until that is done, plaintiffs ought not to have a cause of action.

Our contention is very much strengthened by section 753 of the Code of Civil Procedure, which provides that after payment of the debts, funeral charges, and expenses of administration, and the allowances, if any, made for the expense of maintenance of the family of the deceased, the court shall assign the residue of the estate to the persons entitled to the same, and in its order shall name the persons and proportions, to which each is entitled, and "such persons may demand and recover their respertive shares from the executor or administrator, or any

other person having the same in his possession," and section 754, which provides: "But the heirs, devisees, or legatees, shall not be entitled to an order for their share, until the payment of the debts and allowances mentioned in the preceding section, etc., unless they give a bond with such surety or sureties as the court directs, to secure the payment of such debts, expenses or allowances," etc.

These are plain statutory provisions. There is no claim or pretense that the plaintiffs have even attempted to comply with either one of them. Yet, the majority opinion gives them, as collateral heirs, a personal judgment against the surviving partner for the full par value of the estate of the deceased partner.

For all of such reasons, I dissent.

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[1] Rojas *vs*. Singson Tongson.

[2] Sochayseng *vs*. Trujillo.

[3] Molera *vs*. Molera.

[4] Nable Jose *vs*. Nable Jose.

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