

ANDRES E. VARELA ALIAS ANDREW E. VARELA, PLAINTIFF AND APPELLANT VS. JOSE VILLANUEVA, ETC., ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-3052. June 29, 1954*

Ponente: PARAS, C.J.

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Mariano R. Varela died in Batangas, Batangas, on September 5, 1940. Intestate proceedings (No. 3708) were instituted in the Court of First Instance of Batangas on September 16, 1940 by his first cousin, Jose Villanueva. The petition alleged that Mariano Valera was single at the time of his death and left as the sole heir his brother, Andres Valera y Villanueva, who had been absent from the Philippines since many years ago and last resided at No. 1343,122nd Street, New York City, U. S. A. Efforts were immediately exerted by Jose Villanueva, through Rafael Villanueva, and by Marcelo "P. Alay, a servant and protegee of the deceased, to contact Andres Varela, enlisting the aid and good offices of Francisco Varona, then attached to the Philippine Resident Commissioner in Washington, D. C.; the Division of Territories and Island Possessions, Department of the Interior, Washington, D. C; the Filipino National Council in New York; U. S. Secretary of State; and Congressman Fred L. Crawford of Michigan. The whereabouts of Andres Varela, however, remained unknown.

In the meantime, the petition in the intestate proceedings having been duly published, various collateral relatives of Mariano Varela had entered their appearances, namely, Rosario Rodriguez Varela, half-sister; Faustino Rodriguez Varela, son of a deceased half-brother; Felix Villanueva and brothers, first cousins; Manuel Villanueva and brothers (except Rafael Villanueva), first cousins; Rosario Villanueva and brothers, first cousins; and Rosario Torres Watson and Enriqueta Torres Smith, first cousins. On November 6,1940, over the opposition of Rosario Rodriguez Varela and Faustino Rodriguez Varela, the court appointed Jose Villanueva as administrator,—

On February 14,1941, Rosario Rodriguez Varela and Faustino Rodriguez Varela, on the one hand, and Carmelo Bautista the latter represented by Josefa Enopia, on the other, executed the following compromise agreement:

"Este CONVENIO DE TRANSACCION otorgado y suscrito por:

"JOSEFA ENOPIA, mayor de edad, Filipina, vecina y residente en el municipio de Batangas, provincia del mismo nombre, Filipinas, en representacion de su hi jo Carmelo Bautista;

"ROSARIO RODRIGUEZ VARELA, soltera, mayor de edad, Filipina, vecina y residente en la ciudad de Manila, Filipinas;

"FAUSTINO RODRIGUEZ VARELA, mayor de edad, Filipino, casado, vecino y residente en la ciudad de Manila, Filipinas;

"ATESTIGUA, QUE:

"1." POR CUANTO Don Mariano Rodriguez Varela y Villanueva fallecid en el municipio de Batangas, provincia del mismo nombre, el 5 de Septiembre de 1940;

"2." POR CUANTO Don Mariano Rodriguez Varela y Villanueva fallecio sin haber dejado testamento y con propiedades ubicadas en la provincia de Batangas que, de acuerdo con el inventario sometido por el Administrador Don Jose Villanueva monta a P45,251.00;

"3." POR CUANTO dicho finado no ha dejado hijos ni desceiidientes legitimos, ni tampoco padres o ascenientes legitimos;

"4." POR CUANTO de conformidad con las disposiciones de la ley, el unico heredero legal del finado, con exclusion de todos los otros parientes, es un hijo natural reconocido llamado Carmelo Bautista, ahora menor de edad y representado en este documento por su madre y tutora natural Da, Josefa Enopia;

"5." POR CUANTO el recocimiento de dicho hijo consta en escrito indubitado del finado Mariano Rodriguez Varela y Villanueva, cuyo escrito obra en poder y se halla bajo la custodia del administrator Don Jose Villanueva y Romualdez.

"6." POR CUANTO a los otros comparecientes, que son media hermana y sobrino, hijo de medio hermano, consta que el referido finado ha reconocido publicamente y continuadamente al joven Carmelo Bautista como su hijo natural y este ha disfrutado publica y continuadamente de tal estado de hijo natural reconocido;

"7." POR CUANTO como ya se ha dicho, el referido finado Don Mariano Rodriguez Varela y Villanueva reconocio en vida, publicamente, a Carmelo Bautista como su hijo natural presentandole asi a todos sus parientes, entre ellos los comparecientes, a sus amigos y a la sociedad en general, atendiendo a, su subsistencia y educacion y cuidando como un buen padre de familia del bienestar y porvenir de su citado hijo;

"8." POR CUANTO los comparecientes no desean sostener entre si ningun litigio para la division de la herencia, pues a todos consta la legitimidad del derecho de Carmelo Bautista de reclamar para si, como unico heredero legal abintestado del finado, toda la herencia de este, despues de deducidas las obligaciones que tuviere;

"9." Por cuanto por su parte, el hijo natural reconocido Carmelo Bautista, no desea tampoco quedarse para si con toda la herencia, privando a los hermanos y sobrinos del finado, entre ellos los otros comparecientes, de toda participacion en la herencia, y siendo el deseo de dicho (Carmelo Bautista el que todos participen en cierto sentido de la herencia relicta por su finado padre;

"POR TANTO, las partes han convenido en lo siguiente:

"(a) En que el citado Carmelo Bautista sea declarado como hijo natural reconocido del finado Don Mariano Rodriguez Varela y Villanueva, y como su unico y legitimo heredero abintestado;

"(b) Que habiendo deiado el finado un hermano llamado Andres Rodriguez Varela, el cual se halla ausente de Filipinas, ignorandose su paradero e ignorandose, asimismo, si existe 6 ha fallecido pues de el no se tiene noticias desde hace muchos anos, el otorgante Carmelo Bautista se compromete a reservar de los bienes que reciba como su herencia del intestado de su difunto padre, bienes muebles 6 mmueWes por su valor equivalente a doce mil uesos (P12.000), en la inteligencia de que los frutos naturales, industriales 6 de otra indole que perciban los bienes perteneceran al otorgante Carmelo Bautista, quien solo vendra obligado a entregar al referido ausente, al tiempo de su presentation, bienes 6 dinero por valor de P12,000.

"(c) Que el otorgante Carmelo Bautista se compromete a entregar a su tia Da. Rosario Rodriguez Varela tan pronto como reciba la herencia de su difunto padre, bienes 6 metalico, a election de esta, en la suma de seis mil pesos (P6,000);

"(d) El mismo Carmelo Bautista se compromete a pagar a eu primo Faustino Rodriguez Varela tan pronto como reciba la herencia del finado bienes 6 metalico por la misma cantidad de seis mil pesos (P6.000);

"(e) Finalmente, quie todas las partes comparecientes en este documento consider an este como una transaction

de sus derechos hereditarios en los bienes relictos por el finado Don Mariano Rodriguez Varela y Villanueva, y renuncian a formular cualquier otra reclamacion ahora 6 en lo futuro que pudiera derivarse de sus derechos hereditarios como parientes del referido finado, y renunciando los unos en favor de los otros cualquier derecho que pudiera derivarse de su cualidad de herederos abintestado del referido finado;

"(f) Que en caso de que el ausente Don Andres Rodriguez Varela no aparezca 6 sea declarado muerto, la participacion que se le asigna en este documento acrecera la parte del hi jo natural reconocido y cualquier derecho que los otorgantes pudieran tener sobre dicha participacion se renuncia expresamente por ellos en favor del hi jo. natural;

"(g) Queda especialmente convenido y pactado que este documento surtira efecto entre las partes—en cuanto a las obligaciones. monetarias que en su virtud se contraen—tan pronto como haya sido aprobado por el Juzgado correspondiente, conviniendo las partes en someter este documento a la aprobacion del Juzgado de Testamentarias que conoce del Intestado del finado Don Mariano Rodriguez Varela y Villanueva.

"Leido este documento por los otorgantes y encontrandolo conforme con lo por ellos convenido, la otorgan su consentimiento firmandolo por octuplicado en la ciudad de Manila, Filipinas, hoy a 14 de Febrero de 1941.

"(Fdo.) ROSARIO RODRIGUEZ VARELA.

"(Fdo.) JOSEPA ENOPIA en representation de su hijo Carmelo Bautista

"(Fdo.) FAUSTINO RODRIGUEZ VARELA."

On March 25, 1941, a motion was filed by Carmelo Bautista, praying that he be declared the sole heir of the deceased Mariano Varela, entitled to inherit all his properties; that the above-quoted compromise agreement (attached to the motion) be approved in toto; and that the administrator be ordered to pay, after payment of all debts and obligations, to Rosario Rodriguez Varela and Faustino Rodriguez Varela the amounts due them under said compromise agreement. Upon motion of attorney for some of the claimants, the hearing of the motion was postponed to April 7, 1941. On April 2, Atty. Jose Avancena appeared for Rosario Rodriguez Varela, represented previously by Atty. Tomas Yumol. On April 7, 1947, the Court of First Instance of Batangas issued the following order:

"Tratase de una mocion presentada por la representation de Carmelo Bautista, con la concurrencia de Da. Rosario Rodriguez Varela, media hennana del finado Mariano Rodriguez Varela, y Villanueva y su sobrino Faustino Rodriguez Varela en la que pide la aprobacion de un convenio que obra unido a los autos en cuya virtud se pide que se declare al mencionado Carmelo Bautista, como hi jo natural reconocido del difunto Mariano Rodriguez Varela y Villanueva, y como tal, unico heredero de los bienes relictos por el mencionado finado, se autorice al administrador que pague, con cargo a la herencia, a Da. Rosario Rodriguez Varela y a D. Faustino Rodriguez Varela, la suma de P6.000 cada uno, reservndose, ademas, de los bienes remanentes del finado, bienes 6 metalico, montantes a la suma de P12,000 que habra de retener a su poder el hijo natural reconocido para ponerlo a disposition del hermano del finado llamado Andres Rodriguez Varela, quien se halla ausente de Filipinas desde hace muchos afios, ignorandose actualmente su paradero, en la inteligencia de que, los frutos naturales, industriales o de otra indole que perciban los bienes asi reservados pertenecieran al mencionado Garmelo Bautista, quien soio vendra obligado a entregar al referido ausente al tiempo de su presentation bienes 6 dinero por valor de P12,000.

"Con fecha de 29 de marzo del presente ano, se registro en la Escribania de este Juzgado un escrito de comparencia por el Abogado D. Claro M. Recto como abogado de Felix Villanueva y hermanos, Manuela Villanueva y hermanos (excepto Rafael Villanueva) y Rosario Torres Villanueva y hermanos, quienes alegando ser primos hermanos del finado y como tales personas interesadas en este intestado, pidieron la posposicidn de la consideration de la mocion de Carmelo Bautista que estaba sefialada para el 2 de abril de 1941. El Juzgado, proveyendo a dicha motion, pospuso la vista para esta fecha.

"Llamada la vista de esta motion en el dia de hoy, previa notificacion a las partes interesadas, el Escribano dio cuenta de que se ha recibido en la escribania unescrito firmado por el abogado Sr. Recto en la que con la conformidad de sus clientes, se retiraba de su representaeion. Ninguna otra persona comparecio por dichos 'opositores. Don Felix Villanueva, uno de dichos opositores, se limito a comparecer como abogado del administrador y manifesto en corte abierta que habiendo firmado el administrador su conformidad a la mocion, el no tenia objecidn a su aprobacion. Por el mencionado Carmelo Bautista comparecio el Abogado Jose M. Casal y Rosario Rodriguez Varela y Faustino Rodriguez Varela comparecieron asistidos de su abogado Sr. Jose Avancena, quien manifesto unirse al mocionante a los efectos de pedir la aprobacion del convenio de transaccion unido a los autos.

"Examinados los autos, resulta, que el finado Don Mariano Rodriguez Varela y Villanueva no ha dejado hijos ni descendientes legitimos, por lo que bajo las disposiciones de la ley son llamados a su sucesion los parientes colaterales quienes resultan ser hermano de doble vinculo llamado Andres Rodriguez Varela, Da. Rosario Rodriguez Varela y su sobrino, hi jo de medio hermano, Faustino Rodriguez Varela, quien debera concurrir a la herencia con ella por derecho de representacion.

"Tratandose como se trata, de una sucesion intestada, los parientes mas proximos excluyen los mas remotos y por consiguiente los hermanos y sobrinos excluyen de la herencia los primos y demas parientes en el mismo grado que estos.

"Resulta tambien, que dicha Da. Rosario Rodriguez Varela y su sobrino Faustino Rodriguez Varela, que como quedo dicho son Qamados a la sucesion de este intestado por ministerio de la ley, reconocen, en virtud del documento cuya aprobacion se pide, que el finado Don Mariano Rodriguez Varela y Villanueva, ha dejado nn hi jo natural reconocido publicamente llamado Carmelo Bautista y este, como tal hijo natural reconocido, viene a sucederle en sus derecho s y acciones y demas bienes con la exclusion de todos los parientes colaterales.

"Y resultando, que este convenio se ha hecho por los comparecientes, Rosario Rodriguez Varela y Faustino Rodriguez Varela, en perjuicio aparente de sus propios intereses, puesto que el reconocimiento que en el documento hacen de la existencia de un hijo natural reconocido del finado y de la posesion publica que este hijo natural ha gozado de su estado de hijo natural durante la vida del finado, les excluye de toda participacion a la herencia de esta, el Juzgado no halla otra alternativa mas que aprobar este convenio en los terminos en que esta redactado, salvando cualquier derecho que pudiera tener el hermano ausente Andres Rodriguez Varela, en el caso de que xompareciere.

"En su virtud, con la aprobacion del convenio unido a los autos otorgado por Carmelo Bautista, representado por su tutora Da. Josefa Enopia, por un lado, y Da. Rosario Rodriguez Varela y Faustino Rodriguez Varela por otro, se declara al joven Carmelo Bautista como hijo natural reconocido del finado Mariano Rodriguez Varela y Villanueva con derecho a sucederle en todos bienes y se ordena al administrador a que de los fondos que tenga en su poder 6 de los que pudiera procurarse con los bienes relictos por el finado, pague a Da. Rosario Rodriguez Varela y Faustino Rodriguez Varela la suma de P6,000 cada uno, en cumplimiento de los terminos del convenio."

On October 29, 1942, the administrator filed a petition for the delivery of the properties to Carmelo Bautista and for the closing of the intestate proceedings. On January 28, 1943, the court ordered Carmelo Bautista to file a bond for P12,000 to secure the payment of the amount due under the compromise agreement to Andres Varela, his heirs or successors-in-interest, or that a lien in the same amount be noted in Certificate of Title No. 5418 covering the land one-half of which corresponded to Carmelo Bautista. Upon petition filed by the administrator on February 1, 1943, the court issued an order on February 2, declaring the intestate proceedings closed.

On January 2, 1946, Andres E. Varela alias Andrew E. Varela, filed a complaint in the Court of First Instance of Batangas against Jose Villanueva and others, in the main praying that the order of April 7, 1941, issued in Special Proceedings No. 3708, be annulled and that Andres Varela be declared the sole heir of his deceased brother

Mariano Varela. On October 7, 1947, Andres Varela filed an amended complaint with practically the same prayer. Plaintiff's theory is that the defendants Jose Villanueva, Rafael Villanueva, Josefa Enopia, Rosario Rodriguez Varela, Faustino Rodriguez Varela, Jose Perez Cardenas and Jose M. Casal conspired together in fraudulently causing the Court of First Instance of Batangas to issue the order of April 7, 1941. After trial the court rendered on August 12, 1948, a decision the dispositive parts of which read as follows:

"Wherefore, judgment is hereby rendered as follows:

"(a) The plaintiff is ordered to deliver the possession of the properties: to Luisa Villanueva the land described in Transfer Certificate of Title No. 3271 of the Province of Batangas, the cadastral lots Nos. 971 and 968 of the municipality of Batangas, and the proindiviso one-half share of the land described in the Original Certificate of Title No. 139, Province of Batangas, and the following personal properties a mirror and a small marble table parted in the middle which Andres Varela had taken; to Jose Villanueva, the land covered by Transfer Certificate of the Title No. 3677 Province of Batangas; to Felisa Vergara and her minor children the land described in Transfer Certificate of Title No. 4021 of the Province of Batangas; to Encarnacion Samos and her minor children a portion of 7/12 share of the land described in Transfer Certificate of Title No. 3800 of the Province of Batangas and to the minor children of Carmelo Bautista, namely, Carmen, Romeo and Fe, all surnamed Varela, the undivided one-half share of the land described in the Transfer Certificate of Title No. 5418 of the Province of Batangas the parcels of land described in Tax Declaration Nos. 63881, 53205, 59595 (which is a portion of the land described in Transfer Certificate of Title No. 342 of the Province of Batangas), and 48758, all of them in the municipality of Batangas, Batangas, and an undivided one-half share in the land described in the Original Certificate of Title No. 140 of the Province of Batangas, all of which are identified as the properties described in letters I, J, K, L, M and N of paragraph 5 of the amended complaint, and the following personal properties, eight chairs, two tables, two wardrobes, one bed and one desk. The defendant Luisa Villanueva has presented no proof of the value of the mirror and the small marble table, neither the minor children of Carmelo Bautista have offered proof of the value of the personal properties above-described, all of which had been taken from them by the plaintiff and, therefore, the court is not in a position to render a money judgment against the plaintiff for the value of the said furniture and fixtures in the event that their re-delivery cannot be effected;

"(b) The plaintiff is hereby sentenced to pay to Jose Villanueva the sum of P1,026.73 damages suffered by him for the wrongful attachment of his properties with legal interest from the date of this decision;

"(c) the plaintiff is sentenced to pay to the minor children of Carmelo Bautista the amount of P6,492.50 the value of 209 cavanes of palay, and P30 the value of 62 gantas of corn, and to deliver 13 gantas of mongo, the value of which has not been proven and also to pay P150 the proceeds of the sale of coconut fruits, with legal interest thereon from the date of this judgment;

"(d) The plaintiff is sentenced to pay Luisa Villanueva the total sum of P3,270 the value of palay harvested and income received from the land with legal interest from the date of this decision; and

"(e) The complaint is hereby dismissed with costs against the plaintiff, and the attachment levied upon the properties of the defendants Jose Villanueva and Luisa Villanueva, as also the notice of *Its pendens* recorded on the back of the titles of the properties belonging to the defendants, the subject matter of the present litigation, are hereby ordered discharged and cancelled."

The plaintiff Andres Varela has appealed. To start with, we may state that the present action was filed three years after the final closing of the intestate proceedings of Mariano Varela, and that the rule is that an action to annul a judgment, upon the ground of fraud, will not lie unless the fraud be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered, and that false testimony or perjury is not a ground for assailing said judgment, unless the fraud refers to jurisdiction (*Labayan vs. Talisay-Silay Milling Co.*, 68 Phil., 376); that fraud has been regarded as extrinsic or

collateral, where it has prevented a party from having a trial or from presenting all of his case to the court (33 Am. Jur., pp. 230-232). The reason for this rule has been aptly stated in *Almeda et al. vs. Cruz*, 47 Off. Gaz., 1179:

"Fraud to be ground for nullity of a judgment must be extrinsic to the litigation. Were not this the rule there would be no end to litigations, perjury being of such common occurrence in trials. In fact, under the opposite rule, the losing party could attack the judgment at any time by attributing imaginary falsehood to his adversary's proofs. But the settled law is that judicial determination however erroneous of matters brought within the court's jurisdiction cannot be invalidated in another proceeding. It is the business of a party to meet and repel his opponent's perjured evidence."

The deceased Mariano Varela left a book of memoirs in his own handwriting discovered by the administrator Jose Villanueva among his belongings, which book was presented in evidence as Exhibit I. The following entries are contained in said book:

"1920. Josefa Enopia se unio conmigo en la noche del dia sabado 16 de octubre de 1920, en Manila y estuvo toda la noche conmigo.

"(Exhibit 1-a.)

"1921. El 16 de Octubre de 1920, dfa en que apadrine a Ramon Tarnate, fue la primera vez en que Epay Enopia durmio conmigo en Manila, y desde entonces una vez masdurmiamos juntos, hasta el 4 de Febrero 1921, que era carnaval.

"Desde el mes de Diciembre dijo que ella estaba en cinta.

"Julio. El dia 16 sabado 11:30 p.m. dio a luz un nino. De modo que a los nueve meses coincidiendo en el mismo dia Sabado y fecha 16, daba a luz.

"En el registro civil en el Municipio aparece registrado el casamiento de Josefa Enopia con Gaudencio Bautista, el 19 de Junio de 1921, este es su anterior pretendiente, que yo fui preferido y aceptado a el.

"No me cabe duda que este chiquillo es mio.

"El dia Domingo 22 de Enero de 1922, fiesta del pueblo, yo fui el padrino de este nino, a peticion de toda la familia y se le puso el nombre de Carmelo.

"(Exhibits 1-b and 1-c)

The foregoing entries formed the principal basis for the execution of the compromise agreement between Rosario Rodriguez Varela and Faustino Rodriguez Varela, on the one hand, and Josefa Enopia, in representation of Carmelo Bautista on the other, which in turn led to the order of the Court of First Instance of Batangas dated April 7, 1941, declaring Carmelo Bautista as acknowledged natural child of Mariano Varela, entitled to succeed to all his estate.

As Rosario Rodriguez Varela and Faustino Rodriguez Varela were represented by counsel both in the execution of the compromise agreement and in the hearing for the approval by the Court of First Instance of Batangas of said compromise agreement, it cannot be contended that they were not aware of the true facts surrounding the proceedings. Indeed, they uncomplainingly accepted the benefits of said agreement.

As already stated, at the commencement of the intestate proceedings, a thorough search for the whereabouts of Andres Varela was made, and all available agencies were asked to lend their assistance in locating him. Even Marcelo Alay, a witness for the plaintiff and a protegee of Mariano Varela, himself made necessary inquiries. Indeed, in his letter written on June 22, 1941, to the Resident Commissioner in Washington, he made the special request that Andres Varela be advised to attend to the properties and wealth left by his brother Mariano Varela,

because some other interested parties were taking charge of said wealth amounting to more than P200,000 at the same time informing that Andres was the nearest and rightful heir of his brother Mariano. It is difficult to believe that Andres Varela was purposely prevented from having or deprived of his day in court because, first, in the petition filed in the intestate proceedings by Jose Villanueva, who was appointed administrator of the estate of Mariano Varela, it was specifically alleged that Andres was the sole heir of his deceased brother Mariano Varela; secondly, no stone was left unturned in discovering the whereabouts of Andres Varela; and, thirdly, the intestate proceedings lasted for quite some time, having been started on September 16, 1940 and finally closed only on February 2, 1943, thereby giving ample opportunity for Andres to appear. That there was not the least intention to disinherit Andres Varela, although the existence of Carmelo Bautista as acknowledged natural child of the deceased Mariano Varela, necessarily excluded him and other collateral relatives, is shown by the fact that provision was made in the compromise agreement, reserving to him the share of P12,000, which was twice as much as the share granted to Rosario Rodriguez Varela and Faustino Rodriguez Varela.

There can be no question about the authenticity and probative value of the book of memoirs, since even plaintiff's principal witness, Teofilo Gui (confidential secretary of Mariano Varela), testified that the entries therein are in the handwriting of Mariano; although more than two months after said testimony was given, Teofilo was recalled to the witness stand, and in redirect examination declared that he admitted that said memoirs are in the handwriting of Mariano Varela, because, when the book was handed to him in the former hearing, he saw the name Mariano R. Varela appearing on the back thereof. This rather belated explanation is unconvincing. Moreover, while some opposing attorneys secured copies of the entries in Exhibit "I" for examination by the NBI handwriting experts, they had failed to submit in evidence any such examination or analysis.

The force and effect of the acknowledgment made by Mariano Varela in his book of memoirs of Carmelo Bautista as his natural son is sought to be nullified by the plaintiff-appellant, by contending that Josefa Enopia, mother of Carmelo was married to Gaudencio Bautista, on June 19, 1921, and that Carmelo was born during said marriage. There is, however, ample evidence tending to show that Josefa was forced by her father to marry Gaudencio and that, prior to and after her marriage to Gaudencio, she never had any carnal contact with him; that in the decision of the Court of First Instance of Quezon City rendered on March 10, 1941, from which no appeal was taken, the marriage of Josefa to Gaudencio was declared null and void, and Josefa's children were declared to have never been neither legitimate nor illegitimate children of Gaudencio. The regularity of the annulment proceedings, apart from being legally presumed, is borne out by the testimony of Juan Solis, a lawyer and a witness for plaintiff-appellant, and of course by that of Josefa Enopia and her lawyer.

In Special Proceedings No. 3708 of the Court of First Instance of Batangas, claims to the estate of Mariano Varela were actually before the court, affecting Rosario Rodriguez Varela, Faustino Rodriguez Varela and several other first cousins of Mariano, and even the plaintiff-appellant himself as alleged in the petition filed by Jose Villanueva; and said claims logically were in conflict with the latter claim interposed on behalf of Carmelo Bautista. The court was called upon to determine who of said claimants had preferential right to the inheritance, and each claimant of course was entitled and bound not only to dispute Carmelo's alleged right but also to establish his adverse claim. The issue thus presented, was disposed of in the order of April 7, 1941, approving the compromise agreement entered into between Carmelo Bautista, represented by Josefa Enopia, and Rosario Rodriguez Varela and Faustino Rodriguez Varela, the two nearest kin next to Carmelo that necessarily excluded the other collateral relatives. There was accordingly a judicial settlement of the controversy, and said order of April 7, 1941, was no less a judgment on the merits which may be annulled only upon the ground of extrinsic fraud.

The plaintiff-appellant has failed to demonstrate, notwithstanding his elaborate efforts, that there was such

extrinsic or collateral fraud as would justify the setting aside of the order of April 7, 1941. As already noted, he cannot be said to have been prevented from having a fair trial. On the contrary, it may be said that plaintiff was rather indifferent to his interests, because, although he had been absent from the Philippines since 1910, he never took the trouble or precaution of informing his brother Mariano of his whereabouts from time to time, and likewise failed to give any instructions to anybody who could protect his rights, knowing that, as early as 1933, he was, as regards his brother Mariano, the nearest of kin who might succeed of his estate in case of death. The implication that follows is that the plaintiff-appellant in effect had abandoned his hereditary rights in the Philippines. It is improbable that, as claimed by him, he had stayed in the mountains in the United States recuperating from an illness from 1939 to 1942, without any facility for correspondence to the Philippines, especially when it is recalled that he admitted that he was not so sick that he could not write if he wanted to. This claim that there was no mail in the place, is also of little moment, since he could have commissioned somebody to go to the nearest post office, there being no pretence that his situation was such that he was cut from all sorts of communication. At the risk of repetition, much less can Jose Villanueva be charged with having wished to eliminate plaintiff-appellant from succeeding to the estate left by Mariano Varela, as Jose Villanueva himself alleged in his petition filed in the intestate proceedings that the sole surviving heir of Mariano was Andres Varela, and he made extensive, inquiries about his whereabouts in the United States.

The fraud which plaintiff-appellant has attempted to show under the evidence presented in the court below, consists of misrepresentations about the existence of Carmelo Bautista as an acknowledged natural child of Mariano Varela. Assuming that there were falsities on the aspect of the case, they make out merely intrinsic fraud which, as already noted, is not sufficient to annul a judgment. And yet, we agree with the trial court that the evidence preponderates in favor of the conclusion that Carmelo Bautista had been shown to be an acknowledged natural child of Mariano Varela.

Appellant likewise tried to prove, through the testimony of Rosario Rodriguez Varela and Faustino Rodriguez Varela that the latter had signed the compromise agreement without reading its contents, in the first place, Rosario Rodriguez Varela and Faustino Rodriguez Varela have now aligned themselves with appellant's cause, for the obvious reason that their share in the inheritance would be much greater if Carmelo Bautista is excluded. In the second place, the allegation of Rosario Rodriguez Varela that she did not speak English (and therefore could not understand the compromise agreement) is negated by the fact that said agreement was written in Spanish; and Rosario testified in Spanish. In the third place, Rosario testified that at the signing only she, her nephew Rafael Villanueva, and Attys. Cardenas and Casal were present, and yet her nephew stated that they were accompanied by their lawyer, Atty. Godofredo del Rosario, and that Josefa Enopia was there once. Indeed, Godofredo del Rosario and Josefa Enopia signed the agreement, the first as a witness and the latter as a party. In the fourth place, Faustino Rodriguez Varela admitted that he spoke Spanish, and he was therefore in a position to be aware of the contents of the compromise agreement. In the fifth place, both Rosario Rodriguez Varela and Faustino Rodriguez Varela had filed their claims as collateral relatives, were represented by counsel, opposed the appointment of Jose Villanueva as administrator of the estate; and it is improbable that they would sign any compromise agreement without being certain of the true facts. In the last place, the claim of Faustino Rodriguez Varela that he and Rosario signed the document in a hurry, because Atty. Cardenas wanted to bring it to Batangas, and that he signed when told by his attorney that, if something wrong was discovered later, he should be informed thereof, is apparently without any basis; since the compromise agreement was not submitted to the court until March 25, 1941, the motion for its approval was not heard until April 7, 1941, and the agreement had been signed as early as February 14, 1941. Moreover, it is surprising that, notwithstanding the advice of his counsel to inform him if something wrong was discovered, nothing was done from 1941 to the date of the filing of appellant's complaint, although it is admitted that copy of the agreement was given to Faustino Rodriguez Varela, at the latest, after

having been paid what was stipulated in said agreement.

Atty. Jose Perez Cardenas explained the steps leading to the signing of the compromise agreement, and he testified that Atty. Jose Avanceiia, representing Rosario Rodriguez Varela and Faustino Rodriguez Varela, was given a draft which finally gave to his two clients P6,000 each, and that at the signing of the document Rosario and Faustino were accompanied not only by Atty. Avanceiia but also by Atty. del Rosario. It is significant that neither of said attorneys was placed on the witness stand by appellant to negative Atty. Cardenas' testimony.

Appellant presented in evidence, to show that Carmelo was the child of Josefa Enopia with Gaudencio Bautista, a baptismal certificate (Exhibit "D"), purporting to show that Carmelo was their legitimate son. It appears, however, that on cross-examination, Reverend Father Eustaquio Daite, who testified that the certificate was an exact copy of the original, admitted that the word "legitimate" did not appear in the parochial book. Exhibit "CC" was also presented, a supposed copy of the original record of the marriage of Josefa and Gaudencio, and yet it does not contain the notation made by the civil registrar regarding the annulment of said marriage. These omissions were taken by the trial court as indications of a false claim on the part of plaintiff-appellant, and it is not without foundation.

The testimony of Teofilo Gui to the effect that Jose Villanueva had told him that they should produce a son of the deceased Mariano Varela so that they could get a portion of his estate, is rather inconsistent with the frankness of Jose Villanueva in alleging in the petition filed in intestate proceedings that the sole heir of Mariano was his brother Andres, plaintiff-appellant. Considering that Teofilo had presented a claim against the estate of Mariano Varela in the amount of P2,040, which, in view of the opposition of Jose Villanueva, was reduced to P300, it is easy to understand why Teofilo could not have been without any motive for testifying against Jose Villanueva.

Antonio Villanueva, another witness for appellant, declared that he heard Atty. Cardenas suggest that they should present somebody as a son of Mariano Varela, because of the claims filed by Rosario Rodriguez Varela and Faustino Rodriguez Varela. The veracity of this witness is again doubtful, it appearing that he alleged having heard the conversation after the war or during the war, when the intestate proceedings took place in 1940 and 1941 and Carmelo's claim was filed long before the war; and that said conversation was in the law office of Atty. Cardenas and Casal at 34 Escolta, Manila, when it is beyond question that said office was on the second floor of the National City Bank Building at Juan Luna, Manila, at the institution of the intestate proceedings.

Exhibits "F" and "G" were presented by plaintiff-appellant, the first being an affidavit of Josefa Enopia tending to show that she was induced to testify before the Court of First Instance of Batangas that Carmelo Bautista was the son of Mariano Varela, when in fact he was a child of Gaudencio Bautista; the second being an affidavit of Cristina Marajas, Carmelo's widow, to the effect that she was returning the property she had received after she learned that her deceased husband Carmelo was not a natural child recognized by Mariano. We are inclined to give no weight to said exhibits, which have been repudiated by Josefa and Cristina during the trial.

Appellant argues that he cannot be bound by the compromise agreement because he was not a party thereto. In answer it is sufficient to state that the intestate proceedings were in rem and the judgment therein, declaring Carmelo Bautista the sole heir of the deceased Mariano Varela, was therefore binding against the whole world. Section 44 (a) of Rule 39 of the Rules of Court provides that: "In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title of the thing, the will or administration, or the condition or relation of the person; however, the probate of a will or granting of letters of administration shall only be prima facie evidence of the death of the testator or intestate." As aptly commented by Chief Justice Moran "Subdivision (a) refers to judgments in rem.

Thus, a judgment rendered in connection with a petition for the probate of a will is binding upon the whole world. A judgment concerning personal, political, or legal condition or relation of a particular person, as, for instance, a judgment in intestate or testate proceedings, declaring who the heirs of the deceased person are, or a judgment in an application for citizenship, or a judgment adjudging a person to be a spendthrift, may be considered as a judgment in rem, binding on the whole world." (Moran, Comment on the Rules of Court, 2d Ed. Vol. II, p. 704.)

Even if the plaintiff Andres Varela had appeared and actively taken part in Special Proceedings No. 3708, the result would have been the same, in the sense that the recognition by the Court of First Instance of Batangas of Carmelo Bautista as acknowledged natural child of Mariano Varela, and accordingly the sole heir of the latter, would also have excluded appellant from any inheritance, being merely a collateral relative; and the fraud, if any, that would lead to such recognition, would merely be intrinsic not justifying the annulment of a final judgment. The present case should be distinguished from that of Anuran vs. Aquino, 38 Phil., 29, wherein the estate of the deceased Ambrosio Aquino was awarded and delivered to the defendant Ana Aquino, because although the latter and the administrator knew that the plaintiff Florencia Anuran was the surviving spouse of Ambrosio Aquino, and that the defendant Ana Aquino was not a legitimate but only a natural daughter of the deceased sister of Ambrosio, the said Ana Aquino and administrator, without notice to the widow, and acting in collusion, fraudulently procured the entry of the order in the administration proceedings approving the delivery of all the estate to Ana Aquino. It will be noted that in the Anuran case, the mere appearance of the plaintiff Florencia Anuran (prevented from having: a trial) changed the result of the order sought to be annulled.

Plaintiff-appellant invokes the reservation contained in the order of April 7, 1941, namely, "salvando cualquier derecho que pudiera tener el hermano ausente, Andres Rodriguez Varela, en el caso que compareciere." It appears, however, that said reservation is recited in the course of the order, and not in the dispositive part declaring Carmelo Bautista as the acknowledged natural son of Mariano Varela entitled to succeed to his estate. The dispositive part logically excludes the recognition of any successional right on the part of the appellant, and that this was the sense of the order is shown by the fact that, after Carmelo had put up a bond in the amount of P12,000 to answer for the obligation in favor of appellant, as covenanted in the compromise agreement approved by the court, the intestate proceedings were declared definitely closed. The clause, "en el caso que compareciere" should merely mean that appearance by the appellant contemplated therein was to be within the period before the final closing of the proceedings.

Neither is there anything irregular in the action of the trial court in making an express finding to the effect that Carmelo Bautista, under the evidence presented in the present case, was an acknowledged natural child of the deceased Mariano Valera. As explained in the appealed judgment, although the order of April 7, 1941 was final and not tainted with extrinsic fraud, the trial court had to make a pronouncement of fact under the evidence presented by appellant which, however, had reference merely to intrinsic fraud.

The book of memoirs, indubitably evidencing Carmelo Bautista's recognition by Mariano Varela as the latter's acknowledged natural child, is assailed by plaintiff-appellant for not being signed by its author. This criticism is of no moment, because the entries therein are in the handwriting of Mariano and proved to be so by the very key witness for appellant, Teofilo Gui. We have elsewhere pointed out the reason why the attempt of appellant to have Teofilo Gui, upon being recalled to the witness stand two months after his direct examination, explain his damaging testimony, may not be believed. In this connection, it may be added that, in at least two instances cited in the appealed decision, the entries in the book have been shown to conform to the actual facts. We quote from said decision: "For instance, the last entry on page 26, which reads: El 16 de Octubre de 1920, dia en que apadrine a Ramon Tarnate, etc., is fully corroborated by the marriage certificate Exhibit 1-F, wherein it is shown that on October 16, 1920, Ramon Tarnate was married to Mercedes de la Pena, and one of the sponsors or witnesses to

the wedding was Mariano R. Varela. Again, the second entry appearing on page 25, which reads: Mi buena y querida Mama fallecio en mi cuarto, sentada en mi butaca,. el 8 de Sept. dia Domingo y dia de la Correa, las 4:45 p.m. de 1918, y al dia siguiente fueron sus funerales en este pueblo de Batangas, is also confirmed by the death certificate of Julia Villanueva, the mother of Mariano Varela, wherein it is shown that said Julia Villanueva died on September 8, 1918."

Plaintiff-appellant capitalizes the circumstance that Carmelo had used the surname Bautista, to show that he was not the child of the deceased Mariano Varela. Apart from the denial of Josefa Enopia, Carmelo's mother, and (Ms. Tina Marajas, his widow, the use of that surname finds its explanation in the fact that Josefa Enopia was forcibly married by her father to Gaudencio Bautista to protect her honor, and it should be an indiscretion on her part to let the people know, by using the surname Varela, that Carmelo and her other children are those of Mariano Varela to whom she was not married. The same explanation controls with reference to the circumstance that Josefa did not reveal her relations with Mariano until the latter's Appellant contends that the trial court erred in not finding that Jose Villanueva did not include in his inventory in Special Proceedings No. 3708 the jewelries belonging to appellant and his brother Mariano Varela which were taken by defendant-appellee Jose Villanueva. According to appellant, the collection of jewelries and coins referred to was worth P234,560 as early as 1910, and he even went to the extent of describing the various items; and in 1933, when appellant learned through his brother that his mother and sister had died, the estate left by these two was worth at least P250,000. Appellant's theory is hard to sustain. There is evidence to show that in 1912 the properties of Sinforoso Varela, father of appellant and Mariano Varela, were sold at an execution sale to satisfy a debt of only P1,500, and this is quite inconsistent with the existence of the jewels claimed to have been "looted" by appellee Jose Villanueva. At the time appellant learned of the death of his mother and sister, he was earning only enough to cover his expenses and save a little; and yet, if he was certain that there were such jewels as now claimed by him, he never bothered about returning to the Philippines to receive his share in the fortune. It cannot be said that he trusted his relatives in the Philippines, because no sooner had he learned of the death of his brother Mariano than he lost no time in returning home. The trend of appellant's evidence is also to the effect that appellee Jose Villanueva grabbed the valuable jewels and coins left by Mariano Varela in the presence of appellant's witnesses, like Teofilo Gui, Marcelo Alay and Aurea Eumague. In the ordinary course of things, if Jose Villanueva really intended to take possession of Mariano Varela's jewelries and coins, he would have done so surreptitiously. Moreover, as elsewhere adverted to, Teofilo Gui's claim against the estate of Mariano Varela was opposed by administrator Jose Villanueva and this left Teofilo with at least some motive for being hostile to the former. Upon the other hand, Marcelo Alay and Aurea Eumague might themselves have been biased, in that the first admittedly had a quarrel with the Villanuevas because the latter ordered the cutting of Marcelo's banana plantation which caused him damage and they told him to leave the house where he was staying, for Mrs. Villanueva was going to burn it; and the second admittedly was working for and being supported by the appellant in his house at the time of the trial. On top of these, although Jose Villanueva submitted to the court the required inventory of the properties of Mariano Varela as early as December 14, 1940, no opposition was registered thereto, notwithstanding the fact that Rosario Rodriguez Varela and Faustino Rodriguez Varela appeared in the intestate proceedings and even assailed the appointment of Jose Villanueva as administrator.

We have found nothing wrong in the agreement for attorneys' fees between Atty. Jose Perez Cardenas and Josefa Enopia. Atty. Cardenas represented the interest of Carmelo Bautista, agreeing to bear all the expenses of the litigation, on condition that he would receive one-half of everything awarded to Carmelo. The fee is clearly contingent, and as Atty. Cardenas ultimately received less than P20,000, it cannot be held that the fee was excessive, much less unconscionable. Indeed, the arrangement was submitted to and approved by the court.

For the rest, we agree to the appealed decision as regards the various properties that passed to the

defendants-appellees pursuant to and as a result of the recognition of Carmelo Bautista as the sole heir of the deceased Mariano Varela, in relation to the compromise agreement between Josefa Enopia, in representation of Carmelo Bautista, and Rosario Rodriguez Varela and Faustino Rodriguez Varela. The trial court has particularized the properties thus conveyed, as follows:

"PROPERTIES CONVEYED TO LUISA VILLANUEVA:

"By virtue of the aforesaid order of the court of April 7, 1941, and in order to comply with that portion of the order to pay to Rosario R. Varela and Faustino R. Varela the sum of P6,000 to each, the administrator filed a motion in court on June 6, 1941, praying the court to approve the deed of sale over four parcels of land, the first, is covered by Original Certificate of Title No. 5417 of the Province of Batangas, registered in the exclusive name of Mariano R. Varela, single (Exhibit SS); the second and third, are cadastral lots Nos. 871 and 968, which until now are not covered by any Torrens Title, but their tax declarations appear in the exclusive name of Mariano Varela (Exhibits 55-1 and TT); and the fourth is covered by Original Certificate of Title No. 0-139 of the Province of Batangas, in the names of Mariano R. Varela, single and Andres R. Varela, single, pro-indiviso and in equal shares (Exhibit GG), and the total assessed value of the said four parcels is P2,127, which said administrator has executed in favor of Luisa Villanueva, a defendant in the instant case, for the sum of P10,000. After consideration by the court of the aforesaid motion, the same was approved. The administrator received from Luisa Villanueva the amount of P10,000, which together with an additional sum of P2,000, that the administrator took from the funds of the estate, making a total of P12,000, was paid to Rosario R. Varela and Faustino R. Varela, each, receiving the sum of P6,000, receipt of which was acknowledged by them. The Original Certificate of Title No. 5417 has already been cancelled by Transfer Certificate of Title No. 3271 which is now in the name of Luisa Villanueva. Luisa Villanueva took immediate possession of the property through her overseer, treated and dealt with it as her own. However, when Andres Varela arrived in Batangas (he arrived in August 1946), and with the help of other persons, he took possession of the property without the consent of its owner, Luisa Villanueva, depriving her of the use and enjoyment thereof and of the fruits therefrom.

"ADJUDICATED SHARE TO ANDRES E. VARELA IN THE INTESTATE ESTATE OF MARIANO VARELA:

"In the agreement Exhibit E-1, Andres Varela was given a share in the estate of his deceased brother equivalent to P12,000 which Carmelo Bautista agreed to satisfy either in movable or immovable properties in the event that said Andres Varela would be found alive, and in the order of April 7, 1941, the court provided that out of the properties which Carmelo Bautista shall receive as inheritance there shall be reserved for the use and benefit of Andres Varela properites either movable or immovable equivalent to the value of P12,000. In compliance with the said agreement and order of the court, the property described in the Original Certificate of Title No. 5418 of the Province of Batangas, registered in the name of Mariano R. Varela and Andres E. Varela pro-indiviso and in equal shares, the half portion pertaining to Mariano R. Varela in said land which has been adjudicated to Carmelo Bautista as part of his inheritance was made to answer of an encumbrance in favor of Andres Varela for the sum of P12,000, as appears duly noted on the said title (Exhibits FF and JJJ).

"PROPERTIES CONVEYED TO JOSE PEREZ CARDENAS AND PORTIONS OF THEM SOLD TO JOSE VIIXANUEVA, JOSE M. CASAL, AND RAFAEL VILLANUEVA:

"On May 29, 1941, Attorney Cardenas filed a motion in the intestate proceedings praying that his attorney's fees as agreed upon in the contract for attorney's fees of November 18, 1940 (Exhibit 34-a), be ordered paid by the heir Carmelo Bautista by delivering to said Attorney Cardenas one-half of the properties inherited by Carmelo Bautista from the estate. After hearing thereon, the court, on June 16, 1941, approved the contract for attorney's fees and it ordered that one-half of the properties inherited by Carmelo Bautista be delivered to said Attorney Cardenas. Upon a notarial document dated June 19, 1941 (Exhibit DD-1), executed by the

administrator in favor of Attorney Jose Perez Cardenas, the former conveyed to the latter certain real and personal properties taken from the share of Carmelo Bautista of his inheritance in the estate of his deceased father in full payment of Jose Perez Cardenas attorney's fees. The real properties consist of four parcels with the improvement thereon, the first is that covered by Transfer Certificate of Title No. 41194 of the Province of Batangas, registered in the exclusive name of Mariano R. Varela, single (Exhibit RR); the second is that covered by Transfer Certificate of Title No. 2584 of the Province of Batangas, registered in the exclusive name of Mariano R. Varela, single (Exhibit PP-12); the third is that portion pertaining to Mariano R. Varela of an undivided interest of 7/12 share in the property covered by Original Certificate of Title No. 30998 of the Province of Batangas, registered in the names of Mariano R. Varela and Andres E. Varela, in an undivided interest of 5/12 share for Mariano R. Varela and 7/12 share for Andres E. Varela (Exhibit 44); and the fourth is that portion pertaining to Mariano R. Varela of an undivided interest of 7/12 share in the property covered by Original Certificate of Title No. 30997 of the Province of Batangas, registered in the names of Mariano R. Varela and Andres E. Varela, in an undivided interest of 7/12 share for Mariano R. Varela and 5/12 share for Andres E. Varela (Exhibit EE). And the personal property consists of a gold ring with small diamonds appraised in the inventory for P60.

"Transfer Certificate of Title No. 41194 was cancelled by Transfer Certificate of Title No. 62344 issued in the name of Jose Perez Cardenas (Exhibit RR-1), and later sold by him to Victoria G. de Laperal of Manila, on October 27, 1941, (Exhibit RR-2), and this purchaser is not a party defendant in the case.

"Transfer Certificate of Title No. 2584 was cancelled by Transfer Certificate of Title No. 3318 issued in the name of Jose Perez Cardenas (Exhibit PP-13), who caused the subdivision of the land into four lots, namely, lots 869-A, 869-B, 869-C, and 869-D (Exhibit PP-8). For lot 869-A, a new Transfer Certificate of Title No. 3697 (Exhibit PP-1) was obtained in the name of Jose Perez Cardenas and portion thereof had been sold by Cardenas to several purchasers, the sales having been duly noted on the title, and said purchasers are not parties defendants in the case (See memorandum of incumbrances on back of title); lot 869-B was conveyed to Jose M. Casal (Exhibit PP-5), who secured in his name Transfer Certificate of Title No. 3676 (Exhibit PP-2), and later sold by him to Jose Linatok (Exhibit PP-10), said purchaser having obtained in his name Transfer Certificate of Title No. 4021 (Exhibit 2-Linatok, and said last purchaser is a defendant in the case; lot 869-C was conveyed to Rafael Villanueva (Exhibit PP-6, who secured in his name Transfer Certificate of Title No. 3678 (Exhibit PP-3), and portions thereof had been sold to several purchasers, the sales having been duly noted on the title and said purchasers are not defendants in this case; and lot 869-D was conveyed to Jose Villanueva (Exhibit PP-7), who secured in his name a new Transfer Certificate of Title No. 3677 (Exhibit PP-4).

"The third parcel of land conveyed by the administrator to Jose Perez Cardenas in payment of his attorney's fees was that described as cadastral lot No. 355 of the municipality of Batangas without reference to any Torrens Title. It appears, however, that said lot No. 355 with the improvements thereon is covered by Original Certificate of Title No. 30998 of the Province of Batangas, registered in the names of Mariano R. Varela and Andres E. Varela in an undivided interest, 7/12 share for Mariano R. Varela and 5/12 share for Andres E. Varela (Exhibit DD). The interests and participation of 7/12 of Mariano R. Varela was conveyed to Jose Perez Cardenas and a new Transfer Certificate of Title No. 3523 was issued in the joint names of Jose Perez Cardenas and Andres Varela in an undivided interest and in the proportion of 2/3 for Jose Perez Cardenas and 1/3 for Andres E. Varela, respecting and preserving the share of Andres Varela (Exhibit DD-3). The share that accrued to Jose Perez Cardenas was conveyed by him to Encarnacion Samos (Exhibit DD-5), and a new Transfer Certificate of Title No. 3800 was issued in the joint names of Encarnacion Samos and Andres Varela in an undivided interest and in the proportion of 7/12 for Encarnacion Samos and 5/12 for Andres Varela (Exhibit DD-2). Encarnacion Samos together with her minor children Amelia Villanueva and Rafael Villanueva, Jr., are defendants in this case.

"The fourth and last parcel of land conveyed by the administrator to Jose Perez Cardenas in payment of his attorney's fees is described in the conveyance as cadastral lot No. 361 of the municipality of Batangas without

reference to any Torrens title. It appears, however, that said parcel of land is covered by Original Certificate of Title No. 30997 of the Province of Batangas registered in the joint names of Mariano R. Varela and Andres E. Varela in an undivided interest and in the proportion of 7/12 for Mariano R. Varela and 5/12 for Andres E. Varela (Exhibit EE). The share of 7/12 pertaining to Mariano R. Varela was conveyed to Jose Perez Cardenas, and a new Transfer Certificate of Title No. 3522 was issued in the joint names of Jose Perez Cardenas and Andres Varela in an undivided interest and in the proportion of 7/12 and 5/12 respectively (Exhibit II-1).

"PROPERTIES ADJUDICATED TO CARMELO BAUTISTA AS HIS SHARE IN THE INHERITANCE:

"The properties adjudicated to Carmelo Bautista consists of real and personal properties as shown in the document Exhibit JJJ:

" (a) The share of Mariano R. Varela in the parcel of land situated in barrio Calicanto, Municipality of San Juan, Batangas, described in the Original Certificate of Title No. 5418 registered in the joint names of Mariano R. Varela and Andres E. Varela pro-indiviso and in equal shares (Exhibit FF).

"(b) That parcel of land, without Torrens title, declared under Tax Declaration of, real property No. 63881, situated in barrio San Jose Batangas, Batangas, in the exclusive name of Mariano R. Varela (Exhibit VV).

"(c) That parcel of land, without Torrens title situated in barrio San Jose, Batangas, Batangas, registered in the exclusive name of Mariano R. Varela under Tax Declaration of real property No. 53205 (Exhibit WW).

"(d) That parcel of land situated in barrio Sambat, Batangas, Batangas, with an area of 2,264 sq. m., which is a portion of a larger mass of land described in the Transfer Certificate of Title No. 342 of the Province of Batangas in the names of Ward B. Gregg and others which had been sold to several persons, among them Mariano R. Varela, the names of the purchasers are given in the attached list to the deed of conveyance executed by the said Ward B. Gregg and others (Exhibit 50-A), and the portion sold to Mariano Varela is the same land described in Tax Declaration of real property No. 59595 in the name of Mariano R. Varela (Exhibit xx).

"(e) That parcel of land described in the Original Certificate of Title No. 30494 of the Province of Batangas registered in the exclusive name of Mariano R. Varela (Exhibit 51), and which is the same land mentioned in the Tax Declaration of real property No. 48758 in the name of Mariano R. Varela (Exhibit YY).

"(f) That parcel of land situated in barrio Cuta, Batangas, Batangas, known as lot No. 102 of the Cadastral Survey of Batangas covered by Original Certificate of Title No. 140 of the Province of Batangas (Exhibit HH), in the joint names of Mariano R. Varela and Andres E. Varela, pro-indiviso and in equal shares. Although the title contains no notation of the interest pertaining to Carmelo Bautista, obviously, the interest and participation acquired by Carmelo Bautista could only be that of his deceased father.

"(g) And those movables, large catties, and a credit against Doroteo Ylagan for P1,000 mentioned in the document of delivery Exhibit JJJ.

"PROPERTY CONVEYED TO MELECIO ARCEO:

"Melecio Arceo is made a defendant in this case for having purchased the cadastral lot No. 14076 situated in the barrio of San Jose, Batangas, Batangas, containing an area of a little over 40 hectares, from the administrator of the estate of Mariano R. Varela, deceased, which sale was duly approved by the court in said intestate proceedings of Mariano R. Varela Civil Case No. 3708 (Exhibits 1, 1-A, 1-B, 1-C and 2-Arceo). The consideration paid by the purchaser Arceo in the amount of P150, apparently seems to be out of reasonable proportion to the area of the land sold, but the documents have shown that the purchaser had certain acquired rights over the land for having purchased it from another person other than Mariano R. Varela, and to compromise the conflicting claims, for the land was also claimed by the estate of the deceased Mariano R. Varela, the administrator sold the interest of the estate for the amount of P150, which fact was made to appear

in the motion of the administrator when the deed of sale was submitted to the court for approval (Exhibit 1-Arceo).

"From the documents presented by defendant Arceo, it appears that by virtue of writ of execution issued by the Court of First Instance of Manila on September 6, 1910, upon a judgment obtained by 'Jose T. Paterno, Albacea del finado Maximino M. A. Paterno, demandante, contra Sinforoso R. Varela, demandado' in Civil Case No. 1330-54, the Provincial Sheriff of Batangas levied execution upon certain parcels of land of the defendant Sinforoso R. Varela situated in barrio Bilogo, Batangas, Batangas, containing an area of about 40 hectares, to satisfy a money judgment against said Sinforoso R. Varela in the sum of P1,500. The sale of the attached property of Sinforoso E. Varela was effected on January 18, 1912, and the judgment debtor having failed to redeem the property within the time fixed in the law, the Provincial Sheriff of Batangas executed a definite deed of sale on July 10, 1913, in favor of Jose T. Paterno, the purchaser at the execution sale. The document also show that the defendant Arceo had acquired his right, title, and interest to the land which is now as cadastral lot No. 14076 from the successors in interest of the said Jose T. Paterno.

"PROPERTY CONVEYED TO JOSE LINATOK:

"Under the amended complaint, Lucia Linatok, the oldest daughter of Jose Linatok, deceased, and Felisa Vergara, the surviving spouse of said deceased, for herself and as guardian ad litem of her minor children Silvestre, Artemio, Adelaida and Julita, all surnamed Linatok, have been included as parties defendants herein. The reason for their inclusion is the fact that Jose Linatok in life purchased from Jose M. Casal lot No. 869-B of the Batangas Cadastre containing an area of 54,768 square meters, more or less, situated in the Municipality of Batangas.

"The proofs demonstrate that in the lifetime of Jose Linatok, and to be more specific on July 4, 1944, he purchased from Jose M. Casal said lot No. 869-B for the sum of P130,000 of which P4,000 were genuine Philippine currency and the balance Japanese Military notes, that said lot is now covered by Transfer Certificate of Title No. 4021 of the Province of Batangas issued in the name of Jose Linatok, married to Pelisa Vergara; and Jose M. Casal acquired said lot from Jose Perez Cardenas who obtained same from the estate of Mariano Varela in Special Proceeding No. 3708 of this court as part payment of the fees of said Attorney Jose Perez Cardenas; that said lot was a part of a greater mass of land covered by Transfer Certificate of Title No. 2584 of the Province of Batangas, registered in the exclusive name of Mariano R. Varela, and was accounted as property of the deceased in the inventory submitted by the administrator in the estate of Mariano Varela, deceased; that prior to the sale to Jose Linatok, said lot was covered by Transfer Certificate of Title No. 3676 of the Province of Batangas in the name of Jose M. Casal, free from any lien or encumbrance; that the Torrens title No. 4821 in the name of Jose Linatok, married to Felisa Vergara, is also free from any lien or encumbrance whatsoever; that Jose Linatok died in the year 1945, leaving as his surviving heirs the defendants Felisa Vergara and their children Lucia, Silvestre, Artemio, Adelaida and Julita; that due to the last war, Jose Linatok in life and his heirs after his death were not able to take immediate possession of said property, and said defendants were able to take possession only after the liberation of Batangas from the Japanese and remained in possession thereof for several months only, because shortly after the arrival of plaintiff in Batangas he forced the tenants in the land in question to quit paying their respective monthly rentals to defendants herein, but instead to him; that actually plaintiff is in possession of said lot No. 869-B.

"From the proofs, the court finds that Jose Linatok in whose name Transfer Certificate of Title No. 4021 of the land records of the Province of Batangas now stands is a purchaser for value and in good faith, and that his surviving heirs, defendants herein, have been deprived by the plaintiff of their possession thereof."

The trial court correctly hold that, in respect of certain transfers involved in the litigation, the different purchasers paid valuable consideration and on the faith of the titles covering the properties, and accordingly they are purchasers for value and in good faith. Upon the whole, we find the appealed decision to be supported by a preponderance of the evidence, unaffected by the fact that a part of the lost testimony had been retaken.

Wherefore, the appealed judgment is affirmed and it is so ordered with costs against the plaintiff-appellant.
Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Concepcion, JJ., concur.

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