

SANTIAGO CRUZADO, PLAINTIFF AND APPELLANT, VS. ESTEFANIA BUSTOS AND MANUEL ESCALER, DEFENDANTS AND APPELLEES.*G.R. No. 10244. February 29, 1916*

Ponente: TORRES, J.

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This appeal, by bill of exceptions, was taken from the judgment of June 17, 1914, in which the trial judge absolved defendants from the complaint and plaintiff from the cross-complaint, without express finding as to costs. Counsel for plaintiff appealed from this judgment and moved for a new trial. This motion was denied, exception was taken by appellant, and, on the filing of the proper bill of exceptions, the same was approved, certified, and transmitted to the clerk of this court, together with a transcript of the evidence introduced at the trial.

Counsel for the plaintiff Santiago Cruzado filed a written complaint on October 8, 1910, amended on September 25, 1913, in which he alleged that plaintiff was the owner of certain rural property situated in the barrio of Dolores, formerly San Isidro, of the municipality of Bacolor, Pampanga, containing an area of 65 balitas and bounded as set forth in the complaint; that Estefania Bustos, during her lifetime, and now the administrator of her estate, together with the other defendant, Manuel Escaler, had, since the year 1906 up to the present, been detaining the said parcel of land, and had refused to deliver the possession thereof to plaintiff and to recognize his ownership of the same, notwithstanding the repeated demands made upon them; that by such detention, the plaintiff had suffered losses and damages to the amount of P3,500. He therefore asked for judgment declaring plaintiff to be the owner of the said parcel of land and ordering defendants to return it to plaintiff and to pay the latter P3,500 for losses and damages, and the costs.

The demurrer filed by the defendant Bustos having been overruled, in her answer she made a general denial of each and all of the allegations of the complaint, and of each and all of the paragraphs thereof, and, as a special defense, alleged that the title to the said land, produced by the plaintiff, was not a lawful one, for the reason that only a simulated sale of the land was made by and between herself and the deceased Agapito Geronimo Cruzado, plaintiff's father, and that for more than thirty years preceding the present time she had been the sole, exclusive, and lawful owner of the said parcel of land in question; that she had been holding it quietly, peaceably, publicly and in good faith; that it formed an integral part of another larger parcel of land, both parcels aggregating a total area of 100 balitas, 9 loanes, and 41 square brazas; that in September, 1891, with plaintiff's knowledge, the defendant Bustos sold and conveyed all the said property to the other defendant Manuel Escaler who then acquired the possession and ownership of the said parcel of land, and had retained such ownership and possession up to the present time; that at no time and on no account whatever had plaintiff or any other person except defendants acquired possession of the said parcel of land or any part thereof, nor any right or title therein. She therefore prayed to be absolved from the complaint, with the costs against plaintiff.

The other defendant, Manuel Escaler, in an amended answer to the aforementioned complaint, denied each and all of the allegations therein contained and each and all of its clauses, and, as a special defense, alleged that plaintiff's title to the said land was illegal as only a simulated sale was made by and between Agapito Geronimo Cruzado,

plaintiff's predecessor in interest, and Bernardino Dizon; that defendants had been in possession of the said parcel of land for more than thirty years; that the defendant Escaler in good faith purchased the land in question from Estefania Bustos, widow of Dizon, without ever having had any notice of any defect in the vendor's title; that plaintiff had knowledge of the contract of sale of the land in question yet did nothing to oppose its purchase by the defendant Escaler, wherefore the latter, in acquiring the property, did so under the belief that the plaintiff Santiago Cruzado had no right or interest therein. He therefore prayed that the complaint be dismissed, with the costs against plaintiff, and that an injunction issue to restrain the latter from interfering with the defendant Escaler in the enjoyment of his property and rights and from performing any act prejudicial to his interests.

On the case coming to trial, both parties adduced evidence, among which was included the deposition of Inocencio Rosete.

Counsel for defendants, in a cross-complaint set forth: that as shown by the evidence, the defendant Escaler acquired in good faith from Estefania Bustos the land in question at a time when there was no record whatever in the property registry to show that this land belonged to a third person or any other than the vendor; that, on entering into possession of the property, Escaler spent P4,000 in improvements and in the repair of a long dike to prevent the erosion of the land by the frequent overflows of the adjoining estuary; that of this sum P2,000 was paid by Escaler and the remaining P2,000 by Estefania Bustos, in her capacity as lessee of the land; and that in case the judgment of the court should be adverse to defendants, these latter, as owners in good faith, were entitled to be indemnified by plaintiff for the said expenses. He therefore asked that plaintiff be ordered to reimburse half of the said P4,000 to each of the defendants in case judgment should be rendered favorable to plaintiff.

The letter's counsel, in answer to the said cross-complaint, specifically denied each and all of the allegations thereof and, in special defense, reproduced plaintiff's amended complaint in all its parts and alleged that the facts set forth in the cross-complaint did not constitute a cause of action. He therefore prayed that plaintiff be absolved from the cross-complaint and that judgment be rendered against defendants, in conformity with the prayer of his complaint.

After the evidence was all in, counsel for the defendant Escaler moved that the deposition of the witness Inocencio Espanol Rosete be admitted into the record, and in support of his motion stated that with the authorization of the court the said deposition had been taken on November 21, 1913, in the municipality of Arayat in the presence of plaintiff's attorney; that the said declaration of the deponent was duly forwarded to the clerk of the court, and there attached to the record, but through an unintentional oversight of defendant's attorney, it was not presented in evidence at the trial; that this deposition was very important for the defendants' defense; and that the deponent was and continued to be unable to appear before the court on account of a threatened attack of brain fever which might develop during the journey from Arayat to San Fernando.

Plaintiff's counsel asked that the foregoing motion be overruled and that the deposition of the witness Rosete be stricken from the record, because defendants' motion was made out of time and was contrary to the rules of procedure, and there was no reason for altering the order of procedure, as requested by defendants, for, when the period for the reception of the evidence of both parties is closed, an alteration in the order of procedure such as asked by defendants would be improper and illegal, counsel citing the decision of this court in the case of Garcia vs. Reyes. He alleged, moreover, that the said deposition necessarily affected the main issue in controversy and that to allow the motion would be in contravention of the provisions of section 364 of the Code of Civil Procedure. He therefore asked that the said motion be overruled. The court, however, ordered that the deposition of the witness Inocencio Rosete be admitted in evidence, and that plaintiff's exception be noted. In view of the foregoing, the judgment aforementioned was rendered.

The questions herein submitted for the decision of this court are:

- Is it or is it not true that the deed of sale, Exhibit A, (p. 40 of the record) of 65 balitas of land situated in the municipality of Bacolor, Pampanga, executed by Estefania Bustos, with the assistance of her husband Bernardino Dizon, in favor of Agapito Geronimo Cruzado, for the sum of P2,200, was simulated, not with intent to defraud any third person, but for the sole purpose of making it appear that the vendee, Cruzado, then a candidate for the position of procurador on the date of the said deed, September 7, 1875, possessed real estate to the value of P2,200 with which to guarantee the faithful discharge of the duties of the office of procurador?
- Is it or is it not true that, notwithstanding such apparent alienation of the 65 balitas of land, the supposed vendee continued in possession thereof, without the supposed purchaser having taken possession of the property until September 10, 1891, when its owner Bustos sold to Escaler, not only the said 65 balitas of land, but also all the remainder of a large tract of agricultural land of which the portion appearing as sold to Agapito G. Cruzado formed and forms a part, and that Escaler was then and, until the date of plaintiff's claim, continued to be in peaceable, uninterrupted possession of the said whole tract of land, including the aforementioned portion of 65 balitas?
- Has the right of ownership prescribed which Manuel Escaler is and has been enjoying in the land which Estefania Bustos had sold to him and which includes the parcel of 65 balitas claimed by plaintiff, Santiago Cruzado, or has the right of any real or personal action he might exercise by reason of the sale to Cruzado prescribed on account of the lapse of the respective periods fixed by law, between the 7th of September, 1875, the date of said sale, and the 8th of October, 1910, that of the filing of the complaint?

To judge from the evidence adduced in this case, there is ample ground for holding that the said deed of sale of a parcel of 65 balitas of land was simulated, not to defraud any creditor or other person interested in the land nor for the purpose of eluding any lawful obligation on the part of its owner, Estefania Bustos, but for the sole purpose of doing a favor, of rendering a special service to Agapito Geronimo Cruzado, father of the plaintiff Santiago Cruzado.

During his lifetime Agapito G. Cruzado aspired to hold the office of procurador in the Court of First Instance of Pampanga, but notwithstanding that he possessed the required ability for the discharge of the duties of that position, he was unable to give the required bond, an indispensable condition for his appointment, as he was possessed of no means or real property wherewith to guarantee the proper discharge of his duties in the manner prescribed by the laws then in force.

In the certified copy of the record of the case tried in the Secretaria de Gobierno of the abolished Real Audiencia de Manila issued by the Assistant Executive Secretary and chief of the division of archives, there appears on page 178 a decree by the presidencia of this latter tribunal, issued by virtue of the resolution passed by the sala de gobierno on November 24, 1875, whereby it was ordered that Agapito Geronimo Cruzado should be notified that within the period of 30 days he must show proof of having furnished a bond of P700 in cash or of P2,100 in real property as security for the position of procurador to which he had been appointed, with the understanding that should he fail to furnish such bond he would not be issued the certificate entitling him to practise the profession of procurador.

After complying with the requirements of the said court and executing the mortgage deed of the land purchased by the procurador elect Cruzado from Estefania Bustos, on March 18, 1876, the mortgage was recorded in the old mortgage registry then kept in the office of the Ayuntamiento of Manila during the former sovereignty and thereafter Agapito G. Cruzado received his appointment and commenced to discharge the duties of his position.

The above-related facts conclusively prove that Estefania Bustos executed the deed of sale Exhibit A in favor of the deceased Cruzado in order to enable the latter, by showing that he was a property owner, to hold the office of

procurador. This position he held for many years, thanks to the liberality of the pretended vendor, who, notwithstanding the statements contained in the deed of sale, does not appear to have been paid anything as a result of the sham sale, a sale which was effected, not in prejudice or fraud of any person, nor those who were entitled to hold Cruzado liable for the proper discharge of the duties of his office, because, had the need arisen, any liability of his could have been covered by the value of the land, the sale of which was fictitiously set forth in that deed as lawfully belonging to Cruzado, and then Estefania Bustos would have had no right either to object to or escape the consequences of that alienation, although simulated.

The simulation of the said sale was effected by making a pretended contract which bore the appearances of truth, when really and truly there was no contract, because the contracting parties did not in fact intend to execute one, but only to formulate a sale in such a manner that, for the particular purposes sought by Bustos and Cruzado, it would appear to have been celebrated solely that Cruzado might hold his office of procurador on the strength of the security afforded by the value of the land feignedly sold.

The record does not show when the procurador Cruzado died, but it is unquestionable that he was still living during the last months of 1882, judging from the certificate which he himself issued to Norberto Decena (Exhibit 3). He must have died sometime between the years 1882 and 1890, to judge from the contents of the letters plaintiff addressed to Natalio Dizon, one of the children of Estefania Bustos, on July 7, 1891, and July 4, 1896, and from the fact that in the said year 1890 Agapito G. Cruzado was no longer a practising procurador in the Court of First Instance of Pampanga.

It is true that even after the death of the aforesaid procurador, any liability he might have incurred in connection with the exercise of his office could have been, upon presentation of the proper claim, collected out of the value of the land apparently sold by Estefania Bustos and pledged as security for the proper discharge of the duties of his office. On October 8, 1910, when his son Santiago Cruzado filed his complaint, already more than twenty years had elapsed since 1889, if plaintiff's father died in 1889 and not between 1883 and 1889; therefore, any right of action to foreclose the mortgage, or any personal action with regard to the value of the encumbered land, as the result of any liability incurred in the performance of his duties as procurador, has more than prescribed. (Art. 1964, Civil Code, and sees. 38, 39 and 43, Act No. 190.)

On the termination of the sovereignty of Spain over this Archipelago, the Spanish courts here established went out of existence on January 31, 1899, the Pampanga court indeed being abolished about the middle of 1897 as a result of the revolution against the former sovereignty. The personnel of those courts also ceased to render service as such. It may therefore be affirmed that, if the said lien on the land in question has not terminated by its no longer having any object, it is at least undeniable that prescription has already run with respect to any action that might have been brought against the pledged land to recover for any liability which might have been incurred by the procurador Cruzado during his lifetime in connection with his office. so that this real estate may now be considered as free from that hypothecary encumbrance.

At the present time we have only to explain what rights Agapito G. Cruzado transmitted at his death to his son, the herein plaintiff, by virtue of the deed of sale of the land in litigation, executed by its owner Estefania Bustos.

It is unquestionable that the contract of sale of the 65 balitas of land was perfect and binding upon both contracting parties, since they both appear in that instrument to have agreed upon the thing sold, to wit, the 65 balitas of land, and upon the price, P2,200; but it is also undeniable that the said contract was not consummated, inasmuch as, notwithstanding that the deed of sale Exhibit A was accomplished and this document was kept by the pretended purchaser, it is positively certain that the latter did not pay the purchase price of P2,200, and never took possession of the land apparently sold in the said deed. All that this vendee afterwards did was to pledge the

land—on March 14, 1876, that is, six months and some days after the 7th of September, 1875, the date when he purchased it— as security for the faithful discharge of the duties of his office of procurador of the Court of First Instance of Pampanga.

The plaintiff, Santiago Cruzado, a son of the vendee, claiming that the said land was being detained by the vendor, or by the administrator of the latter's estate on her death after the commencement of these proceedings, and by the other defendant Manuel Escaler, prayed the court to declare him to be the owner thereof, to order the defendants to return it to him and to pay him for losses and damages, and the costs.

The action brought by the plaintiff is evidently one for recovery of possession, founded on the right transmitted to him by his father at his death,—a right arising from the said simulated deed of sale of the land in question. This action is of course improper, not only because the sale was simulated, but also because it was not consummated. The price of the land was not paid nor did the vendee take possession of the property from the 7th of September, 1875, when the said sale was feigned, until the time of his death; nor did any of his successors, nor the plaintiff himself until the date of his claim, enter into possession of the land.

It is indeed true that it is not necessary that the thing sold or its price should have been delivered in order that the contract of purchase and sale be deemed perfect on account of its being consensual, and from it reciprocal obligations arise mutually to compel the parties to effect its fulfillment; but there is no transmission of ownership until the thing, as in the case at bar, the land, has been delivered, and the moment such delivery is made the contract of purchase and sale is regarded as consummated. Article 1450 of the Civil Code, relied upon in this connection by the appellant, refers solely to the perfection of the contract and not to its consummation.

The purchaser is also a creditor with respect to the products of the thing sold, and article 1095 of the Civil Code prescribes as follows:

"A creditor has a right to the fruits of a thing from the time the obligation to deliver it arises. However, he shall not acquire a property right thereto until it has been delivered to him."

The provisions of this article are in agreement with that of the second paragraph of article 609 of the same Code, which is of the following tenor:

"Ownership is acquired by retention.

"Ownership and other property rights are acquired and transmitted by law, by gift, by testate or intestate succession, and, in consequence of certain contracts, by tradition.

"They can also be acquired by prescription."

The provisions of the said article 1095 are also in accord with those of article 1462 which reads:

"A thing sold shall be considered as delivered, when it is placed in the hands and possession of the vendee.

"When the sale should be made by means of a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if in said instrument the contrary does not appear or may be clearly inferred."

It is true that the deed of sale Exhibit A remained in possession of the vendee Cruzado, but the sale is not to be considered as consummated by this because the said vendee never entered into possession of the land and neither did his son the plaintiff. The latter, moreover, was unable to prove that at any time as owner of the land he collected the fruits harvested thereon, or that any other person cultivated the said land in the name and representation of his deceased father or of the plaintiff himself. The fiction created by means of the execution and delivery of a public instrument produces no effect if the person acquiring it never takes possession of the thing

sold or acquired, as happened in the case at bar.

If, as prescribed by the preinserted article 1095, the creditor, and in the present case the vendee, does not acquire a property right in the land purchased until the property has been delivered to him or he has taken possession of it, it is unquestionable that, as neither the plaintiff nor his predecessor in interest took possession of the land in litigation, neither of them acquired any property right therein and, consequently, could not and cannot now bring an action for recovery of possession which arises out of a property right in a thing which belongs to them and not a mere right productive of a personal obligation. The plaintiff Santiago Cruzado could only, in a proper case, exercise the personal right of action flowing from the right possessed by his father to compel the vendor to fulfill the contract made in a public instrument to deliver the land sold or to give him possession of it, in consequence of the said contract, though simulated and executed for the sole purpose that the deceased Cruzado in default of P700 in cash might appear to own real estate with which to insure the proper performance of his duties as procurador, an office he then desired to hold.

The supreme court of Spain in a decision of cassation of June 1, 1900, established the following doctrine:

"That articles 1258 and 1450 of the Civil Code and the decisions of cassation of June 30, 1854, April 13 and December 13, 1861, June 30, 1864, and April 19 and December 15, 1865, do not warrant the conclusion that whoever purchases personal or real property may exercise with respect thereto all rights of action inherent in its ownership, without it having, in some way or another, been placed at his disposal. On the contrary, the distinction between the perfecting and the consummation of a contract marks the diversity of relations of the contracting parties among themselves and of the owner with respect to what constitutes his property."

This principle is in harmony with those set up by the same high tribunal in its decision of January 19, 1898, and March 8, 1901.

In this last decision, also rendered on an appeal in cassation, the doctrine enunciated in the excerpt copied here below was established:

"That the contract of purchase and sale, as consensual, is perfected by consent as to the price and the thing and is consummated by the reciprocal delivery of the one and the other, the full ownership of the thing sold being conveyed to the vendee, from which moment the rights of action derived from this right may be exercised."

It is, then, of the utmost importance to examine whether in the said sale the purchase price was paid and whether the vendee took possession of the land supposed to have been sold.

The record discloses that Cruzado during his lifetime was, before he became a procurador, an official escribiente or clerk charged with the duty of courting records and proceedings in the Court of Pampanga; that his salary was hardly sufficient to maintain him and his family; that on account of the insufficiency of his monthly stipend, he was frequently obliged to borrow money from his friends, notwithstanding that he with his family lodged in the house of Bernardino Dizon, the husband of the vendor Bustos, situated in the municipality of Bacolor, with whom Cruzado maintained intimate relations of friendship, and on this account the said couple were content to live in a country house they owned on one of their rice fields. Such was the testimony of several witnesses who lived in that municipality, and who knew and had considerable dealings with the plaintiff's father for many years. It was the opinion of these witnesses that the deceased Agapito G. Cruzado was a poor man, for the reason that his monthly salary scarcely provided for the needs of himself and his family, and they therefore believed that he could not have furnished the sum of P2,200 to purchase the land in question, and, furthermore, if the plaintiff's father had possessed this sum, he would have made the deposit of the sum of P700, the amount of security required by the Presidencia of the former Real Audiencia de Manila for his appointment as procurador, since, having the means, he would have preferred to deposit this smaller sum rather than to have used P2,200 in

acquiring a piece of land from which he would derive no benefit whatever, as in fact he never did, as he must have known that in spite of the simulated sale of the property its owner would continue in its possession and would cultivate it, as she did do until her death. It is, therefore, unquestionable that the price of the sale was not paid, an omission which would indicate that it was in effect simulated.

Aside from the fact that the spouses Estefania Bustos and Bernardino Dizon had no need to sell the said 65 balitas of land, or of fencing or separating this parcel from the large tract of land that belonged to them and of which it formed a part, for the reason that they were rich and at that time were not in need of money to cultivate their extensive land holdings, it is also to be noted that the portion of land sold was worth very much more than the P2,200 which, in the said instrument, purported to be its price.

In addition to the foregoing, the proceedings in the case at bar furnish ample proof that Agapito Geronimo Cruzado during his lifetime stated to various persons that he succeeded in giving bond for his appointment as procurador by means of the said instrument of simulated sale, executed in his favor by the spouses Dizon and Bustos, as he did not have the money to make the deposit required for his appointment. So close were the relations that then existed between the Cruzado family and that of Dizon and Bustos, that later on the plaintiff married a daughter of these latter; hence, plaintiff, in the beginning of his letters Exhibits 8 and 9 addressed to Natalio Dizon, a son of the vendor Estefania Bustos, calls his correspondent his "dear and esteemed brother-in-law." It is therefore not strange that these spouses should have wished to help plaintiff's predecessor in interest by assisting him to obtain the office of procurador, even to the extent of making a feigned sale.

However, years afterwards, prompted by an intuition of possible future difficulties, Dizon and his wife Bustos went to the office of Agapito G. Cruzado and required him to cancel the said deed of sale, in order to avoid any lawsuit after their death. Cruzado promised to look for money wherewith to substitute the mortgage bond. This demand had to be repeated several times, because Cruzado did not cancel the deed as he promised.

Furthermore, it is shown that the instrument Exhibit A is merely a second copy obtained by the plaintiff from the chief of division of archives, without prior summons or notification to the vendor Estefania Bustos, who was still living, in conformity with the provisions contained in article 18 of the Notarial Law of February 15, 1889, and without the plaintiff's having explained what became of the first copy. Besides, the clerk and notary who certified that instrument did not attest therein that in his presence the vendee Cruzado paid over the sum of P2,200, the price of the land sold, and as the vendor denied having received this sum, the obligation devolved upon plaintiff to prove that his deceased father had paid the price stated in that instrument. By his not having done so, his omission constitutes additional proof that the sale of the land, the recovery of possession of which plaintiff now seeks, was really simulated.

The supreme court of Spain, in a decision dated February 20, 1899, rendered on an appeal in cassation, laid down the doctrine that, in accordance with the provisions of article 40 of the Mortgage Law, in the alienation of real property it is understood that no price has been paid if the notary does not attest its delivery or the contracting parties do not prove that it was previously paid.

The courts are allowed full latitude to accept the presumption that the purchase price has not been paid when the notary before whom the instrument was executed does not attest the delivery of the money, and when, such delivery being denied by one of the contracting parties, the other does not adduce proof of its payment, especially when such presumption is corroborated by other circumstantial evidence which, all together, undoubtedly prove that the sale was feigned and simulated for certain purposes sought to be attained by the parties, though, as in the case at bar, the simulation was not effected in fraud of creditors.

Besides the failure to pay the purchase price, the record discloses another very important fact, to wit, that neither

the vendee nor his heirs, among these latter, the plaintiff, had at any time taken possession of the land which in the said instrument Exhibit A appeared to have been sold, for, by the testimony of seven competent witnesses examined at the trial it is decisively and conclusively proven that the alleged vendor, Estefania Bustos, and her husband while he was living, notwithstanding the said alienation, continued to possess the said land supposedly sold to plaintiff's father, and cultivated it, as she had done long before the sale of September, 1875, and continued to do so up to the date of the complaint filed by Santiago Cruzado; in the first period, until September 10, 1891, as the owner of the land, and from this date, when the whole of the large tract of land of which the said portion apparently sold forms a part was sold to the other defendant Manuel Escaler, the original owner Estefania Bustos continued in the material possession of the land, but now as the lessee of the new owner, until 1908, when she was substituted by Marcelo Rodriguez as the new lessee of the property. The plaintiff at no time after his father's death occupied the land in litigation, notwithstanding his allegation that he has been collecting rentals from Estefania Bustos, his mother-in-law, by reason of his having leased the land to her.

The plaintiff endeavored to prove that during the years 1882 and 1883 he personally took charge of and tilled the disputed land on shares through his tenants named Florentino de los Reyes, Lino Cortes, Macario de los Reyes and Regino de los Reyes, all of whom corroborated plaintiff's testimony in this regard. However, six of the defendants' witnesses positively stated that they never were aware that the said tenants had worked on the land in question during either the said two years or in any other, for these latter were working on the adjacent lands belonging to other owners. Pablo Angeles, one of the defendants' witnesses testified that Regino and Florentino de los Reyes were his tenants on shares and were employed on his land adjoining that in question. He was positively certain that they never worked on the disputed land during or about the years aforementioned, because the carabaos used by his said two tenants belonged to him and he never would have permitted them to use these animals in working land that did not belong to him. He added that Regino's children, Macario and Basilio, were at that time so young, being about eight years of age, that they were not yet able to work in the fields.

The plaintiff must have been well convinced that he had no right whatever in the land supposedly purchased by his father. The latter never demanded its possession from its owner Estefania Bustos and never thought of declaring the property as belonging to him, for the purposes of the land tax, from the time this tax was established in this country, notwithstanding that the plaintiff, knowing his obligation, filed a sworn declaration relative to a lot he owned in the municipality of Bacolor. This procedure of plaintiff's proves that he did not believe himself to be the owner of the land he claims and which its present owner Manuel Escaler has constantly declared for the purpose of assessment.

Moreover, about the middle of the year 1891, the plaintiff Santiago Cruzado begged his brother-in-law Natalio Dizon to tell the latter's mother, plaintiff's mother-in-law, that Cruzado desired to lease four balitas of the land in question, and some days afterwards, possibly because he received no reply from his said brother-in-law, he addressed a letter to Dizon (Exhibit 9, page 152 of the record, translated on page 154) in which he repeated his request and asked for a reply; but notwithstanding that his brother-in-law Dizon told him that he could not dispose of any part of the said land for the reason that his mother Estefania Bustos was negotiating for the sale of all the land she possessed in the sitio of Sicat to Manuel Escaler, plaintiff went to Dizon's house on an occasion when Paulino de la Cruz was there. Cruz was a representative of Escaler and had been charged to inform himself of the situation, condition and quality of the land which Bustos was about to sell to his principal and was at the said house for the purpose of being shown the land offered for sale. On this occasion plaintiff learned that negotiations were being made for the sale of all the land owned by Estefania Bustos of which the 65 balitas in litigation formed a part. Plaintiff did not then or afterwards make any statement or objection whatever in defense of his rights and interest, if he really believed that he was entitled to the land shown in the instrument Exhibit A to have been purchased by his father.

Plaintiff made no protest whatsoever, because he well knew that the said sale was simulated and that his father had acquired no right whatever in the property; he was therefore anxious to lease four balitas of the same land, a purpose in which he was unsuccessful because a deal was then already going forward for the sale of the said land to its present owner, Manuel Escaler, who in fact did buy it on September 10, 1891. If plaintiff were convinced that he was the owner of the land, as he rashly asserted that he was in his complaint for recovery of possession, it is not understood why about the middle of the year 1891 he wished to lease, not all the 65 balitas, but only four of them, as stated in his said letter, Exhibit 9.

From that time the new owner Manuel Escaler took possession of all the land sold by Estefania Bustos, including the 65 balitas in litigation, and continued in its possession as the owner thereof until October 8, 1910, when plaintiff filed his claim. Thus, more than the ten years required by law for ordinary prescription had already elapsed, as Escaler purchased the land and was holding it in good faith under a lawful title and was not disturbed in his continuous and peaceable possession, one that was adverse to the whole world. It is therefore unquestionable that he has absolutely acquired by prescription the ownership of the disputed land, and the action brought by plaintiff, founded solely on a simulated sale executed by the original owner of the land, not to the prejudice, but to the benefit, of the pretended vendee, cannot prevail against Escaler's rights.

The registration obtained by the plaintiff in the property registry of the second copy of the said instrument Exhibit A, about two months before filing his action for recovery, to wit, on August 23, 1910, has not improved the deed of sale nor made it more effective, nor could it affect the rights held by the original owner and the present proprietor of the land in question, inasmuch as their predecessor in interest, by default of payment of the price of the sale and on account of his never having taken possession of the land sold, was not the owner thereof, nor did he acquire any property right whatever therein. Consequently at his death he could not have transmitted to the plaintiff as his successor any greater right than a personal right to exact the fulfillment of a contract, and as plaintiff was not the owner of the land, he could not validly register it.

Article 1473 of the Civil Code prescribes:

"If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be personal property.

"Should it be real property, it shall belong to the person acquiring it who first recorded it in the registry.

"Should there be no entry, the property shall belong to the person who first took possession of it in good faith, and, in the absence thereof, to the person who presents the oldest title, provided there is good faith."

On the sale of the land to the defendant Escaler, neither he nor the plaintiff had had it entered in the property registry, but the said new owner, Escaler, took possession of the land on the date of its acquisition, September 10, 1891, and has retained possession thereof up to the present time. So that when plaintiff registered the land he was not in possession thereof and no longer had any right whatever therein, because it already belonged to the defendant Escaler, its lawful owner.

However, even though it were proper for plaintiff to bring the real action for recovery derived, though we do not admit that it could be, from the simulated sale before mentioned, both this action as well as the personal action—the only one available in a proper case, as before demonstrated, pursuant to the provisions of article 1095 of the Civil Code—have both certainly prescribed, for the reason that the periods fixed by law for filing such actions have much more than elapsed.

Article 1939 of the Civil Code says:

"Prescription, which began to run before the publication of this code, shall be governed by the prior laws; but

if, after this code became operative, all the time required in the same for prescription has elapsed, it shall be effectual, even if according to said prior laws a longer period of time may be required."

Personal actions prescribe after ten years; and the same with the writ of execution therein issued, after twenty years; while real actions prescribe after thirty years: according to Law 6, Title 8, Book 11 of the Novísima Recopilación, and Law 21, Title 29, Partida 3, which were those in force on the date of the execution of the deed of sale, Exhibit A.

From September 7, 1875, to October 8, 1910, when the complaint was filed, thirty-five years have elapsed. Therefore, not only in accordance with the laws aforesaid, but also pursuant to the provisions of articles 1963 and 1964 of the Civil Code, the periods fixed for the prescription of the personal action which could, in a proper case, have been exercised, as well as for the real action for recovery of possession brought by the plaintiff without right so to do, have more than prescribed.

For all the foregoing reasons, whereby the errors assigned to the judgment appealed from have been duly refuted, the said judgment should be, as it is hereby, affirmed, with the costs against the appellant. So ordered.

Arellano, C. J., Johnson, Carson, Moreland, Trent, and Araullo, JJ., concur.

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