

DOMINGO MERCADO AND JOSEFA MERCADO, PLAINTIFFS AND APPELLANTS, VS. JOSE ESPIRITU, ADMINISTRATOR OF THE ESTATE OF THE DECEASED LUIS ESPIRITU, DEFENDANT AND APPELLEE.*G.R. No. 11872. December 01, 1917*

Ponente: TORRES, J.

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This is an appeal by bill of exceptions, filed by counsel for the plaintiffs from the judgment of September 22, 1914, in which the judge of the Seventh Judicial District dismissed the complaint filed by the plaintiffs and ordered them to keep perpetual silence in regard to the litigated land, and to pay the costs of the suit.

By a complaint dated April 9, 1913, counsel for Domingo and Josefa Mercado brought suit in the Court of First Instance of Bulacan, against Luis Espiritu, but, as the latter died soon thereafter, the complaint was amended by being directed against Jose Espiritu in his capacity of administrator of the estate of the deceased Luis Espiritu. The plaintiffs alleged that they and their sisters Concepcion and Paz, all surnamed Mercado, were the children and sole heirs of Margarita Espiritu, a sister of the deceased Luis Espiritu; that Margarita Espiritu died in 1897, leaving as her paraphernal property a tract of land of 48 hectares in area situated in the barrio of Panducot, municipality of Calumpit, Bulacan, and bounded as described in paragraph 4 of the amended complaint, which hereditary portion had since then been held by the plaintiffs and their sisters, through their father Wenceslao Mercado, husband of Margarita Espiritu; that, about the year 1910, said Luis Espiritu, by means of cajolery, induced, and fraudulently succeeded in getting the plaintiffs Domingo and Josef a Mercado to sign a deed of sale of the land left by their mother, for the sum of P400, which amount was divided among the two plaintiffs and their sisters Concepcion and Paz, notwithstanding the fact that said land, according to its assessment, was valued at P3,795; that one-half of the land in question belonged to Margarita Espiritu, and one-half of this share, that is, one-fourth of said land, to the plaintiffs, and the other one-fourth, to their two sisters Concepcion and Paz; that the part of the land belonging to the two plaintiffs could produce 180 cavanese of rice per annum, which, at P2.50 per cavan, was equivalent to P450 per annum; and that Luis Espiritu had received said products from 1901 until the time of his death. Said counsel therefore asked that judgment be rendered in plaintiffs' favor by holding to be null and void the sale they made of their respective shares of their land, to Luis Espiritu, and that the defendant be ordered to deliver and restore to the plaintiffs the shares of the land that fell to the latter in the partition of the estate of their deceased mother Margarita Espiritu, together with the products thereof, uncollected since 1901, or their equivalent, to wit, P450 per annum, and to pay the costs of the suit.

In due season the defendant administrator answered the aforementioned complaint, denying each and all of the allegations therein contained, and in special defense alleged that the land, the subject-matter of the complaint, had an area of only 21 cavanese of seed rice; that, on May 25, 1894, its owner, the deceased Margarita Espiritu y Yutoc, the plaintiffs' mother, with the due authorization of her husband Wenceslao Mercado y Arnedo Cruz sold to Luis Espiritu for the sum of P2,000 a portion of said land, to wit, an area such as is usually required for fifteen cavanese of seed; that subsequently, on May 14, 1901, Wenceslao Mercado y Arnedo Cruz, the plaintiffs' father, in

his capacity as administrator of the property of his children sold under pacto de retro to the same Luis Espiritu at the price of P375 the remainder of said land, to wit, an area covered by six cavanases of seed to meet the expenses of the maintenance of his (Wenceslao's) children, and this amount being still insufficient he successively borrowed from said Luis Espiritu other sums of money aggregating a total of P600; but that later, on May 17, 1910, the plaintiffs, alleging themselves to be of legal age, executed, with their sisters Maria del Consejo and Maria de la Paz, the notarial instrument inserted integrally in the 5th paragraph of the answer, by which instrument, ratifying said sale under pacto de retro of the land that had belonged to their mother Margarita Espiritu, effected by their father Wenceslao Mercado in favor of Luis Espiritu for the sum of P2,600, they sold absolutely and perpetually to said Luis Espiritu, in consideration of P400, the property that had belonged to their deceased mother and which they acknowledged having received from the aforementioned purchaser. In his cross-complaint the defendant alleged that the complaint filed by the plaintiffs was unfounded and malicious, and that thereby losses and damages in the sum of P1,000 had been caused to the intestate estate of the said Luis Espiritu. He therefore asked that judgment be rendered by ordering the plaintiffs to keep perpetual silence with respect to the land in litigation and, besides, to pay said intestate estate P1,000 for losses and damages, and that the costs of the trial be charged against them.

In reply to the cross-complaint, the plaintiffs denied each and all of the facts therein set forth, and in special defense alleged that at the time of the execution of the deed of sale inserted in the cross-complaint the plaintiffs were still minors, and that since they reached their majority the four years fixed by law for the annulment of said contract had not yet elapsed. They therefore asked that they be absolved from the defendant's cross-complaint.

After trial and the introduction of evidence by both parties, the court rendered the judgment aforementioned, to which the plaintiffs excepted and in writing moved for a reopening of the case and a new trial. This motion was overruled, exception was taken by the petitioners, and, the proper bill of exceptions having been presented, the same was approved and transmitted to the clerk of this court.

As the plaintiffs assailed the validity of the deed of sale, Exhibit 3, executed by them on May 17, 1910, on the ground that they were minors when they executed it, the questions submitted to the decision of this court consist in determining whether it is true that the plaintiffs were then minors and therefore incapable of selling their property on the date borne by the instrument Exhibit 3; and in case they then were such, whether a person who is really and truly a minor and, notwithstanding, attests that he is of legal age, can, after the execution of the deed and within the legal period, ask for the annulment of the instrument executed by him, because of some defect that invalidates the contract, in accordance with the law (Civ. Code, arts. 1263 and 1300), so that he may obtain the restitution of the land sold.

The record shows it to have been fully proven that in 1891 Lucas Espiritu obtained title by composition with the State, to three parcels of land, adjoining each other, in the sitio of Panducot of the pueblo of Calumpit, Bulacan, containing altogether an area of 75 hectares, 25 ares and 59 centares, which facts appear in the title Exhibit D; that, upon Luis Espiritu's death, his said lands passed by inheritance to his four children named Victoria, Ines, Margarita, and Luis; and that, in the partition of said decedent's estate, the parcel of land described in the complaint as containing forty-seven and odd hectares was allotted to the brother and sister Luis and Margarita, in equal shares. Margarita Espiritu, married to Wenceslao Mercado y Arnedo Cruz, had by this husband five children, Maria Consejo, Maria de la Paz, Domingo, Josefa, and Amalia, all surnamed Mercado y Espiritu, who, at the death of their mother in 1896 inherited, by operation of law, one-half of the land described in the complaint.

The plaintiffs' petition for the annulment of the sale and the consequent restitution to them of two-fourths of the land left by their mother, that is, of one-fourth of all the land described in the complaint, and which, they stated, amounts to 11 hectares, 86 ares and 37 centares. To this claim the defendant excepted, alleging that the land in

question comprised only an area such as is customarily covered by 21 cavanese of seed.

It was also duly proven that, by a notarial instrument of May 25, 1894, the plaintiffs' mother conveyed by actual and absolute sale for the sum of P2,000, to her brother Luis Espiritu a portion of the land now in litigation, or an area such as is usually covered by about 15 cavanese of seed; and that, on account of the loss of the original of said instrument, which was in the possession of the purchaser Luis Espiritu, and furthermore because, during the revolution, the protocols or registers of public documents of the Province of Bulacan were burned, Wenceslao Mercado y Arnedo Cruz, the widower of the vendor and father of the plaintiffs, executed, at the instance of the interested party Luis Espiritu, the notarial instrument Exhibit 1, of the date of May 20, 1901, in his own name and in those of his minor children Maria Consejo, Maria de la Paz, Domingo, Josefa, and Amalia, and therein set forth that it was true that the sale of said portion of land had been made by his aforementioned wife, then deceased, to Luis Espiritu in 1894.

However, even prior to said date, to wit, on May 14th of the same year, 1901, the widower Wenceslao Mercado, according to the private document Exhibit 2, pledged or mortgaged to the same man, Luis Espiritu, for P375, a part, or an area covered by six cavanese of seed, of the land that had belonged to this vendor's deceased wife, Margarita Espiritu, adjoining the parcel previously sold to the said Luis Espiritu and which now forms a part of the land in question—a transaction which Mercado was obliged to make in order to obtain funds with which "to cover his children's needs." Wenceslao Mercado, the plaintiffs' father, having died, about the year 1904, the plaintiffs Domingo and Josefa Mercado, together with their sisters Consejo and Paz, declaring themselves to be of legal age and in possession of the required legal status to contract, executed and subscribed before a notary the document Exhibit 3, on May 17, 1910, in which referring to the previous sale of the land, effected by their deceased mother for the sum of P2,600 and with her husband's permission and authorization, they sold absolutely and in perpetuity to Luis Espiritu, for the sum of P400 "as an increase" of the previous purchase price, the land described in said instrument and situated in Panducot, pueblo of Calumpit, Bulacan, of an area equal to that usually sown with 21 cavanese of seed, bounded on the north by the lands of Flaviano Abreu and the heirs of Pedro Espiritu, on the east by those of Victoria Espiritu and Ines Espiritu, on the south by those of Luis Espiritu, and on the west by those of Hermogenes Tan-Toco and by the Sapang-Maitu stream.

In this status of the case the plaintiffs seek the annulment of the deed Exhibit 3, on the ground that on the date of its execution they were minors without legal capacity to contract, and for the further reason that the deceased purchaser Luis Espiritu availed himself of deceit and fraud in obtaining their consent for the execution of said deed.

As it was proven by the testimony of the clerk of the parochial church of Apalit (the plaintiffs were born in Apalit) that the baptismal register books of that parish pertaining to the years 1890-1891, were lost or burned, the witness Maria Consejo Mercado recognized and identified the book Exhibit A, which she testified had been kept and taken care of by her deceased father Wenceslao Mercado, pages 396 and 397 of which bear the attestation that the plaintiff Domingo Mercado was born on August 4, 1890, and Josefa Mercado, on July 14, 1891. Furthermore, this witness corroborated the averment of the plaintiffs' minority, by the personal registration certificate of said Domingo Mercado, of the year 1914, Exhibit C, by which it appears that in 1910 he was only 23 years old, whereby it would also appear that Josefa Mercado was 22 years of age in 1910, and therefore, on May 17, 1910, when the instrument of purchase and sale, Exhibit 3, was executed, the plaintiffs must have been, respectively, 19 and 18 years of age.

The witness Maria Consejo Mercado also testified that after her father's death her brother and sisters removed to Manila to live there, although her brother Domingo used to reside with his uncle Luis Espiritu, who took charge of the administration of the property left by his predecessors in interest; that it was her uncle Luis who got for her

brother Domingo the other cedula, Exhibit B, pertaining to the year 1910, wherein it appears that the latter was then already 23 years of age; that she did not know why her uncle did so; that she and her brother and sisters merely signed the deed of May 17, 1910; and that her father Wenceslao Mercado, prior to his death had pledged the land to her uncle Luis Espiritu.

The witness Ines Espiritu testified that after the death of the plaintiffs' father, it was Luis Espiritu who directed the cultivation of the land in litigation. This testimony was corroborated by her sister Victoria Espiritu, who added that her nephew, the plaintiff Domingo, had lived for some time, she did not know just how long, under the control of Luis Espiritu.

Roque Galang, married to a sister of Luis Espiritu, stated that the land that fell to his wife and to his sister-in-law Victoria, and which had an area of about 8 hectares less than that of the land allotted to the aforementioned Luis and Margarita produced for his wife and his sister-in-law Victoria a net and minimum yield of 507 cavanese in 1907, in spite of its being high land and of inferior quality, as compared with the land in dispute, and that its yield was still larger in 1914, when the said two sisters' share was 764 cavanese.

Patricio Tanjuncto, the notary before whom the deed Exhibit 3 was ratified, was a witness for the defendant. He testified that this deed was drawn up by him at the request of the plaintiff Josef a Mercado; that the grantors of the instrument assured him that they were all of legal age; that said document was signed by the plaintiffs and the other contracting parties, after it had been read to them and had been translated into the Pampangan dialect for those of them who did not understand Spanish. On cross-examination, witness added that ever since he was 18 years of age and began to court, he had known the plaintiff Josefa Mercado, who was then a young maiden, although she had not yet commenced to attend social gatherings, and that all this took place about the year 1898, for witness said that he was then [at the time of his testimony, 1914,] 34 years of age.

Antonio Espiritu, 60 years of age, who knew Lucas Espiritu and the properties owned by the latter, testified that Espiritu's land contained an area of only 84 cavanese, and, after its owner's death, was under witness' administration during two harvest seasons; that the products yielded by a portion of this land, to wit, an area such as is sown by about 15 cavanese of seed, had been, since 1894, utilized by Luis Espiritu, by reason of his having acquired the land; and that, after Margarita Espiritu's death, her husband Wenceslao Mercado took possession of another portion of the land, containing an area of six cavanese of seed and which had been left by this deceased, and that he held the same until 1901, when he conveyed it to Luis Espiritu.

The defendant-administrator, Jose Espiritu, a son of the deceased Luis Espiritu, testified that the plaintiff Domingo Mercado used to live off and on in the house of his deceased father, about the year 1909 or 1910, and used to go back and forth between his father's house and those of his other relatives. He denied that his father had at any time administered the property belonging to the Mercado brother and sisters.

In rebuttal, Antonino Mercado, a cousin of Wenceslao, father of the plaintiffs, testified that he mediated in several transactions in connection with a piece of land belonging to Margarita Espiritu. When shown the deed of purchase and sale Exhibit 1, he stated that he was not acquainted with its contents. This same witness also testified that he mediated in a transaction had between Wenceslao Mercado and Luis Espiritu (he did not remember the year), in which the former sold to the latter a parcel of land situated in Panducot. He stated that as he was a witness of the deed of sale he could identify this instrument were it exhibited to him; but he did not do so, for no instrument whatever was presented to him for identification. The transaction mentioned must have concerned either the ratification of the sale of the land of 15 cavanese, in 1901, attested in Exhibit 1, or the mortgage or pledge of the other parcel of 6 cavanese, given on May 14, 1901, by Wenceslao Mercado to Luis Espiritu, as may be seen by the private document Exhibit 2. In rebuttal, the plaintiff Josefa Mercado denied having gone to the house of the notary

Tanjutco for the purpose of requesting him to draw up any document whatever. She stated that she saw the document Exhibit 3 for the first time in the house of her uncle Luis Espiritu on the day she signed it, on which occasion and while said document was being signed said notary was not present, nor were the witnesses thereto whose names appear therein; and that she went to her said uncle's house, because he had sent for her, as well as her brother and sisters, sending a carromata to fetch them. Victoria Espiritu denied ever having been in the house of her brother Luis Espiritu in company with the plaintiffs, for the purpose of giving her consent to the execution of any deed in behalf of her brother.

The evidence adduced at the trial does not show, even circumstantially, that the purchaser Luis Espiritu employed fraud, deceit, violence or intimidation, in order to effect the sale mentioned in the document Exhibit 3, executed on May 17, 1910. In this document the vendors, the brother and sisters Domingo, Maria del Consejo, Paz, and Josefa, surnamed Mercado y Espiritu, attested the certainty of the previous sale which their mother, during her lifetime, had made in behalf of said purchaser Luis Espiritu, her brother, with the consent of her husband Wenceslao Mercado, father of the vendors of the portion of land situated in the barrio of Panducot, pueblo of Calumpit, Bulacan; and in consideration of the fact that the said vendor Luis Espiritu paid them, as an increase, the sum of P400, by virtue of the contract made with him, they declare having sold to him absolutely and in perpetuity said parcel of land, and waive thenceforth any and all rights they may have, inasmuch as said sum constitutes the just price of the property.

So that said document Exhibit 3 is virtually an acknowledgment of the contract of sale of the parcel or portion of land that would contain 15 cavanos of seed rice made by the vendors' mother in favor of the purchaser Luis Espiritu, their uncle, and likewise an acknowledgment of the contract of pledge or mortgage of the remainder of said land, an area of six cavanos, made with the same purchaser, at an increase of P400 over the price of P2,600, making an aggregate sum of P3,000, decomposed as follows: P2,000, collected during her lifetime, by the vendors' deceased mother; P600 collected by the vendors' father; and the said increase of P400, collected by the plaintiffs.

In the aforementioned sale, according to the deed of May 25, 1894, Margarita Espiritu conveyed to her brother Luis the parcel of 15 cavanos of seed, Exhibit 1, and after her death the plaintiffs' widowed father mortgaged or pledged the remaining portion or parcel of 6 cavanos of seed to her brother-in-law, Luis Espiritu, in May, 1901 (Exhibit 2). So it is that the notarial instrument Exhibit 3, which was assailed by the plaintiffs, recognized the validity of the previous contracts, and the totality of the land, consisting of an area containing 21 cavanos of seed rice, was sold absolutely and in perpetuity, the vendors receiving in exchange P400 more; and there is no conclusive proof in the record that this last document was false and simulated on account of the employment of any violence, intimidation, fraud, or deceit, in the procuring of the consent of the vendors who executed it.

Considering the relation that exists between the document Exhibit 3 and those of previous dates, Exhibits 1 and 2, and taking into account the relationship between the contracting parties, and also the general custom that prevails in many provinces of these Islands for the vendor or debtor to obtain an increase in the price of the sale or of the pledge, or an increase in the amount loaned, without proof to the contrary, it would be improper and illegal to hold, in view of the facts hereinabove set forth, that the purchaser Luis Espiritu, now deceased, had any need to forge or simulate the document Exhibit 3 inasmuch as, since May, 1894, he has held in the capacity of owner by virtue of a prior acquisition, the parcel of land of 15 cavanos of seed, and likewise, since May, 1901, according to the contract of mortgage or pledge, the parcel of 6 cavanos, or the remainder of the total area of 21 cavanos.

So that Luis Espiritu was, during his lifetime, and now, after his death, his testate or intestate estate is in lawful possession of the parcel of land situated in Panducot that contains 21 cavanos of seed, by virtue of the title of conveyance of ownership of the land measuring 15 cavanos, and, in consequence of the contract of pledge or

mortgage in security for the sum of P600, is likewise in lawful possession of the remainder of the land, or an area containing 6 cavanese of seed.

The plaintiffs have absolutely no right whatever to recover said first parcel of land, as its ownership was conveyed to the purchaser by means of a singular title of purchase and sale; and as to the other portion of 6 cavanese of seed, they could have redeemed it before May 17, 1910, upon the payment or the return of the sum which their deceased father Wenceslao Mercado had, during his lifetime, received as a loan under security of the pledged property; but, after the execution of the document Exhibit 3, the creditor Luis Espiritu definitely acquired the ownership of said parcel of 6 cavanese. It is therefore a rash venture to attempt to recover this latter parcel by means of the contract of final and absolute sale, set forth in the deed Exhibit 3.

Moreover, the notarial document Exhibit 1, as regards the statements made therein, is of the nature of a public document and is evidence of the fact which gave rise to its execution and of the date of the latter, even against a third person and his predecessors in interest such as are the plaintiffs. (Civ. Code, art. 1218.)

The plaintiffs' father, Wenceslao Mercado, recognizing it to be perfectly true that his wife Margarita Espiritu sold said parcel of land which she inherited from her father, of an area of about "15 cavanese of seed," to her brother Luis Espiritu, by means of an instrument executed by her on May 25, 1894—an instrument that disappeared or was burned—and likewise recognizing that the protocols and register books belonging to the Province of Bulacan were destroyed as a result of the past revolution, at the request of his brother-in-law Luis Espiritu he had no objection to give the testimony recorded in said notarial instrument, as it was the truth regarding what had occurred, and in so doing he acted as the plaintiffs' legitimate father in the exercise of his parental authority, inasmuch as he had personal knowledge of said sale, he himself being the husband who authorized said conveyance, notwithstanding that his testimony affected his children's interests and prejudiced his own, as the owner of any fruits that might be produced by said real property.

The signature and handwriting of the document Exhibit 2 were identified as authentic by one of the plaintiffs, Consejo Mercado, and as the record shows no evidence whatever that this document is false, and it does not appear to have been assailed as such, and as it was signed by the plaintiffs' father, there is no legal ground or well-founded reason why it should be rejected. It was therefore properly admitted as evidence of the certainty of the facts therein set forth.

The principal defect attributed by the plaintiffs to the document Exhibit 3 consists in that, on the date of May 17, 1910, when it was executed and they signed it, they were minors, that is, they had not yet attained the age of 21 years fixed by Act No. 1891, though no evidence appears in the record that the plaintiffs Josefa and Domingo Mercado were in fact minors, for no certified copies were presented of their respective baptismal certificates, nor did the plaintiffs adduce any supplemental evidence whatever to prove that Domingo was actually 19 and Josefa 18 years of age when they signed the document Exhibit 3, on May 17, 1910, inasmuch as the copybook, Exhibit A, notwithstanding the testimony of the plaintiff Consejo Mercado, does not constitute sufficient proof of the dates of the births of the said Domingo and Josefa.

However, even in the doubt whether they certainly were of legal age on the date referred to, it cannot be gainsaid that in the document Exhibit 3 they stated that they were of legal age at the time they executed and signed it, and on that account the sale mentioned in said notarial deed Exhibit 3 is perfectly valid—a sale that is considered as limited solely to the parcel of land of 6 cavanese of seed, pledged by the deceased father of the plaintiffs in security for P600 received by him as a loan from his brother-in-law Luis Espiritu, for the reason that the parcel of 15 cavanese had been lawfully sold by its original owner, the plaintiffs' mother.

The courts, in their interpretation of the law, have laid down the rule that the sale of real estate, made by minors

who pretend to be of legal age, when in fact they are not, is valid, and they will not be permitted to excuse themselves from the fulfillment of the obligations contracted by them, or to have them annulled in pursuance of the provisions of Law 6, title 19, of the 6th Partida; and the judgment that holds such a sale to be valid and absolves the purchaser from the complaint filed against him does not violate the laws relative to the sale of minors' property, nor the juridical rules established in consonance therewith. (Decisions of the supreme court of Spain, of April 27, 1860, July 11, 1868, and March 1, 1875.)

With respect to the true age of the plaintiffs, no proof was adduced of the fact that it was Luis Espiritu who took out Domingo Mercado's personal registration certificate on April 13, 1910, causing the age of 23 years to be entered therein in order to corroborate the date of the notarial instrument of May 17th of the same year; and the supposition that he did, would also allow it to be supposed, in order to show the propriety of the claim, that the cedula Exhibit C was taken out on February 14, 1914, wherein it is recorded that Domingo Mercado was on that date 23 years of age, for both these facts are not proved; neither was any proof adduced against the statement made by the plaintiffs Domingo and Josefa in the notarial instrument Exhibit 3, that, on the date when they executed it, they were already of legal age, and, besides the annotation contained in the copybook Exhibit A, no supplemental proof of their true ages was introduced.

Aside from the foregoing, from a careful examination of the record in this case, it cannot be concluded that the plaintiffs, who claim to have been minors when they executed the notarial instrument Exhibit 3, have suffered positive and actual losses and damages in their rights and interests as a result of the execution of said document, inasmuch as the sale effected by the plaintiffs' mother, Margarita Espiritu, in May, 1894, of the greater part of the land of 21 cavanos of seed, did not occasion the plaintiffs any damage or prejudice whatever, for the reason that the portion of the land sold to Luis Espiritu was disposed of by its lawful owner, and, with respect to the area of 6 cavanos that was a part of the same property and was pledged or mortgaged by the plaintiffs' father, neither did this transaction occasion any damage or prejudice to the plaintiffs, inasmuch as their father stated in the document Exhibits that he was obliged to mortgage or pledge said remaining portion of the land in order to secure the loan of the P375 furnished by Luis Espiritu and which was subsequently increased to P600 so as to provide for certain engagements or perhaps to meet the needs of his children, the plaintiff; and therefore, to judge from the statements made by their father himself, they received through him, in exchange for the land of 6 cavanos of seed, which passed into the possession of the creditor Luis Espiritu, the benefit which must have accrued to them from the sums of money received as loans; and, finally, on the execution of the impugned document Exhibit 3, the plaintiffs received and divided between themselves the sum of P400, which sum, added to that of the P2,000 received by Margarita Espiritu, and to that of the P600 collected by Wenceslao Mercado, widower of the latter and father of the plaintiffs, makes all together the sum of P3,000, the amount paid by the purchaser as the price of all the land containing 21 cavanos of seed, and is the just price of the property, was not impugned, and, consequently, should be considered as equivalent to, and compensatory for, the true value of said land.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from have been refuted, and deeming said judgment to be in accordance with law and the evidence of record, we should, and do hereby, affirm the same, with the costs against the appellants. So ordered.

Arellano, C. J., Johnson, Araullo, Street, and Malcolm, JJ., concur.

CARSON, J., concurring:

I concur.

But in order to avoid misunderstanding, I think it well to indicate that the general statement in the prevailing

opinion to the effect that the making of false representations as to his age by an infant executing a contract will preclude him from disaffirming the contract or setting up the defense of infancy, must be understood as limited to cases wherein, on account of the minor's representations as to his majority, and because of his near approach thereto, the other party had good reason to believe, and did in fact believe the minor capable of contracting.

The doctrine set forth in the Partidas, relied upon by the supreme court of Spain in the cases cited in the prevailing opinion, is substantially similar to the doctrine of estoppel as applied in like instances by many of the courts in the United States.

For purposes of convenient comparison, I here insert some citations of authority, Spanish and American, recognizing the limitations upon the general doctrine to which I am inviting attention at this time; and in this connection it is worthy of note that the courts of the United States look with rather less favor than the supreme court of Spain upon the application of the doctrine, doubtless because the cases wherein it may properly be applied, are much less likely to occur in a jurisdiction where majority is reached at the age of 21 than a jurisdiction wherein majority is not ordinarily attained until the infant reaches the age of 25.

Ley 6, tit. 19, Partida 6.a is, in part, as follows:

"If he who is a minor (1) deceitfully says or sets forth in an instrument that he is over twenty-five years of age, and this assertion is believed by another person who takes him to be of about that age, (2) in an action at law he should be deemed to be of the age he asserted, and should not (3) afterwards be released from liability on the plea that he was not of said age when he assumed the obligation. The reason for this is that the law helps the deceived and not the deceivers."

In the glossary to these provisions of the Partidas by Gregorio Lopez, I find the following:

"(1) De tal tiempo. Nota bene hoc verbum, nam si appareret ex aspectu eum esse minorem, tunc adversarius non potest dicere se deceptum; imo tam ipse, quam minor videntur esse in dolo, quo casu competit minori restitutio, quia facta doli compensatione, perinde est ac si nuUus fuisset in dolo, et ideo datur restitutio; et quia scienti dolus non inferitur, 1. 1. D. de act. empt. secundum Cyn. Alberic et Salic, in 1. 3. C. si minor se major, dixer. adde Albericum tenentem, quando per aspectum aliter constaret, in authent. sacramenta puberum, col. 3. C. si adversus vendit.

"(2) Enganosamente. Adde 1. 2. et 3. C. si minor se major, dixer. Et adverte nam per istam legem Partitarum, quae non distinguit, an adultus, vel pupillis taloni assertionem faciat, videtur comprobari dictum Guilielmi. de Cuius. de quo per Paul, de Castr. in 1. qui iurasse. in princ. D. de iurejur. quod si pupillus proximus pubertati iuret, cum contrahit, se esse puberem, et postea etiam iuret, quod non veniet contra contractum quod habebit locum dispositio authenticae sacramenta puberum, sicut si esset pubes: et cum isto dicto transit ibi Paul, de Cast, multum commendans, dicens, se alibi non legisse; si tamen teneamus illam opinionem, quod etiam pupillus doli capax obligatur ex iuramento, non esset ita miranda dicta, decisio; vide per Alexand. in dict. 1. qui iurasse, in princ. Item lex ista Partitarum expresse sentit de adulto, non de pupillo, cum superius dixit, quae parescere de tal tiempo: Doctores etiam intelligunt de adulto 11. diet. tit. C. si minor, se major, dixer. et patet ex 11. illius tituli. Quid autem dicemus in dubio, cum non constat de dolo minoris? Azon. in summa illius tit. in fin. dicit, quod praesumitur dolus in minore, qui se maiorem dixit; et idem tenet Glossa in dict. 1. 3. et ibi Odofred. in fin. Cynus tamen, et alii, tenent oppositum, quia dolus non praesumitur, nisi probetur, 1. quotiens, s., qui dolo, D. de probat. Et hoc etiam vult ista lex Partitarum, cum dicit, si loquatur enganosamente: et ita tenent Alberic. et Salicet. in diet. 1. 3. ubi etiam Bart, in fin. Si autem minor sui facilitate asserat se maiorem, et ita iuret, tunc distingue, ut habetur diet. 1. 3. quia aut iuravit verbo tenus, et tunc non restituitur, nisi per instrumentum seu scripturam probet se minorem; et si iuravit corporaliter, nullo modo restituitur, ut ibi; et per quae instrumenta probentur, cum verbo

tenus juravit, vide per Specul. tit. de restit. in integr. s. quis autem, col. 4. vers. sed cujusmodi erit scriptura, ubi etiam vide per Speculatorem aliquas notabiles quaestiones in ista materia, in col. 5. videlicet, an praejudicet sibi minor ex tali juramento in aliis contractibus, et tenet, quod non; et tenet glossa finalis in 1. de astate, D. de minor. in fin. gloss, vide ibi per Speculat. ubi etiam de aliis in ista materia."

In the decision of the supreme court of Spain dated the 27th of April, 1860, I find an excellent illustration of the conditions under which that court applied the doctrine, as appears from the following resolution therein set forth.

"Sales of real estate made by minors are valid when the latter pretend to be twenty-five years of age and, due to the circumstances that they are nearly of that age, are married, or have the administration of their property, or on account of other special circumstances affecting them, the other parties to the contract believe them to be of legal age."

With these citations compare the general doctrine in the United States as set forth in 22 Cyc. (p. 610), supported by numerous citations of authority.

"Estoppel to disaffirm—(I) In General.—The doctrine of estoppel not being as a general rule applicable to infants, the court will not readily hold that his acts during infancy have created an estoppel against him to disaffirm his contracts. Certainly the infant cannot be estopped by the acts or admissions of other persons.

"(II) False representations as to age.—According to some authorities the fact that an infant at the time of entering into a contract falsely represented to the person with whom he dealt that he had attained the age of majority does not give any validity to the contract or estop the infant from disaffirming the same or setting up the defense of infancy against the enforcement of any rights thereunder; but there is also authority for the view that such false representations will create an estoppel against the infant, and under the statutes of some states no contract can be disaffirmed where, on account of the minor's representations as to his majority, the other party had good reason to believe the minor capable of contracting. Where the infant has made no representations whatever as to his age, the mere fact that the person with whom he dealt believed him to be of age, even though his belief was warranted by the infant's appearance and the surrounding circumstances, and the infant knew of such belief, will not render the contract valid or estop the infant to disaffirm."

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