

ALBERTO BARRETTO, PLAINTIFF AND APPELLEE, VS. LEONARDO F. BARRETTO ET AL., DEFENDANTS AND APPELLANTS. ANGELICA MARIA BARRETTO ET AL., INTERVENERS AND APPELLANTS.

G.R. No. 11933, December 01, 1917

Ponente: TORRES, J.

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TORRES, J.:

This case was begun in the Court of First Instance of Zambales by Alberto Barretto, who claimed delivery to him of a piece of land which was a part of the hacienda named "Balintagac" together with its fruits or their value, and also of a lot situated in the same hacienda together with the rents thereof, and was brought to this court on appeal, by bill of exceptions, presented by the counsel for the defendants and the defendant interveners from the judgment entered on July 2, 1915, in the office of the clerk of the said Court of First Instance, by which, after declaring that the said Alberto Barretto y Blanco is the owner of the hacienda of Balintagac described in the complaint, it was ordered that the defendant Leonardo F. Barretto deliver to the plaintiff the possession of the piece of land and the lot withheld, and to pay, together with the other defendants, the costs of the action.

In his complaint of November 11, 1913, filed in the Court of First Instance of Zambales, Alberto Barretto alleges as his first cause of action that he is the owner of the whole hacienda called Balintagac, situated in the barrio of the same name, in the municipality of San Felipe of said province, having an area of about 200 quinones antiguos, and bounded on the north by the Anonang River; on the south by the Carmen Mountain; on the east by the corner of Balintagac; and on the west by the Tectec Mountain. That he was in possession of the said hacienda quietly, peacefully, and continuously, as were his predecessors since the year 1884 until May, 1912; that on a certain day of the latter "month and year, the defendant Leonardo F. Barretto alleging himself to be the owner of a certain part of said hacienda illegally and unduly usurped a portion of land of the said hacienda on the eastern part situated in Ilum-Ilog, Santa Maria and Inubo-grande y pequeno, Santa Maria and Carupisan, bounded on the north by the Anonang River, on the east by the Golongoro River and the corner of Balintagac, on the south by the Balintagac and Inbo mountains, and on the west by the rest of the hacienda which the plaintiff at present holds; that since that time the defendant had been receiving two-thirds of the fruits which the usurped portion annually produced, which amounted to 33 uyon and 145 and 33 per cent cavan of rice at P8 per uyon and P2 a cavan, and whose value amounts to the sum of P554; that the defendant refused to return that portion of land usurped together with the fruits received, or their value, in spite of the fact that he has been required to do so in writing by the plaintiff.

That, as a second cause of action, the defendant, on the said month of May, 1912, illegally took possession of a lot situated in the same hacienda and barrio of Balintagac, bounded on the front by the provincial road, on its right, left, and rear sides by lands of the hacienda belonging to the plaintiff, measuring 18 meters in front by 48 meters deep, that is, an area of 864 square meters, which lot should reasonably produce for its use a monthly rent of P1, and that in spite of the fact that the plaintiff had requested the defendant to vacate and to deliver the said lot to him with its rents, he (defendant) refused to return the said lot or pay the rents therefor, for which reason the plaintiff prayed judgment in his favor ordering the delivery or restitution of the said portion of land and lot,

claimed in his first and second causes of action, together with the products of rice said to have been received, and those which in the future may be obtained, or their value, and the sum of P18 for the reasonable use of the lot since May, 1912, to October, 1913, and the rent that it should produce at the rate of P1 a month until the actual delivery of the lot shall have been made, with the costs of the action.

The demurrer to the said complaint having been overruled, the counsel for the defendant in an answer dated May 23, 1914, denied each and every one of the allegations contained in the complaint and alleged that the defendant is in possession of the land and lot claimed in the first and second causes of action of the complaint, as well as of the rest of the hacienda, that is, that he is in possession of all the hacienda of Balintagac as the true owner thereof since 1881.

Upon the permission of the Court, the attorney for Angelica Barretto, Beatriz Barretto West and her husband, J. C. West, Maria Teresa Barretto York and her husband Archibald C. York, Carlos Alejandro Barretto, Bernardo O. Barretto, and Ernesto E. Barretto, filed a complaint of intervention in this case, alleging among other things that the hacienda of Balintagac in controversy was owned and possessed by Juan Antonio Barretto, sr.; that on his death in Zambales on November 21, 1881, he left seven children called Juan Antonio Barretto, domiciled in Macao, Angelica Maria Barretto, a resident of Manila, Leonardo F. Barretto, a resident of San Felipe, Zambales, Francisca Barretto also domiciled in Macao, Bartolome Barretto, a resident of Kow Loon, China, and the now deceased Jose A. Barretto and Leopoldo Barretto, and these seven children of the deceased Juan Antonio Barretto, sr., were his only heirs who succeeded him in all his rights and actions and for this reason they became owners with the right of possession of the said hacienda of Balintagac, as in fact they are at present in possession of the same through their agents and representatives; that one of his children Jose A. Barretto on his death in 1893 left three children, Beatriz Barretto, Amalia Barretto, and Jose Conde Barretto, who succeeded in all the rights of their father Jose A. Barretto and in the possession of the said hacienda, as well as the four children of Leopoldo F. Barretto, who died in 1894, named Maria Teresa Barretto, Carlos Alejandro Barretto, Ernesto E. Barretto, and Bernardo .O. Barretto, coowners and copossessors of the said hacienda; that the interveners deny that the plaintiff Alberto Barretto is the owner of any part of the said hacienda and the lot mentioned in the complaint, or that the said plaintiff was in possession of them, or any portion of the same, and that the defendant Leonardo F. Barretto is in possession of the said hacienda Balintagac and the lot described in the complaint as the representative of the interveners and of the other coheirs of the estate of the deceased Juan Antonio Barretto, sr., since the said Leonardo F. Barretto being one of the coheirs, is not the only owner of the said hacienda, nor of any part of the same, except that portion which belongs to him as one of the heirs of the original owner, but without any right to withhold the possession of the hacienda as against the interveners, and concluded by asking that they be declared owners as the heirs of their deceased ascendant Juan Antonio Barretto, sr., of their respective undivided shares in that hacienda and lot mentioned in the complaint, adjudging to them the possession of the same, with the costs.

The counsel for Amalia Barretto Moore and her husband, J. B. Moore, residents of San Francisco, California, with the permission of the court filed a complaint of intervention proclaiming their intention to unite, take part and reproduced the application for intervention formerly asked by Angelica Maria Barretto and others, adopting all the allegations contained in the former complaint of intervention with the prayers therein made.

The demurrer interposed by the plaintiff having been overruled and the court having ordered Juan Antonio Barretto, jr., Amalia Barretto, Jose Conde Barretto, Francisco Barretto, and Bartolome Barretto to appear and become parties to this action, with the exception of the plaintiff, the latter in answer to the complaint of intervention alleged: that he admits the first three paragraphs of said complaint and denies generally and specifically those following, up to paragraph 13, except the last of these in which it is alleged that Leonardo F. Barretto was the representative of the interveners and of the other heirs of Juan Antonio Barretto, sr., which part is

admitted. As a special defense he alleged that by a notarial document executed May 16, 1882, Juan Antonio Barretto Grandpre, jr., then executor of his deceased father Juan Antonio Barretto, sr.f declaring himself to be the absolute owner of all the hacienda of Balintagac—the boundary of which is expressed and its area is 200 quinones—borrowed money in the sum of P11,000 from Antonio Vicente Barretto for the expenses of the said hacienda with the obligation to pay P1,000 for delinquency and other causes and interests at 8 per cent per annum, payable quarterly in advance, and as guaranty for said loan he mortgaged specifically the cultivated half of the hacienda and other properties mentioned in the instrument and to this effect the brothers of said Juan Antonio Barretto Grandpre intervened and procured the granting of the loan for the indicated purpose, inducing the creditor to grant said loan on the security of the mortgage above mentioned; that for the failure of the debtor to pay his debt, the creditor Antonio Vicente Barretto, on April, 1885, brought an action to foreclose the mortgage in order to recover the money loaned, against Juan Antonio Barretto Grandpre in his own behalf and as executor of his father. The trial was at first conducted against himself and then against Leonardo F. Barretto as attorney in fact of said Juan Antonio Barretto Grandpre. Half of the mortgaged hacienda was levied upon and a judgment to sell the property was rendered, but said half of the attached hacienda could not be sold in spite of the fact that it was placed at auction three times, its price in the last two having been reduced; then the creditor, about May, 1888, prayed for the adjudication of all the property attached to the payment of his credit of P7,648 to which adjudication and conveyance in part payment the defendant Lieonardo F. Barretto voluntarily agreed and consented as attorney in fact of Juan Antonio Barretto Grandpre. That Juan Antonio Barretto, jr., and his brothers, not being able to pay the debt, interests, and costs delivered and conveyed all the hacienda of Balintagac to the creditor about the year 1889 or 1890. That from these years the brothers of Juan Antonio Barretto Grandpre named Leonardo F. Barretto, Jose Barretto, Leopoldo Barretto, and Bartolome Barretto administered, by the appointment and exclusive account of Antonio Vicente Barretto, the entire hacienda, acknowledging him as the owner of all of it and delivering to him all its products till April 1896. That in this month of that year Antonio Vicente Barretto leased the whole hacienda for P900 annually to Luis Bonifacio Barretto who administered it till his death in 1902 with the knowledge and without the objection of Lieonardo F. Barretto, the attorney in fact and representative of his brothers and coheirs. That on the death of Antonio Vicente Barretto his children Antonio Maria Barretto y Rocha, Ricardo Esteban Barretto y Rocha and Guadalupe Barretto y Rocha succeeded him, and about the year 1902 they appointed Antonio T. Barretto y Blanco as administrator of the entire hacienda with its annual rent of P225 and he administered it continuously without any interruption whatsoever till May or June, 1912, when Leonardo F. Barretto illegally took possession of two portions of the said hacienda the area and boundaries of which are described in the complaint. That on March 31, 1913, Antonio and Ricardo Barretto y Rocha, by means of a notarial document, sold to the plaintiff Alberto Barretto y Blanco the two-thirds part which belonged to them as heirs of the creditor Antonio Vicente Barretto. That about June, 1902, Guadalupe Barretto y Rocha with the consent of her husband donated all her rights and interests as heir of Antonio Vicente Barretto, in the hacienda Balintagac, to the plaintiff Alberto Barretto, on condition that the donee should deliver to every one of his brothers or the latter s children one eighth part of what the donation consisted, and Alberto Barretto, having acquired the rights which Ricardo, Antonio Maria, and Guadalupe Barretto y Rocha had as successors of Antonio Vicente Barretto, over the whole of the said hacienda, the plaintiff has possessed the same quietly, publicly, and peacefully as its owner until May or June, 1912, when Leonardo F. Barretto usurped and retained certain portions of the property and its land tax (with the sworn declaration of ownership since it was introduced up to the present) has been paid by him in the name and on the account of the heirs of Antonio Vicente Barretto.

As a special defense and as an estoppel he (plaintiff) alleged that Juan Antonio Barretto, jr., and his brothers Leonardo F. Barretto, Bartolome Barretto, Jose Barretto, and Leopoldo Barretto by their own acts induced Antonio Vicente Barretto intentionally and deliberately to believe that Juan Antonio Barretto, jr., had full and absolute power to dispose of all the hacienda of Balintagac, by reason of which the creditor executed the loan on

the security of the said property and then his brothers by their own acts acknowledged Antonio Vicente Barretto as the owner of the whole hacienda, and Leonardo F. Barretto, on his part, as attorney in fact of Juan Antonio Grandpre, jr., and as representative of his coheirs agreed to the adjudication of the attached and cultivated half of the referred hacienda in favor of Antonio Vicente Barretto in payment of the sum of P7,648. Lastly and likewise as a special defense he (plaintiff) alleged prescription for the reason that Antonio Vicente Barretto in his own behalf and in that of his successors and through his representatives, administrators, lessees and grantees, since 1889 and 1890 had been in possession of the hacienda publicly, quietly and peacefully till May or June, 1912, without any interruption and as owner of the whole of said hacienda by means of which possession they had acquired the dominion and ownership of all the said hacienda by acquisitive prescription, and at the same time all the rights and actions which Leonardo F. Barretto and the interveners could have or might allege as to all or part of it, have prescribed; and, therefore, Alberto Barretto asked the court to dismiss the complaint of intervention, declaring him the owner of all the hacienda of Balintagac, with costs to the defendants and interveners.

The counsel for the interveners in answer to the special defenses alleged in the preceding pleading, said that he denies generally and specifically all that was alleged in it by the plaintiff, defendant in the intervention.

After the trial and the introduction of evidence on both sides, the exhibits being attached to the record, the court by judgment recorded in the office of the clerk of the Court of First Instance of Zambales July 2, 1915, rendered the decision above mentioned, against which the defendants and the interveners excepted and asked for a new trial, which was denied and exception was taken to the ruling by them. The corresponding bill of exceptions having been presented, the same was approved and forwarded to this court together with the document and transcript of the stenographic notes and other proceedings which constitute the evidence adduced by the parties in the action.

The fact is uncontroverted and fully proved in the record that Antonio Vicente Barretto as creditor—not being able to collect his credit of ₱1,000 and interest at 8 per cent, nor obtain the adjudication in his favor of half of the hacienda of Balintagac which was mortgaged for the security of the debt, and there having been no bidders on the three occasions in which it was offered for public auction—took possession, in 1888 or 1889, of all the hacienda and from that time on received through his administrators the products of the same for the purpose of collecting his credit and interests, and on the lack of proof to the contrary it may be established that he took possession of said hacienda by virtue of voluntary assignment with the express consent of the heirs of the deceased Juan Antonio Barretto, sr., owner of one-half of the hacienda and of Juan Antonio Barretto Grandpre, jr., owner of the other half.

It does not fully appear which contract has been entered into between the creditor and the said heirs of the deceased Juan Antonio Barretto, sr., and his son Juan Antonio Barretto Grandpre; but from the facts that have been fully established it is inferred that since the years 1888-1889, once the foreclosure proceedings brought by the creditor Antonio Vicente Barretto against Juan Antonio Barretto, jr., were suspended, because the creditor had not been able to obtain the adjudication of the hacienda in his favor, the creditor took possession of the hacienda of Balintagac, and held it in usufruct with the knowledge and express, consent of its legitimate owners; thenceforth there has not been any opposition or protest against the possession which by usufruct the creditor and his successors enjoyed, aside from the usurpation of two small portions of that property effected by the defendant Leonardo F. Barretto in 1912.

Considering that from the facts proved, which refer to the possession and usufruct enjoyed by Antonio Vicente Barretto while living, and then by his successors among whom was the plaintiff, Alberto Barretto y Blanco, it is logically deduced that such facts were accomplished by virtue of a verbal contract, and not by a written one, entered into between the owners of the hacienda and the creditor Antonio Vicente Barretto. Since from the

documentary and oral evidence on record it is not shown that the debtors have delivered the whole hacienda to the creditor by assignment of the property, in payment of the debt that weighed down, as it were, the half which secures the payment of the debt it is to be presumed with founded and just reason that the debtors delivered not only one half, but the whole hacienda with a view that the creditor might collect by usufruct his credit with the accrued interests.

Even when it cannot possibly be doubted that the assignment of the hacienda to Antonio Vicente Barretto was not made in payment of his credit, as shown by the evidence adduced at the trial, nevertheless, in spite of the fact that the agreement between the creditor and the debtors was not set down in any document, due to the relationship which exists between them, it may safely be asserted, assuming the facts that took place, that the debtors have limited themselves to give to the creditor the right to collect his credit from the fruits of the hacienda of Balintagac, conferring upon him the possession of the property, but not transferring to him the dominion of the same, since such transfer does not in any way appear to be proved in the present action.

The agreement or verbal stipulation which lead to the facts proved deserves in law the name of antichresis as defined by the Civil Code in its article 1881, which says:

"By antichresis a creditor acquires a right to receive the fruits of real property of his debtor, with the obligation to apply them to the payment of the interest, if due, and afterwards to the principal of his credit."

The perusal of the following articles, 1882 to 1886, of the Code, shows in a convincing way that the possession of the hacienda enjoyed by the creditor Antonio Vicente Barretto while living and later on by his successors up to the present time was conferred to them by virtue of the stated contract or agreement in antichresis; thus, one of the administrators of the hacienda, Luis Barretto, was the one who presented the sworn declaration of ownership of the same for the purposes of the assessment tax and paid the land tax in the name of the creditor who possessed and held the hacienda in usufruct, as it is duly established in the record.

Although article 1884 of the same Code states that the creditor does not acquire through possession the ownership of the real property delivered by virtue of an antichresis, for failure to pay the debt within the stipulated time—any agreement to the contrary being void—nevertheless, the debtor according to the preceding article 1883 cannot recover the use of the real property given in antichresis to the creditor, without previously fully paying the creditor, who in case of insolvency may ask for the sale of the real property which he possesses by virtue of the covenant in antichresis, unless the pending debt be paid.

It appears to be duly proved in the record that in 1912 the defendant Leonardo F. Barretto, by himself and for himself and without the consent of the present possessor now the plaintiff, took over and usurped a portion of land of the hacienda and a lot included in it, withholding and refusing to deliver them to the creditor in antichresis on the pretext that he is the owner of the whole hacienda; and as it does not appear in any way that the debt, for the payment of which the whole hacienda of Balintagac was delivered in antichresis, has been paid, it is doubtless that the defendant Leonardo F. Barretto, when he effected the usurpation, acted without just reason and in contravention of the provisions of the said article 1883 of the Civil Code. It is known that the action to recover a thing, where a

legitimate possessor has been deprived of his possession, takes place in accordance with the law, even against the owner himself, who wrested the possession, since the despoiler can never be protected by the law even on his right of ownership, without first restoring what he acquired through his authority by an illegal act of dispossession.

It is to be inferred from the facts and the foregoing statements that though the plaintiff Alberto Barretto has no title of ownership over the hacienda of Balintagac, and therefore, he can not be declared owner of the same,

nevertheless, his claim that a judgment be rendered ordering the return to him of the portion usurped by the defendant Leonardo F. Barretto which refers to the first cause of action of his complaint, as well as the lot described in the second cause of action of the same, which is withheld by said defendant, is in conformity with the law and is in accordance with the merits of the present action. The plaintiff being in the legitimate possession and use of all the hacienda of Balintagac which was voluntarily delivered to him by Juan Antonio Barretto Grandpre, jr., and his coheirs as the successors of the deceased Juan Antonio Barretto, sr., with the object that the creditor Antonio Vicente Barretto might collect the capital and interests which they owed and still owe him—a lawful contractual act called by law a covenant or agreement in antichresis—the debtors, or any of them, can under no circumstances while the debt exists and is not fully paid, recover or reacquire, as the mentioned article 1883 provides, the possession and use of the real property delivered to the creditor, without the latter giving his consent; consequently, the defendant Leonardo F. Barretto without the knowledge or consent of the plaintiff Alberto Barretto who succeeded by singular title in the possession and use of the hacienda in question, could not have recovered by usurpation the possession and use of a portion of the same.

Although the plaintiff affirms in his complaint that he is the sole owner of the said hacienda and as such he claims in his complaint the delivery of the portion of the land and the lot withheld by the defendant, his complaint is not, even then, explicit enough to affirm that the action brought thereby is a technical one and precisely that of recovery of possession (*reivindicatoria*). In a complaint whereby the "*accion publiciana*" is brought, also called in law a plenary action of possession, the restitution and delivery of the thing or real property of the possession of which the plaintiff has been illegally deprived is equally asked for. Therefore, it should not be understood that, because the plaintiff Barretto asks for the delivery of the portion of land and lot claimed in his complaint, the action brought is that of recovery of ownership and possession (*reivindicatoria*): it should be understood, instead, that he seeks to recover the portion of land, of the legal possession of which he has been improperly deprived by the usurper, Leonardo F. Barretto; since the facts should be established in the suit as grounds for decision in accordance with the results of the evidence adduced at the trial. When the defendants denied the ownership which the plaintiff pretends to have over the said hacienda, they have not denied nor could they deny the existence and the certainty of the debt guaranteed by the mortgage of one-half of the hacienda of Balintagac in favor of the creditor, now deceased, Antonio Vicente Barretto; nor could they allege and prove that the debt has been entirely paid, so that they may reacquire and recover the possession and use of the hacienda which was delivered to the original creditor, the predecessor of the plaintiff.

The preceding facts in this case are beyond discussion, since it appears duly proved in the record that the original owner of the hacienda of Balintagac, according to the composition title issued by the State, Exhibit A, on July 9, 1858, was Antonio Lorenzo Barretto, now deceased, from whom Juan Antonio Barretto, sr., acquired one-half of said hacienda, on March, 1881 (Exhibit C), and Juan Antonio Barretto, jr., had acquired the other half from the said original owner Antonio Lorenzo Barretto, on November, 1881.

After the death of Juan Antonio Barretto, sr., his son Juan Antonio Barretto Grandpre, in his own behalf and as the executor of his father, mortgaged, on May 16, 1882, the cultivated half of said hacienda in favor of Antonio Vicente Barretto as security for the amount of P11,000 which the latter loaned to him, according to the document, Exhibit F, recorded in the registry.

In order to show how and in what manner the plaintiff Alberto Barretto succeeded to the rights acquired by the creditor Antonio Vicente Barretto to whom the hacienda was delivered in 1888 or 1889, that he might collect his credit from the products of the property, it is stated that on the death of the said creditor his three children and heirs Antonio M.a Barretto, Ricardo Esteban Barretto, and Guadalupe Barretto came to succeed him. The last one by means of a document, Exhibit 1, executed July 5, 1902, made a donation *inter vivos* in favor of the plaintiff

Alberto Barretto of the undivided one-third part of the hypothecary credit and of the rights belonging to her deceased father Antonio Vicente Barretto, assigning to the donee all the rights and actions which she might have in the foreclosure proceedings exhibited at the trial of the present action, on the condition that as soon as the donee Alberto Barretto could collect the said one-third part of the credit or should obtain the assignment of the property of the debtor, he would divide what was donated, into nine equal parts among the donee himself and his six living brothers and the heirs of their two brothers now dead, each receiving one-ninth part.

In the public documents, Exhibits J, J-1, J-2, J-3, J-4, J-5, and J-6, it appears to be established that the plaintiff Alberto Barretto, complying with the condition imposed in said document of donation executed by the donor Guadalupe Barretto, paid to each of his brothers and nephews, the latter by right of representation, the sum of P875 as the price of one-eighth part of one third of the said hacienda and in exchange for the sums received as such price his co-donees assigned and conveyed to him one-eighth part of the third of the said hacienda and whatever rights and interests the grantors might have by virtue of the said donation in favor of the plaintiff Barretto. It is to be noted that the plaintiff bought one-eighth undivided part of the third of the whole hacienda of Balintagac and paid to every claimant P875 as the price of the eighth part to him, and, without these statements appearing in said seven documents Exhibit 1, it may be understood at the third part of the ownership of the hacienda was transferred to the plaintiff by the donor Guadalupe Barretto.

In fact, with the mutual purpose on the part of the brothers Antonio M.a Barretto and Ricardo Esteban Barretto and of that of Alberto Barretto of transferring to the latter the rest or the two-thirds part of the hypothecary credit and of the right to collect its value from the fruits of the hacienda of Balintagac, the notarial document, Exhibit K, was executed and after reciting in it that one undivided half of said hacienda was in May, 1882, mortgaged to secure the sum of P11,000, at 8 per cent per annum, which Juan Antonio Barretto Grandpre received from his uncle Antonio Vicente Barretto, and for neither having paid the debt nor having sold the said half of the mortgaged hacienda on the three occasions in which it was offered for public auction, the whole hacienda was delivered to the creditor in order that he might collect his credit and interests. From that time on the said Antonio Vicente Barretto and later on his successors have been in possession of the hacienda, receiving the fruits of the property, paying the expenses and the corresponding taxes, the outcome being that the debt, capital and interests, up to March 31, 1913, according to the liquidation, amounted to about one hundred thousand pesos. It is further stated that by virtue of the same, the grantors, the brothers Antonio M.a Barretto and Ricardo Esteban Barretto, sold and conveyed all their rights and actions included and derived from the said hypothecary credit for the price of P14,000 which would be paid by the grantee and vendee by installments and in the manner prescribed in the said deed, assigning to him, besides, all the rights which the said brothers had over the two-third parts of the said hacienda.

The contents of this documents, which is public in nature, as well as those of another deed, Exhibit 1, conclusively prove that the plaintiff did not obtain by assignment, sale, or transfer, as expressed in said deeds, the ownership of the said hacienda of Balintagac, but only the hypothecary credit which the heirs of the deceased creditor Antonio Vicente Barretto had inherited from the latter, after the plaintiff had obtained from his other brothers the conveyance of their respective rights to the donation.

The rights acquired by the creditor were transmitted by hereditary title through operation of law to the heirs of the same Antonio M.a, Ricardo Esteban, and Guadalupe, Barretto y Rocha and these in turn assigned, sold and transferred the credit with all their rights as hypothecary creditors, as well as the right to the usufruct of all the hacienda of Balintagac to the plaintiff Alberto Barretto, without it being ever understood that the right of ownership over the same was transferred for the reason that neither the original creditor Antonio Vicente Barretto nor his three heirs had acquired such right of ownership, but merely the right to receive the products of the

hacienda in order to cover the credit which the owners of the hacienda owed.

If the fact were not certain that the hacienda was delivered by its owners to the creditor Antonio Vicente Barretto, it cannot be understood why it is that in the long course of this action the defendant and the interveners could not explain how and in what manner Antonio Vicente Barretto took possession of the hacienda in 1888 or 1889 after the termination of the said foreclosure proceedings, nor could they explain how and why several of the coowners of the said hacienda had acted as administrators of the same in the name and representation of the creditor Antonio Vicente Barretto.

It appears from the record without any contradiction whatsoever that the first who administered the said hacienda in the name and by direction of Antonio Vicente Barretto was the defendant Leonardo F. Barretto himself till the year 1890 in which year the latter voluntarily left by direction of the creditor and was succeeded by his brother Jose Barretto till 1893, when Leopoldo Barretto entered as administrator relieving Jose Barretto by order of Antonio Vicente Barretto himself, till 1894. In this year the defendant Leonardo F. Barretto himself returned to act as administrator by direction and in the name of the creditor Antonio Vicente Barretto, till the year 1895, when according to the letter of Leonardo, Exhibit L, and the letter, Exhibit M, of Antonio Vicente Barretto by direction of the latter the defendant Leonardo F. Barretto delivered the hacienda to his other brother Bartolome Barretto. It is to be noted that in the said letter, Exhibit M, Antonio Vicente Barretto advised the defendant Leonardo to tell the tenants of the hacienda to transact their business with Bartolome as the administrator. In 1896, because of the death of Bartolome Antonio Barretto, Luis Bonifacio Barretto succeeded him as administrator, who managed the hacienda in the name of the same creditor. After the death of the latter; he (Luis) dealt with Antonio M.a Barretto, one of the heirs of the deceased creditor. On August, 1902, because of the death of the above-mentioned Luis Bonifacio Barretto, his brother Antonio T. Barretto succeeded him in the administration of the hacienda in the name and account of the heirs of the deceased Antonio Vicente Barretto and the said Antonio T. Barretto continued to act as administrator of the hacienda in the name of the plaintiff Barretto, who acquired the rights of the heirs of the deceased creditor Antonio Vicente Barretto, until the beginning of the present action.

These facts which have been fully established show that the whole hacienda was delivered to Antonio Vicente Barretto so that he might collect his credit, and this is corroborated by the letters which have been exchanged between Juan Antonio Barretto Grandpre, jr., residing abroad and Antonio Vicente Barretto, as well as by the account, Exhibit 3, rendered to Juan Antonio Barretto, jr., by Antonio Vicente Barretto up to December 31, 1888, in which the hypothecary credit of P11,000 with its interests amounting to P16,255.70 still appear existing and complete. Such facts cannot in any way prove that Antonio Vicente Barretto took possession of the hacienda in the character of owner although he had been appointing administrators until his death in 1897 and the administrators had dealt with him while living for the determination of the rent of the hacienda and other particulars, as well as the fact that the declaration of ownership for the assessment of the property was made in his name and the payment of the land tax due was made on his account, for the reason that he acted as creditor in antichresis, and not as owner and proprietor of the hacienda, which fact does not appear to be proved by the oral evidence, while the contrary has been fully established by the documentary evidence attached in the record.

That the said verbal contract of antichresis was not set out in some document is not contrary to what has been said, since the same, being a consensual contract, has the elements enumerated in article 1261 of the Civil Code and was complied with and carried into effect without any difficulty whatsoever from the year 1888 until 1912, that is, during more than 24 years, without any protest or objection on the part of any of those who could and probably had the right to impugn it; but, on the contrary, several of the coowners of the hacienda usufructed by the creditor submitted themselves to the discretionary orders of the latter in the exercise of his right as creditor in antichresis, the former acting successively as administrators of the very hacienda of which they were coowners;

and they only dared to oppose and to overlook the facts whose realization many of them have helped, from the time the defendant Leonardo F. Barretto, who on two occasions administered the hacienda in the name and on the account of the creditor Antonio Vicente Barretto, dared to usurp a portion of the hacienda and to deny the unquestioned rights of the plaintiff which were directly derived from the said creditor, now dead, taking possession of two portions of the hacienda in usufruct, in his own behalf, while the whole debt, or part of it, still exists for the payment of which the right of usufruct is at present exercised.

In other respects, the proceedings in the present action do not offer any legal cause or reason by virtue of which it can be established that the plaintiff has acquired the ownership of the said hacienda by prescription, since the original possessor entered into possession of the same with the consent of the owners and not as owner, but as a creditor with the right only to collect his credit on the fruits of the said hacienda, and the plaintiff could not acquire better rights than those which had been conferred upon him by his predecessors in possession. Thus, article 1884 of the Civil Code declares that the creditor cannot acquire the ownership of the real property for failure to pay the debt within the time agreed upon. Any stipulation to the contrary shall be void.

It is, therefore, clear and beyond all discussion that the possession enjoyed by the predecessors of the plaintiff has not been conferred by the owners of the hacienda to the creditor that the latter might acquire the ownership of the property, but merely that from its products he might collect the existing debt. Consequently, the possession exercised by the creditor Antonio Vicente Barretto, not being under title of ownership because no right of ownership could have taken place, the present possession of the hacienda can not possibly turn into a title of acquisitive prescription of the property.

Furthermore, it does not appear that the donation made by Guadalupe Barretto and the sales or assignment made by Antonio M.a Barretto and Ricardo Esteban Barretto were that of the ownership or dominion of the hacienda, but the hypothecary credit and whatever right the donor and the assignors and vendors had against the owners of the hacienda, as it is clearly expressed in the documents Exhibits 1, and K above referred to. The rights acquired by the plaintiff Alberto Barretto consist, without any doubt whatsoever, of what the said three brothers of the creditor Antonio Vicente Barretto had transferred to him and under no circumstance could it be understood that they transferred the dominion and the ownership of the said hacienda.

As the extinguishment of the right of the creditor and the termination of the use and possession of the real property depend upon the entire payment of the debt and its interest, it is proper—the liquidation of accounts having been made—to fix definitely the sums of the amounts which the debtors had paid on account of the capital and interests and which had been really received by the creditor.

For these considerations, whereby some of the errors, assigned against the sentence appealed from as notoriously opposed to the foundation of right and justice laid down in this decision, are deemed to have been refuted, holding the plaintiff to be in legitimate possession of the said hacienda, the defendant Leonardo F. Barretto should be sentenced and we sentence him to vacate and release immediately—otherwise subject to an order of ejectment—the portion of land and lot included within the boundary of the hacienda Balintagac, and place same at the disposal of the plaintiff, Alberto Barretto, or of his representatives; it being understood that before liquidation, the actual amount of the debt be fixed, which debt, in the form of capital and interest, is collectible from the products of the hacienda, by the adjustment of the amounts paid and received on their account to cover the debt. There is no special finding as to costs in both instances; thus, that part of the judgment appealed from, which is in conformity with this decision is affirmed and that contrary to it is reversed- So ordered.

Arellano, C. J., Johnson, Carson, Street, Malcolm, and Avancena, JJ., concur.

Araullo, J., did not take part.

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