

UY SOO LIM, PLAINTIFF AND APPELLANT, VS. BENITO TAN UNCHUAN, FRANCISCA PASTRANO AND BASILIO CEFRANO UY BUNDAN, DEFENDANTS AND APPELLEES.*G.R. No. 12605. September 07, 1918*

Ponente: FISHER, J.

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This is an appeal by plaintiff upon the law and the facts, from a judgment of the Court of First Instance of Cebu, dismissing on the merits his action for the annulment of a contract by the terms of which he sold to the defendant Francisca Pastrano all his interest in the estate of the late Santiago Pastrano Uy Toco.

The material facts as found by the trial court, whose findings are fully supported by the evidence, are that at the age of about thirteen Santiago Pastrano Uy Toco, a Chinese, came from China to reside in the Philippine Islands. He was then unmarried. On August 2, 1882, he married Candida Vivares, a Filipina woman, at Mambajao, in the Province of Cagayan de Misamis. Of this marriage there were born two daughters, Francisca and Concepcion. Francisca is a defendant in this suit and is the wife of the codefendant, Benito Tan Unchuan. At the time of this marriage, Santiago Pastrano possessed very little property—a tienda worth about two thousand pesos. The large estate left by him at his death was acquired by him during his marriage with Candida Vivares.

In 1891, Santiago Pastrano, who had resided continuously in the Philippines since he came to the Islands at the age of 13, returned to China where he remained for little less than a year. While there he entered into illicit relations with a Chinese woman, Chan Quieg, also referred to as Chan Ni Yu.

After staying a little less than a year in China, Santiago Pastrano returned to the Philippines where he remained till his death in Cebu, in March, 1901. He never saw Chan Quieg again, but received letters from her informing him that she had borne him a son, Uy Soo Lim, the present plaintiff. He died without ever having seen Uy Soo Lim, but under the belief that he was his only son, and it was in this belief that he dictated the provisions of his will.

On March 6, 1901, Santiago Pastrano died in Cebu, leaving a large estate. The persons who survived him, and then or afterward laid claim to an interest in the estate, were his wife, Candida Vivares, his daughters, Francisca Pastrano and Concepcion Pastrano, Chan Quieg, and the plaintiff Uy Soo Lim.

By the terms of his will, Santiago Pastrano attempted to dispose of the greater part of his estate in favor of the appellant, Uy Soo Lim. The will was duly probated in the Court of First Instance of Cebu, and the defendant Benito Tan Unchuan, husband of the defendant Francisca Pastrano, who was named in the will as executor, duly qualified as such on May 13, 1902. Basilio Uy Bundan, one of the defendants herein and brother of Santiago Pastrano, was named by the testator as guardian of Francisca Pastrano, Concepcion Pastrano, and Uy Soo Lim, who were all three minors at the time of the death of the testator, and duly qualified as such before the court on August 6, 1902.

On October 21, 1904 the Court of First Instance of Cebu, in the matter of the testamentary estate of Santiago

Pastrano, deceased, issued an order requiring Benito Tan Unchuan, as executor of the testamentary estate of Santiago Pastrano, to deliver to Basilio Uy Bundan, guardian of Francisca Pastrano, Concepcion Pastrano, and Uy Soo Lim, the property to which they were entitled under the will of said Santiago Pastrano. This order was complied with and the administration of the testamentary estate declared closed.

Basilio Uy Bundan having received, as guardian of the minors Francisca Pastrano, Concepcion Pastrano, and Uy Soo Lim, the property devised to them under the will of said Santiago Pastrano, continued to administer the said property as guardian without incident of note till October, 1910. On October 18, 1910, the court, in the matter of the aforesaid guardianship, issued an order on the guardian, Basilio Uy Bundan, in which it was noted that Francisca Pastrano had reached majority, that Concepcion Pastrano would reach her majority in a few months, and that Uy Soo Lim had married and the guardian was therefore ordered to present a plan of distribution of the estate in accordance with the dispositions of the will of Santiago Pastrano.

The guardian did not comply with this order at once, and, before the plan of the distribution called for by this order could be presented, objections against carrying into effect the provisions of the will were presented to the court.

On May 25, 1911, Candida Vivares presented, through her attorneys, a motion in the matter of the testamentary estate of Santiago Pastrano in which she claimed the right as the widow of the deceased to one-half of all the estate, and asked that the administration of said estate be reopened and the rights of the persons read judged and determined according to law. A motion of similar purport was filed by her in the matter of the guardianship of Uy Soo Lim et al.

On June 5, 1911, Francisca Pastrano and Concepcion Pastrano filed, through their attorneys, a motion in the guardianship of Uy Soo Lim et al., in which they opposed the distribution of the estate of Santiago Pastrano in accordance with the terms of his will, alleging that Uy Soo Lim was not entitled under the law to the amount of the estate assigned him in the will, for the reason that the marriage alleged therein of Santiago Pastrano with Chan Quieg, was null and void, and, furthermore, that Uy Soo Lim was not a son, legitimate or illegitimate, of said Santiago Pastrano. They, therefore, asked for a suspension of the distribution and a reopening of the matter of the testamentary estate of Santiago Pastrano and that the rights of all persons in interest be readjudged and determined according to law. Chan Quieg also appeared in the matter of the estate of Santiago Pastrano on October 7, 1911, and asked that she be declared entitled to one-half the estate on account of "having in the year 1892 in the city of Amoy, China, held carnal relations with the deceased Santiago Pastrano, having lived maritally with him during his stay in said city that year, which union, under the laws and customs of China, constitutes all the forms of valid marriage in said jurisdiction."

The effect of all these motions was to put in question the right of Uy Soo Lim to seven-ninths of the property as left him by Santiago Pastrano in his will and even to put in question his right to receive anything at all. If Uy Soo Lim was merely an illegitimate son of Santiago Pastrano not legitimated and incapable of being legitimated or of being given the status of an acknowledged natural son, and if Candida Vivares was the lawful wife of Santiago Pastrano and Francisca and Concepcion are the lawful issue of that marriage, then the utmost that Uy Soo Lim could have taken under the will of Santiago Pastrano, according to the contention of Pastrano's widow and daughters, would have been the third of Santiago Pastrano's one-half interest in the community estate subject to the testator's disposition, or one-sixth of the entire estate, instead of the seven-ninths bequeathed him by said will.

Uy Soo Lim had married in China in 1910. He was aware of the fact that he was heir to a large fortune in the Philippine Islands under the terms of the will of Santiago Pastrano, having already drawn from the estate for his personal use P26,800. Before Candida Vivares, Francisca Pastrano, Concepcion Pastrano, and his own supposed

mother Chan Quieg had formally impeached before the court his right to seven-ninths of the property described in the will of Santiago Pastrano, he was fully aware of the preparations being made to reduce his interest to nothing or to a small fraction of that conferred by the will. It was for the express purpose of frustrating these efforts that Uy Soo Lim left China and arrived in Manila on March 13, 1911, about two months more or less before the first formal protest made in court attacking the rights conferred on Uy Soo Lim under the will.

Before setting out for Manila Uy Soo Lim employed as his agent and adviser one Choa Tek Hee, a resident merchant of Manila, then on a visit to China. Plaintiff came to Manila on March 13, 1911, and resided in the house of Choa Tek Hee till his departure in November, 1911. Choa Tek Hee was then in China, but came to Manila in time to aid plaintiff in the subsequent negotiations of plaintiff's matters, though the exact date does not appear. On April 11, 1911, plaintiff executed a power of attorney in favor of Choa Tek Hee to represent him in the pending negotiations. He also secured the services of two attorneys, Major Bishop to represent him in Manila and Levering, of Cebu, to represent him in Cebu.

About the end of October, 1911, or, perhaps the early part of November, an agreement was reached between Choa Tek Hee and plaintiff, of the one part, and Tan Unchuan and Del Rosario, an attorney of Cebu, representing the interest of Candida Vivares, Francisca and Concepcion Pastrano, on the other, to submit the entire matter in dispute to the judgment of three respectable Chinese merchants designated. The persons thus designated were not, strictly speaking, arbitrators, but rather friendly advisers, since there was no agreement that their findings should be binding on the parties. These advisers came to the conclusion that the sum of P82,500 should be accepted by plaintiff in full satisfaction and relinquishment of all his right, title, and interest in and to the estate of the deceased Santiago Pastrano, and this recommendation was accepted by Choa Tek Hee and plaintiff and by Tan Unchuan and Del Rosario. In accordance with this agreement, plaintiff, on November 18, 1911, executed a deed by which he relinquished and sold to Francisca Pastrano all his right, title, and interest in the estate of the deceased Santiago Pastrano in consideration of P82,500, of which sum P10,000 was received in cash and the balance was represented by six promissory notes payable to Choa Tek Hee as attorney in fact for Uy Soo Lim, the first for P22,500 and the remaining five for P10,000 each. This is the document known as plaintiff's Exhibit B, which plaintiff is seeking to annul in the present action. Thereafter, on December 6, 1911, Candida Vivares and Concepcion Pastrano, then of age, executed separate deeds by which they relinquished and sold to Francisca Pastrano all their right, title, and interest in the estate left by Santiago Pastrano.

On November 29, 1911, Chan Quieg, then temporarily in the port of Cebu, executed a deed whereby she sold and relinquished to Francisca Pastrano all her right, title, and interest in the estate of Santiago Pastrano. On December 4, 1911, Chan Quieg executed a public document in which she gave her consent to the sale by Uy Soo Lim of his right and interest in said estate "in case the same should be necessary by virtue of any legal requirements of the laws of the Philippine Islands."

And finally, on December 4, 1911, Basilio Uy Bundan executed a public document in which he declared that in spite of the statements in the will of Santiago Pastrano, said testator was the owner of the entire business in Cebu known as Santiago Pastrano & Co., and that Calixto Uy Conchio, the brother of testator and of said Basilio Uy Bundan, did not, as declared in said will, own a three-quarter interest in said business, or any interest at all therein, for which reason the said Basilio Uy Bundan renounced any interest in said business which he might appear to have as brother and heir of said Calixto Uy Conchio, who died without direct heirs in the ascending or descending line, said renunciation of right being made in favor of Francisca Pastrano.

All the documents above mentioned having been duly presented to the lower court by Pantaleon del Rosario, ting as attorney of Francisca Pastrano, that court, on December 11, 1911, issued an order in the matter of the guardianship of Uy Soo Lim et al., by which Francisca Pastrano was declared the sole owner of all the property

left by the deceased Santiago Pastrano, and the guardian Basilio Uy Bundan was ordered to deliver the same to Francisca Pastrano. On December 14, 1911, upon proof of compliance "with said order, the guardianship was closed and the guardian's bond canceled.

On August 24, 1914, the plaintiff and appellant, Uy Soo Lim, commenced the present action in the Court of First Instance of Cebu, for the purpose of vacating the orders of the lower court of December 11 and December 14, 1911, and to rescind and annul the contract by which he had sold and transferred to Francisca Pastrano his interest in the estate of Santiago Pastrano.

The complaint alleges as one of the reasons for setting aside plaintiff's sale of his rights to Francisca Pastrano that defendants Benito Tan Unchuan and Basilio Uy Bundan induced the plaintiff to execute the deed of cession by conspiring together to exercise undue influence upon the plaintiff, by taking advantage of his youth, passions, and inexperience, by misrepresenting material facts concerning the value of the property and interests in questions, and by concealing others. The court below held that appellant had not been induced by deceit, or undue influence to enter into the contract, but did so deliberately, with full knowledge of the facts, after mature deliberation and upon the advice of capable counsel. This ruling of the court is assigned by appellant as error. Upon this branch of the case the trial judge said:

"The plaintiff testified before the court and a careful reading of the verbal and documentary evidence furnishes a fair idea of the general characteristics of the plaintiff. That he is a spendthrift and unable to make a wise use of money is quite evident. But it is equally evident that the plaintiff now is and at the time of executing the bill of sale was a youth of more than ordinary intelligence, with a keen appreciation and understanding of all the elements of strength and weakness in his 'case' that could only have been bettered by a study of the law as a profession. As a witness he displayed uncommon ability in avoiding a direct answer to inconvenient questions and in professing lack of memory in other points. It is true that this testimony was given some three years, more or less, after signing the document of cession, but the court has no reason to believe that the plaintiff's evident intelligence, not to say cunning, was appreciably less then than now. The court upon a review of the evidence finds that plaintiff when he signed the document was in possession of all the essential facts bearing upon his interest in the estate and had an intelligent comprehension of the nature of the deed of cession, its contents and its effect upon his interests.

"Some shadow of claim might be made on this issue if plaintiff, then a minor, had signed the document without careful and competent advisers to direct him. He had however three advisers. One of them was Choa Tek Hee, characterized by Judge Del Rosario as a person of unusual ability. Whatever discord may have arisen subsequently between plaintiff and Choa Tek Hee, there is no serious claim either in the complaint or based on the evidence that Choa Tek Hee was a party to the supposed conspiracy against plaintiff, and the Court does not doubt but what Choa Tek Hee exerted all his ability to procure for plaintiff the best possible terms. But plaintiff from the very beginning until the end had the benefit of the advice of two lawyers, Major Bishop to consult with in Manila, where the document itself was signed, and Mr. Levering of Cebu, where most of the property was situated, where the other parties in interest lived and where the litigation itself was pending. To claim that plaintiff did not know what he was signing appears to the court to be an impeachment of the intelligence which a reading of the testimony shows the plaintiff to have possessed at the time in question. To claim that the two attorneys named allowed their client to sign the document without being satisfied that he understood its import and thereafter consented to the final decree issued by the court in Cebu based on said sale, constitutes in the opinion of the court an untenable impeachment of the conduct of two lawyers well and favorably known to the Bench and Bar of these Islands as attorneys of ability and integrity.

"In support of the claim that material facts were concealed and misrepresented by defendants, special stress is laid

on a memorandum furnished the 'arbitrators' by Tan Unchuan. This memorandum was shown to plaintiff's agent Choa Tek Hee and was a general account of the property left by Santiago Pastrano and a calculation of the possible interest of the plaintiff based thereof. In this memorandum, Santiago Pastrano's estate was credited with a quarter interest in the business known as Santiago Pastrano & Co., his deceased brother Calixto Uy Conchio being credited with only the remaining three-fourths, while as a matter of fact it would appear that Santiago Pastrano was the owner of the entire interest in said business and subsequently to the execution of the document in question by plaintiff the entire interest in the business passed by decree of this court to Francisca Pastrano who has purchased the interest of all the other heirs. But whatever may have been the effect of the presentation of this memorandum, plaintiff is not shown to have relied thereon. It was for the purpose among others of being informed as to the nature and value of his interests and as to the weight that might be attached to the claims made by persons with adverse interest that plaintiff employed a lawyer in Cebu where most of the property (and the business known as Santiago Pastrano & Co.) was located and the facts relating thereto accessible. Without better proof than has been presented the court will not presume that a document circulated among the arbitrators, though seen by plaintiff, influenced plaintiff in signing the deed of cession when he had employed attorneys well able to revise and check up any statements, made in said memorandum.

"Furthermore, the bill of sale itself specifically states that among the rights sold by plaintiff is his interest in the business of Santiago Pastrano, whatever that might be, and expressly states that the will Erroneously stated that testator's interest was one quarter, whereas in reality testator owned the entire business. The court finds under the evidence that plaintiff understood this part of the bill of sale along with its other provisions and that its import was explained to him by his attorneys before he signed it.

"Without going further into all the evidence on this question, the court finds that not only has plaintiff not sustained the burden of proving the fraud, imposition and deceit, which the law never presumes, but that plaintiff in fact signed the deed of cession in question without relying upon the statements and representations of the defendants as the motive for signing the same; that before signing the same he understood the nature of said document, its contents and its effect upon his interest, and that in signing the same he was determined by the advice of his own agent Choa Tek Hee and upon the advice of his two lawyers, who explained to him fully and to his complete understanding the nature, contents and effect of said instrument."

Appellant vigorously assails these conclusions of the trial court, but the evidence is amply sufficient to support the findings, and we find nothing in the record to indicate that the trial court has failed to consider all the evidence adduced, or that the findings are contrary to the weight of the testimony. Whenever there is a conflict in the evidence and the conclusion to be reached must rest largely upon the relative credibility of the witnesses, we rarely disturb the findings of the trial court, and we can see no reason for doing so in this case. On the contrary, we are convinced that the weight of the evidence strongly supports the findings, and that the court did not err in rejecting appellant's contention that the contract is voidable upon the ground that his consent was obtained by fraud or undue influence. We are particularly impressed by the fact that it is expressly stated in the contract (Exhibit B) which plaintiff now seeks to repudiate that notwithstanding the statement to the contrary in Pastrano's will, the latter was in fact the sole owner of the business referred to in that document. Plaintiff therefore had full information regarding the assets which composed the Pastrano's estate, and surrounded as he was by skillful and competent advisers, we have no doubt that he was fully aware of the value of those assets.

The trial court found that plaintiff was a minor at the time of the execution of the contract in question, but that he not only failed to repudiate it promptly upon reaching his majority but tacitly ratified it by disposing of the greater part of the proceeds after he became of age and after he had full knowledge of the facts upon which he now seeks to disaffirm the agreement.

By the terms of the contract by which appellant transferred to the appellee Francisca Pastrano his interest in the Pastrano Estate he was paid P10,000 in cash, the balance of the P82,500 being represented by six promissory notes dated November 18, 1911, signed as maker by the defendant Tan Unchuan, the husband of the defendant Francisca Pastrano. The first note was for P22,500 payable twelve days after date, and the other five for P10,000 each, payable in six, twelve, eighteen, twenty-four and thirty months, respectively. These notes were made payable to Choa Tek Hee, or order, as attorney in fact for Uy Soo Lim.

Of these notes the first three, amounting to P42,500 were paid to Choa Tek Hee as they fell due. It appears, however, that Choa Tek Hee failed to account to the satisfaction of Uy Soo Lim for the money so received, whereupon the latter returned to Manila on February 20, 1913, to seek an adjustment of his affairs with his attorney in fact.

Uy Soo Lim, upon his arrival in Manila, sent the following cable to Tan Unchuan at Cebu:

"I revoke power to Tek Hee. Don't pay him any more money. Please forward account payments to him Urgent, Address P. O. 1360.

(Sgd.) "Uy Soo Lim."

This cable, sent to forestall further payment to Choa Tek Hee, evidences a clear and convincing knowledge by plaintiff both of the conditions of the bill of sale and his rights thereunder.

Not being able amicably to adjust with Choa Tek Hee the matter of such moneys, Uy Soo Lim filed suit against him in the Court of First Instance, Manila, asking that the power of attorney be canceled, and for an accounting. This complaint is dated March 31, 1913, and has attached thereto a copy of the will of Santiago Pastrano. It recites that plaintiff's interest in the estate of Santiago Pastrano was reasonably worth P200,000; that this interest had been liquidated and "reduced to a money basis," and that in consequence money and choses in action had come into the hand of Choa Tek Hee amounting to P83,000 more or less. There is also an allegation that the power of attorney was executed while plaintiff was still a minor.

These allegations are important as showing that on March 31, 1913, plaintiff, while claiming his interest in the estate of Santiago Pastrano was reasonably worth P200,000 knew such interest had been sold for P83,000, more or less, and also knew he was a minor under Philippine laws at the time of such sale.

By his answer Choa Tek Hee laid claim to a considerable portion of the P42,500 collected by him, for "services rendered," etc., his statement showing a cash balance of only P2,867.94. This latter amount, upon petition of plaintiff, was ordered deposited with the clerk of the court.

In the meantime Chas. E. Tenney had been appointed guardian ad litem of plaintiff, and on May 12, 1913, filed a motion on behalf of plaintiff reciting that promissory note No. 4 for P10,000 (being one of the notes executed on account of plaintiff's bill of sale) would fall due on May 18, 1913, and asking that Choa Tek Hee be directed to indorse it over to the clerk of the court for collection. As the note was drawn in favor of Choa Tek Hee it took some time to adjust the matter of payment, it being finally paid by Tan Unchuan to the clerk of the court on October 24, 1913. The P10,000 due on note No. 5 was paid into court on December 18, 1913, and the final P10,000, being note No. 6, was paid on May 23, 1914.

In the meantime, on October 8, 1913, Uy Soo Lim reached his majority under Philippine laws, being then 21 years of age. On October 10, 1913, Chas. E. Tenney, his guardian ad litem, filed a motion with the court reciting the fact of Uy Soo Lim's majority, stating that the services of a guardian ad litem were no longer necessary.

The sum of P2,867.94 deposited by Choa Tek Hee was part of the proceeds accruing to plaintiff under his bill of

sale to Francisca Pastrano, as was also the P30,000 deposited by Tan Unchuan in payment of promissory notes Nos. 4, 5, and 6, which notes accrued subsequent to the filing of suit against Choa Tek Hee. The whole of this P30,000 was paid into court upon demand of plaintiff, such payments being made after October 8, 1913, when plaintiff became of age.

On March 30, 1914, Uy Soo Lim secured judgment against Choa Tek Hee in the sum of P31,511.93, with interest, which amount was in addition to the P32,867.94 deposited with the court during the pendency of the proceedings. As heretofore noted, the final promissory note for P10,000 was paid into court on May 23, 1914. On May 25, 1914, or within two days after the final P10,000 due upon his bill of sale had been paid into court, Uy Soo Lim filed suit in the Court of First Instance of Manila, to annul it on the ground of minority, fraud, conspiracy, and deceit.

Before filing the suit to annul his contract plaintiff had already withdrawn from the P32,867.94 deposited with the court, the sum of P9,517.20, of which amount the sum of P7,550 was withdrawn after he reached his majority.

In filing his suit to annul the contract no offer was made by appellant to return to Francisca Pastrano the consideration of such contract, or to hold, subject to her disposition, the balance of P54,863.61 then on deposit with the court and represented by the Choa Tek Hee judgment. On the contrary, he proceeded with the utmost celerity to secure, spend and otherwise dispose of the last cent of such consideration.

On August 24, 1914, or more than ten months after plaintiff reached his majority, the present suit was filed in the Court of First Instance of Cebu, the action brought in Manila having been dismissed for lack of jurisdiction.

On March 29, 1915, this court affirmed on appeal the decision of the trial court awarding Uy Soo Lim P31,511.93, with interest, in his suit against Choa Tek Hee.[1] Appellant lost no time in seeking to get possession of these additional funds. Execution was secured against Choa Tek Hee on April 27, 1915, and by June 5, 1915, the whole of this judgment was collected and converted to plaintiff's use except the sum of P7,200.

By the time the present action came to trial, therefore, the whole of this P64,377.81—the then available balance on hand derived from plaintiff's bill of sale—had been collected and converted by him save and except the sum of P7,200, still due upon the judgment against Choa Tek Hee. As soon as the trial of this case was closed appellant proceeded at once to realize this remaining remnant accruing from his bill of sale, by transferring his interest therein to one Wee Thiam Tew, of Singapore.

As showing how and in what manner the P82,500 was realized by plaintiff, we quote as follows from the findings of the trial court (B. E., pp. 109, 110):

"To recapitulate, plaintiff has secured and converted to his own use the entire amount of P82,500 the consideration for which he executed the deed of cession he is now seeking to annul.

"Of this amount of P82,500, plaintiff, speaking in rough figures, has received and converted to his own use:

"About P20,000 before coming of age under the laws of the Philippine Islands.

"About P62,500 since coming of age under the laws of the Philippine Islands.

"Of the P62,500 received and spent by plaintiff since coming of age under our laws, plaintiff has spent approximately about P7,500 before bringing suit to set aside his deed of cession, and about P55,000 since filing his first action in Manila to set aside the deed of cession.

"And of this sum of about P55,000, about P36,000 were received and spent by plaintiff after filing the present suit.

"And of the sum of P36,000 more or less which plaintiff has received and spent since filing the present suit, P7,200 was received and spent after the trial of the present case before this court had been closed; that is, after all the evidence had been presented and the case submitted to the court for its final decision upon briefs to be filed. It was this disposal by plaintiff of the last remains of the consideration price which was presented to the court as additional evidence on the reopening of the trial."

It is important to note that this final P7,200 was disposed of by plaintiff on April 13, 1916, or more than two and a half years after he reached his majority, and an equal time after he knew all the facts now alleged by him to constitute fraud.

Uy Soo Lim became of age under Philippine laws on October 8, 1913. On March 31, 1913 (some months prior to reaching majority) he filed suit against Choa Tek Hee for an accounting, wherein reference is had to this bill of sale and to the fact of minority. The purpose of that action was to reduce to possession the consideration accruing to him from his bill of sale.

Knowing his legal rights, therefore, plaintiff should have been prompt to disaffirm his contract upon reaching majority. This was not done. Instead, he deliberately permitted defendants to continue making payments thereunder, and then, on May 25, 1914, when the last cent upon such contract was Collected, sought to avail himself of this ground of rescission. This was almost eight months after he had attained his majority.

The privilege granted minors of disaffirming their contracts upon reaching majority is subject to prompt election in the matter. The court, in *Hastings vs. Dollarhide* (24 Cal., 195, 212), states the principle thus:

"The exemption of infants from liability on their contracts proceeds solely upon the principle that such exemption is essential to their protection; and it is admitted that the law of infancy should be so administered that that result may, in all cases, be secured. But it has not unfrequently happened that courts, in their anxiety to protect the rights of infants in the matter of contracts made by them during nonage, have after they have become adults, treated them to same extent as infants still, exempting them from the operation of rules of law, not only of general obligation, but founded on essential justice. The strong tendency of the modern decisions, however, is to limit the exemptions of infancy to the principle upon which the disability proceeds."

To the same effect *Goodnow vs. Empire Lumber Company* (31 Minn., 468; 47 Am. Rep., 798) where the court, in discussing the question, said:

"The rule holding certain contracts of an infant voidable (among them his conveyances of real estate) and giving him the right to affirm or disaffirm after he arrives at majority, is for the protection of minors, and so that they shall not be prejudiced by acts done or obligations incurred at a time when they are not capable of determining what is for their interest to do. For this purpose of protection the law gives them an opportunity, after they have become capable of judging for themselves, to determine whether such acts or obligations are beneficial or prejudicial to them, and whether they will abide by or avoid them. If the right to affirm or disaffirm extends beyond an adequate opportunity to so determine and to act on the result, it ceases to be a measure of protection, and becomes, in the language of the court in *Wallace vs. Lewis* (4 Harr., 75, 80), 'a dangerous weapon of offense, instead of a defense.' For we cannot assent to the reason given in *Boody vs. McKenney* (23 Me., 517), (the only reason given by any of the cases for the rule that long acquiescence is no proof of ratification), 'that by his silent acquiescence he occasions no injury to other persons, and secures no benefits or new rights to himself. There is nothing to urge him as a duty to others to act speedily. The existence of such an infirmity in one's title as the right of another at his pleasure to defeat it, is necessarily prejudicial to it; and the longer it may continue, the more serious the injury. Such a right is a continual menace to the title. Holding such a menace over the title is of course an injury to the owner of it; one possessing such a right is bound in justice and fairness toward the owner of the

title to determine without unnecessary delay whether he will exercise it. The right of a minor to disaffirm on coming of age, like the right to disaffirm in any other case, should be exercised with some regard to the rights of others—with as much regard to those rights as is fairly consistent with due protection to the interests of the minor.

"In every other case of a right to disaffirm, the party holding it is required, out of regard to the rights of those who may be affected by its exercise, to act upon it within a reasonable time. There is no reason for allowing greater latitude where the right exists because of infancy at the time of making the contract. A reasonable time after majority within which to act is all that is essential to the infant's protection. That ten, fifteen, or twenty years, or such other time as the law may give for bringing an action, is necessary as a matter of protection to him is absurd. The only effect of giving more than a reasonable time is to enable the mature man, not to correct what he did amiss in his infancy, but to speculate on the events of the future—a consequence entirely foreign to the purposes of the rule, which is solely protection to the infant. Reason, justice to others, public policy (which is not subserved by cherishing defective titles), and convenience, require the right of disaffirmance to be acted upon within a reasonable time. What is a reasonable time will depend on the circumstances of each particular case, and may be either for the court or for the jury to decide. Where, as in this case, there is mere delay, with nothing to explain or excuse it, or show its necessity, it will be for the court."

The above decisions (which could be multiplied indefinitely) are based upon justice and sound sense, and have peculiar application to the case now before us. Here plaintiff not only showed a personal knowledge of his rights under this contract prior to and at the time of reaching majority, but he was surrounded by able advisers, legal and otherwise, retained to protect his interests. As a result of his failure to disaffirm promptly on reaching majority, he received a balance of P30,000 upon the contract, which amount certainly would not have been paid if it had been known that he was about to attempt to repudiate his agreement. This amount was not only collected by Uy Soo Lim after reaching majority, but was effectually disposed of as rapidly as possible.

The record shows that of the P2,867.94 deposited in court by Choa Tek Hee, and the P30,000 paid into court by Tan Unchuan, only P1,967.20 was withdrawn by plaintiff before reaching majority. Seven thousand five hundred and fifty pesos was withdrawn after he became of age and before filing suit to rescind. There was still uncollected the P31,511.93, with interest—represented by the Choa Tek Hee judgment. When plaintiff reached majority, therefore, there was P62,412.67 of the original consideration available for refund, and there still remained P55,000 when he filed his suit to rescind. This sum could have been returned to Francisca Pastrano or held by the court for her account.

Positive statutory law, no less than uniform court decisions, require, as a condition precedent to rescission of a contract on account of minority, that the consideration received be refunded. We cite and quote as follows:

"Art. 1295 (Civil Code). Rescission obliges the return of the things which were the objects of the contract, with their fruits and the sum with interest; therefore it can only be carried into effect when the person who may have claimed it can return that which, on his part, he is bound to do.

"ART. 1304 (Civil Code). When the nullity arises from the incapacity of one of the contracting parties, the incapacitated person is not obliged to make restitution, except to the extent he has profited by the thing or by the sum he may have received.

"Art. 1308 (Civil Code). While one of the contracting parties does not return that which he is obliged to deliver by virtue of the declaration of nullity, the other cannot be compelled to fulfill, on his part, what is incumbent on him."

Not only should plaintiff have refunded all moneys in his possession upon filing his action to rescind, but, by insisting upon receiving and spending such consideration after reaching majority, knowing the rights conferred

upon him by law, he must be held to have forfeited any right to bring such action.

Article 1314, Civil Code, provides as follows:

"The action for nullity of a contract shall also be extinguished when the thing which is the object thereof should be lost by fraud or fault of the person having the right to bring the action.

"If the cause of the action should be the incapacity of any of the contracting parties, the loss of the thing shall be no obstacle for the action to prevail, unless it has occurred by fraud or fault on the part of the plaintiff after having acquired capacity."

Plaintiff has disposed of the whole of the P85,000 which was paid him in consideration of the execution of the contract he is now seeking to annul. The record establishes beyond peradventure of doubt that he is utterly without funds to reimburse this consideration. In the Choa Tek Hee suit (Exhibit 10) there appears at folio 17 a motion by plaintiff, under oath, wherein he recites as a ground for realizing certain of the moneys deposited under this contract that he (plaintiff) "has no funds with which to support himself except such as may be advanced to him out of the moneys belonging to him which is now or may hereafter be in the hands of the clerk of this court." Being without other funds, there was the greater reason why this deposit, derived from the very contract sought to be repudiated, should have been held intact to reimburse his Vendee.

In note to Englebert vs. Pritchett reported in 26 L. R. A., 177, the various cases relating to the necessity of returning the entire consideration in order to disaffirm infant's contracts are correlated and discussed. We quote as follows:

"The rule which comes the nearest to being general is that all consideration which remains in the infant's possession upon his reaching majority or at the time of an attempted disaffirmance in case he is still under age must be returned, but that disaffirmance will not be defeated by inability to return what he has parted with prior to such time.

"He will not be permitted to regain what he parted with or refuse payment while still possessed of what he received.

"There have been many distinctions attempted such as between executory and executed contracts, and between seeking relief at law and in equity, but with only a few exceptions the rule as stated above has governed the decisions regardless of the facts relied on as distinguishing facts. There is no substantial ground for a distinction as to the rule to be applied, although there may be as to the manner of its application.

"The rule is that the consideration must be restored. (Dickerson vs. Gordon, 24 N. Y. S. R., 448.)"

Whatever difference may exist in the authorities as to the obligation of the infant to return the entire consideration received as a condition precedent to disaffirming the contract, they are unanimous in holding that he must return such portion thereof as remains in his possession when reaching majority.

As heretofore noted, a very considerable portion of the 'moneys called for by the contract under consideration was collected and used by plaintiff after May 25, 1914, when he definitely elected to disaffirm it by bringing suit to rescind.

A leading case on the general subject is that of Manning vs. Johnson (26 Ala., 446), reported in 62 Am. Dec, 732, with an extensive footnote. Discussing the general subject the court there lays down the following rule (p. 733):

"When we come to reason upon the proposition, however, it is surrounded with difficulty; for if the infant can raise money to the whole value of his estate by a voidable sale or mortgage, and can only avoid the conveyance

after refunding, he is furnished the means of indulging habits of dissipation and prodigality, which in many instances would doubtless result in squandering the whole of the proceeds, while the purchaser or mortgagee would risk nothing, the land or estate of the infant so sold or mortgaged furnishing adequate security. On the other hand, to allow the infant to retain the consideration and yet to repudiate or disaffirm the conveyance, would tempt as well as enable him to practice frauds upon others. We think the safe rule should furnish a check both upon the infant and the party contracting with him. That rule we take to be this: If the infant after he arrives at age is shown to be possessed of the consideration paid him, whether it be property, money or chooses in action, and either disposes of it so that he cannot restore it, or retains it for an unreasonable length of time after attaining his majority, this amounts to an affirmance of the contract. So likewise if it be shown that he has the power to restore the thing that he received, he cannot be allowed to rescind without first making restitution."

Certainly the rule as above stated is fair and equitable.

Appellant argues that the notes of Tan Unchuan were accepted in payment of the consideration, moving from Francisca Pastrano and that therefore the fact that some of these notes were collected after he reached his majority is of no importance. We cannot accept this view. Even had the whole of the payment been made in cash at the time of the execution of the contract, if it had been shown that all or part of that money or its proceeds was still in the possession of appellant when he attained his majority, it would have been incumbent upon him to make restitution, as far as was then possible, upon coming of age. The important fact is not the time when he received the money, but the time when he disposed of it.

The contract involved herein is an executed contract. When plaintiff reached majority there was P62,412.67 in esse, and, when suit was filed, the sum of P55,000. The "offer to account" in paragraph 20 of the complaint, "if such accounting should be necessary," is not the tender, or offer to produce or pay, which the law makes a condition precedent to demanding equitable relief. Certainly it cannot be so construed in the present case, where it is conclusively shown that plaintiff after reaching majority and after filing his action to annul, proceeded to collect and dispose of the proceeds of such contract, reciting, as a reason for such collection, that he had "no other funds." If plaintiff had succeeded in having the contract set aside it would have left him in the same position as that in which he stood when it was executed—that is to say, he would have been compelled to face the contention that he was lawfully entitled to little or nothing. Had he made restitution of all the money which came into his hands after he attained his majority, a decision in favor of the claims of the widow and legitimate daughters of Santiago Pastrano would not have been a wholly barren victory for them. By consuming the last centavo of the proceeds of the contract plaintiff placed himself in a position where he was bound to enjoy the most advantageous position whatever might be the outcome of the litigation. To give countenance to such conduct would be to encourage deliberate bad faith.

On the assumption, therefore, that plaintiff might have had a right to rescind this contract on the ground of minority, his action fails:

- (1) Because, with a full knowledge of his rights in the premises, he failed to disaffirm his contract within a reasonable time after reaching majority; and
- (2) Because he not only failed to tender, or offer to produce and pay the consideration in esse when he reached majority, and when he filed his action, but proceeded, after such events, to demand, collect and dispose of such consideration, when according to his own statement under oath he had no other funds with which to make reimbursement.

It is argued on behalf of appellee that it having been shown that appellant is a Chinese subject or citizen, and that under the laws of China he was of age when he executed the contract here in dispute his contractual capacity must

be determined by his national law (estatuto personal) . The conclusion we have reached upon the assumption most favorable to appellant, that he was a minor at the time of the execution of the contract makes it unnecessary for us to decide this question or to consider the effect of the marriage of appellant before attaining the age of twenty-one upon his contractual capacity.

For the reasons stated we are of the opinion that the judgment of the trial court is without error,. and it is, therefore, affirmed, with the costs of both instances. So ordered.

Arellano, C. J., Torres, Street, Malcolm, and Avanceña, JJ., concur.

[1] R. G. No. 9997, not published.

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