

**RAFAEL J. FERRER ET AL., PLAINTIFFS AND APPELLANTS, VS.
JOAQUIN J. DE INCHAUSTI ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 12993. October 28, 1918*

Ponente: TORRES, J.

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This appeal was taken through bill of exceptions by counsel for the plaintiffs from the judgment of February 12, 1917, whereby the judge of the Court of First Instance held that Rosa Viademonte, mother of the plaintiffs, could not have been a legitimate daughter of the deceased Isabel Gonzalez, who, on her death, left some legitimate children. The court did not deem it necessary to discuss whether the said Rosa Viademonte could be a daughter of the said Isabel Gonzalez, for the reason given in his decision, and held that the plaintiffs should not be entitled to what they have demanded, and that they should pay the costs.

Under date of May 12, 1916, the attorney of Rafael J. Ferrer y Viademonte and Maria Angelina Ferrer y Viademonte with her husband Ricardo Hernandez y Aracil filed a complaint in the Court of First Instance of the city of Manila, praying for the rendition of a final judgment declaring that Rosa Matilde Viademonte y Gonzalez had the right to succeed to the inheritance left by Isabel Gonzalez in the same proportion and capacity as the other four children of the latter, namely, Ramon Viademonte, Rafael C. de Inchausti, Joaquin C. de Inchausti, and Clotilde de Inchausti de Vidal; that the plaintiffs Rafael and Maria Angelina Ferrer are the only and legitimate heirs of the deceased Rosa Viademonte and the only ones entitled to receive her share of the inheritance left by Isabel Gonzalez, that is, the one-fifth part of the latter's estate; that the defendants render to the plaintiffs an account of the fruits and administration of all the property from the moment the said community of property was constituted among them, and to deliver to the plaintiffs that part which corresponds to them in their capacity as sole heirs of Rosa Viademonte y Gonzalez, that is, the one-fifth part of the inheritance, with all its accessions, fruits, and interests; and, finally, that the defendants pay the costs. In fact, it is alleged that the plaintiffs are the legitimate children of Rosa Matilde Viademonte and Benigno Ferrer, who died and was survived by his wife, Rosa Viademonte, who in turn died on November 20, 1898, leaving the two plaintiffs as surviving legitimate children; that the said Isabel Gonzalez was married, first, to Ramon Martinez Viademonte, and from this marriage two children, named Ramon and Rosa Matilde, and surnamed Viademonte y Gonzalez, survived; that after the death of her husband Ramon Martinez Viademonte, Sr., the widow, Isabel Gonzalez, contracted a second marriage with Don Jose Joaquin de Inchausti with whom she had three children named Clotilde, Rafael, and Joaquin, all surnamed Inchausti y Gonzalez; that Ramon Viademonte y Gonzalez, Jr., died on January 1, 1905, without leaving any forced heir, and, by a will dated May 16, 1900, he left his property to the son or sons which Rafael C. de Inchausti might have, and, in default of such child or children, to the same Rafael C. de Inchausti; that on his death, on October 5, 1913, Rafael C. de Inchausti, by a will, left as his heirs and successors in interest his legitimate son Jose R. de Inchausti, his recognized natural daughter Maria Consolacion de Inchausti de Ortigas, and his widow Maria Consolacion Rico y Medina; that on her death, Isabel Gonzalez left a certain property valued at P191,284.81, which is one-half of the conjugal property in her marriage with Jose Joaquin de Inchausti, which would amount approximately to P1,000,000, with its accessions, according to present valuation,

as shown by the inventory of said property which makes up Exhibit A; that on January 14, 1888, Jose Joaquin de Inchausti made an extrajudicial partition of the property left by his deceased wife, Isabel Gonzalez, among Ramon Viademonte y Gonzalez, Rafael C. de Inchausti y Gonzalez, Joaquin C. de Inchausti y Gonzalez, and Clotilde de Inchausti y Gonzalez de Vidal, each of whom received one-fourth of the estate left by the deceased Isabel Gonzalez, excluding therefrom Rosa Viademonte, the mother of the plaintiffs, notwithstanding the fact that she had an equal right to inherit from Isabel Gonzalez; that since January 1888 till his death, Ramon Viademonte, Jr., had been the possessor and administrator of the fourth part of the inheritance which he received from his deceased mother Isabel Gonzalez, which portion of the property later came to the possession and control of Rafael C. de Inchausti, and on the death of the latter, this fourth part of the inheritance came to the possession of Maria Consolacion Rico de Inchausti, widow of said Rafael C. de Inchausti, in her capacity as guardian of her son Jose Rafael de Inchausti, and part of it, to the possession of Maria Consolacion Inchausti de Ortigas; and that a great part of the property which the defendants actually possess, came from the young children, who received it from Isabel Gonzalez with the earnings and accessions thereof; these children have been possessing it pro indiviso or in coownership, in their life-time, with Rosa Viademonte while living, and upon the death of the latter, with her heirs, but that, in spite of the demands made by the plaintiffs for the delivery to them by the defendants of their corresponding share in the inheritance, the latter have always refused to do so.

In his answer, counsel for Clotilde Inchausti de Vidal admitted that the plaintiffs are the children of Rosa Viademonte and Benigno Ferrer; that Isabel Gonzalez was married first to Ramon Martinez de Viademonte, and afterwards to Jose Joaquin de Inchausti; that on the death of her mother Isabel Gonzalez, on December 13, 1886, her share in the conjugal partnership amounted to P191,284.81, and on January 14, 1888, Jose Joaquin de Inchausti, as executor of his wife, after paying the legacies mentioned in the testament, paid to this defendant in cash the sum of P46,295.70 as her hereditary portion in the liquidated property of her mother, and likewise delivered to the other three sons of said Isabel Gonzalez similar amounts; that, after receiving her share of the inheritance from her mother, she (Clotilde Inchausti de Vidal) spent it all, and she no longer has any part of it, nor has she left any portion of it during the last thirty years, and that neither the plaintiffs nor their deceased mother had ever possessed or enjoyed the said sum; and denies generally all the allegations of the complaint which are not admitted, and denies specially the allegation that the mother of the plaintiffs had ever married with their father Benigno Ferrer, that they (the plaintiffs) and their mother ever had the surname of "Viademonte" or "Viademonte y Gonzalez," and that the mother of the plaintiffs was a daughter of Isabel Gonzalez.

As a special defense, she alleged that her possession of the money derived from the inheritance of her mother had been public, adverse, pacific, continuous, and under a claim of ownership, in good faith and with just title, since January 14, 1888; that never during the lifetime of the plaintiffs' mother did she (plaintiff's mother) make any claim or assert any right in the amount received by this defendant from the inheritance of her deceased mother; that more than thirty years had elapsed since she received said amount to the date of the presentation of the complaint; and that the action of the plaintiffs has already prescribed in accordance with the provisions of article 1955 of the Civil Code and section 38 of the Code of Civil Procedure.

Counsel for Maria de la Consolaci6n de Inchausti, in turn, set up a special defense similar to that of Clotilde, and alleged that Ramon Martinez Viademonte, son of Isabel Gonzalez, died in the city of Manila on January 1, 1905, without leaving any heirs, and bequeathed by will to his brother Rafael C. de Inchatusti, father of this defendant, all of his property, with the exception of some property of little importance which he had bequeathed to others; but denied that any part of his (Ramon Martinez Viademonte's) property has ever been bequeathed to the children of said Rafael C. de Inchatusti; that, on the death of said Ramon Martinez de Viademonte, his will was duly allowed to probate in the Court of First Instance of Manila, and all his remaining property delivered to Rafael C. de Inchausti with the court's approval; that the only part of Ramon Martinez Viademonte's property received by

her father Rafael C. de Inchausti was a small piece of land situated in Santa Ana and known by the name of Hacienda de Lamayan; that the title of Rafael C. de Inchausti to said land was registered by virtue of a decree of the Court of Land Registration, in accordance with the provisions of the Land Registration Act; that said land was in turn inherited by this defendant from her father upon the death of the latter, and that she appears in the registry of property as owner of the same; that, upon the allowance of said will in the Court of First Instance of this city, the plaintiffs did not present any claim to the commissioners appointed to appraise the property, and that the period allowed for the presentation of such claims expired on October 20, 1914, and that, therefore, the action now filed by the plaintiffs has prescribed, in accordance with the provisions of section 695 of the Code of Civil Procedure. In similar terms, counsel for Joaquin C. de Inchausti worded his defense in a written answer as amended under date of September 19, 1916.

Counsel for Maria de la Consolacion Rico y Medina in her personal capacity and as a widow of Rafael Inchausti and also as guardian of her son Jose Rafael de Inchausti y Rico, in his answer to the foregoing complaint, admits that Ramon Martinez and Isabel Gonzalez Ferrer, both now deceased, were in their lifetime husband and wife, and were survived by a child named Ramon Martinez Viademonte y Gonzalez, but denied that the said Rosa Matilde was a daughter of that marriage or of any of the said spouses; he also admits that the deceased Ramon Martinez Viademonte, Jr., died in this city on January 1, 1905, without leaving any forced heir, and by a will dated May 16, 1900, he left to his maternal brother Rafael C. de Inchausti, husband of this defendant, all his property with the exception of some small legacies, denying at the same time that any portion of the inheritance of said Ramon Viademonte, Jr., had been left to the children of the defendant's husband; that Isabel Gonzalez Ferrer, the mother of her husband, who died on December 13, 1886, executed a will on April 29 of the said year, wherein she declared that she had a son with her first husband Ramon Martinez Viademonte, and the name of said son was also Ramon, and that with her second husband Jose Joaquin de Inchausti, she had three children, and she instituted the said four children as the sole and universal heirs to the remainder of her property in equal parts, her property being the one half of the conjugal property had during her marriage with her second husband Inchausti who had survived her; that no portion of the inheritance from the deceased Isabel Gonzalez y Ferrer was adjudicated to the mother of the plaintiffs; that the deceased Rafael C. de Inchausti inherited from the said Ramon Martinez Viademonte, Jr., a parcel of land known by the name of Hacienda de Lamayan, registered in the name of the deceased Rafael de Inchausti, which property was, in turn, inherited by the defendant Maria Consolacion de Inchausti de Ortigas. As a special defense, she alleged that in the said will wherein the testatrix Isabel Gonzalez named her sole and universal heirs, Rosa Matilde, the mother of the plaintiffs, was not designated as heiress or legatee, but, on the contrary, was omitted therefrom; that from the death of the testatrix Isabel, on December 12, 1886, up to the time of the filing of this complaint, neither Rosa Matilde nor the plaintiffs presented any claim whatsoever against the omission of Rosa Matilde from the will of said Isabel Gonzalez, for the plaintiffs could have availed themselves of any right which Rosa Matilde could have had in the property inherited by the defendant and her son Jose Rafael de Inchausti, derived from the estate of Isabel Gonzalez; that the period fixed by law for contesting the will of Isabel Gonzalez on the ground of the prejudicial omission therefrom of Rosa Matilde expired long before the date on which this complaint was filed, and consequently, said action has prescribed; that, after the death of Ramon Viademonte, Jr., in February, 1905, probate proceedings were had in the Court of First Instance of Manila, whereby the will of the deceased was proved and allowed, an administrator of the decedent's estate was appointed, and on July 21 of said year the commissioners to appraise the estate of the deceased were appointed, and after the lapse of the period fixed for allowing claims against the estate, the property of the deceased was adjudicated to his heir Rafael C. de Inchausti and to the legatees, the plaintiffs not having presented to the commissioners any claim against the estate of Ramon Viademonte, Jr.; that the action against the estate of said deceased has thus prescribed by the lapse of the period for its presentation; that, after the death of Rafael C. de Inchausti, on October 5, 1913, probate proceedings were had regarding his will in the Court

of First Instance of this city, an executor was appointed as well as the commissioners to appraise the estate, and the period within which claims against the estate might be received has expired, and the plaintiffs have not presented any claim whatsoever against the estate of said Rafael C. de Inchausti; and finally, she alleged that the period fixed by law for presenting claims against the estate of said Rafael C. de Inchausti expired long before the date of the filing of this complaint, and consequently, the action to assert such a claim has already prescribed, and that therefore the defendant should be absolved from the complaint with the costs against the plaintiffs.

Counsel for the plaintiffs, in his written reply amending his replies of September 20 and 21, 1916, denied generally and specifically each and all of the new facts alleged in the answers of the defendants, and added that the will of Isabel Gonzalez, dated October 12, 1886, is null and void, inasmuch as Rosa Viademonte Gonzalez was omitted therein, without any legal cause for disinheriting her, she being a daughter of said Isabel Gonzalez and having equal rights as her other children; that the defendants are estopped from denying that the surname of Rosa Matilde is really Viademonte y Gonzalez and that said Rosa Matilde was a daughter of Isabel Gonzalez with Ramon Martinez Viademonte; that the plaintiffs are legitimate children of said Rosa Matilde with Benigno Ferrer inasmuch as both their predecessors in interest as well as the present defendants have previously made declarations and formal affirmations, written and oral, recognizing that the surname of Rosa Matilde was Viademonte y Gonzalez, that the same was a legitimate daughter of Isabel Gonzalez and Ramon Martinez Viademonte, and that the plaintiffs are legitimate children of Rosa Viademonte y Gonzalez with Benigno Ferrer.

The trial having been held and the evidence of both parties adduced, the trial judge, on February 12, 1917, rendered a judgment declaring that the plaintiffs receive nothing in this action and pay the costs. To this decision the plaintiffs excepted and moved for a new trial, which motion was denied by order of the court on the 27th day of the same month and year. An exception was taken to the order denying the motion for a new trial, and the corresponding bill of exceptions was presented, approved, certified, and forwarded to the office of the clerk of this court.

The parties are agreed as regards the allegations that the plaintiffs Rafael J. Ferrer and Maria Angelina Ferrer are children of the deceased Rosa Matilde Viademonte, although the defendants deny that they (plaintiffs) were legitimate children of their mother contrary to the affirmation of the plaintiffs to this effect. The evidence of record concerning this point is of such a character that it is difficult to deduce therefrom a certain and definite conclusion, because, while it appears that Rosa Matilde Viademonte has, on various occasions, stated that she was unmarried and never contracted a marriage, she has made entirely different statements on other occasions. In the proceedings (Exhibit 8) instituted by the said Rosa Matilde against Rafael C. de Inchausti, it was disclosed that she had never been married and that if her children with Benigno Ferrer were baptized as legitimate children, it was so done in order to conceal her dishonor, such statement being found in a document drawn in 1892 and signed by her (Exhibit 8, pp. 3—1). On page 159 of the records of the said proceedings (Exhibit 8) it appears that said Rosa Matilde stated under oath before a judge, on January 21, 1893, that she had never married, and the same declaration was made by her on April 15th of the same year in another case. (Exhibit 7, pp. 17-26.)

In a document found on page 166 of said Exhibit 8, executed in 1890, Rosa Matilde stated that she was a widow; but, in a document executed in 1893, found on page 257 of Exhibit 8, and in a document (Exhibit 1, page 136 of the first document executed in 1894) she made the statement that she was unmarried. Rosa Matilde might have made these contradictions due perhaps to her extreme poverty, which had prompted her to tell a lie before the courts of justice, with the sole purpose of recovering the amount claimed by her as her legacy, while, on the other hand, it is undeniable that she could not duly justify the marriage contracted by her with Benigno Ferrer.

Even if the plaintiffs be considered as legitimate children of Rosa Matilde Viademonte in her marriage with Benigno Ferrer, still this action filed by them will not prosper, inasmuch as the evidence adduced at the trial to

prove the origin of the cause of action referred to shows, in a manner which leaves no room for doubt, that Rosa Matilde was not a legitimate daughter of Isabel Gonzalez, and it follows that her children as well as her privies have no right to a part of the hereditary property of said Isabel Gonzalez.

Counsel for plaintiffs pretend to establish that Rosa Matilde Viademonte had been treated and considered as a daughter by Isabel Gonzalez, and as a sister by the children of the latter; that, on one occasion, said Gonzalez remarked that the father of Rosa Matilde was Ramon Martinez de Viademonte; that Joaquin C. de Inchausti dedicated a picture to Rosa Matilde in the following manner: "To my dear and unforgettable sister Rosa." (Exhibit G) ; that when Rosa Matilde entered the College de la Compania de Jesus, her name as recorded in the registry of that college was Rosa Matilde Viademonte, and her expenses were defrayed by Rafael de Inchausti, and in the same registry said Rafael de Inchausti appears as brother of Rosa; that when Rosa entered the Colegio de Santa Isabel, she used the same name and surname; that Ramon Martinez de Viademonte, Jr., presented Rosa Matilde as his sister, saying that the father of the same was also his father named Ramon Martinez de Viademonte, while Rosa Matilde has always been known by the same name and surname during" the time she was studying in the Colegio de Luisa Odan de Virgi; that Clotilde de Inchausti called Rosa Matilde her sister in her letters to Rafael Ripol, and that Joaquin Jose de Inchausti himself in the codicil of his testament (Exhibit F, p. 120), designates Rosa Matilde with the surname of Viademonte.

From all the evidence adduced, the slightest indication cannot be inferred that Rosa Matilde was born during the marriage of Ramon Martinez de Viademonte, Sr., with Isabel Gonzalez or within the 300 days after the dissolution of their marriage by the death of the husband (art. Ill, Civil Code), nor has the said Ramon Martinez de Viademonte, Sr., in his lifetime recognized said Rosa Matilde as his daughter. If Rosa Matilde is a legitimate daughter of Isabel Gonzalez, it follows that she was also a daughter of Isabel's husband, Ramon Martinez de Viademonte, under the assumption that she was born in the marriage of both or at a time prior or subsequent to that of the celebration of the marriage, as fixed by law. (Arte. 119, 120 121 and 122 of the Civil Code.)

Legitimate filiation presupposes the existence of marriage contracted by the presumed parents in accordance with law, and therefore a person can not be declared to be a legitimate daughter of her mother, without presuming at the same time that she was born in the marriage of this mother with the presumed father, who, in his lifetime, and without his consent, could not have been considered as father of a child that was not conceived by his own wife, because the mere fact of having used his surname after his death, without his assent or consent, does not constitute a proof of filiation of paternity.

In this decision it is to be determined whether Rosa Matilde was born in the lifetime of Ramon Martinez de Viademonte to decide on the truth of the assertion made by the plaintiffs that their predecessor in interest was a legitimate daughter of the said spouses Viademonte and Gonzalez.

At the trial the death certificate of Ramon Martinez de Viademonte, first husband of Isabel Gonzalez, was not presented in evidence; but it is uncontroverted that he died on September 30, 1836, as corroborated by the accountant of the naval division of Puerto Galera in charge of the Lieutenant of the Spanish Navy, Jose Atienza, saying that the Lieutenant, who had the rank of captain in the navy, Ramon Viademonte, died on September 30, 1836, as appears in the list of officers found in the payroll under his custody, having paid till the date of the death of said Viademonte all his salaries corresponding to him as such officer, and further saying that, by request of the widow of the deceased, he issued the proper certificate on December 31, 1836.

So certain is the death of said Ramon Martinez de Viademonte that his widow Isabel Gonzalez, on January 3, 1837, applied to the Government for a pension sufficient to cover her widowhood expenses, alleging that she was a widow with children of the deceased. The application was made in a paper stamped as of the years 1836 and

1837, a fact which proves the authenticity of the document written in a stamped paper, and the presentation of said application by the widow demonstrates the fact that her husband really died, wherefore she asked for a pension, because she would have been held responsible if, in truth and in fact, her husband had been living and not dead as she claimed.

The said documents, as constituting a supplementary proof of the death of the deceased Ramon Martinez de Viademonte, appear to be corroborated by an entry in a notebook belonging to Ramon Viademonte, Jr. (Exhibit 4, p. 10), wherein it is stated that his mother was married in 1833 to Ramon Martinez de Viademonte, who died on September 30, 1836, at the age of 33 years, being then a major in the naval division assigned at Puerto Galera, Mindoro.

Notwithstanding the fact that the death certificate of said Ramon Martinez de Viademonte, first husband of Isabel Gonzalez, was not presented in evidence, still the documentary and circumstantial evidence of record, especially the fact of the marriage of his widow Isabel Gonzalez with Jose Joaquin de Inchausti, some years after the death of Viademonte, demonstrate clearly that the said Ramon Martinez de Viademonte died before that marriage or on September 30, 1836. If this be true, let us see on what day Rosa Matilde was born, and in this way it will be shown that she did not have the status of a legitimate child of those spouses, even after the dissolution of their marriage by the death of the husband.

It appears in the certificate, Exhibit 6, p. 139, that on September 1, 1852, a child three days old, born of unknown parents, was baptized in the Cathedral Church of this city, and given the name of Rosa Matilde Robles. In view of the fact that the plaintiffs have not shown that such baptismal certificate was not that of their mother Rosa Matilde, it remains proven therefore that said certificate refers to Rosa Matilde Viademonte, as the same certificate was presented as exhibit by Rafael C. de Inchausti in a case concerning the delivery of a legacy instituted against said Rosa Matilde, who, instead of denying that such a baptismal certificate referred to her, admitted that such certificate might have been hers.

On page 9 of the day-book which Ramon Martinez de Viademonte, Jr., kept during his lifetime, appears a memorandum which says: "On September 1, 1852, at seven o'clock in the evening, a child three days old, named Rosa Matilde Robles, according to the baptismal certificate issued by the acting rector Don Ramon Fernandez of the Cathedral Church of Manila, was delivered to my mother; this child was baptized by the priest Don Remigio Rodriguez with the authority of said rector, and according to the baptismal certificate, it was a child of unknown parents." This memorandum agrees with the above-mentioned baptismal certificate of Rosa Matilde Robles.

Notwithstanding the argument of counsel for the appellants, Joaquin Jose de Inchausti stated that one day he was assured by his halfbrother Ramon Martinez Viademonte that Rosa Matilde was not his sister, but that she was only a mere protegee and that her true name was Rosa Matilde Robles, and that on that occasion the said brother showed him the certificate of birth of which Exhibit 6 is a copy, which he took from the parochial church.

In view of the fact that Ramon Martinez Viademonte is now dead, the testimony of Joaquin Jose de Inchausti referring to the said deceased is admissible, for they are members of the same family, in accordance with the provisions of section 281 of Act No. 190, and consequently, the conclusion is that Rosa Matilde is the same Rosa Matilde Robles which is mentioned in Exhibit 6; and because she was born in 1852, in no manner could she be a legitimate daughter of Ramon Viademonte and Isabel Gonzalez, whose marriage was dissolved in 1836 by the death of the husband. Moreover, the witness Pilar Abarca presented by the plaintiffs testified that she had known Rosa Matilde in the Colegio de Santa Isabel, in 1863, she being then 20 years old and Rosa, 9 years. If the witness Abarca was 73 years old on the date of giving this testimony in 1916, it follows that Rosa Matilde was born in 1854, and that therefore she could not be a daughter of Ramon Martinez de Viademonte who died in 1836.

Notwithstanding the attempt of the plaintiffs to impugn the testimony of said witness, said testimony is admissible according to section 263 [283] of the Code of Civil Procedure, which provides that when part of an act, declaration, conversation, or writing is given in evidence by one party, the whole of the same subject may be inquired into by the other. It is true that the said witness was not presented to prove the date of Rosa Matilde's birth, but the fact is that the age of a child 9 years old as well as that of a youth 19 or 22 years of age can be known from the appearance of the child, and even if, in fixing the age of Rosa Matilde, a mistake has been made, said mistake could not be such as to reduce her true age by 10 years; but even then and even supposing still that Rosa Matilde was 20 years old in 1863, the fact remains that she must have been born in 1843, and so she could not have been a daughter of Ramon Martinez de Viademonte, Sr.

Juan Ferrer, another witness for the plaintiffs, testified that Benigno Ferrer and Rosa Matilde married in 1872, that Rosa Matilde must have been then between 22 and 30 years of age. It is inferred from this testimony that, if Rosa Matilde could not be over 30 years old in 1872, she could not have been born before 1842, and much less in 1836 or 1837.

The document No. 663, page 257 of Exhibit 8, appears to have been executed by Rosa Matilde in 1893, wherein she declared to the notary public before whom the document was executed that she was then 39 years of age. If she was 39 years old in 1893, she could not have been born in 1854 and much less in 1836 and 1837.

In Exhibit 1, page 135, which is a certified copy of a discharge in full executed by Rosa Matilde in 1894 in favor of Joaquin Jose de Inchausti, it is said that the maker of the deed was 40 years old, thus corroborating in a convincing manner what has been stated regarding this point in the preceding document.

In view of the objections and arguments made by counsel for the plaintiffs against the admission of the aforementioned documents, it becomes necessary to say in this connection that it is undeniable that Rosa Matilde, in executing said two documents, gave as her age those appearing therein, and that there was no reason for the belief that she told a lie and tried to conceal her true age; but, even admitting that she had made a mistake by telling that she was older or younger than she really was, such a mistake could not have given a difference of 10 years from her true age, inasmuch as she was an educated person, and it is not possible to believe that, through ignorance, she gave an age different from her true age; and, even if 10 years be added to the age given by Rosa Matilde in the documents referred to, still the fact remains that in 1894 she must have been only 50 years old and that she must have been born in 1844. It is undisputed that Rosa Matilde was born 16 years after the death of Ramon Viademonte, and therefore could not be a daughter of the latter.

Counsel for plaintiffs objected to the admission in evidence of the day-book kept by Ramon Martinez Viademonte, Jr., during his lifetime, alleging that it has not been proven that the entries in said book were made at the same time that those events occurred; that the witness who identified it did not see Ramon Martinez de Viademonte, Jr., in the act of making the said entries, and that, even if it were so, still the writing contained in the book, being a mere memorandum of an interested party, can not be admitted at the trial.

The above objection can be met and disposed of by the provisions of section 298, No. 13 of the Code of Civil Procedure, which provides that evidence may be given upon trial of monuments and inscriptions in public places as evidence of common reputation; and entries in family Bibles or other family books or charts; engravings on rings, family portraits and the like, as evidence of pedigree.

The law does not require that the entries in the said booklet be made at the same time as the occurrence of those events; hence, the written memorandum in the same is not subject to the defect attributed to it. The witness Joaquin Jose de Inchausti declared affirmatively that the memorandum under consideration has been written in the handwriting of his brother Ramon Martinez de Viademonte, whose handwriting he was familiar with, and the

testimony of this witness contains some reference to a member of the family, now dead, and concerning the family genealogy of the same.

It remains now to be decided whether Rosa Matilde Viademonte was a natural daughter of the deceased Isabel Gonzalez or was a mere protegee cared for and maintained in the house of said Isabel Gonzalez, and, if, in the first case, the plaintiffs have the right to succeed ab intestato to a part of the inheritance of Isabel Gonzalez in representation of their mother Rosa Matilde Viademante or Robles.

The record does not furnish satisfactory proof that Rosa Matilde was a daughter or at least a natural daughter of Isabel Gonzalez; on the other hand, it is shown in the records of the case that she was a protegee in the house of said Isabel, for, in a conciliation proceeding had on April 15, 1893, between Rosa Matilde and Joaquin F. de Inchausti, it appears in the record thereof that, although in some of the documents presented to justify the accounts, Rosa Matilde called Rafael de Inchausti her brother, this manner of calling him was due to the intimacy in which both have been brought up from childhood in the same house, she being a mere protegee of the latter's parents, and not because they were really brother and sister.

This statement made by Inchausti in the presence of Rosa Matilde Viademonte did not bring about a protest or objection on the part of Rosa Matilde herself or her attorney. In addition to this fact, Rafael C. de Inchausti stated under oath that it is not true that Rosa Matilde Viademonte was his maternal sister.

Rosa Viademonte herself, in a document dated June 15, 1894 (Exhibit 1, page 135), made the statement that Jose Joaquin de Inchausti, who, together with his wife, cared for her since her early childhood, bequeathed to her, by virtue of a codicil executed before a notary public on January 12, 1889, a legacy amounting to P4,000. The contents of this document constitute a most convincing proof that Rosa Matilde was not a daughter of Isabel Gonzalez, but only a protegee of hers and of her husband Jose Joaquin de Inchausti.

Ramon Viademonte, Jr., while yet living, told his brother Joaquin J. de Inchausti (record, p. 85), that Rosa Matilde was not their sister but only a protegee of their parents, whose name was Rosa Matilde Robles. It is thus fully proven in the records of the case that Rosa Matilde, the mother of the plaintiffs, was not a daughter of Isabel Gonzalez.

Even supposing that Rosa Matilde was in fact a natural child of the deceased Isabel Gonzalez, because the records show that it was impossible that she was a legitimate daughter of the latter, still it cannot be disputed that the said Rosa Matilde could not inherit from her supposed natural mother, Isabel Gonzalez.

It is a positive fact admitted by the plaintiffs that Isabel Gonzalez died in 1886 (record, p. 325) or some years before the Civil Code became operative in these Islands, and therefore, the hereditary rights of the successors of the said deceased should be determined in accordance with the prior laws or the Law of Toro, which provides, among other things, that natural children have no right to succeed to their natural mother when, on her death, the latter leaves legitimate children, as in the present case, and for this reason it is useless to inquire as to whether Rosa Viademonte or Robles was a natural or even an acknowledged natural child of Isabel Gonzalez.

Rule 1 of the transitory provisions of the Civil Code invoked by the appellants provides as follows: "Rights arising under the legislation prior to this code, out of matters carried out under its rules, shall be governed by said prior legislation, even if the code should regulate them in another manner, or does not recognize the same. But if said right is declared for the first time in this code, it shall be effective at once, even when the act which gave rise thereto may have taken place under the prior legislation, provided it does not prejudice other acquired rights having the same

When Isabel Gonzalez died on December 12, 1886, or some time before the Civil Code became effective in these

Islands, she was survived by four children, the eldest being Ramon Viademonte had with her first husband, and the other three, had with her second husband Jose Joaquin de Inchausti, are Clotilde, Rafael, and Joaquin. On her death, the right to succeed her was transmitted by operation of law to her legitimate and legitimated children, and for this reason, even supposing that Rosa Matilde was a natural child of Isabel Gonzalez, she could not claim any right to the inheritance of her supposed natural mother, inasmuch as against her right there exist the rights acquired by the four legitimate and legitimated children of said Isabel Gonzalez, which rights can not be injured or prejudiced in accordance with the conclusive provision of the aforementioned Rule 1 of the transitory provisions of the Civil Code.

Besides, the records show that the action brought by the plaintiffs has already prescribed, because section 38 of the Code of Civil Procedure provides that the rights of action which have already accrued, with the exception of the two cases mentioned in the same section, among which the present case is not included, must be vindicated by the commencement of an action or proceeding to enforce the same within ten years after Act No. 190 came into effect, and, as this Act became operative in 1901, it is evident that the action instituted against the estate of Isabel Gonzalez has already prescribed.

The plaintiffs, by their complaint, do not only seek the partition of the estate of the deceased Isabel Gonzalez, but also and principally to recover the part of the inheritance corresponding to their mother Rosa Matilde in her succession to the said deceased, so that the discussion during the proceedings referred mainly to the question as to whether the plaintiffs were descendants of an heiress to the said deceased, and if so, whether they had a right derived from their mother to a part of the estate of Isabel Gonzalez. This action must be brought within ten years. He who brings an action for the partition or division of hereditary estates or property in common is supposed to be a coheir and to have an undisputed right to tjia property claimed or to be a coowner of the same property possessed in common. He who claims a right to a part of an inheritance of a deceased person, and who alleges that he is a relative of the latter and has a right of testate or intestate succession thereto, has for his principal object the recognition of his right to the inheritance claimed by him and the delivery to him of his share as fixed by law.

Before concluding this decision, it must be stated that, on page 21 of the brief signed by Vicente Sotto as the plaintiffs' attorney, and after the first five lines thereof, the following statement appears: "It is also established that Rosa Viademonte was born of Isabel Gonzalez in the year 1852, that is, during the widowhood of the latter."

Counsel for the defendants, with reason, qualify as false, this affirmation made by the counsel for the plaintiffs to the effect that the judge has established the fact that, Rosa Viademonte was born of Isabel Gonzalez, when such affirmation does not appear in any part of the decision rendered by the said judge.

This court can not look with indifference on any attempt to alter or falsify, for certain purposes, the facts or their important details in the extracts or references that have to be made in proceedings or records brought before it. All the records in a proceeding should contain and reflect the truth in such a way that all who intervene in it may have absolute confidence that the course and procedure of a trial are under the vigilance and inspection of the court.

It is unprofessional and worthy of the highest form of rebuke for a lawyer to attribute to a judge a statement which he has not made in his decision, and in view of the fact that Vicente Sotto has already been disbarred from the exercise of his profession by resolution of this court, it is deemed unnecessary to determine what punishment shall be adopted for said act, which in his case, should be imposed upon him as a lawyer.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment should be, as it hereby is, affirmed and the defendants absolved from the complaint, with the costs against the appellants. So ordered.

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

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