

FRANCISCO D. LUNSOD ET AL., PLAINTIFFS AND APPELLANTS, VS. SINFOROSO ORTEGA ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 14904. September 19, 1921*

Ponente: ARAULLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-14904/>**ARAULLO, J.:**

On June 3, 1915, Rufma Medel, widow, resident of the municipality of San Pablo, Province of Laguna, in a public document executed and acknowledged on the same day before Felix Esconde, notary public for and in said municipality, sold to Francisco Lunsod, husband of Gabina Peyamonte, for the sum of P2,000 and with the right to repurchase for two years, three parcels of land planted with coconut trees, situated in the barrio of Sta. Catalina of said municipality, described in said document and in the complaint to which reference is hereafter made, it being a condition of the sale that the vendor could not exercise the right to repurchase until after the expiration of said two years from the date of the document and that two-thirds of the fruits produced by said land would belong to the purchaser and one-third to the vendor, as compensation for the work of cleaning and taking care of the parcels of land during said period.

On September 19, 1916, Francisco Lunsod filed in the justice of the peace court of San Pablo a complaint against Sinforoso Ortega and Candido Cariaga, the case being docketed there as civil case No. 861. In said complaint the description of the parcels in question was given and the plaintiff alleged that he was the owner of the three parcels of land mentioned in the aforementioned document and that on or about June 4, 1916, he was illegally, and by means of strategy and stealth, turned out of the possession thereof by Sinforoso Ortega and Candido Cariaga, who have been collecting the fruits, thereby injuring him in the sum of P150. The plaintiff, therefore, prayed that judgment be rendered against the defendants, ordering them to deliver the possession to the plaintiff, and compelling them to pay to the plaintiff the sum of P150, the value of the coconuts taken and the damages occasioned to the latter, and further, that a writ of preliminary injunction be issued enjoining the defendants from continuing to perform acts of possession upon the land and from gathering the fruits.

The defendants having answered the complaint, judgment was rendered on October 26, 1916, by the justice of the peace court in favor of the plaintiff, sentencing Sinforoso Ortega to restore the possession of the property in question to the plaintiff and to pay the sum of P150, as damages sustained by the latter, with the costs. The case was dismissed as to the defendant Cariaga. From this judgment an appeal was taken to the Court of First Instance by the defendant Ortega. In the Court of First Instance an incidental question was raised by the plaintiff concerning the irregularity and insufficiency of the bond filed by the defendant for the purposes of the appeal and it was asked that the appeal be declared improperly taken and dismissed. This motion was overruled in said court and due exception was taken by the plaintiff, who thereupon reproduced his complaint in said court against the defendant Sinforoso Ortega only, but without the allegation that he was the owner of said parcels, it being only alleged that prior to the month of June, 1916, he was in the quiet and peaceful possession and enjoyment thereof, and, in addition to what was alleged in his complaint in the justice of the peace court, that the defendant Sinforoso Ortega had used force and intimidation in turning him out of said possession and that until said day, March 9,

1917, said defendant illegally detained said parcels. The plaintiff prayed that the injunction mentioned in his previous complaint be issued against the defendant, that he be sentenced to restore the possession of said three parcels to the plaintiff, and to pay the sum of P150 as damages and whatever other damages may have been suffered by him from the month of September, 1916, the date of the filing of the complaint, until the final disposition of the case, and the costs.

In answer to said complaint, the defendant Ortega denied generally and specifically each and every allegation thereof, and alleged, as a special defense, that he was in possession of said parcels because he was, together with his sister Francisca Ortega, a pro indiviso owner thereof, and that his possession was not obtained illegally, nor by the means mentioned in the complaint. The defendant, therefore, prayed that he be absolved from the complaint and the injunction denied.

To this answer the plaintiff filed a reply, denying generally and specifically all the facts alleged therein, and further stating that said three parcels were his exclusive property, having acquired them by purchase from Rufina Medel, deceased, the sole and absolute owner thereof.

Said Rufina Medel having died on April 10, 1916, intestate proceedings, docketed as case No. 2218, were instituted in the same Court of First Instance of Laguna by Cipriano Medel, brother of said deceased, for the appointment of an administrator of the property left by her, and Cipriano Medel himself was appointed administrator. An inventory of the property of said deceased having been submitted on October 31, 1916, in which the three parcels of land in question were included, with the statement that they had been sold to Francisco Lunsod with the right to repurchase for the sum of P12,000, Sinforoso Ortega and Francisca Ortega appeared in said proceedings and filed a motion asking that said parcels be excluded from the inventory on the ground that said parcels were their exclusive property and were then in their exclusive possession, having inherited the same from their first cousin, Anacleto Ortega, who died in the municipality of San Pablo on or about June 8, 1903. This petition was opposed by said administrator and denied by the court on November 25, 1916, reserving to Sinforoso Ortega and Francisca Ortega the right to institute the proper action against the administrator of the property, on the ground that the question as to the ownership of those parcels could not be raised in said proceedings.

By virtue of said resolution, Sinforoso Ortega and Francisca Ortega filed, on the same day that the order was issued, a complaint in the Court of First Instance, which was afterwards amended and docketed as case No. 2286, against said administrator of the estate of Rufina Medel, deceased, and Francisco Lunsod, the plaintiff in the case for unlawful entry and detainer. It was there alleged that through inheritance from their deceased father Mariano Ortega and their niece Anacleto Ortega, deceased, they, Sinforoso Ortega and Francisca Ortega, were the absolute owners thereof, and had been in possession of said parcels in question; that the defendants, by common accord, without any legal right, in an attempt to dispossess them of said parcels, had decided to molest and interrupt them in the possession and enjoyment thereof. In support of this claim it was alleged that Francisco Lunsod had presented a criminal complaint against them for theft of coconuts in the justice of the peace court of San Pablo, which was dismissed, as appeared from the certified copy attached to the complaint as a part thereof, and Cipriano Medel had included said parcels of land in the inventory submitted by him, as administrator of the estate of said deceased in the intestate proceeding No. 2218, and both had filed numberless charges against them for theft of coconuts—all this in addition to the other acts performed by said defendants which restricted the rights of the plaintiffs as owners of said property from the death of Rufina Medel on April 10, 1916, who, during her lifetime, had only the usufruct of said parcels. The plaintiffs pray: (1) That said parcels be excluded by said administrator of the estate from the inventory; (2) that they, the plaintiffs, be declared the sole owners of said parcels and the improvements thereon; (3) that a preliminary injunction be issued and that it be made absolute, enjoining the defendants, their agents or representatives from disturbing the plaintiffs in their possession and the exercise of

their rights as owners, which they had been exercising upon said parcels, and from intervening in the gathering of the fruits thereof.

The prayer for the preliminary injunction was denied on the ground that the question whether or not the death of Runna Medel gave an end to the usufruct and possession of said parcels, which apparently were in the possession of the intestate estate, as they were included in said inventory, would have to be finally determined in the very case initiated by said complaint; and a demurrer to the complaint having been presented by the defendants and overruled by the court, the defendants answered the complaint, denying generally and specifically all the facts alleged therein, and alleging as special defense, besides those stated as grounds of the demurrer, that one of them, Cipriano Medel, and his sister, Jacoba Medel, acquired said three parcels of land by inheritance from their deceased sister Rufina Medel, the same being a property belonging to the intestate estate of said deceased, the record of which was made an integral part of the answer; that therefore it was against the law and improper to sue the administrator of said estate before the debts were paid and the liquidation and adjudication effected by the court; that said deceased was at any event the sole heir in the direct line of her deceased daughter Anacleta Ortega, the latter having died before her mother while still young and long after her father Estanislao Ortega; that there was no will, and as Rufina Medel left neither legitimate descendants nor ascendants, nor acknowledged or legitimated children, her brother and sister who survived her, the defendant Cipriano Medel and the latter's sister Jacoba, succeeded her directly, in all her obligations, rights and choses in action affecting said three parcels of land, according to said intestate proceeding No. 2218, and that Rufina Medel, together with her predecessors and heirs, had been exercising the absolute right of ownership over said parcels and had been possessing them as owners quietly and peacefully, without any interruption, for many years until July 4, 1916, when they were usurped by the plaintiffs. As a counterclaim the defendants also alleged that Eufina Medel in her lifetime, to wit, on June 3, 1915, sold said three parcels and others with right of repurchase to one of them, the defendant Francisco Lunsod, for the sum of P2,000, as appears in a public instrument, also made a part of the answer, and that on the same date said Francisco Lunsod took possession thereof, having been in the quiet and peaceful possession and enjoyment of the same until the plaintiffs by means of force, strategy and fraud, illegally deprived them of said possession, said plaintiffs having been since then gathering the fruits of the lands, notwithstanding the protest and demands made by said Lunsod, who by reason of said detention had suffered damages in the sum of P1,140, the value of the coconuts gathered. Said defendants therefore prayed that they be absolved from the complaint and that the deceased Rufina Medel be declared to be the sole owner of said three parcels of land, as the sole intestate heir of her deceased daughter Anacleta Ortega and successor of the latter in all her rights and obligations and that Cipriano Medel and his sister Jacoba were equally intestate heirs with respect to the properties left by the deceased Rufina and that the acts and contracts executed by the latter should be considered subsisting; and, finally, that the plaintiffs be sentenced to return said three parcels to the defendant Francisco Lunsod and to pay P1,440, as damages caused said defendant, plus the sum of P90, as the value of the crop for every two months until said restitution is effected, and that, if the plaintiffs should not pay said sum to the defendant Lunsod, they be ordered, pending the trial and until final judgment, to deposit said crop as the average product for every two succeeding months.

In answer to said counterclaim, the plaintiffs denied all the allegations thereof, setting up as a special defense that the sale of the lands in question with the right to repurchase, made by Rufina Medel in favor of Francisco Lunsod, was absolutely null and void because the vendor was not the true and exclusive owner of said parcels of land at the time of said sale, for which reason it did not have any effect, and the plaintiffs asked that they be absolved from the counterclaim.

After the institution of intestate proceedings for the settlement of the estate of the deceased Rufina Medel, to wit, on November 6, 1916, which was one and one-half month after the filing by Francisco Lunsod of the complaint

for unlawful detainer and six days after the inventory of the properties left by said deceased had been made and submitted, the administrator of the estate, Cipriano Medel, and his sister Jacoba presented, in the same Court of First Instance of Laguna an application, which was later amended, for the registration in their name, in accordance with the Land Registration Act, of said three parcels with the improvements thereon, described in the plans attached thereto. In said application it was alleged that they acquired the absolute[^] title thereto through inheritance from their deceased sister Rufina Medel, and that said parcels were occupied since the year 1915 by Francisco Lunsod to whom they had been sold with the right to repurchase by their sister Rufina. The applicants finally invoked the benefits of chapter 6 of Act No. 926, on the ground that they had been in continuous, open and peaceful possession of the land for more than 21 years including that of their predecessors in interest.

The application, which was docketed as case No. 219, was opposed on the one hand by Francisco Lunsod, and on the other, by Sinforoso Ortega and Francisca Ortega. The first named person alleged that, the period for the repurchase of said parcels, stipulated in the document of June 3, 1915, having already expired, without any of those believing themselves entitled thereto having made use of the right of redemption, he was the sole and exclusive owner thereof. The last two named persons, in turn, claimed that they were the absolute owners and were in possession thereof, having acquired them by inheritance from their deceased father Mariano Ortega and their deceased niece Anacleta Ortega.

The three civil suits respectively mentioned, to wit, case No. 2322, for unlawful entry and detainer, case No. 2286, for the recovery of title, and exclusion of the land from the inventory of the intestate estate of the deceased Rufina Medel and the issuance of a preliminary injunction against the defendants, and finally case No. 219, that is to say, the proceedings instituted by Cipriano Medel and his sister Jacoba Medel for the registration of said three parcels, were jointly tried, by common consent of the parties; and it was agreed between the parties that the evidence introduced in case No. 2286, should be considered as evidence in the other two cases. After said trial the Court of First Instance of Laguna rendered judgment as follows: In case No. 219, which is the land registration case, it was declared that Cipriano and Jacoba Medel had no right to a decree of registration and the application was therefore dismissed, with costs. In the other two civil cases, Nos. 2286 and 2322, it was held that the three parcels of land in question belonged to Sinforoso Ortega and Francisca Ortega, and it was therefore ordered that the defeated party should pay the costs and that said three parcels should be excluded from the inventory submitted by Cipriano Medel, administrator of the estate of the deceased Rufina Medel in civil case No. 2218, the intestate proceeding. To this judgment the plaintiff Francisco Lunsod and the administrator of the intestate estate, Cipriano Medel, and his sister Jacoba Medel excepted, and filed a motion for new trial, which was denied with their exception, and took an appeal by the proper bill of exceptions, which was transmitted to this court.

In their brief the appellants assign various errors to the judgment of the trial court. Some of these errors refer to the allowance of the appeal from the judgment rendered by the justice of the peace court, notwithstanding the alleged irregularity of the bond filed; to the consequent lack of jurisdiction of the Court of First Instance to take cognizance of the case on account thereof and for the reason that an original complaint asking for the issuance of a preliminary injunction as to said three parcels had been filed, although said complaint had no connection with any other case pending before said court; and lastly, to the overruling by said court of the demurrer to said complaint presented by the defendants-appellants. The other errors relate to the merits of the case.

The defendant Ortega was not sentenced by the justice of the peace in the case for unlawful entry and detainer to pay any sum as rent in arrears of the land or as the reasonable value of the use and occupation of the same, for the judgment did not fix any amount, and the bond filed by him was in the sum of P500, (not P150, for this was merely the amount which the defendant was sentenced to pay as damages, and which was, by order of the court dated September 27, 1917, substituted by P500), to answer for damages and costs, not with only one surety, as

claimed by the appellants, but with two sureties. Therefore said bond was in accordance with the provisions of section 88 of the Code of Civil Procedure, as amended by Acts Nos. 1776 and 2588; and the defendant is not obliged, in order to secure a stay of the execution of said judgment, to make any monthly payment, as required by Act No. 2588, for the reason that there was in the judgment no order for the payment of rent in arrears nor for any amount for the use and occupation of said parcels. The result is that the appeal interposed by the defendant against said judgment was properly admitted and the Court of First Instance acquired jurisdiction to take cognizance of said case.

It is not true that the complaint filed by Sinforoso and Francisca Ortega against Francisco Lunsod and Cipriano Medel, administrator of the intestate estate of the deceased Rufina Medel, docketed in the Court of First Instance as case No. 2286, had for its sole object the issuance of a writ of preliminary injunction against said defendants, prohibiting them from performing acts of ownership and possession upon said parcels. Neither is it true that said complaint is not related to any other original action instituted in said court, for in the same complaint, as already stated, allegations were made relative to the title of the plaintiffs to said parcels and to the acts performed by the defendants violative of plaintiffs' right over said parcels and of their possession, use and enjoyment thereof; and by virtue of these allegations, it was prayed not only that the plaintiffs be declared the only owners of said parcels with the improvements thereon, as though the proper action to recover title were instituted, but also that said parcels be excluded and stricken out from the inventory presented in the intestate proceedings for the settlement of the estate of said deceased, and, lastly, that said writ of preliminary injunction be issued. It is, therefore, evident that there is no force in the arguments advanced by the appellants to show that the trial court committed errors Nos. 4 and 5, assigned in their brief, in taking cognizance of said action in spite of its lack of jurisdiction, and in overruling the demurrer to the complaint on the ground that the facts therein stated did not constitute a cause of action.

Neither does the claim or allegation, made by the appellants, of another action pending, justify the filing of said demurrer for two reasons: First, in case No. 2322, instituted by Francisco Lunsod against Sinforoso Ortega and Candido Cariaga in the justice of the peace court, the only question in issue was as to the actual possession of said three parcels of land, and, although in said case for unlawful entry and detainer judgment was rendered by said court in favor of the plaintiff, from which appeal was taken by the defendant Ortega, said judgment, according to the positive provisions of section 87 of the Code of Civil Procedure and the repeated doctrines of this Court, construing said section, is no obstacle to the institution by the same parties in the Court of First Instance of another action respecting the title to said real property, nor is it conclusive evidence, in another case between the same parties, of the facts established therein. Second, with respect to the petition of the plaintiffs Ortega in case No. 2286, for the recovery of title, and exclusion of said parcels from the inventory of the intestate estate of the deceased Rufina Medel, on the ground that the same belong to them in fee simple and they are entitled to the possession thereof, since the court held in said intestate proceedings that the question of title to said property was a matter of another action, for it was not proper to raise it in said proceedings, and the administrator of the intestate estate did not appeal from said decision, said ruling became final. Besides, in said motion the defendant Francisco Lunsod and Jacoba Medel were not parties in said petition while they were parties defendant, together with Cipriano Medel, in the case for recovery of title No. 2286. Furthermore, it is an established doctrine of this court that the mere fact that one of the parties is the executor or administrator of the estate of a deceased person does not confer upon the probate court, in which the proceedings for the distribution and settlement of said estate are pending, exclusive jurisdiction to decide all questions that may arise between said executor or administrator and third persons as to the title to a specific property (*Bauermann vs. Casas*, 10 Phil., 386), which doctrine the trial court undoubtedly had in mind in reserving to the plaintiffs in said proceedings the right to institute the proper action against the administrator of the intestate estate with respect to the ownership of said property.

Lastly, neither could the demurrer be sustained on the ground that the plaintiffs had no capacity to bring such action docketed as case No. 2286, for the recovery of title, because a plaintiff lacks capacity to sue in two cases, to wit, when he does not have the necessary qualifications to appear at the trial, or when he does not have the character or representation he claims; and, in the present case, it does not appear from the complaint that the plaintiffs were not in the full exercise of their civil rights, nor was it necessary that they should first have proved their character as heirs of their deceased father Mariano Ortega and their deceased niece Anacleto Ortega, for, it having been alleged that they were absolute owners of the parcels in question by inheritance from them, this should be, as in fact it was, a matter to be proved at the trial. If it should be accepted that for this reason the plaintiffs had no capacity to institute the action, it necessarily follows that the defendants Cipriano Medel and Jacoba Medel would also lack the capacity to exercise, as they did in their answer to said complaint, their right as owners of said parcels by inheritance from their deceased sister Rufina Medel, or the right to ask for the registration of said parcels in the registry of property in their name because of their character as such heirs, as they did in the application docketed as case No. 219, which was presented when the proceedings relating to the administration of the intestate estate of the same deceased were not yet terminated, the inventory of the respective properties was not yet approved, and no declaration had as yet been made in favor of said defendants.

The questions raised by the parties in the three cases aforesaid by their respective allegations reduced themselves to one the resolution of which will determine the appeal interposed by the defendants. This question relates to the title to the three parcels which were sold with the right to repurchase by Rufina Medel to Francisco Lunsod in the document of June 3, 1915.

Considering the documents in connection with the testimony of the appellees Ortega, Prudencio Baldovino and Aguedo Reyes, it appears from the evidence beyond question: (1) That upon the death of Mariano Ortega, resident of the municipality of San Pablo, Province of Laguna, which took place about 27 years ago, he left three children, named Sinforoso, Francisca and Estanislao Ortega; (2) that Estanislao Ortega was married on May 8, 1895, to Rufina Medel and died on September 26, 1902, leaving a daughter born of said marriage, named Anacleto Ortega, who also died on June 17, 1903, at the age of six years, she and Estanislao Ortega having been survived by said Rufina Medel, who died on April 10, 1916.

The plaintiff Sinforoso Ortega presented two witnesses, Prudencio Baldovino and Aguedo Reyes, who are residents of the same municipality of San Pablo, 65 years old, and well informed about the three parcels of land in question, situated in the barrio of Sta. Catalina of said municipality, because the first, for about forty years or more, and the second, since he could remember, had possessed lands in the same place besides the latter being an adjoining owner of the third parcel. From their testimony it also appears that the person whom they first saw in possession of said three parcels, cleaning and sowing and planting palay and coconut trees upon them was, according to one of them, Mariano Ortega, father of Sinforoso Ortega, Francisca Ortega and Estanislao Ortega, said possession having been quiet and peaceful; that upon the death of Mariano Ortega, he was succeeded in the possession of said parcels by the three brothers, children of said deceased, named Sinforoso, Francisca and Estanislao Ortega, who used to help their father in the cultivation of the land and continued to cultivate it, as was seen by the same witnesses; that upon the death of Estanislao Ortega, husband of Rufina Medel, the latter and her brother and sister-in-law Sinforoso and Francisca, respectively, that is to say, the appellees in this case, continued in possession, aiding one another, according to Sinforoso Ortega, in the cultivation of the land, and dividing the fruits collected therefrom between them; that upon the death of Rufina Medel on April 10, 1916, said Sinforoso and Francisca Ortega, and no other, took, or continued in, possession, according to the second of said witnesses, Aguedo Reyes, one of the appellees, Sinforoso Ortega being at present, that is to say, at the time the witness was testifying, in possession of the land, although in the month of October, 1916, Rufina Medel being already dead, Catalino Alaguilan Segundo collected the coconuts by order, according to them, of Francisco Lunsod, that is, the

plaintiff in the case for unlawful entry and detainer, No. 2322, but after that event Sinforoso Ortega continued in possession. The same witnesses Baldovino and Reyes described the different parcels in their declarations, the first having described the boundaries of each of the three parcels and stated the number of trees planted on them, and the second having given the boundaries of the second parcel about which he was examined, and also stated the number of coconut trees planted thereon, as well as the fact that Mariano Ortega had a house on said parcel, which was between the other two parcels; and, finally, the first, who had been cabeza de barangay and lieutenant of the barrio of Sta. Catalina, as well as the second who, as aforesaid, possessed lands in that barrio, testified that they did not know that the Medel family had any land in the same barrio, the last named witness stating that the lands of the Medel family were in the barrio of San Lorenzo, near that of Sta. Catalina.

Lastly, the attorney for the plaintiffs and appellees Ortega having stated that he still had two witnesses, named Basilia Balcita, adjoining owner of the third parcel on the west, and Pantaleon Esconde on the north, and another witness Cirilo Escaba, adjoining owner of the first parcel on the west, who would testify to the same effect as the witness Aguedo Reyes, the attorney for the appellants accepted their testimony without objection.

On the other hand, from the evidence offered by the defendants it appears, according to Francisco Lunsod, that he was in possession of said three parcels since June, 1915, the date of the deed of sale executed by Rufina Medel in his favor, to which reference was made in the beginning of this decision, as shown by his having ordered the collection of the fruits every two months by his overseer, who was

Cipriano Medel; that his watchman on said lands was Ca-talino Alaguilan Segundo; that he held said possession until June, 1916, when the land was taken by Sinforoso Ortega who prohibited his overseer (Lunsod's) from collecting the fruits on the ground that the property belonged to him (Ortega) ; that by reason thereof he filed a complaint in the justice of the peace court for theft, which was dismissed, and another for forcible entry and detainer; that he collected fruits six times a year, sometimes personally and sometimes through his overseer, although he could not exactly say how many times he had been on the land; that he also placed Rufina Medel herself in charge of that work in her lifetime, she having been succeeded in the possession by her brother Cipriano; that he knew Rufina Medel to be the true owner of said parcels, because in the real estate tax declarations, Exhibits 2, 3, and 4, presented by her in the municipality of San Pablo for the purposes of the payment of the taxes, and introduced at the trial, he saw the name of said Rufina Medel, the witness identifying the receipt Exhibit 5, also presented by said defendants, dated May 31, 1917, issued in favor of the same Rufina Medel and evidencing the payment of the land taxes of 5 parcels of land, two of which, according to the same document, are situated in said barrio of Sta. Catalina.

Cipriano Medel, testifying as witness, declared that he knew that Francisco Lunsod had property in the barrio of Sta. Catalina because he (Lunsod) had purchased such property in the year 1915 from his sister Rufina Medel, who before that year was in possession thereof; that the parcel in the sitio of Ma-ancel in said barrio was bought by his parents (the witness') from Mariano Ortega, but he did not then remember the boundaries thereof nor could he say how many coconut trees there were on the land because he had not seen them; that the other parcel in the sitio of Duhat was bought by Rufina Medel from one Julio Bajalaldia, deceased, but the witness does not remember when because Rufina Medel told him only that she had bought that land; that the other parcel in the sitio of Lac-dawen had not been bought by Rufina Medel from anybody; that the sitio of Ma-ancel is in the barrio of Sta. Catalina and that the other parcel is in the sitio of Catmon; that since 1915, when said lands were conveyed to Francisco Lunsod by Rufina Medel the former took possession thereof, but in the year 1916, Sinforoso Ortega seized (so says the witness) the possession thereof from the former, prohibiting Lunsod from collecting the coconuts on the land and from interfering in any way with them on the ground that he, Ortega, was its owner.

Francisco Baldonado, another witness for the defendants, 28 years old and laborer by occupation, also stated that

he knew that Lunsod had a coconut grove in the barrio of Sta. Catalina, because he had been several times upon said land since 1915 and had bought coconuts from the overseer, named Cipriano Medel, about four times, and thrice from Lunsod himself, although it is true that the third time, which took place in the first days of June, 1916, the purchase was not carried into effect because Sinforoso Ortega suspended the collection of the fruits, telling them that if they should not do so they would settle the matter by force. The witness also declared that he did not remember the boundaries of the land on which the gathering of the fruits was suspended, nor the number of coconut trees or fruits that were in the land, and that when the event occurred Francisco Lunsod was not present.

The parties stipulated that Mateo Ticson would declare in the same terms as the preceding witness.

Catalino Alaguilan Segundo, a laborer 50 years old, also testifying for the defendants, stated that he knew that Francisco Lunsod had three parcels of land in said barrio of Sta. Catalina, municipality of San Pablo, one in the sitio of Lacdawen, another in Ma-ancel, and the third in Catmon, of which parcels he was the owner and possessor since 1915 by acquisition from Rufina Medel, who in turn acquired the land in the sitio of Lacdawen from her father-in-law Mariano Ortega as dowry when she married, that in the sitio of Ma-ancel by inheritance from her mother (that of Rufina Medel), and that in the sitio of Catmon, the boundaries of which were mentioned, but not the respective cardinal points, by purchase from Julio Bajalaldia about twenty years ago, said Medel being then newly married, this fact being also known to the witness because he had been working with them and Medel had requested him to gather the coconuts in order to pay to Bajalaldia the price of the said parcel, and he himself, who was then a laborer working for Rufina Medel, personally delivered the price to the vendor, the first delivery being for P20 and the second for P15, without any receipt having been given by Bajalaldia for he stated that he did not know how to write; that from the time of the possession of Rufina Medel he himself took care of said land and gathered the coconuts thereon, and since 1915 Francisco Lunsod put him in charge thereof ordering him to gather the fruits which he had done six times; that the parcel in Lacdawen was, during the lifetime of Mariano Ortega, in the latter's possession and they gathered the fruits thereof; that from the very first time that he knew the parcel in Ma-ancel he saw Rufina Medel and her husband in possession thereof, the witness also naming the boundaries but not the respective cardinal points; that the owner of the parcel in Lacdawen was the father of Sinforoso Ortega and the person taking care of the three parcels on the date on which he testified was the same Sinforoso Ortega since June, 1916, when he seized the lands from Francisco Lunsod; and finally that he, the witness, as the overseer or watchman of Lunsod, had a share of one-fifth in the fruits gathered on said parcels and was interested in securing the possession of the land for Lunsod.

The evidence adduced by both parties being considered, we arrive at the conclusion that there is no reason why we should not give credit to the testimony of the witnesses for the plaintiffs, relative to the statements in

the documents presented by them, with respect to the relationship between said plaintiffs Sinforoso Ortega and Francisca Ortega and the deceased Mariano Ortega, Estanislao Ortega and his daughter, Anacleta Ortega, born of the marriage with Rufina Medel, who also died at a tender age, one year after her father Estanislao, as well as with respect to the quiet, peaceful, and uninterrupted possession which they enjoyed since about thirty years ago of the three parcels in question, first, through Mariano Ortega and later, upon his death, through his children Sinforoso, Francisca and Estanislao, and upon the latter's death through Rufina Medel, mother of Anacleta Ortega, together with her brother and sister-in-law Sinforoso and Francisca, respectively, which possession was, upon the death of Anacleta, held by said three persons until June 3, 1915, when the mother of the latter, Rufina Medel, sold said three parcels to Francisco Lunsod with the right to repurchase. Said witnesses, two of whom are 65 years of age and adjoining owners with respect to said lands, had shown complete knowledge of those facts and explained the reasons why they respectively knew what they had testified to.

On the other hand, while it is true that from the testimony given by the witnesses for the defendants it appears that

they had attempted to prove the sole and exclusive title of Rufina Medel to said three parcels and her possession thereof as owner when she sold them on said date, June 3, 1915, to Francisco Lunsod, said witnesses tracing said possession to an origin different from that claimed by the plaintiffs, yet the following facts must be observed in analyzing said declarations:

(1) Francisco Lunsod himself did not know from whom Rufina Medel acquired said parcels. He knew that she owned them only from the real estate tax declaration presented by her in the municipality of San Pablo for the purposes of taxation and by the real estate tax receipts issued to her on May 31, 1917, on which date she was already dead, and in which receipt the two parcels situated in the barrio of Sta. Catalina, municipality of San Pablo, are only vaguely and generally mentioned. These documents, as may be seen, are not and cannot be considered as evidence of title, as has repeatedly been held by this court in similar cases. Besides, it must also be remembered that in 1915 said lands had been placed in the assessment list in her own name by Rufina Medel after the death of her daughter Anacleto Ortega, who was the owner thereof, as heir of her deceased father Estanislao Ortega, when, according to the testimony of the witnesses for the plaintiffs, she and the plaintiffs, her brother and sister-in-law, were in joint possession of said real property. This fact also explains why Rufina Medel in June of said year was able to effect the sale of those three parcels, with the right to repurchase, in favor of Francisco Lunsod as if she were the lawful and exclusive owner thereof, although with the condition inserted in the corresponding document that she, the vendor, would take care and clean said parcels in consideration of a third part of the coconuts that might be gathered during the term of the repurchase, a circumstance which may have caused the Ortega brothers, who participated with her in the possession thereof, not to note that she had conveyed said parcels with pacto de retro to said Lunsod.

(2) Rufina Medel being in charge of the cleaning and watching of said parcels at said compensation it is strange that Cipriano Medel should also be the overseer of Lunsod, as stated by the latter, and this is particularly so, because said Cipriano Medel in his testimony was not asked by the attorney for the defendants on this point and did not make any statement whatever about it; on the other hand it is not strange that Catalino Alaguilan Segundo should have declared that he was the watchman of Lunsod and furthermore, that he participated to the extent of one-fifth of the fruits collected on said parcels, for the reason that said person, according to his testimony, had been working for Rufina Medel and had taken care of said parcels and gathered the fruits thereon since the time of Eufina Medel; the result, therefore, is that, although it may be true that Rufina Medel on June 3, 1915, had sold the lands with pacto de retro to Francisco Lunsod, as appears from the document already mentioned, the testimony of said Alaguilan Segundo does not prove that the plaintiffs were not, jointly with Rufina Medel, in possession of said parcels on the date when, according to Francisco Lunsod, he was turned out of said possession by Sinforoso Ortega and this is the more so when it is considered that, according to Lunsod himself, the person who gathered the coconuts on said parcels was his representative, Cipriano Medel, and his watchman Alaguilan Segundo, he (Lunsod) having gone to the land only a few times, which he could not exactly determine, and that he also left that work to Rufina Medel during her lifetime. It is thus seen quite clearly why the plaintiffs Sinforoso and Francisca Ortega were completely ignorant of the fact that Rufina Medel had sold said parcels to Francisco Lunsod, and were unable to know that said Lunsod claimed to be in possession of said lands.

(3) Cipriano Medel did not remember the boundaries of the parcel in Ma-ancel and could not state how many coconut trees there were on it, because he had not seen it although he stated that that parcel was purchased from Mariano Ortega by his parents and sisters Jacoba and Rufina Medel; and as he must have known everything relative to the three parcels for, according to him and his sister Jacoba, they inherited them from their other sister, now deceased, Rufina Medel, he mentioned a parcel in the sitio of Duhat as The parcel bought by her from Julio Bajalaldia, about which parcel nothing was said by the other witness Catalino Alaguilan Segundo or appears in the record, said Alaguilan Segundo having, in turn, stated that what was purchased by Rufina Medel from Julio

Bajalaldia was the parcel in the sitio of Catmon. The result is that as these two witnesses contradict themselves upon this point nothing certain is proved as to the acquisition of said parcels; and said Alaguilan Segundo being, according to his own statement, the overseer of said parcel of Rufina Medel since the latter was married and prior to the year 1915, he having succeeded Francisco Lunsod, and having about twenty years ago, as laborer of Rufina Medel, taken to Julio Bajalaldia the payment of the price of the parcel in Catmon and having, furthermore, as overseer and watchman of Lunsod with a right to a share of one-fifth of the fruits, collected six times, as stated by him, the fruit of the coconut trees planted thereon, it is at the same time strange that he was the owner of the lands adjoining the parcels in Catmon and Lacdawen about which he has been examined, not having been asked with respect to the boundaries and owners of the properties adjoining the land at Ma-ancel.

(4) The same parcel in the sitio of Ma-ancel was, according to Alaguilan Segundo, acquired by Rufina Medel from her mother through inheritance, which is contrary to the testimony of Cipriano Medel, who testified, as already stated, that said parcel was purchased by her parents from Mariano Ortega; and said Alaguilan Segundo has also said that Rufina Medel acquired the parcel in Lacdawen from her father-in-law Mariano Ortega as dowry when she married, while Cipriano Medel only stated that that parcel was not purchased by Rufina Medel from anybody but did not state how she acquired it, notwithstanding that he and his sister Jacoba claimed that they acquired the ownership thereof by inheritance from their deceased sister Rufina. (5) Francisco Baldonado being a laborer, as stated by him, it is likewise strange that he had four times purchased coconuts, gathered on said parcels, from the overseer Cipriano Medel, and twice from Lunsod himself, that is, six times in all, as if he were a merchant or business man. It is also doubtful that said witness was present when Sinforoso Ortega suspended the operation of the collection of the fruits on the first days of June, 1916, threatening to wound those who were engaged in that work, because he did not remember the boundaries of the land as to which said suspension was ordered or the number of coconuts gathered or that of the coconut trees planted upon the land, and, on the other hand, Cipriano Medel himself in his testimony did not state anything about his having sold at any time the coconuts gathered on said lands, as overseer of Francisco Lunsod, nor about Sinforoso Ortega having threatened to injure those who were engaged in the gathering of the fruits; said witness only stated that in 1916 Ortega seized said parcels from Lunsod, prohibited the latter from gathering the coconuts on the land or from interfering with them on the ground that he (Ortega) was their owner, which statement indicates that Lunsod was present when said prohibition was made, and this is aside from the fact that what has been stated by Alaguilan Segundo clearly leads to the inference that he, and not Cipriano Medel, was the person who, as overseer and watchman of the land of Lunsod, for he was entitled to a share of one-fifth of the fruits, gathered the coconuts by order of Lunsod himself, an operation which, according to him, was effected about six times, which must be the same occasions referred to by the witness Baldonado when, according to him, he bought coconuts from Cipriano Medel, for according to Lunsod himself he had gathered fruits six times a year and that year was from June, 1915, when he bought the parcels from Rufina Medel, to June, 1916, when, according to the complaint, he was disturbed in the possession thereof. Alaguilan Segundo also did not state that when Sinforoso Ortega seized said parcels in June, 1916, from Lunsod, he threatened to attack with his bolo those who were gathering the fruits, nor did he testify that they were then engaged in that task.

What has been said constitutes sufficient ground for not giving any credence to the allegation of the defendants and appellants and the testimony of their witnesses that said defendants owned and possessed the parcels in question.

Upon the same ground it can also be held that the trial court did not err in finding that the weight of the evidence markedly preponderates in favor of the theory that the lands in question passed, through inheritance, upon the death of Mariano Ortega, father of Sinforoso, Francisca and Es-tanislao Ortega, to the last named person who, with his wife Rufina Medel, took possession thereof, and that, therefore, said couple having had a daughter named

Anacleto Ortega, who inherited said three parcels upon the death of her father; upon the death of said daughter on June 17, 1903, said three parcels of land passed by inheritance to her mother Rufina Medel. To this it must also be added that it is likewise proven that Rufina Medel continued in possession of said parcels jointly with the brother and sister of her deceased husband, who are uncle and aunt, respectively, of her deceased daughter Anacleto, and who are the appellees Sinforoso Ortega and Francisca Ortega, and that she was in such joint possession on June 3, 1915, when she sold said parcels with pacto de retro to Francisco Lunsod who, notwithstanding said sale, was not in possession thereof in June, 1916, the date when, according to him he was turned out of said possession by Sinforoso Ortega, by reason of which facts we cannot hold that the acts indicative of that possession and testified to by Lunsod himself and his witnesses and the witnesses of the other plaintiffs and appellees were duly proven.

Now, according to article 811 of the Civil Code an ascendant who inherits from a descendant any property acquired by the latter gratuitously from some other ascendant, or from a brother or sister is obliged to reserve such property as he may have acquired by operation of law in favor of the relatives within the third degree belonging to the line from which such property came. In the decision rendered in the case of Edroso vs. Sablan and Sablan (25 Phil., 295), in which the former, as heir of her son, asked for the registration of certain property classified as reservable, the application having been opposed by two legitimate uncles

in their capacity as heirs of their nephew entitled to the reservable property, and in which it was at the same time asked that, in case the application be granted, the reservable character of the property in their favor be noted, this court, speaking through the illustrious Chief Justice, Cayetano S. Arellano, now deceased, laid down the following:

"ESTATES ; DUTY OF ASCENDANT, WHO INHERITS THROUGH A DESCENDANT, TO RESERVE THE PROPERTY IN ACCORDANCE WITH LAW; ARTICLE 811, Civil Code.—Property which an ascendant inherits by operation of law from his descendant and which was inherited by the latter from another ascendant of his, must be reserved by the ascendant heir in favor of uncles of the descendant from whom the inheritance proceeded, who are his father's brothers,¹ because they are relatives within the third degree, if they belong to the line whence the property proceeded according to the provisions of article 811 of the Civil Code."

In the case at bar, Rufma Medel inherited by operation of law from her daughter Anacleto Ortega, who died at the age of six years, the three parcels of land in question situated in the barrio of Sta. Catalina in the municipality of San Pablo, Province of Laguna, which parcels had been acquired by said Anacleto Ortega gratuitously, that is to say, also by inheritance from an ascendant, who was her father Es-tanislao Ortega, and said three parcels having come from Mariano Ortega, father of the deceased Estanislao Ortega and the appellees Sinforoso and Francisca Ortega, who are therefore relatives within the third degree of the child Anacleto Ortega, daughter of Estanislao Ortega, then according to the provisions of said article 811, these pieces of land constitute reservable property in favor of said Sinforoso and Francisca Ortega, uncle and aunt of the descendant's predecessor in interest with respect to the property.

With respect to the rights and obligations of the person obliged to reserve in connection with the reservable property mentioned in the same article, the discussion made by this court in the same decision is quite clear and explicit, to wit:

"It must be remembered that absolute title consists of the rights to use, enjoy, dispose of, and recover. The person who has in himself all these rights has the absolute or complete ownership of the thing; otherwise, the person who has the rights to use and enjoy will have the usufruct, and the person who has the rights of disposal and recovery the direct title. The person who by law, act, or contract is granted the right of usufruct has the first two rights of using and enjoying, and then he is said not to have the fee simple—that is, the rights of disposal and recovery, which pertain to another who, after the usufruct expires, will come into full ownership.

"The question set up in the first assignment of error of the appellant's brief is this:

" 'What are the rights in the property of the person who holds it subject to the reservation of article 811 of the Civil Code?'

"There are not lacking writers who say, only those of a usufructuary, the ultimate title belonging to the persons in whose favor the reservation is made. If that were so, the person holding the property could not apply for registration of title, but the person in whose favor it must be reserved, with the former's consent. This opinion does not seem to be admissible, although it appears to be supported by decisions of the supreme court of Spain of May 21, 1861, and June 18, 1880, prior to the Civil Code, and of June 22, 1895, somewhat subsequent to the enforcement thereof.

"Another writer says: 'This opinion only looks at two salient points—the usufruct and the fee simple; the remaining features of the arrangement are not perceived, but become obscured in the presence of that deceptive emphasis which only brings out two things: that the person holding the property will enjoy it and that he must keep what he enjoys for other persons.' (Manresa, VII, 189.)

"In another place he says: 'We do not believe that the third opinion can now be maintained—that is, that the surviving spouse (the person obligated by article 968 to make the reservation) can be regarded as a mere usufructuary and the descendants immediately as the owner; such theory has no serious foundation in the Code.' (Ibid., 238.)

"The ascendant who inherits from a descendant, whether by the latter's wish or by operation of law, acquires the inheritance by virtue of a title perfectly transferring absolute ownership. All the attributes of the right of ownership belong to him exclusively—use, enjoyment, disposal, and recovery. This absolute ownership, which is inherent in the hereditary title, is not altered in the least, if there be no relatives within the third degree in the line whence the property proceeds or they die before the ascendant heir who is the possessor and absolute owner of the property. If there should be relatives within the third degree who belong to the line whence the property proceeded, then a limitation to that absolute ownership would arise. The nature and scope of this limitation must be determined with exactness in order not to vitiate rights that the law wishes to be effective. The opinion which makes this limitation consist in reducing the ascendant heir to the condition of a mere usufructuary, depriving him of the right of disposal and recovery, does not seem to have any support in the law, as it does not have, according to the opinion that has been expressed in speaking of the rights of the father or mother who has married again. There is a marked difference between the case where a man's wish institutes two persons as his heirs, one as usufructuary and the other as owner of his property, and the case of the ascendant in article 811 or of the father or mother in article 968. In the first case, there is not the slightest doubt that the title to the hereditary property resides in the hereditary owner and only he can dispose of and recover it, while the usufructuary can in no way perform any act of disposal of the hereditary property (except that he may dispose of the right of usufruct in accordance with the provisions of article 480 of the Civil Code), or any act of recovery thereof except the limited one in the form prescribed in article 486 of the Code itself, because he totally lacks the fee simple. But the ascendant who holds the property required by article 811 to be reserved, and the father or mother required by article 968 to reserve the right, can dispose of the property they inherit itself, the former from his descendant and the latter from his or her child in first marriage, and recover it from anyone who may unjustly detain it, while the persons in whose favor the right is required to be reserved in either case cannot perform any act whatsoever of disposal or of recovery.

"Article 975 states explicitly that the father or mother required by article 968 to reserve the right may dispose of the property itself:

" 'Alienation of the property required by law to be reserved which may be made by the surviving spouse after contracting a second marriage shall be valid only if at his or her death no legitimate children or descendants of the first marriage survive, without prejudice to the provisions of the Mortgage Law.'

"It thus appears that the alienation is valid, although not altogether effective, but under a condition subsequent, to wit: 'If at his or her death no legitimate children or descendants of the first marriage survive.'

"If the title did not reside in the person holding the property to be reserved, his alienation thereof would necessarily be null and void, as executed without a right to do so and without a right which he could transmit to the acquirer. The law says that the alienation subsists (to subsist is to continue to exist) 'without prejudice to the provisions of the Mortgage Law.' Article 109 of this Law says:

" 'The possessor of property subject to conditions subsequent that are still pending may mortgage or alienate it, provided always that he preserve the right of the parties interested in said conditions by expressly reserving that right in the registration.'

"In such case, the child or legitimate descendant of the first marriage in whose favor the right is reserved cannot impugn the validity of the alienation so long as the condition subsequent is pending, that is, so long as the remarried spouse who must reserve the right is alive, because it might easily happen that the person who must reserve the right should outlive all the persons in whose favor the right is reserved and then there would be no reason for the condition subsequent that they survive him, and, the object of the law having disappeared, the right required to be reserved would disappear, and the alienation would not only be valid but also in every way absolutely effective. Consequently, the alienation is valid when the right required by law to be reserved to the children is respected; while the effects of the alienation depend upon a condition, because it will or will not become definite, it will continue to exist or cease to exist, according to circumstances. This is what the law establishes with reference to the reservation of article 968, wherein the legislator expressly directs that the surviving spouse who contracts a second marriage shall reserve to the children or descendants of the first marriage ownership. Article 811 says nothing more than that the ascendant must make the reservation.

"Manresa, with his recognized ability, summarizes the subject under the heading, 'Rights and obligations during the existence of the right required by law to be reserved, in these words:

" 'During the whole period between the constitution in legal form of the right required by law to be reserved and the extinction thereof, the relatives within the third degree, after the right that in their turn may pertain to them has been assured, have only an expectation, and therefore they do not even have the capacity to transmit that expectation to their heirs.

" 'The ascendant is in the first place a usufructuary who should use and enjoy the things according to their nature, in the manner and form already set forth in commenting upon the articles of the Code referring to use and usufruct.

" 'But since in addition to being the usufructuary he is, even though conditionally, the owner in fee simple of the property, he can dispose of it in the manner provided in articles 974 to 976 of the same Code. Doubt arose also on this point, but the Direccion General of the registries, in an opinion of June 25, 1892, declared that articles 974 and 975, which are applicable by analogy, for they refer to property reserved by law, reveal in the clearest manner the attitude of the legislator on this subject, and the relatives within the third degree ought not to be more privileged in the right reserved in article 811 than the children in the right reserved by article 975, chiefly for the reason that the right required to be reserved carries with it a condition subsequent, and the property subject to those conditions can validly be alienated in accordance with article 109 of the Mortgage Law, such alienation to continue, pending fulfillment of the condition.' (Civil Code, VI, 270.)

"Another commentator corroborates the foregoing in every way. He says:

" 'The ascendant acquires that property with a condition subsequent, to wit, whether or not there exist at the time of his death relatives within the third degree of the descendant from whom they inherit in the line whence the property proceeds. If such relatives exist, they acquire ownership of the property at the death of the ascendant. If they do not exist, the ascendant can freely dispose thereof. If this is true, since the possessor of

property subject to conditions subsequent can alienate and encumber it, the ascendant may alienate the property required by law to be reserved, but he will alienate what he has and nothing more because no one can give what does not belong to him, and the acquirer will therefore receive a limited and revocable title. The relatives within the third degree will in their turn have an expectation to the property while the ascendant lives, an expectation that cannot be transmitted to their heirs, unless these are also within the third degree. After the person who is required by law to reserve the right has died, the relatives may rescind the alienation of the realty required by law to be reserved and they will acquire it and all the rest that has the same character in complete ownership, in fee simple, because the condition and the usufruct have been terminated by the death of the usufructuary.' (Morell, Estudios sobre bienes reservables, 304, 305.)

"The conclusion is that the person required by article 811 to reserve the right has, beyond any doubt at all, the rights of use and usufruct. He has, moreover, for the reasons set forth, the legal title and dominion, although under a condition subsequent. Clearly he has, under an express provision of the law, the right to dispose of the property reserved, and to dispose of is to alienate, although under a condition. He has the right to recover it, because he is the one who possesses or should possess it and have title to it, although a limited and revocable one. In a word, the legal title and dominion, even though under a condition, reside in him while he lives. After the right required by law to be reserved has been assured, he can do anything that a genuine owner can do.

"On the other hand, the relatives within the third degree in whose favor the right is reserved cannot dispose of the property, first because it is in no way, either actually, constructively, or formally, in their possession; and, moreover, because they have no title of ownership or of fee simple which they can transmit to another, on the hypothesis that only when the person who must reserve the right should die before them will they acquire it, thus creating a fee simple, and only then will they take their place in the succession of the descendant of whom they are relatives within the third degree, that is to say, a second contingent place in said legitimate succession in the fashion of aspirants to a possible future legacy. If any of the persons in whose favor the right is reserved should, after their right has been assured in the registry, dare to dispose of even nothing more than the fee simple of the property to be reserved his act would be null and void, for, as was definitely decided in the decision on appeal of December 30, 1897, it is impossible to determine the part 'that might pertain therein to the relative at the time he exercised the right, because in view of the nature and scope of the right required by law to be reserved the extent of his right cannot be foreseen, for it may disappear by his dying before the person required to reserve it, just as it may even become absolute should that person die.'

"Careful consideration of the matter forces the conclusion that no act of disposal inter vivos of the person required by law to reserve the right can be impugned by him in whose favor it is reserved, because such person has all, absolutely all, the rights inherent in ownership, except that the legal title is burdened with a condition that the third party acquirer may ascertain from the registry in order to know that he is acquiring a title subject to a condition subsequent. In conclusion, it seems to us that only an act of disposal mortis causa in favor of persons other than relatives within the third degree of the descendant from whom he got the property to be reserved must be prohibited to him, because this alone has been the object of the law: 'To prevent persons outside a family from securing, by some special accident of life, property that would otherwise have remained therein.' (Decision of December 30, 1897.)

"Practically, even in the opinion of those who reduce the person reserving the right to the condition of a mere usufructuary, the person in whose favor it must be reserved cannot attack the alienation .that may be absolutely made of the property the law requires to be reserved, in the present case, that which the applicant has made of the two parcels of land in question to a third party, because the conditional alienation that is permitted her is equivalent to an alienation of the usufruct, which is authorized by article 480 of the Civil Code, and, practically, use and enjoyment of the property required by law to be reserved are all that the person who must reserve it has during his lifetime, and in alienating the usufruct all the usefulness of the thing would be transmitted in an incontrovertible manner. The question as to whether or not she transmits the fee simple is purely academic, sine re, for it is not real, actual and positive, as is the case of the institution of two heirs, one a

usufructuary and the other the owner, by the express wish of the predecessor in interest.

"If the person whom article 811 requires to reserve the right has all the rights inherent in ownership, he can use, enjoy, dispose of and recover it; and if, in addition to usufructuary, he is in fact and in, law the real owner and can alienate it, although under a condition. * * *"

It is, therefore, indisputable, in view of the preceding discussion made in the decision of this court just cited, that the person obliged to reserve, that is, Rufina Medel, heir of her daughter Anacleto Ortega, was not only a usufructuary but also the owner in fee simple of the three parcels of land in question, notwithstanding the fact that they have the character of reservable property in favor of Sinforoso and Francisca Ortega, relatives within the third degree of said Anacleto Ortega and belonging to the line from which such property came, and, in her capacity as such, she could have, as she did, sold with the right to repurchase on June 3, 1915, said three parcels to Francisco Lunsod; but it is also indisputable that Rufina Medel acquired these parcels subject to a resolutive condition, that is to say, her ownership of said property was subject to said condition, to wit, that there should or should not exist at the time- of her death relatives of Anacleto Ortega from whom she inherited said property, included within the third degree and belonging to the line from which said property came, by virtue of which condition said property was impressed with the reservable character, according to the provision of article 811 of the Civil Code, and therefore she could not have effected said sale without saving the rights of the persons entitled to have the property reserved to them, by securing to the latter the value thereof, according to the provisions of articles 974 and 975 of the Civil Code in connection with article 109 of the Mortgage Law and in the manner established in this article, the provisions of the first two articles being applicable by analogy to reservable property mentioned in article 811 of the Civil Code to which reference has already been made.

Rufina Medel not having complied with the provisions of said articles in effecting the sale of said parcels in favor of. Francisco Lunsod, inasmuch as the document executed for the purpose was not recorded in the registry of property, and she could not, therefore, have made in the corresponding record the express reservation of the right of Sinforoso and Francisca Ortega over said property, and said Rufina Medel not having even mentioned in said document the fact that said property was reservable, said alienation is void and can have no effect as against the persons entitled to have such property reserved, who are Sinforoso and Francisca Ortega. And Rufina Medel having died on April 10, 1916, leaving as her survivors the persons already mentioned and „, entitled to have the property reserved in their favor, and the condition attached to the title to said parcels having thus been resolved, said parcels became the absolute and exclusive property of the same persons entitled to have said property reserved as relatives within the third degree of Anacleto Ortega and belonging to the line from which said property came.

Rufina Medel not having acquired said parcels before her death in fee simple and without the limitation which characterizes them as reservable property, for the reason that Sinforoso and Francisca Ortega, who were entitled to have

such parcels reserved, survived her, it is obvious that the brother and sister of the former, Cipriano and Jacoba Medel did not, as they claim, acquire said parcels by inheritance from said deceased, and, consequently, they have no right to have said property registered in the registry of deeds in their name and the opposition to said registration presented by Francisco Lunsod in said case No. 219 is, therefore, groundless.

The three parcels referred to not being, therefore, property of the conjugal partnership of the deceased Estanislao Ortega and Rufina Medel, but the separate and exclusive property of the former, since he acquired them gratuitously from his father Mariano Ortega, the title thereof passing afterwards to their daughter Anacleto Ortega, and, upon the latter's death, to Rufina Medel by inheritance from Anacleto, with the character of reservable property in favor of Sinforoso and Francisca Ortega, who acquired the absolute title thereto by virtue of said

character, the exclusion, ordered by the court, of said property from the inventory presented by the administrator Cipriano Medel in the intestate proceedings for the settlement of the estate of Rufina Medel, case No. 2218, was proper.

With respect to the possession of said parcels claimed by Francisco Lunsod of which, he alleges, he was deprived by Sinforoso Ortega in June or July, 1916, these facts were not proved at the trial, as already stated, but, on the contrary, it was proven that Rufina Medel continued in said possession in which, in some way or another, her brother and sister-in-law, Sinforoso and Francisca Ortega, the persons entitled to have the property reserved in their favor, participated, although Rufina Medel, according to the document of June 3, 1915, had already sold said parcels to Lunsod with the right to repurchase, and therefore the remedy prayed for by the latter in his complaint in the Court of First Instance, which is a reproduction of the one previously filed in the court of the justice of the peace of

San Pablo, and docketed there as case No. 2322, is improper and groundless.

What has been said shows that the trial court did not commit errors Nos. 6, 8, and 9 assigned by the appellants in their brief; neither -did the court below commit the 7th error, for in the judgment appealed from, there are set forth the conclusions arrived at by the trial judge with respect to the points in issue and which his Honor considered proved, it being there stated, at the same time, that the preponderance of the evidence is notably in favor of the theory maintained by the appellees Sinforoso and Francisca Ortega.

For the foregoing reasons the judgment appealed from is affirmed with the addition that Sinforoso Ortega is absolved from the complaint filed against him by Francisco Lunsod on May 9, 1917, and docketed as case No. 2322, for unlawful entry and detainer; and the opposition of said Lunsod to the application of Cipriano and Jacoba Medel for registry of deeds is dismissed, and the opposition entered by Sinforoso and Francisca Ortega to said registration is sustained, with the costs of first instance as ordered in the judgment appealed from, and the costs of this instance against the appellants. So ordered.

Johnson, Street, Avancena, and Villamor, JJ., concur.

Judgment affirmed.

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