

ERIBERTO ALFORQUE, AS JUDICIAL ADMINISTRATOR OF THE ESTATE OF THE DECEASED RICARIO VELOSO, AND JUAN VELOSO, PLAINTIFFS AND APPELLEES, VS. GABINO R. VELOSO, IN HIS OWN BEHALF AND...*G.R. No. 43607. February 16, 1938*

Ponente: DIAZ, J.

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The subject matter of the litigation between the plaintiffs and the defendants consists of the properties set out and described in paragraph VII of the complaint. The plaintiffs alleged that the said properties originally belonged to the deceased Rafael Veloso, who, while living, was the husband of the now deceased Josefa Garces; that upon his death, the same passed to the latter who survived him, by way of usufruct of the widow; and that upon her death, they automatically passed to the heirs of the former, who are said to be Ricario Veloso of whose properties, since his death, the first plaintiff is the present judicial administrator, the other plaintiff named Juan Veloso, and the defendants surnamed Veloso, Suico, Gabiola and De la Cerna.

The deceased Rafael Veloso and Josefa Garces contracted marriage on January 16, 1882, having had nine children during their married life, namely, the plaintiff Juan Veloso, the deceased Ricario Veloso, Agripina Veloso, Gorgonio Veloso, Eriberta Veloso, Martina Veloso, Carmen Veloso, Gabino Roberto Veloso, and the deceased Rafael Miguel Veloso.

The record does not show the relationship between the aforesaid spouses and the defendants Flora Suico, Natividad, Osmundo, Alberto, Cecilio and Rafael Gaviola, and neither the lower court nor the complaint itself gives any idea of such relationship, if any, or of the reason for including said defendants as parties in this case.

Before the deceased Rafael Veloso and Josefa Garces contracted marriage, the former had a natural child whom he subsequently acknowledged as such, namely, the defendant named Arsenio Veloso or Arsenio de la Cerna.

Before his death which took place on October 6, 1897, Rafael Veloso executed an open will, valid under the then existing laws, wherein, for sole heirs, he instituted his aforesaid nine legitimate children had with his wife Josefa Garces, and his natural child Arsenio de la Cerna. The clause of his will thus instituting them as his heirs was as follows:

"Fifth.—He institutes as his sole and universal heirs, in equal parts, to all his present and future properties, his legitimate children named Agripina, Juan, Eriberta, Ricario, Martina, Carmen, Rafael Miguel, and Gabino Roberto, and his natural child Arsenio de la Cerna whose portion shall be taken from the third portion which can be freely disposed of by the testator and he institutes his legitimate son Gorgonio heir only to the part corresponding to him in the third of the legitime of the children who received no betterment, and he finally institutes his wife as heir to the portion of his properties corresponding to her by way of usufruct under existing law."

In a preceding clause, the will stated as follows:

"Second.—He declares being joined in lawful wedlock with Dona Josefa Garces, begotten of which marriage are children all living named Agripina, Gorgonio, Juan, Eriberta, Ricario, Martina, Carmen, Rafael Miguel, and Gabino Roberto; that his wife did not contribute anything to the marriage, and that he contributed the sum of thirty-nine thousand pesos more or less, which the testator received by way of legatee from his father Don Gabino Veloso, as shown by the corresponding schedule of his share."

When Rafael Veloso died, his children Martina, Carmen and Gabino Roberto were still minors, and his son Rafael Miguel followed him shortly thereafter. For this reason, the then widow Josefa Garces, in 1905, applied for and was granted guardianship papers over the aforesaid minors, she having been appointed their guardian. Then the properties of Rafael Veloso continued in the same state in which he left them upon his death, undivided; and it being her desire and that of the minor children of whom she was the guardian, as well as other heirs of the deceased Rafael Veloso who were at the time already of age, to divide the properties left by the latter, without judicial intervention as provided in his will, to the end that each one may keep the hereditary portion corresponding to him, they agreed to proceed to the partition of the said properties as they in fact did, executing for that purpose the deed of partition on August 20, 1906, marked in the record as Exhibit B. The said deed is of the following tenor:

"Know all men by these presents: that whereas Don Rafael Veloso died in the Municipality of Cebu in 1897 having executed a will wherein, among other things, it was prohibited to have any judicial intervention in the partition of his properties, and the said properties not having been partitioned to date among the heirs instituted in the said will,

"Now, therefore, we Josefa Garces, in her own behalf, and as legal guardian of her minor children Martina; Carmen and Gabino-Roberto, and as heir of her deceased son Rafael-Miguel; Juan Veloso in his own right and as purchaser of the hereditary shares of Arsenio Veloso and Gorgonio Veloso; Juan P. Gerardo as special attorney-in-fact of Agripina Veloso; Marcelo Regner as special attorney-in-fact of Eriberta Veloso; and Ricario Veloso in his own right, being the only heirs of Rafael Veloso, have agreed to partition extrajudicially his properties, set out in the inventory signed by all of us and attached hereto, as a part hereof, and for the purpose we have formed and approved the schedule of shares also attached to this deed as a part thereof, in order to adjudicate, as there is hereby adjudicated to each of us, the properties set out in his respective share, renouncing thereby any right which he might have over the other properties or any part thereof.

"Provided, however, that should other properties appear which are not included in the attached inventory, they shall be partitioned among the heirs in the same proportion as those now being partitioned, as shown in the schedule of shares.

"It is likewise agreed that this deed, together with the inventory and the schedule of shares, shall be kept by Mr. Marcelo Regner, who is bound to show the same to any one of the parties interested when so desired, and to each one of the said interested parties shall be given only one copy of this deed and of his respective schedule of share signed by all the others or their representatives.

"In testimony whereof, we sign the present deed in Cebu today Agust 20, 1906. Juan Veloso—Marcelo Regner—Ricario Veloso— Josefa Garces—Juan P. Gerardo, seal.

"United States of America—Philippine Islands—Province of Cebu. In the municipality of Cebu of the Province aforesaid, today, August 22, 1906, A. D., appeared personally Dona Josefa Garces, Don Juan Veloso and Don Ricario Veloso whom I personally know as the persons who executed the foregoing document and ratified the same as their free and voluntary act. D. Juan P. Gerardo exhibited to me his cedula number 1203474, issued in Cebu on February 9, 1906, Don Marcelo Regner exhibited to me his cedula number 1201405 issued in Cebu on January 2, 1906, Don Juan Veloso his cedula number 1202891 issued in Cebu on February 1, 1906, Don

Ricario Veloso his cedula number 1206343 issued in Cebu on March 20, 1906, Dona Josefa Garces not having exhibited any cedula because of exemption by reason of sex. Before me, Joaquin Hernandez. Notary Public. The appointment expires January 1, 1907.—There is a twenty-centavo stamp—There is a dry seal which states: Joaquin Hernandez Junquera, Notary Public, Cebu, Philippine Islands." (There follows the schedule of shares assigned to each one of the heirs.)

The share corresponding to Josefa Garces under the aforesaid agreement of partition Exhibit R consisted of the properties set out in paragraph VII of the complaint, and the value thereof, at the then market price, was P10,924.

The shares corresponding to the other heirs are valued as follows:

Value of the share of Agripina Veloso 2,740.02

Value of the share of Carmen Veloso 2,740.00

Value of the share of Martina Veloso 2,740.00

Value of the share of Gabino Roberto Veloso 2,740.00

Value of the share of Juan Veloso 2,740.02

Value of the share of Ricario Veloso 2,740.02

Value of the share of Eriberta Veloso 2,740.02

Value of the share of Rafael Miguel Veloso 2,740.00

Value of the share of Gorgonio Veloso 1,862.65 and

Value of the share of Arsenio de la Cerna or Veloso 1,406.06

Josefa Garces who died in July, 1927, left a will which was duly probated in the same year, a competent court having confirmed the appointment of an executor which she made in favor of her son Gabino Veloso, who is one of those who survived her, had in her marriage with the deceased Rafael Veloso.

The executor of the deceased Josefa Garces having included in the inventory of properties which he filed with the court in the testamentary proceedings of the deceased, among other properties, those which constituted her share under the agreement of partition aforesaid, aside from those which constituted the share of Rafael Miguel Veloso, the plaintiffs commenced this action in the Court of First Instance of Cebu asking that the aforesaid properties be declared to be those of Rafael Veloso, alleging that if they ever came into the hands of Josefa Garces, as stated in the agreement of partition Exhibit R, it was only by way of usufruct of the widow; that after her death, the same automatically passed to the heirs of Rafael Veloso; and that the said properties be ordered partitioned among all the heirs, in the most equitable way possible under the law.

The plaintiffs principally base their contention on what they said to be stated in the second paragraph of the will of Rafael Veloso, already quoted in the preceding pages of this decision.

The defendants, meeting the contention of the plaintiffs, alleged in their answer, and at the trial adduced evidence to show these facts: (1) That the deceased Josefa Garces was the sole and absolute owner of the properties in question; (2) that she had been in possession thereof as such owner for more than 23 years, peacefully and openly, hence, it may be said that she had become the owner thereof by prescription; (3) that the plaintiff Juan Veloso and the deceased Ricario Veloso had expressly renounced, in favor of the deceased Josefa Garces, all their interest, participation, action, and rights which they had or might have in said properties; (4) that the plaintiff Juan Veloso and the deceased Ricario Veloso acknowledged the deceased Josefa Garces as the sole, absolute and exclusive

owner of the properties in question, and they at all times respected all her rights as such owner; (5) that the land situated in Cogon, El Teatro Street, with the house constructed thereon, both valued at P3,000, the land being now known as lots Nos. 678 and 679-A of the cadastre of Cebu, plus the portion measuring 0.303 of the other parcel called Pampango, situated on P. Burgos Street, valued at P2,424, now known as lot No. 7532 of the aforesaid cadastre of Cebu, which constituted a part of the share corresponding to the aforesaid deceased, were adjudicated to her as her exclusive property in the cadastral case covering the said properties, there having been issued in her name certificates of title Nos. 2893, 713 and 14954; (6) that the right which the plaintiffs might have, if any, over the properties in question, has prescribed; and (7) that the defendant Gorgonio Veloso has no more interest, participation, or right over the said properties, for having sold and conveyed what he had or might have therein to the defendants Martina Veloso, Carmen Veloso and Gabino Veloso.

The lower court decided the case in favor of the plaintiffs, ordering the defendants to convey to each one of them 25/126 part of the questioned properties, that is, those described in paragraph VII of the amended complaint, with notice that if, within sixty days, they do not agree as to the best means of effecting such conveyance, it would appoint three commissioners to make the partition.

The defendants appealed from the decision of the lower court and now contend in their brief that:

"1. The lower court erred in permitting the plaintiff Juan Veloso, as witness, to testify on questions of fact which took place before the death of Dona Josefa Garces over the repeated and timely objections of the appellants.

"2. The lower court also erred in sustaining the contention of the plaintiffs that the properties, including the one in question, which were partitioned on August 20, 1906, between Dona Josefa Garces and the heirs of Don Rafael Veloso were not conjugal properties of the spouses Don Rafael Veloso and Dona Josefa Garces, but the private properties of the former.

"3. The lower court also erred in holding that it was the intention of the heirs of the deceased Don Rafael Veloso to adjudicate to Dona Josefa Garces the properties set out in her schedule of share by way of usufruct only and not in full ownership.

"4. The lower court erred, moreover, in holding that the agreement of partition Exhibit R, in so far as it adjudicated to Doña Josefa Garces the properties described in her schedule of share Exhibit S in full ownership, is not legal and binding.

"5. The lower court erred in not holding that the plaintiffs have expressly renounced in favor of Doña Josefa Garces all their rights, interest, participation and action over the properties in litigation.

"6. The lower court erred in not holding that Doña Josefa Garces, from the time the properties described in her schedule of share have been adjudicated to her, was considered the sole, absolute and exclusive owner thereof having them under her adverse possession, and she was so treated and considered by his children, including Juan Veloso and Ricario Veloso.

"7. The lower court also erred in not holding that Doña Josefa Garces acquired the questioned properties by prescription.

"8. The same court erred in not holding that the action of the plaintiffs has completely prescribed.

"9. The lower court also erred in not holding that lot No. 678 of the Cebu cadastre belonged to the deceased Doña Josefa Garces.

"10. The lower court also erred in giving judgment to the plaintiffs.

"11. The lower court erred in stating in its order approving the bill of exceptions, that the defendants and

appellants were notified of the decision on April 4 or 5, 1934.

"12. The lower court erred in denying the motion for new trial of the defendants-appellants."

Although the plaintiffs do not clearly say so, there is no doubt that their object is to ask for the rescission of the agreement of partition referred to in their complaint, in the execution of which took part, as interested parties, the second plaintiff (Juan Veloso) and his deceased brother Ricario Veloso, both being forced heirs of Rafael Veloso; for while the said agreement remains unrescinded, its effect would be that what was adjudicated to each of the signatories thereof, inasmuch as everyone so agreed, became his exclusive property, especially when immediately thereafter each one took charge of what pertained to him and held and administered it as owner until the commencement of this action. Ownership is acquired by occupation, and the same as well as other rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, by delivery as a result of certain contracts, and by prescription. (Articles 609, 1058, 1068, Civil Code.)

It should be noted that from the execution of the agreement of partition, which was on August 20, 1906 until October 15, 1930, when the original complaint was filed. 24 years, 1 month, and 25 days have gone by, a time more than sufficient to lose by prescription a right of the nature of that which, without saying so, the plaintiffs pretend to exercise. The action for rescission of a partition on the ground of lesion exceeding the fourth part, may only be brought within four years from the time of its making. (Arts. 1074 and 1076, Civil Code; Garcia vs. Tolentino, 25 Phil., 102; Africa vs. Africa, 42 Phil., 902.)

And even considering that the action brought by the plaintiffs is one for recovery and not one for rescission, their contention based on the proposition that Josefa Garces should not be considered as having ever become the owner in fee simple of the questioned properties, because her possession thereof was only by way of the widow's usufruct, appears to be as unfounded as that based on the proposition that the agreement of partition should be rescinded, because the evidence shows that since Josefa Garces received the questioned properties in 1906, under the aforesaid Agreement, until the year 1927 when she died, she possessed and administered the same as her exclusive properties, not only openly and continuously and against the whole world, but with the acquiescence and full conformity of the plaintiffs themselves and of the other interested parties; all without exception took her as the exclusive owner of the said properties. The law provides that whatever may be the manner of occupancy of real property by one who claims it as his own, if said occupancy is in the concept of owner and is, moreover, open, adverse and continuous for a period of ten years, the same constitutes sufficient title for the occupant (sec. 41, Act No. 190); and to this should be added the circumstance that the plaintiff Juan Veloso and Ricario Veloso when the latter was still living, purchased from Josefa Garces many years after the agreement of partition, the first, lot No. 679-B which forms a part of parcel 5 of her so-called schedule of share, and the latter, a portion of the parcel marked as No. 6 in said schedule of share, both knowing that they were properties which were adjudicated to her under the aforesaid agreement. (Exhibits 7 and 9.)

If the plaintiffs have any right to claim as their own all or a part of the properties in question, the law gave them the peremptory period of ten years only within which to do so. Instead of making any move within the said period, they waited until more than twenty-four years have gone by. The law provides that "An action for recovery of title to, or possession of, real property, or an interest therein, can only be brought within ten years after the cause of such action accrues." (Sec. 40, Act No. 190.)

The plaintiffs' inactivity was due to their knowledge of the fact that the agreement of partition, to which they would now give a meaning which it does not have and never did have, as they knew in executing it that it would serve to put an end to the state of indivision in which the properties of the deceased Rafael Veloso were left after his death until 1906, finally adjudicated to each and all of those who executed and signed it the full ownership of

the respective portions corresponding to them in the partition. It was so understood by the lower court itself, hence, this holding in its decision: "According to the terms of the deed of partition, therefore, the mass of the inheritance was distributed among the heirs in full ownership and not in usufruct to anyone." (Exhibit X.) The plaintiffs, like the other signatories to the agreement, then had legal capacity to execute it and to bind themselves to comply with all its conditions; and they were not unaware that Josefa Garces was entitled to be paid her widow's share and to claim, in addition, one-half of the conjugal properties. The very will of Rafael Veloso, from which the plaintiffs draw their deduction that she did not contribute anything to the marriage, says nothing on this point but the fact that the sum of P39,000 was the contribution of the said deceased thereto, nor does it say that the questioned properties had not been acquired by the two during their marriage. It is to be presumed, by express legal provision (art. 1407, Civil Code), that all the properties of the spouses are conjugal, unless there is evidence that they belong exclusively to the husband or to the wife; which fact has not been established. To say that Rafael Veloso contributed the amount of P39,000 to the marriage in January, 1882, is not to assert that the questioned properties were acquired with the said money, or that he and Josefa Garces did not acquire them or could not have acquired them through their joint labor during their 15 years, of married life and association, or that the said money still existed upon his death; and on the other hand, under the law, among other properties considered conjugal are the fruits, income or interest earned or acquired during the marriage, coming from the partnership property or from those belonging exclusively to either one of the spouses (art. 1401, No. 3, Civil Code; Quintos de Ansaldo and Ansaldo vs. Sheriff of the City of Manila, 35 Off. Gaz., 1669), even supposing, if it is possible to suppose, that the questioned properties had been acquired by the fruits of the aforesaid P39,000—while the amount existed.

The heirs of Rafael Veloso, including the defendant Juan Veloso and the deceased Ricario Veloso, who could not but acknowledge the right which Josefa Garces had to the widow's share, could have satisfied this share, either by assigning to her a life annuity or the proceeds of a specific property, or by giving her a sum in cash in accordance with law; but they preferred to satisfy her in another way, by conveying to her all the questioned properties, and this is permissible and legal. (Arts. 834 and 838, Civil Code.) Commenting on article 838 of the Civil Code, Manresa says:

"We have said that article 833 only allows, as a right of the heirs, the substitution of the usufruct by another right of enjoyment, payment of income, payment of certain fruits, usufruct of a specific sum in cash. But according to the spouse a different thing may be stipulated. It is no longer a question of the right of the heirs, but of an agreement subsequent to the acquisition of the hereditary properties; an agreement under which the spouse may consent to the assignment to him of specific real or personal properties, or a sum in cash, equivalent to his right of usufruct." (6 Manresa, page 507.)

The plaintiffs' contention that the properties in question were not conveyed to Josefa Garces except by way of usufruct does not find any support in the agreement of partition. On the contrary, it is there said that all the said properties pass to her in full ownership; for to this effect is the declaration appearing therein in the following language:

"* * * we have agreed to partition extra judicially his properties, set out in the inventory signed by all of us and attached hereto, as a part hereof, and for the purpose we have formed and approved the schedule of shares also attached to this deed as a part thereof, in order to adjudicate, as there is hereby adjudicated to each of us, the properties set out in his respective schedule of share, renouncing thereby any right which he might have over the other properties or any part thereof."

In consenting to the adjudication of said properties to Josefa Garces in the manner indicated, the plaintiffs did so with full knowledge that there were grounds to act as they did and not to consider that she should have them in usufruct only while she lived. They are now precluded from questioning the adjudication thus made, because in

giving as they gave their consent to the agreement, they induced all those who took part in its execution to believe that Josefa Garces was entitled to said properties not only in payment of her share as widow with respect to some, but also, with respect to others, that they rightfully belonged to her because they constituted one-half of the conjugal properties which she had with her husband Rafael Veloso; and they also induced them to believe that the others were entitled only to the shares which had been allotted to them. This is so in view of the rule which states:

"Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he can not, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it." (Sec. 333, No. 1, Act No. 190.)

On the other hand, granting that the plaintiffs were entitled to a part of the properties in question and that the portions corresponding to them by way of share were meager and that there is now a notable disproportion between the said portions and that of Josefa Garces, it is now too late for them to raise this question, because having formally renounced all the right which they then had or might in the future have to claim something more than that adjudicated to them, aside from those which had not been partitioned, this would be tantamount to going against their own acts and going back on their own words. It should be noted that there is this renunciation in the agreement of partition:

"* * * in order to adjudicate, as there is hereby adjudicated to each of us, the properties set out in his respective share, renouncing thereby any right which he might have over the other properties or any part thereof."

The questioned properties could not have been conveyed to Josefa Garces in usufruct only, but in final payment of her right to the said usufruct and of her right of ownership of one-half of the conjugal properties, because, while not stated in the agreement, it is a fact established by the evidence that they did not give her one-half of the lands that Rafael Veloso acquired during his marriage with her. This is inferable from the following facts:

The first parcel adjudicated by way of Juan Veloso's share, situated in Gahad, town of Sibonga (40 B. E.), was purchased by Rafael Veloso, from the brothers surnamed Fiel and Montemayores, on August 18, 1893, while he was already married to Josefa Garces. (Exhibit 1.)

The last parcel adjudicated by way of Martina Veloso's share, situated in Inayanan, Pardo, Cebu (48 B. E.), was also bought by him from Modesta Pacafia on June 5, 1884, while already married to Josefa Garces. (Exhibit 2.)

The second parcel adjudicated by way of Carmen Veloso's share, situated in Banica, town of Sibonga (50 B. E.), was likewise purchased by Rafael Veloso on January 12, 1886, from some brothers surnamed Pescadero, while already married to Josefa Garces. (Exhibit 3.)

The last parcel adjudicated by way of Carmen Veloso's share, situated in the barrio of Apo, Argao, was conveyed to him on January 1, 1894 by a Chinaman named Julian Opus Real Saya, who had purchased it on April 26, 1888, from one, Gregorio Nasis, married to Anastasia Jugo. Therefore, Rafael Veloso was already married to Josefa Garces. (Exhibits 4 and 4-A.)

The land a part of which is formed by the portion equivalent to 0.303 of the lot called Pampango, P. Burgos Street, which is included in the share of Josefa Garces (11 B. E.), which is now known as lot No. 7532 of the cadastral plan of Cebu, Cebu, was adjudicated by judicial decision in cadastral case No. 9, G. L. R. O. Cad. Record No. 9465 of Cebu, in the proportion indicated in the decision, undivided, to Josefa Garces, to the deceased Ricario Veloso the judicial administrator of whom is the first plaintiff, to Martina Veloso, to Carmen Veloso, to Estefania Ch. Veloso de Osmeña, and to Gabino R. Veloso (original certificate of title No. 14934); and it does not appear that the plaintiffs have ever questioned the said decision, much less have they taken an appeal therefrom before it became final, or that they have applied for the review of the decree of registration approving it.

Wherefore, it should be held that the question, in so far as it refers to said land and to the portion thereof which was adjudicated to Josefa Garces, was already finally passed upon, and that the adjudication made in her favor (Exhibit 10), is now *res judicata*.

From the foregoing facts, it cannot but be deduced that the lands referred to in Exhibits 1, 2, 3, 4 and 4-A were the conjugal properties of the deceased spouses Rafael Veloso and Josefa Garces, and in strict law, one-half thereof belonged to the latter. But the interested parties, in order to avoid in all probability difficulties in the partition of the properties left by the deceased Rafael Veloso, agreed to convey as they did convey to Josefa Garces the properties now in question, in order that she may have them in full ownership, instead of dividing in two equal parts his and her conjugal properties, an act which, as has been stated, is allowed by law.

What has been so far set out shows that the lower court in fact committed the second, third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth errors assigned by the defendants and appellants, wherefore, it is held that, where the forced heirs of a deceased person who had executed a valid will, who concur with the surviving spouse in the partition of the properties left by him upon his death, agree formally, freely and voluntarily to partition the same among themselves, executing for the purpose a deed of partition, not delivering to said surviving spouse the one-half of the conjugal properties to which she is by law entitled, and adjudicating to her while living some of the said properties not in usufruct merely but in full ownership, and immediately thereafter and for more than twenty-four years she exercises acts of ownership over the same, publicly, peacefully, and uninterruptedly, just as the said heirs, in turn, exercise similar acts with respect to those adjudicated to them as their shares under the aforesaid deed of partition, and some of them sold to her, more than ten years thereafter, part of the said properties, they are precluded, as well as their successors in interest, from impugning the partition, or from asking the setting aside of the deed evidencing it, to the end that they may proceed to a new partition, notwithstanding the fact that the partition was not effected in strict conformity with the provisions of the will of the deceased, for the reason that the right to inherit through a will or otherwise is as renounceable as any other right.

As to the first error also attributed by the defendants to the lower court, we find no occasion to pass thereon in view of what we have just held with respect to errors 2 to 10, especially as they have not been prejudiced by the procedure followed by said court.

As to the eleventh error alleged, it suffices to state that the question raised was already considered by the court in its resolution of May 21, 1935, holding as it there held that the defendants and appellants were not formally notified of the appealed decision until April 19, 1934, and for that reason denying the petition of the plaintiffs and appellees that the appeal of the defendants be dismissed.

And as to the last error, it being merely a consequence of the questions raised in errors 2 to 10 which have already been resolved, the same cannot now be considered.

Wherefore, the appealed decision is reversed, and the defendants are absolved from the complaint of the plaintiffs and appellees, with the costs of both instances to the latter. So ordered.

Avanceña, C J., Villa-Real, Abad Santos, Imperial, Concepcion, and Laurel, JJ., concur.

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