

**SY JOC LIENG, SY YOC CHAY, SY JUI NIU AND SY CHUA NIU,
PLAINTIFFS, APPELLEES AND APPELLANTS, VS. PETRONILA
ENCARNACION, GKEGORIO SY QUIA, PEDRO SY QUIA, JUAN SY QUIA
AND GENEROS...**

G.R. No. 4718. March 19, 1910

Ponente: TORRES, J.

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TORRES, J.:

On the 4th day of December, 1905, the said Sy Joe Lieng, Sy Joe Chay, Sy Jui Niu and Sy Chua Niu filed an amended complaint against the said defendants, alleging: That in or about the year 1823 one Sy Quia, subsequently known in these Islands as Vicente Romero Sy Quia, was born in China, and in or about the year 1847 was married in the city of Amoy to Yap Puan Niu, of which marriage the following male children were born, to wit: Sy By Bo and Sy By Guit, they being the only legitimate heirs of the said Vicente Romero Sy Quia; that in or about the year 1882 Sy By Bo died intestate in China, leaving as his only surviving children and legitimate heirs the plaintiffs Sy Yoc Chay and Sy Jui Niu; that in or about the year 1880 the other child of Sy Quia, Sy By Guit, also died intestate in China, leaving as his only surviving children and legitimate heirs the other plaintiffs, Sy Joe Lieng and Sy Chua Niu; that in or about the year 1891 Yap Puan Niu died intestate in China, leaving her surviving husband, Sy Quia, and her grandchildren, who are the plaintiffs in this case; that in the year 1894 Vicente Romero Sy Quia died intestate in this city of Manila, leaving his surviving grandchildren, the plaintiffs, as his only legitimate heirs.

That Vicente Romero Sy Quia acquired during his life-time a large amount of property, consisting of personal and real property in the Philippine Islands, mostly located in the city of Manila, amounting to P1,000,000 Philippine currency; that on or about the 3d of August, 1900, the defendants illegally, without any rights, and in the absence of the plaintiffs herein, took possession of all the said personal and real property left by the said Sy Quia, deceased, and since then have managed and administered the same, alleging to be the owners thereof; that since the said 3d day of August, 1900, the defendants and each of them have converted and are converting part of the property of the said Sy Quia, deceased, to the use and benefit of each of them, and a large part of the said property, consisting of real and personal property unknown to the plaintiffs, they being in possession thereof as owners, exercising over them acts of ownership, and converting them to their own use; that it has been impossible for the plaintiffs to discover, ascertain, and have knowledge of each and all the items of real and personal property belonging to the said Vicente Romero Sy Quia, deceased, at the time of his death, nor the amount of personal and real property converted by the defendants, except such as is described in the accompanying document marked "Exhibit A," which is a part of the complaint; that the property described in said document is a part of the estate left by the deceased Sy Quia at the time of his death, aside and apart from the personal and real property converted by the defendants, who are, and each one of them is, in possession and custody of all the deeds, instruments, contracts, books, and papers relating to the title and conversion of the said real and personal property, which titles and the descriptions thereof could not be proven without the sworn statements of the defendants and

of each one of them; that the plaintiffs are informed and believe that the said real and personal property belonging to the estate of the said Sy Quia, and which is now held and controlled by the defendants, has a value of approximately P1,000,000, Philippine currency.

That the plaintiffs are the only descendants and legitimate heirs of the deceased Sy Quia, they being entitled to the possession of all the property of his estate, as well as of the real and personal property converted as aforesaid, and the defendants having appropriated the same, with all the rents and profits thereof, it is impossible for the plaintiffs to ascertain and discover the true amount of the said rents and profits, which aggregate several thousand pesos, all of which said property is in danger of being lost, to the irreparable damage of the plaintiffs, unless and except a receiver is appointed to take charge of the preservation and custody of the same in order to protect the interests of the said plaintiffs, and enable the court to determine the actual value of the real and personal property of the estate at the time of the death of the said Sy Quia, as well as the value of the real and personal property subsequently converted by the defendants, together with the rents and profits of the whole estate, converted by the defendants to their own use and benefit; wherefore it is necessary that said defendants be required to render detailed accounts of the real and personal property and rents and profits of the estate, and that it be ascertained by the sworn statement of the said defendants what the actual value of the real and personal property of the said estate, with the rents and profits, thus converted and held by them, is.

They accordingly prayed that defendants be directed to render under oath a complete and detailed account of all the property left by Sy Quia at the time of his death, of the administration, custody, control, conversion and disposal thereof, of the conversion of the same, and of the rents and profits of the original property, as well as of the property thus converted, including in the said accounting both such properties with the rents and profits; that, upon the giving of the necessary bond, a receiver be appointed to administer the original property, as well as the property converted, during the pendency of the present litigation, the said complete and detailed account under oath as aforesaid to be submitted to the court, covering the original property as well as the property converted, with all rents and profits, and that thereupon a receiver be appointed to take charge and control of the administration of the whole of said property.

They further prayed that it be adjudged and decreed that the defendants are the only descendants and heirs of the said Vicente Romero Sy Quia from and since the time of his death, and that they are the only legitimate owners of the real and personal property left by him, and of the whole of said property converted by the defendants, and that they are entitled to the possession of the whole of the said property and the rents and profits accruing therefrom; that it be decreed that the defendants have not and never had any right, title or interest to the said property, nor to the rents and profits thereof, the same being held by them as mere trustees for the benefit of the plaintiffs and each of them, further praying for any other relief which the court may deem just and equitable, and for the costs of this action.

ANSWER.

The defendants, Petronila Encarnacion, Pedro Sy Quia, and Juan Sy Quia, answering the foregoing complaint, specifically deny paragraphs 1, 2, 3, 4, 5, and 6 of the complaint, which relate to the paternity and status of the plaintiffs, and to the death of their grandmother and parents, and also deny generally all and each of the allegations contained in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of the complaint, relating to the succession and actual condition of the estate of the deceased Sy Quia, except as otherwise expressly admitted as true in the said answer,

As a special defense and in opposition to the complaint, the defendants allege that prior to the year 1852 Vicente Ruperto Romero Sy Quia was an infidel known only by the name of Sy Quia, he having resided in the Philippine

Islands for many years prior thereto; that on June 8, and made an integral part of the answer; that on June 9, 1853, the Christian Chinaman Vicente Ruperto Romero Sy Quia contracted canonical marriage in accordance with the laws then in force in these Islands, with the defendant Petronila Encarnacion, a native of Vigan, Ilocos Sur, as shown by his certificate of marriage marked "Exhibit 2," which is made an integral part of the answer; that the said Vicente Sy Quia and his wife, Petronila Encarnacion, fixed their residence and conjugal domicile in these Islands until the dissolution of the conjugal partnership by the death of the husband on January 9, 1894; that at the time of their marriage Vicente Romero Sy Quia had no property, and brought no property into the marriage, but that the wife brought to the marriage a small capital which was the foundation of the subsequent fortune acquired by the spouses by their labor and industry, and by the labor and industry of the children, five in number, named Apolinaria, Maria, Gregorio, Pedro and Juan, all of whom have always been in continuous possession of the status of legitimate children, in lawful wedlock begotten of the said Vicente Romero Sy Quia and Petronila Encarnacion, according to the copies of the certificates of baptism marked "Exhibits 3, 4, 5, 6, and 7," to be considered as an integral part of the answer.

That on January 9, 1894, Vicente Romero Sy Quia died intestate in the city of Manila, and after the necessary legal proceedings under the legislation then in force, his surviving children, Apolinaria, Gregorio, Pedro and Juan, and his grandchild Generoso Mendoza, representing his mother, Maria Romero Sy Quia, deceased, were declared by a decree of the Court of First Instance of the district of Quiapo, dated January 26 of the said year, to be the heirs abintestate of the said deceased, as shown by a copy of the said decree, marked "Exhibit 3," as an integral part of the answer, Apolinaria Romero Sy Quia, one of the children recognized as heirs of their deceased father, having died on the 1st of May, 1900, leaving as her only legitimate heir her surviving mother, Petronila Encarnacion.

That since January 9, 1894, when Vicente Romero Sy Quia died, the defendants have been in quiet, peaceful, and uninterrupted possession as owners in good faith and with a just title, of the property which constitutes the estate of their deceased father, they never having been heretofore disturbed therein by the plaintiffs or any of them, notwithstanding the fact that the said plaintiffs were here in the Philippine Islands, and all the property included in the inventory made at the time of the partition of the estate of the deceased Sy Quia, was acquired by him subsequent to the year 1853, when he married the defendant Petronila Encarnacion; that a great portion of the real property included in the said inventory was acquired by Petronila Encarnacion after the death of her husband, and that in the title deeds of a considerable portion of the property bought during the lifetime of Sy Quia, Petronila Encarnacion appears as the vendee, wherefore the defendants Pedro Sy Quia, Juan Sy Quia, and Petronila Encarnacion prayed the court that they be acquitted of the complaint, with the costs against the plaintiffs, and that they, the defendants, be granted such other and further relief as might be just and equitable.

The other defendant, Gregorio Sy Quia, answering the complaint, denied all and each of the allegations therein contained, and further specifically denied that Sy Quia had married in or about the year 1847 at Amoy, China, the Chinese woman Yap Puan Niu, and that the said Sy Bi Bo and Sy By Guit were the legitimate children and heirs of the deceased Sy Quia, also that the plaintiffs Sy Joe Lieng, Sy Joe Chay, Sy Jui Niu and Sy Chua Niu were the grandchildren and legitimate heirs of the deceased Vicente Romero Sy Quia; that as a special defense he alleged that the deceased Sy Quia, many years prior to 1852, while a non-Christian Chinese subject, definitely fixed his residence and domicile in the Philippine Islands, subjecting himself to the laws then therein in force; that in the year 1852 Sy Quia was baptized, having been converted to the Catholic faith, on the 11th of June of that year, the ceremony taking place at the parish church of San Vicente, he being then named Vicente Ruperto Romero Sy Quia, and on June 9 of the following year he contracted marriage with Petronila Encarnacion in accordance with the rites of the Catholic Church, and in conformity with the laws then in force in the Philippine Islands, as shown by the church certificates marked "Exhibits A and B."

That Sy Quia and his wife Petronila Encarnacion since their marriage continuously resided in the Philippine Islands until the 9th of January, 1894, when the husband died intestate, they having had since their marriage five children, among them Gregorio, who subscribes this answer, according to canonical certificate Exhibit C; that the deceased Sy Quia brought no property into the conjugal partnership, but Petronila Encarnacion did bring with her the small capital of P5,000, with which, through their labor and industry at first, and subsequently by the labor and industry of their children, they had acquired the large amount of property existing at the time of the death of the husband, said property so acquired being located in the Philippine Islands; that on the 23d of January, 1894, by an order of the Court of First Instance of the district of Quiapo, the surviving children of Sy Quia, named Apolinaria, Gregorio, Pedro, and Juan, and Sy Quia's grandchild, Generoso Mendoza, representing his (Generoso's) deceased mother, Maria Romero Sy Quia, were declared to be the heirs abintestate of the said Sy Quia, as shown by a copy of the said decree, marked "Exhibit D," the defendants having taken possession from that date of the property left by the deceased Sy Quia, they having continued so in possession in the quality of owners, with just title and good faith, adversely, publicly, quietly and peacefully, until the plaintiffs presented their complaint to the court; that on the 1st day of May, 1900, Apolinaria Romero Sy Quia died a spinster and intestate, leaving as her only legitimate heir her mother, Petronila Encarnacion; that the plaintiffs at the time of the death of Vicente Romero Sy Quia had knowledge of his demise, and had notice that the defendants had petitioned to the court for a declaration, which they obtained, to the effect that they were the heirs of the said Vicente Romero Sy Quia, deceased; and that at no time were the plaintiffs or their parents recognized or considered by the said Vicente Ruperto Romero Sy Quia as his descendants, heirs or relatives; wherefore defendant prayed that judgment be entered declaring that the plaintiffs had no right or interest to or in the estate of the deceased Vicente Romero Sy Quia, and that the defendants are the only legitimate heirs of the said Sy Quia, taxing the costs against the plaintiffs.

The last of the defendants, Generoso Mendoza Sy Quia, answering the complaint on the 18th of January, 1906, alleged that he denied all and each of the allegations contained in paragraphs 1 to 16, inclusive, of the complaint, and, that he also specifically denied that the deceased Sy Quia, whose Christian name is Vicente Ruperto Romero Sy Quia, had married at Amoy, China, the woman Yap Puan Niu, in or about the year 1847, or at any time previous or subsequent thereto; that the said Sy By Bo and Sy By Guit were the legitimate children and heirs of the deceased Sy Quia; that the plaintiffs Sy Joe Lieng, Sy Yoc Chay, Sy Jui Niu, and Sy Chua Niu were the legitimate descendants or heirs of the deceased Sy Quia.

As a special defense, defendant alleged that the Chinaman Sy Quia came to the Philippine Islands as an immigrant a long time prior to 1852, fixing his residence and domicile therein, and subjecting himself to the laws then in force in this country; that in the said year 1852, Sy Quia having been converted to Christianity, was baptized in the parish church of San Vicente, Ilocos Sur, and named Vicente Ruperto Romero Sy Quia, as shown by the canonical certificates exhibited by the defendants, and marked "Exhibits 1 and A," which are made a part of this answer; that on June 9, Vicente Ruperto Romero Sy Quia was married by the Church to Petronila Encarnacion in accordance with the canonical laws, as shown by the certified copies of the marriage certificate, marked "Exhibits 2 and B," introduced by the other defendants; that Sy Quia and his wife Petronila Encarnacion established themselves and fixed their conjugal domicile in the Philippine Islands, where they continued to reside until the 9th of January, 1894, when the marriage was dissolved by the death of the husband in Manila; that the said spouses since their marriage had five children, of whom Apolinaria died a spinster, and Maria, who had married, died leaving a child, the defendant Generoso Mendoza, the grandson of the deceased Sy Quia, the said Generoso Mendoza and the other children of the deceased Sy Quia, named Gregorio, Pedro, and Juan, having survived; that Vicente Romero Sy Quia at the time of his marriage owned no property, while Petronila Encarnacion brought to the conjugal partnership a small capital, amounting to P5,000, which was the foundation of the large fortune

subsequently acquired by them through their labor and industry, subsequently augmented with the aid of their own children.

That on the 9th of January, 1894, Vicente Romero Sy Quia died, and after the necessary legal proceedings under the law of civil procedure then in force in these Islands, the Court of First Instance by a decree dated the 26th of the said month and year, declared that the surviving children, Apolinaria, Gregorio, Pedro, and Juan, and his grandchild Generoso Mendoza, representing his mother Maria, deceased, were the heirs of the deceased Sy Quia, intestate, as shown by Exhibits 8 and D, introduced by the other defendants; that on May 1, 1900, the oldest daughter, Apolinaria, died intestate and single, leaving as her only heir her mother Petronila Encarnacion; that since the death of the said Vicente Romero Sy Quia the defendants had been in quiet, public, peaceful, and uninterrupted possession of the property left by the deceased Sy Quia, having held the same adversely, with good faith and just title; and that they have never been disturbed by the plaintiffs in such possession, notwithstanding the fact that they, the plaintiffs, were in the Philippine Islands at the time of the death of Vicente Romero Sy Quia, and had knowledge of the fact that the defendants had applied to the Court of First Instance for and secured a declaration to the effect that they were the heirs of the deceased Sy Quia; and that neither the plaintiffs nor the said Sy By Bo and Sy By Guit had ever been recognized or considered by the deceased Vicente Romero Sy Quia as his descendants, heirs or relatives, they never having been in possession of the legal status of children or legitimate descendants of the said Sy Quia; wherefore this defendant prayed that judgment be rendered in favor of all the defendants, acquitting them of the complaint, and directing that the plaintiffs pay the costs.

AMENDMENT TO THE COMPLAINT.

The plaintiffs on the 31st of January, 1906, presented by way of reply to the answers of the various defendants an amendment to the original complaint, denying generally and specifically all and each of the material allegations set out in the answers of the defendants and alleging that the pretended marriage between Vicente Romero Sy Quia and Petronila Encarnacion was not a lawful marriage, but a false and fraudulent one, without any force, efficacy, or legal validity, the certificate of marriage presented by the defendants not being a true and correct certificate of marriage, the same being false, fraudulent, and without any force, efficacy, or legal validity, for the reason that on June 9, 1853, Vicente Romero Sy Quia was and thereafter continued to be the lawful husband of one Yap Puan Niu, until the year 1891, when she died, and that the marriage of Sy Quia with the said Yap Puan Niu, since 1847 and until her death in 1891, was continuously in full force and effect, Sy Quia not having married again after the death of the said wife; and that Apolinaria, Maria, Gregorio, Pedro and Juan, the alleged legitimate children of Vicente Romero Sy Quia and Petronila Encarnacion, were not and never had been the legitimate children of Sy Quia, and that they were not and never had been his legitimate heirs and descendants, the certificates of baptism produced by the defendants, and marked "Exhibits 3, 4, 5, 6, and 7," not being true nor proper, but false and fraudulent, and of no force, efficacy, or legal validity, the said children not being the legitimate descendants of the deceased Sy, Quia. Paragraphs 9 and 10 of the amended complaint are a repetition of similar paragraphs contained in the original.

ANSWER TO THE AMENDED COMPLAINT.

The defendants, Generoso Mendoza, Petronila Encarnacion, Pedro Sy Quia, Gregorio Sy Quia, and Juan Sy Quia, filed their answers to the amended complaint on the 7th and 13th of February, 1906, denying all and each of the allegations contained in paragraphs 2, 3, 4, and 5 of the amended complaint, stating that they ratified each and all of the allegations, denials and defenses contained in their previous answer, which they reproduced therein, and that they renewed their prayer that judgment be rendered acquitting them of the said complaint, with the costs against the plaintiffs.

On June 19, 1906, counsel for Petronila Encarnacion notified the court in writing of the death of the said Petronila Encarnacion, who died in this city on the 6th of the said month, and as counsel for the other defendants, Pedro and Juan Sy Quia, moved the court that in accordance with section 119 of the Code of Civil Procedure, an order be made directing that the action be proceeded with in the name of the administrator of her estate, Pedro Sy Quia, which motion was granted without any objection on the part of the plaintiffs' attorney, on June 21, 1906.

On August 20, 1906, it was stipulated between counsel for both parties that by order of the court the deposition of several witnesses then designated by the plaintiffs be taken at Amoy, China, before the consul, vice-consul, or a consular agent of the United States in the said city, during the days and in the manner agreed upon, in accordance with section 362 of the Code of Civil Procedure, the defendants being authorized to take the deposition of such witnesses as they might desire to present in the manner agreed upon.

On November 8, 1906, counsel for plaintiffs informed the court of the death of one of the plaintiffs, Sy Jui Niu, at Amoy, China, on or about the 28th of July of the said year, and she having died intestate, the court on November 8, appointed C. W. O'Brien as special administrator of her estate, and said counsel thereupon asked the court to allow the action to be continued by him, and, by a subsequent petition filed on the 13th of the same month, the administrator C. W. O'Brien, appointed as aforesaid, filed a written appearance as such administrator of the estate of the deceased Sy Jui Niu.

On a petition filed on the 17th of November, 1906, counsel for both parties informed the court that the documents presented by the defendants, and marked "Exhibits 1, 2, 3, 4, 5, 6, and 7, and A, B, and C," which are certificates of baptism, marriage, and burial, should be considered as original and authentic documents, so as to avoid the necessity of presenting the originals themselves, which were bound in book form, together with other documents relating to persons who had no connection with this litigation.

On the 4th of January, 1907, the defendants presented a motion to the Court of First Instance, asking that the depositions taken before the consul of the United States at Amoy, China, as given by the witnesses for the plaintiffs, named Li Ung Bing, Sy Peng, Lim Chio, Yap Si Tan, Yap Chia, Sy Kay Tit, Yap Chong, Sy Boan, Sy Kong Len, and Sy Hong Oan, whose testimony the plaintiffs attempted to introduce in this action, be not admitted, defendants' motion being based on the ground that the said depositions contained a formal defect concerning the manner in which the oath was administered to the witnesses.

In a petition filed on the same date, January 4, the defendants reproduced their former motion, alleging as a further ground in support thereof that the certificates by the officer who took the said depositions did not comply with the essential requisites provided by law, and after due notice to the plaintiffs, a hearing was had upon the said petition on January 7, 1907. After the recital of the evidence introduced by both parties, and after the documents exhibited by them, together with the depositions taken at Vigan of various witnesses for the defendants, and of the depositions taken at Amoy, China, had been united to the record, the Court of First Instance on the 26th of February, 1908, rendered a judgment declaring that the plaintiffs Sy Joe Lieng, Sy Yoc Chay, Sy Chua Niu, and C. W. O'Brien, the latter as guardian of Sian Han, and the defendants Gregorio Sy Quia, Pedro Sy Quia, Juan Sy Quia, and Generoso Mendoza Sy Quia, and the heirs of the deceased Petronila Encarnacion, represented by one of the defendants, Pedro Sy Quia, as the administrator of the property, were the heirs of the property of the estate of Vicente Romero Sy Quia, now deceased, consisting of one-half of the property distributed by the order of the Court of First Instance of the district of Quiapo of the 3d of August, 1900, in the following form: To Sy Joe Lieng, one-ninth; Sy Yoc Chay, one-ninth; Sy Chua Niu, one-ninth; C. W. O'Brien, as the guardian of Sian Han, one-ninth; Pedro Sy Quia, one-ninth; Juan Sy Quia, one-ninth; Gregorio Sy Quia, one-ninth; Generoso Mendoza Sy Quia, one-ninth; and the heirs of Petronila Encarnacion, represented by Pedro Sy Quia as the administrator of the latter's estate, one-ninth; the heirs of the said Petronila Encarnacion, represented by the administrator of her

estate, being the owners with the right to possession of the other half of the property left by Vicente Romero Sy Quia at the time of his death.

That the defendants, Gregorio, Pedro, Juan, and Generoso, and Pedro Sy Quia as the administrator of the property of his mother Petronila Encarnacion and as a representative of the latter's heirs, render a statement of the property which was distributed among them under and by virtue of the order of the Court of First Instance, of the 3d of August, 1900.

That the said defendants and each of them render an accounting of the rents and profits of all the property respectively received by them from the dates when they were delivered to them, it being understood that if upon making the inventory of the property it appears that the portion thereof assigned to Petronila Encarnacion as her share does not exceed one-half of all the property left by Vicente Romero Sy Quia, at the time of his death, it will not be necessary to render an accounting of the rents and profits of the portion to her thus assigned.

That a receiver, to be selected later, be appointed upon the giving of a sufficient bond, the amount of which will be hereafter fixed, to take charge and possession of all the property known as aforesaid, it being understood that if upon making a list of the said property it appears that the part thereof assigned to Petronila Encarnacion as her share does not exceed one-half of all the property of the estate of Vicente Romero Sy Quia at the time of his death, the said receiver shall only take possession of one-half of the property assigned to the other persons who have accounted for them. The Court of First Instance made no special order as to costs.

To this decision of the trial court counsel for the defendants, Pedro Sy Quia, by himself and as administrator of the estate of Petronila Encarnacion, Juan Sy Quia, Gregorio Sy Quia, and Generoso Mendoza, duly excepted, and by a motion presented to the court asked that the said judgment be set aside and a new trial granted, on the ground that the evidence was insufficient to justify the decision in favor of the plaintiffs, and because the decision of the trial court was contrary to law, the findings of fact being plainly and manifestly against the weight of the evidence. Upon notice to counsel for plaintiffs, a hearing was had upon said motions, which were subsequently over-ruled by the court. Defendants having duly excepted to the order of the court overruling the same, and upon filing their bill of exceptions, asked the court to unite to the same all of the evidence taken and introduced by both parties, with the documents and pleadings presented during the course of the trial, the transcript of the stenographic notes containing the testimony of the witnesses, and the depositions taken at Vigan and Amoy, which said bill of exceptions defendants asked the court to approve and certify to the Supreme Court, with all of the said evidence which was made an integral part thereof.

By an order entered on the 28th of March, 1908, the court upon certifying the bill of exceptions, directed that the execution of the judgment be not stayed in so far as it required the defendants to submit a statement showing the property received by them, and to render an account of all the rents and profits, upon giving a bond satisfactory to the court, to secure the fulfillment of the judgment in case the same be totally or partially affirmed by the Supreme Court.

The trial court in deciding the motion for the appointment of a receiver, and after hearing both parties, made an order on the 17th of March, 1908, appointing Gregorio Sy Quia as receiver of the property in question, upon the giving of a bond in the sum of P400,000, to be approved by the court, and in case that the person thus appointed did not accept, the appointment would be set aside, and a stranger duly qualified substituted. To this order of the court the defendants Pedro Sy Quia and Juan Sy Quia duly excepted, and on the 27th of March, 1908, there was united to the proper files the personal bond for P400,000 given by the receiver.

By another order made on the said 17th day of March, the court in deciding the motion that a time be fixed within which the defendants should report to the court whatever property belonging to the deceased Vicente Romero Sy

Quia was distributed among them, directed that the defendants Juan Sy Quia, Generoso Mendoza and Pedro Sy Quia, the latter by himself and as administrator of the estate of Petronila Encarnacion, submit a statement of the property distributed among them under and by virtue of the order of the 3d of August, 1900, on or before the 23d day of March, 1908, and that Gregorio Sy Quia submit a similar statement on or before the 31st day of the said month and year.

Pedro Sy Quia and Juan Sy Quia excepted to this order of the court dated March 17 as aforesaid, requiring them to submit a statement of the property they had received, and asked the court to approve and to have united t

The plaintiffs, upon being notified of the said judgment of the court, excepted thereto, and requested in writing that the court modify its decision and conclusions of law by declaring that the plaintiffs Sy Joe Lieng, Sy Yoc Ohay, Sy Chua Niu, and G. W. O'Brien, as the guardian of Sian Han, were the only heirs of Vicente Romero Sy Quia, deceased; that they were entitled to all the property left by the latter, and distributed under the order of the court of the 3d of August, 1900; that Petronila Encarnacion, deceased, and her children and heirs had no interest in the said estate of Sy Quia; that they were not the heirs of the deceased Vicente Romero Sy Quia; that the receiver appointed by the court be authorized to take possession of all the property left by the said deceased, especially the property which was distributed by the decree of the court of the 3d of August, 1900, together with the rents and profits, and that the said judgment be modified, awarding the plaintiffs the costs of the action, and directing that defendants submit an accounting of the property in litigation.

This action has for its purpose primarily to recover from the present possessors the property left at the time of his death in this city by the Chinaman, Vicente Romero Sy Quia, the plaintiffs alleging that three of them are the grandchildren and one the great-grandson of the deceased Sy Quia by his lawful marriage in his own country with their deceased grandmother, Yap Puan Nzu. So that the marriage of the said Sy Quia with this woman in China is practically the fundamental basis of the action brought by the plaintiffs for the recovery of the inheritance against the defendants, who appear to be the children of the deceased Sy Quia by his marriage in these Islands with the native, Petronila Encarnacion.

Does the record show that the Chinaman Sy Quia removed from Vigan, Philippine Islands, to his native town or village of Am Thau, Amoy, China, in 1847, and then married in accordance with the rites and ceremonies of his native country, Yap Puan Niu?

Plaintiffs having failed to present at the trial the matrimonial letters which should have been exchanged between the contracting parties at the time the said marriage was performed, according to the ancient laws and customs of the Celestial Kingdom, and there being no allegation in the complaint as to the day and month of the common calendar year, or of the Chinese calendar year, when the said marriage took place, there is no ground on which to base the conclusion that such an important act in the life of Sy Quia has been duly established by authentic documents, nor is his alleged voyage to China from the port of Manila for the purpose of contracting such marriage, satisfactorily proven thereby, for the plaintiffs have likewise failed to introduce in evidence the passport, required by the legislation then in force, which should and would have been then issued to Sy Quia in order to enable him to leave this country and return to his own. (See superior decree of December 20, 1849.)

Seven witnesses, named Sy Peng, Lim Chio, Yap Si Tan, Yap Chia, Sy Kai Tit, Yap Chong, and Sy Botm, whose respective ages are not less than 71 nor more than 80 years, in their testimony or depositions before the vice-consul of the United States at Amoy, having promised to tell the truth, affirmed through an interpreter that they were present at the ceremony of the wedding of the said Sy Quia with the Chinese woman Yap Puan Niu; that Sy Quia, who was in these Islands, having been expressly called to China by his father for the purpose of marrying the said Yap Puan Niu, accordingly returned to his native town or village of Am Thau, and, after being

married to Yap Puan Niu, remained in the said village three or four years with his wife, by whom he had two children, Sy By Bo and Sy By Guit, the latter having been born one year after the birth of the former.

To overcome the testimony of the witnesses for the plaintiffs, the defendants presented nine witnesses, to wit: Felix Millan, Aniceto Singson, Norberta Feril, Remigio Tongson, Estefania Crisologo, Alexandra Singson, Benita Encarnacion, Paulino Revilla, and Silveria Damian, whose respective ages were not less than 71 nor more than 87 years, except Aniceto Singson, who was only 66 years of age, who testified, some of them in the Court of First Instance of Manila, and the others before the justice of the peace of Vigan by virtue of a commission, that they knew Sy Quia when he was an unmarried resident of the city of Vigan, for six or seven years according to most of the said witnesses, and for five years according to others, prior to his marriage with Petronila Encarnacion, they having known him when he was a clerk and dry goods salesman for another Chinaman by the name of Jose Gloria Lecaroz, a resident of Manila, the witness Revilla stating that he was gobernadorcillo in 1852, when Sy Quia, after being converted to the Christian religion, was baptized in the church of San Vicente, the priest of which, who was his (Revilla's) uncle, being frequently visited by the said Sy Quia for the purpose of the latter's instruction in the new religion, and that Sy Quia upon being baptized was named Vicente Ruperto Romero, after his godfather Romero, who was at that time the clerk of the court; and Silveria Damian further testified that to the best of her recollection Sy Quia arrived in Vigan in the year 1848, stopping at her house, Sy Quia being a friend and countryman of her husband, who was also a Chinaman, and that she knew that Sy Quia was then a bachelor, that he was baptized some years later, and on the following year was married to Petronila Encarnacion. Silveria Damian, her husband and other witnesses in the case attended the wedding.

It will be seen therefore that the record contains strikingly conflicting evidence, that is to say, the evidence introduced by the plaintiffs is directly in conflict with that adduced by the defendants for while the witnesses for the plaintiffs asserted that Sy Quia was at Am Thau, Amoy, in 1847, and contracted marriage in that year with Yap Puan Niu, with whom he continued to live for about three or four years thereafter, during which time the children Sy By Bo and Sy By Guit were born; the witnesses for the defendants on the other hand affirmed that Sy Quia was at the time in Vigan, and that he did not leave that city during the six or seven years, according to most of the witnesses, and during five years, according to the others, which immediately preceded his marriage with Petronila Encarnacion in 1853.

In order to determine whether the weight and preponderance of the evidence is with the plaintiffs or in favor of the defendants, in accordance with the provisions of section 273 of the Code of Civil Procedure, it becomes necessary to examine and analyze each of the declarations of the respective witnesses presented at the trial, and ascertain the result of their various declarations taken as a whole, bearing in mind the circumstances of the case, the probability or improbability of their testimony, with due regard to the nature of the facts as to which they testified, their degree of intelligence, and the manner in which they testified.

The presence of Sy Quia in Vigan, and his presence at the same time at Am Thau, Province of Amoy, China, for a period of four years, to wit, from 1847 to 1850, two facts which are directly inconsistent with each other, might have been satisfactorily established by the testimony of witnesses, but the only proof of the fact of the marriage alleged to have been contracted by Sy Quia at the said Chinese town in 1847 could only have consisted of the matrimonial letters or cards which should have been exchanged between the families of the two contracting parties in the manner referred to by the witness Li Ung Bing, the interpreter of the American Consulate, who was called by the plaintiffs themselves, and whose testimony in this respect is uniformly corroborated by Nicolay in his book entitled "Historia de las Creencias," by Ratzel in his book entitled "Las Razas Humanas," by Cantu in his work entitled "Historia Universal," and by the authors of the "Spanish American Encyclopedic Dictionary." These matrimonial letters, once they have been mutually exchanged by the contracting parties, constitute the essential

requisite required by the laws of that country in order that a Chinese marriage may be considered duly solemnized, and at the same time are the best proof of its having actually taken place.

The party obliged to exhibit these letters can only be relieved from the necessity of so doing by proving that the same have been lost or disappeared, for in the absence of such proof (there being none of this character in the record), they must be produced at the trial in order to establish the fact of the marriage alleged to have taken place, and only in the cases expressly excepted by law can any other proof, such as the testimony of witnesses, be allowed, but the letters themselves must be produced as evidence of the contract to which they relate, in accordance with the provisions of section 285 of the Code of Civil Procedure.

The failure to produce the said matrimonial letters which, according to some of the witnesses for the plaintiffs, were exchanged between both families prior to the celebration of the marriage of Sy Quia with Yap Puan Niu, and the lack of proof that they had been destroyed or lost, give rise to the legal presumption that the marriage was not performed; and such presumption can not be overcome by the testimony of witnesses, some of them incompetent, while the testimony of others is conflicting, not to say contradictory, in itself, as well as highly improbable; for this is a most important contract, which, according to the ancient laws and customs of China, must be evidenced by such letters or cards, and the fact that these letters have not been produced shows that the marriage never took place; if they actually exist they should be exhibited, for it is a well-known rule that where evidence is wilfully suppressed, it is presumed that it would be adverse to the party presenting the same, if produced. (Sec. 334, par. 5, Code of Civil Procedure.)

Entering upon an analysis of the testimony of the witnesses for the plaintiffs, it will be noticed that Sy Peng stated that upon the death of Sy Quia, the women of his house extended their sympathy, as customary, to his widow in China. This, however, is not true, because it appears in the record as a proved fact that Yap Puan Niu died in 1891, while Sy Quia died in this city in 1894, Lim Chio affirmed that Sy By Bo, the alleged son of Sy Quia, had two children by his wife, one of them being Sy Yoc Chay. This is not true, because Sy Yoc Chay was only an adopted son. The witness Yap Si Tan testified that Yap Puan Niu lost a natural child, whose name she did not remember, and in his place adopted Sy Yoc Chay as her son. This fact is not testified to by any of the other witnesses, who simply said that the adoption had been made by Sy By Bo. The witness Yap Chio, 72 years of age, who testified that he had been present at the wedding of Sy Quia with Yap Puan Niu, must have been 8 years old at the time. The other witness, Sy Kai Tit, who was 71 years of age, and who, according to himself, was about 12 years old at the time, stated that he had taken part in the investigation made as to the status and condition of the bride, Yap Puan Niu, having assisted Sy Quia's parents and the mediator in the investigation. Another witness by the name of Sy Boan testified that Sy Quia, when he died in this city, was survived by his wife, Yap Puan Niu, who was still living in China, this being in direct contradiction with the established fact that Yap Puan Niu died before Sy Quia. This witness further said that when Sy Quia returned for the second time to China, in order to attend his parents' funeral, his alleged wife, Yap Puan Niu, was still living, his testimony in this respect being in contradiction with that of the other witnesses, Lim Chio, Yap Si Tan, Yap Chio and Sy Kai Tit.

The testimony of these witnesses, most of whom have seriously contradicted themselves upon important points in the course of their examination, and some of them, considering the fact that they were very young in 1847, having told a very improbable story, claiming that they had assisted Sy Quia's parents in bringing about the latter's marriage, can be given no credence by the courts to sustain a finding that Sy Quia actually married Yap Puan Niu, much less so the marriages of Sy By Bo and Sy By Guit who are alleged to be the legitimate children of the said Sy Quia and Yap Puan Niu, and the marriage of Sy Jui Niu, the mother of Sian Han, a grandson of Sy By Bo and a great-grandson of Sy Quia, for the reason that there were not introduced in evidence at the trial the matrimonial letters that must have been exchanged before the celebration of these marriages, all of these witnesses having

simply said that they attended the wedding of Sy Quia and Yap Puan Niu, that their said sons were also subsequently married and each had two children, and that Sy By Bo adopted Sy Yoc Chay in place of one of his deceased children. From the testimony of these witnesses, taken as a whole, it is impossible to arrive at the truth and to lay the foundation of a just judgment in accordance with the law.

The witness Sy Hien, who claims to be a younger brother of Sy Quia, and was a witness for the plaintiffs, among the many conflicting statements made by him, as may be seen from his testimony, said that his certificates of marriage, which presumably consisted of similar matrimonial letters or cards, were kept in his own town, and that he was unable to state the difference in age between himself, who was 59 years old, and his brother Sy Quia, who, had he lived, would today be about 80 years old, unless he was permitted to examine a certain book kept in his own home in China (p. 116 of the record). His testimony clearly shows that such matrimonial letters are duly preserved and that the date of birth of the members of a family is noted or entered in a book kept in the paternal residence, in like manner as the death of such members of the family is recorded by mortuary inscriptions on tablets, a practice which is very natural among people who live in civilized communities and cities with a civilization of their own and who, like the Chinese, notwithstanding their remarkable backwardness with reference to more advanced and cultured races, generally speaking are not barbarians and do not live a nomad or savage life.

The mortuary inscriptions upon one of the tablets presented in evidence at the time of taking the evidence of some of the witnesses who were called by the plaintiffs for the purpose of establishing that the deceased, Sy Quia, had in his lifetime married Yap Puan Niu, an English translation of which appears in the records, are not conclusive or supplementary proof of the said marriage, because they are absolutely false and contrary to the actual facts with reference to Sy Quia, for the latter was still alive in 1891, when he was presumed to be dead according to the said inscriptions, he having actually died in January, 1894; therefore the said mortuary tablet, and the inscriptions appearing thereon, can not serve to corroborate the testimony of the witnesses who testified to the celebration of the marriage, because such tablet and inscriptions are glaringly false, the fact that the witness Sy Peng said that this tablet, together with others, was taken by him from the temple or sanctuary of Sy Quia's family at Am Thau, to be introduced as evidence in this action, to the contrary notwithstanding. The falsity of the inscription of Sy Quia's death, when he was still alive, made upon a tablet which was evidently prepared with remarkable haste and temerity, is borne out by the witness Li Ung Bing, the interpreter of the American consulate, who claimed to be familiar with the laws and customs of his country, for, according to him, where Chinese die out of China no inscription is made at the place of their former residence in China, upon such tablets, of the fact of their death; and as it is a fact, admitted by the plaintiffs, that Sy Quia died in Manila and was buried in La Loma cemetery, there is no doubt that the tablet in question was fraudulently prepared and fabricated to supply the lack of documentary proof as to the so much talked about marriage in China which is the fundamental basis of plaintiffs' claim.

In the administrative proceedings that Sy Quia must have instituted for the purpose of securing the necessary permission to marry Petronila Encarnacion, and at the investigation which, after the obtaining of such permission, must have been conducted by the ecclesiastical court of the ^bishopric of Vigan, he, Sy Quia, necessarily must have declared that he was single, as evidently he did, according to the testimony of the witness Roman Gray, 72 years of age, then a clerk of that court, whose testimony under oath is supported by that of other witnesses, two of them being of the same race as Sy Quia, and in view of the result of the said proceedings and investigation, conducted as aforesaid, the parish priest of the said city of Vigan was authorized to marry Vicente Sy Quia to Petronila Encarnacion, the certificate of marriage reciting the fact that there was no impediment whatever to the performance of the marriage.

Without the aforesaid permission of the Governor-General, sought and obtained in accordance with sections 34

and 35 of the superior decree of the 20th of December, 1849, the vicar-general of the bishopric of Vigan would not have admitted the testimony given by the witnesses in the investigation for the purpose of proving that Vicente Sy Quia was single and free to marry, nor could the parish priest have performed the marriage ceremony without first securing the necessary authority from the court of the vicar-general in the name of the bishop.

Therefore the result of those proceedings and the canonical certificate, evidencing the marriage of Vicente Sy Quia and Petronila Encarnacion, corroborate the testimony of the witnesses for the defendants to the effect that Sy Quia was single and had resided for many years in that city before he married Petronila Encarnacion, and that he could not have spent four years at Am Thau, province of Amoy, China, during that period, as alleged.

With reference to the validity and efficacy of the canonical certificates and the certified copies thereof introduced here in evidence, we adhere to and follow the doctrine laid down by this court in the case of the United States vs, Nicolas Arceo (11 Phil. Rep., 530), No. 4539, wherein this court said:

"The canonical entries in parochial books have not lost the character of public documents for the purpose of proving such acts as are therein related, inasmuch as, since the change of sovereignty in these Islands, no legal provision has been promulgated to destroy the official and public character that the said entries had under the former regime.

"Parish priests continue in the legal custody of the parochial books kept during the former sovereignty, and as such legal custodians they may issue literal copies in the form of certificates of the entries contained therein, in like manner as custodians of archives."

To strengthen the proof introduced by the plaintiffs as to Sy Quia's marriage to Yap Puan Niu, an attempt was made to establish that the said Yap Puan Niu had been twice in Manila, the last time in 1886; that on these two occasions she stopped for five or six months at the house of Sy Tay, Sy Quia's brother, and that Sy Quia frequently called on her at the said house; but, notwithstanding the testimony of some witnesses who testified to this effect, particularly Sy Hien, who claimed to be one of Sy Quia's brothers, and who testified long after Sy Quia's death, we have in the record the sworn statement to the contrary by the Chinese woman, Ana Quang Su, the wife of the said Sy Tay, who positively testified that upon the two occasions that the said Yap Puan Niu stopped as a guest at the house of her husband for a period of five or six months, she had never seen Sy Quia call on her, Yap Puan Niu, and that the said Yap Puan Niu never went out of the house but remained at home as was customary with Chinese women, adding that she would have known if it had been otherwise, because said Yap Puan Niu occupied a room adjoining hers in the same house, the witness being always at home, further saying that her husband Sy Tay supported the said guest, Yap Puan Niu, and paid for her transportation both ways between Manila and China, and that Sy Joe Lien and Sy Yoc Chay, who on successive dates came to Manila from China, also stopped at her, the witness's house, where they lived at the expense and under the orders of her husband Sy Tay. The testimony of this witness is of the utmost importance, and has not been impugned or discredited in any way in this case.

The witness, Roman Gray, above referred to, affirmed that while he was clerk of the ecclesiastical court of Vigan, which position he had held since 1850, he met the Chinaman Sy Quia when the latter went to his court for the purpose of being baptized as a Christian, stating that the said Sy Quia several years thereafter, in 1853, presented a petition for permission to marry, whereupon the necessary proceedings were instituted, in which said proceedings two Chinese witnesses and Sy Quia himself stated under oath that Sy Quia was single and free to marry, and a decree was subsequently entered authorizing the performance of the marriage with Petronila Encarnacion, the witness further stating that he had read the proceedings but that in 1898 the papers were destroyed by the insurgents, who removed everything from the place where the archives were kept and occupied the premises for some length of time.

Aside from what has been said before, there is no other evidence in the record to show that the plaintiffs, particularly Sy Chua Niu, Sy Joe Lieng and Sy Yoc Chay, were ever recognized as legitimate grandchildren and adopted grandchild, respectively, and that Sian Han is the greatgrandchild of the said Sy Quia, nor is there any proof to show that the plaintiffs Sy Joe Lieng and Sy Chua Niu have been continuously in possession of the legal status of children of the said Sy By Guit, and the said Sy Yoc Chay as the adopted child of Sy By Bo, and Sian Han as the grandchild of the said Sy By Bo, who, as well as Sy By Guit, is said to be the legitimate son of Sy Quia by his wife, Yap Puan Niu.

Further, there is no evidence to the effect that Sy Quia had ever provided for the support of Yap Puan Niu, nor that Petronila Encarnacion at any time delivered money, as alleged, to Sy Joe Lieng and Sy Yoc Chay by reason of their hereditary income, inasmuch as the delivery of the sum of ₱4,000 to the said Sy Joe Lieng, entered in a book kept by Sy Tay, as per the copy of the entries appearing on page 300 of the book marked "A. S.," is no proof of the payment of a part of the inheritance, and without any express declaration on the part of Petronila Encarnacion, an entry in a book kept by the firm 'of Sy Tay could not be binding upon the said Encarnacion, this, aside from the fact that the entries do not show the reason why this sum of ₱4,000 was charged to the account of Petronila Encarnacion and credited to Sy Joe Lieng; and, even if we admit as true the statement of the witness Emilio Medina that in his presence, the said Sy Joe Lieng received an additional sum of ₱2,000 from Petronila Encarnacion there is no evidence to show why this sum was paid to and received by the said Sy Joe Lieng; the witness himself said that the receipt made out at the time set forth that the money was for commercial purposes.

It likewise appears from the record that the plaintiffs, who now seek to be recognized as the grandchildren, and Sian Han as the great-grandchild of the deceased Sy Quia, incidentally attempting to recover the property which the said Sy Quia left at the time of his death, have not shown by competent documentary proof that Sy By Bo and Sy By Guit were in fact the children of Sy Quia by his wife Yap Puan Niu; that Sy Yoc Lieng and Sy Chua Niu are the children of Sy By Guit; that Sy Yoc Chay is the adopted child of Sy By Bo, and Sian Han the son of Sy Jui Niu, who was the daughter of the said Sy By Bo, for the parentage and affiliation of the said parties, as well as the marriage of Sy By Bo and Sy By Guit, the adoption of Sy Yoc Chay, and the marriage of Sy Jui Niu, should have been established by means of the documents in which such facts are customarily recorded, as stated by Sy Hien, one of the witnesses for the plaintiffs and who also was alleged to be a brother of Sy Quia; the testimony of witnesses, the most dangerous and risky of evidence, not being sufficient to sustain a finding that the court erred in its estimation of the facts, since the preponderance of the evidence must be fixed precisely where the judge believes the truth lies, taking into consideration the facts which were sought to be established, together with the nature of the same and the circumstances of the case; and it should be noted that for the lack of documentary evidence it is impossible to determine on what date Sy Quia was actually married, if he was married at all, to Yap Puan Niu; and considering as a whole the evidence introduced by the plaintiffs as to the stay and residence of the said Sy Quia in the city of Vigan, Philippine Islands, during the three or four years when it is alleged he was at Amoy and there married, it can not be said that the preponderance of the evidence lies with the plaintiffs.

It further appears from the record that while the body of the deceased Vicente Romero Sy Quia was lying in state at the house where he died, in January, 1894, for the purpose of performing the ceremony of robing a descendant of the deceased with the nine silk suits which had been prepared for the corpse in accordance with the Chinese custom, and although Sy Hien, a brother of the deceased, was in charge of the ceremonies, it did not occur to him to dress Sy Yoc Chay in these garments, he, Sy Yoc Chay, being the son of By By Bo, and if the said Sy Hien thought that this would not be proper for the reason that Sy Yoc Chay was merely an adopted son, it is significant that Sy Joe Lieng, who was also present or at least in the house, was not dressed in the said nine suits, but the same were worn by Tomas Sy Quia, the eldest son of Gregorio, who for this purpose was expressly taken out of the college where he was at the time, as testified to by several witnesses, among them Macario Pavila, a resident

merchant of Pangasinan, who chanced to be at the house on that occasion. The statement of Sy Hien to the effect that he did not remember the said ceremony, is not worthy of credit in view of the positive testimony of the defendants Pedro and Juan and of the witness Pavila, who, together with several Chinese, among them Sy Yoc Chay and Sy Joe Lieng, witnessed the same. The latter's statement that he was not present at the ceremony on account of his having temporarily left the house in order to carry out certain instructions received by him, can not be believed, for, if it is a fact that he was the proper person to wear the said nine silk suits according to the customs of his country, the master of the ceremonies would have suspended the same until he, Sy Joe Lieng, returned to the house; but instead of this the eldest son of Gregorio Sy Quia was brought, it is alleged, from the college where he was, his father Gregorio being at the time in Vigan, for the investiture of the nine robes before they were placed upon the corpse. From all this it may be inferred that Sy Yoc Chay, who denied that the said ceremony took place, and Sy Joe Lieng, were not, as a matter of fact, the grandsons of Sy Quia, as Sy Hien, a brother of the deceased, who conducted the ceremony well knew, and that the only descendant to be designated in accordance with traditional customs of the Chinese was Gregorio Sy Quia, the eldest son of the deceased, and, in his absence, the latter's eldest son, Tomas Sy Quia, which designation was accordingly made.

In addition to the foregoing considerations it should be stated that the sworn statement by Vicente Romero Sy Quia before the civil and ecclesiastical authorities of the city of Vigan in the proceedings which were instituted in 1853 in connection with his marriage in the parish church of that city, the continued possession for a period of many years of the status of a single man enjoyed by him and recognized and accepted by the whole community of the capital of the Province of Ilocos Sur, the belief on the part of his townsmen and neighbors that he was in fact a single man, all these facts being corroborated, as they are, by the uniform testimony of the witnesses for the defendants, and the unexplained silence on the part of his alleged wife, Yap Puan Niu, who might have asserted whatever rights she may have had as the legitimate wife of Sy Quia before the tribunals of this country, if she really had any, completely overcome and destroy the improvised parol evidence as to the pretended marriage of Sy Quia in China, the performance of which was for the first time alleged in December, 1905, after Sy Quia's death and the demise of the latter's brother, Joaquin Martinez Sy Tiong Tay, who, having sheltered in his house the woman Yap Puan Niu on the two occasions aforesaid, as well as the plaintiffs Sy Yoc Chay and Sy Joe Lieng since these latter landed in the Philippines, might have testified to the existence of the marriage, thus supporting the plaintiff's claim to the Sy Quia estate.

It is admitted by the plaintiffs in this case that two of them, Sy Yoc Chay and Sy Joe Lieng, and the woman Yap Puan Niu, when they came to this country stopped at the house of the said Sy Tiong Tay, who provided for their support and maintenance, gave employment to the first two in his own business and paid for the transportation of the woman to Manila and back to China on the two occasions when she came to this country; and, notwithstanding the truth and certainty of these facts, the plaintiffs, nevertheless, did not even endeavor to show that the said Sy Tiong Tay had defrayed all these expenses by order and on account of his brother Sy Quia, a fact which would appear from the entries in the books kept by him as a merchant, if such payments were really made in behalf of the said Sy Quia. The plaintiffs introduced in evidence a certain book alleged to belong to the firm of Sy Tay for the purpose of establishing a certain payment made by Petronila Encarnacion to the said plaintiffs. They, however, were unable to produce any book to show that the expenses incurred by the said Sy Tay for the maintenance and support of the said plaintiffs and of the woman, Yap Puan Niu, as well as the latter's traveling expenses were paid by and on account of Sy Quia.

They were unable to explain the reason for these disbursements made by Sy Tay for the benefit of two of the plaintiffs and their alleged grandmother, notwithstanding the fact that death had forever stilled the lips of the two brothers, Sy Tay and Sy Quia, plaintiffs having confined themselves to attributing to him whom they believed to be the wealthier of the two brothers, who unfortunately can not now speak, the paternity and parentage of a family

which is not proved to be his.

This court, in the strictest administration of justice and in conformity with the law, can not admit that plaintiffs have proved four marriages and three generations, since the evidence introduced by them in support of these facts only consists of the testimony of witnesses, most of whom have made conflicting statements and some have contradicted themselves, as for instance the brother of Sy Quia, Sy Hien, whose testimony is absolutely unworthy of credence, and other witnesses have told improbable stories and testified as to things which are not likely to occur in the natural and ordinary course of human events.

Even assuming that Sy Quia before he became a Christian actually married Yap Puan Niu in 1847, as alleged, and that his second marriage in 1853 with a Christian woman, by whom he had five children and with whom he lived contentedly in these Islands since the marriage until he died, covering a period of forty-one years, while the first marriage was still in full force and effect, was null and void, he, Vicente Romero Sy Quia, having therefore married twice in violation of the law, the plaintiffs, nevertheless, would not be entitled to the relief sought by them in their complaint.

There is not the slightest evidence in the record which even tends to indicate that Sy Quia, at the time of his marriage at Vigan in 1853 with Petronila Encaraacion, brought any property or money into the conjugal partnership. The fact that he did not is not surprising, as he was then a mere clerk in the employment of another Chinaman by the name of Jose Gloria, who was a resident of this city, with a salary of P200 per annum, as per the testimony of Silveria Damian, an aged woman, whose husband was also a Chinaman and worked for the same man that Sy Quia did and for the same salary; while, on the other hand, there is evidence in the record to the effect that Petronila Encarnacion, who belonged to a wealthy family of Vigan, brought to the marriage, as a gift from her parents, the sum of P5,000, which, together with their common labor and industry, was the basis of the fortune accumulated by both husband and wife in the course of years.

Therefore, even assuming that the second marriage which was contracted by Sy Quia at Vigan was void, while a former marriage alleged to have been performed at Amoy, China, was still in full force and effect, and upon which the plaintiffs in this case base their contention, the second marriage, however, produced civil effects under the laws here in force in 1853, the time when it was performed. These laws are as follows:

Law 3, title 3, Partida 4, provides in part as follows:

"Further, if people marry advisably, knowing that such impediment existed, and that for this reason they should not have married, the children which may be born will not be legitimate; but if only one of the contracting parties, and not both, was cognizant of the existence of such impediment, the children will be legitimate, for the ignorance of one of the contracting parties excuses them, and no one can say that they are not legitimate children."

Law 1, title 13, Partida 4, provides in part as follows:

"And even if it should happen that between those who are married manifestly in facie ecclesie such impediment exists which would require that the marriage be set aside, the children which may be born to them before the contracting parties knew that the impediment existed, will be legitimate. And this would also be the case if neither of the contracting parties knew that the impediment existed, as well as if only one of them had knowledge thereof, for the ignorance on the part of one of them would make the children legitimate. But if after knowing with certainty that the impediment existed between them, they should have children, any that should be born subsequent thereto will not be legitimate. But, if while such impediment exists without the knowledge of both parties or of either of them, they should be accused before the judges of the Holy Church, and before the impediment is duly established and final judgment entered, children be born to them, such children as may be born while the doubt exists, will be legitimate."

The Civil Code has merely reproduced with certain modifications the provisions of the old legislation in force in 1853 as to the civil effects of a void marriage where both parties married in good faith, as well as where only one of them acted in good faith, for whether one or both married in good faith, the marriage will produce civil effects only in favor of the innocent spouse, and of the children born of this void marriage.

If in all the acts of life good faith is to be presumed unless the contrary is proven, it can not be denied that Petronila Encarnacion acted in good faith when she married Vicente Romero Sy Quia in 1853, since there is no evidence in the record to the effect that she knew before or after her marriage that the said Vicente Romero Sy Quia was married in China to another woman.

The marriage contracted by a Christian Chinese at the time when Sy Quia was married in the Philippines, was preceded by such formalities, and so many requisites had first to be complied with, that it was difficult, not to say impossible, that in the natural and ordinary course of things the marriage could have been performed if there were any impediment at all thereto. In the case of Sy Quia, not only for many years was he considered in the city of Vigan by the community at large as a bachelor, his name appearing as such in the municipal census, but it must be fairly assumed that when he instituted the proceedings before the civil authorities, and ecclesiastical proceedings in the ecclesiastical court of Vigan, in order to secure permission and authority to marry in accordance with the various decrees then in force, among them the decree of the 20th of December, 1849, he must have positively said then that he was a bachelor, and this fact must have appeared from the summary investigation conducted by the ecclesiastical authorities of Vigan for the purpose of ascertaining whether or not he was a bachelor and free to marry, and when at last the parish priest of Vigan was authorized to proceed with the marriage ceremony, there is little room for doubt that Petronila Encarnacion, as well as her family, relying upon the result of both proceedings, and upon the license or authority granted by the government, and the authority given by the vicar general in the name of the bishop, for the performance of the marriage, they consented thereto in the best of good faith, particularly Petronila Encarnacion, to the latter's union to Vicente Romero Sy Quia in lawful wedlock.

If, on the contrary, it were true that Sy Quia had married in China many years before, there is no doubt that he acted in bad faith by deceiving his wife Petronila Encarnacion, as well as the civil and ecclesiastical authorities of this country, perjuring himself. And upon the assumption that the marriage with Petronila Encarnacion was void by reason of the existence of a prior undissolved marriage, the second marriage, nevertheless, produced its civil effects in favor of the deceived spouse, and of the children born to them, who, notwithstanding the nullity of the second marriage, are in the eyes of the law legitimate, as though they had been born of parents lawfully married.

Therefore, assuming that Vicente Romero Sy Quia acted in bad faith by concealing the fact of his first marriage at the investigation made by the authorities for the purpose of determining whether or not he was a bachelor and free to marry, one of the civil effects produced by the marriage thus rendered void was that Sy Quia thereby absolutely forfeited all his rights and interest to one-half of the conjugal property appearing in the instrument of partition, Exhibit A. F., and by operation of law all the property which would otherwise have belonged to him, became the property of his wife, Petronila Encarnacion," in accordance with the provisions of the Civil Code applicable to the case in conformity with rule 3 of the transitory provisions.

Law 16, title 17, Partida 7, with reference to this subject, provides:

"Notorious wickedness is committed by men who knowingly marry twice while their first wife is living, and the same may be said of women who marry twice knowing that their first husband is still alive. Because such marriages give offense to God, and bring about great damages and dishonor to those who are deceived, and they should be careful to marry well and properly, as directed by the holy Church, for they would otherwise be married to persons with whom they would later live in sin, and while they endeavor to be happy in their marriage, and have children, the first wife or first husband appears when least expected, and disrupts the

marriage, and on account of this rupture many women are dishonored and ruined forever, and men are disgraced in many ways. We therefore command that everyone who should knowingly enter into such a marriage, in any of the manners specified in this law, be hence banished to some island for five years, and that he forfeit whatever he may own at the place where the marriage was performed, and that it be given to his children or his grandchildren, if he has any, and if he has no children or grandchildren, one-half of such property should go to the person deceived, and the other half to the king's chamber ; and if both parties knew that one of them was married, and wilfully married him or her, then both shall be banished, each to a separate island, and the property of either of them who may have no children should go to the king's chamber."

Article 1417 of the Civil Code provides as follows:

"The conjugal partnership expires on the dissolution of the marriage or when it is declared void.

"The spouse who, by reason of his or her bad faith, caused the annulment, shall not receive any share of the property of the partnership."

This article embodies and reproduces under different aspects the provisions contained in articles 72, 1333, subsection 3, 1373, 1378, and 1429 of the same code, and a mere reading of this article, together with the provisions of law 16 of the Partidas above quoted, will show the difference between the two. It will be noticed that the code contains more favorable and less strict provisions on this subject than the law of the Partidas, wherefore, in accordance with rule 3 of the transitory provisions of the said code, the intestate succession of the deceased Vicente Romero Sy Quia should be governed and regulated by the new code, which was in force on January 9, 1894, the date of Sy Quia's death.

True, article 72 of the said code is included in title 4, the application and enforcement of which in these Islands was suspended under the former sovereignty; but there is no doubt that article 1417 and the other sections cited are now in force, said article 1417 providing that the spouse who by reason of his or her bad faith causes the annulment of the marriage, shall not receive any share of the property of the conjugal partnership.

It should be borne in mind that on account of the unexplained silence of Yap Puan Niu during her lifetime, and the silence of the plaintiffs during Sy Quia's lifetime, the conjugal partnership constituted in 1853 between Sy Quia and Petronila Encarnacion was dissolved in 1894 by the death of the husband, and only then, when the Civil Code was already in operation, would their presumptive heirs have acquired a right to claim the inheritance, for the right to inherit while the deceased was still living is a mere right in expectancy, and not until after the decease of the person whose succession is in concern can such a right be said to exist or to be duly acquired. See the preamble to the Civil Code and the doctrine laid down by the supreme court of Spain on the subject in its judgment of the 24th of June, 1897, wherein the court said:

"That upon the settlement and distribution of the estate of a person who dies subsequent to the promulgation of the Civil Code, any action for the recovery of the property of the estate should be governed by the provisions of the said code, in conformity with the first rule and the one preceding the last, of the transitory provisions, because the rule as to the nonretroactivity of the new law only applies to rights acquired under the former legislation; and it is a well-known fact that hereditary rights exist only after the demise of the decedent; and the trial court having so decided, it did not infringe the provisions of laws 11 and 12, title 13, Partida 6, and the general provision of the transitory rules for the application of the Civil Code."

However, as a matter of fact the action instituted by plaintiffs in 1905, claiming the property left by Sy Quia at the time of his death, is based especially upon the alleged nullity of the second marriage on account of the existence of the former performed in China. Therefore, the rights claimed by the plaintiffs should be determined in accordance with the provisions of the Civil Code which has been in operation since 1889 and under which the rights now asserted by the plaintiffs might have sprung and been acquired by them, this assuming that the alleged

first marriage was actually performed in China and that the claimants were in fact the issue of the said pretended marriage of Sy Quia and Yap Puan Niu.

Since the 9th of June, 1853, when Vicente Romero Sy Quia married Petronila Encarnacion, the conjugal partnership commenced to exist between the two spouses. All the property acquired by them up to the time of the dissolution of the said partnership on account of the death of Sy Quia on January 9, 1894, belonged to this partnership. (Law 1, title 3, of the Fuero Real; laws 1, 3 and 4, title 4, book 10, of the Novisima Recopilacion; and arts. 1393, 1401, 1403-1407, Civil Code.)

During Sy Quia's lifetime the validity of his marriage with Petronila Encarnacion, as has been said before, was never questioned, no one having indicated any defect which rendered the same void. It was only after his death that the plaintiffs ventured to attack the validity of the same by claiming that they were his legitimate heirs and as such entitled to his estate.

The Laws of the Partidas above cited, as well as the Civil Code, both recognize as a fact that a marriage contracted in good faith, by one at least of the parties to the same, produces the same civil effects as a valid marriage with reference to the innocent spouse and the children born of such marriage, even though the same be subsequently declared null and void.

It can not be denied that Petronila Encarnacion married Sy Quia in the best of good faith, there being not the slightest proof to the contrary so far as the record shows. Therefore, being innocent, she must be held to have acquired all the rights to which a wife is ordinarily entitled, and neither she nor her children can be made to suffer the consequences of the nullity of such marriage, this, assuming that the marriage was void; nor can they in any event be made to suffer the consequences of the bad faith of her husband Sy Quia.

The nullity of the marriage, once declared by the courts, may deprive the partnership created by the marriage of the alleged spouses of its otherwise legal character, but can not destroy the legal consequences of the marital union while it existed. Consequently the children are considered legitimate, and the innocent spouse is unquestionably entitled to one-half of the conjugal property acquired during the marriage.

From the legal provisions above cited, especially the sections of the Civil Code referred to, it necessarily follows that the half of the conjugal property to which Vicente Romero Sy Quia would have been otherwise entitled, on account of the alleged nullity of his marriage with Petronila Encarnacion and of his bad faith in contracting the same, was forfeited by him and by operation of the law passed to the other spouse, Encarnacion; and the plaintiffs, in their alleged capacity as legitimate descendants of the said Sy Quia, deceased, can not now claim the said property, as the decedent, by the express provisions of the law, absolutely forfeited his right to the said half of the property acquired during the marriage. Such marriage must be considered null and void if it is true, as alleged by the plaintiffs, that Sy Quia's marriage with Yap Puan Niu was still in full force and effect when he married Petronila Encarnacion.

Counsel for plaintiffs now ask this court to modify the judgment appealed from and to declare that the said plaintiffs are the only legitimate heirs of Sy Quia and consequently entitled to his entire estate, together with all rents and profits, for which judgment should be entered in their favor with costs. In support of their contention they have assigned various errors as committed by the trial court, among them that the court erred in finding as a conclusion of law that the said Sy Quia was a subject of the Chinese Empire and that his estate should be distributed in accordance with the laws of China.

It is an admitted fact that Sy Quia was a native Chinaman and therefore a foreigner; that he came to this country in 1839 or 1840, when he was 12 years of age. He having resided in these Islands since then and until January, 1894,

when he died, that is to say, for a period of more than 53 years, having obtained for this purpose the necessary license or permission, and having been converted to the Catholic religion, marrying a native woman in the city of Vigan and establishing his domicile first in the Province of Ilocos and later in this city of Manila, with the intention of residing here permanently, engaging in business generally and acquiring real estate, it is unquestionable that by virtue of all these acts he acquired a residence and became definitely domiciled in these Islands with the same rights as any nationalized citizen in accordance with the laws in force in these Islands while he lived here and until his death.

It should be noticed that, as the laws have no retroactive effect, in order to determine what rights Sy Quia had actually acquired since he removed to the Philippines in 1839 or 1840, it will be necessary to resort to the laws in force at that time; and the provisions of the Civil Code promulgated in November, 1889, could not affect in the least rights thus acquired by virtue of his long residence in these Islands. Article 3 of the Civil Code is as follows: "Laws shall not have retroactive effect unless otherwise prescribed therein." This provision is in accordance with the provisions of law 15, title 14, Partida 3.

The legislation then in force on the subject of naturalization and residence of foreigners in the Philippine Islands will be found in the following laws. Law 1, title 11, book 6 of the Novisima Recopilacion, is as follows:

"We permit that the subjects of other kingdoms (provided they are Catholics and friendly to our Crown) who may desire to come here to practice their trade or profession may do so, and we command that if they do now practice some trade or profession and live twenty leagues inland from any port, they shall be forever exempt from the payment of taxes, and shall be likewise exempt, for a period of six years, from the payment of municipal taxes and from the performance of any ordinary or extraordinary services, as well as from holding office as members of municipal councils at the place where they may reside; and they, like other residents, shall be permitted to use the common pastures and enjoy all the privileges accorded to the latter: and we hereby command the authorities to provide them with house and lands, if necessary. And other foreigners, whether they have any trade or profession, provided they have lived in this kingdom for a period of ten years in a home of their own, and have been married to native women for a period of six years, shall be admitted to all the offices of the republic except to those of magistrate, governor, mayor, alderman, warden, treasurer, revenue collector, secretary of city council, or any other government position of trust. As to these latter offices, as well as to all ecclesiastical offices, all existing laws shall continue in full force and effect, etc."

And law 3 of the same title and book of the Novisima Recopilacion provides:

"There shall be considered as denizens, in the first place. all foreigners who obtain the privilege of naturalization and those who are born in these kingdoms; those who residing therein may be converted to our holy Catholic faith; those who, being self-supporting, establish their domicile therein; those who ask for and obtain residence in any town thereof; those who marry a native woman of the said kingdoms and are domiciled therein; and in the case of a foreign woman who marries a native man, she thereby becomes subject to the same laws and acquires the same domicile as her husband; those who establish themselves in the country by acquiring real property; those who have a trade or profession and go there to practice the same; also those who practice some mechanical trade therein or keep a retail store; those who hold public or honorary offices or any such position whatsoever which can only be held by natives; those who enjoy the privilege of the common pastures and other privileges usually accorded to other residents; those who shall reside in the said kingdoms for a period of ten years in a home of their own; and also those foreigners who, in accordance with the common law, royal orders and other laws of the kingdoms, may have become naturalized or acquired residence therein, they being obliged to pay the same taxes as the natives for the legal and fundamental reason that they also participate in their privileges, etc."

Article 18 of the Code of Commerce of May 30, 1829, which was in operation until 1888, is as follows:

"Foreigners who have become naturalized or have acquired residence in Spain in the manner provided by law may freely engage in commerce with the same rights and under the same conditions as natives of the kingdom."

Although the royal decree of the 17th of November, 1852, was not extended to the colonies, with the exception of section 28 thereof, nevertheless, it is only proper to call attention to the provisions of the said decree in so far as they have any bearing upon the case at bar, in view of the provisions of laws 1 and 2, title 1, book 2, of the Compilation of the Laws of the Indies, which direct that the laws of Castile shall be observed in all cases not otherwise covered by said laws. Section 2 of the said royal decree of 1852 is as follows:

"Foreigners who have gained or obtained a residence, in accordance with the laws, shall be considered Spanish subjects."

Section 3 provides that all other foreigners who reside in Spain without having taken out naturalization papers, or otherwise gained a residence therein, shall continue to be foreigners. And section 12 provides:

"Those persons shall not be legally considered as foreigners, under any circumstances, who have failed to register as such in the registry of transients or domiciled persons kept by the civil authorities of the provinces or with the consuls of the respective nations."

It is a proven and undeniable fact that Sy Quia resided in the Philippines for more than fifty years, he having only absented himself occasionally for a short time with the intention of immediately returning to the Islands; and it is also a fact that in various documents and public instruments executed before notaries public, which have been introduced in evidence marked as "Exhibits 1, 2, and 3," said Vicente Romero Sy Quia has uniformly stated that he was a resident of the district of Binondo, having declared in one of the said documents that he was a freeholder. If the Chinaman Vicente Romero Sy Quia on account of his continuous residence in these Islands for a period of more than fifty years, and by virtue of the fact that he had permanently established himself in this country, living in a house of his own, with his wife and children, and having acquired real estate therein, did become a domiciled denizen under the laws then in force, even if it be held that the royal decree of the 17th of November, 1852, was applicable to these Islands by virtue of the provision contained in the Laws of the Indies, the legal status of Vicente Romero Sy Quia has not changed, because the provisions of the said decree do not in any way affect the rights acquired by him; and the supreme court of Spain in a judgment of the 30th of April, 1861, in construing this provision of the law, declared and held that the purpose of the royal decree of the 17th of November, 1852, was not to promulgate a new law, but merely to condense and embody in one single act the various provisions then in force with reference to foreigners, and to preserve the *fuero de extranjeria* (the rights which foreigners had in certain cases to invoke their own laws) in the same manner as it existed before. In another judgment of the 29th of August of the same year the said supreme court of Spain held that under the provisions of law 3, title 11, book 6, of the *Novisima Recopilacion*, there should be considered as domiciled denizens of Spain all foreigners who, being self-supporting, established their domicile in the country; the double inscription in the registry, as required by the royal decree of the 17th of November, 1852, being no obstacle thereto.

Many years prior to the promulgation of the Civil Code in these Islands, there was published in the Official Gazette of this city on September 18, 1870, the decretal law of the 4th of July of the said year relating to foreigners, section 2 of which provides:

"Foreigners who, in accordance with the laws, shall become naturalized or gain residence in any town of the Spanish provinces beyond the seas, shall be considered as Spanish subjects."

After dividing into three different classes the foreigners who should come into and establish themselves in the provinces beyond the seas, classifying them respectively as domiciled, transient, and immigrant foreigners, the

said section provided that "Domiciled foreigners are those who have a regular residence and have lived for three years in any province or who may have registered as such residents in the registry of domiciled, persons kept for this purpose," etc.

Section 7 of the said decree provides as follows:

"Any foreigner residing in the provinces beyond the seas, in order to be considered as such foreigner under the laws of the country, shall register in the registry of foreigners to be kept for this purpose by the civil supreme authorities and by the consuls of their respective nations."

The above-quoted sections of the said decree are in harmony with similar sections contained in the decree of the 17th of November, 1852, which, as has been said, was never extended to these Islands - with the exception of section 28 thereof relating to the settlement of the estates of deceased foreigners. The doctrine laid down by the supreme court of Spain with reference to the interpretation and proper construction of the said decree is not, therefore, inconsistent with the provisions of the decree or law of 1870, also relating to foreigners.

True that prior to 1870 there existed in these Islands no registry of foreigners and that even the civil registry was not then in operation, the provisions of titles 4 and 12 of the Civil Code relating thereto having been suspended by telegraphic order of the 29th of December, 1889. It is also true that no registry was kept by the foreign consulates and that there was no Chinese consul here at that time. However, if the Chinaman By Quia Kad really intended to preserve his nationality and the protection of the laws of this country, he would have registered in the registry which was kept by the Government here after the publication in these Islands of the said decree of 1870; and under the theory of the law a foreigner, in order to have the right to invoke the laws of his own country, must register in the proper registries as such foreigner; if Sy Quia did not see fit to so register at any time prior to his death in 1894, we must presume that he did not do so because he desired to, preserve the rights which he had acquired as a resident of Manila.

Continuous and permanent residence in the country for a period of years, and the rights thereby acquired as a denizen of any town, were always taken into consideration by the Spanish legislators in determining the rights of a foreigner residing in Spanish territory. The constitution of 1812 provides in section 5 that there shall be considered as Spanish subjects:

"2. Foreigners who have obtained from the cortes a certificate of naturalization; and, 3. Those who have otherwise gained residence in accordance with the laws of the country and lived as such residents for a period of ten years in any town of the kingdom."

A similar provision is contained in section 1 of the constitution of 1845, paragraph 4 of which is as follows:

"Spanish subjects are those who, not having otherwise obtained a certificate of naturalization, have, nevertheless, gained residence in any town of the kingdom."

It becomes necessary to refer to the Spanish laws which were applicable or in operation in these Islands at the time that Vicente Romero Sy Quia gained residence and acquired the status of a domiciled denizen of the municipality of Vigan and subsequently of this city of Manila, for the reason that they were the only laws regulating his personal rights.

In addition to what has been said for the purpose of demonstrating that Vicente Romero Sy Quia acquired the legal status of a domiciled resident of these Islands, we should not forget to say that the Chinese residents of these Islands under the former sovereignty, and particularly at the time that Sy Quia gained a residence in this Archipelago, were governed by the Laws of the Indies and other special laws, some of them quite ancient; although they had no consul or any other representative of the Chinese Government, they, nevertheless, had a

governadorcillo who was elected by their most prominent citizens, subject to the approval of the Governor-General. They were governed by laws different from the general laws of the country and paid a tax different from that which was paid by the natives and foreigners, and, upon their landing for the purpose of establishing themselves in the Islands, they had to obtain what was known as a resident's license and secure passports and permits whenever they desired to leave the Islands, and not only had they to obtain such permission from the Government, but also from their native wife, if they were married. It should be noticed also that they were not permitted to land in Manila without first obtaining a permit from the Government, and that they had to state before the Chinese immigration authorities whether they came here as mere transients, or visitors for a period of three months, which could be extended if they really intended to establish themselves in the country. For this purpose certain proceedings were instituted before the immigrant was given the said resident's license. This license entitled them to more liberty and privileges in their business journeys and excursions through the provinces than the other transients who merely had permission to stay here three months. All this may be verified by reference to the decrees of the 31st of August, 1839; 16th of September, 1840; 13th of December, 1843; and 20th of December, 1849.

It should be noticed further that section 19 of the said decree of the 16th of September, 1840, provided that the children always follow the status of their father and pay the same taxes, except the children of Chinese, who, according to the decree of the 2d of May, 1786, were considered as Chinese mestizos. These decrees may be found in the work entitled "Legislacion Ultra Marina," by Rodriguez San Pedro, vol. 2, pp. 471-483, and vol. 8, p. 401.

The foregoing will clearly show that Vicente Romero Sy Quia gained residence in these Islands under the laws of the Novisima Recopilacion. Therefore the questions raised by those who now claim to be his descendants should be decided in accordance with the laws in force in the Philippines to which Sy Quia submitted himself from the time he applied for a resident's license and abstained from registering in 1870 as a foreigner. Most of the property left by him being real, the same is subject to the laws of the country in which it is located.

In support of what has been said with reference to the special laws governing in the Philippines concerning Chinese, we will cite the decision in a case where a Chinese Christian by the name of Bonifacio Lim Tuaco requested that the children of Chinese married to native women, whether pure natives or half-castes, pay the same taxes as their father and be permitted to wear the same costume as the latter up to the age of 25. The Spanish Government, inspired by the traditional spirit of the ancient special laws relating to Chinese residents in these Islands, after consulting various heads of departments and obtaining the opinion of the Philippine council, denied the said petition in a royal order of the 24th of February, 1880, which was communicated to the Governor-General of these Islands and published in the Official Gazette April 17, 1880.

The plaintiffs in this case have invoked certain provisions of the Chinese laws as one of the grounds of the action by them instituted and now contend that the estate of Vicente Romero Sy Quia, deceased, should be distributed in accordance with the laws of that country. Even disregarding the fact that the plaintiffs should have, but have not, alleged in their complaint, as one of the facts constituting their cause of action, the existence of a law passed and promulgated in China, the existence of which law, being foreign, should have been alleged in the complaint, the fact remains that there is absolutely no evidence in the record as to the existence of the Chinese laws referred to by plaintiffs in their subsequent pleadings, the evidence of this character introduced by them consisting of books or pamphlets written in Chinese characters and marked "Exhibits AH, AI, AJ, and AK," which they claim contain a compilation of the laws of China, being useless and of no value.

It may be that they contain, as plaintiffs claim, the laws of China, but we have no Spanish translation of them, they being in the Chinese language, and written with characters which are absolutely unknown to this court and to

the defendants. Further, the plaintiffs have not introduced expert testimony in the manner and form prescribed by section 292 of the Code of Civil Procedure, and, finally, there is no evidence that these four books or pamphlets were printed by authority of the Chinese Government or that they have been duly authenticated by the certificate of competent authorities or that they are properly sealed with the seal of the nation to which they belong. For this" reason the said books or pamphlets can not, under any circumstances, be considered as documentary proof of the laws of China.

Section 300 of the Code of Civil Procedure reads as follows:

"Books printed or published under the authority of the United States, or of one of the States of the United States, or a foreign country, and purporting to contain statutes, codes, or other written law of such State or country, or proved to be commonly admitted in the tribunals of such State or country as evidence of the written law thereof, are admissible in the Philippine Islands as evidence of such law."

Section 301 of the same code provides:

"A copy of the written law, or other public writing of any State or country, attested by the certificate of the officer having charge of the original, under the seal of the State or country, is admissible as evidence of such law or writing."

Section 302 provides as follows:

"The oral testimony of witnesses, skilled therein, is admissible as evidence of the unwritten law of the United States or of any State of the United States, or foreign country, as are also printed and published books of reports of decisions of the courts of the United States or of such State or country, or proved to be commonly admitted in such courts."

The jurisprudence of American and Spanish tribunals is uniform on this subject. For the purposes of this decision however it will be sufficient to refer to the judgment of the supreme court of Spain of the 26th of May, 1887, wherein it is said:

"Whenever a foreign law is invoked in our tribunals, its existence must be satisfactorily established as any other fact."

If the pamphlets or books, written in Chinese characters, do not satisfactorily establish the existence of certain Chinese laws invoked by the plaintiffs, not only because such pamphlets or books lack the aforesaid formalities and requisites, but further because there is no evidence as to the nature of the laws contained in those books or pamphlets and the subjects with which they deal; on the other hand, the two witnesses whose testimony was introduced for the purpose of establishing the authenticity of the laws which, according to the plaintiffs, are contained in the said books, were unable to say positively at least that the book marked Exhibit AH contains an exact copy of the original. And the Chinese consul of this city, Sy Int Chu, after stating that he had never made a regular study of the laws of his country, simply consulting the same in connection with his official reports, admitted that he had never read or seen the original copy of this alleged compilation, the books not being duly certified, adding that he could not say whether the book marked "Exhibit AH" was an exact copy of the original.

The testimony of the witness Ly Ung Bing, the interpreter, as to the written and unwritten laws of China, does not show, as required by the Code of Civil Procedure, that he knew such laws or that he was acquainted with the nature of the laws alleged to be contained in the said books. He merely confined himself to expressing his own opinion with reference to the two classes of laws. He, not being an expert on the subject thoroughly conversant with the laws of China, his testimony, considering the manner in which he testified, can not even be accepted as partial evidence that the said four books really contain the written and unwritten laws of China.

From the foregoing facts and provisions of law referred to we conclude:

First. That it has not been duly established in this case that the Chinaman Sy Quia, married in 1847 at Am Thau, Amoy, China, the woman Yap Puan Niu, or that the plaintiffs are the descendants of the said Sy Quia, for the reason that the marriage of Sy By Bo, Sy By Guit and Sy Jui Niu, respectively, the affiliation and parentage of the latter and of Sy Chua Niu and Sian Han, and the adoption of Sy Yoc Chay have not been proven.

Second. That, even assuming that Sy Quia actually married Yap Puan Niu in 1847, and that the second marriage with Petronila Encarnacion in 1853 is, therefore, void, Sy Quia having contracted this second marriage in bad faith by concealing the fact that his former wife was still living, his half of the property of the conjugal partnership between him and his second wife, who married him in good faith, was forfeited by operation of law in favor of his said second wife, for although the law recognizes civil effects to a void marriage, it, nevertheless, deprives the party who married in bad faith of his share in the community property acquired during the existence of the marriage up to the time of its annulment.

Third. That, as a consequence of the foregoing conclusion and under the same hypothesis, the plaintiffs, as the descendants of Sy Quia by his first marriage, have no right to claim Sy Quia's share in the conjugal property acquired during his second marriage with Petronila Encarnacion for the reason that by the express provision of the law the half of the said conjugal property which would have otherwise belonged to the husband was transmitted to Petronila Encarnacion, together with the other half of the said property to which she was rightfully entitled under the law as the deceived wife.

Fourth. That, under the same hypothesis that the marriage of Sy Quia with Petronila Encarnacion is void, his former marriage not having been dissolved when he married the said Petronila Encarnacion, the children by the second marriage are, nevertheless, legitimate, this being one of the civil effects of a marriage contracted in good faith, as in this case, at least on the part of one of the contracting parties, Petronila Encarnacion.

Fifth. That Vicente Romero Sy Quia, having become a regularly domiciled denizen under the laws above cited by reason of his long residence in this country for more than fifty years and by reason of the further fact that he married a native woman, established himself in this city with a home of his own, acquired real property and engaged in business generally, most of the property left by him at the time of his death being real property, the questions raised by plaintiffs' petition must be determined in accordance with the laws of the Philippines to which Sy Quia submitted himself when he came to the Islands and secured a residence therein, and not in accordance with any other foreign or unknown law.

Sixth. That, aside from the fact that it does not specifically appear from the record what are the Chinese laws applicable to the issues of this case, there is no proof of the existence of the Chinese laws referred to by the "plaintiffs, nor is there anything to show that the books or pamphlets introduced by them in evidence contain any specific laws of the Celestial Empire.

The foregoing disposes explicitly or implicitly, affirmatively or otherwise, of all the questions raised by the various assignments of error submitted by both parties; and in our opinion it is not necessary to dispose of each of them in detail in view of the conclusion at which the court has arrived in this most important litigation.

For the reasons hereinbefore stated, we are of the opinion, and so hold, that the judgment of the trial court, appealed from by both parties, should be reversed, and that we should, and do hereby, absolve the defendants of the complaint upon which this action was instituted, without any special order as to the costs of both instances. The bond given by the receiver, Gregorio Sy Quia, is hereby discharged and the petition heretofore made for the appointment of a new receiver is hereby denied. It is so ordered.

Carson and Elliott, JJ., concur.

Arellano, C. J., concurring:

I concur, reserving my additional opinion.

Mapa, J., concurs in the result.

CONCURRING

MORELAND, J.,

The decision of this case will be very far reaching in its results. It is of the utmost importance to a great many families and to many large business interests in these Islands. It determines whether designing persons in China are to be permitted upon doubtful evidence to destroy or, at least, render utterly useless the protection which property ought to receive in the country where it is created.

A considerable part of the business of the Philippine Islands is conducted by Chinamen, natives of China. They are prominent participants in substantially every department of industry of the Islands. Many of them are married to native Filipino women and have children born of the union. The Filipino wife, generally speaking, acts in the utmost good faith in marrying her Chinese spouse and not infrequently materially assists in laying the foundations of their business prosperity. When the male child arrives at suitable age he enters the business of his father, and by industry, fidelity, and frugality helps to build the fortune of his house. Their whole business life is lived here; their whole business capital invested here. The products and resources of this country are the subjects of their efforts; from them and them alone comes the wealth amassed. The Filipino wife has no suspicion that she has been deceived by her Chinese husband. The children have no thought that they are illegitimate. The banns were published, the marriage ceremony performed before the world. The children were born, baptized, and received in life as the legitimate fruit of honest wedlock. They have labored unsparingly in order that they might have the comforts of life and the joys of home. Just when their hopes are about to be realized and their dreams to become realities, they are told that the husband and father has a wife and children in China; that the Chinese marriage antedates that in the Philippines; that the Filipino wife is a concubine and her children in effect illegitimate; that the earnings of the family, the accumulations and savings of a lifetime of industry and frugality, if not entirely swept away, are to be divided among aliens to the land, among strangers to its production.

What is the kind and character of evidence which, under such circumstances, public policy and public necessity ought to require to establish the prior marriage?

The facts in the case at bar have been fully set forth in the opinion of Mr. Justice Torres. It is unnecessary to present them again. They are far stronger in favor of the defense than those detailed in the previous general statement. In this case the Filipino wife, Petronila Encarnacion, was the financier of the family. She was the one who brought to the marriage the capital which was the corner stone of the subsequent business structure. She was born of a business family who had accumulated wealth. On her marriage with Sy Quia she received a portion of that accumulation. He was at that time and for some years prior thereto had been an employee of a merchant, receiving a salary of P200 per year. He was young when he married. He was understood to be single. He alleged that fact in a public document and added to that allegation the solemnity of his oath. He was taught the tenets of the Catholic faith and entered the fold of its church a ceremony which required the better part of two years. The espousals were made, the banns published, and the marriage publicly solemnized. For more than half a century no

one appeared to question its legality or attack its validity. Death had stilled the lips of the husband for more than eleven years, and the wife, enfeebled in mind and body, was on the very verge of the grave, so near in fact that she died before this action was tried, when the attack was made upon it. Even then the assault was not made by the alleged wife in China, nor by her children. They lived for nearly forty years wholly apart from the alleged husband and father, and died, mother and children, without having asserted, during all that time, their rights before the world. It remained for the second generation, the grandchildren of the Chinese wife, those whom Sy Hien brought from China to this country, to resuscitate and revive an alleged relationship which had lain dormant for more than fifty years.

Again, I ask, what kind of evidence must public policy, indeed, public necessity require before it will permit that the marriage be held established?

"Every intendment of the law leans to matrimony. When a marriage has been shown in evidence, whether regular or irregular, and whatever the form of the proofs, the law raises a strong presumption of its legality - not only casting the burden of proof on the party objecting, but requiring him throughout, in every particular, to make plain, against the constant pressure of this presumption, the truth of law and fact that it is illegal and void. So that this issue can not be tried like the ordinary ones, which are independent of this special presumption. And the strength of the presumption increases with the lapse of time through which the parties are cohabiting as husband and wife. It being for the highest good of the parties, of the children, and of the community, that all intercourse between the sexes in form matrimonial should be such in fact, the law, when administered by enlightened judges, seizes upon all probabilities, and presses into its service all things else which can help it, in each particular case, to sustain the marriage, and repel the conclusion of unlawful commerce. This doctrine explains why, as between the two presumptions of innocence and life, the law prefers the one which makes the marriage good. It extends through the entire law of marriage, and casts its weight beneficially into the balance when other considerations are conflicting, or their effect is doubtful. Persons dwelling together in apparent matrimony are presumed, in the absence of any counterpresumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society, and that if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. And because marriage is the highest public interest, this presumption' is stronger and less easily overthrown than the other and ordinary presumptions of fact. If a ceremony of marriage appears in evidence, it is presumed to have been rightly performed, and to have been preceded by all the needful preliminaries. If one of the 'parties had before been married, there is notv a presumption of great strength that the partner in such former marriage is dead. Yet if such partner is shoivn to have been living shortly before this second marriage transpired, the presumption of life will be in conflict with that of the validity of the marriage, whereupon all the circumstances should be made to appear, and the fact be deduced from the entire evidence as operated upon by these rules. An absence of the standard period of seven years will not now be required to make the second marriage good, because the seven-years presumption of life is weakened or overcome by that of the validity of the second marriage." (Bishop, Marriage, Divorce and Separation, vol. 1, sees. 956, 958, 959.)

"The law always presumes against the commission of crime, and therefore, where a woman, twelve months after her first husband was last heard of, married a second husband, and had children by him, the sessions did right in presuming, prima facie, that the first husband was dead at the time of the second marriage; and that it was incumbent on the party objecting to the second marriage to give some proof that the first husband was then alive." (The King vs. The Inhabitants of Twining, 2 B. & Aid., 386.)

"As against the duly proved marriage of Patrick Larkin and Cephalia P. Bartlett, November 20, 1860, it was not enough for the defendant to prove that Patrick was married seventeen years before to Mary O'Neill. Proof of such previous marriage did not cast the burden upon the plaintiff of proving either that the former wife was dead, or, if living, that a legal divorce had been granted. One of the plaintiff's claims, in reply to the defendant's claim of title by prescription, was, that on the 20th of November, 1860, she was, and ever since had been, a

married woman, the wife of said Patrick, who died December 31, 1882. She proved the marriage by competent evidence. Being proved, the law raises a presumption in favor of its legality, upon which she had a right to rely until its illegality was proved. *Semper praesumitur pro matrimonio*. In the case at bar then, as it was presented to the court, there was no occasion for the plaintiff to prove the divorce, and it mattered not to the defendant that the Irish copy of marriage record was excluded, inasmuch as there was no offer on the part of the defendant to prove, in connection with proof of the first marriage and that the first wife was living at the date of the second marriage, that no divorce had ever dissolved her marriage with Patrick Larkin, all of which steps were necessary in order to overthrow the presumption of law in favor of the marriage of Patrick and Cephalia." (*Erwin vs. English*, 61 Conn., 509.)

"Where a person has departed from the State, and has not since been heard from, the presumption of the law is that he is alive, until the lapse of five years, and after that time, that he is dead. But the presumption of life within the five years is not sufficient to establish, the illegality of a second marriage of such person's wife within that time; for that would be to establish a crime by mere presumption of law; and especially ought the second marriage to be deemed legal when it is attacked after the lapse of twenty years and during all that time the party has not been heard from." (*Spears vs. Burton*, 31 Miss., 547.)

"When a marriage has been solemnized according to the forms of law every presumption will be indulged in favor of its validity. The presumption is one in favor of innocence, as it will be presumed that a man will not commit the crime of bigamy by marrying a second time while his first wife is living. (*Johnson vs. Johnson*, 114 Ill., 611.) Absence of seven years without being heard from creates the presumption of death. But the presumption in favor of the validity of marriage is so strong that a former husband or wife will be presumed to be dead after an absence of less than seven years. The ordinary presumption in favor of the continuance of human life is made to give way to the presumption in favor of the innocence of a second marriage. (*Yates vs. Houston*, 3 Tex., 433; *Johnson vs. Johnson*, supra.) In the present case, however, no presumption as to the death of Barbara Beatrice can be indulged in favor of the validity of the marriage with Margaret Hube, because the proof shows affirmatively that said Barbara was alive when said marriage took place, and for nine years thereafter. The two marriages of Nicholas Beatrice, jr., and the existence of the first wife at the time of the second marriage, being established by proof, the presumption would arise in favor of a divorce from his first wife in order to sustain the second marriage. In view of this presumption the burden of proof rested upon the appellants, as the objecting parties, to show that there had been no divorce. The law is so positive in requiring a party, who asserts the illegality of a marriage, to take the burden of proving it, that such requirement is enforced even though it involves the proving of a negative. (*Boulden vs. McIntire*, 119 Ind., 574.)" (*Schmisseur vs. Beatrice*, 147 Ill., 210; *Dixon vs. People*, 18 Mich., 84; *Hull vs. Rawls*, 27 Miss., 471; *Harris vs. Harris*, 8 Ill. App., 57; *Senser vs. Bower*, 1 Pa., 450; *Cartwright vs. McGown*, 121 Ill., 388.)

"In this case it is proven that the defendant, being a single woman and competent to make a marriage contract, by a marriage ceremony of legal form was married to Levi B. Davis in 1878; that the parties lived together as husband and wife until the death of Davis, in the year 1889, being recognized by the entire community to be husband and wife during that entire time. If presumptions are to be indulged in, is it not clear that these facts would demand the presumption to be that at the date of the death of Davis the defendant was his wife? To overcome the conclusion inevitable from these facts, the government asserts that during all this period Davis had a lawful wife living. It proves the bare fact that a marriage ceremony was had between Davis and Eliza Jane Callahan, and then asks the court, as the trier of the facts, to assume as a fact that the prior marriage was legal, without offering any evidence to show that the parties who entered into this ceremony were legally competent to contract in marriage. It may very well be that this prior marriage was legal and binding. It may be that it was not. The validity of the marriage between Davis and the defendant has never been denied by anyone, until the government chose to question it by bringing this suit. Under the peculiar facts of this case, the court, as the trier of the facts, is justified in demanding clear proof of the validity of the alleged prior marriage which is relied on to defeat the claim of the defendant to be the lawful widow of Levi B. Davis, and, in the judgment of the court, the evidence adduced does not prove the validity of the prior marriage, but leaves that

question uncertain; and, as the burden of proof is upon the government, it must be held that it has failed to adduce sufficient evidence to justify the finding that the defendant is not the lawful widow of Levi B. Davis, deceased." (Shiras, J., in *U. S. vs. Green*, 98 Fed., 63.)

"It is conceded by counsel for appellants that Orica Leach was at one time the lawfully wedded wife of T. H. Leach, but they insist that under the facts of this case the presumption arises that these parties were divorced. It appeared from the testimony that after the second marriage, which was in 1838, T. H. Leach and Orinda Leach lived in the town where Orica Leach was living, until T. H. Leach left for the West, and that Orica never made any claim that T. H. Leach was her husband. Orica was introduced to the second Mrs. Leach, but nothing was said about her relations to T. H. Leach. Children were born as a result of this second marriage and they were recognized as legitimate by the first wife. Emma Leach, a child of the second marriage, was introduced to the first wife, and they frequently met thereafter. At the time of the second marriage Leach claimed to have been divorced from his first wife; but there is no testimony in the record, other than presumption, as to a divorce having been granted. Neither is there any direct testimony tending to show that Orica Leach did not obtain a divorce, except the presumption that the marriage relation once shown is presumed to continue. We think these facts bring the case within the rule announced in the case of *Blanchard vs. Lambert* (43 Iowa, 228). The law presumes that this second marriage was lawful, and not criminal, and that either Leach or his first wife had obtained a divorce before the second marriage. * * * There is no testimony whatever to meet the presumption of divorce; no showing that the parties to the first marriage were not divorced. The second marriage having been solemnized according to the forms of law, every presumption should be indulged in favor of its validity. * * * If it be said that this rule requires one to prove a negative, it may be said in answer that very frequently one has the burden of proving a negative. Where a negative is essential to the existence of a right, the party claiming such right has the burden of proving it. * * * The facts in this case clearly bring it within the rule of the *Blanchard* case, and, following that case, we must hold that the presumption of divorce has not been overcome." (*Leach vs. Hall*, 95 Iowa, 611.)

"The presumption of the death of the former husband or wife, in the case of second marriage, is only one of the many presumptions the law indulges in favor of the validity of the second marriage. As the authorities cited abundantly establish, every presumption is to be indulged as against the illegality of such a marriage. If the law will presume the termination of the former marriage relation by the death of one of the former parties to it, why not indulge any other presumption which might legally terminate that relation? We think, where the facts are not such as to destroy such a presumption, that a dissolution of the first marriage, by divorce, will be presumed in favor of the validity of the second marriage." (*Boulden vs. McIntire*, 119 Ind., 574.)

"In an action to annul a marriage on the ground of the previous marriage of the woman to another husband, who has not been heard of for four and a half years at the time of the second marriage, in the absence of proof that the first husband was then living, or had not been divorced from the defendant, the presumption in favor of the innocence of the defendant from crime or wrong and of the legality of the second marriage will prevail over the presumption of continuance of life of the first husband; and the burden is cast upon the party asserting her guilt or immorality to prove that the first marriage was not ended by death or divorce before the second marriage." (*Hunter vs. Hunter*, 111 Cal., 261; *Klein vs. Laudman*, 29 Mo., 259; *Jones vs. Gilbert*, 135 111., 27; *Potter vs. Clapp*, 203 111., 592; *Kelly vs. Drew*, 94 Mass., 107.)

"Is the intermarriage of Burdick with the pauper, in 1836, rendered illegal and void from the fact of her intermarriage with Hyland in 1834, who, after a short cohabitation with her, absconded and has not since been heard of? To render the second marriage illegal and void we must presume the continuance of the life of Hyland down to the time of the second marriage; and though, as a general principle, we are to presume the continuance of life for the space of seven years, still, when this presumption is brought in conflict with other presumptions in law, it may be made to yield to them. We are in all cases to presume against the commission of crime, and in favor of innocence; and the result will be, if we suffer this presumption to yield to the other, we, by presumption alone, pronounce the second marriage illegal and void, and the parties guilty of a heinous

crime." (Greensborough vs. Underbill, 12 Vt, 604.)

"The presumption in favor of matrimony is one of the strongest known to the law. * * * The law presumes morality, and not immorality; marriage, and not concubinage; legitimacy, and not bastardy." (Teter vs. Teter, 101 Ind., 129.)

"A. and B., after cohabiting as man and wife, separated in 1781, and the wife went to her friends in 1783, when she removed out of the State, and was never heard of afterwards. Her husband, in 1781, married another woman, with whom he lived thirty-eight years, and died leaving children. The absence of the first wife for seven years, from 1783 to 1790, without having been heard of during that time, was sufficient to afford a presumption of her death; and although the second marriage of A. in 1781 was void, his first wife being then living, yet his continued cohabitation with his second wife for twenty-seven years after 1790, and the reputation of their marriage, and the good character in society of the parties during all that time, and until the death of A., afforded sufficient ground to presume an actual marriage between them after 1790, or the time of the presumed death of the first wife, so as to entitle his second wife to dower in the lands which her husband was seised of during that period." (Jackson vs. Claw, 18 Johnson, 345.)

"Where husband and wife separated in 1829, and lived at places remote from each other, and the wife married again in 1835, and the husband in 1837, and the husband and last wife lived together as man and wife, until his death in 1853; in a controversy between a child by the first wife and the second wife and her children, respecting the estate, it was held that the second marriage of the husband must be held valid, without proof of a divorce between the husband and first wife, notwithstanding the second wife knew of the first marriage of her husband, and that his first wife was still living, but married to a second husband. * * * There was no evidence that the first wife of the deceased had obtained a divorce prior to her second marriage. But the law in favor of innocence raises such presumption. And the defendant Susan, if she knew of the existence of the first wife, might have acted on this presumption in contracting the marriage relation with Mr. Carroll. * * * No attempt was made to impeach or destroy their marriage relation, and we may safely conclude, after this lapse of time and under the circumstances, that the defendant was the lawful wife of the deceased, and that there existed no legal impediment to their marriage." (Carroll vs. Carroll, 20 Tex., 732.)

"But even if it had been shown that the first wife was living at the time of the second marriage, we should be constrained to presume under the facts of this case that there was a divorce." (Nixon vs. Wichita Land and Cattle Co., 84 Tex., 408.)

"It is settled law in this State that when a marriage has been consummated in accordance with the forms of law it is presumed that no legal impediments existed to the parties entering into such marriage, and the fact, if shown, that either or both of the parties have been previously married, and that such wife or husband of the first marriage is still living, does not destroy the prima facie legality of the last marriage. The presumption in such case is that the former marriage has been legally dissolved and the burden that it has not rests upon the party seeking to impeach the last marriage," (Wenning vs. Teeple, 114 Ind., 189.)

"The marriage with Desgrange having been proved, it was established as prima facie true, that Zulime was not the lawful wife of Clark, and the onus of proving that Desgrange had a former wife living when he married Zulime was imposed on the complainant; she was bound to prove the affirmative fact that Desgrange committed bigamy. * * * On the admissibility of Desgrange's confession that he committed bigamy when he married Zulime, the question arises whether this confession (if made) could be given in evidence against the defendants. They do not claim under Desgrange; he was not interested in this controversy When it originated, and was competent to give evidence in this cause at any time, if living, to prove, or disprove, that a previous marriage took place and was in full force when he married Zulime. Phillips, in his Treatise on Evidence (vol. 3, 287, Cowen's ed.) lays down the rule with accuracy, and cites authorities in its support, which rule is, that 'either of the married parties, provided they are not interested in the suit, will be competent to prove the marriage; and either of them will also be competent to disprove the supposed marriage; and they may give

evidence as to the fact whether their child was born before or after marriage.' If Desgrange could overthrow his marriage with Zulime by confession at one time, so he could at any other time; on this assumption, his confession of a previous marriage could have been admitted at any time before the trial, or at the trial, when he stood by and might be examined as a witness. The great basis of human society throughout the civilized world is founded on marriages and legitimate offspring; and to hold that either of the parties could, by a mere declaration, establish the fact that a marriage was void, would be an alarming doctrine." (Games vs. Relf, 53 U. S., 533.)

Whether we fully accept the doctrine above laid down or not, we are nevertheless forced to the conclusion that the evidence adduced by the plaintiffs relative to the marriage in China should be "clear, strong, and convincing" before the court holds such marriage proved. Under the circumstances of this case every presumption should be in favor of sustaining the second marriage, even to the extent of holding that the marriage, if any, between Sy Quia and Yap Puan Niu had been dissolved by divorce when the second marriage occurred. In addition to the stern demands of public policy which imperatively require that families born and reared in this country who by industry and frugality have amassed a competency from the utilization of its resources and opportunities shall not be despoiled of the fruits of a lifetime except upon clear, strong, and convincing proof, we have laid upon us no less imperatively the injunction that a marriage concededly solemnized in accordance with the forms of religion and of law shall not be annulled and destroyed for light and transient causes, but shall be presumed to be valid and binding upon participants and society until its nullity shall have been demonstrated by clear, strong, and convincing proof.

In weighing such evidence we must bear in mind the following:

- The marriage is alleged to have occurred at Am Thou, a small interior town of China, more than a thousand miles from the home of the defendants, among a people whose language was wholly unknown to the defendants. It was substantially impossible for them to obtain in China any evidence in opposition to that produced by the plaintiffs. They were wholly at the mercy of the plaintiffs in this respect. The plaintiffs might allege what they chose, produce any class and quality of witness whatever to sustain their allegations, entirely free from discovery or denial. Testifying in a foreign tongue, through an interpreter, the witnesses were substantially exempt from effective cross-examination. Detailing customs and ceremonies of which the defendants were wholly ignorant, they could invent as they pleased and color as they would. Free from the possibility of contradiction or detection, they could fabricate and falsify with utter impunity. Dealing with an event which occurred more than half a century before, they effectually and absolutely precluded the defendants, under all the conditions, from obtaining opposing testimony in the very place where the event occurred.

It seems to me that the court should take into consideration the enormous disadvantage under which the defendants labored in preparing a defense against these allegations and proofs of the plaintiffs. The conditions presented here are very like those involved when one party has under his control the evidence upon which his opponent must rely for the protection of his rights,

In the case of the Queen vs. Schooner "S. G. Marshall" (1 Has. & War., 316, 324), which involved a seizure for violation of a British shipping act, the owner alleged that he was born in British territory of British subjects and that he was himself a loyal subject of Great Britain, although his father had taken the oath of allegiance to the United States. Concerning the testimony given by the owner on the question of his citizenship, Judge Peters said: "My experience has led me in cases like this, where the temptation to state what is untrue is great, and the means of detection and contradiction are difficult to be obtained, to assign no appreciable weight to such testimony."

In the case of Foster vs. Mansfield etc. R. R. Co. (146 U. S., 88, 99), the court said:

"The defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by

his own oath, and hard to disprove; and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law which demands, not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of the facts."

In the case of *Young vs. Wolfe* (120 Fed. Rep., 956), Coxe, C. J., said, page 959:

"In approaching the defense of prior use the rule of evidence applicable thereto should constantly be borne in mind. The defense must be established beyond a reasonable doubt. The reason for the rule is obvious. It is so easy to fabricate or color testimony which lies almost wholly in the control of the person producing it, the infirmities of the human memory are so great and the liability to mistake so manifest, that the court is never justified in permitting such testimony to outweigh the presumption of validity which attaches to the patent unless it be of such a character as to carry a clear conviction and remove every reasonable doubt. This court has frequently had occasion to consider this defense, and it is, therefore, unnecessary to repeat what has been often said heretofore." (*Thayer vs. Hart*, 20 Fed., 693; *Mack vs. Spencer*, 52 Fed., 819; *Lalanc Co. vs. Habermann Co.*, 53 Fed., 375; *Singer Mfg. Co. vs. Schenck*, 68 Fed., 191.)

In the case of "*The Manitou*" (116 Fed., 60, 63), where the controversy turned upon the question whether or not a vessel came within the "Harter Act" so as to receive its benefits, and where much testimony was presented to show that every precaution was taken as required by that Act, the court said:

"But all testimony given under these conditions requires close scrutiny and it is not necessarily to be accepted unless found to be inherently worthy of belief. Where an account of circumstances leading to a loss is entirely within the control of one side of a controversy, there is more of a burden upon such party than where the matter has been open to the other side for an ascertainment of the facts."

In numerous other cases courts of chancery have required that the evidence shall be "clear, strong and convincing" or have used an equivalent phrase, studiously avoiding the expression "preponderance of evidence." The following are some of the cases: To prove an intention to abandon an easement, *Hennessey vs. Murdock* (137 N. Y., 317); to prove notice of an unrecorded deed in order to defeat the title of a subsequent purchaser, *Flagg vs. Mann* (2 Sumn., 486; 9 Fed. Cases, No. 4847); to prove that a deed found in the possession of the grantor had nevertheless been delivered, *Vreeland vs. Vreeland* (48 N. J. Eq., 56); to prove delivery of a gift not at any time found in the absolute possession of the donee, *Chambers vs. McCreery* (106 Fed. Rep., 367); to prove that a bill of sale or a deed absolute on its face is a mortgage, 4 Am. and Eng. Ency. of Law, 566, 567; *Dexter vs. Arnold* (3 Sumn., 152), *Gannon vs. Moles* (209 111., 180), *McAnnulty vs. Seick* (59 Ia., 586), *Dwyer Pine Land Co. vs. Whiteman* (92 Minn., 55) ; to establish a parol trust, *Moore vs. Crawford* (130 U. S., 122), *Emfinger vs. Emmiger* (137 Ala., 337), *Cline vs. Cline* (204 111., 130), *Brinkman vs. Sunken* (174 Mo., 709), *Krauth vs. Thiele* (45 N. J. Eq., 407), *Crouse vs. Frothingham* (97 N. Y., 105) ; to establish a lost instrument by parol evidence of its contents in order to found a right thereon, *Renner vs. Columbia Bank* (9 Wheat, 581), *McCarn vs. Rundall* (111 Ia., 406), *Edwards vs. Noyes* (65 N. Y., 125), *Van Horn vs. Munnell* (145 Pa. St., 497) ; to establish the right to specific performance of parol contracts in general and especially of such contracts concerning an interest in land or oral contracts to devise property, *Dalzell vs. Company* (149 T.J. S., 315), *Farley vs. Hill* (150 U. S., 572), *Shipley vs. Fink* (102 Md., 219), *Jones vs. Patrick* (145 Fed. Rep., 440), *Chicago, etc., R. R. Co. vs. Chipps* (226 Ill, 584), *Gibbs vs. Whitwell* (164 Mo., 387) ; to prove that the offspring of cohabitation apparently matrimonial is not legitimate, *Adger vs. Ackerman* (115 Fed. Rep., 124) ; to set aside a Government land patent on the ground of mistake, *Thallmann vs. Thomas* (111 Fed. Rep., 277) ; to impeach an officer's return of service of process, *Loeb vs. Waller* (110 Ala., 487) ; to falsify the statements in an officer's certificate of acknowledgment, *Willis vs. Baker* (75 Ohio State, 291), *Albany County Bank vs. McCarty* (149 N. Y., 71) ; to controvert a certificate of residence issued to a Chinaman under the provisions of the Chinese Exclusion Act, *Jew Sing vs. U. S.* (97 Fed. Rep., 583) ; to establish a contract by a parent to pay for services of an adult child living with him, *Conway vs.*

Cooney (111 N. Y. App. Div., 864); to establish as against the representatives of a deceased wife a parol gift by her to her husband, *Wales vs. Newbould* (9 Mich., 45, 89); to establish on behalf of a mortgagor that he did not receive the amount stated in his mortgage and that the latter was usurious, *Morris vs. Taylor* (22 N. J. Eq., 438); to annul a judgment or decree for fraud, *Wood vs. Davis* (108 Fed. Rep., 130) ; to prove that a probate court's grant of administration is void for want of jurisdiction, *Boston, etc., R. R. Co. vs. Kurd* (108 Fed. Rep., 116) ; to establish claims against estates of deceased persons, *Kearney vs. McKeon* (85 N. Y., 136), *Belcher vs. Grey* (16 Ga., 208), *Bodenheimer vs. Executors* (35 La. An., 1005), *Moore on Facts* (vol. 1, pp. 70, 71, 72, 75).

Without adopting to the full the rule of these cases, nor applying it with all its force and in all its extent to the case at bar, it nevertheless is clear to me that a rule of somewhat similar character ought to be applied here. As to result, it matters not whether we say that in all civil cases more than a preponderance of the proof is never required to establish a cause of action, and then permit the special circumstances to weigh in arriving at the preponderance of the proof, or whether we hold that the general rule of preponderance in civil cases is changed by exceptional or special conditions. The end is the same. In my judgment there are most assuredly conditions and circumstances in the case before us which require that the testimony presented by the plaintiffs shall be scrutinized and weighed with greater care and stronger suspicion than in the ordinary civil case.

The following should also be taken into consideration in weighing the evidence in this case:

- It has been said in the discussion of this case that great consideration should be given to the fact that the trial court saw the witnesses during the trial, observed their manner of testifying, considered their attitudes and interests, and resolved the question of credibility accordingly. It should be noted, however, that all of the direct testimony relative to the marriage in China was taken by commission at Amoy, China, and that the trial court never saw any of the witnesses who testified in that connection. On the other hand, the marriage here between Sy Quia and Petronila Encarnacion is admitted by all parties.

- Of the thirteen witnesses who testified for the plaintiffs concerning the marriage in China, nine were members of the family or tribe of the plaintiffs. This is indicated by the prefix "Sy." One or two others not having such appellation were shown by direct evidence to be also related to the plaintiffs.

- Some historians assert that there is always extreme difficulty in ascertaining the real facts from Chinese witnesses, even in Chinese courts, owing to the peculiar methods of procedure to which they are accustomed. (Williams, *Middle Kingdom*, vol. 1, pp. 484, 500, 501, 504, 518, 785.) The evidence relating to the marriage was taken before an American consul in Amoy through an interpreter. That difficulty was necessarily intensified.

- "It is quite true, however, that the testimony of foreigners and of others who are brought from a distance to the place of trial requires to be scrutinized with more than common caution. The tribunal before which they speak knows little of them, and they care little for it, and may have no respect for the laws of the country in which they are giving evidence. They have little to fear from having their falsehoods exposed, as there is little danger of conviction of perjury, and they lose nothing in reputation among their fellows. In our courts a witness who does not understand or who can not speak our language,, but who speaks through an interpreter, if at all, has the time and opportunity to prepare his answers to each question with care, and hence the force of a cross-examination is broken, if not destroyed." (*U. S. vs. Lee Huen*, 118 Fed. Rep., 442.)

- It is very significant that death has swept away every member of the Chinese family of Sy Quia of that generation, leaving not one to speak in this case. Sy Quia himself, Yap Puan Niu, his alleged Chinese wife, Sy Bi Bo and Sy Bi Git, their two sons, and the wives of both, all were dead when this action was commenced, and had been dead for years. Petronila Encarnacion, although alive when the action was brought, was so feeble in mind and body that she died before her testimony could be taken. The plaintiffs were thus free from possibility of

contradiction in whatever they might assert concerning the dead spouses.

- In the year 1894, when the death of Sy Quia occurred, the plaintiffs Sy Joe Lieng and Sy Yoc Chay, the only parties plaintiff who ever came to the Islands and the only persons who have appeared or taken part in the prosecution of the action, were 21 years old. They were men in stature and experience. There was nothing to prevent the immediate presentation of their claims against the property of Sy Quia. Yet they waited for more than eleven years before they instituted proceedings for the probate of their rights. During all that time they saw the property of Sy Quia in the hands of his Filipino wife and children, practically divided among them, they receiving the fruits therefrom and enjoying it as they would. They themselves were poor, were obliged to work to live and really needed the property far more than the Filipino children of Sy Quia. Yet they said nothing; did nothing to secure a declaration of their rights or a division of their property. It needs no citation of authorities to substantiate the proposition that the failure of the plaintiffs to enforce their rights for a period of eleven years raises a very strong presumption against their good faith and the validity of their claims.

- The testimony of the plaintiffs Sy Joe Lieng and Sy Yoc Chay (the other two plaintiffs did not testify and took no personal part in the prosecution of the case), in so far as it is valuable to them, consists very largely in admissions alleged to have been made by Sy Quia and Petronila Encarnacion recognizing that the plaintiffs were grandchildren of Sy Quia. Such evidence, if competent at all, should be scrutinized with the utmost care. (Code of Civil Procedure, sees. 383, 277, 282, 298.) No citation of authority is required to support a proposition so elementary. The great bulk of the personal testimony of the plaintiffs is of this character. Usually these admissions were made to the plaintiffs when no one else was present.

- The account book belonging to Sy Tay containing an entry of a sum of money alleged to have been given by Petronila Encarnacion in recognition of the fact that the plaintiffs were grandchildren of Sy Quia was incompetent, not having been properly proved.

- A careful reading of the testimony of the plaintiffs relative to the alleged gifts of P4,000 and P2,000 of Petronila Encarnacion in recognition of the paternity of Sy Quia discloses nothing which requires the construction placed upon such testimony by the plaintiffs.

- Sy Hien, brother of Sy (Juia, who seems to have been the main witness of the plaintiffs, is involved in so many contradictions and his appearance upon the stand during his last examination was so suspicious and unsatisfactory (he being in such a state that the court of its own motion ordered him from the witness stand) that he strengthened materially the defendants' case. His dressing a grandchild of Sy Quia and Petronila instead of Sy Quia and Yap Puan Niu in the nine suits is a circumstance of striking significance.

I have touched these latter matters very lightly for the reason that they are treated more at length in the opinion of Mr. Justice Torres.

Referring very cursorily to the evidence of the defense, Mr. Justice Torres having dealt with it more at length, these points should be noted:

- That if the evidence given by the defendants' witnesses as to the whereabouts of Sy Quia from 1848 to 1853 is true, the marriage in China is absolutely impossible. This testimony shows conclusively that Sy Quia was in Vigan, Philippine Islands, during the very years when he is alleged to have been living in China and raising a family there. It seems to me that their testimony ought, at the very least, to offset completely the evidence of the marriage in China. This evidence was also taken, at least partly, by commission, and the trial court saw only a few of the witnesses.

- That the testimony offered by the plaintiffs tending to show (a) that Sy Quia visited as his wife Yap Puan Niu on

one or two occasions when she was in Manila living at the house of Sy Tay; that he paid her passage to and from China and gave her money and presents; and (6) that the plaintiffs Sy Joe Lieng and Sy Yoc Chay were brought here from China at the request of Sy Quia and their passage paid by him; and that they were lodged at the house of Sy Tay and educated at his (Sy Quia's) expense, is utterly destroyed by the testimony of the wife of Sy Tay, who says, in effect, that such testimony of plaintiffs is a complete and pure fabrication.

In the consideration of this case it must be remembered that the Supreme Court of the Philippine Islands is, under the holding of the Supreme Court of the United States, in some respects a trial court, and that it has the power to reverse or modify a judgment rendered by a Court of First Instance, if it finds that the judgment of that court is against the preponderance of the evidence. (Sec. 497, Code of Civil Procedure, as amended by sec. 5 of Act No. 1123 and by sec. 1 of Act No. 1596.)

I can not bring myself to believe that the evidence of the plaintiffs is satisfactory. Their success in this case would be so disastrous in its possibilities to such a considerable portion of the people and the business interests of the Islands that plaintiffs' case can be established only by clear, strong, and convincing proofs. Having signally failed to produce such proofs, they can not succeed.

DISSENTING

JOHNSON, J.,

The Hon. A. S. Crossfield, who tried the case and saw and heard the witnesses, in his very carefully prepared opinion, found the following facts to be fully proved:

First. That one Sy Quia, a Chinaman, was born in the Empire of China, in or near the city of Amoy, in 1822 or 1823.

Second. That when the said Sy Quia was about 12 years of age he came to the Philippine Islands and remained here until he was about 25 years of age.

Third. That in the year 1847 he returned to China where he was married to one Yap Buanju (Yap Pua Niu), a Chinese woman, in accordance with the laws and customs of the Chinese Empire.

Fourth. That Sy Quia and Yap Buanju lived together from 1847 to 1851 or 1852; that during this period two children were born of that marriage and were called respectively, Sy Bibo and Sy Biguel.

Fifth. That about 1870 the said Sy Bibo was lawfully married to Ho Gim Niu, a Chinese woman, and there were born to them two children, one of which died in infancy, and the other, named Sy Jui Niu, one of the plaintiffs in the present case, died after the commencement of the present action, leaving an only child named Sian Han, a minor, now represented in the present case by his guardian, C. W. O'Brien; that when the first child of the said Sy Bibo died in infancy he adopted in accordance with the laws and customs of China, a Chinese child named Sy Joe Chay, one of the plaintiffs in the present case. Sy Bibo died in China in 1882.

Sixth. That said Sy Biguel, on or about the year 1871, was lawfully married in China to a Chinese woman named Yap Su Niu, from which marriage there were born two children, named, respectively, Sy Joe Lieng and Sy Chuaniu, who are each plaintiffs in the present action. Sy Biguel died in China in or about the year 1880, leaving his two above-named children as his only heirs.

It will be seen, therefore, that each of the plaintiffs included in the title of this cause is a direct descendant of the said Sy Quia and his Chinese wife, Yap Buanju.

Seventh. Yap Buanju, the Chinese wife of the said Sy Quia, died in China, intestate, in the year 1891.

Eighth. In the year 1851 or 1852 Sy Quia returned to the Philippine Islands where he became a member of the Catholic Church and adopted the name of Vicente Romero Sy Quia.

Ninth. In 1853 the said Sy Quia (Vicente Romero Sy Quia) was married, in accordance with the forms prescribed by the Roman Catholic Church, to the defendant, Petronila Encarnacion, who died in the year 1906, after the commencement of the present action, and her estate is now represented by Pedro Sy Quia, her son, as administrator.

Tenth. The said Sy Quia (Vicente Romero Sy Quia) died intestate in the city of Manila, in the year 1894.

Eleventh. After the marriage of the said Sy Quia (Vicente Romero Sy Quia) and Petronila Encarnacion, there were born to them five children, whose names, with the years of their birth, are as follows:

Apolinaria Sy Quia, 1853 (who died, without being married, intestate, in May 1900, leaving her mother as her only heir.)

Maria Sy Quia, who died before the commencement of the present suit, leaving as her only heir surviving Generoso Mendoza Sy Quia, one of the defendants in the present action.

Gregorio Sy Quia, 1856, Pedro Sy Quia, 1858, and Juan Sy Quia, 1860.

It will be seen that the present defendants, Petronila Encarnacion (Pedro Sy Quia now being the administrator of her estate), Generoso Mendoza Sy Quia, Gregorio Sy Quia, and Pedro Sy Quia, on his own behalf and as administrator of the estate of Petronila Encarnacion, and Juan Sy Quia, are the direct descendants of the said Sy Quia (Vicente Romero Sy Quia) and Petronila Encarnacion.

Twelfth. After the death of Sy Quia (Vicente Romero Sy Quia) on the 9th day of January, 1894, his estate was duly administered by his Filipino wife, Petronila Encarnacion, and a final distribution of his estate was made by order of the court of First Instance of Manila, on the 3d day of August, 1900, among the defendants herein.

Thirteenth. That the said Sy Quia (Vicente Romero Sy Quia) during his married life had accumulated a large fortune, consisting of real and personal property, all of which was located in the Philippine Islands.

Fourteenth. That while there is some dispute upon the question as to the amount of property which the said Petronila Encarnacion brought to the marriage, we are of the opinion that the proof justifies the conclusion that at the time of the marriage of the said Sy Quia and Petronila Encarnacion, they each brought to the marriage relation property of about the same value.

Fifteenth. That each of the marriages of the said Sy Quia, the first in China in 1847 to the said Yap Buanju, and the second in the Philippine Islands in 1853 to the said Petronila Encarnacion, was made in accordance with the laws and customs of the respective countries in which the marriage ceremonies were performed.

Sixteenth. There is nothing in the record which shows or tends to show that each of said marriages, so far as the two women were concerned, was not made in absolute good faith, believing that they had a right to enter into the said marriage relation, and that there was no impediment in law against it. There is nothing in the record which shows or tends to show that Petronila Encarnacion did not enter into the marriage relation in good faith, believing that there was nothing in law, at least, which forbade it.

Seventeenth. We have, therefore, in brief, the following facts:

(a) That Sy Quia (Vicente Romero Sy Quia) and his Chinese wife, Yap Buanju, were married according to the

laws and customs of China in 1847, and that the present plaintiffs are the direct descendants of that marriage.

(b) That Sy Quia (Vicente Romero Sy Quia) and Petronila Encarnacion were married in 1853, in accordance with the laws and customs of the Philippine Islands, and that the defendants in the present case are the direct descendants of that marriage.

(c) That the marriage of the said Sy Quia with Yap Buanju had not been dissolved or annulled at the time of the marriage of Sy Quia with Petronila Encarnacion.

(d) That so far as Petronila Encarnacion was concerned her marriage was entered into in absolute good faith.

Basing his conclusions upon the foregoing facts, the Hon. A. S. Crossfield rendered a decision as follows:

(a) Giving to the children of Vicente Romero Sy Quia by his first wife, Yap Pua Niu, one-half of the said estate; and

(b) Giving to the children of his second wife, Petronila Encarnacion, the other half of the said estate. From this decision the plaintiffs and defendants each appealed and each presented a bill of exceptions.

The plaintiffs and appellants agree to the findings of fact made by the lower court and present only a question of law in their appeal. The contention of the plaintiffs is that they are entitled to all of the estate of Vicente Romero Sy Quia, under the law.

The defendants and appellants each excepted to the judgment of the lower court and each presented a motion for a new trial, based upon the ground that the evidence adduced during the trial of the cause did not justify the findings of fact made by the lower court, which motion the court denied; to which order of the lower court the defendants duly excepted.

The contention of the defendants and appellants is:

First. That the findings of fact made by the lower court are not supported by the evidence; and

Second. That under the evidence they are entitled to all of the estate of Vicente Romero Sy Quia.

The lower court, in speaking of the evidence adduced during the trial of the cause, said: "There is practically no conflict in the evidence received, except such as possibly may be drawn from inference, and I find the following facts undoubtedly established:" [The findings are set out above.]

The appeals brought to this court present both a question of fact and of law.

The plaintiffs and appellants, under their appeal, are not entitled to have the evidence examined. (See par. 2, sec. 1, Act No. 1596, Philippine Commission.) They made no motion for a new trial in the court below.

The defendants, by virtue of their having made a motion for a new trial based upon the ground that the evidence was insufficient to justify the decision, and having excepted to the order of the court thereon, are entitled to have the evidence examined in this court. This court, however, while it may review the evidence taken in the court below, can not affirm or reverse except:

(a) By giving due weight to the fact that the judge who tried the case saw the witnesses when they testified; and

(b) When there is a preponderance of evidence against the findings of the lower court. (See sec. 1, Act No. 1596, Philippine Commission.)

Our contention, taking into consideration the fact that the lower court saw and heard the witnesses, is that his findings of fact are supported by a clear preponderance of the evidence and that his judgment, based upon such

facts, is clearly supported by the *lato* as well as by sound reason and justice.

The majority opinion finds that Sy Quia and Yap Pua Niu were not married in China, as is alleged by the plaintiffs for the reasons:

First. That his children and grandchildren, after the lapse of about fifty-eight years, could not present the letters which passed between the father of Sy Quia and the father of his wife Yap Pua Niu, before the marriage, by which these parents arranged for the said marriage, without the consent of the contracting parties, which letters they (the contracting parties) never had in their possession and never saw; and

Second. Because when Sy Quia in the Philippine Islands was trying to practice a fraud upon his Chinese wife and his to be second Filipino wife, he then said that he was not married.

All of the Chinese children of Sy Quia, born of his Chinese wife, were born in China between the years of 1847 and 1852, and those who were living at the time of the trial were between fifty-three and fifty-eight years of age. As a practical question, how many men of the most civilized nations, who have reached the age of fifty years, could then prove by documentary evidence, in the absence of public record, the marriage of their parents? I doubt whether there is a single member of this present court who would be able to prove by documentary evidence the marriage of his parents. The assertion is ventured that not a single member of the Supreme Court of the United States, the recognized greatest judicial body, would be able to prove by documentary proof, outside of public records, that his parents were legally married.

There is no proof in the record that the Chinese Government had a system of public records of marriage at the time of the marriage of Sy Quia with his first wife Yap Pua Niu, or that they have any such system now.

Sy Quia could not, by any representation of his made at the time or before his second marriage in the Philippine Islands, change the fact of his first marriage in China for the purpose of defeating the legitimacy of his children born of his Chinese wife.

The evidence adduced by the plaintiffs relating to the marriage of Sy Quia in China is literally as follows:

Sy Peng testified as follows:

"Q. What is your name? - A. Surname, Sy; name, Peng.

"Q. Where do you live? - A. I live at Am Thau.

"Q. What is your occupation? - A. I have been heretofore going abroad, and now I stay at home.

"Q. How old are you? - A. Eighty.

"Q. What position, if any, do you hold in the village of Am Thau? - A. I have been elected by the people of this village as headman.

"Q. How many headmen are there in your village? - A. Seven or eight.

"Q. Who is the chief of the headmen of your village? - A. I have been elected by all the people of the village to be head.

"Q. Where were you born? - A. I was born in Am Thau.

"Q. Do you know Sy Quia? - A. Yes; I know Sy Quian.

"Q. When did you first know him? - A. Ever since we were boys, we were traveling together and he is my clansman.

"Q. In what village did you first know Sy Quian? - A. In the Am Thau village, he lived quite close to my house, I saw him coming in and going out.

"Q. How well did you know him as a boy? - A. Very well, he was only four years older than myself and we have been playing together as boys.

"Q. Did you know his father and mother? - A. I did.

"Q. Where did they live? - A. They lived in the same house as Sy Quian.

"Q. How far was the house from the house where you lived? - A. Three houses away, about 50 or 60 steps.

"Q. When did Sy Quia first go abroad? - A. When he was twelve years old.

"Q. Where did he go? - A. Philippine Islands.

"Q. Where did you next meet him? - A. When he came home from abroad.

"Q. When he came home, to what village did he return? - A. The same village; to his house.

"Q. How old was he when he came back? - A. About 25 years old.

"Q. Do you know why he came back? - A. He came home to marry a wife.

"Q. How long did he stay at the village at that time? - A. About three or four years and then he went out abroad again.

"Q. When did you next see him? - A. Do you mean the third time?

"Q. Yes. - A. The third time his uncle had a boat which was sent here to Amoy with Sy Quian as supercargo.

"Q. How long did Sy Quia stay that time? A. Not very long; he went away with that ship.

"Q. When did you next see Sy Quia? - A. This is the fourth time I saw him, in Manila; I went there myself.

"Q. About when was that? - A. Upwards of ten years after he came home with that ship as supercargo.

"Q. How often did you go to Manila? - A. I was a broker. I went back and forth twice a year, sometimes three times. This is seldom though.

"Q. When in Manila would you meet Sy Quia, I mean the man you have testified about, who first left your village when about twelve years old and later came back to get married? - A. About upwards of ten years after the time he came back to be married.

"Q. How many times did you meet him in Manila? - A. Very frequently. He was not all the time at Luzon, or Manila; when he went to the other provinces I did not see him.

"Q. Do you know the name of the town or province that he went to from Manila? - A. He went to one province at one time and another at another. I, being a broker, do not know the language down there.

"Q. By What name did you know this man in Manila? - A. He was known as Vicente Ormero Sy Quiana.

"Q. Is the father and mother of this man you refer to as Vicente, living or dead? - A. Father and mother both dead.

"Q. Where did they die - in what village? - A. In Am Thau.

"Q. Was Sy Quia married or single? - A. Sy Quian was married in China.

"Q. In what village? - A. He married a girl of Lao Boan village, called Yap Puan Niu.

"Q. When was this man married? - A. He came home to be married when twenty-five years old.

"Q. How do you know he was married? - A. By reason of my relation to him as a clansman, and the fact that I was present at the feast and the celebration and "saw the bride" on her wedding day.

"Q. Where were they married? - A. They were married in the house Sy Quian's father and mother lived in.

"Q. In what village was this? - A. Am Thau village.

"Q. When Sy Quia (pronounced by the witness with a nasal sound) married Yap Pua (pronounced with a nasal sound) was he married or single? - A. He was single and Yap Puan was the only wife he married.

"Q. How do you know he was single? - A. By reason of my relationship; I know it as a fact that he came home for the purpose of getting married.

"Q. Was Yap Puan married or single when she married this man? - A. She was single.

"Q. After Sy Quia (pronounced with a nasal sound) was married, where did he live? - A. In the same house with his father and mother.

"Q. In what village? - A. Am Thau.

"Q. How long did he remain there after he was married? - A. After he was married a son was born, the second year another; the following year these children were taken care of by the wet nurse. He left home to go abroad after the second son was born.

"Q. Where did he go to? - A. To Manila.

"Q. Did he afterwards return, if so when? - A. He did; not very long after he was gone Sy Quian's uncle sent a ship here, Sy Quian being the supercargo, he, however, left soon again with that ship.

"Q. How do you know he returned? - A. I went to see him to get information concerning my brothers who were then in Manila.

"Q. Did Sy Quian and his wife have any children, if so, how many? - A. Two sons.

"Q. How do you know that this couple had these two children? - A. When sons are born the father sends around cakes and so forth to notify the relatives, and they come to congratulate him, that is the way I came to know it.

"Q. Where did these two sons live? - A. In the same house.

"Q. With whom? - A. At that time the grandfather and grandmother of these two sons were dead, they lived with their father's younger brother, his wife, and their mother.

"Q. In what village? - A. In Am Thau." Lim Chio testified as follows:

"Q. What is your name? - A. My surname is Lim, and I have married into the Yap family.

"Q. State your name in full. - A. Lim Chio.

"Q. Where do you live? - A. In Lau Poan.

"Q. What is your occupation? - A. I have no particular occupation; I am an old woman looking after the family.

"Q. How old are you? - A. Seventy-seven years old.

"Q. How long have you lived in Lau Poan village? - A. A very long time; ever since I was married.

"Q. Where did you live before you were married? - A. Before I was married I lived in my old home in Tung Bin.

"Q. Are you married or a widow? - A. I am a widow, my husband having died more than twenty years ago.

"Q. When were you married? - A. When I was 17 years old I was married into the Lau Poan village.

"Q. Whom did you marry? - A. I married Yap Su.

"Q. Did you know a woman by the name of Yap Puan Niu? - A. Yes; I did.

"Q. Where did you first know her? - A. At the time of my marriage. She lived in the upper house and she acted on the day of my marriage as my maid.

"Q. What do you mean by the "upper house?" - A. I mean the next house to mine.

"Q. How far was that house from the house you lived in? - A. Very close together; next door, in fact.

"Q. When you first knew Yap Puan Niu, state, if you know, whether she was married or single. - A. She was single.

"Q. Do you speak the Amoy dialect? - A. Yes.

"Q. Do you know whether or not Yap Puan Niu was married? - A. She afterwards married Sy Quian.

"Q. You stated that Yap Puan Niu was single when she acted as your maid. State if you know whether or not she subsequently became a married woman. - A. The next year after that she married.

"Q. Whom did she marry? - A. She married Sy Quian, of the Am Thau village.

"Q. Where did you live at the time Yap Puan Niu was married? - A. I lived as her neighbor.

"Q. Where was Yap Puan Niu married? - A. In the Lau Poan village.

"Q. How do you know that she married Sy Quian of the Am Thau village. - A. He first obtained her 'eight characters' and he sent a red chair for her.

"Q. State, if you know, who, if anyone, arranged the marriage between Sy Quian and Yap Puan Niu.- A. Yes; there was one, Yap Hong was the mediator.

"Q. How do you know Sy Quian sent a red chair for Yap Puan Niu? - A. I was there to help Yap Puan Niu put on the bridal suit and assisted her into the red chair.

"Q. State, if you know, whether this man Yap Hong was present at the time of the coming and departure of the red chair. - A. He was with the party that came with the red chair and also departed with the red chair, as the mediator.

"Q. State, if you know, where Sy Quian went after he left Am Thau. - A. He went to Manila.

"Q. State, if you know, about how old Yap Puan Niu was when she married Sy Quian. - A. She was about twenty-one years old at the time she married Sy Quian.

"Q. State, if you know, whether Yap Puan Niu had ever been married before she married Sy Quian. - A. No; she had not been married.

"Q. State, if you know, whether Sy Quian had ever been married before he married Yap Puan Niu. - A. No; had he been married his proposal would have been refused.

"Q. Did Sy Quian and his wife Yap Puan Niu have any children? State, if you know. - A. Yes.

"Q. How many? - A. Two.

"Q. Boys or girls? - A. Both boys.

"Q. Do you know their names? - A. The older one was named Sy Bi (Mi) Bo, and the other one Sy Bi (Mi) Git. They were brothers.

"Q. Is Sy Quian living or dead? - A. He is dead.

"Q. Is his wife, Yap Puan Niu, living or dead? - A. She is dead.

"Q. When did she die? - A. She has been dead fifteen or sixteen years; she died before Sy Quian.

"Q. Where did she die? - A. In Am Thau.

"Q. Where was Sy Quian buried? - A. In Manila. Yap Si Tan testified as follows:

"Q. What is your name? - A. Yap Si Tan.

"Q. Where do you live? - A. At present in Lao Poan.

"Q. How old are you? - A. Seventy-eight.

"Q. Are you married or single? - A. Married.

"Q. Where is your husband? - A. He is dead now.

"Q. Where were you married? - A. In Lao Poan.

"Q. Did you know a woman of the name of Yap Puan Niu? - A. Yes; I did.

"Q. Where did you first know her? - A. First time I knew her was when we were small girls, we lived as neighbors.

"Q. How old were you when you got married? - A. Fifteen years old.

"Q. When you first knew Yap Puan Niu was she married or single? - A. She was not married.

"Q. Where is she now? - A. She is in Am Thau.

"Q. Is she living or dead? - A. Dead.

"Q. About how long has she been dead? - A. Fifteen or sixteen years.

"Q. Do you know whether or not she was married? - A. Yes; Yap Puan married Sy Quian.

"Q. How do you know that Yap Puan Niu married Sy Quian? - A. She was my elder cousin. I was there by her invitation at the time of her wedding.

"Q. About how old was Yap Puan Niu at the time of her marriage? - A. Twenty-one years old at the time of her marriage.

"Q. Do you know if she had ever been married before? - A. No; she was not.

"Q. Where were Sy Quian and Yap Puan Niu married? - A. Sy Quian and Yap Puan Niu were married at Am Thau and Lao Poan, respectively.

"Q. Do you know whether or not any one arranged the marriage between Sy Quian and Yap Puan Niu? - A. Yap Hong was the mediator.

"Q. State, if you know, whether the mediator, Yap Hong, was present at the marriage. A. Yes; he came with the red chair, but he did not come after the marriage.

"Q. How do you know the bride was sent for to be married? - A. On the betrothal day there were sent from the groom's family the usual presents, which were distributed among the friends and relatives of the bride's family. In the same manner were those return presents, such as Chinese breast pieces, and so forth, distributed among the friends and relatives of the groom's family; in this way the betrothal was made known. Two days prior to the marriage the bridal dress was sent to the bride's family.

"Q. Were you present at the time the party left with the red chair? - A. I was.

"Q. Do you know whether Sy Quian and his wife had any children? - A. Yes; the very next year after the marriage.

"Q. How many children did they have? - A. Two.

"Q. What were their names? - A. One was named Sy Bi (Mi) Bo and the younger one Sy Bi (Mi) Git.

"Q. Were these children ever in your village? - A. Yes; they were. Their mother Yap Puan Niu took them there.

"Q. Was Sy Quian ever in that village after the twelfth day that you have mentioned? - A. Yes.

"Q. State, if you know how long Sy Quian remained in Am Thau after his marriage to Yap Puan Niu. -A. Three or four years.

"Q. State, if you know, where he went. - A. To Manila.

"Q. Did he ever return ? - A. Three or four months afterwards he came back as a supercargo of a certain steamer.

"Q. How long did he remain? - A. Only upwards of ten days. He left again with the same steamer.

"Q. State, if you know, where Sy Quian is now. - A. In Manila.

"Q. Is he living or dead? - A. Sy Quian, I understand, is dead."

Yap Chia testified as follows:

"Q. What is your name? - A. Yap Chia.

"Q. Where do you live? - A. Lao Poan.

"Q. What is your occupation? - A. I have been a farmer and am now village elder.

"Q. How old are you? - A. Seventy-two.

"Q. How long have you lived in the Lao Poan village? - A. Ever since I was born there.

"Q. Did you know a woman by the name of Yap Puan Niu? - A. Yes; she was a cousin by the same grandfather and lived in the same house with me.

"Q. How long did you and Yap Puan Niu live in the same house together ? - A. She lived in the same house-with me until she was married.

"Q. State, if you know, whom she married. - A. She married Sy Quian, of Am Thau village.

"Q. State, if you know, whether she had ever been married before.- A. No, she was not. A certain member of my house from Am Thau village made very diligent inquiries concerning Yap Puan Niu; the fact was her 'eight characters' had never been asked for and sent out of the house. The woman from Am Thau village was called

Im.

"Q. How do you know they were married? - A. Because I lived in the same house with Yap Puan Niu, was present on the betrothal day, and was present when the red chair came and when she left in that chair. On the last-named occasion I was firing the big firecrackers which were about the size of my two arms put together.

"Q. Who was the mediator? - A. Yap Hong.

"Q. State, if you know, where Sy Quian and Yap Puan Niu lived after their marriage. - A. They lived in Am Thau.

"Q. How long did Sy Quian continue to live in Am Thau? - A. Three or four years.

"Q. State, if you know, where Sy Quian went after he left Am Thau. - A. He went to Luzon or Manila.

"Q. Do you know how old Sy Quian was at the time of his marriage? - A. He was four or five years older than Yap Puan Niu; he was about twenty-five years old.

"Q. State, if you know, whether Sy Quian and his wife Yap Puan Niu had any children. - A. Yes. The very next year after the marriage they had a son, Bi (Mi) Bo by name.

"Q. How many children did they have altogether? - A. Two. The other one, Bi (Mi) Git by name. Those two I saw on their visit to their mother's old home.

"Q. Is Sy Quian living or dead? - A. He is dead.

"Q. When did he die? - A. More than ten years ago.

"Q. Where? - A. In Luzon. He had never been home since his third return.

"Q. Is his wife Yap Puan Niu living or dead? - A. Also dead.

"Q. Where did she die? - A. In Am Thau. I was present at her funeral.

"Q. When did she die? - A. Fifteen or sixteen years ago.

"Q. Who died first - Sy Quian or Yap Puan Niu? - A. Sy Quian's wife died first."

Sy Kai Tit testified as follows:

"Q. What is your name? - A. Sy Kai Tit.

"Q. Where do you live? - A. Na Au.

"Q. What is your occupation? - A. Elder of the village.

"Q. How old are you? - A. Seventy-one years old.

"Q. How long have you lived in Na Au? - A. Ever since I was born there.

"Q. Do you know the village of Am Thau? - A. Yes, I do.

"Q. How far is it from your village? - A. 600 or 700 steps.

"Q. To what clan do you belong? - A. To the Sy clan.

"Q. Were you acquainted with Sy Quian? - A. Yes; we were acquainted.

"Q. How long did you know Sy Quian? - A. The first time I knew him was when he came home to be married.

"Q. About how old was he at that time? - A. He was twenty-five years old.

"Q. At the time he came home, state, if you know, whether he was married or single. - A. He had not been married.

"Q. State whether or not he was married at any time during your acquaintance with him. - A. He came home from abroad for the special purpose of getting married. He had not been married before.

"Q. State whether or not he did get married. - A. Yes, he did.

"Q. State with whom. - A. Yap Puan Niu of Lao Poan.

"Q. When? - A. When he was twenty-five years old.

"Q. How long after he returned from abroad? - A. Only a few months after he came back from abroad did he marry the girl of his father's choice.

"Q. Where? - A. In Am Thau.

"Q. State, if you know, whether they had any children. - A. Yes.

"Q. How many? - A. Two; one Bi (Mi) Bo and the other Bi (Mi) Git by name.

"Q. How long did you know these two children, Sy Bi (Mi) Bo and Sy Bi (Mi) Git? - A. I knew them since they were mere boys; I used to visit their home quite often.

"Q. How long did Sy Quian remain in Am Thau after his marriage? - A. Three or four years. Then he went abroad again.

"Q. During these three or four years, were you ever in the house of Sy Quian and Yap Puan Niu, his wife? - A. I was in the house during these three or four years almost every day; I had nothing to do then, and went there to have a chat with him.

"Q. How do you know that they had these two children? - A. By reason of my visits, as I have stated, and by reason of the cakes, and so forth, which I received on the births of these two children as notification thereof.

"Q. Where is Sy Quian now? - A. He is dead in Manila.

"Q. Where is Yap Puan Niu now? - A. She is also dead." Yap Chong testified as follows:

"Q. What is your name? - A. Yap Chong.

"Q. Where do you live? - A. In Lao Poan.

"Q. What is your occupation? - A. I am elder of the village. I have been a farmer heretofore.

"Q. How old are you? - A. Seventy-one years old.

"Q. Were you acquainted with Yap Puan Niu? - A. Yes. I am acquainted with Yap Puan Niu. She was of my village.

"Q. When did you first know her? - A. She was my neighbor, and I knew her since she was a child; she was older than myself.

"Q. Where is she now? - A. She is now dead; she died, in Am Thau.

"Q. How long ago? - A. She has been dead about fifteen or sixteen years.

"Q. State, if you know, whether she was married or single at the time of her death. - A. She was married in Am

Thau; husband's name Sy Quian.

"Q. When were they married?- A. When she was about twenty-one years old.

"Q. State, if you know, whether Sy Quian and Yap Puan Niu had any children. - A. Yes.

"Q. How many? - A. They had two.

"Q. Boys or girls? - A. Boys.

"Q. What were their names? - A. The elder one was named Bi (Mi) Bo.

"Q. And the younger one? - A. Bi (Mi) Git.

"Q. When was Sy Bi (Mi) Bo born, in reference to the marriage of Sy Quian and Yap Puan Niu? - A. The next year after their marriage.

"Q. When was Sy Bi (Mi) Git born? - A. The next year after the other one.

"Q. At the time of the marriage of Yap Puan Niu to Sy Quian, state, if you know, whether she was married or single. - A. No, she was not married.

"Q. State, if you know, whether Sy Quian was married or single at the time he married Yap Puan Niu. - A. No, he was not married.

"Q. Where is Sy Quian now? - A. He is dead.

"Q. Where did he die? - A. He died in Manila."

Sy Boan testified as follows:

"Q. What is your name? - A. Sy Boan.

"Q. Where do you live? - A. Na Au, Am Thau.

"Q. How old are you? - A. Seventy-eight years old.

"Q. How long have you lived in Am Thau? - A. I have been living there in Na Au since I was born.

"Q. Where is Na Au in reference to Am Thau? - A. Joining one another.

"Q. Were you acquainted with Sy Quian? - A. Yes, sir, Sy Quian, I know.

"Q. How long did you know Sy Quian? - A. I was born in Na Au; knew him since a boy.

"Q. Where is he now? - A. He is dead.

"Q. When did he die? - A. More than ten years ago.

"Q. Where? - A. Manila.

"Q. State,, if you know, whether he was married or single? - A. He was married.

"Q. Where was he married? - A. In Am Thau.

"Q. When? - A. When he was more than 20 years old.

"Q. Whom did he marry? - A. He married Yap Puan Niu, of Lao Poan.

"Q. How do you know? - A. I was present at his wedding and invited to the wedding feast.

"Q. How long did he remain in Am Thau after he was married? - A. After his marriage he stayed three or four years before he went abroad again.

"Q. Was Sy Quian married or single at the time he married Yap Puan Niu ? - A. He was not married.

"Q. At the time Yap Puan Niu married Sy Quian, was she married or single? - A. She was not married.

"Q. Do you know who arranged this marriage? - A. The mediator.

"Q. Did Sy Quian and his wife have any children? If so, how many? - A. Yes, two.

"Q. Boys or girls? - A. Boys.

"Q. What were their names? - A. One Bi (Mi) Bo and the other, the younger, Bi (Mi) Git by name.

"Q. When was Sy Bi (Mi) Bo born, with reference to the marriage? - A. One year or more after the marriage.

"Q. When was Sy Bi (Mi) Git born, in reference to the marriage? - A. He was born in the year following.

"Q. During the three or four years that Sy Quian lived in Am Thau after his marriage, were you ever in his house? - A. Yes.

"Q. How often? - A. Occasionally.

"Q. Where is Sy Quian's wife, Yap Puan Niu, now? - A. She is dead." Sy Kong Leng testified as follows:

"Q. What is your name? - A. Sy Kong Leng.

"Q. Where do you live? - A. Na Au.

"Q. What is your occupation? - A. I am the elder of the village.

"Q. How old are you? - A. Fifty-eight.

"Q. Where is Na Au, in reference to Am Thau? - A. It is simply another name; it is part of Am Thau.

"Q. How long have you lived there? - A. I have lived there very long. When I was nineteen years old I went abroad.

"Q. When you went abroad, what place did you go to? - A. To Luzon.

"Q. To what part of Luzon? - A. Manila.

"Q. How long did you remain in Manila? - A. Two or three years.

"Q. And then where did you go? - A. Returned home.

"Q. How long did you remain at home? - A. For two or three years; then I went there again.

"Q. How long did you remain in Manila at that time? - A. Only two months or more, then I went to some province of the Philippine Islands.

"Q. Are you acquainted with Sy Quian, formerly of the Am Thau village? - A. Yes.

"Q. When did you first become acquainted with Sy Quian? - A. When I was a boy in my teens.

"Q. And where did you first become acquainted with him? - A. In Am Thau.

"Q. Where is Sy Quian now? - A. He is dead.

"Q. Where did he die? - A. He died in Manila.

"Q. At the time of his death was Sy Quian married or single? - A. He was not only married but had children at the time of his death.

"Q. What was the name of his wife? - A. Yap Puan Niu.

"Q. Where did she live? - A. In Am Thau.

"Q. Where is she now? - A. She is dead.

"Q. Did Sy Quian and his wife, Yap Puan Niu, have any children? - A. Yes.

"Q. How many? - A. Two.

"Q. Boys or girls? - A. Boys.

"Q. What were their names? - A. The older one Bi (Mi) Bo and the younger Bi (Mi) Git by name.

"Q. Were you acquainted with Sy Quian in any other place than Am Thau? - A. Sy Quia is the name of Sy Quian as it is given in Manila.

"Q. How often did you meet him in Manila? - A. We lived in the same house in Manila.

"Q. Did you meet Sy Quian while abroad? If so, where? - A. Yes, in Manila; lived in the same house with him.

"Q. By what name or names was he known in Manila? - A. Vicente Romero Sy Quia.

"Q. How long did you live in the same building with Vicente Romero Sy Quia? - A. Two or three years."

Sy Jong Oan testified as follows:

"Q. What is your name? - A. Sy Jong Oan.

"Q. Where do you live? - A. Am Thau.

"Q. What is your occupation? - A. I am elder of the village.

"Q. How old are you? - A. Fifty-three.

"Q. How long have you lived there? - A. I have been abroad, but since my return I have lived there.

"Q. Where were you born? - A. Am Thau.

"Q. When you went abroad, to what place did you go? - A. Manila.

"Q. How old were you when you first went abroad? - A. Twenty-one years old.

"Q. How long did you remain in Manila? - A. Five years.

"Q. And where did you then go? - A. Came home.

"Q. How long did you remain at home? - A. Two years.

"Q. And then where did you go? - A. Manila.

"Q. How long did you remain in Manila that time? - A. Two years. I came home then when I was 28 years old.

"Q. How long did you remain at home? - A. Two years again this time.

"Q. And then where did you go? - A. To Manila.

"Q. How long did you remain in Manila? - A. I came home when I was 30 years old and remained until I was 36, when I again went to Manila.

"Q. Did you know a man in Am Thau by the name of Sy Quian? - A. Yes, I did.

"Q. When did you first know him? - A. When I was 8 or 9 years old he returned to China then.

"Q. To what place in China? - A. Am Thau.

"Q. How long did he remain in Am Thau? - A. A year or more.

"Q. Where did he go then? - A. Manila,

"Q. Did you ever see him again? - A. Yes; when I went there at 21 I met him there.

"Q. What was the occasion of your meeting him there? - A. I lived in Binondo and Sy Quian in Jaboneros. I had a message from him, so I called on him.

"Q. Did you meet him? - A. Yes.

"Q. Have any conversation with him? - A. Yes.

"Q. Where? - A. In his house.

"Q. Did anyone else live in that house? - A. I saw a Filipino woman and some men, Filipinos.

"Q. By what name was he known in Manila? - A. Vicente Romero Sy Quia.

"Q. How often did you meet Vicente Romero Sy Quia in Manila? - A. Very often.

"Q. Where is he now? - A. Dead.

"Q. How do you know that Vicente Romero Sy Quia is dead? - A. I was in Manila at the time of his death, and came home the next year.

"Q. State, if you know, where he was buried. - A. He was buried in the Chinese cemetery in Manila.

"Q. How do you know? - A. I was present at his funeral.

"Q. At the time of his death was he a married or a single man? - A. He was married.

"Q. What was the name of his wife? - A. Yap Puan Niu.

"Q. Where did she live? - A. Am Thau.

"Q. Where is she now? - A. Dead.

"Q. By what name was Yap Puan Niu's husband known in Am Thau? - A. Sy Quian.

"Q. By what name was Yap Puan Niu's husband known in Manila? - A. Vicente Romero Sy Quia.

"Q. At the time of the death of Vicente Romero Sy Quia and Yap Puan Niu did they have any children? - A. Yes.

"Q. How many? - A. Two.

"Q. Boys or girls? - A. Boys.

"Q. What were their names? - A. The older one Sy Bi (Mi) Bo and the younger one Sy Bi (Mi) Git."

Lim Pan Ling testified as follows:

"Q. State your name. - A. Lim Pan Ling.

"Q. Are you of the Catholic religion? - A. Yes, sir.

"Q. How old are you? - A. Fifty-two years of age, going on fifty-three this year.

"Q. Of what nationality was your father? - A. Chinese.

"Q. Where was your father born? - A. In Amoy.

"Q. How many wives did your father have? - A. He was married in China and also in Cebu.

"Q. Were you ever in China? - A. Yes, sir.

"Q. How many times? - A. I have been in China three times.

"Q. How old were you the first time you went there to China? - A. I was ten years old.

"Q. How long did you stay in China that time? - A. Six years.

"Q. Where did you live when you were in Amoy? - A. In the house of Sy Quia.

"Q. Where did you first know Sy Quia? - A. I was a child when I first knew him.

"Q. Did you know him first in the Philippine Islands or in China? - A. In China.

"Q. Where did Sy Quia live when you knew him in China? - A. At Amoy.

"Q. In what house in Amoy? - A. In the house of Sy Quia.

"Q. Where is Sy Quia now? - A. He is dead.

"Q. When did he die? - A. In 1894.

"Q. Where did he die? - A. Here in Manila.

"Q. Where is he buried? - A. At the Chinese cemetery, at Pambundoc.

"Q. How do you know that Sy Quia is buried there? - A. Because I went to his funeral the day he was buried.

"Q. Are there any other graves immediately adjacent to that one of Sy Quia? - A. Yes, sir.

"Q. Do you know who are buried in any of the graves immediately by the side of that of Sy Quia? - A. Joaquin Sy Ty.

"Q. Who was Joaquin Sy Ty? - A. He was a brother of Sy Quia.

"Q. Do you know whether the Sy Quia who is buried in that grave had any brothers? - A. Yes, sir; he had other brothers.

"Q. How many brothers did he have? - A. There were five.

"Q. Give their names. - A. First there was Sy Quia, then Sy Ty, then Sy Tiap, then my mother, Sy Chua Niu, and then Sy Hien.

"Q. Did Sy Quia have any sisters? - A. Yes, sir; my mother.

"Q. Do you know whether Sy Quia had a Christian name in these Islands? - A. Yes, sir.

"Q. What was his Christian name? - A. Vicente Romero Sy Quia.

"Q. Where is Sy Quia's brother Sy Ty? - A. He is dead; he died here in Manila.

"Q. Where is Sy Quia's brother Sy Tiap? - A. I do not know; I was told he died long1 ago.

"Q. And where is that sister, Sy Chua Niu, whom you have referred to as your Chinese mother? - A. She is dead, in China.

"Q. And where is Sy Quia's brother Sy Hien? - A. Here in Manila.

"Q. What identity, if any, is there between the Sy Quia with whom you say you lived in Am Thau, China, and the Vicente Romero Sy Quia whom you say died here in 1894? - A. They are one and the same person.

"Q. How old were you when you stayed in the house of Sy Quia in Am Thau? - A. Thirteen years of age.

"Q. Do you know whether Sy Quia was married or single at the time you were living in the same house with him in China? - A. He was married. "Q. What was the name of his wife? - A. Yap Puan Niu.

"Q. Where did Yap Puan Niu live, in what house? - A. In the house of Sy Quia.

"Q. In the village of Am Thau? - A. Yes, sir.

"Q. Did Sy Quia and his wife, Yap Puan Niu, have any children? - A. Yes, sir.

"Q. How many? - A. Two.

"Q. Boys or girls? - A. Both boys.

"Q. What were their names? - A. Sy Bi Bo, Sy Bi Git; the family name is Sy."

Sy Hien testified as follows :

"Q. State your name. - A. Sy Hien.

"Q. What is your age? - A. I am 59 years of age.

"Q. Where were you born? - A. At Am Thau, Amoy, China.

"Q. Did you have any brothers? - A. Yes, sir.

"Q. What were their names? - A. The oldest was Sy Quia, who was also named Vicente Romero Sy Quia; then came Sy Ty, and afterwards Sy Tiap, and then myself.

"Q. Who was the youngest among these brothers ? - A. I am the youngest of all.

"Q. Did you have a sister? - A, Yes, sir.

"Q. What is her name? - A. Sy Chua Niu.

"Q. Do you know Lim Pan Ling? - A. Yes, sir.

"Q. What relation is there between him and your sister? - A. He is just like a son of Lim Chiatco.

"Q. Do you mean to say that he was a son of Lim Chiatco with your sister? - A. Yes, sir.

"Q. Where are your brothers now? - A. They are all dead.

"Q. If Sy Quia were living now, about how old would he be? - A. Approximately 80 years of age.

"Q. What is the difference of age between you and your brother Sy Quia? - A. About twenty-five years' difference.

"Q. Do you know whether or not Sy Quia was married during his lifetime? - A. Yes, sir; he was married in China.

"Q. Where did he get married in China? - A. In my pueblo at Am Thau,

"Q. With whom did he get married? - A. With Yap Puan Niu.

"Q. Where is his wife now? - A. She is dead.

"Q. During the lifetime of Sy Quia's wife, where did she live? - A. In the house of Sy Quia.

"Q. Where? - A. At Am Thau.

"Q. You have stated that Sy Quia is dead now; when did he die? - A. I believe in 1894.

"Q. During the marriage contract of your brother Sy Quia, did he have any children? - A. Yes, sir; two sons.

"Q. What are their names? - A. The oldest was Sy Bi Bo; the second, Sy Bi Git.

"Q. What are the ages of the children of your brother Sy Quia living now? - A. The same age as myself, the youngest one is one year younger than I am.

"Q. Where were Sy Bi Bo and Sy Bi Git born? - A. At Am Thau, China.

"Q. In whose house? - A. In the house of the family, Sy Quia's house.

"Q. How long did Sy Quia live in that house after he got married? - A. Sometimes he lived in China and sometimes he lived here in Manila.

"Q. Do you know whether or not after his marriage in China he came to the Philippine Islands, to Manila? - A. Yes, sir; he did.

"Q. How long after the marriage of Sy Quia in China did he come to the Philippine Islands? - A. I do not know how long¹ after it was; I do not even know what year he came to Manila.

"Q. How old was Sy Quia when he came to the Philippine Islands the first time, if you know? - A. From what my parents told me Sy Quia was 12 years old when he came to the Philippine Islands the first time.

"Q. How old were you when you came to the Philippine Islands the first time? - A. Twelve years of age.

"Q. With whom did you live in Manila? -A. In the same house with Sy Quia.

"Q. Who else were living in the house of Sy Quia besides you ? - A. Sy Quia and Sy Ty and all our relatives.

"Q. How long did you live there in that house of your brother Sy Quia, more or less? - A. The first time over twelve years.

"Q. Who supported the family of Sy Quia at Am Thau? - A. Sy Quia himself; he sent money to his family every year.

"Q. How do you know that Sy Quia sent money to his family at Am Thau? - A. Because sometimes it went through my hands.

"Q. What amount of money did Sy Quia send to his family each year at Am Thau, China? - A. Every year he sent P1,000.

"Q. Who supported Sy Yoc Leng? - A. His grandfather also.

"Q. What was the name of his grandfather? - A. Vicente Sy Quia.

"Q. Who was paying for his education ? - A. Always the grandfather.

"Q. How do you know that fact? - A. Because sometimes the money went through my sister-in-law's hands* and she gave it to me.

"Q. How was Sy Yoc Leng treated by Sy Quia? - A. As his grandson.

"Q. How did Sy Quia refer to Sy Yoc Chay and Sy Yoc Leng? - A. As his grandchildren.

"Q. By what name was Sy Quia known in Manila? - A. He was known in Manila by the name of Vicente Romero Sy Quia.

"Q. What relationship existed between Vicente Romero Sy Quia and Sy Jui Niu? - A. Sy Jui Niu is the granddaughter of Sy Quia.

"Q. What relationship exists between Sy Chua Niu and Vicente Romero Sy Quia? - A. Also his granddaughter, the daughter of Sy Bi Git.

"Q. Were you in Manila at the time of the death of Vicente Romero Sy Quia? - A. Yes, sir; I was.

"Q. Where was he buried ? - A. In the Chinese cemetery.

"Q. Do you know Petronila Encarnacion? - A. Yes, sir; of course.

"Q. Where is she now? - A. She is dead.

"Q. When did she die? - A. I do not remember exactly whether this year or last.

"Q. Where is Petronila Encarnacion buried? - A. I believe at Paco.

"Q. What relationship existed between Sy Quia and the said Petronila Encarnacion? - A. She was his legitimate wife, married to him, and he had many children with her.

"Q. In China or in the Philippine Islands? - A. In the Philippine Islands.

"Q. Do you know the names of the children of Sy Quia by Petronila Encarnacion? - A. Yes, sir.

"Q. What are their names ? - A. Gregorio, Pedro, Juan, and the two women are Maria and Apolinaria.

"Q. Was the Vicente Romero Sy Quia who was married here in the Philippine Islands to Petronila Encarnacion the same Sy Quia or Sy Tiong Quii who married Yap Puan Niu in China? - A. Yes, sir; one and the same person."

Lim Pan Ling, being recalled, testified as follows:

"Q. Where is the Sy Hien that you referred to yesterday as the youngest brother of Sy Quia? - A. He is here in Manila.

"Q. Is he in the court room? - A. Yes, sir.

"Q. Will you kindly point him out? - A. There he is" [indicating the witness who has just left the stand].

Sy Hien, being recalled, testified as follows:

"Q. Will you write in Chinese characters the name of Yap Puan Niu?"

(Witness writes, and attorney for plaintiffs identifies by marking it "name No. 3.")

"Q. Will you now please write the name of Sy Bi Bo in Chinese characters?"

(Witness writes, and attorney for plaintiffs identifies by marking it "name No. 4.")

"Q. Will you now please write in Chinese characters the name of Sy Bi Git?"

(Witness writes, and attorney for plaintiffs identifies by marking it "name No. 6.")

"Q. What relation, if any, is Yap Puan Niu, whose name you have written at No. 3, to the Sy Quia whom you have referred to as having lived in Manila and whose name you have written at No. 1 of plaintiff's Exhibit 6? - A. Yap Puan Niu is the legitimate wife of Sy Quia, whom he married in China.

"Q. What relation is Sy Bi Bo, whose name you have written at No. 4, to the Sy Quia to whom you have just referred? - A. Sy Bi Bo is the son of Sy Quia.

"Q. What relation is Sy Bi Bo to Ho Gim Niu, whose name you have written at No. 5? - A. Ho Gim Niu is the wife of Sy Bi Bo.

"Q. What relation is, there between Sy Bi Git, whose name you have written at No. 6, and the Sy Bi Bo whom you have just mentioned? - A. Sy Bi Git is the younger, and Sy Bi Bo is the older son of Sy Quia.

"Q. Were you born from the same mother that Sy Quia was? - A. Yes, sir; from the same mother.

"Q. Are you sure that you are 59 years of age now? - A. Yes, sir; I am 59 years of age.

"Q. You have stated that Sy Yoc Chay and Sy Yoc Leng, when they came to Manila, were sent to school at the expense of Sy Quia. To what school were they sent? - A. To a private school at Calle Elcano.

"Q. To a Chinese school? - A. No; a Spanish school.

"Q. You also stated yesterday that you knew that Sy Yoc Chay and Sy Yoc Leng were sent to school at the expense of Sy Quia, and you knew that fact because the money for these expenses sometimes passed through your hands, given to you by Dona Petronila Encarnacion. Are you sure of that? - A. Yes, sir; sometimes the money was given to me to pay these expenses.

"Q. Was the money given to you by Dona Petronila Encarnacion herself? - A. Yes, sir; in the house at Santo "Cristo."

Sy Qui Quion testified as follows:

"Q. Please state your name. - A. Sy Qui Quion.

"Q. How old are you? - A. Fifty years of age.

"Q. Where were you born? - A. In China.

"Q. What town? - A. Am Thau.

"Q. Where is Am Thau, in reference to Amoy? - A. It is very near, one hour's walk from Amoy.

"Q. How long have you been in the Philippine Islands? - A. At the present time over thirty years.

"Q. How old were you when you first came to the Philippine Islands? - A. Fifteen years of age; and after staying in Manila three years I went back to China.

"Q. Did you know a man by the name of Don Vicente Romero Sy Quia in Manila? - A. Yes, sir; I knew him because my grandfather and his grandfather are brothers, therefore Sy Quia and myself are like cousins.

"Q. When did you first know Vicente Romero Sy Quia? - A. The first time I knew him I was in China, I was about 9 or 10 years old.

"Q. How far was your father's house from the house of Sy Quia in Am Thau, China? - A. About double the distance to that house there [indicating a house about 20 rods distant].

"Q. By what name did you know him in Am Thau, China ? - A. Who do you mean ?

"Q. Don Vicente Romero Sy Quia. - A. Some people called him Sy Quia, and some people called him Sy Quii.

"Q. Where is Sy Quia now? - A. He is dead now.

"Q. Where did he die? - A. Here in Manila.

"Q. Did Sy Quia have any brothers and sisters? - A. Yes, sir.

"Q. Give the names of the brothers. - A. Sy Ty, Sy Tiap, and Sy Ty Hien; they were four in all.

"Q. How many sisters did he have? - A. One sister.

"Q. Give her name. - A. Sy Chiu Niu.

"Q. Was Sy Quia married or single? - A. Married.

"Q. What was the name of his wife? - A. Yap Puan Niu.

"Q. Where did Yap Puan Niu live? - A. She lived in the house of Sy Quia.

"Q. Did Don Vicente Romero Sy Quia and Yap Puan Niu have any children ? - A. Yes, sir; he had two sons, and when I was a boy I used to go to school with his two sons.

"Q. Who was the older, you or the boys of Sy Quia? - A. The boys of Sy Quia were older than me.

"Q. How much older were they? - A. One of them was ten or eleven years older than me, that was Sy Bi Bo, and Sy Bi Git was eight or nine years older than me.

"Q. Where is Sy Hien now? - A. Here in Manila; that is the witness who has just left the stand.

"Q. What relation was he to Sy Quia? - A. Brother; Sy Quia was the oldest brother.

"Q. Was Sy Bi Bo married or single at the time of his death? - A. Married.

"Q. How do you know that he was married? - A. Because I was in China at the time Sy Bi Bo and Sy Bi Git were married.

"Q. What was the name of the wife of Sy Bi Bo? - A. Ho Gim Niu.

(Q. Where is Ho Gim Niu now? - A. She is also dead.

"Q. Where did she die? - A. In China.

"Q. What is the name of the adopted son? - A. Sy Yoc Chay.

"Q. Where is Sy Yoc Chay now? - A. Here in Manila.

"Q. Is he in the court room? - A. Yes, sir.

"Q. Will you kindly point him out? - A. There he is [indicating the plaintiff, Sy Yoc Chay].

"Q. When did you first see the adopted son, Sy Yoc Chay? - A. He was a small boy, about 3 or 4 years of age, when I first saw him. Sy Bi Bo told me that that was his son, and that the other one, Sy Yoc Leng, was the son of Sy Bi Git.

"Q. What relation, if any, was this Yap Puan Niu to the Don Vicente Romero Sy Quia whom you have testified about? - A. She was the wife of Sy Quia."

Sy Siang testified as follows:

"Q. What is your name? - A. Sy Siang.

"Q. How old are you? - A. Sixty years of age.

"Q. Where were you born ? - A. In Am Thau.

"Q. Did you know a man in Manila by the name of Don Vicente Romero Sy Quia? - A. I did.

"Q. When did you first know him? - A. In China.

"Q. In what place in China?- A. At Am Thau.

"Q. How old were you when you first knew Don Vicente Romero Sy Quia in Am Thau? - A. I was about 18 or 19 years of age when I saw him in Am Thau, China; when I went there to visit my relatives, that is the first time I knew him.

"Q. State, if you know, in whose house Sy Quia lived while in Am Thau ? - A. His own house, a large house, the largest of all.

"Q. Did Sy Quia have any brothers and sisters? - A. Yes, sir.

"Q. How many brothers did he have? - A. First Sy Ty, then Sy Tiap, then a brother, whose name I don't know, who is dead, and then Sy Hien.

"Q. Did Sy Quia have any sisters? - A. Yes, sir.

"Q. What was the name of the sister? - A. Sy Chua Niu.

"Q. Where is the brother, Sy Hien ? - A. Here in Manila.

"Q. How long did you know Don Vicente Romero Sy Quia in China? - A. The first time I knew him was when I went to pay a visit to my parents; I was a boy 18 or 19 years of age when I knew him the first time.

"Q. About how long did Sy Quia remain in Am Thau that time? - A. He came back to China on that occasion to arrange for the burial of his father and mother, and to settle everything.

"Q. Where is Don Vicente Romero Sy Quia now? - A. He is dead.

"Q. Where did he die? - A. Here in Manila.

"Q. Was Sy Quia married or single? - A. Married.

"Q. What was the name of his wife? - A. Which wife do you mean; the wife here or the wife in China?

"Q. Both wives. - A. The wife here was called Ba Lang, the wife in China was called Yap Puan Niu.

"Q. Where is Yap Puan Niu? - A. She is dead.

"Q. Where did she die? - A. At Am Thau.

"Q. When did she die? - A. I believe fourteen or fifteen years ago,

"Q. Who died first, Sy Quia or Yap Puan Niu? - A. Yap Puan Niu died first.

"Q. Did Vicente Romero Sy Quia have any children with Yap Puan Niu? - A. Yes, sir.

"Q. How many? - A. Do you mean in China?

"Q. I mean how many children did Vicente Romero Sy Quia have with his wife Yap Puan Niu? - A. Two.

"Q. Boys or girls? - A. Boys.

"Q. What were their names? - A. Sy Bi Bo was the first one, and the second one was Sy Bi Git.

"Q. When did you first know these two boys? - A. They were in the same school with me.

"Q. In what town? - A. Am Thau.

"Q. In what house did Yap Puan Niu and Sy Bi Bo and Sy Bi Git live? - A. In the big house of Sy Quii.

"Q. What relation was Sy Quii and Sy Tiong Quii to the Vicente Romero Sy Quia whom you say died in Manila? - A. They are one and the same person.

"Q. Where did you first see Sy Yoc Chay? - A. Where do you mean, here or in China?

"Q. In China. - A. I saw his father having him in his arms, and he stated to me that he had a boy who died, and that he had taken this one and adopted him as his son.

"Q. How long did you know this boy, Sy Yoc Chay, in China? - A. Up to the present time.

"Q. Where is Sy Yoc Leng now? - A. Here in Manila.

"Q. Is he in the court room? - A. Yes, sir.

"Q. Will you kindly point him out? - A. There he is [indicating the plaintiff, Sy Yoc Leng].

"Q. Who was Ba Lang? - A. Ba Lang is the wife of Sy Quia, and the mother of Gregorio, Pedro, and Juan Sy Quia.

"Q. Was she a Chinese or Filipino woman? - A. She was a Filipina."

Sy Yoc Chay testified as follows:

"Q. What is your name? - A. Sy Yoc Chay.

"Q. How old are you? - A. Thirty-five years of age.

"Q. Where were you born? - A. I am a native of Am Thau.

"Q. Are you one of the plaintiffs in this action against Petronila Encarnacion and others? - A. Yes, sir.

"Q. Where did your father and mother live? - A. In China.

"Q. But where in China? - A. They lived in the house of my grandfather.

"Q. What was your father's name? - A. Sy Bi Bo.

"Q. Is your mother living or dead? - A. My father died four years ago, and my mother is dead about eleven years ago.

"Q. When did your father die? - A. When my father died I was 11 years of age; he died twenty-four years ago.

"Q. What is the name of your grandfather? - A. Sy Quii.

"Q. Did your father have any brothers or sisters? - A. He had a brother.

"Q. What was his name? - A. Sy Bi Git.

"Q. Who is your grandmother? - A. Yap Puan Niu.

"Q. Who is the husband of Yap Puan Niu? - A. My grandfather, Sy Quui.

"Q. Where is Yap Puan Niu now? - A. She is dead.

"Q. Where is Sy Quui now? - A. My grandfather is dead also."

Sy Yoc Leng testified as follows:

"Q. What is your name? - A. Sy Yoc Leng.

"Q. How old are you? - A. Thirty-four years of age.

"Q. Are you one of the plaintiffs in this action? - A. Yes, sir.

"Q. Where were you born? - A. At Am Thau.

"Q. In what house in Am Thau were you born? - A. In the house of Sy Quia.

"Q. Where is Am Thau? - A. In the Province of Amoy, China.

"Q. How long did you live there? - A. For fourteen years, and I then came to the Philippine Islands.

"Q. What is the name of your father? - A. Sy Bi Git.

"Q. Where is your father now? - A. He is dead.

"Q. When did he die? - A. About twenty-six years ago.

"Q. Where was he buried? - A. In China, near the pueblo of Am Thau.

"Q. What is the name of your mother? - A. Yap Su Niu.

"Q. Where is your mother now? - A. She is dead.

"Q. Where did she die? - A. At Am Thau, in the house of Sy Quia.

"Q. When did she die? - A. About twenty-two years ago.

"Q. What was the name of your father's father, that is, your grandfather? - A. In Manila he was called Vicente Romero Sy Quia, and in China he was called Sy Quian and sometimes he was also called Sy Tiong Quian.

"Q. What was the name of your grandmother? - A. Yap Puan Niu.

"Q. Was she known by any other name than Yap Puan Niu? - A. Yes, sir.

"Q. What other name was she known by? - A. By the name of Chu Kun.

"Q. What signification, if any, has that name Chu Kun? - A. The word Kim means that she was a very hard-working woman in the house, and therefore when she died they gave her that name of Chu Kim.

"Q. What was the name of your grandfather's father? - A. Chan Bong Niu.

"Q. Where did they live? - A. In the house of Sy Quia.

"Q. In what village? - A. Am Thau.

"Q. Who owned the house when you lived there? - A. It was divided into four parts; one for Sy Quia, one for Sy Ty, one for Sy Hien, and one for Sy Que Bieng.

"Q. Where is your grandfather now? - A. He is dead.

"Q. Where did he die? - A. Here in Manila.

"Q. When did he die? - A. In 1894.

"Q. Where was he buried? - A. In La Loma.

"Q. How do you know that? - A. Because I went to the funeral.

"Q. How many times have you seen the grave of your grandfather since he was buried at La Loma? - A. Very many times; I could not count the number.

"Q. What were the occasions of your seeing the grave? - A. In the fiesta of All Saints' Day, Catholic as well as Chinese, I go there."

Sy Yoc Leng, being recalled, testified as follows:

"Q. Have you received any part of the property left by Vicente Romero Sy Quia, deceased? - A. No.

"Q. Do you know what property was left by Don Vicente Romero Sy Quia at the time of his death? - A. I only heard that there were many houses."

Under these facts the following questions are properly presented to the court:

First. Sy Quia having been lawfully married in 1847 in China, what was the legal effect of his second marriage in the Philippine Islands, without the first marriage having been annulled or dissolved, granting that each of said marriage relations was entered into in good faith on the part of the respective wives?

Second. What are the rights of the respective wives in the estate of the said Sy Quia, he having died intestate?

Third. What are the rights of the children of the respective marriages in the estate of the said Sy Quia, he having died intestate?

Bigamy and polygamy were both expressly prohibited under the Laws of the Indies, as well as by the rules of the Holy Roman Catholic Church. No rule was better established than that which made a second marriage null which was entered into before the dissolution or annulment of a preceding one. This was the rule under the civil as well as under the common law. By the common law, if a person having a husband or wife, married another person, such second marriage was absolutely null and void. (*Dalrymple vs. Dalrymple* (1811), 2 Hagg. Const, 54, 17 English Ruling Cases, 10; *Second Kent's Commentaries*, 79; *First Bishop on Marriage and Divorce*, 299; *Pride vs. Earl of Bath*, 1 Salt., 120; *Fenton vs. Reed*, 4 Johnson (N. Y.), 52; *Martin vs. Martin*, 22 Ala., 86; *Gathings vs. Williams*, 44 Am. Dec, and note 49; see also 5 *Iredell's Law* (N. C), 487.)

Under the common law such marriages being void, the incidents which attend and follow a valid marriage were not acquired by the parties, nor by their descendants, such as dower, curtesy, legitimacy of children, etc. The rule of the common law allowing none of the incidents of a true marriage to follow another marriage entered into during the continuance of a first, was early found to work great injustice upon the innocent parties to the second marriage and especially upon the offspring of such second marriage. To remedy these hardships many statutes were passed both in England and in the different States of the United States. Among such States may be named Massachusetts, New York, Missouri, Maryland, California and Texas. (*Glass vs. Glass*, 114 Mass., 563; *Brower vs. Brower*, 1 Abbott's Appeals (N. Y.), 214; *Spicer vs. Spicer*, 16 Abbott's Practice, (new series) 114; *Dyer vs. Brannock*, 66 Mo., 391; *Graham vs. Bennett*, 2 Cal., 503; *Smith vs. Smith*, 1 Tex., 621; 46 Am. Dec, 121.)

Under the civil law this rule, making the second marriage, during the existence of the first, absolutely null and

void, was also early modified (law 1, title 13, Partida 4). Civilians recognized the hardship resulting to children born of the second marriage and provided a remedy earlier than those who were subject to the common law. While law 1, title 13 of the fourth Partida does not expressly make the second marriage valid, when one or both of the parties entered into the same in good faith, believing that there existed no impediment, yet this is the effect of the law, for the reason that it expressly makes the issue of such marriage legitimate, which, of course, could not be done except upon the theory that the marriage itself was legitimate and legal. This provision of the Partidas does not, however, allow the legality of such marriage to exist nor the legitimacy of the children, except up to the time when the innocent spouse has knowledge that the marriage is illegal. From that time the marriage is regarded as an illegal marriage and children which are born after that time are illegitimate. Law 1, title 13, Partida 4, is as follows:

"By a legitimate child is meant he who is begotten according to law; and they are called legitimate who are born of a father and mother who are really married according to the ordinances of Holy Church. And although it should happen, that between those who were married openly and publicly in the Church, there should exist any impediment for which the marriage ought to be dissolved, yet the children they beget (fiziessen) before they know of such impediment, will be legitimate. And so it would be, as well where both of the spouses were ignorant of the existence of the impediment, as when one only of them knew it; for the ignorance of one of the spouses alone, would render the children legitimate. But if after they knew with certainty of the existence of such impediment, they should beget children, those that they afterwards have, will not be legitimate. Yet if during the existence of such impediment, and while both or one of them was ignorant of it, they should be accused before the judges of the Holy Church and before the impediment was proved or the sentence pronounced, they should have children, those that they beget (fiziessen) during the existence of the doubt, will all be legitimate. And so the children a man has by his concubine (barragana) will be legitimate, if he afterwards marry her. For although they are not legitimate when they are born, yet so great is the force of matrimony, that they become legitimate immediately their father and mother are married. And so it would be, if a man have a child by his slave, and he afterwards marry her. For marriage has so great an effect; that as soon as it is contracted, the mother becomes free, and the children legitimate."

The above-quoted provision of the Partidas is a very just and humane provision of law. It justly protects those who have innocently entered into the solemn relation of marriage, and their descendants. The good faith of the parties will be presumed until the contrary is shown or proved. (Art. 69, Civil Code (Spanish); *Las Leyes de Matrimonio*, sec. 96; *Gaines vs. Hennen*, 65 U. S. 553.)

There is nothing in the record which shows or tends to show that the respective wives had entered into the marriage relation knowing or believing that there existed any impediment whatever. It must be concluded then that they acted in good faith, and for the purposes of participation in the estate of the husband, *Sy Quia*, the two marriages must be regarded as legitimate. (Law 1, title 18, Partida 4; *Escriche*, vol. 2, p. 110, *White's New Recopilation*, vol. 1, p. 64.)

A woman who is deceived by a man who represents himself as single, and who marries him, she and her children born while the deception lasted, under the Spanish law, are entitled to all the rights of a legitimate wife and children. These rights are provided for in the Civil Code.

See also the following decisions: *Dalrymple vs. Dalrymple* (1811), 2 Hagg. Const., 54, 55, 17 English Ruling Cases, 10; *Clendenning vs. Clendenning et al.* (March, 1825), *Martin's Reports* (La.) vol. 7, p. 587; *Patton et al. vs. Cities of Philadelphia and New Orleans* (May, 1846), 1 La. An., 98; *Tratado del Contrato de Matrimonio* (1846), by Pothier, 190-194; *Smith vs. Smith* (December, 1846), 1 Tex., 621; *Hubbell vs. Inkstein* (April, 1852), 7 La. An., 252; *Graham vs. Bennett* (October, 1852), 2 Cal., 503; *Lee vs. Smith* (1856), 18 Tex., 142; *Abston vs. Abston* (March, 1860), 15 La. An., 137; *Gaines vs. Hennen* (December, 1860), 65 U. S., 553.

See also - 13 Peters, 404; 15 Peters, 9; 2 Howard, 619; 6 Howard, 552; 15 Howard, 473; Gaines vs. New Orleans (December, 1867), 73 U. S., 642; Succession of J. B. Navarro (April, 1872), 24 La. An., 298; Glass vs. Glass (January, 1874), 114 Mass., 563; Harrington vs. Barfield et al. (July, 1878), 30 La. An., 1297; Succession of J. C. Taylor (June, 1887), 39 La. An., 823; Germann vs. Tenneas (December, 1887), 39 La. An., 1021; Jermann vs. Tenneas et al. (May, 1892), 44 La. An., 621; Green vs. Green (December, 1894), 126 Mass., 17; Barkley vs. Dumke, 99 Tex., 153, 87 S. W. Rep., 1147; Lawson vs. Lawson, 30 Tex. Civ. App., 43; Allen vs. Allen, 105 S. W. Rep., 54; Newland vs. Holland, 45 Tex., 588; Ft. Worth, etc. Railway Co. et al. vs. Robertson (April 17, 1909), 121 S. W. Rep., 202, 10 Columbia Law Review, 79.

The majority opinion cites section 1417 of the Civil Code in support of its conclusion that all of the property of Sy Quia belongs to the children of the second wife. Said section is as follows:

"Art. 1417. The conjugal partnership expires on the dissolution of the marriage or when it is declared void.

"The spouse who, by reason of his or her bad faith, causes the annulment, shall not receive any share of the property of the partnership.

"The conjugal partnership shall also terminate in the cases mentioned in article 1433."

Practically all of the provisions of the Civil Code now in force in the Philippine Islands existed prior to the adoption of the Civil Code in what are known as "The Laws of the Indies," "Leyes de Toro," Novisima Recopilacion" the "Partidas" and others. In other words, the Civil Code is nothing more or less, with a few modifications, than a codification of the separate decrees and royal acts applicable to the Philippine Islands. The Civil Code was not put in force in the Philippine Islands until on or about the month of December, 1889. Sy Quia was married to his first wife in 1847 and to his second wife in 1852 or 1853. If his second marriage was null and void, it was null and void in 1852 or 1853, and the laws governing the effect of such nullity in force at that time must govern, which were "The Laws of the Indies" above quoted. (Law 1, title 13, Partida 4.) But even admitting that article 1417 is the law applicable in cases where the marriage is null, we contend that it was not the intention of the legislature to apply said provision to a case like the present. We do not believe that it was the intention of the wise legislators of the Spanish Government, where a man having a legal wife and children marries another woman and has children by such other woman, that the effect of the second marriage was to turn over to the second wife and children all of the property belonging to him, to the prejudice of the first wife and legitimate children. Such an interpretation is nauseating to every sense of justice and right. We do not believe that it was the intention of the Spanish Government to enforce said article (1417) to the prejudice of a prior legal wife and legitimate children. To give article 1417 the interpretation which the majority opinion contends for is to deprive the first wife and the first children, who have committed no wrong whatever, of their legitimate participation in the property of their husband and father.

We believe that article 1417 is not applicable to a case where a man or a woman, having a legitimate wife or husband and children, marries a second wife or husband. We do not believe that it was the intention of the legislature to punish the first wife and children in the way indicated by said article. We do not believe that it is the intention of said article to take away from the legitimate wife and children property to which they are legally entitled and give it to a second wife and children, in the manner contended for in the majority opinion. There can be no objection to the interpretation given to article 1417 when the marriage is declared null and void, by reason of the provisions of the Civil Code, (Arts. 101, 102, and 103.) But even the cases mentioned in these articles do not contemplate the existence of a former wife and legitimate children.

The Civil Code contains no provisions for the division of property in a case like the present. We, therefore, insist that the law which is applicable to the present case is that provision of the Partidas which we have quoted above

(law 1, title 13, Partida 4) and which is the provision of law followed by the Supreme Court of the United States and the other States above quoted. We believe that this provision affords an adequate, equitable, and just remedy, and one in consonance with sound reason and justice for a case like the present. Courts are frequently called upon to solve questions where there is no express provision of statutory law to assist them. We are fortunate, however, in the present complicated case, to find that the wise legislators of the Spanish Government, assisted always by the pure motives and high ideals of the Holy Roman Catholic Church, have made an express provision governing the present case. (Law 1, title 13, Partida 4.)

Suppose, for example, that Sy Quia had married his first wife in 1847 in one part of the Philippine Archipelago and as a result of said marriage there were born to them two children, and that after the birth of the two children Sy Quia had gone to some remote part of the Archipelago and had there married his second wife and had lived with her for a number of years and had had children and acquired property as he did in the present case. Would the courts, under these facts, have given all of the property to the second wife and children? So far as the present case is concerned, in our opinion, the mere fact that the first wife happened to live in China, instead of in the Philippine Islands, makes no difference in the solution of the problem. It is of no importance whatever whether he married his first wife in one part of the Archipelago or in a foreign country. (*GaineS vs. Hennen*, 65 U. S., 553; *Hubbell vs. Inkstein*, 7 La. An., 252; *Germann vs. Tenneas*, 39 La An., 1021.)

With reference to the second question, "What are the rights of the respective wives in the estate of the said Sy Quia, he having died intestate?" and having held that for the purposes of participation in the estate of the husband, they are each regarded as legitimate, it would seem to be a just and humane conclusion to hold that each wife in the present case should succeed to that interest in the estate of the husband to which she would be entitled were she the only legitimate wife.

There is no evidence that the Chinese wife brought any property whatever to the marriage relation. The proof showed that the Filipino wife, Petronila Encarnacion, brought to the marriage relation about the same amount of property which the husband had at the time of their marriage.

Article 1392 of the Civil Code provides that "by virtue of the conjugal partnership, the earnings or profits indiscriminately obtained by either of the spouses during the marriage, shall belong to the husband and wife, share and share alike, upon the dissolution of the marriage,"

Article 1424 of the Civil Code provides that the amount of indebtedness against the respective spouses, chargeable to the conjugal partnership, shall first be deducted, and that then the remainder shall be divided.

Article 1426 of the Civil code provides that "the net remainder of the partnership property shall be divided, share and share alike, between the husband and wife, or their respective heirs."

From these provisions of the Civil Code, which were in force at the time of the settlement of the estate of the said Sy Quia, it would follow, having held that each of the wives was legitimate, for the purposes of sharing in the conjugal partnership property, that each would be entitled to one-half of the net estate of the said Sy Quia. No decisions of the supreme court of Spain have been found bearing upon this question. Several decisions, however, have been found in the decisions of the Supreme Court of the United States and of the supreme court of the State of Louisiana, as well as other States of the United States. The decisions of the Supreme Court of the United States and those of the State of Louisiana are especially applicable to the present case, for the reason that they deal with the Spanish codes.

The first case that we find is that of *Clendenning vs. Clendenning et al.* (March, 1825), 7 Martin's Reports (La.), 587. In that case a man had married two women and had had children by each of them. The question presented to

the court was, What were the respective rights of the wives and thier respective children? The court said:

"The defendants contend, that notwithstanding that the plaintiffs' father had had a lawful wife, at the time of the second marriage, as the woman he last married was in good faith, at the time of the marriage, and ever since, at least till after the birth of the last child she had by him, her marriage has its civil effects, and she and her children, the present defendants, are entitled to all the advantages the law gives to a lawful wife and children. * * * There seems to be no dispute on the question of law. The woman, who was deceived by a man, who represented himself as single, and his children begot while the deception lasted, are bona fide wife and children, and as such are entitled to all the rights of a legitimate wife and issue."

The next case which we find is that of Patton et al. vs.

The Cities of Philadelphia and New Orleans (May, 1846), (1 La. An., 98). The facts, as related by the judge who wrote the opinion in the case, are as follows:

In the year 1790 Abraham Morehouse married Abigail Young in the State of New York and had two children by her. He subsequently came to the Spanish colony of Louisiana, gave it to be understood that he was a widower, and in September, 1799, by an act passed by the commandant of Fort Miro, in the District of Ouachita, acting as a notary public, agreed to take as his wife Eleonore Hook. The commandant states in the act that it is passed before him in conformity with a custom sanctioned by the Government on account of the want of spiritual assistance, and that the marriage is to be solemnized before the church on the first opportunity.

At the time of the marriage Abraham Morehouse declared that he was the widower of Abigail Young.

During the trial at the cause it was insisted that the second marriage ceremony performed in Louisiana in September, 1799, was simply a contract per verba de futuro. The court held that the ceremony was followed by cohabitation and that a marriage per verba de futuro cum copula had all the legal effects of a marriage per verba de prsenti. The court held further that it was the intention of the parties to make a marriage per verba de prsenti.

After the marriage with the second wife in 1799, Abraham Morehouse acquired large landed estates in the State of Louisiana. He died in 1813, his two wives being then alive. Many years after the death of Abraham Morehouse, one Stephen Girard acquired some of this land through the first wife, Abigail Young, and her sons, they representing themselves to be the only legitimate wife and children of the said Abraham Morehouse. Later the said Stephen Girard, who had acquired about 208,000 acres of land from the said Morehouse, by will, bequeathed to the city of New Orleans the undivided one-third of the said 208,000 acres of land and the remaining two-thirds to the city of Philadelphia.

The plaintiffs in the case of Patton et al. claimed to be the only lawful heirs and representatives of the said Abraham Morehouse and brought an action against the defendants (the Cities of Philadelphia and New Orleans) to get possession of the said property obtained through the said Stephen Girard. The essential facts being as we have just stated, the supreme court of Louisiana discussed the following questions:

First. Was the marriage of Abraham Morehouse to Eleonore Hook valid as a civil contract, under the laws in force in Louisiana at the time of its celebration, although that marriage was not afterwards solemnized before the Church?

Second. If the marriage was not valid, when did Eleonore Hook acquire such a knowledge of tyie previous marriage of her husband as to put an end to her good faith?

Third. While she continued in good faith, what right had each of the wives to the acquests and gains made by the husband?

It will be remembered that the commandant who solemnized the marriage ceremony between Morehouse and his second wife, stated to the parties that the marriage was to be solemnized before the church on the first opportunity. It was contended on the part of the defendants that the marriage never having been solemnized before the church, that there in fact never existed a marriage between Morehouse and his second wife. In other words, that it was a clandestine marriage (*clandestina matrwionia*). The defendants further argued that under and by virtue of the provisions of the Council of Trent, which had been adopted in Spain by a real cedula of Philip II, on the 12th day of August, 1564, the marriage could not be considered a valid marriage. The court held, however, that no proof had been presented showing that the provisions of the Council of Trent had ever been made applicable to the Territory of Louisiana. The court admitted, for the purpose of argument, that the Kings of Spain intended that the adoption of the General Council of Trent should extend to all the countries which they might subsequently discover or acquire. It has never been understood that when the King of Spain had adopted any ecclesiastical orders or laws that such laivs had the effect of annulling the civil laws in force at the time.

From the earliest periods of which we have any authentic history, there was a constant effort on the part of the Christian Church to bring about reforms in the method of entering into the marriage relation and to make it a most holy relation. Marriages by purchase, sale, and capture, concubinage, and polygamy were always abhorrent to the high ideals of the Christian Church. A study of the history of the growth of the marriage relation shows clearly that the Church believed that the marriage should be a holy sacrament, that the state in its civil functions was not capable of dealing with such a holy relation, and therefore the Christian Church, from the earliest period of its history, made a strenuous effort to have the entering into the marriage relation controlled absolutely by Church ordinances. As early as the year 325 at Nice a general council of 318 bishops was convened for the purpose of considering reform in the matter of marriages. Again in the year 787 another council was called at Nice, composed of 350 bishops for the same purpose. Again at the Council of Winchester in the year 1076 it was resolved: "That no man give his daughter or kinswoman in marriage without the priest's benediction," and declared that "otherwise the marriage shall not be deemed legitimate, but as fornication." Twenty-six years later (1102) at the Council of London, an attempt was made to put a check upon all clandestine contracts of marriage. This council resolved that "promises of marriage made between a man and woman without witnesses are declared to be null, if either party deny them."

In the year 1175 the resolutions of the preceding councils were reinforced by the canons of Archbishop Richard, taken from the decrees of Pope Ormidas of the year 514, ordering that "no faithful man, of what degree soever, marry in private, but in public, by receiving the priest's benediction. If any priest be discovered to have married any in private, let him be suspended from his office for three years."

Later, in the year 1200, Archbishop Walter ordained that "no marriage be contracted without the banns thrice published in the church, nor between persons unknown, and no marriage not publicly solemnized in the face of the Church is to be allowed except by special authority of the bishop."

It was contended for many years that no marriage was valid unless it had been entered into by prescribed religious celebration. The efforts of the Church to control marriages to the end that it should be recognized as a holy sacrament and not a civil contract, were evidenced in each of the councils of Lateran (Letran). The last of the councils of Lateran (Letran) was held in the year 1215. This council resolved that all unblessed marriages were illegal. Notwithstanding the efforts of the Christian Church to make all marriages illegal which had not been celebrated under the rites of the Church, it was finally compelled to recognize, as valid, marriages which were celebrated without the intervention of priest.

The next general effort on the part of the Christian Church to control the question of marriage and to make the relation more holy and sacred, was by the Council of Trent. The Council of Trent was the nineteenth ecumenical

council of the Holy Catholic Church, held at Trent, an imperial free city, under a prince bishop, in the Province of Tyrol. The council was called by Pope Paul III on November 1, 1542, and was finally opened December 13, 1545. This council held twenty-five sessions at various times, some of them at Bologna. It was prorogued several times. It was prorogued on the 28th of April, 1552. Pope Pius IV convoked the council again on the 18th of January, 1563. This council passed many resolutions for reform, among which the recommendations as to marriage were not the least. (See Alcubilla, *Diccionario de la Administracion Espanola*, p. 4.)

The Council of Trent resolved "that henceforward all marriages not contracted in the presence of a priest and two or three witnesses shall be void." (See 3 Alcubilla, 63.)

It was the purpose of the Council of Trent to have its resolutions adopted and enforced in all Catholic communities. Philip II accepted as a law of the State by royal cedula dated in Madrid the 12th of July, 1564, the decrees of the Council of Trent. (See *Novisima Recopilacion*, law 13, title I, book I.)

W. Prescott states in his famous history of the reign of Philip II that it was his policy to enforce strict conformity to the Roman Catholic communion. That no marriage was valid unless, celebrated according to the rites of, and in observance of the principles laid down by the canon law. These ecclesiastical laws continued to rule in Spain for over three centuries, but upon the dethronement of Isabela II (1868) the question arose whether the civil marriage ought not to be introduced. On the 18th day of June, 1870, a new law was passed (*La Ley Provisional de Matrimonio Civil*) enacting that a civil ceremony alone made a lawful contract and that the marriage ceremony should be performed by civil officials. But in 1875 when the conservative party was reinstated, and the minor king, Alfonso XII had ascended the throne, the regency, by a mere decreto (real decreto de 9 de Febrero, 1875) revived the religious marriage of the Council of Trent. It will be borne in mind, however, that this real decreto of the Queen Regent allowed the laws relating to civil marriage to remain in force. The said real decreto (9th of February, 1875) made certain exceptions. They, "de otra creencia que la verdadera y malos catolicos" who remained, in consequence of their nonobservance of religion regarding marriage "imposibilitados de santificarlo el Sacramento." Later, on the 27th of February, 1875, another decree was issued by the Queen Regent, providing that no Roman Catholic could celebrate in Spain a valid marriage before acivil official. (See 25 *American Law Review*, p.52

"Philip the Second, by royal cedula dated Madrid, July 12, 1564, accepting as law of the State the decrees of the Council of Trent, extinguished completely the last vestiges of our laws of the forum, and he brought to the highest state of perfection the unification of civil and Catholic marriages, at the time when, in the rest of Europe, a new era was opened to the marital legislation of the middle ages through the reform that broke the bonds which up to then had united Church and State. Wherever religious communions were established other than Catholic, it was no longer possible for the State not to recognize as legitimate many marriages which the Catholic Church had not blessed."

The resolutions of the Council of Trent were adopted as a part of the laws of the Kingdom of Spain. Article 75 of the Civil Code (Spanish) provides that "the requisites, forms, and solemnities for the celebration of canonical marriages shall be governed by the provisions of the Catholic Church, and of the Holy Council of Trent, accepted as laws of the kingdom." It will be noted, however, that the provisions of the Catholic Church and of the Holy Council of Trent were only accepted with reference to canonical marriages. The Civil Code (Spanish) chapter 3, title 4, from articles 83 to 100, relating to civil marriages, provides for the capacity of the contracting parties and the celebration of the marriage. The Civil Code (Spanish) also provides for civil marriages in which there was no provision for the intervention of priest or of the Church.

The Civil Code was promulgated in Spain on the 30th of June, 1876. It will be remembered, however, that six years prior to the adoption of the Civil Code, to wit, on the 18th of June, 1870, there were promulgated "Las

Leyes Provisionales del Matrimonio" In said law (June 18, 1870) there seems to have been no provision whatever for the celebration of canonical marriages, recognized by said law; neither were the forms prescribed by the Catholic Church and by the holy Council of Trent for the celebration of marriages expressly prohibited.

The exact date when the preparation of the Siete Partidas was commenced and completed is not expressly stated by any of the authors. It is certain, however, that El Rey Don Alfonso El Sabio, ordered their preparation in the early part of the thirteenth century (1251) and that they were probably completed in the early part of the fourteenth century (perhaps 1330). The provisions of law 1, title 13, Partida 4, above quoted, relating to the effect of a second marriage entered into in good faith by one or both of the spouses, continued in force up to the time of the promulgation of "Las Leyes Provisionales del Matrimonio" in 1870, and were in force in Las Indias during all that period. The law of 1870 makes no express reference to the provisions of the Partidas. Said law, however, in the third section of chapter 3, contains the following provisions:

"Art. 94. A null marriage, contracted in good faith by both spouses, shall produce all its civil effects while it lasts and the legitimacy of the children.

"Art. 95. That contracted in good faith by one of them shall produce the effects mentioned in the preceding article only with respect to the innocent spouse and the children.

"Art. 96. Good faith shall always be presumed, unless the contrary is proved."

It will be noted that the provisions of the above-quoted articles were substantially the same as those of the Partidas above quoted and were brought forward and now constitute in effect article 69 of the Spanish Civil Code, which was made effective in the Civil Code applicable to the Philippine Islands on the 8th of December, 1889. The above provisions of the Civil Code, however, remained in force in the Philippine Islands but a few days, for the reason that General Weyler on the 29th of December, 1889, issued the following order:

"GENERAL GOVERNMENT OF THE PHILIPPINES,
"SECRETARY'S OFFICE, BUREAU NO. 2,

"Manila, December 29, 1889.

"By direction of Her Majesty's Government, until further orders, titles 4 and 12 of the Civil Code, extended to these Islands by royal decree of July 31 last, published in the Gazette of this city of the 17th of November last, are suspended in this Archipelago.

"The proper authorities will issue the necessary orders to the end that in lieu of the two titles so suspended the former law may continue in force.

"This order shall be communicated and published.

"WEYLER."

There has been some discussion as to whether the titles 4 and 12 referred to by General Weyler refer to titles 4 and 12 of book I, for the reason that some of the other books of the Civil Code also contain titles 4 and 12. It is now, however, well established that the titles referred to by General Weyler are titles 4 and 12 of book I. (See *Benedicto vs. De la Rama*, 3 Phil. Rep., 34.)

The law of 1870 was never promulgated in the Philippine Islands, except articles 44-78, inclusive. (See royal decree of April 13, 1883.)

It might be argued that the promulgation of the provisions of article 69 of the Civil Code in the Philippine Islands had the effect of annulling the provisions of the Partidas theretofore in force. But even admitting that to be true,

by reference to the proclamation or decree of General Weyler, it will be found that he provided for the reestablishment of the laws relating to marriage, legitimacy, etc., which had hitherto been in force. It would seem to be clear, therefore, without referring to the provisions of the Civil Code, that at the time of the marriage of Sy Quia, law 1, title 13 of Partida 4 was the law in force in the Philippine Islands, and that each of his wives, under the circumstances in the present case, should be considered legitimate, and the children born of each marriage should be regarded as legitimate children, and that said wives should each be entitled to the benefits of the provisions of article 1392 of the Civil Code.

The ecclesiastical decrees had no effect in Spain until they had been adopted by the King. They were only binding upon the ecclesiastical bodies within the territory and upon the civil authorities when the Government of Spain expressly made them so; in other words, the mere adoption of an ecclesiastical order or law governing the holy Catholic Church in Spanish territory was only binding as a civil law, when the same was expressly adopted by the King. Therefore, the mere fact that the marriage ceremony had not been solemnized in accordance with the provisions of the holy council of Trent, did not make such marriage null.

In the case of *Patton vs. The Cities of Philadelphia and New Orleans*, the court held that the ceremony performed by the said commandante had all the legal effect of a marriage per verba de presenti and that the parties to the contract were recognized as husband and wife, and that it had all the civil effects of a marriage contract. The commandante, in the celebration of the marriage ceremony, declared that he had performed the marriage in conformity with a custom sanctioned by the Government. The Supreme Court of the United States, in the case of *Arredondo vs. United States* (6 Peters, 691, 714), said that when the commandante says he had authority and exercised it, his authority will be presumed and that no one can question it but his superiors.

It was admitted that Eleonore Hook married Morehouse in good faith, believing that there was no existing impediment to such marriage and that all of the children were begotten or born before she had any knowledge of the fact that there existed a legal impediment to such marriage. The court held, in discussing the question of the rights of each of the wives, "that the laws of Spain recognized in such cases, two entire communities." As the wife, under those laws forfeits her share of the acquets and gains, when she is guilty of adultery, so the husband forfeits his share when he has two wives living, and each of the wives takes the undivided one-half to which the law would entitle her if she was alone."

Paz, in his sixty-first consulta, class 9, states the law as follows, in a case identically the same as the present:

"Out of the acquets and gains, the debts must be paid, because what the parties owe during the marriage can not form a part of the acquets and gains, and belongs to the creditors. The balance, after paying the debts, must be divided between the two wives, without any portion of it going to the succession of the husband. The reason of this is that by the laws of this realm, one-half of the acquets or gains belongs to the first wife, although they have been made by the husband (book 5, New Recopilacion, title 9, I, 1-6), and although the second law of this title requires the cohabitation of the wife with the husband in order that she be entitled to her share, yet as the marital cohabitation has not failed through her fault, but on the contrary through the fault of her husband, who abandoned her, she is not to lose her rights on account of the faults or misconduct of her husband. *Imputari non debet ei per quem non stat si non faciat quod per cum fuerat faciendum.*" (De Reg. Jur. 6, reg. 41.)

To the second wife, the other one-half is due because by virtue of her good faith at the time of her marriage, she is reputed the lawful wife, for the same reason for which the law recognizes her issue as legitimate.

This doctrine is confirmed by Covarrubias en Epit. (p. 2, chap. 7, sec. 1, No. 7); Antonio Gomez (1, 50 de Toro, No. 77); and Molina (De Just. Tract. 2, Disp. 432), who all agree that it is the common opinion of the doctors of

the law that a woman marrying in good faith, although the marriage may be null, is entitled to one-half the acquests and gains, from which it results that one-half goes to each of the wives, and that the husband, deceiving the second and doing a grievous wrong to the first, refuses unjustly to either, the share which belongs to her, and that he is bound to satisfy both out of everything he possesses, because the law favors those who are deceived against those deceiving them. Cum deceptis et non decipientibus jura subveniunt

"In taking from the father's succession those acquests and gains, no wrong is done the inheritance or legitimate portion of his children, because this is a just debt, which he owes to his two wives, and the thing which the father owes is not inherited by his children, but taken by his creditors as their own." (Paz, Consultas Varias, pp. 483-484.)

The next case involving the same question is that of *Hubbell vs. Inkstein* (April, 1852), 7 La. An., 252. The facts were substantially as follows.

Julius Hubbell, who had been legally married to one Sarah Hubbell in the State of New York, went to the State of Louisiana in 1820 and there, in 1826, married Mary Inkstein. In 1837, Julius Hubbell died, leaving a considerable amount of property in the State of Louisiana which he "had acquired during his residence in 1he said State. This property was taken possession of by his second wife and was finally distributed between her and the children born of her marriage with Julius Hubbell. Later, Sarah Hubbell, the first wife, brought an action against Mary Inkstein et al. to recover the entire property of which the said Julius Hubbell had died seized. In deciding the case, Rost, justice, speaking for the court, said (p. 253):

"Being of opinion that there is nothing in the record to show that Mary Inkstein ceased to be in good faith before the death of Julius Hubbell, or until long afterwards, we consider her entitled to the rights of a lawful wife. * * * We are, therefore, of opinion that Sarah Hubbell and Mary Inkstein were each entitled to one-half of the acquests and gains at his death."

The next case which came before the courts of the United States in which the same question was discussed was that of *Lee vs. Smith* (1856), 18 Tex., 142. In that case one William Smith married Harriet Stone in the State of Missouri, in 1822, by whom he had three children before 1828. He then abandoned his wife, went to Texas, and under the name of John W. Smith, in 1831 or 1832, married, according to the laws of the State of Texas, one Maria Jesusa Delgado. The said Maria Delgado (the second wife) was totally ignorant of the first marriage. The husband died in 1845. During the marriage with the second wife a large estate was acquired. At the time of the marriage with the second wife neither had any property. Harriet Stone, the first wife, in or about the year 1833, obtained a divorce from her husband, the said William Smith. Later, the children of the first wife brought an action for the partition and distribution of the property of their father between them and the wife and children of the second marriage. The court granted the partition, and, in deciding the question, said (p. 145):

"The second marriage of Smith with Maria Jesusa Delgado was not null and void in law, with reference either to the wife or the children of that marriage. In Spanish law, such a marriage is designated as putative, and the consort who enters into such matrimony ignorant that her partner has a wife or husband living, is in law not only innocent of a crime, but has all the rights, incidents, and privileges pertaining to a lawful marriage, and these are continued as long as there is ignorance of the former or of an impediment to the second marriage."

In the case of *Abston et al. vs. Abston et al.* (March, 1860), (15 La. An., 137), the supreme court of Louisiana again reiterated the doctrine laid down in the cases of *Clendenning vs. Clendenning*, and *Patton vs. Philadelphia*, as well as in that of *Hubbell vs. Inkstein*.

In that case one John Abston married Olive Hart in the State of Alabama. John N. Abston, one of the parties to the suit, was a son born of that marriage. Later, the said John Abston abandoned his family in the State of Alabama,

and without having obtained a divorce a vinculo matrimonii from his first wife, entered into a second marriage in the State of Mississippi with one Suzanne Bell. Later Suzanne Bell died; after the death of the second wife, Suzanne Bell, still being undivorced from his first wife, John Abston married one Rebecca Wright in the State of Mississippi, and of this third marriage there was born a child called Nancy Nix Abston. During the marriage relation between the said John Abston and Rebecca Wright, and while they were still living in the State of Mississippi, John Abston made a will bequeathing to his third wife, Rebecca Wright, the whole of his estate after the payment of his debts. After the making of the said will and before his death, John Abston, with his third wife and child removed to the State of Louisiana and there died. Later his said will was duly admitted to probate and executed in the State of Louisiana. (No dates are given as to these various incidents.)

Later the said Olive Abston and her son, John N. Abston, commenced an action in the courts of the State of Louisiana for the purpose of securing their portion of the property of the deceased John Abston. This action was brought against the third wife, Rebecca Wright, and her daughter, the said Nancy Nix Abston. Under these facts, the supreme court of Louisiana decided:

First That the decree of partition of the court ordering the said will of John Abston to be executed did not amount to a judgment binding on those who were not parties to those proceedings, and that the court subsequently had a right to inquire into the validity of the title of the property of the said Rebecca Wright, under the said will.

Second. That the plaintiff, Olive Abston, was declared to be entitled to one-half of the community property in the succession of John Abston, deceased, and that the defendant, Rebecca Wright, be declared to be entitled to one-half of the said community property.

Third. That John N. Abston (the child of the first marriage) and Nancy Nix Abston (the child of the third marriage) be recognized as heirs at law to the separate property or estate of their deceased father, John Abston.

In the case of *Gaines vs. Hennen* (December, 1860), (65 U. S., 553), the Supreme Court of the United States discussed this same question at length. In order to understand the above case of *Gaines vs. Hennen* fully it will be necessary to read the cases of *Ex parte Myra Clarke Whitney* (38 U. S., 403), *Gaines et al. vs. Relf et al.* (40 U. S., 8), *Gaines et al. vs. Relf et al.* (43 U. S., 619), *Patterson vs. Games* (47 U. S., 550), *Gaines vs. Relf et al.* (53 U. S., 472), *Gaines vs. New Orleans* (73 U. S., 642), *Davis vs. Gaines* (14 Otto, 386, 406), and *Gaines vs. De la Croix* (73 U. S., 719).

In the above case of *Gaines vs. Hennen*, the Supreme Court of the United States cited and approved the decisions of the supreme court of Louisiana in the cases of *Clendenning vs. Clendenning* (7 Martin's Reports, 587), *Patton vs. The Cities of Philadelphia and New Orleans* (1 La. An., 98), and *Abston vs. Abston* (15 La. An., 137).

In the case of the succession of J. B. Navarro (April, 1872), 24 La. An., 298, the facts appeared to be as follows:

Jean Baptiste Navarro was married in Italy in August, 1833, to one Marie Massucco. He abandoned his wife in Italy and came to the State of Louisiana in 1841 and in 1851 was there married to one Anastasie La France, while the first marriage in Italy was undissolved. The second wife, Anastasie La France, died on or about the 12th day of January, 1869. Jean Baptiste Navarro died on the 21st day of January, 1869. Of the marriage of Jean Baptiste Navarro and Anastasie La France there was born a son called Paul Augustin Navarro, who survived them. The first wife, Marie Massucco, died on the 23d day of October, 1870. Jean Baptiste Navarro during this second marriage had accumulated property which inventoried \$20,759. An action was brought by the representatives or heirs of Marie Massucco to recover her interest in the estate of her husband (Jean Baptiste Navarro) claiming one-half of his estate as his legitimate widow. Paul Augustin Navarro (the issue of the second marriage) claimed the other one-half of the estate of his deceased father. The supreme court of Louisiana granted the petition of the

respective heirs, citing and approving again the decisions of *Clendenning vs. Clendenning*, *Patton vs. The Cities of Philadelphia and New Orleans*, *Hubbell vs. Inkstein*, and *Abston vs. Abston*. (See also *Glass vs. Glass* (January, 1874), 114 Mass., 563.)

In the case of *Harrington vs. Barfield et al.* (July, 1878), (30 La. An., 1297), one Harrington in 1851 married Cecelia Barfield, while he had living in another State, from whom he was undivorced, another wife known as Matilda J. Kelley. Soon after the marriage of Harrington with Barfield, they left the State of Louisiana and went to the State of Arkansas, where a son was born to them. Cecelia, at the time of her marriage, had a brother and sister living; her parents were also living at that time. Later her parents died and her brother and sister, Ira and Isabelle, divided the estate of their parents, believing that Cecelia was no longer living. Later, in 1875, the son born of the marriage of Harrington and Cecelia appeared in the locality where Ira and Isabelle lived and demanded his mother's share of his grandfather's estate. His mother had then been dead several years, having died in the State of Arkansas. Ira and Isabelle claimed that he was a bastard and had no interest in the estate of their father. The court held that the marriage of Harrington and Cecelia, so far as Cecelia was concerned, was a lawful marriage and that the son born of said marriage was a legitimate son and was entitled to his mother's interest in his grandfather's estate.

(See also the succession of J. C. Taylor (June, 1887), 39 La. An., 823.)

The next case which came before the supreme court of Louisiana was the case of *Jermann vs. Tenneas et al.* (May, 1892). This case had been before the court before and is reported in La. An., 39, p. 1021. In that case the facts seem to be as follows:

One Francis Jermann was married to Josephine Attinger, in the village of Moos, Germany, on the 19th day of March, 1851. Later and after a child had been born of this marriage the said Francis Jermann removed to the city of New Orleans and was there known as Francis Germaine. In the city of New Orleans the said Francis Jermann (Germaine) in the year 1855 married Mary Tenneas, of which marriage there were several children born. Francis Jermann (Germaine) died in the city of New Orleans in 1873. During the continuance of the marriage relation between Francis Jermann (Germaine) and Mary Tenneas, a considerable amount of property was acquired. There was some question raised with reference to whether the Francis Jermann who married Josephine Attinger in 1851 was the Francis Germaine who married Mary Tenneas in 1855. The lower court held and the supreme court affirmed it that these names referred to the same person. It was admitted that all of the property that the said Francis Jermann had at the time of his death had been acquired by him during the existence of the second marriage. In 1886 or 1887 Josephine Jermann (Attinger) the first wife brought an action against Mary Tenneas et al. to recover her share of the estate of the said Francis Jermann. The court allowed the claim of the plaintiff and said (44 La. An., 620, 627):

"It [referring to the conjugal property] was acquired during the community regime, and, at the dissolution of the community, by the death of the husband, title to half vested in Josephine Attinger, regardless of the second marriage, whether contracted in good faith or not"

Here again the supreme court of Louisiana cited and approved the decisions in the cases of *Clendenning vs. Clendenning*, *Patton vs. Philadelphia et al.*, *Hubbell vs. Inkstein*, and *Abston vs. Abston*.

This same doctrine is recognized by the statutes of several of the States of the United States. (See the Revised Statutes of New York (1882), sec. 1745, vol. 2, p. 2702; General Statutes of Massachusetts, chap. 107, sees. 4 and 30; see also Code of Napoleon, arts. 201, 202; Pothier, *Contract du Marriage*, vol. 3, pp. 172, 107; Toullier, vol. 1, p. 598; Marcadi, *Explication du Code*, vol. 1, p. 520; Dalton's Dictionary, vol. 2, p. 372; Laws of the Indies, law 1, title 13, Partida 4.)

This is also the doctrine of article 69 of the Civil Code, which in effect is the same as that of law 1, title 13, Partida 4. Said article 69 provides:

"A marriage contracted in good faith produces civil effects, although it may be declared void. If good faith existed on the part of only one of the spouses, it shall produce civil effects only with regard to the said spouse and to the children. Good faith is presumed if the contrary does not appear."

(See. also Manresa, 1 Código Civil, 309-312.)

The phrase in article 69 "civil effects" means that even though the marriage was null and void, if it was contracted in good faith, the parties who contracted the same in good faith shall have the same rights under the law, with reference to the community property, as if the marriage was absolutely legal. Article 1392 contains the provisions of the Civil Code relating to the rights of the spouses in the community property or conjugal partnership property.

Pothier, in his commentaries upon the contract of marriage under the Spanish law, discusses this question at length and says (pp. 190 and 193):

"It is a much debated question among the doctors of law whether or not this rule should allow an exception in the case where one of the parties is unaware that the other was married at the time of having the carnal relations. Those who take the affirmative base their argument on the chapter *Ex tenor e, extr. qui fili sint legit*, according to which, as we shall see below, article 4, when one of the parties in good faith contracts a marriage that is null and void, believing it to be legitimate through ignorance of the existence of the impediment that makes it void, as when a woman marries a man whom she does not know is already married to another woman, the good faith of this second presumed spouse causes them to grant to this marriage, although null and void, all the effects of a legitimate marriage, and consequently, the titles and rights of legitimate children to those begotten herein.

"There are marriages which, although null and void, produce civil effects by operation of law, in consideration of the good faith of the parties or of one of them who was ignorant of the impediment which nullified the marriage."

Our conclusion is, therefore, with reference to the second question:

(a) That the marriage of Sy Quia with Yap Buanju in China in 1847 was contracted in accordance with the forms prescribed by the Chinese laws and was entered into in good faith.

(b) That the marriage of Sy Quia with Petronila Encarnacion in the Philippine Islands in 1853 was solemnized in accordance with the laws of the Philippine Islands and was, so far as Petronila Encarnacion was concerned, entered into in good faith; therefore, in accordance with the provisions of law 1, title 13, Partida 4, and article 1392 of the Civil Code, and in accordance with the jurisprudence established under the Spanish law, they are each entitled to one-half of the estate of the said Sy Quia.

With reference to the third question, to wit, "What are the rights of the children of the respective marriages in the estate of the said Sy Quia, he having died intestate?" no provision of the Civil Code has been found which attempts to answer this question, under the facts presented in the present case. The question is a difficult one of solution. Paz, in his *Consultas* (sixty-first consulta, class 9) takes the view that while the children of the two marriages are legitimate, their interest in the estate of the common father is confined to the interest which their respective mothers inherit. He takes the position that the claim of each of the wives against the estate of the husband is in the nature of a creditor, and says:

"The balance, after paying the debtg, must be divided between the two wives, without any portion of it going to the succession of the husband * * *. In taking from the father's succession those acquests and gains, no

wrong is done the inheritance or legitimate portion of his children, because this (the claims of the respective wives) is a just debt which he owes to his two wives, and the thing the father owes is not inherited by his children, but is taken by his creditors as their own." (Paz, Consultas Varias, pp. 483, 484.)

This doctrine seems to be humane and as well furnishes a solution of a most difficult and perplexing question.

The respective mothers are each entitled to one-half of the estate of the said Sy Quia and the children are entitled to the estate thus obtained by their respective mothers.

Marriages are governed by the *lex loci contractus*. If the marriage is valid where it was contracted and entered into, it is valid everywhere. (26 Cyc. (Encyclopedia of Law and Procedure), 829; *Travers vs. Reinhardt*, 205 U. S., 423; *Hawaii vs. Si Shee*, 12 Hawaii Reports, 329; *Gaines vs. Hennen*, 65 U. S., 553-631.)

We believe that the evidence in the present case is sufficient to show that the marriage of Sy Quia with Yap Buanju was in accordance with the laws and customs of China, and therefore was a valid marriage in China, and will be so considered in the Philippine Islands,

While it may or not be true that the marriage of Sy Quia with Petronila Encarnacion in the Philippine Islands made him or perhaps both of them criminally responsible for the crime of bigamy, yet the same was performed in accordance with the laws of the Philippine Islands and was entered into, at least by the said Petronila Encarnacion, in good faith, and there attached to said marriage all the civil rights, so far as the wife was concerned, which belong to marriage in general, in that she, so long as her good faith continued, succeeded to her share of the community property in accordance with article 1392 of the Civil Code, and the children born of this marriage were legitimate.

The right of succession to property by inheritance is determined generally:

- (a) As to personal property, by the laws of the residence of the parties; and
- (b) As to real property, by the location of the property.

As to personal property, the *lex domicilii* governs as a general rule; as to real property, the *lex loci situs* controls. (*Gaines vs. Hennen*, 65 U. S., 553, 597; *Abston vs. Abston*, 15 La. An., 137; 14 Cyc. (Encyclopedia of Law and Procedure), 21 and cases.)

This is not the rule, however, with reference to the personal property of foreigners residing in the Philippine Islands. The Civil Code (art. 10) provides:

"Personal property is subject to the laws of the nation of the owner thereof; real property to the laws of the country in which it is situated.

"However, legal and testamentary successions, with regard to the order of succession, as well as to the amount of the successional rights and to the intrinsic validity of their provisions, shall be regulated by the laws of the nation of the person whose succession is in question, whatever may be the nature of the property and the country where it may be situate.

"Biscayans, even though they reside in towns, shall continue subject, with regard to the property they possess in the level lands, to law 15, title 20, of the *Fuero de Vizcaya*."(e) That each be required to pay one-half the costs.

This provision of the Civil Code has been the law of Spain, applicable to her foreign possessions, for a great many years. Substantially the same provision is found in law 15, title 14, of the third Partida. Substantially the same law exists in each of the South American States, Cuba and Porto Rico today, which were formerly under the

jurisdiction of the Spanish Crown. Some South American States, however, have established the above-quoted general rule, to wit, that the law of inheritance of the place of the domicile of the owner of personal property is applicable to the inheritance of the same.

In the present case the father was a Chinaman, and there is nothing in the record which shows that he ever became a subject of the Crown of Spain. He never became a naturalized citizen of Spain, entitled to exercise the political rights granted under the Spanish Government in its colonial possessions. He lived in the Philippine Islands, so far as the record shows, permanently from 1852 or 1853 until the time of his death. His wife was a native of the Philippine Islands. The children living are now all adults. There is nothing in the record which shows or tends to show that they ever intended to leave the Philippine Islands. The fact that they have always lived here and made the Philippine Islands their home raises a strong presumption, at least, that they had adopted the Philippine Islands as the place of their permanent abode.

The question is properly raised under the provisions of the Civil Code above quoted, in view of the fact that it was enacted many, many years ago, whether it was the intention of the Spanish Government to make the same applicable to foreigners who had taken up their permanent abode in the Spanish colonial possessions for the purpose of making such place their permanent home. Should not said article 10 be given an interpretation which would make a difference in the distribution of an inheritance between foreigners who are domiciled in the Philippine Islands with the definite intention to return to their native country some time in the future and those foreigners who are domiciled in the Philippine Islands permanently with the intention of remaining here so long as they live? For example, A, an American citizen, comes to the Philippine Islands with his wife and children for the purpose of making his permanent home here, without any intention whatever of removing elsewhere; he left the United States without the slightest intention of ever returning there for the purpose of residing. He engages in business in the Philippine Islands. He accumulates a large fortune. His children are educated here. He and his family have become an integral part of both the social and business relations of the country. He dies, leaving his wife and children, who have all reached their majorities. Another example: B, an American citizen, comes to the Philippine Islands with his wife and children, engages in business, but has the intention to return to his native country at some definite or indefinite future time. He has no intention of becoming a permanent resident in the Philippine Islands. His purpose is to acquire a fortune, if possible, and return to his native heath for the purpose of enjoying the fruits of his labor with his family there. Both or each A and B, while they are residing in the Philippine Islands, with their domicile here, are entitled to all of the civil rights accorded to citizens under the Government. Neither, however, are entitled to exercise political rights under the Government. The question is, Should said article 10 apply equally to them? The first is a permanent resident, with a permanent domicile; the second a temporary resident, with a temporary domicile. Should the wife and children of A in the administration and distribution of his estate be compelled to invoke the provisions of the law of the State of the United States from which he came, in view of the fact that they have never had the slightest intention to return to the United States from the time they landed here? We do not believe that it was the purpose of the code makers, at the time they drafted said article 10, to compel the descendants of permanent residents in the Philippine Islands, even though not permitted to exercise the political rights under the Government, to invoke the laws of a foreign country, one to which they owed no allegiance whatever, in the administration and distribution of their inheritance. We believe that article 10 should be given such an interpretation as would permit foreigners who have permanently allied themselves with the interests of the country to have their property administered after their death in accordance with the laws of the country which they have selected as their home. We are living in a progressive age, and it is not believed that the present age should be governed by any ironclad interpretation of a statute of the centuries gone by which is contrary to the sense of the people of today. Statutes should be interpreted, so far as it is possible, to meet the conditions. While the courts are not permitted to amend the law,

yet, nevertheless, they are permitted to give a law such an interpretation as will make it applicable to new conditions. Many examples might be given to show where this has been done. It is believed that the conditions in the Philippine Islands will justify the assertion that there are literally hundreds of families here who are not entitled to exercise the political rights of the Government, who are strangers in fact under the law, but who have adopted the Philippine Islands as the place of their permanent abode. They have forsworn either in fact or by implication their allegiance to any other country or government. Should their descendants, in the face of these conditions, be compelled to resort to the laws of a foreign country, of which they know nothing and for which they care less, for rules and regulations in the administration and distribution of their inheritance? It may possibly be that they left their native land for the very purpose of evading the very laws in question. We believe that it is perfectly justifiable under the provisions of article 10, and in view of the provisions of the real decreto of the 17th day of November, 1852, as well as that of the 4th of July, 1870, to give said article such an interpretation as will permit foreigners who have adopted the Philippine Islands as their permanent home and domicile to have their property, after their death, administered and distributed to their descendants in accordance with the laws of this country the land which they have adopted as their permanent home and not in accordance with the laws of the country which they had permanently abandoned. No doubt many of the families to which reference is made above have for years not only been exercising the civil rights accorded them under the Spanish Government but have also exercised political rights. We believe that under such circumstances the law of presumption should be applied after they have exercised civil and political rights for a number of years, and that they should be presumed to be citizens of the country which they have adopted as their permanent home. To sustain this conclusion we invoke the doctrine established by the Supreme Court of the United States in the case of *Boyd vs. Thayer* (143 U. S., 135). In that case, Mr. Boyd was born in the State of Ohio of foreign parents. His father had not been naturalized during his minority. Later he removed to the State of Nebraska and for a long period of years exercised both civil and political rights under the laws of the Territory and State of Nebraska. He was finally elected by the people of the State to the position of governor. The question as to his rights to exercise this political function in the State was questioned by quo warranto proceedings. The case finally reached the Supreme Court of the United States. The Supreme Court of the United States, Chief Justice Fuller writing the opinion, adopted the doctrine of "presumption of naturalization." Mr. Chief Justice Fuller said (p. 180):

"It is true that naturalization under the Acts of Congress known as the Naturalization Laws can only be completed before a court, and that the usual proof of naturalization is a copy of the record of the court. But it is equally true that where no record of naturalization can be produced, evidence that a person, having the requisite qualifications to become a citizen, did in fact and for a long time vote and hold office and exercise rights belonging to citizens, is sufficient to warrant a jury in inferring that he had been duly naturalized as a citizen." (*Boyd vs. Thayer*, 143 U. S., 135, 180; *Blight vs. Rochester*, 7 Wheaton, 535, 546; *Hogan vs. Kurtz*, 94 U. S., 773, 778.)

The Civil Code of the Republic of Argentina, South America, in its articles 10 and 11, which contain substantially the same provisions as article 10 of the Civil Code of the Philippine Islands, has wisely recognized the difference between foreigners who are permanently residing in the Republic and foreigners who are residing temporarily there. Those foreigners who are permanently residing in that Republic are permitted to have their property administered and distributed after their death in accordance with the laws of the country, whether such property be real or personal, while those who are residing there temporarily are governed in the administration and distribution of their estates by the laws of their native country. (See *Canedo*, Vol. I, p. 51.)

In the present case, Sy Quia resided in the Philippine Islands at the time of his death and all of the property in question in the present case is located in the Philippine Islands. Therefore the laws relating to the descent and distribution of both personal and real property in litigation are the laws of the Philippine Islands. The contention

of the appellants that the descent and distribution of the property should be governed by the laws of China is not tenable.

By the weight of authority the legitimacy of children depends upon the *lex fori*. We have seen that under the laws of Spain where a man has married a second wife without having the first marriage annulled, and where the second wife married in good faith, the children of such second marriage are legitimate. Of course, the children of the first marriage, which was entered into legally, are legitimate. We have also seen that the inheritance depends upon the *lex domicilii*. The rights of the legitimate children, therefore, depend upon the *lex fori* or the *lex domicilii*. (Irving vs. Ford (March, 1903), 183 Mass., 448; Minor's Conflict of Laws, sec. 10; Lingen vs. Lingen, 54 Ala., 410; Wharton's Conflict of Laws, sec. 246; Loring vs. Thorndike, 5 Allen, 257; Morris vs. Williams, 39 Ohio St., 554; Scott vs. Key, 11 La. An., 232; Blythe vs. Ay res, 96 Cal., 532; see also, for general discussion of the question, the case of Irving vs. Ford, 65 L. R. A., 177.)

It may be argued that inasmuch as the estate of the said Sy Quia had been settled and the property divided among the heirs in the Philippine Islands, that said estate can not be reopened for the purpose of considering the question of the right of property. The effect of the probate of the estate of the said Sy Quia has no effect whatever upon parties who have a right in the said estate and who were not made parties in said settlement. (Abston et al. vs. Abston et al., 15 La. An., 137; Sophie vs. Duplessis, 2 La. An., 724; Succession of Dupuy, 4 La. An., 570; Games vs. Hennen, 65 U. S., 553-631.)

In the last case the Supreme Court of the United States, approving the decision in the case of Abston vs. Abston, *supra*, said:

"The court declared that the decree of a probate court ordering a will to be executed does not amount to a judgment binding on those who are not concerned in it, and when the will is offered as the title in virtue of which property is claimed or withheld, that its validity may be inquired into."

A good deal of stress is laid upon the fact that Sy Quia was a Chinaman, and not a resident of the Philippine Islands, subject to the laws of Spain, and that, therefore, the descent of the property of his estate should be governed by the laws of China, where the first marriage took place. We are of the opinion and so hold that the question of his citizenship is of no importance. All of the property of his estate was in the Philippine Islands at the time of his death, both real and personal, and therefore should be governed in its descent in accordance with the laws in force here. In the absence of a special contract between the spouses to the contrary, their respective rights in the conjugal property will be governed by the *lex domicilii*, and not by the law of the place of the marriage. It may well be doubted whether the spouses could control the descent of their property even by contract when their children or descendants or ascendants were the only parties interested. The record does not disclose that Sy Quia, with either wife, had made a contract at the time of entering into the marriage relation which in any way affected the descent or distribution of his estate.

The defendants herein are in possession of their respective distributive shares of the estate of Sy Quia. They were given possession of it by order of the Court of First Instance of Manila, and it is to be presumed that they went into possession of the same in good faith. They are, therefore, not subject to pay interest or rent for the use of the same until after a judicial demand had been made by the persons who claimed a lawful possession. From that date, however, the defendants are liable to pay interest or rent upon that portion of the property which they possess which rightfully belongs to the plaintiffs.

From the judgment of the lower court both the plaintiffs and defendants appealed. Each presented a bill of exceptions, together with numerous assignments of error. Each of the appellants presented most interesting and readable briefs. The assignments of error of the respective parties have not been considered in detail. We believe,

however, that the fundamental questions which were presented by the different bills of exceptions and the various assignments of error have been answered in the foregoing opinion.

Our conclusions are, therefore:

First. That each of the wives of the said Sy Quia was in law a legitimate wife of the said Sy Quia and the children born of the respective wives were legitimate children.

Second. That as a legitimate wife, each is entitled to one-half of the conjugal property of the estate of the said Sy Quia.

Third. That the children of each wife are entitled to a proportional amount of their respective mother's share in said estate.

Therefore the judgment of the lower court should be hereby modified and it should be ordered and adjudged:

(a) That a judgment be entered giving the descendants of each of the respective wives one-half of the estate of the said Sy Quia.

(b) That the said defendants each render an account of all the property received by them respectively under the said judicial order of the Court of First Instance of the city of Manila in 1900.

(c) That the receiver heretofore appointed By the lower court take possession of the whole estate and administer the same until the lower court can make an order distributing the said estate in accordance herewith.

(d) That the plaintiffs recover of the defendants legal interest on one-half of all the moneys received by the defendants from the said estate and a reasonable rent for the use and occupation of one-half of all the property of the said estate, said interest and rent to begin to run from the 4th of December, 1905.

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