

DONATO LAJOM, PLAINTIFF-APPELLANT, VS. JOSE P. VIOLA, RAFAEL VIOLA, AND SILVIO VIOLA, DEFENDANTS-APPELLEES.

G.R. No. 47475. May 06, 1942

Ponente: BOCOBO, J.

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BOCOBO, J.:

This is an appeal from an order of the Court of First Instance of Nueva Ecija, sustaining the defendants' demurrer to the plaintiff's amended complaint and dismissing the case. On March 17, 1939, the plaintiff-appellant, Donato Lajom, filed a complaint, which was amended on May 16, 1939, praying, among other things, that he be declared a natural child of the late Dr. Maximo Viola and therefore a co-heir of the defendant-appellees, Jose P. Viola, Rafael Viola, and Silvio Viola, legitimate children of said Dr. Maximo Viola; and that after collation, payment of debts and accounting of fruits, a new partition be ordered, adjudicating one-seventh of the estate to the plaintiff and two-sevenths to each of the defendants. Among the allegations of the complaint are the following:

* * * * *

"2. That the plaintiff is a natural child, impliedly recognized and tacitly acknowledged by his father, the late Dr. Maximo Viola, begotten by the deceased Filomena Lajom and born in 1882 when both, Maximo Viola and Filomena Lajom, were free and could have contracted marriage;

* * * * *

"4. That from early childhood until before the year 1889, and even thereafter, the plaintiff had been living with his father, the late Mr. Maximo Viola, and had been enjoying the status of a son, not only within the family circle but also publicly, on account of the acts of his said father;

* * * * *

"6. That a testate proceeding was instituted in the Court of First Instance of Bulacan, covering the estate left by the said Dr. Maximo Viola, registered as civil case No. 4741 of said Court; and this special proceeding was already closed on March 17, 1937, as can be seen in a copy of the order of said Court, hereto attached, marked as Annex D, and is being made an integral part hereof;

"7. That the plaintiff did not intervene during the pendency of the special proceeding above mentioned, as he expected that his brothers, the herein defendants, would disclose and tell the truth to the Court that they have a natural brother whom they knew to be living, and whose address was well known to them; a brother who should also participate in the estate of their deceased father; and besides, the herein defendants promised to the herein plaintiff that they would give him his lawful share in the estate of their father;

"8. That the herein defendants willfully, deliberately and fraudulently concealed the truth from the Court that they have a natural brother who should also participate in the estate of their deceased father, with the single and avowed intention to deprive deliberately and fraudulently the herein plaintiff of his lawful participation in the estate in question; "

9. That the herein defendants partitioned among themselves the estate in question, as can be seen in their 'Convenio de Particion y Adjudication', dated October 25, 1935, a copy of which is hereto attached, marked as Annex E, and is made an integral part hereof; and since then up to the present time, each of the herein defendants has been occupying, possessing and enjoying his corresponding share, in accordance with the said 'Convenio de Particion y Adjudicacion'; while the properties alleged to be paraphernal properties of the late Juan a Roura in said 'Convenio de Particion y Adjudicacion' are not paraphernal but conjugal properties of the late spouses, Dr. Maximo Viola and Doña Juana Roura, acquired during their marital life;

* * * * *

"18. That the plaintiff had demanded of the defendants that they give to him his lawful participation of the estate in question, as well as of the products therefrom, in order not only to comply with their promise but also in order to comply with the law; but the herein defendants have failed to give to the herein plaintiff his lawful share of the estate in question, nor of the products or fruits therefrom; and the said defendants continue to fail to give to him his legal portion of the said estate and the fruits or products therefrom, of which the plaintiff is entitled to one-seventh (1/7), while each of the three defendants is entitled to two-sevenths (2/7) of the same."

By an order dated July 31, 1939, the Court of First Instance of Nueva Ecija sustained the defendants' demurrer and dismissed the case. The Court held that the complaint did not state facts sufficient to constitute a cause of action because its allegations called for the exercise of the probate jurisdiction of the court and consequently did not constitute a cause of action in an ordinary civil case like the present. It was further held that the court had no jurisdiction because there was no allegation that the late Dr. Maximo Viola was, at the time of his death, a resident of Nueva Ecija; on the contrary, the complaint showed that the will of the deceased had already been probated in the Court of First Instance of Bulacan and that court having first taken cognizance of the settlement of the estate, the Court of First Instance of Nueva Ecija could no longer assume jurisdiction over the same case.

The two grounds for sustaining the demurrer to the complaint will now be discussed.

First, as to the jurisdiction of the Court of First Instance of Nueva Ecija. The complaint alleges that the plaintiff and one of the defendants, Jose P. Viola, are residents of Nueva Ecija; and from the complaint it appears that 16 of the parcels of land belonging to the estate are situated in the Province of Nueva Ecija, while 3 lots are in the Province of Isabela, 1 in the City of Baguio, 6 in Manila, and the rest (46 parcels) are found in the Province of Bulacan. Paragraphs 7, 8, and 18 of the complaint allege a violation of contract, a breach of trust, and therefore the case may be instituted in the Province of Nueva Ecija. Paragraph 7 alleges that "the herein defendants promised to the herein plaintiff that they would give him his lawful share in the estate of their father." Paragraph 8 states that "the herein defendants willfully, deliberately and fraudulently concealed from the Court the truth that they have a natural brother who should participate in the estate of their deceased father, with the single and avowed intention to deprive deliberately and " fraudulently the herein plaintiff of his lawful participation in the estate in question." And paragraph 18 asserts that "the plaintiff herein had demanded of the defendants that they give to him his lawful participation of the estate in question, as well as of the products therefrom, in order not only to comply with their promise, but also in order to comply with the law; but the herein defendants have failed to give the herein plaintiff his lawful share of the estate in question." These allegations clearly denounce a breach of trust which, if proved at the trial, the courts could not for a moment countenance. Regardless of any legal title to the plaintiff's share, declared by the Court of First Instance of Bulacan in favor of the defendants in the testate proceedings, high considerations of equity vehemently demand that the defendants shall not take advantage of such legal title, obtained by them through a betrayal of confidence placed in them by the plaintiff. So far as plaintiff's share in the inheritance is concerned, the defendants are trustees for the plaintiff, who may bring an action in Nueva Ecija for breach of trust (Sec. 337, Act No. 190, and sec. 1, Rule 5 of the Rules of Court.) If this promise should be shown by proper evidence, its enforcement would not necessitate the revision or

reconsideration of the order of the Court of First Instance of Bulacan approving the partition, because leaving that court order as it is, the trust can and should be carried out through conveyance to the plaintiff of his share, by the defendants out of their respective participations in virtue of the partition.

The case of *Peverino vs. Severino* (44 Phil. 343 [year 1923]) has declared certain principles that may be applied in the case at bar. In that case, the defendant Guillermo Severino, who was an agent of Melecio Severino, had obtained a Torrens title in his own name to four parcels of land belonging to the principal. More than one year having elapsed since the entry of the final decree adjudicating the lands to the defendant, the question was whether the defendant could be compelled to convey the lands to the estate of the deceased principal, Melecio Severino. This Court maintained the affirmative holding in part:

"In the case of *Felix vs. Patrick* (14G U. S. 317), the United States Supreme Court, after examining the authorities, said:

"'The substance of these authorities is that, wherever a person obtains the legal title to land by any artifice or concealment, or by malting use of facilities intended for the benefit of another, a court of equity will impress upon the land so held by him a trust in favor of the party who is justly entitled to them, and will order the trust executed by decreeing their conveyance to the party in whose favor the trust was created.' (Citing *Bank of Metropolis vs. Guttschlick*, H Pet. 19, 31; *Moses vs. Murgatroyd*, 1 Johns, Ch. 119; *Cumberland vs. Codrington*, 3 Johns, Ch. 229, 261; *Neilson vs. Blight*, 1 Johns. Gas. 205; *Weston vs. Barker*, 13 Johns. 276.)

"The same doctrine has also been adopted in the Philippines. In the case of *Uy Aloe vs. Cho Jan Ling* (19 Phil. 202), the facts are stated by the court as follows:

"'From the facts proven at the trial it appears that a number of Chinese merchants raised a fund by voluntary subscription with which they purchased a valuable tract of land and erected a large building to be used as a sort of clubhouse for the mutual benefit of the subscribers to the fund. The subscribers organized themselves into an irregular association, which had no regular articles of association, and was not incorporated or registered in the commercial registry or elsewhere. The association not having any existence as a legal entity, it wan agreed to have the title to the property placed in the name of one of the members, the defendant, Cho Jan Ling, who on his part accepted the trust, and agreed to hold the property as the agent of the members of the association. After the club building was completed with the funds of the members of the association, Cho Jan Ling collected some P25,000 in rents for which he failed and refused to account, and upon proceedings being instituted to compel him to do so, he set up title in himself to the club property as well as to the rents accruing therefrom, falsely alleging that he had bought the real estate and constructed the building with his own funds, and denying the claims of the members of the association that it was their funds which had been used for that purposes.'

"The decree of the court provided, among other things, for the conveyance of the clubhouse and the land on which it stood from the defendant, Cho Jan Ling, in whose name it was registered, to the members of the association. In affirming the decree, this court said:

" 'In the case at bar the legal title of the holder of the registered title is not questioned; it is admitted that the members of the association voluntarily obtained the inscription in the name of Cho Jan Ling, and that they had no tight to have that inscription cancelled; they do not neck such cancellation, and on the contrary they allege and prove that the duly registered legal title to the property is in Cho Jan Ling, but they maintain, and we think that they rightly maintain, that he holds it under an obligation, both express an implied, to deal with it exclusively for the benefit of the members of the association, and subject to their will.'"

"Torrens titles being based on judicial decrees there is, of course, a strong presumption in favor of their regularity or validity, and in order to maintain an action such as the present the proof as to the fiduciary relation of the parties and of the breach of trust must be clear and convincing. Such proof is, as we have seen,

not lacking in his case.

"But once the relation and the breach of trust on the part of the fiduciary is thus established, there is no reason, neither practical nor legal, why he should not be compelled to make such reparation as may lie within his power for the injury caused by his wrong, and as long as the land stands registered in the name of the party who is guilty of the breach of trust and no rights of innocent third parties are adversely affected, there can be no reason why such reparation should not, in the proper case, take the form of a conveyance or transfer of the title to the cestui que trust. No reasons of public policy demand that a person guilty of fraud or breach of trust be permitted to use his certificate of title as a shield against the consequences of his own wrong."

In the present case, the defendants partitioned the estate among themselves in the administration proceedings before the Court of First Instance of Bulacan. Even granting that the partition was binding against the whole world (though it will be shown later that it was not), nevertheless it could not have a more puissant finality than a decree of title under the Torrens system. Upon the authority of *Severino vs. Severino*, the legal title obtained by the defendants to the plaintiff's share in the estate, in the partition approved by the Court of First Instance of Bulacan, must yield to the superior and inviolate rights in equity of the plaintiff, who abstained from taking part in that partition because of the promise made to him by the defendants that they would deliver to him his lawful share as an acknowledged natural child.

A possible objection to the promise of the defendants to give the plaintiff his share in the estate as an acknowledged natural child is that such agreement may run counter to article 1814, Civil Code, which reads: "No se puede transigir sob re el estado civil de las personas, ni sobre las cuestiones matri-moniales, ni sobre alimentos futuros" (There can be no compromise over the civil status of persons, or over matrimonial questions, or over future support). However, it does not appear from the complaint that the defendants ever impugned or denied the plaintiff's status as an acknowledged natural child; on the contrary, according to the complaint, the defendants admitted such status by promising to give the plaintiff his lawful share in the estate of the father. There having been, in accordance with the allegations in the complaint, no controversy over the condition of the plaintiff as an acknowledged natural child, the agreement between the plaintiff and defendants alleged in par. 7 of the complaint, if shown at the trial, is not a compromise at all, and is not frowned upon by the legislator in article 1814 of the Civil Code.

Furthermore, article 1965 of the Civil Code, which has been held by this court to be still in force, in spite of sees. 43 et seq. of the Code of Civil Procedure (*Bargayo vs. Camumot*, 40 Phil., 857, 872-3) provides as follows: "No prescribe, entre coherederos, condueños o propietarios de fincas colindantes la acción para pedir la partición de la herencia, la división de la cosa común o el deslinde de las propiedades contiguas." (Among coheirs, coowners or proprietors of adjoining lands, the action to ask for the partition of the inheritance, the division of the thing owned in common or the fixing of boundaries of adjoining lands, does not prescribe.) The defendants having, according to the complaint, promised to give the plaintiff his share in the inheritance, his right to demand partition of the inheritance does not prescribe, in view of said article 1965.

In the case of *Bargayo vs. Camumot*, just cited, the defendant, Jorge Camumot, an uncle of the plaintiffs, had been in possession for many years, of the whole estate in question, which had belonged to the deceased grandfather of the plaintiffs and father of the defendant. This court held that the defendant had not acquired the property by prescription under section 41 of the Code of Civil Procedure because his possession had not been hostile and adverse, and that therefore, the plaintiffs should be awarded one-half of the estate. This court said:

"Taking the evidence together, it does not appear that the defendant's act upon the land had been of real ouster, i. e., that if among strangers said acts may be sufficient to characterize his possession as adverse, such is not the case in the present suit wherein we are dealing with prescription among coheirs. For it appears that when

called upon by the plaintiffs to bring about the partition, the defendant did not deny that the plaintiffs had any right to share in the inheritance. When Basilio Hargayo was asked why they did not institute this action before, he replied that it was because they considered the defendant as their father, since he was their uncle, and they expected him to give them their respective shares of the inheritance, and that when they first asked him to make the partition, he (defendant) asked them a postponement, saying that they should leave him then in the possession of the land in order to compensate himself from what he has spent for their grandfather when the latter was, and died, under his (defendant's) care. All of these show in some way that defendant's possession was not adverse, i. e., hostile or repugnant to the plaintiff's right. The same witness, who is one of the plaintiffs, only says that whenever they would ask him for the partition, the defendant did not pay any attention to them, i. e., he limited himself in laying aside the fulfillment of the partition, a conduct which can be explained in various ways. And it is probable that said conduct was simply tolerated by the plaintiffs on account of his being their uncle, so that they never thought that by and through the defendant was attempting to oust them forever from the inheritance, nor that the defendant would have so intended. In any way, dealing as we do here with the acquisition of a thing by prescription, the evidence must be so clear and conclusive as to establish said prescription without any shadow of doubt. This does not happen in the instant case, for the defendant did not even try to prove that he has expressly or impliedly refused plaintiffs' right over an aliquot part of the inheritance."

But regardless of the defendants' undertaking referred to, the Court of First Instance of Nueva Ecija had jurisdiction over the case because the complaint contains allegations which, if shown at the trial, would be sufficient to support and warrant an action for reivindication of his right as a co-owner of the sixteen parcels of land situated in the Province of Nueva Ecija. From the moment of the death of the late Dr. Maximo Viola on September 3, 1933, succession was opened (art. 657, Civil Code). The possession of his whole estate was transmitted to all his heirs (including the plaintiff) without interruption and from the moment of his death. (Article 440, Civil Code.) The plaintiff's dominion over his share of the estate was therefore automatically and by operation of law vested in him upon the death of his natural father, subject of course to the lien of the creditors of the decedent. This being true, it is difficult to ignore the right of the plaintiff to recover his share in the lands in Nueva Ecija, (the debts of the estate having been adjusted before the partition approved by the Court of First Instance of Bulacan) by an action of reivindication because of the defendants' refusal to deliver said share to him.

In the case of *Ramirez vs. Gmur* (42 Phil. 855, 860), this court held:

"The law in force in the Philippine Islands regarding the distribution of estates of deceased persona is to be found in section 753 et seq., of the Code of Civil Procedure. In general terms the law is that after the payment of the debts and expenses of administration the court shall distribute the residue of the estate among the persons who are entitled to receive it, whether by the terms of the will or by operation of law. It will be noted that while the law (sec. 751) provides that the order of distribution may be had upon the application of the executor or administrator, or of a person interested in the estate, no provision is made for notice, by publication or otherwise, of such application. The proceeding, therefore, is to all intents and purposes ex parte. As will be seen our law is very vague and incomplete; and certainly it cannot be held that a purely ex parte proceeding, had without notice by personal service or by publication, by which the court undertakes to distribute the property of deceased persons, can be conclusive upon minor heirs who are not represented therein.

"Section 11 of the Code of Civil Procedure provides that ten years actual adverse possession by 'occupancy, grant, descent, or otherwise' shall vest title in the possessor. This would indicate that a decree of distribution under which one may be placed in possession of land acquired by descent, is not in itself conclusive, and that, as held in *Layre vs. Pasco* (5 Rob. [La.], 9), the action of revindication may be brought by the heir against the persons put in possession by decree of the probate court at any time within the period allowed by the general statute of limitations."

In the case just cited, this court upheld two propositions: (1) that a judicial partition in probate proceedings does

not bind the heirs who were not parties thereto; and (2) that in such cases, the heir who has been deprived of his share in the estate may bring an action for reivindication within the prescriptive period against the persons put in possession by the probate court.

Upon the first point, the following quotation from *Corpus Juris* (vol. 47, pp. 434 and 435) would seem to be pertinent:

"SEC. 417. Persons concluded.—A judgment in partition is conclusive upon all persons having any interest who were made parties to the proceeding.

* * * * *

"Permits not parties.—The general rule is that *persona not partea* to the action or suit are not bound by the decree or judgment for partition and their rights cannot be adjudicated; but such a decree is not invalid as between the parties thereto, although it has been considered as erroneous. Among the persons held not to have been concluded by the decree or judgment, by reason of not having been made parties, are, besides owners of an undivided interest in the property, persons having a contingent remainder therein, a widow with a dower right, creditors having a lien on the property, and a person who had attached, on *mesne process*, the interest of one of the tenants in common."

In *Rodriguez vs. De la Cruz* (8 Phil., 665, 667), this court said:

"With reference to the first assignment of error above noted, we are of the opinion, and so hold, that for the reason that the said Matea E. Rodriguez had not been made a party in the action for partition between the present defendants and the said Hilarion de la Cruz, her interest in said lands was in no way prejudiced by the decision of the court in that cause."

But, it may be said, the plaintiff knew of the probate proceedings in the Province of Bulacan, and is therefore bound thereby. However, it is alleged in the complaint and admitted by the demurrer, that he did not appear in those proceedings because of the defendants' promise to give him his share.

On the second point, that is to say, that the aggrieved coheir may bring an action for reivindication within the prescriptive period, this court in the case of *Ramirez vs. Gmur* properly applied section 41 of the Code of Civil Procedure regarding acquisitive prescription after ten years of adverse possession by "occupancy, grant, descent or otherwise." In other words, that even after a decree of distribution, an action for recovery may be brought by the excluded heir within ten years.

In *Layre vs. Pasco* (5 Rob. [La.] 9), cited by this court in *Ramirez vs. Gmur*, it was held:

"II. This action may be considered as a petitory one, brought against a third possessor. The plaintiff must recover upon the strength of her title to the succession of her sister; and for that purpose she must show that she is the natural sister of the deceased, and that the deceased left no lawful heir entitled to her inheritance. This has been done satisfactorily. The evidence establishes, that the defendant was put in possession of the estate, as testamentary heir, by a decree of the Court of Probates. It was, therefore, useless for the plaintiff to attempt to demand the possession of the property of the succession, since it had been delivered to the defendant, and the estate had ceased to be under the control and supervision of the Probate Court. Her application to the Court of Probates would have had no object, as that court was no longer possessed of any power over the succession, and, consequently, no order could have been rendered to take it out of the defendant's hands. The action of reivindication was left to the plaintiff, and we are not prepared to say, that previous to her instituting it, it was necessary that she should have been recognised as heir by the Probate Court. This requisite, is only to be implied with, as long as the succession is under the supervision of the court by which the administrator, curator, or executor has been appointed, as it seems to us, that after delivery to the heir who is apparently entitled thereto, it would be requiring a vain thing. *Lex neminem cogit ad vana*.

* * * * *

"With regard to the exception of jurisdiction: it was not insisted on by the defendant's counsel, and was properly overruled by the Judge, a quo. The rule is well established, that 'when an action of reivindication is instituted by an heir at law, against the testamentary heir or universal legatee, who has been put in possession of the estate, and who sets up the will as his title to the property, District Courts are the proper tribunals in which such suits must be brought.' " (Roberts vs. Allier, 17 La. 15.)

It would not be amiss, at this juncture, to bring into view section 196 of the Code of Civil Procedure (similar to sec. 12 of Rule 71 of the Rules of Court) and article 405 of the Civil Code.

Section 106 of Act No. 190 provides:

"SECTION 196. Paramount rights and amicable partition not affected.—Nothing herein contained shall be construed so as to injure, prejudice, defeat, or destroy the estate, right, or title of any person claiming a tract of land; or any part thereof, by title under any other person, or by title paramount to the title of the joint tenants, tenants in common, or co-parceneri by whom partition may have been made." (Italics supplied.)

The plaintiff has a paramount title to his share in the estate.

Article 405 of the Civil Code reads:

"La division de una cosa comun no perjudicara a tercero, el cual conservara los derechos de hipoteca, servidumbre u otros derechos reales que la pertenecieran antes de nacer la particion." (Italics supplied.) (The division of a thing owned in common shall not prejudice any third person, who shall preserve the rights of mortgage, easement or other real rights which might belong to him before the partition.)

It is to be observed that ownership is the real right par excellence. If, as alleged in the complaint, the plaintiff is the owner of a share in the estate, then his rights are shielded by article 405 of the Civil Code against any adverse or inimical effect of the partition already mentioned.

These safeguards established both by the Code of Civil Procedure and the Civil Code are sound in principle and farsighted in the protection of property rights. They are morally and juridically right because no partition, either by decree of court or by extra-judicial agreement, could add one iota or particle to the interest which the partitioned had during the joint possession. Partition is of the nature of a conveyance of ownership (Manresa's comment on articles 400-406, Civil Code), and certainly none of the co-owners may convey to the others more than his own true right. Section 196 of Act No. 190 and article 405 of the Civil Code are also an effective guaranty of ownership because otherwise, it would be possible for usurpers to carry out their covetous designs either by deceiving the court or through the egregious mockery of a contract solemnized by the signature and seal of a notary public.

Moreover, a judicial partition in probate proceedings is not final and conclusive, as shown by articles 1073, 1074, 1080 and 1081 of the Civil Code.

"1073. Las particiones pueden rescindirse por las mismas causas que las obligadas.

"1074. Podran tambien ser rescindidas las particiones por causa de lesion en mas de la cuarta parte, atendido el valor de las cosas cuando fueron adjudicadas.

"1080. La particion hecha con pretericion de alguno de los herederos no se rescindira, a no ser que se pruebe que hubo mala fe o dolo por parte de los otros interesados; pero estos tendran la obligacion de pagar al preterido la parte que proporcionalmente le corresponde.

"1081. La particion hecha con uno a quien se creyo heredero sin serlo, sera nula."

The above legal provisions—section 196 of the Code of Civil Procedure, and articles 405, 1073, 1074, 1080 and 1081 of the Civil Code—are material in this aspect of the present case, not because we believe the partition in the probate proceedings in Bulacan should be annulled or rescinded but because said partition not being of such definitive character as to stop all means of redress for a coheir who has been deprived of his lawful share, such coheir may still, within the prescriptive period, bring an action for reivindicacion in the province where any of the real property of the deceased may be situated. In this case, 16 of the lots belonging to the estate of the deceased Dr. Viola are located in the Province of Nueva Ecija where the present action was brought.

Broad perspectives of public policy, which the lawmaker must have contemplated, would seem to reveal the wisdom of allowing a coheir the benefits of the law of prescription even after a partition, judicial or extrajudicial, has been had. Not infrequently, the heirs are living in different provinces, far from one another and far from the residence of the decedent. Some of them may not hear of the probate proceedings, or if they do, they may not have at the time either the means or the inclination to participate therein. Sometimes, one of the heirs, by cajolery, bluster or truculence succeeds in preventing a number of the coheirs from laying their just claims before the probate court. There are also instances where an heir, cut of a sense of self-reliance, does not care to show keen and active interest in the partition. In some cases, as it might have happened in the present one, a coheir, from delicacy or fitting pride does not want, at the time of the settlement of the estate, to appear in court as a natural child, and thus make himself the object of public pity or disdain and inconsiderately lift the veil which time has benignantly placed over the father's past social deviation. Why should it be presumed that the lawmaker did not respect this attitude of the child? It often occurs, likewise, that a child, out of reverence for the memory of the deceased, is loath to show eagerness to secure his share of the inheritance. Why should it be assumed that the legislator wanted to compel such a child to haggle and argue over sordid and material things when the heart-wounds from the death of the beloved father or mother still smart? To such a child, zealous alacrity to get one's share in the inheritance so soon after the death of the father or mother is akin to the sacrilegious avarice of those who, after the Crucifixion, parted and divided the garments. Is it reasonable to suppose that the lawmaker did not deem such child's feelings worthy of deferential regard?

The second main question is, Does the complaint state facts sufficient to constitute a cause of action?

Paragraph 2 of the complaint reads thus:

"2. That the plaintiff is a natural child, implied? recognized and tacitly acknowledged by his father, the late Dr. Maximo Viola, begotten by the deceased Filomena Lajom, and born in 1882 when both, Hanimo Viola and Filomena Lajom, were free and could have contracted marriage";

Law 11 of Toro, promulgated in 1505, provides :

"Ordenamos y mandamoa que entonces se digan ser los hijos naturales a, cuando al tiempo que nacieren, o fueren concebidos, sus padres podian casar con sus madres juatamente sin dispensacion," (We order and command that children shall be said to be natural when at the time they are born, or conceived, their fathers could marry their mothers justly without dispensation.)

The complaint does not allege that the parents were free to marry "each other" and "without dispensation." One who is prone to search for the "nice sharp quilllets of the law" would consider these omissions in the complaint fatal because Law 11 of Toro requires that the children's "fathers could marry their mothers justly without dispensation" ("sus padres podian casar con sus madres justamente ain dispensacion"). In other words, a strict interpretation of the complaint would hold (1) that the parents might be free to marry others but not each other; and (2) that by omitting the words "without dispensation," the complaint contains no allegation that the parents were not so related as to require dispensation to get married to each other. For example, under Law 11 of Toro, if

the parents are uncle and niece, the child is not natural because they need dispensation to marry each other. Law 11 of Toro is on this point different from the Civil Code in that under the latter (article 119) it is sufficient if the parents can marry each other "with or without dispensation," that is to say, according to the Civil Code, even if the parents are, for instance, uncle and niece, the child is natural if said parents have obtained dispensation to marry each other.

But pleadings should be liberally construed with a view to substantial justice between the parties (sec. 106, Code of Civil Procedure and sec. 17, Rule 15 of the Rules of Court). Upon this principle the complaint is sufficient because the allegation that the parents "were free and could have contracted marriage" signifies that neither was married and that there was no impediment on account of relationship which would have required dispensation. In the case of *Ramirez vs. Gmur* (42 Phil., 855, 861-862), this court held:

"Relative to this preemption of the capacity of the parents to marry, the author Sanchez Roman makes the following comment:

" 'Furthermore, viewing the conception of natural child in connection with two mutually interrelated circumstances, to "it, the freedom of the parents to inter-marry, with or without dispensation, at the time of the conception of the offspring stigmatized as natural, the first of those, or freedom to marry, is a point upon which there is, according to the jurisprudence of our former law, whose spirit is maintained in the Code, an affirmative presumption which places the burden of proving the contrary upon those who are interested in impugning the natural filiation.' " (Vol. 5, *Derecho Civil*, pp. 1018, 1019.)

The Supreme Tribunal of Spain in its Sentence of October 11, 1882, declared that paternity having been proved, it is presumed that the parents were not disqualified to marry each other.

This liberal interpretation of the complaint is the more compelling in this case because the status of the plaintiff as a natural child is to be determined in harmony with Law 11 of Toro, which was the least severe toward natural children in the history of Spanish legislation. The development of the law on this subject has had three periods; first, the Roman law viewpoint which was the most strict; second, the Laws of Toro which gave the largest measure of concessions to the natural child; and third, the Civil Code, which places greater limitations on the concept of natural children. (See "Hijos Naturales" by Victor Covian, Vol. XVII, *Enciclopedia Juridica*, p. 809; and "Comentario Historico, Critico y Juridico a las Leyes de Toro," by Joaquin Francisco Pacheco, pp. 136-141.) The Laws of Toro having been promulgated in 1505, their relatively liberal concept of natural children was the one which prevailed in the Philippines during practically the entire period of the Spanish regime.

The complaint states that the plaintiff was born in 1882 when his parents were free to marry. This is sufficient because Law 11 of Toro requires the freedom of the parents at the time either of the conception or of the birth of the child, although according to the Civil Code this freedom to marry must exist at the time of the child's conception (article 119).

The complaint alleges that "the plaintiff is a natural child, impliedly recognized and tacitly acknowledged by his father." Under Law 11 of Toro, voluntary recognition of a natural child may be tacit, while under the Civil Code (article 131) it must be in a record of birth, in a will or in any other public document.

Finally, it is proper and pertinent to invoke the case of *Larena and Larena vs. Rubio* (43 Phil. 1017). Asuncion Larena, Maximiana Larena and Eustaquio Larena appeared in the proceedings for settlement of the estate of the deceased Demetrio Larena, alleging that they were his natural children and claimed the right to participate in the inheritance. The widow, Josefina Rubio viuda de Larena, by whom the deceased had had four legitimate children, opposed the petition. The lower court dismissed the petition, and Asuncion Larena appealed. The appellant was Demetrio Larena's natural daughter, born in 1880 when he and the mother were free and could have been married

to each other. From early childhood she had been living with her father and enjoying the status of a daughter, not only within the family but also publicly on account of the acts of her father. This court reversed the order of the lower court and declared the appellant as the natural daughter of the deceased with a right to a share in the estate, holding in part as follows:

"The lower court based its decision upon the fact that since the appellant had attained the age of majority in the year 1901, and her father having died in 1916, without any effort on her part previous to that time looking to her acknowledgment as a natural child, she had lost such right in view of article 137 of the Civil Code which requires that action for acknowledgment should be commenced during the lifetime of the father. This is an error. The Civil Code is not applicable to this case. The appellant was born and had enjoyed the status of a natural child by acts of acknowledgment of her father even before the said Code was put in force here. Under the law at that time (Law 11 of Toro), this tacit acknowledgment on the part of her father was in itself sufficient to give the appellant the status of a natural child, and such acknowledgment could be established by the ordinary means of evidence without any limitations as to time. This civil status granted to the appellant by the former law, derived from the fact of her birth and from the acts of implied acknowledgment of her father, having taken place under the former legislation, gives the appellant a vested interest inherent to her status which cannot in any way be impaired by the provisions of the Civil Code. The transitory provisions of this Code declare that the changes introduced by it, when prejudicial to the rights acquired under the former civil legislation, shall not have retroactive effect, and such former legislation shall regulate all the rights arising under it although the Civil Code may provide differently or may not recognize them." (Decisions of the Supreme Court of Spain of January 16, 1900; of April 11 and December 28, 1807; and decisions of this court in the cases of Mijares vs. Nery, 3 Phil. 196, and of Llorente vs. Rodriguez, 3 Phil. 897.)

Upon the authority of the decision just cited, the plaintiff in the present case is entitled to be considered and declared a natural son of Dr. Maximo Viola, voluntarily acknowledged by him through his own acts. There is, however, a statement in the decision in the Larena case which needs some revision, and it is this: "Such acknowledgment could be established by the ordinary means of evidence without any limitations as to time." These italicized words seemed to have been based on the sentence of the Supreme Tribunal of Spain of December 28, 1906 cited by Manresa in his comment on the 1st rule of the transitory provisions. But later decisions of that Tribunal, such as that of January 10, 1919, have held that the action by a natural child under Law 11 of Toro is limited by the period for personal actions, which under article 1964 of the Civil Code is fifteen years, from the death of the natural father. (See also Sentence of December 29, 1927.) It should also be noted that personal actions under Law LXIII of Toro should be brought within twenty years; and that under section 44 of the Code of Civil Procedure all action not otherwise provided for should be brought within ten years after the cause of action accrues. It will thus be seen that whether Law LXIII of Toro, or the Civil Code or the Code of Civil Procedure is applied, there is a period for the bringing of an action by a natural child whose status is governed by Law 11 of Toro. In view of the repealing provisions of the Code of Civil Procedure in section 795 thereof, the period for bringing an action by a natural child voluntarily recognized by the father under Law 11 of Toro, for declaration of the status of a natural child, should be 10 years from the death of the natural father. In this case, less than six years have elapsed from the death of Dr. Maximo Viola to the filing of the complaint. In any event, this matter of prescription of the action has not been set up as a defense.

Wherefore, the order of the lower court sustaining the demurrer to the plaintiff's amended complaint and dismissing the case, should be and is hereby reversed, without pronouncement as to costs. Let the record of the case be returned to the Court of First Instance of Nueva Ecija. So ordered.

Yulo, C. J., Moran, and Ozaeta, JJ., concur.

CONCURRING**PARAS, J.,**

I concur in the result for the reason that the demurrer admits the allegation in the complaint that the plaintiff is half brother to the defendants and that the latter promised to convey to him his legal share in the estate left by their common father. A good cause of action in equity has thus been shown. The Court of First Instance of the Province of Nueva Ecija where the plaintiff resides has jurisdiction to enforce the obligation assumed by the defendants.

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