

ALEJANDRA IRLANDA, PLAINTIFF AND APPELLANT, VS. CATALINA PITARGUE ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 6920. March 28, 1912*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-6920/>**TORRES, J:**

Appeals raised through bills of exception by counsel for both parties from judgment in this case by the Honorable Vicente Jocson, judge.

On June 16, 1909, counsel for Alexandra Irlanda filed a complaint, representing that: (1) The plaintiff and defendants are all of legal age and residents of Nagcarlang, Laguna; (2) Anselmo Irlanda died on November 30, 1887, according to the burial certificate marked "A," leaving only two sons, his immediate heirs, named Felix and Vicente Irlanda; (3) up to the time of his death Anselmo Irlanda owned four tracts of coconut land, the first planted with 23, the second with 84 and the third with 371 young trees and the fourth with 31 mature trees, all bearing fruit, which tracts are situated in the barrio of Banilad, pueblo of Nagcarlang, their boundaries being set forth in the complaint; (4) upon the death of the said Anselmo Irlanda his son Vicente Irlanda took possession of said tracts, because his brother Felix was then in Camarines engaged in business; (5) on January 4, 1902, said Felix Irlanda died in the pueblo of Calabanga, Ambos Camarines, according to the burial certificate marked "B," leaving a daughter, the plaintiff, who was born of his marriage with Roberta Rubin, according to the certificates marked "C" and "D;" that on or about the month of June of the same year, 1902, Vicente Irlanda also died in Nagcarlang, leaving a widow, Catalina Pitargue, and daughters Agustina, Isabel, Sergia, and Flaviana Irlanda, who took possession of the four tracts of land before mentioned and since then have been reaping the crops and profits therefrom; that in spite of the demands made at various times by the plaintiff that, the defendants deliver to her half of the said tracts the defendants have nevertheless refused to do so, thereby having inflicted upon the plaintiff damages estimated at P600 a year by retaining said lands and enjoying the fruits thereof; whereas according to section 174, paragraphs 2 and 4, of the Code of Civil Procedure, the most efficacious and adequate means for the preservation and administration of this property during the litigation is the appointment of a receiver, because the plaintiff is directly interested in half of all the funds derived from the sale of the products of said tracts, especially as the defendants have no other property to answer for the damages they have been inflicting upon the plaintiff and yet have been for a long time using said tracts and the products thereof. In conclusion, judgment was prayed, declaring: (a) That the plaintiff is the absolute owner by inheritance from her deceased grandfather, Anselmo Irlanda, and her father, the latter's son, Felix Irlanda, of half of the four tracts of land mentioned in the complaint; (b) that the defendants be ordered to deliver to the plaintiff said half of the lands in question and to execute the corresponding instruments of partition; (c) that the defendants be sentenced to pay to the plaintiff the sum of P600 a year as damages from the month of June, 1902, until execution of judgment in this case; (d) that a receiver be appointed to take over the administration of the profits in money derived from the lands in question during the litigation, said appointment to be made in favor of Telesforo Bueno, under bond of P1,500, the approximate value of said four tracts of land; and further that the defendants be sentenced to pay the costs in the case.

Counsel for the defendants in amended answer generally and specifically denied all the allegations contained in

the foregoing complaint; and in special defense alleged: That Anselmo Irlanda had two sons, Felix and Vicente Irlanda; that the defendant Catalina Pitargue in her marriage with Vicente Irlanda had four daughters named Agustina, Isabel, Sergia, and Flaviana, who married Justo Sotomango, one of the defendants, as Flaviana Irlanda is dead; that Felix Irlanda had a daughter, who is the plaintiff; that the property described in the third paragraph of the complaint belonged with other real estate to the deceased Anselmo Irlanda, who in his lifetime made a partition of all his property between his two heirs, Felix and Vicente Irlanda, which partition is now asked by the plaintiff; that more than a half of all the property of the said Anselmo Irlanda was awarded in the partition made over forty years ago to Felix Irlanda, father of the plaintiff, and since that time Vicente Irlanda has possessed with title of owner and to the exclusion of any other right the property described in the third paragraph of the complaint, by virtue of the assignment his father Anselmo made to him as the portion pertaining to him in said partition, that Felix Irlanda in like manner took possession of the property which was assigned him in that partition made by his father and in the exercise of the title he had to said property conveyed it by absolute sale to Manuel Lucido who in turn sold it to other persons, the present owner being the Chinaman Kiam; wherefore the plaintiff Alexandra Irlanda has no longer any right to the property claimed as it is the exclusive property of the defendants; and in their name it was prayed that they be absolved from the complaint and declared to be owners of the lands described in the third paragraph of the complaint, with the costs against the plaintiff.

After trial and submission of evidence, counsel for the plaintiff and the defendants agreed to accept as true the facts alleged in the first five paragraphs of the complaint. Later, counsel for the defendants asked for annulment of this agreement, but such motion was objected to by counsel for the plaintiff and was overruled by the court on July 19, 1910. From the evidence the court decided the case on October 26 of the same year by declaring that the property in question had belonged to Anselmo Irlanda, who, at his death, left two sons named Felix and Vicente, both now dead; that Felix Irlanda left as his sole heir Alexandra Irlanda, and Vicente Irlanda the said Agustina or Justina, Isabel, and Sergia Irlanda and the deceased Flaviana; and that the property in litigation had never been partitioned among the heirs. It was therefore ordered that the property in litigation be divided into two equal parts, one for Alexandra Irlanda and the other for the children of Vicente Irlanda. Catalina Pitargue was sentenced to restore to the heirs a sum at the rate of P72 a year, as the value of the products of said lands up to the time when the same were delivered, counting from July 1, 1902, to be divided into two parts in the same way as the lands. The defendants were sentenced to pay the costs in equal proportions. Counsel for the defendants excepted to this judgment and asked for a new trial, which motion was overruled on November 25, 1910, with exception on the part of said defendants. Counsel for the plaintiff also excepted to the portion relating to the amount of damages granted her, and further prayed that such portion of the decision be annulled and a new trial ordered, which motion was overruled on December 22, with exception on the part of the plaintiff. The corresponding bills of exception were presented and by agreement of both parties merged into one, which after approval was forwarded to this court.

The action in this case has for its subject the partition of certain hereditary property, after declaration of heirship, and the delivery of a half thereof with its products to the complainant as the legitimate successor of its original owner, now deceased.

In the judgment appealed from the following appears:

"From the evidence adduced it is plain that the lands in question belonged to Anselmo Irlanda and passed into the possession of Vicente Irlanda and of his wife and children at his death, while Felix Irlanda, who died in Camarines, was absent; and that this property has not yet been partitioned among the heirs;

"That in his lifetime Anselmo Irlanda sold some parcels, especially when he was a prisoner, has no weight, because he had a perfect right to do so, and even though Felix did the same with one parcel when his father

was a prisoner, it is not presumptuous to suppose that he did so at his father's command, which is evidenced by his silence up to the time of his death.

"The final move of the defendants was to present Guillermo Fule, son-in-law of Catalina Pitargue, as intervener in the ownership of the property in question, an intervention which I think to have been unfortunately allowed, because the definite answers of the defendants and the categorical affirmation of Catalina Pitargue itself leave no room for doubt that the property belonged to Anselmo Irlanda, who had two sons, Vicente and Felix, and that the plaintiff as the only child of Felix is entitled to a half of the property—questions and statements which can not in any manner be denied at the mere whim of the defendants themselves."

It is a fact admitted and agreed upon between the parties that the four tracts or parcels of land described in the third paragraph of the complaint belonged to Anselmo Irlanda, the predecessor in interest and father of the brothers Vicente and Felix, from whose rights in the inheritance which their common father, Anselmo, left at death, arise those which the plaintiff and the children of Vicente Irlanda's widow now assert.

"The rights to the succession of a person are transmitted from the moment of his death." (Art. 657, Civil Code.).

"Succession is granted either by the will of the man as expressed in a will or, in its absence, by provision of law." (Art. 658, Civil Code.)

"Heirs succeed the deceased in all his rights and obligations by the mere fact of his death." (Art. 661, Civil Code.)

The supreme court of Spain has applied this latter article in a judgment on appeal of November 23, 1903, thus:

"As has been repeatedly decided by this supreme court, the heir, as the successor of the deceased in all his rights and obligations, has a right of action and personality to demand what pertains to his interest, without the cooperation of his coheirs, whenever it is not to their prejudice and provided that he conform to the laws regulating common ownership of property."

In another judgment of December 11, of the said year 1903 it says:

"It is an ancient rule of our law, confirmed by article 661 of the Civil Code, that the heirs succeed by the mere fact of the death of their predecessor in interest."

Many other decisions of that supreme court might be cited with reference to the hereditary succession and the rights of the heirs of a deceased person.

In the decision in the case of Pascual vs. Angeles (4 Phil. Rep., 604), this court declared that the heir continues in law the personality of his predecessor in interest, who transmits to him such of his rights, actions and obligations as are not extinguished by his death.

Admitting the legal provisions cited and the precedents established by the courts in the construction and proper application thereof, it is unquestionable that the plaintiff is entitled to be recognized as the legitimate successor of her father, Felix Irlanda, and therefore of her grandfather, Anselmo Irlanda, by right of representation in the property which the latter left at his death; and that after division into halves the part which belongs to her should be delivered to her with the products it is yielding and has yielded. The status of the plaintiff, Alexandra Irlanda, as legitimate daughter of Felix Irlanda and granddaughter of his father, Anselmo Irlanda, being acknowledged by counsel for the defendants, and the fact that the property left by the grand-father at his death is still pro indiviso, without either Felix or the granddaughter having received half of said property, being duly shown by the record, it is neither lawful nor just that the family of the other son of Anselmo should retain and enjoy such half thereof to

the "exclusion and prejudice of the plaintiff.

Under article 807 of the Civil Code, the legitimate children and descendants, with regard to their legitimate parents and ascendants, are heirs by force of law. The plaintiff as the daughter of Felix Irlanda is the granddaughter and legitimate descendant in direct line of Anselmo Irlanda, owner of the said property.

According to article 925, the right of representation shall always take place in the direct descending line, but never in the ascending; and shall only be recognized in the collateral line in favor of the children of brothers or sisters, whether they be of whole or half blood.

"The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares." (Art. 932, Civil Code.)

"The grandchildren and other descendants shall inherit by right of representation." (Art. 933, Civil Code.)

The plaintiff's status as granddaughter of Anselmo Irlanda since she is the daughter of his son, Felix Irlanda, being admitted and acknowledged, her personality to claim half of the property her said grandfather left at his death can not be denied, by virtue of her right of representation by force of law, which same she acquired from the moment of the death of her father, Felix Irlanda, nor can her right be denied to receive and hold half of said property, and it is unjust that her coheirs, the children of her late uncle, Vicente Irlanda, should be permitted to continue to retain it without any right.

A half of the property left by her grandfather at his death can not be withheld from the plaintiff, because her father did not receive it in his lifetime, and as said property is still undivided she has an unquestionable right to demand the partition thereof as heiress in an intestate estate by right of representation of her said grandfather, (Secs. 181, 182 and 183, Code of Civil Procedure.)

It is asserted in one of the errors assigned to the judgment appealed from that the court incurred it by not declaring that the property of the deceased Anselmo Irlanda had already been partitioned by him in his lifetime among his heirs and by not sustaining the prescription alleged by the defendants.

Said partition does not seem from the record to be duly proved, but on the contrary, it appears that the property of the deceased grandfather of the parties still remains pro indiviso, for on various occasions the widow in second marriage with the deceased Felix Irlanda, father of the plaintiff, made demand upon the widow of the deceased Vicente Irlanda, mother of the defendants, for partition of the property she had in her possession, derived from Anselmo Irlanda as one of his heirs, while said defendant widow, Catalina Pitargue, stated under oath that she did not know whether the property of her deceased father-in-law had ever been partitioned; and the witness Lorenzo Irlanda on affirming that some forty years ago Anselmo Irlanda partitioned his property between his two sons, Vicente and Felix, added that he had heard Anselmo say that he was going to execute an instrument of partition of said property between his two sons, but he did not know whether this had been done nor did he learn afterwards whether an instrument recording such partition had ever been executed.

Observing that it is neither usual nor common in the ordinary course of things for a father in his lifetime to partition his property among his children, especially when he is not very rich and does not possess much, because it is customary to leave the partition until after his death, and even admitting as true that Angelmo Irlanda did partition his property, which was not extensive, between his two sons, although it does not appear what he kept to live on, the delivery of the property partitioned—on the supposition that it was delivered—could only have the character of a donation inter vivos, made, according to the witness Lorenzo, some forty years ago. In such case, under law 9, title 4, partida 5, when its value did not exceed 500 gold maravedis it did not have to be recorded in a public instrument, but in case of excess thereof it had to be done by exhibition of the instrument for approval to

the judge of the district. The value of the property donated does not appear in the record, nor is there shown any fulfillment of the requisite of exhibition required by the law then in force, for the Civil Code only went into effect toward the close of the year 1889. So it is not proven that Anselmo Irlanda in his lifetime partitioned his property between his two sons, or that he made a donation of his property to his sons Felix and Vicente.

The exception of prescription alleged against the action exercised in this case by the plaintiff is disposed of simply by reading over article 1965 of the Civil Code:

"Among coheirs, coowners, or proprietors of adjacent estates, the action to demand the division of the inheritance, of the thing held in common, or the survey of the adjacent properties does not prescribe."

With reference to the error imputed to the court for having overruled the motion of the defendants to annul the agreement of facts entered into between the counsel for both parties, it must be noted that the stipulations in a case are agreements or admissions regarding certain facts included in the litigation and are conclusive between the parties. Acts or facts admitted do not require proof and can not be contradicted, unless it be shown that the admission was made through a palpable mistake, for parties are not allowed to gainsay their own acts or deny rights which they have previously recognized. (Sec. 333, Code of Civil Procedure.) Wherefore, and by admitting the reasons assigned by the court in its order of July 19, 1910, the annulment asked by the defendants is held to have been properly overruled, as well as the decision of July 26 of the same year with reference to the claim of intervention presented by Guillermo Fule, for the reasons therein given, especially when he did not present his claim as intervener in the manner prescribed by law.

As to the obligation of delivering along with half of the hereditary property the products derived by the possessors thereof, at least from June 16, 1909, the date of filing the complaint, if the plaintiff is entitled to receive half of the property inherited from her grandfather, it follows that the fruits produced thereon unquestionably belong to her. (Art. 354, Civil Code.)

Article 1063 of the same code prescribes:

"On making the division, the coheirs shall reciprocally compensate each other for the income and fruits each of them may have received from the hereditary property for the useful and necessary expenses made on said property or for the damage caused thereto by malice or negligence."

The plaintiff has never entered into possession of said half of the property which belongs to her from the hereditary estate of her grandfather in representation of her father, and therefore her right can not be denied to receive the fruits derived by the widow and children of her uncle, Vicente Irlanda, at least from the date when she judicially demanded the delivery of both, for under section 191 of the Code of Civil Procedure in an action for partition one tenant in common, or joint tenant, or coparcener may recover from another his just share of rents and profits of the common undivided property, and the final judgment shall include an allowance for such rents and profits as are found to be justly recoverable.

After observing that since the death of Vicente Irlanda in June, 1902, his widow and children have been enjoying the fruits or products of said four parcels of land which Anselmo Irlanda left at his death, as well as bearing the expenses of gathering and the loss from poor crops and calamities that have diminished the product of the coconut trees growing on said lands, the court held that with the number or quantity of nuts gathered each year the proceeds could be fixed according to the evidence at an average value of P150 a year, which sum should be divided into two equal parts and the widow and heirs of Vicente Irlanda obligated to pay to the plaintiff P75 a year from June 16, 1909, to the date of payment, as the value of half of the product of said lands.

For the foregoing reasons, whereby the errors assigned on appeal are refuted, we believe that the judgment should

be, and it is, affirmed, except the portion sentencing Catalina Pitargue to pay the sum of P72 a year as the value of the product of the lands in question, to be divided into two parts, which portion is reversed, and in lieu thereof she and the heirs of Vicente Irlanda are sentenced to pay to the plaintiff the sum of 75 a year from June 16, 1909, as half of the value of the product of half of the. lands in litigation, which belongs to the plaintiff; with costs against the defendants. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, and Trent, JJ., concur.

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