

AMPARO NABLE JOSE ET AL., STANDARD OIL COMPANY OF NEW YORK AND CARMEN CASTRO, PLAINTIFFS AND APPELLANTS, VS. MARIANO NABLE JOSE ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 7397. December 11, 1916*

Ponente: CARSON, J.

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The most important questions raised by the appeals in this case have to do with the power of the surviving husband, after the death of his wife, to sell or mortgage the community property acquired during coverture. In the course of these proceeding, as also in the course of the proceedings had in the case of Anson vs. Carrascoso and Roman Catholic Church of Nueva Caceres (R. G. No. 9048),^[1] the power of the surviving husband in this regard is hotly contested, and the validity of such sales and mortgages is drawn in question by the heirs of the deceased wife. The different judges who sat in these cases appear to have held widely divergent views in this regard, and it would appear that we can best dispose of the intricate and involved contentions of counsel in both cases by an examination of the nature and extent of the powers conferred upon the husband in the administration of the communal property (*bienes gananciales*), with special reference to the validity and effect of sales, mortgages, or pledges of such property executed by him after the death of his wife.

In the cases of Alfonso vs. Natividad (6 Phil., 240); Enriquez vs. Victoria (10 Phil., 10); In re estate of Amancio (13 Phil., 297); and Rojas vs. Singson Tongson (17 Phil., 477) this court has definitely decided, "that when a conjugal partnership is dissolved by the death of the wife, the surviving husband, and not the judicial administrator appointed in the proceedings for the settlement of the wife's estate, is entitled to the possession of the property of the conjugal partnership until he has liquidated its affairs; that the surviving husband is the administrator of the affairs of the conjugal partnership until they are finally settled and liquidated; and that the liquidation of the affairs of the partnership is to be conducted by him, as administrator in accordance with the provisions of articles 1418 to 1426 of the Civil Code."

Some Spanish commentators have suggested that upon the death of the husband or wife, the community continues between the survivor and the heirs of the deceased until partition has actually taken place, and that the latter are entitled to share in its acquisitions during its continuance. Some such doctrine seems to have been in the mind of the trial judge in the case of Anson vs. Carrascoso and Roman Catholic Church of Nueva Caceres (*supra*) now pending in this court. But this view was never generally accepted by the Spanish jurists, and an examination of the provisions of the Civil Code makes it clear that the authors of that body of laws did not contemplate any such extension of the life of the community. Gutierrez adopting the views of Matienzo says:

"The community partnership being as permanent as the state that produces it, there can be no doubt that the same causes influence it as marriage. The first of them is death. Some have believed that the community might continue to exist between the surviving spouse and the heirs of the deceased husband or wife; but, in the opinion of Matienzo, which appears to us to be well-founded, there are reasons for believing otherwise, to wit: (1) When the marriage is dissolved, the cause that brought about the community ceases, for the principles of an

ordinary partnership are not applicable to this community, which is governed by special rules. (2) In the absence of the reasons that induced the legislator to establish it, the provisions of law governing the subject should cease to have any effect for the community of property is admissible and proper in so far as it conforms to unity of life, to the mutual affection between husband and wife, and serves as a recompense for the care of preserving and increasing the property; all of which terminates by the death of one of the partners. (3) The partnership having been created by law, it has no object and it is unsafe to extend it on pretext of tacit consent." (Gutierrez, 3d Ed., vol. 1, p. 579.)

Manresa, discussing the status of the community (so, *ciedad*) after dissolution of the conjugal relations makes the following comment:

"* * * The community terminates when the marriage is dissolved or annulled, or when during the marriage an agreement is entered into to divide the conjugal property. The conjugal partnership exists therefore so long as the spouse are legally united; the important thing is not exactly the bond, the tie formed by the marriage, but, the existence in the eyes of the law of the life in common. It is this life in common that creates common necessities and represents common efforts, the result of which should be that both partners should share in the profits.

"When, for any cause, the conjugal partnership established upon the basis of the system of community property is dissolved, all the provisions of articles 1401 to 1416, based upon the existence of that partnership, cease to apply.

"Consequently, whatever is acquired by the surviving spouse on the dissolution of the partnership by death or presumption of death, or by either of the spouse on termination of the partnership for other reasons and when this latter no longer exists, whether the acquisition be made by his or her labor or industry, or whether by onerous or by lucrative title, it forms a part of his or her own capital, in which the other consort, or his or her heirs, can claim no share. The fruits, as an accessory, follow the property; the buildings, the soil; the plantings, the land—all according to the general rules of accession.

"Each interested party, or his or her successors in interest, fulfills the obligations that concern him or her (because there are no longer common charges), is responsible for his or her private debts, and, except during the period of administration, attends to the care, protection and preservation of his or her property; his or her own support and that of his or her children is a personal charge, without prejudice to the provisions contained in article 1430."

See as to the general doctrine in this regard under the laws of Spain prior to the adoption of the Civil Code, 1 Burge Com. 421; Schmidt's Civil Law of Spain and America, arts. 57, 58 et. al.; and Ballinger on Community Property, par. 217.

What then are the relations between the surviving husband and the heirs of the deceased wife resulting from the dissolution of the conjugal partnership; and what are their respective rights, title or interest in and to the conjugal property? An attempt to give a comprehensive answer to this question would carry us far afield, and we shall not attempt to go beyond what seems necessary in the adjudication of the issues raised in the case pending before us, that is to say, the determination of the power of the husband to sell or mortgage the conjugal property pending the liquidation of the conjugal partnership.

Article 1393 of the Civil Code provides that:

"The conjugal community shall always begin on the same day that the marriage is celebrated.

"Any stipulation to the contrary shall be void."

Article 1417 of that Code provides that:

"The conjugal community expires on the dissolution of the marriage or when it is declared null.

"The consort who, on account of his or her bad faith, caused the nullity, shall not share any part of the property of the community.

"The conjugal society shall also terminate in the cases specified in article 1433."

Manresa in commenting on these articles says:

"The conjugal partnership begins, then, on the day and at the very moment of the celebration of the marriage; and the parties may not stipulate that it shall begin prior or subsequent thereto. * * *" (Vol. 9, p. 541.)

"Death is the normal cause of its dissolution; all the rest are relatively rare. The heirs may enter into an ordinary partnership with the surviving spouse; the conjugal partnership is extinguished even against their will.

"What is the moment that marks the dissolution of the partnership ?

"In the case of death, there can be no doubt whatever." (Vol. 9, pp. 675-676.)

It seems clear that unless the heirs join with the surviving husband in organizing an ordinary partnership, the law imposes or creates no such relationship, and there can be no doubt, also, that any such partnership as may be voluntarily created by them, must always be subject to the rights of creditors of the conjugal partnership to enforce the payment of the partnership debts in the manner and form prescribed by law.

That the law does not create any such relationship between the heirs and the surviving spouse, as exists between the partners in any of the voluntary associations recognized in the civil or commercial codes, becomes at once apparent from an examination of their mutual relations, rights and obligations and their respective rights and interests in the property of the conjugal partnership as expressly defined by law. It is therefore extremely dangerous to attempt to ascertain the rights of the parties in a specific case by reasoning from analogy with ordinary partnerships. The relationship of the heirs to the surviving spouse, like the relationship of the conjugal partners during its existence, is *sui generis*, and must be sought first in the pertinent provisions of law defining and determining its nature and character before any attempt is made to find guidance in the rules of law governing ordinary contracts of partnership (*las reglas del contrato de sociedad*). [Art. 1395, Civil Code.]

The law in this connection is set forth in the Spanish Civil Code, examined together with the pertinent provisions of the *Siete Partidas* and the *Novisima Recopilacion*.

The Civil Code providing the manner in which the affairs of the conjugal partnerships are to be liquidated prescribes:

"ART. 1424. After the deductions from the inventoried estate, specified in the three preceding articles have been made, the remainder of the same estate shall constitute the assets of the conjugal community."

"ART. 1426. The net remainder of the community property shall be divided, share and share alike, between the husband and the wife or their respective heirs."

From the express terms of these articles read together with the other provisions of the code touching the communal property, and more especially those which give to the husband the exclusive administration of the partnership property, it may fairly be deduced that prior to the liquidation, the interest of the wife, and in case of her death, of her heirs, is an interest *inchoate*, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of the liquidation and settlement. The interest of the heirs like that of the wife herself is limited to "the net remainder" (*remanente liquido*) resulting from the liquidation of the affairs of the partnership after dissolution of

the partnership; and until a liquidation has been had, it is impossible to say whether or not there will be a "net remainder" to be divided between the interested parties. Until the existence of a "net remainder" has been determined as a result of the liquidation, they can assert no claim of right or title in or to the communal property, which is placed in the exclusive possession and control of the husband as administrator.

That this is the correct interpretation of the pertinent articles of the code, and that it was the law of Spain under the Partidas is maintained in a long line of decisions by the Supreme Court of Spain. (See decisions of March 4, 1867; February 11, 1870; May 8, 1873; March 1, 1874; December 23, 1875; March 2, 1881; May 11, 1889; September 29, 1891; January 28, 1898; April 7, 1900, and May 27, 1905, with which compare *Roca vs. Banco Territorial y Agrícola*, 6 Porto Rico, 339; *Amy vs. Amy*, 15 Porto Rico, 387; and *Packard vs. Arellanes*, 17 Cal., 525.)

We here insert a few extracts from some of these decisions which seem to go directly to the point of our inquiry.

"Although law 10, title 4, book 10, of the Novisima Recopilacion declares that, on account of a crime committed by the husband or the wife, the other spouse does not lose his or her property, nor his or her one-half of the community property acquired during the marriage up to the time of the conviction, yet, according to the constant rules laid down in the decisions of the supreme court, it is indispensable for the correct application of this provision to the community property, that the legal existence of such property be duly shown by means of the settlement of the affairs of the conjugal partnership when it is dissolved by the death of either of the spouses, by divorce, or by the civil interdiction of the husband, inasmuch as, until then, the latter is the lawful and exclusive administrator of the assets of that partnership." (182, decision of May 8, 1873, 27 Jurisprudencia Civil, 670.)

"Considering that all the property of the conjugal partnership is directly liable for the fulfillment of the obligations and debts contracted in benefit of the said partnership, whether contracted jointly or by the husband alone as the lawful administrator, and so long as it is not proven that there was no intent to deceive; and

"Considering that, in order to determine the kind and amount of such property, and, therefore, the right which each one of the consorts has to one-half of it, it is necessary that, after all the obligations have been met, there must be a balance remaining and this cannot be ascertained except upon the dissolution of the conjugal partnership, whether it occurs naturally or by operation of law, as has been repeatedly held by this supreme court. (Decision of February 11, 1870, 21 Jurisprudencia Civil, 211.)

"Considering that law 5, title 17, Fourth Partida (cited as having been violated, on the supposition that the parents should guard and defend the adventitious property of their children) is not applicable to the case at bar, for the reason that the appellant, according to the findings of the trial court on the evidence and not excepted to, has not shown that at his mother's death the conjugal partnership was liquidated, and that the house in question belonged to her as community property." (Decision of December 23, 1875, 33 Jurisprudencia Civil, 35.)

"Considering that, although the buildings constructed during coverture on land belonging to one of the spouses, the value of the land having been paid to the spouses who owned the same, are community property, as is likewise all the property acquired during the marriage, unless it be proven that it belongs to the husband or to the wife personally, it is a doctrine constantly asserted by this court, based formerly on the laws of the Novisima Recopilacion and now on the provisions of the Civil Code, that, in order to determine whether a conjugal partnership possesses community property, it is absolutely indispensable that the assets be first liquidated, because it is only after such a settlement that it may be ascertained together there is any remainder that will constitute community assets which should be awarded or adjudicated to those who are entitled to share therein; that as, in the present case, no liquidation was made to show whether after payment of the debts, charges and obligation of the partnership, there remained any property that should be turned over to the plaintiffs; and whether such property consisted in effect of a one-half interest in the house which they seek to

recover, it is manifest, as set forth in the judgment of the lower court, that they have in no manner proven their ownership of a one-half interest in the house, which property they suppose to belong to Dona Agustina San Vicente and which they claim as her successors in interest; and

"Considering, therefore, the right of ownership on which the action is founded has not been proven, and that without such proof the action cannot prosper, it is useless to discuss the remaining grounds of the appeal not related to the one above mentioned as they are insufficient to secure a reversal of the judgment." (Decision of May 27, 1905, 101 Jurisprudencia Civil, 475.)

"Considering that, as repeatedly asserted by this supreme court, in order to find out whether a conjugal partnership has community property, it is indispensable that a liquidation first be made of all its assets, which was not done with respect to those that remained upon the death of Dona Alejandra de Llano, wife of Don Alejandro de la Sota; and

"Considering that the San Fermin mine was acquired by the appellant's father while the conjugal partnership existed, the record not showing in what manner it was purchased, since no inventory, accounting, partition, and adjudication of the estate left by the plaintiffs' mother at her death, appears to have been made, there is no authority in law to warrant the holding that the mine in question is community property, or that it was properly or improperly sold by Don Alejandro de la Sota after the said conjugal partnership ceased to exist; for which reason the judgment absolving the defendant from the complaint does not violate law 1, title 20, of the Fuego de Vizcaya, nor law 1, title 4, book 10, of the Novisima Recopilacion, cited in grounds 1 and 2." (Decision of March 1, 1884, 54 Jurisprudencia Civil, 358 and 361.)

"Considering that an action for recovery of possession cannot prosper without the presentation of a title deed of conveyance establishing the ownership of the thing claimed; and

"Considering that the acquisition of property during the conjugal partnership is not a sufficient title because, unless a liquidation first be made of the common assets, it cannot be affirmed that there exists any remainder that belongs in equal shares to the husband and wife; and

"Considering that the judgment appealed from does not infringe the laws cited in the first and second assignments of error, for, although the said laws declare that the property acquired by the spouses during their marriage is conjugal property, this is understood to refer to the net amount remaining after the debts have been paid, said debts being preferred, and, therefore, as the hereditary lands were respected in the judgment of the lower court, and as the other lands claimed (and claim for which was disallowed), were not included among the hereditary property, the appeal is improper." (Decision of May 11, 1889, 65 Jurisprudencia Civil, 698-700.)

"Considering that the prescriptions established by the laws and doctrines invoked in the first two assignments can have no application until after the conjugal partnership has been dissolved by the death of one of the partners and it be ascertained by means of a liquidation whether after the satisfaction and payment of the partnership obligations and debts there remains any property to be divided between the surviving spouse and the successors in interest of the decedent, which remainder is what constitutes the community property out of which, in the case at bar, the adventitious property of the appellant minor would be determined; and

"Considering that the laws and doctrines invoked in assignments 4, 5, and 7 are inapplicable and could not have been violated in the manner alleged, inasmuch as the parties having stipulated that no settlement had yet been made of the affairs of the conjugal partnership between Don Marcial Melian and Dona Carlota Chiappi, and it not having been ascertained in any other manner what property remained from said partnership to be divided between the interested parties, proof of the point in issue is assumed without taking into account on the other hand that in this suit it is a question not only of the acts, lawful or abusive, of the legal administrator of the common assets (and it can not be denied that Don Marcial Melian is such administrator), but also, and principally, of the validity or nullity of the contracts which were duly executed by and between him and third person; and

"Considering that the articles of the Mortgage Law cited in the 5th and 6th assignments have not been violated, inasmuch as, (although in conformity with article 33 of the said Law, in force at the time of the execution of the "contracts, the annulment of which is requested in the complaint, the record of instruments or contracts which are null in accordance with law are not validated thereby) the defendants come within the excepted case of article 34, since they contracted with the person who, in the registry, appeared be entitled to encumber the property that he mortgaged, and it is no valid objection that when he did so his civil status differed from that he possessed when he recorded the property, because the law does not regard this circumstance as a sufficient cause to deprive third persons, holding an interest for value, of the legal warranty afforded them by the registry. (Decision published on March 2, 1881, 45 Jurisprudence, Civil, 419-420.)

"Accepting the findings of fact and of law contained in the judgment appealed from, and, furthermore, considering that, although according to the title by which the rural property concerned in these proceedings was acquired it originally belonged to the conjugal partnership formed by Don Tomas Roca and his wife Dona Lucia Gregory, this circumstance by itself alone is not sufficient to warrant us in finding that it is community property and, therefore, that it should be equally divided between the surviving spouse and the heirs of the decedent, inasmuch as the record does not show that, upon the dissolution of the conjugal partnership by the death of the husband, a liquidation of the common assets and a division of the resultant net remainder were made between the parties in interest, and that to the plaintiff, as the heir of her deceased father, there was adjudicated the share claimed by her in the said property; she has therefore failed to establish her title of ownership,—an indispensable requisite for the bringing of this action. The legal provisions cited in the said judgment have been examined." (Roca vs. Banco Territorial y Agrícola, 6 Porto Rico, 339.)

"The interest of the wife in the common property while the community exists is a mere expectancy, and after her death her interest constitutes neither a legal nor an equitable estate, and there is nothing for the probate court to act upon, consequently the same is not subject to administration under the laws for the settlement of the estates of deceased persons." (Packard vs. Arellanes, 17 Cal., 525.)

Having found that the heirs of the wife have no direct title or interest in or to the communal property, as such, until a liquidation has been had and distribution made of the "net remainder," it becomes necessary to ascertain the precise status of this property after the dissolution. of the partnership by the death of the wife and pending the liquidation.

Under the decisions of this Court and those of the Supreme Court of Spain hereinbefore cited, it has been definitely settled that during this period the conjugal property remains in the exclusive possession of the husband as administrator, charged with the liquidation and settlement of the estate. But for the purposes of the case now pending before us it becomes important to determine the nature of his powers as such administrator, and the limitations, if any, which are set upon his disposition and control of the property thus intrusted to his possession.

Here again there is danger of confusion and error if any attempt is made to reason from a supposed analogy between his powers and those of an ordinary administrator or trustee. The only safe guide is the law which defines his duties and prescribes the mode in which they are to be performed. The law prescribes his duties with relation to the conjugal property, which consist substantially of the preparation of an inventory, the payment of the debts, and the distribution of the net remainder. But how the debts shall be paid and how the "net remainder" of the property shall be distributed the law does not attempt to direct. Articles 1418 to 1421, Civil Code. "The object to be accomplished is fixed, but the means of accomplishment," which "are as varied as the circumstances' and discretions of men" are not indicated. To secure the object in view, he has the exclusive possession and control of the property, and in the performance of his duties, he is not subjected to the guidance or control of the courts (as is the ordinary administrator of the estate of a deceased person) except of course when fraud upon the rights of creditors or the heirs is alleged and proven.

The duty to pay the debts and obligations of the partnership imposed in Article 1423 of the Code carries with it by necessary implication the right to realize the funds necessary for that purpose from the property charged with the debts. But the law nowhere prescribes how this shall be done or what property shall be sold or mortgaged, or in what order the debts shall be paid, or what compromises or settlements the liquidator may accept, or how the debts shall be ascertained. Since he is personally liable for the debts, he may pay all or any part of them from his personal funds, and reimburse himself from the partnership property. No judicial authorization or approval of such sales is required, whether the property sold is real or personal. In a word, the husband, as liquidator, is left absolutely free, in the exercise of his uncontrolled discretion, to provide for the payment of the debts from the partnership funds, in such manner as he sees fit.

Such powers in the disposition of the partnership property necessarily carry with them the power to make a good and valid title to both real and personal property, otherwise the full value of the property sold would seldom be realized, and in many instances the power to sell would be wholly illusory.

We conclude therefore that the husband, acting as liquidator of the conjugal partnership, and charged with the payment of the community debts, may sell or mortgage all or any part of the conjugal property, real or personal, in the fulfillment of the duties imposed upon him and give good and valid title to the purchaser or mortgagee.

It would be inconsistent with the breadth and power of the discretion conferred upon the husband to hold that purchasers from him of personal or real estate should be required, at their peril, to ascertain whether sales made by him are made in good faith for the purpose of the payment of the debts of the partnership, or to require such purchasers to see that the purchase price is in fact applied to the payment of such debts. The purchaser has the right to assume that in disposing of the property, the husband, as administrator, is proceeding according to law. And this is true even though the purchaser knows that the husband intends to apply the money for the payment of his own personal debts contracted after the dissolution of the partnership because, as we have said already, the husband may pay the partnership debts out of his private funds and reimburse himself from the partnership property. So far as the purchaser is concerned, he has the right to assume that when the husband liquidates or sells partnership property and applies the proceeds to the payment of his personal debts, the transaction is merely the means adopted by the husband to reimburse himself for payments of partnership indebtedness theretofore made out of the husband's private funds.

It has been suggested that the power of the husband to sell real or personal property and to give good and valid title thereto may also be inferred from the uncontrolled discretion which is claimed for the husband in determining whether he will distribute the property in kind, or sell all the property, and after payment of debts, distribute the net remainder in cash. We do not deem it necessary, however, to discuss or decide the questions involved in this contention, because for the purposes of the cases now pending before us, the power of the husband-administrator to sell the property for the payment of debts affords a sufficient foundation for the conclusion that he has the implied power to give good and valid title to any property in his possession and control as exclusive administrator of the community property.

Merely for purposes of comparison we here insert an extract from a decision of the Supreme, Court of Texas touching the powers of the surviving spouse in that state in the administration of the community property, which is of special interest because in that state the laws of Spain with reference to the conjugal partnership, as those laws were formerly extended to Mexico and Texas prior to the annexation, have been adopted by statutory enactment with certain modifications such as the requirement of bond and qualification under the statute and the like.

In *Leatherwood vs. Arnold* (66 Texas, 416-7) the court, speaking through Robertson, Justice, said:

"By qualifying under the statute the survivor acquires over the whole community estate the same right of management, control, and disposition possessed by the managing partner during the life of the partnership. He is a trustee of a unique character, being the owner in his own right of one-half the trust estate. How the trust shall be executed the law has not attempted to direct. His duty is defined in the conditions of his bond, to pay the debts and distribute the remainder, and here arises the difference between the survivor as trustee and other trustees. The object to be accomplished is fixed, but the means of accomplishment are as varied as the circumstances and the discretions of men. He may sell all the property, pay all the debts, and distribute the remainder in money. He may sell only enough to pay the debts and divide what is left in kind. He may force every creditor, or none, or any number of them to resort to their legal remedies. He may use his own means in paying the debts, and reimburse himself by an appropriation or sale of the assets of the estate. It results, necessarily from his unbridled discretion and unlimited power, that he cannot be required to account as other trustees. Trustees must generally account for every item of the trust estate. But the responsibility of the survivor can only be fixed by aggregates. * * * Inquiring into the details of his administration is inconsistent with the breadth of his power and discretion. * * * He is debited with the value of the estate and its revenues, and credited with disbursements, and must account to creditors or distributees for the remainder. The surviving husband is personally liable for community debts. If he has extinguished the community interest in a given item of community property, it is still subject to community debts, because the community debt is also his individual debt. * * * The surviving wife does not owe the community debts. When she lifts the community charge upon the property in her hands the property is hers as unqualifiedly as if she had bought it with her separate means at an execution sale of it for the payment of a community debt. While she had no power over the community during her husband's life, and is not personally liable for the debts, yet, when the wife survives and qualifies under the statute, she is vested with the same power and discretion in execution of the trust assumed that the husband had during life to manage, control, and dispose of the community as the head of the connubial firm."

Thus far we have not considered the effect of misconduct or fraud upon the transactions of the surviving husband as administrator and liquidator. The husband may fail or refuse to liquidate the partnership; or he may sell the partnership property and misappropriate the proceeds; or he may apply the proceeds to the payment of his personal debts contracted after the marriage, not by way of reimbursement for the amount of the debts of the partnership theretofore paid by him out of his private funds, but in fraud of the rights of the heirs. Under such circumstances what are the respective rights of the parties, and what is the effect of the misconduct of the administrator upon his transactions with third persons?

The law expressly imposes upon the husband the duty of liquidating the affairs of the partnership without delay (*desde luego*). It follows therefore that any interested person may institute the proper proceedings to compel him to perform that duty, and that he will be liable to such person for any loss or damage entailed by his neglect to do that which the law expressly prescribes and for any fraud committed by him with relation to the property while he is charged with its administration.

While we have said that pending the liquidation the heirs have no direct interest in the partnership property in the nature of an estate either legal or equitable, there can be no doubt that they have an interest in the liquidation of the partnership; and such an interest that they may compel the husband to discharge his duty in that regard; hold him responsible for any fraud upon their rights of which he may be guilty; and, doubtless, restrain him from the commission of such frauds in any case wherein they can establish the intent to commit a fraud. They have no power to interfere with him in the exercise of his sound discretion in the discharge of his duties as administrator, nor can they invoke the aid of the courts to that end. He is the exclusive administrator and the manner in which he shall discharge his trust is left to his uncontrolled discretion wherever and whenever he undertakes to exercise that discretion. But the commission of fraud is not an exercise of discretion, and the courts are always open to protect and relieve the blameless victims of fraud when their jurisdiction is invoked in appropriate proceedings.

But what are the effects upon the transactions of the husband with third parties of the perpetration of such frauds, or the attempt to perpetrate such frauds on the rights of the heirs? Manifestly, where third persons are in connivance with the husband-administrator or knowingly lend their aid or countenance, directly or indirectly, to the commission of such fraud, the court will see to it that they will not profit by their misconduct, and the fraud to which they are parties will vitiate and annul all such transaction.

The case is different, however, with innocent third person dealing with the husband in good faith, and with no knowledge of his misconduct in the discharge of his duties as administrator.

The law clothes the surviving husband with the exclusive possession and all the insignia of the power of disposal of the partnership property. It imposes upon him the duty and the right to sell all or any part of the property, which, in the exercise of his uncontrolled discretion, he may deem necessary in the performance of his duties as liquidator. It follows, that notwithstanding the possibility that the husband may have it in mind to make away with the proceeds of the sale and thus defraud the heirs, the purchaser in good faith must be held to take a good and valid title which cannot be set aside thereafter upon proof that in making the sale, or in the use made of the proceeds, the husband liquidator acted in fraud of the rights of the heirs. The heirs must seek their remedy against their father, who is accountable to them for their share of the "net remainder" of the partnership property, after the affairs of the partnership have been liquidated.

The doctrine of caveat emptor has no application since it would be inconsistent with the nature and scope of the powers of the husband-administrator, to hold that purchasers of partnership property must look beyond the insignia of power to dispose of the property and ascertain, at their peril, whether in making the sale he is proceeding in the due performance of his duties as such administrator.

It has been suggested that the doctrine thus announced leaves the infant children of the deceased wife at the mercy of the husband, since he, as their father, is their natural guardian, and in the event of the commission of fraud on their rights, they have no power to protect themselves or to enforce their rights until they come of age. It may be that there is need of some legislation which would require the husband to qualify and to give bond for the due performance of his duties, or that he be required to secure judicial sanction of all sales of real and even personal property when there are infant heirs entitled to share in the distribution of the net remainder of the conjugal property after liquidation.) But that is a question for the legislator and no such legislation has been enacted in this jurisdiction.

Express provision is made in the Spanish Codes for the protection of the wife's interests with relation to dotal and paraphernal property under administration of the husband, by the requirement of special mortgages (hipotecas especiales) or the establishment of legal mortgages (hipotecas legates), article 1384, Civil Code; articles 168, 169, Mortgage Code: so also express provision is made for the protection of the interest of minors whose estate is administered by their father, by requiring judicial authorization for the sale of real estate, article 164 of Civil Code; and the fact that no such provisions are made with relation to conjugal property under the administration of the husband, either before or after the death of his wife, quite clearly discloses the intention of the legislator to entrust the conjugal property to the husband as exclusive administrator, with full and practically untrammelled power to deal with it as he may deem best, provided only that he does not deal with or dispose of it in fraud of the rights of his wife or her heirs. And it would appear that rather than trammel the exclusive possession of the husband-administrator with restrictions in the exercise of his sound discretion in the disposition and control of the conjugal property, in order to anticipate possible instances of fraud on the rights of the wife or her children, the legislator has seen fit to remit the wife and the children to their remedies against the husband and father in any case wherein such fraud is alleged and proven, and innocent purchasers for value have acquired title to all or any part of such property.

In the case at bar, the husband-administrator of the affairs of the conjugal partnership with his first wife, long after her death and after he had married a second time, executed a mortgage in favor of the Standard Oil Company on certain property, real and personal, to assure the payment of certain obligations assumed by him as agent of the company after the death of his first wife. It appears that a large part of this property was acquired during the first marriage, in the exclusive possession of the husband as administrator of the affairs of the conjugal partnership which has never been liquidated. It appears also that the title to all this property was in the name of the husband, the title to the real estate being registered in his name. It appears also that the Standard Oil Company had no knowledge at the time of the execution of the mortgage of the existence of a prior marriage, or that the mortgaged property was held by the husband as administrator of the conjugal property acquired during the former marriage. We think that it must be clear from what has been said already, that whatever claims the children of the deceased wife may have against their father, they can not successfully challenge the validity of the mortgage to the Standard Oil Company.

In accepting the mortgage the company relied (as it had a right to do) upon the fact that the title to all of this property was in the name of the husband, and that he was clothed with all the insignia of power to dispose of it by sale or mortgage. The company had no means of ascertaining with certainty whether this property was or was not the individual property of the husband or conjugal property of the first or the second marriage. As a matter of fact, the company did not know that this property was a part of the conjugal property of the first marriage, but even had the company been advised of that fact, it had the right to assume, in the absence of any indication to the contrary, that the husband was acting within his rights as exclusive administrator and that he had authority to sell, mortgage or otherwise dispose of it, either for the purpose of securing funds for the payment of the partnership debts, or to reimburse himself for the payment of such debts from his own personal funds.

The trial court recognized the right of the children to intervene in this action and to have the mortgage of the conjugal property declared invalid as to their interest therein, which he held to amount to a one-half undivided interest in the mortgage property. But from what has been said it is clear that the trial court erred in recognizing the claims of the heirs of the first wife of Mariano Nable Jose to a one-half undivided share of the specific property mortgaged by him to the Standard Oil Company, which was alleged to be a part of the conjugal property acquired by the conjugal partnership composed of Mariano Nable Jose and his first wife; and further, that the trial court erred in declaring the mortgage invalid in so far as it affects the one-half undivided share of said property, which the court erroneously held to be the property of these heirs, and in rendering a money judgment in their favor for the sum of P750 on account of rents and the proceeds of the sale of a part of these properties as set forth in the final section of the judgment entered in the court below.

As to the other matters in dispute between the various parties to this action we deem it sufficient to say that after full consideration of the record and of the arguments of counsel we hold:

First. That the trial court properly held that the proceeds of the sale of the property described in the mortgage executed in favor of Amparo and Asuncion Nable Jose should be applied first to the payment of the credit of the said Amparo and Asuncion Nable Jose, and second, to the payment of the credit of the Standard Oil Company which holds a second mortgage on said property.

Second. That the trial court erred in failing to limit the right of the said Amparo and Asuncion Nable Jose to first payment from the proceeds of the sale of the property mortgaged to them.

Third. That the trial court erred in failing to hold that the proceeds of the sale of all the remaining properties mortgaged to the Standard Oil Company should be applied on the judgment of the Standard Oil Company.

Fourth. That the trial court should have included in its order for the sale of the mortgaged property the personal as

well as the real property described in the mortgage.

Fifth. That except as hereinbefore indicated the disposing part of the judgment entered in the court below as set forth in the numbered paragraphs one to seven inclusive, found at the end of the opinion filed by the trial judge, satisfactorily disposes of the contentions of the various parties to this litigation.

We conclude that the judgment entered by the trial judge should be reversed, and that the record should be returned to the court below, where a new judgment will be entered disposing of the contentions of the various parties to this litigation as hereinbefore indicated, and providing for the sale of the mortgaged property in the form and upon the conditions prescribed by law. So ordered.

Arellano, C. J., Trent, and Araullo, JJ., concur.

[1] Decided December 12, 1916, not reported.

CONCURRING

JOHNSON, J.:

It appears from the record that on the 28th day of February, 1910, Amparo N. Jose de Lichauco and Asuncion N. Jose, as plaintiffs, commenced an action, through their attorney, Felipe Agoncillo, in the Court of First Instance of the Province of Pangasinan, against Mariano N. Jose y Vinluan. Said action was known as No. 839. The purpose of said action was to recover the balance due on a certain contract for the payment of money and for the foreclosure of a mortgage given upon certain property to secure the payment of said sum of money. Said mortgage was executed on the 31st day of July 1907, and covered the following described real estate:

"A house and camarin, both of strong materials, and the lot on which they stand on Calle Nable, formerly San Fernando, barrio of Pantal, municipality of Dagupan, Province of Pangasinan. The land measures 7,091 square meters and is bounded on the side at the right of its entrance by an alley without name; on the left by the properties of D. Vicente Sayson, Tranquilina Rodriguez, Maria Fernandez and Juana Reina; on the rear by another alley; and on the front by the street formerly named San Fernando and now Nable. The house is now occupied by myself and the frame building is partly occupied by The Standard Oil Company of New York.

"About twenty-one years ago I inherited this property from my father, D. Donato Nable Jose. In 1896 the said house, storehouse, and the lot on which they stand, were assessed at 8,000 pesos, Mexican currency."

Said mortgage appear to have been registered in the registry of property in the Province of Pangasinan on the 26th day of August, 1907.

On the 24th day of October, 1910, the Standard Oil Company of New York, as plaintiff, through its attorneys, W. A. Kincaid and Thomas L. Hartigan, presented its second amended complaint against Mariano N. Jose, Antonio N. Jose, Remedios N. Jose, (married to Fernando Arce) Feliciano N. Jose, Rocio N. Jose, Mariano N. Jose (son), Ramon Salinas, Carmen Castro, and Hermogena Romero. Said action was known as No. 883 in the Court of First Instance. The purpose of the action was to recover from Mariano Nable Jose the sum of P63,111.24 and to foreclose certain mortgages, given by Mariano Nable Jose y Vinluan to the plaintiff, upon certain property particularly described in the complaint to secure the payment of the said sum. Said mortgages were executed and delivered upon the property described therein for the purpose of securing the payment of a certain indebtedness existing, or which might exist, growing out of a contract between the said plaintiff and the defendant on the 20th day of March, 1908, by the terms of which the defendant was authorized and commissioned to sell certain

merchandise for the plaintiff in the Province of Pangasinan, La Union, and Ilocos Sur. The first of said mortgages (Exhibit D) was executed on the 14th day of April, 1909, and covered the following described parcels of land:

"First property: A building lot situated in the town and municipality of Dagupan, Province of Pangasinan and on which there is erected an eight apartment tenement house, built of stone masonry, situated on Calle Municipal of the said municipality. The lot is bounded on the north by Calle Municipal; on the east by properties of Agustin Estrada and Vicente Quesada; and on the south and west by property of Vicente Quesada. It measures 1,995 square meters.

"Second property: A building lot in the town and the municipality of Dagupan, Province of Pangasinan, on which is erected a stone masonry building. This lot is situated on the same Calle Municipal of aforesaid municipality, and is bounded as follows: On the north by the river of the pueblo, on the east by property of Vicente Canieza; on the south by Calle Municipal; and on the west by property of Antonio Fernandez. It measures 1,383 square meters."

The second of said mortgages (Exhibit C) was executed upon the 27th day of September, 1909, and covered the following described property:

"(1) A building lot situated on Calle San Fernando of the pueblo of Dagupan on which there are a house and a camarin, both of strong materials. It is bounded on the north and east by an alley; on the south by Calle San Fernando; and on the west by the properties of Don Vicente Sayson, Tranquilino Rodriguez, Maria Fernandez and Dona Juana Reina. It measures 70 ares and 95 centares.

"(2) A building lot situated on Calle de Hornos of the pueblo of Dagupan, Province of Pangasinan, and on which there is a house of strong materials. It is bounded on the north by the Pantal River; on the east by the properties of Januaria Daroy and Cesario Jovellanos; on the south by Calle de Hornos; and on the west by the property of Juana Rueda. It measures 41 ares and 8 centares.

"(3) A building lot situated on Calle de Hornos of the pueblo of Dagupan, Province of Pangasinan, and on which there is a warehouse of strong materials. It is bounded on the north by Calle de Hornos; on the east by the properties of Don Juan Sison and Dona Maria Callanta; on the south by that of Pablo Coquia; and on the west by that of Don Paulino Quesada. It measures 7 ares and 77 centares.

"(4) A building lot situated on Calle de Santa Isabel of the pueblo of Dagupan, Province of Pangasinan, on which there is a house built of lumber, with a nipa roof. The land is bounded on the north by the Pantal River; on the east by the property of Dona Maxima Parras; on the south by Calle de Santa Isabel; and on the west by the property of Cipriano Hilario. It measures 8 ares and 97 centares.

"(5) A piece of rice land situated in the barrio of Laguit of the pueblo of Salasa, Province of Pangasinan. It is bounded on the north by the properties of Leonardo Quitlong, Tomas Laganas, Paulino Balauza, Saturnino de la Cruz, and Narciso Ulanday; on the east by those of Juan Espino, Antonio Nable Jose and Vicente Samson; and on the south and west by a trail leading to the public forests. It measures 287 hectares, 42 ares and 5 centares.

"(6) A piece of rice land situated in the barrio of Dilan of the pueblo of Urdaneta, Province of Pangasinan It is bounded on the north by the highway leading to Binalonan; on the east by the property of Dona Placida Salinda; and on the south and west by that of Don Rafael Sison. It measures 4 hectares, 53 ares and 20 centares.

"(7) A house with an iron roof, which stands on the property of Jose Bejunco, situated on Calle Pantal, municipality of Dagupan, Province of Pangasinan. This house belongs exclusively to the defendant.

"(8) One-third share in the ownership of a rice mill situated in the municipality of Mangatarem, Province of Pangasinan, the other owners being Patricio Arzadon and Jose Santos."

The third of said mortgages (Exhibit B) was executed on the 27th day of September, 1909, and covered the following described property:

"(1) A boat named La Paz, 14 meters in length, 3.04 meters beam, having a draught of 1.1 meters and a capacity of approximately 10.59 tons.

"(2) A banca, or panco named San Agustin, measuring 22 codos along the keel, 5 1/2 beam, and drawing 2 1/2 codos.

"(3) A pilot's boat named San Roque.

"(4) A launch, formerly named Tina and now Anda 14.37 meters in length, 2.05 meters in breadth of beam, with a draught of 1.26 meters, a gross tonnage of 12.60 tons and a net tonnage of 6.31 tons.

"(5) A boat named Genoveva, 15.3 meters in length, 4.20 meters beam, 1.70 meters draught, with a capacity of 14.20 tons.

"(6) A launch named Perla, 16.15 meters in length, 3.60 meters beam and 1.75 meters draught.

"(7) Three carabaos belonging to the defendant and kept on the Salasa Hacienda of the Province of Pangasinan."

The first mortgage above-mentioned (that of the 14th of April, 1909) was registered in the registry of property of the Province of Pangasinan on the 20th day of April, 1909.

The second of said mortgages (that of the 27th of September, 1909) was registered in the registry of property of the Province of Pangasinan on the 19th day of November, 1909.

The third of said mortgages (that of the 27th of September, 1909) was registered in the registry of property of the Province of Pangasinan on the 19th day of November, 1909.

The other defendants, besides Mariano Nable Jose, in said cause No. 883 were made defendants, all except Hermogena Romero, for the reason that they were making certain claims and insisting upon certain rights in some of the property mortgaged by Mariano Nable Jose to the plaintiff. Hermogena Romero was made a defendant for the reason that she (on the 24th day of April, 1909) entered into a contract by which she guaranteed to the plaintiff the payment of P30,000 of whatever indebtedness which might exist between the plaintiff and the said Mariano Nable Jose and which the plaintiff should be unable to recover from him.

On the 20th day of June, 1910, the said Carmen Castro, by her attorney, Ramon Salinas, commenced an action in the Court of First Instance of the Province of Pangasinan against the defendants Mariano Nable Jose and T. M. Devilbliss for the purpose of recovering a certain sum of money. Said action was known as No. 886 in the Court of First Instance. The plaintiff alleged that the defendant, Mariano Nable Jose, on the 5th day of March, 1908, in a public document, entered into a contract by which he promised to pay to her a certain sum of money, and on the same day executed and delivered a mortgage to secure the payment of said sum, upon the following described property:

"A house of strong materials and the lot on which it stands on Calle Hornos, municipality of Dagupan, Pangasinan, P. I. This lot has an area of 41 ares and 8 centares. It is bounded on the north by the Pantal River; on the east by the properties of Januaria Daroy and Cesario Jovellanos; on the south by the said Calle Hornos; and on the west by property of Juana Rueda."

Said mortgage (of the 5th of March, 1908) was never registered in the registry of property. (Exhibit 1 of Carmen Castro).

On the 14th day of March, 1910, Ramon Salinas, as administrator of the estate of Manuel Posadas, filed a petition of intervention in said cause 883, alleging that the said Manuel Posadas during his lifetime had been the exclusive owner of the following described real estate, which is the same parcel of land described in subparagraph 5 of paragraph 7 of the petition of the Standard Oil Company in its action against Mariano Nable Jose et al:

"A piece of rice land situated in the barrio of Laguit of the pueblo of Salasa, Province of Pangasinan. It is bounded on the north by the properties of Leonardo Quitlong, Tomas Laganas, Paulino Balauza, Saturnino de la Cruz and Narciso Ulanday; on the east by those of Juan Espino, Antonio Nable Jose and Vicente Samson; on the south and west by a trail leading to the public forests. It measures 287 hectares, 42 ares, and 5 centares."

It was alleged that the said Manuel Posadas had acquired said land by virtue of being an heir of Gabriela Vinluan de Posadas, and that said parcel of land was his share of the estate of the said Gabriela Vinluan de Posadas.

Upon motion of the defendant Mariano Nable Jose y Vinluan said causes 839, 883 and 886 were accumulated and were tried together in the lower court.

The defendant Mariano Nable Jose y Vinluan, in each of the causes 839, 883 and 886, after having presented a demurrer which was overruled in each of said causes, presented his answer, practically admitting all of the important allegations contained in the complaint in each of said causes.

The defendant Antonio Nable Jose, in cause 883 presented an answer in said cause in which he alleged that he was the exclusive owner of a portion of the land described in subparagraph 5 of paragraph 7 of the second amended complaint presented by the Standard Oil Company (cause No. 883). He claimed that portion of said parcel (see subparagraph 6 of paragraph 7) which is described as follows:

"A piece of rice land situated in the barrio of Laguit of the pueblo of Salasay Province of Pangasinan. It is bounded on the north by the properties now belonging to Andres de la Cruz, Tomas Palma, Potenciana de la Cruz, Tomas Ulanday, Eugenio Padilla, Juan Castro, Bartolome Soberano and Manuel Quitlong, formerly to Saturnino de la Cruz, Tomas Palaganas (not Laganas), Narciso Ulanday, Paulino Balanga and Leonardo Quitlong; on the east by the properties now belonging to Leonardo Bogayon, Antonio Nable Jose (who purchase from Bernardino Bugayon) and Vicente Samson, and formerly by those of Juan Espino, the said Antonio Nable Jose, (the herein defendant) and Vicente Samson; on the south by Sapang Creek, which separates the defendant's land from the hacienda belonging to Donato Nable Jose and the property of Gabriela Vinluan; and on the west by the said hacienda and the property of Antonio Nable Jose, these being separated by Bocog Creek which flows through the land in question belonging to Antonio Nable Jose, and which land has an approximate area of 40 hectares."

Antonio Nable Jose prayed that said portion of said parcel be excluded (see subparagraph 5 of paragraph 7 in cause 883).

The defendant Remedies Nable Jose, Feliciano Nable Jose, Rocio Nable Jose and Mariano Nable Jose (son) presented an answer to said cause 883 in which they presented a general and special defense together with a counterclaim. In their special defense they alleged that they were the legitimate children of Mariano Nable Jose and Paz Borja; that their mother, the said Paz Borja, died in the year 1898; that all of the property described in paragraphs 6, 7, and 8 of the second amended complaint of the Standard Oil Company, except the parcels of land included in subparagraphs 5, 7, and 8 of said paragraph 7, had been acquired by their parents (Mariano Nable Jose and Paz Borja) during their married life; that said property was the only property of which their mother, Paz Borja, was possessed at the time of her death and that they, as her legitimate children, were entitled to one-half of the same; that the said Mariano Nable Jose was without authority to dispose of or to mortgage more than the one-half of said property (mentioned in said paragraphs 6, 7, and 8).

Judgment by default was rendered against Hermogena Romero.

There were some other questions presented by the answers of the various defendants to which we deem it unnecessary now to refer.

After hearing the evidence adduced during the trial of the cause, the Honorable Isidro Paredes rendered the following instructive decision, in which we find clearly set out the facts which were proven during the trial of the cause:

"Mariano Nable Jose, as a result of his commercial dealings with The Standard Oil Company, became indebted to it in the sum of P63,111.24. He guaranteed payment by mortgages on various real and personal properties, and as demand upon him for the payment of this sum produced no result, his creditor, The Standard Oil Company, sued him to obtain payment thereof, or else foreclosure of the mortgages. In this suit the following named persons are parties:

"(1) Remedios, Feliciano, Rocio and Mariano, all surnamed Nable Jose and all represented by Attorney Ramon Fernandez. The interest of these four litigants consists in that, as they allege, the major part of the properties mortgaged to The Standard Oil Company by Mariano Nable Jose, whose children they are, is community property, the undivided one-half of which belong to them as his heirs.

"(2) Amparo Nable Jose de Lichauco and. Asuncion Nable Jose. The interest of these parties, represented by Attorney Felipe Agoncillo, consists in that they are mortgage creditors of Mariano Nable Jose, and the latter has not yet paid them his entire indebtedness.

"(3) Carmen Castro. This young lady, represented by Attorney Ramon Salinas, also claims from Mariano Nable Jose the balance of a mortgage credit which has not yet been paid.

"(4) Antonio Nable Jose, defended by Attorney Carl Kincaid. He alleges that he is the exclusive owner of a part of the land mortgaged by Mariano Nable Jose to The Standard Oil Company, and prays the court to exclude the same from the foreclosure proceedings.

"(5) Ramon Salinas, as executor of the intestate estate of Manuel Posadas, prays that there be excluded from the complaint of The Standard Oil Company one of the properties mortgaged to the said corporation by Mariano Nable Jose which he alleges belongs exclusively to the said intestate estate.

"(6) The last party interested in this case is Dona Hermogena Romero. She was sued by The Standard Oil Company as a surety of Mariano Nable Jose, having engaged to pay to this company, in case Mariano Nable Jose should not do so, the obligations contracted by the latter, provided they should not exceed the sum of P30,000.

"Mariano Nable Jose was sued not only by The Standard Oil Company in case No. 883 of this court, but also by Carmen Castro, Amparo Nable Jose de Lichauco, and Asuncion Nable Jose, respectively, in cases Nos. 886 and 839, also of this court. On motion by one of the litigating parties these three cases were consolidated in one single case and subsequently, with permission of the court, the other persons above-named intervened as interested parties.

"These consolidated actions were tried on March 14, 1911. All the interested parties appeared, with the exception of Dona Hermogena Romero, who, for that reason and upon motion by The Standard Oil Company, was declared in default.

"After an examination of all the evidence, the court finds the following facts to have been proven:

"1. In the year 1880, Mariano Nable Jose was married in first wedlock to Dona Paz Borja and had by her the following children: Remedios, Feliciano, Rocio and Mariano, the first three of whom are now of age, Remedios is married to Fernandd Arce, but the last child, Mariano, is still a minor and is represented in this

suit by the said Fernando Arce as curator ad litem. Paz Borja died intestate in the year 1898, and left no other heirs than the said four children and her surviving husband, Mariano Nable Jose.

"2. The following properties are community property belonging to the said married couple Mariano Nable Jose and Paz Borja, to wit:

"(a) The second property of Paragraph VI and the second property of Paragraph VII of the second amended complaint of The Standard Oil Company. Both of these were acquired for value by Mariano Nable Jose during his first marriage, the first by purchase from Genaro Nunez, and the second, also by purchase, from Juan Vinterez. (See the testimony of Antonio Nable Jose and the description of the properties 4 and 5 of the possessory information, Exhibit 1, of Remedios Nable Jose et al.)

"(b) The building lot described as the first property of Paragraph VI and the lots described as building lots 3 and 4 of Paragraph VII of the second amended complaint filed by The Standard Oil Company. These three building lots are part of the seven that were adjudicated to Mariano Nable Jose in payment of his hereditary share in the distribution of the estate of his deceased mother Gabriela Vinluan. At the time of their adjudication there were no buildings on them, but Mariano Nable Jose during his first marriage constructed on the first lot a camarin or tenement house of eight" apartments; on the second lot, a warehouse; and on the third a frame house with nipa roof. (See the testimony of Antonio Nable Jose and the instrument of partition of Remedios Nable Jose et al., record, p. 28, par. 5.) It appears from this partition that Mariano Nable Jose's hereditary share amounts to P4,785.87, and that, as he was awarded properties to the value of P9,886.64, he paid to his coheirs the difference between these sums in cash.

"(c) The frame house and the camarin, united and described in the third paragraph of the schedule of Mariano Nable Jose's hereditary share in the said partition (record, p. 28). This is the same property that was mortgaged to Amparo Nable Jose de Lichauco and Asuncion Nable Jose, as will be seen further on.

"(d) All the properties described in paragraph 8 of the second amended complaint of The Standard Oil Company. Those specified in paragraphs Nos. 1 to 7, are boats built by Mariano Nable Jose during his first marriage, and the carabaos described in paragraph 8 were acquired by him also during that marriage.

"3. The community partnership between Mariano Nable Jose and his first wife Paz Borja has not been liquidated since its dissolution in the year 1898. No proceedings whatever have been had for the judicial administration of the properties of this partnership, nor up to the present time have these properties been distributed or adjudicated to any of the heirs.

"4. Mariano Nable Jose was guardian of the persons and properties of Amparo Nable Jose de Lichauco and Asuncion Nable Jose during their minority, and at the termination of the guardianship and as a result of the rendition of accounts, he was found to be indebted to them in the sum of P11,016. To secure the payment of this sum Mariano Nable Jose mortgaged to the said Amparo and Asuncion Nable Jose the house, camarin and lot described under letter (c) of paragraph II of this decision. The mortgage deed was executed and ratified in Manila on July 31, 1897, and was entered in the property registry of Pangasinan on August 25, 1897. (See Exhibit A of Amparo Nable Jose et al.) Of the said sum of P11,016, Mariano Nable Jose owes Amparo and Asuncion Nable Jose only P3,250.20, according to the terms and conditions of the contract, the testimony of Mariano Nable Jose as a witness and the liquidation account, Amparo and Asuncion's Exhibit B. Three-fourths of the mortgaged property in question is community property, as seen in Paragraph II, letter (c), of this decision. This property was mortgaged while Paz Borja was still living.

"5. Mariano Nable Jose administered the property of his niece Carmen Castro and after accounts had been rendered it was found that he was indebted to her in the sum of P7,200, the payment of which he guaranteed by a mortgage of a lot and a house of strong materials. This mortgage was executed and ratified in Manila on March 5, 1908, but up to the present time it has not been entered in the registry. (See Carmen Castro's Exhibit 1.) This property is a part of the community property mentioned under letter (6) of Paragraph II of this

judgment and was subsequently mortgaged to The Standard Oil Company on September 27, 1909. In this mortgage deed, which is The Standard Oil Company's Exhibit C, it is stated that the property therein specified is encumbered by another mortgage in favor of Carmen Castro. Therefore this last encumbrance placed on the said property is of the nature Of a second mortgage. Paz Borja's heirs had no knowledge of these first and second mortgages nor did they give their consent to .them.

"6. (A) On March 20, 1909, Mariano Nable Jose, a resident of Dagupan, and The Standard. Oil Company of New York, a corporation duly organized under the laws of that State, domiciled in Manila and authorized to do business in the Philippine Islands, both entered into a contract whereby The Standard. Oil Company commissioned Nable Jose to sell in the provinces the products in which the said corporation dealt; and the instrument executed for the purpose set forth the terms of the contract and the respective obligations of both contracting parties. (See The Standard Oil Company's Exhibit B.)

"(B) On April 14, 1909, Mariano Nable Jose executed a notarial instrument in which, in accordance with the aforementioned contract, he acknowledged himself indebted to The Standard Oil Company in the sum of P50,442.88, and in guarantee of its payment mortgaged the following properties to The Standard Oil Company:

"First property. A building lot situated in the municipality and the town of Dagupan, Province of Pangasinan, on which stand some tenement houses built of stone masonry and consisting each of eight apartments, situated on Calle Municipal of the said municipality. This lot is bounded on the north by Calle Municipal; on the east by properties of Agustin Estrada and Vicente Quesada; and on the south and west by the property of Vicente Quesada. It has an area of 1,995 square meters.

"Second property. A building lot situated in the town and municipality of Dagupan, Province of Pangasinan, on which is erected a house of stone masonry that stands on the aforesaid Calle Municipal. This lot is bounded on the north by the river of the town; on the east by the property of Vicente Canieza; on the south by Calle Municipal; and on the west by the property of Antonio Fernandez. It measures 1,383 square meters. The deed containing this mortgage was entered in the property registry of Pangasinan on April 20, 1909. (See Standard Oil Company's Exhibit D.)

"(C) On September 27, 1909, Mariano Nable Jose executed another notarial instrument in behalf of The Standard Oil Company wherein he admitted that, after settlement of his accounts with the company, he was indebted thereto in the sum of P69,417.73, to secure the payment of which he mortgaged to it the following properties:

"(1) A building lot situated on Calle San Fernando of the pueblo of Dagupan, on which stand a house and a frame building of strong materials. It is bounded on the north and east by an alley; on the south, by Calle San Fernando; and on the west by the properties of Don Vicente Sayson, Tranquilino Rodriguez, Maria Fernandez and Dona Juana Reina. It has an area of 70.95 square ares.

"(2) A building lot situated on Calle de Hornos of the pueblo of Dagupan, Province of Pangasinan, on which stands a house of strong materials. It is bounded on the north by the Pantal River; on the east, by the properties of Januaria Daroy and Cesareo Jovellanos; on the south by Calle de Hornos; and on the west by the property of Juana Rueda. It has an area of 41.08 square ares.

"(3) A building lot situated on Calle de Hornos of the pueblo of Dagupan, Province of Pangasinan, and on which stands a warehouse of strong materials. It is bounded on the north by Calle de Hornos; on the east by the properties of Don Juan Sison and Dona Maria Callanta; on the south by that of Pablo Coquia; and on the west by that of Don Paulino Quesada. It has an area of 7.77 square ares.

"(4) A building lot situated on Calle de Santa Isabel of the pueblo of Dagupan, Province of Pangasinan, and on which stands a frame house with nipa roof. It is bounded on the north by the Pantal River; on the east by the property of Dona Maxima Paras; on the south by Calle de Santa Isabel; and on the west by the property of

Cipriano Hilario. It has an area of 8.97 square ares.

"(5) A piece of rice land situated in the barrio of Laguit of the pueblo of Salasa, Province of Pangasinan. It is bounded on the north by the properties of Leonardo Quitlong, Tomas Laganas, Paulino Balauza, Saturnino de la Cruz, and Narciso Ulanday; on the east by those of Juan Espino, Antonio Nable Jose, and Vicente Samson; and on the south and west by a trail leading to the public lands. It has an area of 287 hectares, 42 ares, and 5 centares.

"(6) A piece of rice land situated in the barrio of Dilan of the Pueblo of Urdaneta, Province of Pangasinan. It is bounded on the north by the Binalonan Highway; on the east by the property of Dona Placida Salinda; and on the south and west by that of Don Rafael Sison. It has an area of 4 hectares, 53 ares, and 20 centares.

"(7) A house with an iron roof, standing on a lot belonging to Jose Bejunco and situated on Calle Pantal, municipality of Dagupan, Province of Pangasinan. This house is the exclusive property of the defendant.

"(8) A one-third interest in the ownership of a rice mill situated in the municipality of Mangatarem, Province of Pangasinan, the other owners of which are Patricio Azador and Jose Santos.

"The mortgage deed referred to is The Standard Oil Company's Exhibit C and was entered in the property registry of Pangasinan on November 19, 1909. This instrument was executed subsequently to The Standard Oil Company's Exhibit A in which Mariano Nable Jose admits that he is indebted to this corporation in the sum of P70,000.

"(D) On the same date, September 27, 1909, Mariano Nable Jose, in order better to secure the payment of his said debt, conveyed and transferred to The Standard Oil Company the properties hereinbelow described, situated in Dagupan:

"(1) A boat named La Paz, 14 meters in length, 3.04 meters beam, having a draught of 1.10 meters and an approximate tonnage of 10.59 tons.

"(2) A banca, or panco, named San Agustin, measuring 22 codos along the keel 5 1/2 in beam and drawing 2 1/2 codos.

"(3) A pilot's boat named Jose Roque.

"(4) A launch formerly named Tina and now Anda, 14.37 meters in length, 2.05 meters in breadth of beam, with a draught of 1.26 meters, a gross tonnage of 12.60 tons and a net tonnage of 6.31 tons.

"(5) A boat named Genoveva, 15.30 meters in length, 4.20 meters beam, 1.70 meters draught, and a tonnage of 14.20 tons.

"(6) A lighter named Perla, 16.15 meters in length, 3.60 meters of breadth of beam, and 1.75 meters draught.

"(7) Three carabaos belonging to the defendant and kept on the Salasa Hacienda in the Province of Pangasinan.

"This mortgage appears in the instrument Exhibit B of The Standard Oil Company and was entered in the property registry of Pangasinan on September 19, 1909.

"(E) Finally, when demand was made upon Mariano Nable Jose by The Standard Oil Company for the payment of his debt of P69,417.73, he refused and absolutely failed to pay the same.

"(F) The heirs of Paz Borja did not give their consent to, nor did they have any knowledge of, any of the mortgages mentioned in this paragraph of the judgment; and when The Standard Oil Company subsequently attempted to have them ratify these mortgages, they refused to do so.

"(G) The Standard Oil Company, after the filing of its complaint, seized, under the pretext of administering it,

the major part of the property specified in its complaint, without authorization of the court and without the consent of the debtor Mariano Nable Jose, or of the heirs of Paz Borja, or of the other litigating parties, and during the time of such seizure and administration obtained P500 as rents from the urban properties, P500 as products of the Laguit land or Salasa Hacienda, and P1,000 as the price of the lighter Perla which the said corporation sold. The Standard Oil Company has paid no part whatever of the said sums to any of the interested parties in this case. At the trial, The Standard Oil Company sought to recover from Mariano Nable Jose only P59,000, alleging this to be the amount he was owing after deducting from his debt of P69,417.73 the amounts above-mentioned, plus P5,000 which Matias Gonzalez had paid on account of Mariano Nable Jose's debt, and, plus other partial payments from time to time made by the latter. (See the testimony of T. M. Devilbliss.)

"7. The northern part of the property described under No. 5 of Paragraph VII of the second complaint of The Standard Oil Company is claimed by Antonio Nable Jose as his own. This land is situated in the barrio of Laguit of the municipality of Salasa. It has an approximate area of 40 hectares and its description is as follows:

"It is bounded, on the north by the properties of Andres de la Cruz, Tomas Paulina, Potenciano Soberano, and Manuel Quitlong (formerly by those of Leonardo Quitlong, Tomas Laganas, Paulino Abalanza, Saturnino de la Cruz, and Narciso Ulanday); on the east by those of Leonardo Bugayong, Antonio Nable Jose, and Vicente Samson; on the south by the Sapang land which lies between the defendant's land and the hacienda belonging to his father Donato Nable Jose; and on the west by the said Donato Nable Jose's hacienda and by the land of the defendant Antonio Nable Jose, which properties are separated from the land here described by the Bogogque Creek.

"This land comprises 15 parcels which were purchased at public auction in the year 1878 by Donato Nable Jose, Antonio's father, and are the same parcels that are specified in Antonio Nable Jose's Exhibit 3. In the year 1885 Donato Nable Jose died, whereupon Antonio Nable Jose took possession of this land as the administrator of his mother, Gabriela Vinluan, and held it until the year 1895, when, the latter having died, partition was made of her estate and that of her husband Donato. By the instrument of partition and the schedule of share allotted Antonio Nable Jose (the latter's Exhibit 1 and Remedios Nable Jose et al's Exhibit 2) these 15 parcels of land were adjudicated to Antonio Nable Jose; he again took possession of them and has held them since then up to the present time, continuously and peaceably, as the owner. After the adjudication of these 15 parcels of land in the year 1895, Antonio Nable Jose successively purchased from different owners other parcels of land adjoining the said 15 parcels, so that now they altogether form one single tract of land of about 40 hectares in area, which is the subject matter of his claim. (See testimony of Antonio Nable Jose and the exhibits cited in this paragraph.)

"8. Mr. Salinas, as executor of the intestate estate of Manuel Posadas, at the hearing of these consolidated actions restricted his claim to the land described under No. 5 of Paragraph VII of The Standard Oil Company's second amended complaint. This property is called the Laguit rice land or Salasa Hacienda. It contains more than 200 hectares and the northern part of it is contiguous to Antonio Nable Jose's 40 hectares referred to in the preceding paragraph. It was acquired by Manuel Posadas, now deceased, in payment of the legacy of the one-fifth of the estate of Gabriela Vinluan, in, conformity with the mandate and instruction contained in clause 7 of the latter's will. (See Exhibit 1-12 of Antonio Nable Jose, pp. 12, 15, and 23 of the record, and the schedule of the share of the legatee Posadas.)

"9. Hermogena Romero, declared in default in these consolidated cases, executed and ratified in Manila on April 14, 1909, in behalf of The Standard Oil Company, a bond, (the latter's Exhibit E) the essential part of which is as follows:

" 'Know all men by these presents: That, I, Hermogena Romero, unmarried, of legal age and a resident of the city of Manila, P. I., without personal cedula by reason of my sex, do hereby set forth that, in consideration for

the sum of P5 Philippine currency, which has been paid to me by and which I have received from The Standard Oil Company of New York, as well as because of the intimate friendship that I profess toward Don Mariano Nable Jose and the unlimited confidence I have in his honor and solvency, do hereby solemnly stipulate: That I bind myself to pay and comply with, in case Mr. Mariano Nable Jose on his part should not do so, the obligations contracted by him in behalf of The Standard Oil Company of New York by means of the contract drawn up on March 20, 1908, and ratified by the mortgage deed executed by the former in favor of the said company on the same date (of which contract and obligations the latter was well informed) whatever be the debit balance that may result against the said Nable Jose, by reason of the said contracts, provided that such balance does not exceed P30,000, Philippine currency.'

"The said Hermogena Romero in answer to the complaint of The Standard Oil Company, alleged, among other special defenses, that the instrument referred to was fraudulently executed. But this instrument was presented in evidence by The Standard Oil Company and was admitted without objection.

"From the foregoing proven facts, we make the following findings of law:

"First. The conjugal partnership between Mariano Nable Jose and Paz Borja began in the year 1880, on the day of the celebration of their marriage, and came to an end and was dissolved in 1898 by the death of Paz Borja (arts. 1417 and 1893, Civ. Code). The husband is the sole administrator of the conjugal partnership and as such may alienate and encumber for value the property of the conjugal partnership without the consent of the wife (arts. 59, 1412, and 1413, Civ. Code); but only so long as the partnership subsists, for, once dissolved, the administration must cease, unless there can be administration without partnership.

"Community property is: (1) Property acquired for a valuable consideration during the marriage at the expense of the partnership property, whether the acquisition is made for the partnership or for one of the spouses only; (2) that obtained by the industry, salaries, or work of the spouses or of either of them; and (3) the fruits, income, etc. (art. 1401, Civ. Code.) The net remainder of the partnership property shall be divided, share and share alike, between the surviving spouse and the heirs of the decedent. (Art. 1426, Civ. Code.) Voluntary mortgages may only be created by persons who have the free disposition of their property, or, in case they should not have it, if they are authorized to do so in accordance with the laws. A mortgage created by a person who has no right to do so, according to the registry, shall not be valid, even if the mortgagor subsequently acquires said right. (Arts. 126 and 139, Mortgage Law.)

"Pursuant to the legal provisions above cited, all the property specified in paragraph II of this judgment belongs to the conjugal partnership that existed between Mariano Nable Jose and his wife Paz Borja, now deceased. The properties mentioned under letter (a) were acquired for value by Nable Jose during his first marriage.

"The building lots described under letter (b), though they belonged to Gabriela Vinluan's estate, should be considered as community property, for Nable Jose paid in cash their value to his coheirs, inasmuch as when these lots were adjudicated to him their award was excessive. So that, although they came from an inheritance, he did not acquire them by this lucrative title, but by an onerous title, by the expenditure of his own money. The buildings which he subsequently constructed on these lots are of the nature of community property, as they were acquired by his labor and industry. A one-fourth interest in the frame house, the camarin and the lot described under the latter (c) is the exclusive property of Mariano Nable Jose, as part of the inheritance which corresponded to him in the estate left by his mother; but one-half of the remaining three-fourths of the said properties must be considered to be of the nature of community property for the reason that, although derived from an inheritance, this part of the said property was paid for in money by Nable Jose to his coheirs, in the same manner and for the same consideration as the lots aforementioned under letter (6). With respect to the personal property mentioned under letter (d), the same is undoubtedly community property, for, according to the evidence, it was acquired by Mariano Nable Jose through his labor and industry. Consequently, and as all this conjugal partnership property was wrongfully mortgaged by Mariano Nable Jose, the major part to The

Standard Oil Company and the rest of it to other persons, such mortgages should produce no effect except as to one-half of the property, and the other half thereof corresponding to Paz Borja's heirs should be respected as unencumbered and in no manner affected by those mortgages, which were all made subsequent to the dissolution of the conjugal partnership and were effected by a person who had no right so to do. This doctrine should be applied not only to the mortgages in behalf of The Standard Oil Company, but also to those constituted by Nable Jose in favor of Carmen Castro, but not the mortgages made in behalf of Amparo Nable Jose de Lichauco or of Asuncion Nable Jose, because the mortgage given in favor of these two latter, although charged upon community property, was executed prior to the death of Paz Borja and while Mariano Nable Jose still had the administration and free disposal of these properties.

"Second. The mortgage credits that are the subject matter of these consolidated cases, should be foreclosed, in order that all the creditors may be paid within the period and in conformity with the requirements provided by law (secs. 254 to 257, Cod. of Civ. Proc.).

"The proceeds from the sale of the property subject to mortgage should be applied to the payment of the credits in the following order of priority: First, the credit of Amparo and Asuncion Nable Jose; second, that of The Standard Oil Company; and, third, that of Carmen Castro.

"It is undeniable that Amparo and Asuncion Nable Jose have a preference in the mortgage credit, not only because their credit antedates that of the other creditors, but also because it is first as regards its inscription. It is a credit secured by a first and a special mortgage which encumbered a property that, at the time of the constitution of the mortgage, could be freely and legally disposed of by the debtor.

"The preference of The Standard Oil Company's credit over that of Carmen Castro's consists in that it was entered in the property registry.

"Carmen Castro's credit, although first in point of time, was never registered. In accordance with articles 1857 and 1875 of the Civil Code, it is not a mortgage credit. Pursuant to the doctrine laid down by the Supreme Court of the Philippine Islands in its decision in the case of *Compania General de Tabacos de Filipinas vs. Alfredo Jeanjaquet* (12 Phil., 195) a credit such as that of Carmen Castro's enjoys no special privilege and is considered to be only a personal obligation.

"No impediment to the preference of the credit of The Standard Oil Company is found in paragraph (d) of the fourth clause of its Exhibit C, relative to the fact that there was a previous mortgage in favor of Carmen Castro on one of the properties, and to the alleged fact that the encumbrance newly placed on the same property is of the nature of a second mortgage. This clause does not mean either an explicit or a tacit waiver of the right of preference of The Standard Oil Company. It is simply a notice given to it that the said property is encumbered by a previous mortgage. Even though it should imply such a waiver, it could have been made only under the erroneous belief that the previous or first mortgage was valid. It would be very difficult to understand how The Standard Oil Company would consent to defer its credit in favor of another's if it knew that this other credit was not privileged.

"Be this as it may, The Standard Oil Company did not waive its right to register its mortgage. If on making the registration, this latter mortgage turned out to be the first mortgage on the property, it undoubtedly obtained thenceforth and for this reason a privilege over the other unregistered mortgage. Not in vain does the law protect those who are solicitous of their rights; and this protection is founded on the principle of *prior tempore potior jure*. For lack of registration the contract between Carmen Castro and Mariano Nable Jose can not legally be called a mortgage. In the eyes of the law, that contract is valueless, null, and void as a mortgage, and all reference made thereto is to be passed over unheeded. A privileged credit can not possibly be deferred in favor of a simple and purely personal credit.

"Third. If the proceeds derived from the property sold should be insufficient to pay The Standard Oil Company, the surety Hermogena Romero must supply the deficiency, provided it does not exceed P30,000.

The allegation made by the surety that her bond was fraudulently executed, can not be sustained in face of the bond instrument executed by her, this being a public document that attest and fully proves its contents.

"Fourth. As it was proven that Mariano Nable Jose, in mortgaging to The Standard Oil Company the land known as the Laguit property, in the pueblo of Salasa, improperly included in the mortgage the 40 hectares of land claimed by his brother Antonio Nable Jose, these 40 hectares should be excluded from the sale and foreclosure. This land, according to the evidence, belongs exclusively to Antonio Nable Jose and has so belonged to him since the partition of his parent's estate in the year 1895. Mariano Nable Jose took part in and, as an interested party, signed this instrument of partition, and in his schedule of share it does not appear that he was awarded any of the Laguit land. Consequently he had no right to mortgage this land, and this mortgage must be declared null and void and of no value in so far as it may affect these 40 hectares.

"Fifth. Manuel Posadas' claim also relates to this Laguit land known as the Salasa Hacienda. This hacienda was awarded, at a valuation of P5,000, in payment of this legatee's one-fifth interest in the estate of Gabriela Vinluan. Mariano Nable Jose was a party to the instrument of partition and adjudication, gave his consent thereto, and subscribed and signed the same. Therefore the rest of this Laguit land, or the Salasa Hacienda, after segregating therefrom the 40 hectares belonging to Antonio Nable Jose, is the exclusive property of Manuel Posadas and should be exempted from the sale and foreclosure, and the mortgage on this land should be considered null and void.

"Sixth. Now coming to a consideration of the counterclaim made by Remedios Nable Jose and her brothers against The Standard Oil Company relative to the product and revenues collected by this corporation during the time that it has been administering the property mortgaged to it, the court finds:

"(1) With respect to the property mentioned under letter (d) of Paragraph VI of this judgment, that the possession thereof by The Standard Oil Company is legally derived from the mortgage of real property executed by the debtor who transferred and conveyed the same to the creditor corporation, which registered the mortgage in accordance with Act No. 1508 of the Philippine Commission.

"(2) In respect to the real property it does not appear in the deeds or contracts between The Standard Oil Company and Mariano Nable Jose that the latter turned over the said property nor the possession thereof; and according to law, it is not an essential requisite of the contract of mortgage that the property on which it is placed shall pass into the possession of the creditor. The scope of the mortgage comprises, it is true, pursuant to paragraph IV of article 3 of the Mortgage Law, not only the revenue due and unpaid, but also those yet to be paid until the credit be entirely satisfied; but this does not mean that the creditor may take possession or of his own accord seize the mortgaged property. Such a possession, which is that taken in this case, is in all respects contrary to law. Nevertheless, and inasmuch as, after all, the products and revenues collected by The Standard Oil Company during its detention of the property, were applied to the partial payment of Mariano Nable Jose's debt, without protest whatsoever on his part this corporation should not be deprived of those products and revenues, except with regard to the one-half thereof that belongs to the heirs of Paz Borja. It is otherwise with respect to the Laguit land or Salasa Hacienda, because, according to the evidence, it belongs exclusively to Antonio Nable Jose and to the Posada intestate estate and, consequently, all the products of this land, together with its ownership and possession, should be returned to them for they are entitled to this finding and have asked for it in their general petition for all other relief compatible with law and justice.

"Seventh. We still have to discuss the cross-complaint of The Standard Oil Company, in which it is alleged that Mariano Nable Jose has already paid in advance to his children Remedios and Feliciano the share that pertained to them in the one-half of their late mother's community property. I believe that this question was properly raised by the company for, if what it alleges be true, evidently some of the mortgaged property would be divested of its character of community property, and by the removal of this characteristic the property would in its totality be subject to the mortgage credit of the said corporation. But all the evidence on this point consisted in the testimony of Mariano Nable Jose, who stated that he had defrayed the tuition expenses of his

son Feliciano while the latter was abroad and to whom he had for five years remitted a monthly allowance of thirty pounds sterling; and that with respect to his daughter Remedios, he had delivered to her her share of the community property when she married Fernando Arce. Such testimony, on account of its generality and vagueness, has no direct bearing on the points which should have been specifically proven. For instance, that testimony does not tell the kind of property delivered to Remedios at the time of her marriage; it does not specify whether it was in cash, jewelry, securities, credits, commercial effects, or real or personal property. This witness did not state the value of the said property, nor mention the consideration for which it was given, so that we might conclude with all certainty that precisely that property was an advance payment of the legitimate portion chargeable to the community property pertaining to Remedios' mother and was not a simple marriage present or gift propter nuptias. With respect to the expenses said to have been paid to Feliciano, these are not subject to collation under article 1041 of the Civil Code. The defect in the evidence on this point consists principally in that up to the present time no settlement has been made of the partnership property, and, therefore, it can not be determined with strict equity whether or not the share of the community property pertaining to the children of Mariano Nable Jose's first marriage has been paid. Therefore the court holds that the cross-complaint has not been proven.

"By reason of all the foregoing, the court pronounces judgment in the following terms:

"(1) Mariano Nable Jose is ordered to pay to Amparo Nable Jose de Lichauco and Asuncion Nable Jose the sum of P3,250.20, Philippine currency, together with interest thereon, in accordance with the stipulations of his contract; to pay to The Standard Oil Company of New York the sum of P59,000, Philippine currency, together with interest thereon, in compliance with his contract, it being held that he has already paid the difference between this sum of P59,000 and that of the P63,111.24 which he previously owed; and that he shall pay to Carmen Castro the sum of P6,000, Philippine currency, together with the interest thereon stipulated in the contract.

"(2) The mortgage of the Laguit land or Salasa Hacienda, executed by Mariano Nable Jose in behalf of The Standard Oil Company and specified under No. 5 of paragraph VII of its second amended complaint, is held to be null and void, and it is held that the said property, as described and in the proportion mentioned in the body of this decision, exclusively belongs to Antonio Nable Jose and to the Posadas intestate estate and shall be excluded from the sale and foreclosure of the properties mortgaged to The Standard Oil Company.

"(3) It is held that Remedios, Feliciano, Rocio and Mariano all surnamed Nable Jose, are entitled to an undivided one-half of all the properties considered in this decision as community property, and all the mortgages that may affect the said one-half are hereby avoided and annulled.

"(4) In case Mariano Nable Jose should not pay the amounts stated in this judgment on or before the first Tuesday of July of the present year, the date of the first regular term of the Court of First Instance, it is ordered that the mortgaged real properties belonging solely to Mariano Nable Jose be sold at public auction for the whole of their value, and with respect to the property herein held to be community property, the same shall be sold at public auction up to one-half of the value thereof.

"(5) The proceeds from the sale shall be applied to the payment of the credits in the following order of preferences: First, the credit of Amparo and Asuncion Nable Jose second, that of The Standard Oil Company; and third and last, that of Carmen Castro.

"(6) If, through insufficiency of the selling price, The Standard Oil Company should be unable to recover all of its credit, it is ordered that Hermogena Romero shall pay the deficit to The Standard Oil Company, provided that such deficit does not exceed P30,000, Philippine currency.

"(7) The cross-complaint against The Standard Oil Company is dismissed and allowing the counterclaim of Remedios Nable Jose and the executor of the estate of Manuel Posadas, it is ordered that The Standard Oil Company shall return to the said Remedios and spouses the sum of P250, one-half of the rentals of the urban

properties, in addition to the P500, or one-half of the selling price of the launch Perla, and it shall likewise return to Antonio Nable Jose and to the executor of the estate of Manuel Posadas not only the sum of P250, but also the free possession and ownership of the property ordered in this judgment to be excluded from the sale and foreclosure. So ordered, with the costs of these consolidated cases against Mariano Nable Jose.

(Sgd.) "ISIDRO PAREDES,
"Acting Judge."

From that judgment the said Amparo Nable Jose and Asuncion N. Jose, The Standard Oil Company, Carmen Castro, and the children of Paz Borja, the former wife of the defendant Mariano Nable Jose, appealed to the Supreme Court and each made several assignments of error. No appeal was made by the defendants Antonio Nable Jose, Manuel Posadas, and Hermogena Romero.

Before discussing the assignments of error, we deem it advisable to make a brief resume of the conclusions of the lower court. The appellant, The Standard Oil Company, in its brief has correctly stated them as follows:

"(1) That all of the properties mortgaged by the defendant Mariano Nable Jose to The Standard Oil Company, described in paragraphs VI, VII, and VIII of the complaint of said company, formed the community property of the first marriage of Mariano Nable Jose with Paz Borja, with the exception of a one-fourth interest in the house, camarin, and the lot described as No. 1 in paragraph VII, and the properties described as Nos. 5, 6, 7, and 8, paragraph VII, of the said complaint of the Standard Oil Company.

"(2) That an undivided one-half interest of all of the property held to be community property of the first marriage with Paz Borja pertained exclusively to the defendants Remedios, Feliciano, Rocio, and Mariano Nable Jose, jr., the children and heirs of Paz Borja, and that in so far as the property rights of these heirs were concerned the various mortgages executed by Mariano Nable Jose were null and void.

"(3) That the land described as parcel No. 5 in paragraph VII of the complaint filed by the said Standard Oil Company belonged partly to Manuel Posadas and partly to Antonio Nable Jose, a brother of the defendant Mariano Nable Jose.

"(4) That the properties described as Nos. 6, 7, and 8 of paragraph VII, and a one-fourth interest in the property described as No. 1, paragraph VII of the said complaint, belonged exclusively to the defendant Mariano Nable Jose.

"(5) That the defendant Mariano Nable Jose should pay to the plaintiffs Amparo and Asuncion Nable Jose the sum of P3,250.20, with interest according to the terms of the contract between them.

"(6) That the defendant Mariano Nable Jose pay to The Standard Oil Company the sum of P59,000, with interest according to the terms of the contract entered into by them.

"(7) That the said defendant Mariano Nable Jose pay to the plaintiff Carmen Castro the sum of P6,000, with interest stipulated in the contract executed between them.

"(8) That the above judgments be satisfied in the order above indicated, and that in case the various amounts were not paid before the first Tuesday of July, 1911, that all the property mortgaged by Said Mariano Nable Jose and declared by the judgment to be his exclusive property be sold at public auction in its entirety and that in regard to the properties held to belong to the community of the first marriage that one-half of their value be sold at public auction to satisfy the said judgments.

"(9) That the proceeds of the said sales be applied, first, to the credit of Amparo and Asuncion Nable Jose; second, to that of The Standard Oil Company; and third, to that of Carmen Castro.

"(10) That in case the proceeds of such sales were insufficient to satisfy the judgment of The Standard Oil

Company, that Hermogena Romero be compelled to satisfy the balance due on the said judgment, provided that the latter should not be called upon to pay more than the amount of P30,000.

"(11) That The Standard Oil Company pay Remedios, Feliciano, Rocio, and Mariano Nable Jose, jr., the sum of P750, of which P250 constitutes one-half of the rents received by The Standard Oil Company from the real estate mortgaged to it by the defendant Mariano Nable Jose, and P500 the purchase price of the launch Perla.

"(12) That The Standard Oil Company pay Manuel Posadas and Antonio Nable Jose the sum of P250 and deliver to them the possession of the property described as No. 5, paragraph VII of the said complaint of The Standard Oil Company."

The contention of the different appellants we think may be fairly stated as follows:

First. Amparo N. Jose and Asuncion N. Jose insist that the lower court committed an error in excluding a portion of the property covered by their mortgage, upon the theory that said portion constituted a part of the community property of Mariano Nable Jose and his former wife, Paz Borja.

Second. The appellant, The Standard Oil Company, alleges that the lower court committed the following errors:

"(a) In excluding a portion of the property covered by its three mortgages, upon the theory that a portion of said properties constituted a part of the community property of Mariano Nable Jose and his former wife, Paz Borja.

"(b) That the payment of the mortgage in favor of Mariano Nable Jose and Asuncion Nable Jose should be limited to the proceeds of the sale of the property covered by their particular mortgage.

"(c) That the court failed to order the sale of the personal property which had been mortgaged to it by defendant. Mariano Nable Jose; and

"(d) In rendering a judgment against it for the return of a certain sum of money collected by it and ordering it to pay a certain sum for the use and occupation of the portion of the property mortgaged."

Third. Carmen Castro alleges that the lower court committed an error in not giving her mortgage preference over the mortgage of The Standard Oil Company.

With reference to the contention of Amparo N. Jose and Asuncion N. Jose, as well as that of The Standard Oil Company, to wit; that the lower court erred in excluding a portion of the property covered by the respective mortgages upon the theory that said portion constituted a part of the community property of Mariano Nable Jose and his former wife, Paz Borja, it may be said, as was said in the majority opinion, that inasmuch as the alleged community property had never been liquidated, it was impossible for the heirs of Paz Borja to claim any interest in the same or show title thereto. The liquidation is a necessary prerequisite to the right of the children of Paz Borja. There exists also an additional reason why the portion claimed by the children of Paz Borja should not be allowed with reference to the property mortgaged to Amparo N. Jose, et al., it is that said mortgage was executed and delivered during the lifetime of Paz Borja. That question has been decided so many times in favor of the contention of the appellants that we deem it unnecessary to do more than cite some of the decisions supporting their contention. (Decisions of the supreme court of Spain of March 4, 1867; February 11, 1870; May 3, 1873; December 23, 1875; May 27, 1905; September 29, 1891; March 1, 1884; May 11, 1889; March 2, 1881; Roca vs. Banco Territorial y Agricola (6 Porto Rico Rep., 339); Amy vs. Amy (15 Porto Rico Rep., 387).

An examination of said decisions fully justifies the following conclusions made by the appellant, The Standard Oil Company:

1. Upon the dissolution by the death of the wife the husband has the exclusive right, as the surviving spouse, to

take possession of the common property and to administer it, until the same is liquidated, and he is the person entrusted to make the liquidation.

2. That the interest of the wife in the community property is an inchoate interest, a mere expectancy, and after her death her interest constitutes neither a legal nor equitable estate, and only ripens into title when upon liquidation and settlement there appear to be assets in the community.

3. That the heirs of the deceased wife can claim no interest or title to the community property until its affairs are liquidated and settled and it is determined whether or not there are any ganancias to which they are entitled.

4. That the person in possession has in his favor the legal presumption of ownership, and it is incumbent on all parties claiming adversely to establish their allegations.

5. That contracts executed by a person who, according to the registry, has a right thereto, cannot be invalidated with regard to third persons after they have once been recorded.

It is admitted that all of the property mortgaged to Amparo N. Jose, et al. and to The Standard Oil Company was duly registered in the registry of property in the name of the mortgagor, Mariano Nable Jose. The judgment of the lower court excluding a portion of the property mortgaged to Amparo N. Jose, et al., as well as the portion excluded from the property mortgaged to The Standard Oil Company, should be reversed and all of said property should be subjected to the payment of said mortgages.

With reference to the second above-stated contention of The Standard Oil Company, to wit, that the lower court committed an error in not limiting the payment of the mortgage of Amparo N. Jose and Asuncion N. Jose to the property covered by their mortgage, it may be said that inasmuch as their mortgage covered but one piece of property the payment of said mortgage should be limited to the proceeds of the sale of that particular property. It would seem that no argument is necessary to support that conclusion. The judgment of the lower court, therefore, should be reversed in that particular and Amparo N. Jose and Asuncion N. Jose, in the payment of their mortgage, should be limited to the proceeds of that particular property. If, however, there should be an excess, such excess should be applied to the payment of the mortgages in favor of The Standard Oil Company.

There seems to be no good reason why the judgment of the lower court should not be modified with reference to the contention of The Standard Oil Company, to wit, that the lower court failed to order the sale of the personal property which had been mortgaged to it. The mortgage seems to have been perfectly valid and binding upon all parties. The judgment of the lower court should therefore be modified, and said personal property should also be sold for the purpose of satisfying the mortgages in favor of the appellant, The Standard Oil Company.

With reference to that part of the judgment of the lower court which orders the appellant, The Standard Oil Company, to return or to pay the heirs of Paz Borja certain sums of money received by it, as well as to return to Antonio N. Jose and Manuel Posadas a certain sum of money, it may be said that that portion of the judgment of the lower court should also be reversed, for the reason that whatever money the appellant, The Standard Oil Company, received, which the heirs of Paz Borja are now claiming, was received under and by virtue of said mortgage, and the said heirs, because of a failure to liquidate the community property, have no right or interest therein.

Furthermore, the money which the appellant, The Standard Oil Company, received and which the lower court ordered returned to Antonio N. Jose and Manuel Posadas, was ordered returned to them upon the theory that The Standard Oil Company had collected rents and profits of certain lands belonging to them. There is no proof in the record that The Standard Oil Company occupied or collected any rents or profits whatever from the parcels of land which were finally decreed to them. Therefore that part of the judgment of the lower court should be

reversed.

With reference to the contention of Carmen Castro, we find nothing in the record which justifies a modification or reversal of the judgment of the lower court with reference to her. The same should therefore be affirmed.

Subject to the above-suggested modifications of the judgment of the lower court the same should be affirmed.

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