

**ANTONIO MA. BARRETTO Y ROCHA ET AL., PLAINTIFFS AND
APPELLEES, VS. AUGUSTO H. TUASON Y DE LA PAZ ET AL.,
DEFENDANTS AND APPELLANTS; BENITO LEGARDA Y ROCES,
ADMINISTRATOR OF THE...**

G. R. Nos. 36811, 36827, 36840, 36872. March 31, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

For the third time, there is presented for our consideration the mayorazgo founded by the deceased Don Antonio Tuason. The first occasion was when both plaintiffs and defendants appealed from a decision of the Court of First Instance of Manila, dismissing the complaint and the counterclaim filed, without costs. The appeals thus interposed were docketed under No. 23923, and the decision promulgated on March 23, 1926, is published in full in volume 50 Philippine Reports, page 888 et seq. The second occasion was when some of the defendants instituted a certiorari proceeding against the Court of First Instance of Manila, some of the plaintiffs, and other intervenors, because of the appointment, at the latter's instance, of the Bank of the Philippine Islands as receiver of all the properties constituting the . Said proceeding was docketed under No. 32423, and the decision promulgated on February 7, 1930, is published in full in volume 54 Philippine Reports, page 408 et seq.[1] And the third is brought about by four appeals taken by the defendants and some intervenors from certain portions of the decision and order rendered by the court during the new trial held pursuant to our resolution of which we shall hereafter have occasion to speak.

The four appeals now before us were docketed separately, but for a better understanding of the questions which we propose to resolve, we have thought it convenient to render a single decision wherein each appeal will be discussed individually.

PRELIMINARY CONSIDERATIONS

Before entering upon a consideration of the appeals, it is convenient to set out some fundamental facts which have been submitted, discussed, and resolved in the decision rendered in the original and principal case, and which are of the utmost importance to bear in mind in resolving the questions raised anew in the appeals. These facts are:

The mayorazgo was founded by Don Antonio Tuason on February 25, 1794.

On June 4 of the same year the founder died in the City of Manila.

The mayorazgo was approved by Royal Cedula of August 20, 1795.

On October 11, 1820, the Statute of Civil Disentailments was promulgated in Spain, was extended to the Philippine Islands, and took effect therein on March 1, 1864, by virtue of a Royal Decree of October 31, 1863.

The properties of the mayorazgo consist of the Haciendas de Santa Mesa y Diliman, Hacienda de Mariquina, and

two urban properties situated on Rosario Street, Manila. By agreement of the parties, the assessed value of the said properties is:

Haciendas de Santa Mesa y Diliman.....

P3,550,646.00

Hacienda de Mariquina.....

1,507,140.00

Properties on Rosario Street

542,382.00

Total

5,600,168.00

After the promulgation of the decision in the principal case, the defendants filed a motion of reconsideration and various persons filed motions of intervention asking at the same time that they be admitted as intervenors for the purpose of participating in one-fifth of the properties. The resolution published in volume 50 Philippine Reports, page 959 et seq., was adopted, wherein (page 963) the following fundamental conclusions, established in the decision, were reiterated:

"Resolving, therefore, said motion for reconsideration, we reiterate the following conclusions, declaring finally:

"(1) That the first-born possessor of this mayorazgo was a mere usufructuary of the entailed properties.

" (2) That this mayorazgo was a fideicomiso.

" (3) That the charge to distribute the fifth of the revenues from said properties was a family trust.

" (4) That article 4 of the Disentailing Law of October 11, 1820 is applicable to the present case.

" (5) That the fifth of the properties into which, by virtue of said law, the fifth of the revenue was converted on March 1, 1864, when the Disentailing Law¹ became effective in the Philippines, has remained and subsists as a fideicomiso up to the present date.

"(6) That the plaintiffs' right of action has not prescribed.

"(7) That the registration of the entailed properties under Act No. 496 must, with respect to the fifth of the said properties conserved up to the present time as a fideicomiso, be held to have been made in favor of the beneficiaries of said fifth part.

" (8) That the plaintiffs, as well as any other descendants of the founder, are entitled to participate in the fifth of the properties of this mayorazgo in accordance with the sixth clause of the deed of foundation and article 4 of the Disentailing Law."

The motion of reconsideration was denied in so far as it was incompatible with the final and fundamental conclusions arrived at in the decision and in the resolution, but the motion for a new trial of the intervenors—who appeared in order that they or any other person entitled to participate in one-fifth of the properties may intervene,

either by filing other complaints of intervention or by amending the complaint filed—was granted. The dispositive part of said resolution reads literally as follows:

"ORDER

"In view of the foregoing, it is ordered:

"(a) That the motion for reconsideration filed by counsel for the defendants is denied in so far as it is incompatible with the fundamental conclusions we have arrived at in the present cause and enumerated in the preceding resolution.

"(b) That the dispositive part of our decision in this cause be set aside.

" (c) That the record in the present case, together with the petitions of intervention mentioned, be returned to the Court of First Instance of Manila in order that the new parties may intervene in this cause and prove their alleged rights, and that the original plaintiffs may, if they so desire, amend their complaint.

"(d) That the plaintiffs take the necessary steps to include as parties to this cause all such known and unknown persons who may have the right to participate in the said fifth part of the properties of this foundation, requiring them to appear and prove their rights.

"(e) That said Court of First Instance proceed to try this cause and render judgment as to the amount to which the original parties and those who may intervene may be entitled as their participation in the fifth of the properties of this mayoralty.

"(f) That the stipulation of facts subscribed on August 30, 1924 by Attorneys Sanz and Blanco on behalf of the plaintiffs and Araneta & Zaragoza on behalf of the defendants, for all intents and purposes and with respect to the parties affected, is held as subsisting, as well as the oral and documentary evidence presented by the parties during the original trial of the cause, the original parties as well as those who hereafter may intervene, being entitled to introduce such additional evidence as they may desire upon the subject matter of the trial herein ordered." (Barretto vs. Tuason, 50 Phil., 888, 966, 967.)

The case was remanded to the court of origin for the purpose above-mentioned, and after the filing of many complaints of intervention by a number of persons claiming to be relatives of the founder and of his younger children and, therefore, entitled to participate in one-fifth of the properties, on suggestion of counsel for the parties, the court appointed Modesto Reyes as referee, and upon his death, Attorney Crispin Oben. Both referees filed their written reports, although that of the former does not resolve the major portion of the questions raised due to his premature death, and at the trial various objections were interposed which were resolved by the court. In its decision the court approved most of the findings and recommendations of the last referee, but modified others which in its opinion were not supported either by the proven facts or the applicable law. The defendants and some of the intervenors, not being likewise agreeable to certain portions of the decision and order thus promulgated, have taken the four appeals now before us.

G. R. No. 36811

APPEAL OF THE INTERVENORS SURNAMED LEGARDA Y DE LA PAZ

The appellants in this case are the brother and sisters Benito, Consuelo, and Rita, surnamed Legarda y de la Paz. These intervenors claim participations in one-fifth of the properties in two capacities: First, as descendants of the younger son Pablo Tuason, and, second, for having inherited from their parents the participations in one-fifth of the properties which were sold to the latter by certain relatives of the founder. They likewise claim the share to which they would be entitled in the participations of certain relatives of the younger daughter, Eustaquia Ma.

Tuason, who sold said participations to the defendants. We will hereafter have occasion to pass on this contention in discussing the fourth assigned error.

The following is an enumeration of the names of the vendors of their participations in favor of the parents of the appellants, giving the dates of the respective deeds:

"1. DOROTEA TUASON, by a deed of absolute sale execute by her in favor of Benito Legarda and Teresa de la Paz, dated September 13, 1881. (Exhibit A-Legarda.)

"2. ISABEL ARENAS, by a deed of absolute sale executed by her and her husband Francisco Esteban, in favor of the spouses Benito Legarda and Teresa de la Paz, dated October 2, 1884. (Exhibit B-Legarda.)

"3. The brothers ENRIQUE, SEVERINO, and DOMINGO, surnamed FRANCO, by a deed of absolute sale executed by them in favor of the spouses Benito Legarda and Teresa de la Paz, dated November 7, 1884. (Exhibit C-Legarda.)

"4. The sisters Balbina Santos Tuason and Magdalen Santos Tuason, by a deed of absolute sale executed by them in favor of the spouses Benito Legarda and Teresa de la Paz, dated January 23, 1885. (Exhibit D-Legarda.)

"5. APOLINARIA TUASON, by a deed of absolute sale, executed by her in favor of the spouses Benito Legarda and Teresa de la Paz, dated February 11, 1885. (Exhibit E-Legarda.)

"6. ESTEBAN DUARTE, ISIDRA MARIA DUARTE, and ALEJANDRO DUARTE, by a deed of absolute sale executed by them in favor of the spouses Benito Legarda and Teresa de la Paz, dated February 17, 1885. (Exhibit F-Legarda.)

"7. TOMASA TUASON DE TOBIAS, who was then a widow, by a deed of absolute sale executed by her in favor of the spouses Benito Legarda and Teresa de la Paz, dated October 3, 1888. (Exhibit G-Legarda.)

"8. LUIS TUASON and PEDRO TUASON, by a deed of absolute sale executed by them in favor of the spouses Benito Legarda and Teresa de la Paz, dated April 7, 1886. (Exhibit H-Legarda.)

"9. ALEJANDRO, ANACLETO, TEODORICO, MARIA, AND DIONISIA, SURNAMED CAMACHO Y TUASON, AND TOMAS, ENCARNACION, MARIA, and MERCEDES, SURNAMED MACARANAS Y TUASON, by a deed of absolute sale executed by them in favor of the spouses Benito Legarda and Teresa de la Paz, dated August 11, 1886. (Exhibit I-Legarda.)

"10. FELIPE G. ALCALDE, by a deed of absolute sale executed by him in favor of the said spouses, dated October 27, 1886. (Exhibit J-Legarda.)

"11. QUINTINA CASTILLO VIUDA DE JUAN N. C. REYES, by a deed of absolute sale executed by her in favor of the spouses Benito Legarda and Teresa de la Paz, dated April 25, 1888. (Exhibit K-Legarda.)

"The vendor, Quintina Castillo Viuda de Juan N. C. Reyes, who had a participation in the entailed properties as descendant in the direct line of the founder, acquired the participation of the latter, the said vendor Quintina Castillo having been declared the sole and universal heir by will of the said Juan N. C. Reyes, as evidenced by Exhibit K-1-Legarda.

"12. TEODORA EIZMENDI by a deed of absolute sale executed by her in favor of the spouses Benito Legarda and Teresa de la Paz, dated October 3, 1888. (Exhibit L-Legarda.)

"13. PETRONA MARIA DUARTE, by a deed of absolute sale executed by her in favor of the said spouses Benito Legarda and Teresa de la Paz, dated October 8, 1888. (Exhibit L-1-Legarda.)

"14. AVELINO TUASON alias ANDRES AVELINO TUASON, by a deed of absolute sale executed by him

in favor of the father of the herein intervenors, Benito Legarda, dated March 5, 1883. (Exhibit M-Legarda.)"

Of the said sales, only those executed by the following were impugned: (1) Isabel Arenas; (2) Tomasa Tuason de Tobias; (3) Luis Tuason and Pedro Tuason; (4) Alejandro, Anacleto, Teodorico, Maria, and Dionisia, surnamed Camacho y Tuason, and Tomas, Encarnacion, Maria, and Mercedes, surnamed Macaranas y Tuason; (5) Felipe G. Alcalde, and (6) Teodora Eizmendi. The impugners of the sales are relatives of the vendors who would be entitled to succeed them in their respective participations.

The appellants impute the following errors to the appealed decision:

"I. In finding that Tomasa Tuason de Tobias, Luis Tuason, and Pedro Tuason, who sold their participations in the properties in litigation to the father and mother of the intervenors Legarda y de la Paz, were already receiving the revenue on the date the Disentailing Statute took effect.

"II. In declaring null and void as to one-half of the participations sold, instead of valid in their entirety, the sale made by Tomasa Tuason de Tobias (Exhibit G-Legarda) and that executed by Luis and Pedro Tuason (Exhibit H-Legarda), and in not adjudicating to the intervenors Legarda y de la Paz the entire participations corresponding to said vendors.

"III. In excluding from the sales the participations corresponding to the vendors in the portions belonging to the younger children without succession of the founder, and in not adjudicating said participations to the intervenors Legarda y de la Paz.

"IV. In not adjudicating to the intervenors Legarda y de la Paz the participations sold by some descendants of the founder's daughter, Eustaquia Maria Tuason, and in the event of the distribution of said participations among the descendants, in general, of the founder, in not adjudicating to said intervenors the participations which would, therefore, correspond to the vendors of the Legardas.

"V. In not adjudicating to the intervenors Legarda y de la Paz the participation corresponding to the vendor Dorotea Tuason as descendant of Santos Luciano Tuason.

"VI. In not ordering the defendants to pay legal interest.

"VII. In denying the motion for a new trial." The first two assigned errors are intimately related, as they refer to the sales of their participations executed by Tomasa Tuason de Tobias, Luis Tuason, and Pedro Tuason. Referee Oben held in his report that the sales made by said vendors did not transfer more than one-half of their participations, because on the dates of the sales they were the ones who received the revenue and they could not dispose of more than one-half of their participations, reserving the other half in favor of their immediate successors, in accordance with the provisions of article 4, in connection with articles 2 and 3, of the Disentailing Statute. The court entertained the same opinion.

In support of their contention, the appellants advance the following reasons: (1) That the said vendors were not the ones who received the revenue on March 1, 1864, when the Disentailing Statute took effect; consequently, the reservation of one-half is not applicable to the sales in question; (2) that the present action of the impugners to invalidate the sales as to one-half thereof has already prescribed; (3) that the appellants have acquired by prescription of ownership the entire participations sold; and (4) that the inaction of the impugners of the sales for a period of years without exercising their alleged right estops them from claiming the participations sold, under the doctrine known as estoppel by laches.

Although we have examined the oral and documentary evidence adduced, to ascertain whether Tomasa Tuason de Tobias, Luis Tuason, and Pedro Tuason were in fact the ones who received the revenue when the Disentailing Statute took effect—and we are in a position to state that the first of said vendors was not in fact the one who received the revenue on said date but the Tuason brothers—nevertheless, we do not make any pronouncement on

this question in view of the fact that the first two assigned errors under consideration should be resolved in connection with the other arguments relative to prescription of action and ownership and estoppel by laches.

It will be recalled that the deed of sale of the participation of Tomasa Tuason de Tobias was executed on October 3, 1888, and the sale of those of the brothers Luis and Pedro Tuason on April 7, 1886; the complaints of intervention which assailed the validity of the sales of said participations for the first time were filed in 1927, hence, approximately forty-one years have elapsed from the first sale to the date its validity was impugned for the first time, and about thirty years from the execution of the second sale to the said date.

The right now exercised by the impugnors of the sales is a personal action whose prescription should be governed by the laws in force at the time of the execution of the deeds of sale, that is, April 7, 1886, and October 3, 1888, namely, Law 5, Title 8, Book 11, of the Novisima Recopilacion, and Law 21, Title 29, Partida 3, which provide for the period of ten years (*Cruzado vs. Bustos and Escaler*, 34 Phil., 17).

Article 1939 of the present Civil Code provides:

"ART. 1939. Prescription which began to run before the publication of this Code shall be governed by the prior law; but if, after this Code took effect, all the time required by the same for prescription has elapsed, it shall be sufficient even if according to such prior law a longer period of time would have been required."

And article 1301 of the same Code provides:

"ART. 1301. The action of annulment shall last four years.

"The term shall commence to run—

"In cases of intimidation or violence from the day on which it has ceased;

"In those of error or deceit or falsity of consideration, from the date of the consummation of the contract;

"When the purpose of the action is to invalidate the unauthorized contracts of a married woman, from the date of the dissolution of the marriage;

"With respect to contracts made by minors or incapacitated persons, from the date they were released from guardianship."

According to these provisions, the action of annulment, admitting that it had not yet prescribed when the Civil Code took effect in these Islands on December 7, 1889 (*Mijares vs. Nery*, 3 Phil., 195), should have been commenced by the impugnors of the sales within the four (4) years following the taking effect of the Civil Code, which was not done.

The rules of prescription found in the Code of Civil Procedure, Act No. 190, are not applicable to the action of annulment under consideration, because according to section 38 thereof, the prescriptive period provided in former statutes should be applied to rights of action which have already accrued before it went into effect.

From the foregoing it clearly follows that the action of annulment instituted and relied upon by the impugnors of the said sales has already prescribed, both under the Laws of the Partidas and the Novisima Recopilacion and under the provisions of the Civil Code, and in the latter case, even on the supposition that the prescriptive period for an action of annulment of contracts had been extended to ten years, instead of four, in accordance with the provisions of section 43, No. 1, of the Code of Civil Procedure. (*Willard, Notes on Civil Code; Brillantes vs. Margarejo and Belmonte*, 36 Phil., 202.)

But the impugnors of the sales argue that they do not in fact institute an action of annulment, but merely use the same as a defense, hence, they are not affected by the laws of prescription. In the able report of referee Oben, this

phase of the question was discussed at length, and he came to the conclusion, as did the court, that the impugners of the sales have in fact brought an action of annulment. Without going into another extended discussion, we believe it will suffice to state, to demonstrate the same conclusion, that in the instant case those in the enjoyment of the participations sold as well as the ownership thereof are the appellants and not the impugners of the sales, and that to recover the rights lost under the deeds of sale they executed, the latter have to avail themselves of an action of annulment. In this sense, at least, they should be understood as bringing the action instead of simply defending themselves, aside from the indisputable fact that, to recover the participations which they sold, they found it necessary to file complaints of intervention, which are really complaints under the letter and spirit of section 121 of the Code of Civil Procedure.

As to the question of acquisitive prescription, likewise invoked by the appellants, we hold that due to the long lapse of time they have acquired by prescription whatever rights the impugners of the sales had in the participations which they sold.

Addressing ourselves to appellants' last argument, it should again be stated that they and their predecessors have enjoyed the revenue corresponding to the participations which they have acquired and that during the period that has elapsed, the vendors and impugners of the sales have done nothing to recover their alleged rights. Such conduct insurmountably bars the instant action of annulment under the doctrine of estoppel by laches. In the case of *Buenaventura vs. David* (37 Phil., 435), speaking of the said doctrine, we said:

"* * * The assertion of doubtful claims, after long delay, cannot be favored by the courts. Time inevitably tends to obliterate occurrences from the memory of witnesses, and even where the recollection appears to be entirely clear, the true clue to the resolution of a case may be hopelessly lost. These considerations constitute one of the pillars of the doctrine long familiar in equity jurisprudence to the effect that laches or unreasonable delay on the part of a plaintiff in seeking to enforce a right is not only persuasive of a want of merit but may, according to the circumstances, be destructive of the right itself. *Vigilantibus non dormientibus equitas subvenit.*"

And in the case of *Tuason vs. Marquez* (45 Phil., 381), the same principle was again applied as follows:

"The equitable doctrine termed with questionable propriety 'estoppel by laches,' has particular applicability to the facts before vs. Inexcusable delay in asserting a right and acquiescence in existing conditions are a bar to legal action. * * *"

We see no good reason why the said equitable doctrine should not be applied to the case at bar. The impugners of said sales have let pass a number of years from the accrual of their right of action to annul the sales without exercising such right, and have voluntarily permitted appellants' predecessors in interest to enjoy the participations sold; in which circumstances it is the duty of the courts to restrict, instead of encourage, the granting of a right already lost.

The third assigned error refers to the sales executed by some descendants of the founder who sold the participations that would come to them as descendants likewise of the younger children of the founder. The court at first approved the report of referee Oben declaring valid the sales of the participations coming from the younger children with succession as well as from those without succession. But the court, in its order of April 8, 1931, modified its decision declaring invalid the sales of the participations coming from the younger children without succession. From this latter resolution the appeal was taken. The reason alleged by the court in support of its last order was, that the said sales were illegal because they conveyed rights not known and determined at the time of the execution of the deeds of sale. We do not see the force of this argument. If the sales were valid as to the participations coming from the younger children with succession, with more reason should the sales of the participations coming from the younger children who died without succession be declared equally valid, as in

both cases the sale of existing rights, known and determinable, was involved, inasmuch as said participations, in so far as the vendors were concerned, arose and were acquired by the latter from the death of their predecessors in interest, the younger children. (Article 657 of the Civil Code.) For this reason we find the third error tenable and sustain the validity of the sales of said participations.

The plaintiffs and the defendants had stipulated when the original case was heard that the younger daughter, Eustaquia Ma. Tuason, died without succession, but it developed that the said deceased in fact left descendants some of whom sold their participations to the defendants. The referee stated in his report that such participations have neither been sold nor legally acquired by the defendants because they were estopped by their stipulation with the plaintiffs to the effect that said younger daughter died without descendants. The court differed from this view and held in its decision that there was no such estoppel, and that the defendants validly acquired the participations sold to them. The herein appellants, Legarda brothers and sisters, by their fourth assigned error, now attempt to reverse the finding of the court that the defendants are not thus estopped. And appellants' purpose is obvious: if the sales are invalidated, the participations, subject matter thereof, would be distributed among all the relatives of the said younger daughter, and appellants will naturally receive a certain aliquot part thereof.

We agree with the court that the defendants are not estopped just because they stipulated that Eustaquia Ma. Tuason left no succession. And this proposition is clear by simply taking into account that the defendants never agreed that they had not purchased the participations of the descendants of the said younger daughter. The stipulation referred only and exclusively to the succession or descendants of the said younger daughter and cannot be logically extended to the sales made by several of her descendants. Moreover, as properly observed by the court, to sustain appellants' theory would result in the absurd case of the other descendants of said younger daughter who did not sell their participations being deprived thereof just because the original parties stipulated that their predecessor in interest left no succession. We, therefore, rule that the fourth assigned error is untenable.

The fifth error relates to the participations of Dorotea Tuason which she sold to the appellants. This vendor was entitled to a double participation coming from two sources, to wit, from the younger children Santos Luciano Tuason and Felix Bolois Tuason. In the amendatory report of referee Oben the participation of this vendor as descendant of Santos Luciano Tuason was overlooked. The appellants filed a motion of reconsideration asking, among other things, that the participation of said vendor as descendant of Santos Luciano Tuason be likewise adjudicated to them. The court granted the motion, but in its order it was stated that the participation of Dorotea Tuason coming from Felix Bolois Tuason will be adjudicated to the appellants, instead of that coming from Santos Luciano Tuason. In other words, there was a transposition of names, hence, appellants state in their brief that this involves a mere correction of a clerical error.

In view of the foregoing we find the fifth assigned error well-founded.

In their sixth assigned error the appellants contend that the defendants are bound to pay them legal interest on the amounts of money to be adjudicated to them as their participations in the one-fifth, alleging as a reason therefor that the defendants were guilty of delay from the taking effect of the Disentailing Statute ordering the distribution and delivery of the fifth to the persons entitled to it, among whom were said appellants.

The contention is without merit in view of the fact that in the decision rendered in the original case, it was held that the plaintiffs, whose position was like that of the herein appellants, were entitled to an accounting of the expenses and revenues of said properties and to receive the corresponding revenues, from January 1, 1923, until the defendants deliver to them their participations in the properties of the foundation. The revenues thus adjudicated were in lieu of legal interest claimed by the plaintiffs. For these reasons, the sixth assigned error is untenable.

The seventh and last assigned error need not be discussed being a corollary of the preceding ones.

Recapitulating all that has been said so far, it results:

- That the sales of their participations made by Tomasa Tuason de Tobias, Luis Tuason and Pedro Tuason in favor of the appellants, are valid in their entirety and should, therefore, be adjudicated to the latter; thus resolving favorably the first two errors assigned;
- That the sales made by some descendants of the founder, of their participations coming from the younger children without succession, are likewise valid, and said participations should be adjudicated to the appellants. This also resolves favorably the third assigned error;
- That the participation of Dorotea Tuason as descendant of Santos Luciano Tuason should be adjudicated to the appellants; thereby resolving favorably the fifth assigned error; and
- That the fourth and sixth assigned errors are overruled as untenable.

G. R. No. 36827

APPEAL OF THE INTERVENOR ANA BARCINAS TORRES (alias ANA BARCINAS PEREZ) AND OTHERS

It will be recalled, from what has been said in connection with the first appeal, that Eustaquia Ma. Tuason died leaving succession, notwithstanding the stipulation to the contrary by the plaintiffs and the defendants at the trial of the principal case. The herein appellants are descendants of the younger daughter Eustaquia Ma. Tuason. All of them, with the exception of Tomas Barcinas y Reyes, are descendants of Tomas Barcinas y Cruz, Benita Barcinas y Cruz, and Maria Manibusan y Barcinas, who, with the said Tomas Barcinas y Reyes, sold all their rights, interest, and participation in one-fifth of the revenue of the mayorazgo through their attorney-in-fact Manuel de los Reyes, in favor of the estate of Teresa de la Paz.

Said appellants attribute to the appealed decision the following errors:

"I. We hereby adopt as our own all of the pertinent assignments of errors of the other intervenors in G. R. Nos. 36811 and 36840, which are applicable to the intervenors here and, by reference, hereby incorporate their arguments in support of said errors.

"II. The lower court erred in holding the power of attorney executed in favor of Manuel de los Reyes valid, and in failing to hold same null and void.

"III. The lower court erred in holding the sale executed by Manuel de los Reyes, pretending to act under and by virtue of aforesaid void power of attorney, valid, and in failing to hold same null and void.

"IV. The lower court erred in interpreting aforesaid sale executed by Manuel de los Reyes, pretending to act under aforesaid void power of attorney, and in so interpreting said sale as to deprive these intervenors of their true rights under the mayorazgo founded by Don Antonio Tuason."

Exhibit Tuason-1 shows that on June 8, 1894, the said Tomas Barcinas y Cruz, Tomas Barcinas y Reyes, Benita Barcinas y Cruz, and Maria Manibusan y Barcinas, through their attorney-in-fact Manuel de los Reyes, sold all their participations in one-fifth of the revenue of the mayorazgo which they had in possession as descendants of the younger daughter Eustaquia Ma. Tuason, including all their rights and interest in the said one-fifth of the revenue, for the sum of P5,000. In the said deed of sale there was reproduced in full the power of attorney which said vendors had conferred on their attorney-in-fact Manuel de los Reyes, executed on July 4, 1893, in the City of Agana, capital of Marianas Islands, before the judge of first instance acting as notary in the absence of the notary

of said district.

The appellants contend that the sale is null and void because the power of attorney which the vendors conferred on their agent was not ratified before a notary but before a judge of first instance. The referee, in passing upon the legal point involved, said:

"In order that the sale made by Manuel de los Reyes in behalf of the Barcinas may be valid, a written power of attorney was sufficient, without the necessity of converting said power of attorney into a public document. (Section 335, No. 5, Code of Civil Procedure; article 1278, Civil Code.) Without discussing, therefore, whether or not under the laws in force in the Marianas Islands in 1893, the judge of first instance could act as notary public, the indisputable fact remains that those named as grantors in the instrument in question executed said power of attorney; and this execution of the written power of attorney was sufficient to authorize the attorney-in-fact Manuel de los Reyes to execute a valid sale of the property of his principals.

"The undersigned is of the opinion, therefore, that the deed Exhibit Tuason-1 legally transferred to the estate of Dona Teresa de la Paz what appears in said deed, belonging to the grantors therein named."

The court affirmed the conclusion of the referee in the following language:

"The court agrees with the referee that, notwithstanding the execution of the power of attorney in the City of Agana before the judge of first instance of the Marianas Islands, the sale was valid, because according to the said Exhibit Tuason-1, the judge of first instance of said Islands, 'Acted with the witnesses then present, Don Manuel Aflague and Don Juan del Rosario, in the capacity of notary public' in the absence of this official in that district (underscoring ours). The intervenors Barcinas, represented by Attorney Wolf son, have not shown that on the date of the execution of the power of attorney, June 8, 1894, there was a notary in the City of Agana; on the contrary, said Exhibit Tuason-1 shows that there was no such notary in the district, hence, the judge of first instance acted in that capacity. Compliance with the law does not require the impossible. There being no notary, we cannot insist that the power of attorney be executed before a notary. It was sufficient that it be executed before the judge of first instance acting in the capacity of notary public. Wherefore, the court is of the same opinion as the referee, that the sale executed by the intervenors Barcinas, Exhibit Tuason-1, in favor of the estate of Dona Teresa de la Paz is valid."

The appellants have not cited any law especially applicable to the Marianas Islands at the time the power of attorney in question was executed, whereby the intervention of a notary in the execution of said kind of documents was made absolutely necessary. In 1893 the present Civil Code was already in force in the country, and the provisions thereof applicable to the subject of agency are as follows:

"ART. 1710. An agency may be express or implied.

"An express agency may be created by a public or private instrument or even orally.

"The acceptance may also be express or implied, the latter being inferred from the acts of the agent."

"ART. 1713. An agency created in general terms only includes acts of administration.

"In order to compromise, alienate, mortgage, or to execute any other act of strict ownership, an express power is required.

"The power to compromise does not give authority to submit the matter to arbitrators or friendly adjusters,"

The pertinent portion of section 335 of the Code of Civil Procedure, provides:

"SEC. 335. Agreements invalid unless made in writing.— In the following cases an agreement hereafter made shall be unenforceable by action unless the same, or some note or memorandum thereof, be in writing, and

subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or secondary evidence of its contents:

* * * * *

"5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein, and such agreement, if made by the agent of the party sought to be charged, is invalid unless the authority of the agent be in writing and subscribed by the party sought to be charged."

It, therefore, follows that under the legal provisions above quoted, the power conferred upon Manuel de los Reyes is valid although no notary public intervened in its execution. And the sale executed by said attorney-in-fact is likewise valid because in the execution of the corresponding deed the essential requisites provided by law were complied with.

The above refuses appellants' second, third, and fourth assigned errors relating to the validity of the power of attorney and the deed of sale of the participations already referred to.

The first assignment does not specify any error committed by the court and the appellants only make and reproduce therein, as their own, the assignments of error of the intervenors-appellants in cases G. R. Nos. 36811 and 36840. It is not incumbent upon us to consider seriously an assignment of error of this nature, although the assignments of error made by the other appellants will be considered and resolved in due time.

In resume, we find the four assigned errors of these appellants untenable.

G. R. No. 36840

APPEAL OF ESTANISLAO A ARENAS AND OTHERS

The herein appellants are likewise descendants of the founder of the mayorazgo. Some of them directly sold to the defendants their participations in one-fifth of the revenue and all their rights and interest in the mayorazgo; the others are descendants of other relatives of the founder who likewise sold their participations in one-fifth of the revenue and all their rights and interest in the mayorazgo in favor of the same defendants. The deeds evidencing the sales have been marked as Exhibits 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 16, and 17.

The appellants impugn all the sales as null and void and in their brief assign the following errors:

"I. The court erred in holding that, by the deeds of sale executed by the intervenors-appellants, or their predecessors in interest, in favor of the defendants and the predecessors in interest of the intervenors Legarda and sisters, the participations of the former in the ownership and dominion of one-fifth of the properties of the mayorazgo were sold and in not declaring said sales null and void.

"II. The court erred in finding that on the date of the execution of the sale made by Isabel Arenas the latter had no immediate successor and in disapproving the report of the referee on this question.

"III. The court erred in finding that Camila Tuason died after the year 1864, when the Disentailing Statute took effect in the Philippines, and not in 1863 as found by the referee."

In support of the first assigned error, the following propositions are advanced: (1) That the vendors intended to sell only their participations in one-fifth of the revenue and not the ownership or other rights which they had in the mayorazgo, consequently, the sales were null and void for lack of said vendors' consent; (2) that the purchasers were administrators or trustees of the properties of the mayorazgo, and, therefore, fall under the prohibition found in article 1459 of the Civil Code; (3) that the purchasers the spouses Legarda, at the time they purchased the participations of some of the intervenors, were legal administrators of the properties of the mayorazgo, and,

therefore, lacked the capacity to buy in accordance with the provisions of the Novisima Recopilacion then applicable; (4) that the purchasers obtained the vendors' consent through fraud, and (5) that the said sales are moreover null and void under the express provisions of article 4, in connection with article 3, of the Disentailing Statute, for lack of prior formal appraisal and partition of the properties constituting the fifth of the mayorazgo.

Considering the view we have taken in respect of the first assigned error, a view which we will hereafter set forth, it would seem unnecessary to answer the arguments advanced by the appellants. However, we will briefly state the following:

After a careful examination of all the deeds of sale, we hold, as did the referee and the court, that the vendors sold not only their participations in the revenue but also all their rights and interest in the properties of the mayorazgo. In other words, said vendors in fact sold their participations and rights in the ownership of the mayorazgo, to which the one-fifth of the revenue was converted in view of the enforcement of the Disentailing Statute in the Islands.

The purchasers, strictly speaking, were not legal administrators or fiduciaries of the rights sold to them by the vendors, at least in the sense in which the prohibition then existing was expressed and established. As the court correctly stated, the purchasers, in connection with the transactions, acted as mere coproprietors or tenants in common, and the right to buy which they then exercised was expressly recognized by law.

The fraud Imputed to the purchasers has not been proved; the evidence shows that the vendors had full knowledge of the rights which they sold and that thereby they conveyed to the vendees all the interest which they could have in the mayorazgo.

And with respect to the lack of formal appraisal and partition of one-fifth of the properties of the mayorazgo, prior to the sales, requisites found in article 4, in connection with article 3, of the Disentailing Statute, it is sufficient to state our opinion that non-compliance therewith should not produce either the effect or the meaning attributed to them by the appellants. It seems to us that the court was right in interpreting that the appraisal, partition, and intervention of the immediate successor are required only in cases in which the actual possessor of properties or the one who receives the revenue desires to dispose of his participations in a specific and particular form, but not when, as in the case under consideration, undivided and indeterminate rights or participations were sold. In case of an hereditary estate, for instance, a coheir may sell his successory right, although undetermined, without the necessity either of a prior appraisal or partition of said estate or notice to or intervention by the other coheirs.

We will now briefly state the view we have taken of the first assigned error. The most recent sales impugned were made between the years 1905 and 1910; the oldest deeds were executed between the years 1891 and 1898. On the other hand, the appellants challenged the validity of said sales for the first time in January and February, 1929. Theretofore, at least, nineteen years had elapsed as to the sale effected in 1910. We hold that the lapse of the period of nineteen years is more than that required for the prescription of the action of annulment began by the appellants through their complaints of intervention, and in support of this holding we recur here to all that we said on the subject in resolving the appeal interposed by the intervenors Legarda. We are likewise of the opinion that the appellants are now barred from claiming any right in connection with said sales under the doctrine of estoppel by laches. We repeat what we said on this point in the appeal of the Legardas, to the effect that the validity of sales may not be questioned anew after the purchasers have enjoyed the participations sold and the fruits thereof for many years.

The second and third assigned errors refer to the sales made by Isabel Arenas and Alejandro Camacho and brothers, respectively. The intervenor-appellant Rafael Arenas contends that the sale executed by his mother Isabel Arenas is null and void as to one-half because said vendor had an immediate successor at the time of the

sale. The Camachos, in turn, allege that the sale they executed is likewise null and void as to one-half because, contrary to the finding of the court, they were the ones who received the revenue at the time the Disentailing Statute took effect, and they contend in this connection that their mother Camila Tuason died in 1863 and not after 1873, as found by the court. We do not find it necessary to discuss the question of fact thus raised, because in both cases prescription and the rule of estoppel by laches are applicable against the appellants. On both grounds we rule that the appellants may not now question the validity of the aforesaid sales.

It follows from what has been said that the three errors assigned by the appellants are overruled as not well-founded.

G. R. No. 36872

APPEAL OF THE DEFENDANTS AUGUSTO H. TUASON Y DE LA PAZ AND OTHERS

This appeal is interposed by the defendants who were the possessors of all the properties of the mayorazgo at the time the principal case was instituted and before the Bank of the Philippine Islands was appointed receiver. Said appellants impute to the appealed decision and order the following errors:

"FIRST ERROR

"The lower court erred in not passing upon certain vital issues on the ground that they had been definitely concluded.

"SECOND ERROR

"The trial court erred in not finding that the fifth part of the mayorazgo belongs in fee simple to the defendants.

"THIRD ERROR

The trial court erred in distributing the fifth part as follows: three-eighths thereof among all the descendants of the founder (including those of the first possessor of the mayorazgo) per stirps of great great grandchildren, including those who have already died; and the remaining five-eighths among the descendants of the five younger children of the founder who died leaving succession, distributing the same per stirps of said children.

"FOURTH ERROR

"The trial court erred in not finding that the plan of distribution more in conformity with the provisions of article 4 of the Disentailing Law, would be to assign to each recipient (whether plaintiff or intervenor) a portion of the one-fifth of the entail in the proportion that the pension which he used to receive bears to the net income of the fifth of the entail.

"FIFTH ERROR

"The trial court erred in not distributing the three-eighths exclusively among the defendants.

"SIXTH ERROR

"In case the preceding assignment of error be overruled, we respectfully submit that the trial court erred in distributing the three-eighths in equal portions per stirps of the great great grandchildren (tataranietos), including those who have already died, instead of distributing the same only among those that are living, or, more properly, instead of distributing the same per stirps of the children of the founder.

"SEVENTH ERROR

"The trial court erred in not finding what is the value in pesos of the different participations assigned to the different parties in this case.

"EIGHT ERROR

"The trial court erred in not finding that the plaintiffs having filed a personal action against the defendants asking judgment in the sum of five hundred thousand pesos (P500,000), for damages which the said parties agreed were the value of the one-half of the so-called family trust are now barred to claim participation in the properties themselves thereby converting the action into one in rem.

"NINTH ERROR

The trial court erred in finding that the sales executed by Mariano Arenas, Estanislao Arenas, Julio Tuason, Severino Tuason, Encarnacion Rojo and Candelaria Rojo were null and void as to one-half thereof.

"TENTH ERROR

"Assuming that the said sales as to one-half thereof should be declared null and void, the trial court erred in not condemning the sellers or their successors in interest to return one-half of the price received by them from the purchasers, plus the legal interest thereof from the time of the sale.

"ELEVENTH ERROR

"The trial court erred in finding that the sales executed by the intervenors or their predecessors in interest of any rights that they might have had in the fifth of the mayorazgo in question, did not cover the right that they had to participate in the three-eighths which originally correspond to the three younger children of the founder who died without leaving succession.

"TWELTH ERROR

"The trial court erred in not requiring the referee to file an amended report in conformity with the order of the trial court dated April 9, 1931."

By way of preliminary observation we will state that it is not our intention to hold that the questions raised by the appellants in their first, second, third, fourth, fifth, sixth, and eighth assigned errors are res judicata because they have been submitted, discussed at length, and resolved in the decision rendered in the principal case, because we believe this to be unnecessary; but we understand, and so decide, that unless it is shown that said questions have been erroneously resolved and that there exist sufficient reasons justifying that we renounce the conclusions already reached, it is our duty to adhere to them and to apply the principles laid down in the aforesaid decision in so far as they are applicable to the same points raised anew in the instant appeal.

The first assignment does not specify any error committed by the court, hence, we are not bound to resolve any specific question; but in the development of the idea which the appellants have apparently attempted to bring out, they argue in synthesis that in the resolution granting a new trial this court again left open for discussion the same points already considered and resolved as well as the new ones which the parties may desire to raise in the aforesaid new trial. An examination of said resolution, however, shows just the contrary. In the said resolution the following language was employed:

"Counsel for defendants insist upon their contentions maintained from the beginning and disposed of in our decision. They raise some points in their briefs, however, which require a few brief-remarks." (Barretto vs.

Tuason, 50 Phil., 888, 959.)

* * * * *

"Resolving, therefore, said motion for reconsideration, we reiterate the following conclusions, declaring finally:

"(1) That the first-born possessor of this mayorazgo was a mere usufructuary of the entailed properties.

"(2) That this mayorazgo was a fideicomiso.

" (3) That the charge to distribute the fifth of the revenues from said properties was a family trust.

" (4) That article 4 of the Disentailing Law of October 11, 1820 is applicable to the present case.

" (5) That the fifth of the properties into which, by virtue of said law, the fifth of the revenue was converted on March 1, 1864, When the Disentailing Law became effective in the Philippines, has remained and subsists as a fideicomiso up to the present date.

"(6) That the plaintiffs' right of action has not prescribed.

" (7) That the registration of the entailed properties under Act No. 496 must, with respect to the fifth of the said properties conserved up to the present time as a fideicomiso, be held to have been made in favor of the beneficiaries of said fifth part.

" (8) That the plaintiffs, as well as any other descendants of the founder, are entitled to participate in the fifth of the properties of this mayorazgo in accordance with the sixth clause of the deed of foundation and article 4 of the Disentailing Law.

"(9) The pronouncements made in our decision with respect as to the amount of the participation of each claimant shall be set aside in view of the motions of the intervenors which we are about to examine." {Ibid., pp. 963, 964.)

No clearer and more categorical language could have been employed to express the intention of the court to adhere to and reiterate the conclusions and principles already established in the decision originally rendered, notwithstanding the motion of reconsideration and new trial. Neither can there be any doubt as to the questions which the court considered definitely resolved and which should not be the subject of further discussion.

That this court did not intend to allow the parties to raise anew the fundamental questions already resolved, and that the new trial should be limited exclusively to a determination of the amount to which the intervenors could be entitled in the fifth of the properties, is clearly shown by the following quoted paragraphs which form a part of the order found in the aforesaid resolution:

" (a) That the motion for reconsideration filed by counsel for the defendants is denied in so far as it is incompatible with the fundamental conclusions we have arrived at in the present cause and enumerated in the preceding resolution.

* * * * *

" (e) That said Court of First Instance proceed to try this cause and render judgment as to the amount to which the original parties and those who may intervene may be entitled as their participation in the fifth of the properties of this mayorazgo." (Ibid., p. 966.)

Defendants-appellants intimate that the said resolution is without legal force because it was not concurred in by a sufficient majority of the members then composing this court. A sufficient answer to this is, that the aforesaid resolution was authorized and concurred in by eight of the nine members then composing this court.

In the second assigned error, the appellants again insist that the naked ownership of the fifth of the properties of the mayorazgo belongs to them. This question was already definitely resolved in the decision as well as in the resolution on the motions of reconsideration and new trial wherein it was stated:

"Counsel for defendants allege that the properties of this foundation passed into the hands of the heir, Jose Victoriano Tuason, completely free, one-half by testamentary inheritance and the other half by virtue of article 2 of the Disentailing Law. This, however, was not the will of the testator, Don Jose Severo Tuason, nor the will of his successors, all of whom respected the mayorazgo and held it as subsisting de facto. In no event could the properties pass into the hands of the heir Jose Victoriano Tuason completely free. It was necessary to preserve them intact until they were appraised and the fifth part thereof had been segregated for distribution among the recipients of the revenues and their immediate successors, in accordance with the provisions of article 4 of the statute.

"It is a fact that the trust subsisted and still subsists. The successive possessors of the entail have preserved and preserve the properties of the mayorazgo respecting and distributing the fifth of the revenue among the descendants of the younger children of the founder.

"But the entail could not and cannot continue perpetually. Its abolition was decreed by the statute as of the 1st day of March, 1864. Its perpetual survival would be contrary, not only to the Disentailing Law of October 11, 1820, but also the Civil Code in force which, under articles 781 and 785, paragraph 2, positively prohibits perpetual entails.

"If up to the present time the entail in question subsists, this has been because the interested parties have been maintaining it without proceeding to the appraisal and distribution of the entailed properties, as required by articles 2 and 4 of the Disentailing Law; and in accordance with the doctrine announced by the Supreme Court of Spain on October 29, 1857, above cited, the properties of this mayorazgo, preserved de facto by the interested parties as entailed, legally retain this character for the purposes of their partition, which must be effected in accordance with the statute of October 11, 1820.

"From what has been said it follows that since March 1, 1864, the date upon which the said Disentailing Law came into force in the Philippine Islands, the successive possessors of the properties of this mayorazgo constituted themselves trustees, charged with the administration and preservation of the said properties and the distribution of the fifth of the revenue among the descendants of the younger children of the founder. Consequently, after the entail was abolished, one-half of the four-fifths of the properties of the mayorazgo continued subject to the trust in favor of its beneficiaries, the heirs of Jose Victoriano Tuason, who was the one called to succeed immediately to the mayorazgo on the date of its disentailment (article 2, Statute), and the fifth of the said properties in favor of the beneficiaries, the recipients of the fifth of the revenue in accordance with the foundation.

"Summing up the effects produced with respect to this mayorazgo by the Disentailing Law on the one hand, and the conduct of the interested parties on the other, we may say first, that the trust of the naked ownership instituted in favor of the descendants of the founder indefinitely was abolished, in consequence of the disentailment; and second, that the trust of the usufruct of the properties became converted into a trust of the properties themselves, the beneficiaries being the same, but as owners; that is to say, the first-born successor as to one-half of four-fifths of the said properties, and the descendants of the younger children of the founder with respect to the remaining fifth." (Ibid., pp. 936-938.)

"Resolving, therefore, said motion for reconsideration, we reiterate the following conclusions, declaring finally:

* * * * *

" (5) That the fifth of the properties into which, by virtue of said law, the fifth of the revenue was converted on

March 1, 1864, when the Disentailing Law became effective in the Philippines, has remained and subsists as a fideicomiso up to the present date.

* * * * *

"(7) That the registration of the entailed properties under Act No. 496 must, with respect to the fifth of the said properties conserved up to the present time as a fideicomiso, be held to have been made in favor of the beneficiaries of said fifth part.

" (8) That the plaintiffs, as well as any other descendants of the founder, are entitled to participate in the fifth of the properties of this mayorazgo in accordance with the sixth clause of the deed of foundation and article 4 of the Disentailing Law." (Ibid., pp. 963, 964.)

The arguments now advanced by the appellants in support of their second assigned error are not entirely new because they were already brought out when the question was submitted and discussed in the principal case and we do not find therein any weighty reasons justifying our repudiation of the conclusions and principles established in the decision rendered in the original case.

The third, fourth, fifth, and sixth assigned errors may be jointly considered because they all refer to the distribution of the one-fifth of the properties. In the paragraphs hereafter quoted of the original decision, it will be seen that the distribution of the fifth and those entitled to it under the instrument of foundation were already dealt with and resolved:

"PERSONS ENTITLED TO THE REMEDY

"The recipients of the fifth of the revenues are indicated in the sixth clause of the instrument of foundation, the text of which we again transcribe:

" 'It shall be his duty to set apart one-fifth of the net revenue derived from the entail each year, and that one-fifth part shall be divided into eight parts, giving one to each of my eight children, and in their absence, to my grandchildren, but upon the understanding that if one or more of my children should die without succession, the part belonging to them shall be distributed among my grandchildren and other descendants of mine according to their needs and as prudence may dictate to him, so that, when the time arrives that none of my children or grandchildren are alive, it shall then be always understood that said fifth part shall be applied to all those of my descendants who are poor, the apportionment to be made by him prudently according to their needs and therefore the possessor of the entail is hereby charged to discharge this duty with conscientious scruple.'" (Ibid., pp. 941, 942.)

* * * * *

"If the descendants of the younger children, subsequent to the grandchildren of the founder, are granted under certain circumstances the right to possess the mayorazgo itself, with all its properties, we do not see how it can be said that these descendants, subsequent to grandchildren, the sons of sons, were prohibited from receiving a fifth of the revenues of said properties.

"It is our understanding that the intention of the founder was not to restrict the grant of the usufruct of the fifth of the revenue by limiting it to a certain number of generations of the younger children, but that he intended to extend it to all of the descendants of the latter. If this is so we should apply to the case the rule of law of the Partidas (Rule 28, Title 34, 7th Partida), which says: 'Privilegia recipiunt largum interpretationem voluntati consonan concedentis.' (Privileges are to be interpreted with liberality in accordance with the will of him who grants them.)

"Furthermore, that the present plaintiffs are entitled to receive the fifth of the revenues has been repeatedly

recognized by the defendants when they purchased, in 1905, from Don Jose Rocha y Ruiz, and in 1916 from Dona Remedios Aragon y Rocha their respective participations in the fifth of the revenue, according to paragraph 16 of the stipulation of facts, and when in the years 1917 to 1921 the said defendants delivered to Don Antonio Maria Barretto y Rocha, and to Don Santiago, Don Julio and Don Andres Rocha y Ruiz Delgado, and their sister, Dona Rosario; and in the years 1917 to 1922, to Dona Isabel, Dona Enriqueta, Dona Carmen, Don Antonio, Don Alfredo and Don Clodoaldo Rocha y Pereyra, Don Francisco Beech y Rojo, Don Ciriaco, Don Cayetano, Don Pablo Leon and Don Tomas Tuason, and to the minors Dona Consuelo, Don Juan, Dona Rosario and Dona Carmen Tuason, and to Dona Victoria Rufina, Dona Ana Consolacion Tuason and Dona Asuncion Romana Tuason widow of Caballero, their respective participations in the fifth of the revenue, as appears from the cross-complaint of the defendants, admitted in paragraph 8 of the stipulation of facts.

"And it appears that the said Don Jose Rocha y Ruiz was the son of Don Lorenzo Rocha, a grandson, in turn, of Dona Gregoria N. Tuason (Exhibit 6 and paragraphs 2 and 16 of the stipulation of facts); that Dona Remedios Aragon y Rocha is a relative of the founder (Exhibit 7, admitted in paragraph 16 of the stipulation of facts); and that the said recipients of the fifth of the revenue from the year 1917 to 1921 and from the year 1917 to 1922, are all descendants of grandchildren of the younger children of the founder. (Paragraphs 2 to 30, admitted in paragraph 1 of the stipulation of facts.)" (Ibid., pp. 944, 945.)

* * * * *

"Passing to the amount of the participation which is due them respectively, for the purpose of determining this point we must have regard to the intention of the founder, as it is expressed in the instrument creating the mayorazgo. It was his will that the fifth of the revenue should be divided into eight parts, and that to each of his children, other than his first born, one part should be given. Upon the death of each of these children, by virtue of the provisions of the instrument of foundation, and by operation of law, their right to an eighth part of the revenue which they received during their lifetime was transmitted to their heirs. That is, each of these eight portions of the fifth of the revenue was transmitted from succession to succession, within the stirps of each of the eight younger children who died leaving succession. The heirs of a younger son or daughter could not legally participate in the eight part corresponding to another stirps, as long as heirs in the direct line of this stirps survived; that is to say, each of the eight portions of the fifth, except those corresponding to younger children born without succession. The heirs of a younger child could not legally participate in the eight corresponding to another stirps, while heirs of this stirps in the direct line survive. That is to say, each one of the said eight parts of the fifth, except those corresponding to the younger children dying without succession, was preserved and transmitted from generation to generation within each respective stirps.

"This plan of division of participation, based upon the will of the founder and the precepts of the law, is that which in our judgment must continue to prevail, and is that which we shall follow in determining the proportion which corresponds to the plaintiffs in the half of the fifth of the properties of this foundation.

"Of the eight younger children four died without succession and the other four are the descendants of the plaintiffs in this cause. Hence, four of the eight portions, that is, one-half of the fifth of the properties of this foundation, belong to the plaintiffs herein under the plan of division which has just been indicated. The other four portions, that is, the remaining one-half of the said fifth, which would have corresponded to the stirps of the other four younger children, if they had died leaving succession, accrue, so to speak, both to the descendants of the younger children leaving succession and to the other descendants of the founder.

"The distribution of this accretion is made in obedience to a plan distinct from that above indicated, because the founder, foreseeing the contingency, did not prescribe a quota for each stirps of his younger children, but ordered that it be delivered to descendants of both classes, without distinction of line or stirps. Consequently, this one-half in accretion should be distributed among the descendants of the founder in general, who are the plaintiffs and some of the defendants, but bearing in mind the different rights with which each heir participates, by reason of the greater or lesser proximity of his relationship to the founder, for the purpose of determining if

he is to inherit per capita or per stirpes. We say some of the defendants, because with the exception of the ten mentioned in paragraph 5 of the complaint, the other defendants are either persons whose relationship has not been determined (paragraph 6 of the complaint) or have refused to become parties to this action (paragraph 30 of the complaint).

"From what has been said it follows that one-half of the fifth of the properties corresponding to the younger sons leaving succession, four-fortieth parts ($\frac{4}{40}$) of the whole of the properties of this foundation must be divided into four equal portions, because one portion, or one-fortieth part ($\frac{1}{40}$) corresponds to each stirps of the said four younger children. The other one-half of the said fifth, that is to say, the other four-fortieth parts ($\frac{4}{40}$) of the whole of the properties of this foundation must be distributed in general among the plaintiffs and some of the defendants, taking into consideration the circumstances of their respective heirships." (Ibid., pp. 946-948.)

The foregoing paragraphs contain conclusions of fact and of law established after a careful study of the provisions found in the foundation and of the laws applicable to the case, and are squarely applicable to the facts recently proved at the new trial, except that five-eighths of the fifth should be divided among the descendants of the five (5) younger children with succession, and the remaining three-eighths of the fifth among the relatives in general of the founder, because it developed that the younger daughter Eustaquia Ma. Tuason had left heirs, contrary to the stipulation of the plaintiffs and the defendants.

The arguments advanced by the appellants in support of said assignments of error do not justify, in "our opinion, a different result from that already reached; in truth they are merely repetitions of the same arguments already brought out by counsel for the same appellants.

In the seventh assigned error, it is contended that the court erred in not reducing the respective participations of the parties to figures or pesos. It is true that the court did not undertake the arithmetical operations involved therein, but we cannot conceive of this as an error subject to modification or reversal, in view of the fact that there was then no necessity therefor, and that such work could be easily entrusted to the referee after this decision has become final and the records remanded to the court.

By their eighth assigned error the defendants-appellants again reproduce their original special defense to the effect that the plaintiffs could not convert the personal action for damages which they had originally commenced into an action in rem, and that said plaintiffs are barred from claiming any participation in the properties of the mayorazgo.

This point was likewise considered and resolved in the decision in the principal case, wherein it was said:

"In addition to the arguments mentioned heretofore, counsel for defendants interpose as obstacles to the action of plaintiffs the registration of the title to the properties of the mayorazgo in favor of the defendants, mentioned in paragraph 11 of the first special defense, under Act No. 496, and the prescription of this action. The defendants, Dona Paz Tuason de Gonzales, Dona Consuelo Tuason de Quimson, Don Juan Tuason and Dona Albina Tuason interpose as a defense to this action the contention that the plaintiffs filed no claim whatever in the proceedings had upon the testamentary estate of Don Juan Jose Tuason de la Paz, the father of the said defendants, which testamentary proceedings were finally disposed of and filed June 25, 1920.

"If, as we have found and decided, the successive possessors of the properties of this mayorazgo were and have been mere trustees of the said properties, holding them in trust for the benefit of the beneficiaries, part of whom are the recipients of the fifth of the revenues, and their descendants, the registration of the title to said properties under Act No. 496 in favor of the said defendants must be deemed to have been effected for the benefit of the beneficiaries of said properties, part of whom are the present plaintiffs. The doctrine established by this court in the case of *Severino vs. Severino* (44 Phil., 343), is applicable to this feature of the case.

"Although the plaintiffs endeavored to demonstrate that the said defendants registered the title by fraud, it is our opinion that the alleged fraud has not been proven in this action. Nevertheless, the existence of fraud is unnecessary to warrant the declaration that registration of the title under Act No. 496 is not a legal obstacle to this action brought by plaintiffs, and the adjudication in favor of those among them who are entitled thereto of the portion pertaining to them of the properties so registered. It was said in the case of *Gilbert vs. Hewetson* (79 Minn., 326), cited with approval in the case of *Severino vs. Severino*, supra:

" 'A receiver, trustee attorney, agent, or any other person occupying fiduciary relations respecting property or persons, is utterly disabled from acquiring for his own benefit the property committed to his custody for management. This rule is entirely independent of the fact whether any fraud has intervened. No fraud in fact need be shown, and no excuse will be heard from the trustee.' (Italics ours.)

"With respect to the plea of prescription, counsel for defendants contend that inasmuch as plaintiffs, prior to the filing of the present complaint, had made no effort to enforce their rights since the 1st day of March, 1864, their action is barred. But from the records it appears that up to the year 1922 the defendants have been recognizing in the entries in their books, and in deeds, such as Exhibits 6 and 7, signed by Don Augusto Tuason de la Paz, as grantee, the rights of the descendants of the younger children of the founder to the fifth of the revenue, and therefore the trust which this charge implies; furthermore, said defendants made payments on account of the fifth of the revenue. These acts of recognition and payments, made during the said period of time, prevent the operation of prescription. Section 50, Code of Civil Procedure.)

"Furthermore, this being a case which deals with a trust which subsisted from the time of its foundation and by virtue thereof up to March 1, 1864, and thereafter down to the present time by the express will of the present parties, the defense of prescription cannot be entertained. By virtue of the said trust the possession of the said defendants could not be regarded as a basis for an acquisitive prescription in their favor against the plaintiffs because such possession has not been nor is it under claim of ownership, but a title held in the name and on behalf of the beneficiaries, some of whom are the plaintiffs in general. For this reason the defense of prescription cannot be enforced between the trustee and the beneficiaries while the trust relations continue, as was impliedly held in the case of the *Government of the Philippine Islands vs. Abadilla* (46 Phil., 642.)" (Ibid., pp. 938-940.)

Strictly speaking there was no alteration in the nature of the action then commenced by the plaintiffs. They claimed indemnity for damages in the amount of half a million pesos believing that the registration of the real properties of the mayorazgo in favor of the defendants and the issuance of the corresponding certificates of title, made the latter the exclusive owners thereof; but this court held that a trust being involved, the titles should be understood as issued in favor of all the co-proprietors, among them the plaintiffs, and in view of this ruling the plaintiffs were declared entitled, not to an indemnity, but to a participation in one-fifth of the aforesaid properties. From this it follows that, although the plaintiffs were granted a relief different from that they had asked for, the rights which they invoked from the very beginning and upon which they based the action which they began, were, nevertheless, the same, to wit, their rights as relatives or descendants of the founder of the mayorazgo. They erred in the choice of the remedy to which they were entitled, but they did not change the essential ground of the action. In either case the right which they wanted to enforce was the same, but it developed that the adequate remedy was not the one they asked for but that granted to them by the court.

In their ninth assigned error the appellants contend that the court erred in declaring null and void as to one-half the sales of their participations executed by the intervenors Mariano Arenas, Estanislao Arenas, Julio Tuason, Severino Tuason, Encarnacion Rojo, and Candelaria Rojo in favor of the said defendants-appellants.

The referee in fact declared said sales null and void as to one-half, either because the vendors were the ones who received the revenue or because they had immediate successors at the time the Disentailing Statute took effect in the Islands. The court sustained the referee.

Without going into an extended discussion, we rule that the said intervenors-vendors cannot now question the validity of the aforesaid sales because their action has prescribed and they are now in estoppel by laches. All that we said in this connection in the appeal of the Legardas may be taken as reproduced herein. The most recent sale was made in 1916 and the first complaint of intervention questioning the validity of the sales was filed in 1926, that is, after the lapse of more than ten years. During all this time the defendants were in the enjoyment of the said participations without any protest or claim of any kind from any of the vendors. The time that has elapsed is more than that required for the prescription of the action to annul the sales, and estops the intervenors-vendors from questioning their validity.

We find the error assigned tenable.

The tenth assigned error requires no discussion because it was made conditionally, that is, in the event that the preceding one is not well-founded and is not sustained.

Various intervenors or their predecessors sold their participations in the fifth of the mayorazgo which came from the younger children with succession as well as from those without succession, in favor of the defendants. The referee last appointed was of the opinion that the sales of the participations which came from the younger children with succession, were valid, but not those which came from the younger children who died without succession. In its decision the court disapproved this conclusion and held that all the sales were valid. But in its order of April 8, 1931, in passing upon different motions of reconsideration, it concurred in the opinion of the referee and ruled that the sales of the participations coming from the younger children without succession were null and void because undetermined rights were transmitted thereby.

We rule that the eleventh assigned error is well founded and that the sales in question are as valid as those made of the participations coming from the younger children with succession. And on this point we repeat what we already said in the appeal of the Legardas, in resolving a similar case, that pursuant to the provisions of article 657 of the Civil Code, successory rights are transmitted from the death of the person leaving the hereditary estate, wherefore, it cannot be said that in the aforementioned sales undetermined rights were conveyed. It is true that on the dates of the sales, the amount of the participations sold were not yet determined, but doubtless it could be fixed and reduced to figures through the appraisal and liquidation provided for by the Disentailing Statute.

The twelfth and last assigned error states that the court should have required the referee to file an amended report pursuant to the order of April 8, 1931. The error, if any, is no ground for either modification or reversal. There is no doubt that the referee should file his amended and final report, but this may be prepared and submitted for approval after the appeals have been disposed of and the present decision has become final. We find no merit in this assigned error.

Summarizing what has been said in connection with this appeal we have:

- That the first, second, third, fourth, fifth, sixth, seventh, eighth, tenth, and twelfth assigned errors are without merit and must be as they are hereby overruled;
- That the sales executed by Mariano Arenas, Estanislao Arenas, Julio Tuason, Severino Tuason, Encarnacion Rojo and Candelaria Rojo in favor of the defendants are valid in their entirety; thereby sustaining the ninth assigned error; and
- That the sales executed by certain intervenors or their predecessors of their participations coming from the younger children without succession, in favor of the defendants, are valid; thereby sustaining likewise the eleventh assigned error.

JUDGMENT

In view of all the foregoing considerations, and disposing finally of all the appeals interposed, it is ordered:

In case G. R. No. 36811

- That the appealed decision and order be amended, in the sense that the sales executed by Tomasa Tuason de Tobias, Luis Tuason, and Pedro Tuason, in favor of the intervenors Legarda, are valid, and that the participations sold thereby should be adjudicated in favor of said purchasers ;
- That the appealed decision and order be modified, in the sense that the sales executed in favor of the intervenors Legarda of the participations coming from the younger children without succession, are valid, and, consequently, said participations should be adjudicated in favor of the said intervenors;
- That the appealed decision and order be modified, in the sense that the participation of Dorotea Tuason, as descendant of Santos Luciano Tuason, should be adjudicated in favor of the intervenors-appellants, and
- That the appealed decision and order, in so far as they have been affected by the appeal interposed but have not been modified, are hereby affirmed;

In case G. R. No. 36827

- That the aforesaid appealed decision, in so far as it has been affected by the appeal interposed by the intervenors-appellants in this case, is hereby affirmed;

In case G. R. No. 36840

- That the decision of the court is hereby affirmed in so far as it has been affected by the appeal interposed in this case by the intervenors-appellants Estanislao Arenas and others;

In case G. R. No. 36872

- That the appealed decision and order are hereby amended, in the sense that the sales executed by Mariano Arenas, Estanislao Arenas, Julio Tuason, Severino Tuason, Encarnacion Rojo, and Candelaria Rojo, in favor of the defendants-appellants, are valid in their entirety, and consequently, the participations transferred thereby should be adjudicated to the said purchasers;
- That the said appealed decision and order be amended, in the sense that the sales executed in favor of the defendants-appellants of the participations coming from the younger children without succession, are valid in their entirety, and, therefore, said participations should be adjudicated in favor of said* defendants-appellants; and
- That the said decision and order in so far as they have been affected by the appeal interposed in this case but have not been modified, are hereby affirmed.

It is likewise ordered that the court of origin take the necessary steps looking to the adjudication and distribution among the parties entitled thereto of their respective participations, to the end that this mayorazgo case may be definitely closed.

Without costs in this instance. So ordered.

Avancena, C. J., Malcolm, and Villa-Real, JJ., concur.

[1] Tuason vs. Concepcion

CONCURRING

STREET, J., :

In view of the fact that our order granting a new trial, reported in *Barretto vs. Tuason* (50 Phil., 888, 966), is considered by the court to be so limited as to prevent further consideration of the fundamentals, I deem it unnecessary to repeat the considerations which led me to dissent in part from the conclusions reached at the former hearing, and I therefore now concur.

HULL, J., with whom concur GODDARD and DIAZ, JJ., concurring:

I am constrained to concur in the result, feeling bound by the law of the case as it exists in this jurisdiction. (See *Compagnie Franco-Indochinoise vs. Deutsch-Australische Dampschiffs Gesellschaft*, 39 Phil., 474, and *Zarate vs. Director of Lands*, 39 Phil., 747.)

If I were free to vote on the merits, I would deny all relief to plaintiffs.

DISSENTING

ABAD SANTOS, J.,

I regret that I am unable to agree with the prevailing opinion in this case which is not only well-written but manifests a conscientious and painstaking labor. In my judgment, however, it suffers from one vital defect which is that of having assumed as correct and binding the rulings laid down and conclusions reached in *Barretto vs. Tuason* (50 Phil., 888). I am of the opinion (1) that these rulings and conclusions are fundamentally erroneous, and (2) that this court is not bound by them.

- Granting that, as held in the case cited, the mayorazgo involved in this case as a family trust, the trust ceased on March 1, 1864, when the Disentailing Law of October 11, 1820, became effective in the Philippines. As declared by this court in that case on page 936: "But the entail could not and cannot continue perpetually. Its abolition was decreed by the statute as of the 1st day of March, 1864. Its perpetual survival would be contrary, not only to the Disentailing Law of October 11, 1820, but also the Civil Code in force which, under articles 781 and 785, paragraph 2, positively prohibits perpetual entails." After March 1, 1864, the trust, as such, could not legally exist, irrespective of the subsequent conduct of the parties concerned.

The effect of the Disentailing Law was to vest in the cestui or beneficiary both the beneficial and legal ownership of the trust property, subject only to the conditions prescribed under articles 2 and 3 of the Law as to the right of alienation. This gave the cestui his heirs or assigns, the right to possession of the trust property. The exercise of this right was subject to the law on the prescription of actions for the enforcement of rights of such nature. The record shows that the original action in these cases was not brought until August 2, 1923, long after the statute of limitations had run against it.

Even granting that after the termination of the family trust, a resulting trust arose by reason of the subsequent conduct of the parties concerned, it appears from the stipulation of facts that such a resulting trust was repudiated ten years prior to the filing of the original complaint in these cases; and, by the prevailing cases, the general statutes of limitations are applicable to resulting trusts. (39 Cyc, 606.) "It is generally held that the rule that the statute of limitations does not run in favor of a trustee against the cestui que trust applies only to express trusts,

and that implied or constructive trusts are within the operation of the statute, so that a suit to impose and enforce such a trust may become barred. Thus 'whenever a person takes possession of property in his own name and is afterward by matter of evidence or by construction of law changed into a trustee', the statute may be pleaded. This is true a fortiori where plaintiff seeks his remedy in a court of law having no equity jurisdiction. In the case of a constructive or implied trust, except where the trust is imposed on the ground of fraud which is not immediately discovered, or there has been a fraudulent concealment of the cause of action, the statute begins to run in favor of the party chargeable as trustee from the time when the wrong is done by which he becomes thus chargeable, or the time when the beneficiary can assert his rights; not from the time when demand is made on the trustee, or the trust is repudiated by him, for no repudiation of an implied or constructive trust is ordinarily necessary to mature a right of action and set the statute in motion." (20 Cyc, 1155-1158.)

- This court is not bound by the rules laid down and conclusions reached in *Barretto vs. Tuason*, supra. In this connection, it should be observed at the outset that nothing has been adjudicated in that case. It is true that, at first, an adjudication was made therein, but on motion for a reconsideration it was ordered:

* * * * *

" (b) That the dispositive part of our decision in this cause be set aside.

" (c) That the record in the present case, together with the petitions of intervention mentioned, be returned to the Court of First Instance of Manila in order that the new parties may intervene in this cause and prove their alleged rights, and that the original plaintiffs may, if they so desire, amend their complaint.

* * * * *

" (e) That said Court of First Instance proceed to try this cause and render judgment as to the amount to which the original parties and those who may intervene may be entitled as their participation in the fifth of the properties of this mayorazgo."

* * * * *

It seems clear, therefore, that the case should not as it in fact does not, constitute a precedent.

Moreover, it should be borne in mind that the common law doctrine of stare decisis has not been strictly followed in this jurisdiction. What has been followed here is the American theory of precedent which recognizes that "Case Law is not wholly bound by the rules of past generations. It is a 'myth of the law', that stare decisis is impregnable or is anything more than a salutary maxim to promote justice. Although 'certainty is the very essence of the law', the law may be changed by the courts by reversing or modifying a rule when the rule has been demonstrated to be erroneous either through failure of adequate presentation of proper consideration, or consideration out of due time of the earlier case, or when 'through changed conditions it has become obviously harmful or detrimental to society.'" (Pound, "Some Recent Phases of the Evolution of Case Law", Yale Law Journal [1922], vol. XXXI, pp. 361, 363.)

In *Hertz vs. Woodman* (218 U. S., 205, 212; 30 Sup. Ct, 621, 622 [1910]), the Supreme Court of the United States, through Justice Lurton said: "The Circuit Court of Appeals was obviously not bound to follow its own prior decision. The rule of stare decisis, though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court, which is again called upon to consider a question once decided."

And in *Adams Exp. Co. vs. Beckwith* (100 Ohio St., 348, 351, 352; 126 N. E., 300, 301 [1919]), the Supreme Court of Ohio said: "A decided case is worth as much as it weighs in reason and righteousness, and no more. It is

not enough to say 'thus saith the court.' It must prove its right to control in any given situation by the degree in which it supports the rights of a party violated and serves the cause of justice as to all parties concerned."

The present tendency of American decisions is strongly away from the strict English doctrine of stare decisis, and towards the civilian theory of precedents. (Goodhart, *Essays in Jurisprudence and the Common Law*, pp. 50, 51, 65.) The civilian theory, as exemplified by the French practice, has been stated by Prof. Lambert of the University of Lyons in an article published in the *Yale Law Journal*: "In France, the judicial precedent does not, ipso facto, bind either the tribunals which established it nor the lower courts; and the Court of Cassation itself retains the right to go back on its own decisions. The courts of appeal may oppose a doctrine proclaimed by the Court of Cassation, and this opposition has sometimes led to a change of opinion on the part of the higher court. The practice of the courts does not become a source of the law until it is definitely fixed by the repetition of precedents which are in agreement on a single point." ("The Case Method in Canada and the Possibilities of its Adoption to the Civil Law", *Yale Law Journal* [1929], vol. XXXIX, pp. 1, 14.)

In a recent case, speaking of the doctrine of stare decisis, this court said:

"Is the court with new membership compelled to follow blindly the doctrine of the Velasco case? The rule of stare decisis is entitled to respect. Stability in the law, particularly in the business field, is desirable. But idolatrous reverence for precedent, simply as precedent, no longer rules. More important than anything else is that the court should be right. And particularly is it not wise to subordinate legal reason to case law and by so doing perpetuate error when it is brought to mind that the views now expressed conform in principle to the original decision and that since the first decision to the contrary was sent forth there has existed a respectable opinion of non-conformity in the court. Indeed, on at least one occasion has the court broken away from the revamped doctrine, while even in the last case in point the court was as evenly divided as it was possible to be and still reach a decision." (*Philippine Trust Company and Smith, Bell & Company vs. Mitchell*, p. 30, ante.)

In conclusion, I believe that whatever rights of action the plaintiffs in these cases might have had, have either been barred by laches or prescribed. Hence they should take nothing by their actions.

BUTTE, J.,

DISSENTING

I am of the opinion that the assignments of error of the defendants-appellants numbered 1, 2, 3, 4, 5, 6 and 8 should be sustained and I, therefore, dissent.

A Torrens title was issued to the defendants-appellants in 1915 under the provisions of the Land Registration Act (Act No. 496). This court has repeatedly held that such titles are final, irrevocable and incontestable.

From 1878, when Dona Teresa de la Paz succeeded to the estate of her child, Jose Victoriano Tuason, she held possession as owner until her death in 1890 when the property passed to the defendants all of whom are direct descendants of Dona Teresa de la Paz. From 1878 to 1923 when the present action was commenced—that is for forty-five years, the defendants and their predecessors in title held possession as owners. They have, therefore, acquired a title by prescription. (Articles 446, 447, 1959 and 1960, Civil Code. See also *Kincaid vs. Cabututan*, 35 Phil., 383, 406.)

The sixth clause of the instrument creating this estate tail (mayorazgo) dated February 25, 1794, did not create a family trust. Nor is there any evidence showing that the appellees or their predecessors in title come within the language of the sixth clause of that instrument which, at most, might be construed to be a precatory trust. Nor was

that precatory trust indeterminable. The possible beneficiaries thereof no longer existed in March 1, 1864, when the Spanish Statute of Disentailment was extended to the Philippine Islands. It is to be noted that article 4 of the Statute of Disentailment provided for the termination of family trust.

The Statute of Disentailment, effective in the Philippines on March 1, 1864, abolished estates tail and provided that all properties entailed are restored to the class of absolutely free properties. The possessors of entailed estates were empowered at once to freely dispose of one-half of the entailed property, the other half to pass to the immediate successor to the title, who was empowered to dispose of it freely as owner. Under these provisions, after the death of Jose Severo Tuason on February 3, 1874, and Jose Victoriano Tuason, his heir, on January 25, 1878, Teresa de la Paz took the title in fee simple to all the properties involved in this entailed estate. The plaintiffs, who at this late date seek to impress said title with a trust, are guilty of extreme laches.

The Torrens title issued to the defendants in 1915 should be sustained.

VICKERS, J.:

In the above entitled cases I voted to affirm the decisions of the lower court, with the modifications proposed by the ponente, and I hereby authorize the Chief Justice or the Justice acting in his place to certify that I voted in said cases as hereinabove stated.

I certify that Justice J. C. Vickers took part in the consideration of the above enumerated cases, and voted to affirm the appealed decision, as modified in the prevailing opinion.—AVANCENA, C. J.

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