

THE INSULAR LIFE ASSURANCE CO., LTD., PLAINTIFF AND APPELLANT, VS. GAUDENCIO ELEIZEGUI ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 10212. January 07, 1916

Ponente: TRENT, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10212/>

TRENT, J.:

The plaintiff obtained on April 27, 1912, a judgment against Isidro Maguigad, Gaudencio Eleizegui, and Anselmo Remigio for the sum of P1,429.23, with interest and costs. Execution was issued against the three defendants on June 25, 1912, and returned nulla bona. The plaintiff thereupon began supplementary proceedings with the view of ascertaining the whereabouts of any property belonging to the defendants. As a result of these proceedings, the present action was instituted on October 16, 1912, for the purpose of clearing certain real property in the city of Manila of a mortgage so that the same may be sold to satisfy the judgment heretofore mentioned. From a judgment dismissing the case after trial upon the merits, the plaintiff has appealed.

It is urged that the trial court erred (a) in not finding that the mortgage was executed without consideration and for the sole purpose of defrauding creditors, and (b) in not canceling the mortgage and granting the relief prayed for.

As to the facts and circumstances surrounding the execution of the mortgage, Gaudencio Eleizegui testified as follows:

"Q. What amount was given to you before the execution of the mortgage, what sum?—A. I owed him before this date about P9,000 for the house. A part Of this amount I received little by little for repairs which were made and other similar amounts to pay taxes, for water, etc., when I did not have sufficient funds for that purpose, and I also remember of having borrowed from him P5,000 to put into a certain business, which we were going to establish; but we did not establish this business because my wife fell ill and, naturally, I had to support us during that sickness, and had no other recourse than to use this money for that purpose, and it was for this reason that we did not start the business.

"Q. Up to what amount had your brother given you before the execution of the mortgage?—A. I cannot say because it was in various amounts.

"Q. Where are the receipts which represent the various amounts which your brother gave you before the execution of the mortgage?—A. No receipts were given, only a memorandum wherein the amounts were noted because he said that a receipt would be made for the total amount after executing the mortgage.

"Q. On what date was the first amount given you?—A. The last of 1906 or the first of 1907. It was when we commenced building a house.

"Q. From these dates up to what year did he continue giving you money?—A. I remember the last was in November, 1910.

"Q. Did you give another mortgage aside from the one in question for the amounts which you received?—A.

Yes.

"Q. On what?—A. Some jewelry which I had then.

"Q. Where is that jewelry?—A. It was taken by robbers in 1912.

"Q. Where is that document which you have just mentioned?—A. He has it in his possession.

"Q. Are you sure that your brother has it?—A. I cannot be sure.

"Q. At the time your brother gave you these various amounts, what occupation had he?—A. I know that he had a certain business. He was associated with another person.

"Q. What kind of business had he?—A. I know that he was associated with a friend and had certain contracts with the Military Government.

"Q. This was during the Military Government, was it?— A. Yes, I think so.

"Q. Then, that was before he began turning money over to you ? What occupation had your brother at the time he gave you the amounts which you have mentioned?—A. I cannot say because I did not inquire into his private life.

"Q. Is your brother married or single?—A. He is single.

"Q. Since the time of the Military Government has your brother had any occupation?—A. He was employed before. In the time of the Spanish government he was in a private office.

"Q. I said, since the Military Government or since 1900, has your brother had any occupation whatever?—A. I cannot say because I do not live with him.

"Q. State the exact date, if possible, in which your brother turned over to you the P5,000.—A. I cannot state the precise date. It was about the last of November, 1910.

"Q. You state that you spent this money during the sickness of your wife; how long was your wife sick?—A. Approximately two months.

"Q. The P5,000 then, were spent by you for medical attendance?—A. Not exactly for medical attendance, but for medicine, doctors' bills, and the costs of running the house.

"Q. In what year was your wife sick?—A. In December, 1910.

"Q. You do not know where your brother got the P5,000 which he gave to you?—A. No, sir. These were his own affairs, which I did not investigate." In the supplementary proceedings, Gaudencio Eleizegui testified in substance as follows:

"When I incurred the original obligation upon which the judgment was rendered, I swore that I was solvent to the amount of P2,000. The only property I then owned was the house and lot in question, which are assessed at P15,000, more or less. This property was not itself then in cumbrance, but I then owed about P18,000 or P19,000. The property is now incumbered by annotating the mortgage on the Torrens certificate.

"Q. The lien that you are now talking about was made after the demand for the payment was made, was it?—A. Long afterward. This mortgage was made by my brother. I do not know where he got the P5,000 in cash which he paid me at the time of executing the mortgage. He has no occupation at the present time, but formerly he had a casco business at the time of the military occupation. Since that time he has done nothing.

"Q. What did you mean when you said that by reason of your business relations you owed your brother P20,000?—A. I mean to say that I owed him that amount for taking the incumbrance on the property, as I chose to be

indebted to him rather than to anyone else, because he is my brother, because I could have asked him for time in case I failed to pay.

"Q. Will you explain to the court why he (your brother) did not take a mortgage at that time, but only after you were notified of your responsibility in this judgment?—A. The nine or ten thousand pesos that I owed him at that time, I did not get that entire amount from him in a lump sum, but little by little, and as long as I needed money I asked him.

"Q. Then with reference to this liquidation, according to your statement you owed your brother nine or ten thousand pesos, but when you made up your liquidation, you put it at nineteen or twenty thousand pesos, that amount, together with the P5,000, which you got of him at that time, makes a total of twenty-five thousand pesos?—A. About the beginning of the month of December, 1910, I already owed him about seventeen or eighteen thousand pesos, and I have already stated that I took this money from him little by little, whenever I needed it, for the purpose of making improvements on this lot in question, on account of its being marsh land; there was water on it. I could have had more money from him afterwards. I am living on my salary now."

Neither Dario Eleizegui nor the notary public, before whom the mortgage was executed, appeared at the trial of this case in the court below. Dario Eleizegui was in Manila, at the time and could have been called.

Are the foregoing facts sufficient to show that the principal defendant, Gaudencio Eleizegui, executed the mortgage in question without consideration and for the purpose of avoiding the payment of the judgment rendered against him? The mortgage upon its face shows that it was executed on December 27, 1910, just a little over a month prior to the passage of Act No. 2035, requiring notary publics to enter all notarial acts in a register to be kept for that purpose, bearing consecutive numbers, and to be filed with the clerks of Courts of First Instance. The mortgage was not registered until three days after an execution was issued against the mortgagor. According to Gaudencio Eleizegui's own testimony, this mortgage was executed to secure the payment to his brother of a debt amounting to some P20,000 and for an additional sum in cash of about P5,000. The P20,000 was the balance in favor of Dario after a liquidation of their accounts, involving certain transactions during the years from 1906 to 1910. No documentary evidence of any kind was presented to show these transactions. Dario has had no business or occupation since about the year 1900 when he did a little business with the Military Government. He was not sufficiently interested in the matter to appear and defend his rights. Gaudencio said that he would rather be indebted to his brother than to anyone else. He further testified that although the real property in question was registered under the Torrens system in the name of his wife and himself, he was solvent at the time he incurred the obligation to the plaintiff. At the same time he says that he owed P18,000 or P19,000. The property was assessed at a little over P15,000 and his interest therein certainly could not have amounted to P19,000. So, upon his own testimony, he was not solvent at the time he incurred the obligation. The mortgage is far in excess of the total value of the property. Gaudencio has no other property which can be reached by execution aside from the house and lot in question; neither have the other judgment debtors any property with which to pay the judgment. All these facts and circumstances convince us that the mortgage is fictitious and was executed for the sole purpose of avoiding the payment of the plaintiff's judgment.

For the foregoing reasons, the judgment appealed from is reversed and judgment will be entered decreeing the cancellation of the alleged mortgage and subjecting Gaudencio Eleizegui's interest in the property to the payment of the plaintiff's judgment. No costs will be allowed in this instance.

Arellano, C. J., Johnson, Carson, and Moreland, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.