

**ELEUTERIA CHIONG VELOSO, PLAINTIFF AND APPELLANT, VS.
MANUEL ROA, SHERIFF, AND MARTIN M. LEVERING, DEFENDANTS
AND APPELLEES.***G.R. No. 12642. October 26, 1917*

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12642/>**STREET, J.:**

This action was instituted in the Court of First Instance of the Province of Cebu by Eleuteria Chiong Veloso to recover a parcel of land situated in the city of Cebu and the house located thereon. It appears that upon the 23d day of December, 1912, the defendant, Manuel Roa, as sheriff of Cebu, levied an execution upon said house and upon an undivided three-fourths interest in the lot upon which it is located—all as the property of plaintiff's sister, Maximina Chiong Veloso. When the property was levied upon, the plaintiff, Eleuteria Chiong Veloso, served notice upon the sheriff that she claimed the property as her own; but the judgment creditor gave bond to indemnify the sheriff and the latter proceeded with the sale.

It is undisputed that the property levied upon, namely, the house and an undivided three-fourths interest in the lot had been owned by Maximina Chiong Veloso prior to December 8, 1911, and that the other one-fourth undivided interest in the lot, that is, the portion which was not levied upon, is the property of the plaintiff Eleuteria.

The contention in this case is over the question of the validity of the sheriff's sale in so far as it affects the interest in said property which was formerly vested in Maximina. The plaintiff claims as purchaser from Pedro Cui to whom Maximina had sold the property upon December 8, 1911, under a contract with the privilege to repurchase within one year. The case of the defense is based upon the contention that the alienation of this property was effected by Maximina with the intent to hinder and defraud her creditors and that in the purchase of the property by Eleuteria, the latter was cognizant of the intended fraud and acted as the accomplice of her sister.

Other facts necessary to an intelligent understanding of the case are as follows: In June of the year 1907 Maximina Chiong Veloso and her husband, Manuel Martinez Tio Cuana obtained a loan of P8,000 from Tomasa Ricablanca, the mother and at that time the guardian of the minors Asuncion, Maria, Alfonso, and Pilar, their father being dead. The money in question belonged to these children, and by the terms of the loan it was returnable on demand. Maximina Chiong Veloso was at the time of this transaction a woman of considerable means, being the owner of several valuable parcels of real estate and also owner of a pawnbroking establishment in Cebu. Nevertheless in the year 1911, she reached a state of financial embarrassment, and she and her husband appear to have been unable to return this loan. Accordingly upon November 1, 1911, an action was instituted against them by Martin M. Levering, the guardian of the said minors; and upon January 30, 1912, judgment was rendered against them for the amount sued for. Meantime Levering had been substituted by Teodoro Velez as guardian and the case was prosecuted to judgment by the latter. The entire judgment in this case, with interest and costs amounted to about P9,600, of which P4,500 was satisfied by execution levied upon property in the city of Manila belonging to Maximina. This left about P5,100 unsatisfied. The execution upon which the property in

question was seized was issued November 6, 1912, and the levy was effected December 23, 1912. At the final sale, pursuant to this levy, made upon May 8, 1913, Teodoro Velez became purchaser, in his own right, for the sum of P4,200.

Reverting to the transaction of December 8, 1911, by which the alienation of this property by Maximina Chiong Veloso was effected, we find that the sale to Pedro Cui was made about one month after the institution of the action by Levering", as guardian, and about two months before judgment was rendered in that action against Maximina and her husband. The instrument of sale purported to convey both the house and the entire lot, though as already stated, the vendor owned only an undivided three-fourths of the lot. The consideration stated in the contract was P3,000, while it appears that the property conveyed was at the time probably worth P7,000 or P8,000. It was agreed in the contract of sale that the vendor might retain possession of the property during the period allowed for redemption, upon paying a monthly rental of P30 to Cui; and she did in fact so remain in possession.

When the time approached for the period of redemption to expire, Maximina says that she found herself without means to effect the redemption and that accordingly no steps were taken by her to this end. It appears, however, that upon December 6, 1912, or just two days before the expiration of the year allowed for redemption, the plaintiff Eleuteria obtained from Cui a transfer of the property which he had acquired from Maximina under the *venta con pacto de retro* of December 8, 1911. The consideration for this transfer was P3,350, which amount was paid by Eleuteria to Cui. Two days later (i. e. on December 8) the period of redemption allowed to Maximina expired, and the property was consolidated in Eleuteria.

Upon the state of facts above presented the following questions arise: (1) Was the sale which was made by Maximina to Cui on December 8, 1911, executed by her with the intent to defraud her creditors, the plaintiffs in the action instituted by Martin Levering as guardian? (2) Was the plaintiff Eleuteria acting as the agent or accomplice of Maximina in buying the property from Cui on December 6, 1912?

As bearing on the first question, we have the fact that at the time Maximina conveyed the property to Cui she was apparently in financial straits and the action of Levering had already been instituted against her, though the case was as yet undetermined. As tending to show that Maximina had the design of defeating the creditors in that action by making the transfer in question, proof has been introduced to the effect that the plaintiff Eleuteria, in conjunction with Maximina and their brother Januario, had been previously litigating against these creditors (children of their deceased brother) and had attempted in said litigation to reduce their share in the estate of their common ancestors. This circumstance undoubtedly shows a state of hostility between the two branches of the family; but we do not discover any proof which clearly shows that that litigation was fomented and conducted in bad faith, and at any rate its bearing upon the question of the validity of the transaction with Cui is rather remote.

As against these circumstances we have the fact that at the time this conveyance was made Maximina was the owner of other property which remained subject to execution for any judgment that might be recovered against her in the action instituted by Levering. The eleven pieces of realty which were conveyed to E. Michael & Co. on December 6, 1912, were clearly subject to seizure after the execution was issued upon November 6, 1912; and there is nothing to show that these properties were hidden from these creditors at that time. The value of these properties is shown to have been in excess of the debt to Levering; and it is evident that the mere pendency of that action did not destroy the power of Maximina to alienate her property. Even insolvency does not deprive a person of the right to alienate. (*Pantoja vs. Palencia*, 25 Phil. Rep., 644, 645.) The presumption of fraud mentioned in article 1297 of the Civil Code does not exist in this case because the alienation was not gratuitous (*Sobrevilla vs. Montinola*, 22 Phil. Rep., 124) ; and we do not think that the argument based on the alleged inadequacy of the consideration, as tending to show a fraudulent intention, is of much weight. The contract of sale provided for the

right to repurchase, and it must have been expected by both parties to the transaction that the privilege of repurchase would be exercised. In *Oria vs. McMicking* (21 Phil. Rep., 243, 250), this court specified six badges or marks of fraud which will usually be found present in transactions made in fraud of creditors. Of the six circumstances there enumerated it cannot be fairly said that more than one is present in this case to Cui, namely, that the transfer was made after suit was begun; and the inference of fraud from that circumstance is clearly rebutted by the existence of other property of the debtor subject to execution. For the same reason the transfer of certain property located in Manila to Cui in the month of January 1913, cannot be considered as sufficient to show that the sale in question was fraudulent.

We are therefore forced to the conclusion that the sale of the property in question by Maximina to Cui upon December 8, 1911, was not executed in fraud of her creditors. We are further of the opinion that the mere failure of Maximina to redeem cannot in itself be considered a fraudulent act such as to vitiate the transaction of sale, for the rights of the parties were determined by the original contract. But of course her failure to redeem the property is a circumstance to be weighed, in connection with other facts, upon the question whether or not Eleuteria bought the property for her—a subject to be discussed later in this opinion.

The defendants have not criticized the transaction by which Cui obtained the property in question from Maximina, so far as affects that part played therein by Cui himself. He appears to have been a purchaser for value and in good faith to the extent of the sum which he paid for the property; and, although he gave only P3,000, it must have been expected that the property would be redeemed within the period allowed by the contract. In a transaction of this character, which was evidently in the nature of a secured loan, the mere fact that the consideration was less than half the value of the property cannot be taken as sufficient of itself to establish bad faith on the part of the purchaser. Furthermore, there is nothing in the record to show that Cui had any reason to know or suppose that Maximina intended by this transfer to defraud her creditors.

Upon the second question, namely, whether Eleuteria was acting as the agent or accomplice of her sister Maximina in buying the property from Cui on December 6, 1912, we have the circumstance that upon the same day Maximina obtained P4,500 from E. Michael & Co. That Maximina procured this money at that particular time certainly raises the suspicion that the money which Eleuteria used in the transaction with Cui came from that source. The proof on this question, however, does not go beyond the degree of suspicion; and we are unable to find that the money of Maximina was actually so used, or that any other form of collusion existed.

The testimony of Maximina, Eleuteria, and Januario, if credited, shows that there was no collusion, and that the purchase made by Eleuteria was prompted, in part at least, by the fact that she already owned an undivided one-fourth interest in the lot. They all agree in saying that the purchase was not effected at the request of Maximina, nor in her interest. Even if we were inclined to discard their testimony, there is nothing to put in its place. The defendants did not probe into the question as to where Eleuteria got the money which she used; and as the proof shows that all the parties were people of considerable means, we conclude that she might have raised the money from her own resources. Numerous circumstances have been commented upon in defendants' brief as tending to show that collusion existed, but we are constrained to find that the case is not made out. The burden of proof is clearly on the defendants to make good their plea that the transaction was fraudulent, and in this we think they have failed.

It results that the judgment of the court below must be reversed, and judgment will be entered in favor of the plaintiff for the recovery of the premises in question, but without costs of this instance. Judgment will also be entered in favor of the plaintiff against the defendants for the sum of P1,650 as damages incurred by reason of the seizure and detention by the defendants of the premises in question from January 1, 1913, to May 31, 1914, this being the amount shown by the record to have been collected by the defendants as rent during that period. The

judgment must be reversed. So ordered.

Arellano, C. J., Johnson, Carson, Araidlo, and Malcolm, JJ., concur.

Judgment reversed.

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.