

## **ROBERTO SOLATORIO, PLAINTIFF AND APPELLANT, VS. ARCADIO SOLATORIO AND BASILIO SOLATORIO, DEFENDANTS AND APPELLEES.**

*G.R. No. 29367. December 15, 1928*

Ponente: MALCOLM, J.

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### **MALCOLM, J.:**

In an action begun in the Court of First Instance of Occidental Negros, the plaintiff asked that various documents be declared null and fraudulent. But the defense of prescription was sustained, and the case dismissed, with costs against the plaintiff.

The case falls within the purview of subdivision 3 of section 43 of the Code of Civil Procedure. This is true because the action is fundamentally "for relief on the ground of fraud." Although one of the principal documents assailed was executed on December 7, 1916, there was no discovery of the alleged fraud, as these terms are used in the law, until June, 1921. Inasmuch as the present action was instituted on August 6, 1926, much more than the four-year limitation had then passed. In a negative way, it may further be said that the action does not come within subdivision 1 of section 43 of the Code of Civil Procedure, which fixes a prescriptive period of ten years, because this is not an action upon an agreement, contract, or promise in writing, or upon the judgment or decree of a court, but is an action predicated on fraud; nor is the action included within any portion of the Penal Code because no provision of the penal law is involved.

The Philippine law on the subject of limitation of actions was taken from the laws of Ohio. In that State, it has been held that a person of full age who seeks to set aside a deed conveying real estate upon the ground that the execution of such deed was secured through fraud and deceit must bring the action within four years after discovery of such fraud and deceit (*Loffland vs. Bush* [1875], 26 O. S., 559; *Combs vs. Watson* [1877], 32 O. S., 228; *Doney vs. Clark* [1896], 55 O. S., 294; *Melchers vs. Peters* [1920], 17 O. App. Rep., 1; *Frate vs. Rimenik* [1926], 115 O. S., 11; in accord with which is the Philippine case of *Macapinlac vs. Gutierrez Repide* [1922], 43 Phil., 770, 784).

Resolving, therefore, the third assignment of error against the appellant, and having done so, finding it unnecessary to discuss the first two errors assigned, it results in the judgment appealed from being affirmed, with the costs of this instance against the appellant.

Johnson, Street, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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