

**IN THE MATTER OF THE ESTATE OF R. H. FRANKEL, DECEASED.
ANNA HARTSKE, CLARA WEBBER AND FREMA FISCHLER,
PETITIONERS AND APPELLANTS, VS. FRED FRANKEL AND
PHILIPPINE TRUST CO., APP...**

G.R. No. 31287. December 27, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

There is no merit in the first assignment of error. As the lower court well said, the deposition of Fred Frankel was taken under the stipulation in which both parties appeared by their respective attorneys at the stipulated time and place, and propounded their respective questions to the witness, who made written answers to such questions, and it appears that the answers were subscribed and sworn to by the witness. In other words, the deposition was taken under and pursuant to the terms of the stipulation of the parties, and, hence, is admissible in evidence. It clearly appears from the deposition that Herman Frankel died without lineal descendants, and that Fred Frankel is his only surviving brother, and as such is an heir to the estate of his deceased brother, Herman Frankel.

Exhibit A, which the lower court held to be fraudulent, is a deed from Edward A. Carlstrom to the deceased wife of Herman Frankel. It appears that on the same day that it was executed, Herman Frankel conveyed the identical property therein described to Edward A. Carlstrom, and it is contended that such conveyances should be construed together, and that when so construed, it is apparent that they were made for the sole purpose and intent of divesting the conjugal partnership of the property and to vest it in Eugene Fischler, the deceased wife, and for such reasons, it is null and void as against public policy.

It appears that Herman Frankel and his wife separated January 8, 1902, and never again lived together as husband and wife. Exhibit A was executed February 25, 1902, and paragraph 4 of it, which is the certificate of the notary public, recites:

"4. Mrs. Eugene Fischler, with the license and consent of her husband, Mr. Herman Frankel, which was asked and conceded, in this act and in my presence, I, the notary, do give faith and therefore state: That she accepts this sale in the precise terms in which it is made by Mr. Edward A. Carlstrom, manifesting that this present acquisition is made with her own money and does not pertain to the conjugal partnership gananciales, for which reason her husband, from whom she has been separated by virtue of an act dated January 8, 1902, formulated before the notary public of this capital, Don Enrique Barrera y Caldes, only concurs to this instrument so that same may be inscribed in the corresponding property register, he having manifested this to me, corroborating that which is said by the signer, that he has not for himself nor for his heirs any participation in the property the subject matter of this instrument."

It also appears that on August 30, 1916, Torrens certificate of title No. 3374 was issued to and in the name of the deceased wife, Eugene Fischler, for the identical land described in Exhibit A.

The storm center of that exhibit is whether or not it was made with a fraudulent intent and purpose to nullify the

statute, as the trial court found. There is some evidence which tends to show that before her marriage, the deceased wife at one time had about P20,000 of her own money, and the evidence of Fred Frankel tends to show that at one time before his marriage, his brother had about P80,000 in money. But in truth and in fact, there is no oral evidence as to the amount of money, if any, which either of them had at the time of their marriage, and the lower court based on legal presumptions found that any property which either of them had was acquired after marriage, and as such was conjugal property.

Act No. 496 became a law January 1, 1903, and Exhibit A was executed on February 25, 1902, when the old Spanish Notarial Law was still in force and effect, under which the certificate of the notary is entitled to much weight.

It will be noted that in this certificate, the deceased wife says that she accepts the conveyance from Carlstrom "manifesting that this present acquisition is made with her own money and does not pertain to the conjugal partnership gananciales," for which reason her husband, from whom she has been separated since January 8, 1902, as evidenced by the certificate of the notary public "only concurs to this instrument so that same may be inscribed in the corresponding property register, he having manifested this to me, corroborating that which is said by the signer, that he has not for himself nor for his heirs any participation in the property the subject matter of this instrument." That is to say, that this Spanish notarial certificate recites that the wife then claimed and asserted that she acquired this property with her own personal, individual money, and that her husband then confirmed and corroborated that statement of his wife, and says: "That he has not for himself nor for his heirs any participation in the property," and it is a fact that from and after the execution of Exhibit A, the husband during his lifetime did not claim or assert any right, title or interest in or to the property, and that the wife dealt with and treated it as her sole and exclusive property, and there is no evidence to overcome or which is in conflict with those notarial recitals.

Construing them as true, we have the statement of the wife made before the notary that this property was purchased with her own money, which is also confirmed and corroborated by that of her husband.

Without some evidence, and based upon legal presumptions only, how can the court find as a fact that the statements of both the husband and the wife made before a Spanish notary are false and unworthy of belief, in particular, where for twenty-two years they were confirmed and approved by the subsequent acts and conduct of both the husband and the wife?

The following¹ provisions of the Civil Code are in point:

"ART. 1381. Paraphernal property is that which the wife brings in marriage without including it in the dowry and that which she may acquire after its constitution without adding it to the dowry."

"ART. 1392. By virtue of the conjugal partnership the earnings or profits obtained by either of the spouses during¹ the marriage shall belong to the husband and the wife, share and share alike, upon the dissolution of the marriage.

"ART. 1393. The conjugal partnership shall begin on the same day that the marriage is celebrated. Any stipulation to the contrary shall be void".

"ART. 1396. The following is the separate property of each of the spouses:

"1. That brought to the marriage as his or her own;

"2. That acquired gratuitously by either of them during the marriage;

"3. That acquired by right of re-purchase or by exchange for other property belonging to one of the spouses

only;

"4. That bought with money belonging exclusively to the wife or to the husband."

"ART. 1407. All the property of the spouses shall be deemed partnership property in the absence of proof that it belongs exclusively to the husband or to the wife."

"ART. 1432. In default of a specific declaration in the marriage contract, no separation of the property of the spouses shall take place during the marriage except by virtue of a judicial decree, except in the case provided for by article 50."

"ART. 1458. The husband and the wife cannot sell property to each other, except in case a separation of property has been agreed upon or when a judicial separation of such property should have been decreed in accordance with the provisions of Chapter VI, Title III, of this book".

Under similar laws, there is good authority for holding that Exhibit A is valid even as a gift against an heir of the deceased husband.

In the case of *Brown vs. Brown* (174 Massachusetts, 197; American State Reports, vol. 75, p. 292), that court said:

"Although in this commonwealth there has been much change in the law regarding the relations of husband and wife and the power of a married woman to acquire property and make contracts¹, yet it is still the law here that, with certain exceptions as to wearing apparel and similar articles not material to this case, a married woman cannot acquire property by gift from her husband, though such a gift may be so far valid as to give the wife a right to the property at the death of her husband as against his heirs or executors but not against his creditors. Property thus given remains the property of the husband during his life, and may be demanded by him or attached by his creditors."

And *Marshall vs. Jaquith* (134 Massachusetts, 138), the same court said:

"A husband may make a gift of personal property to his wife, which, if not revoked by him, will, after his death, give her a valid title to the property against his heirs, if, with the intention on his part to give it to her, the property is actually delivered to and retained by her, and no rights of the creditors of the husband are impaired."

Be that as it may, upon that point we prefer to base this opinion on the recitals made in the Spanish notarial certificate above quoted, and the subsequent acts and conduct of the parties, that the property described in Exhibit A was purchased by the wife with her own personal money. There is no evidence to overcome the legal force and effect of that certificate.

On the record, we are clearly of the opinion that Exhibit A was a good and valid conveyance to the deceased wife, and that it was and is legally binding on both the husband and his heirs.

As to the remaining property, both real and personal, for ought that appears in the record, it was acquired during the marriage, and there is, no evidence to overcome the statutory presumptions, or which tends to show that it was the separate and exclusive property of the wife.

The judgment of the lower court as to the real property described in Exhibit A is reversed, and it is held to be the sole and separate property of the wife and of her estate. In all other things and respects, the judgment of the lower court is affirmed, without costs to either party. So ordered.

Avanceña, C.J., Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

STREET, J., in part:

The judgment which is the subject of this appeal should in my opinion be affirmed in its entirety, and I dissent from so much of the present decision as holds that the real property covered by Exhibit A is separate property of the wife. There is admittedly no sufficient proof that Eugene Fischler owned property in her own right prior to her marriage to Herman Frankel; and whatever she possessed thereafter must have been acquired during the marriage regime. Of course the mere separation of the spouses did not destroy the right of either to participate in their mutual acquisitions, as in ganancial property. The sole ground upon which the opinion of the court in this case proceeds, in holding the aforesaid property to be separate estate of the wife, is discovered in the recitals of the conveyance, Exhibit A, and in recitals of the notarial acknowledgment appended thereto. But it appears that this property originally was held in the name of the husband, Herman Frankel, and that after he had conveyed it to Carlstrom, the latter, on the same day, executed the Exhibit A, conveying the property to the wife, Eugene Fischler, as, separate property. It is transparent ,that these transactions were consummated as a mere device to evade the statute, which denies validity to direct conveyances made by the husband or wife to each other. Carlstrom was evidently a mere conduit for the purpose of transferring the property from the husband to the wife. If the law prohibits, as it does, the husband from conveying property directly to the wife, it is difficult to see how his heir can be held bound by an admission, evidently fictitious, inserted in the conveyance of Carlstrom to the wife, that the property was, purchased by her with means pertaining to her separate estate. The courts ought not, in my opinion, to grasp at fictions of thi3 sort for the purpose of diverting ganancial property from the channel appointed by law for its devolution.

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