

**RAFAEL ENRIQUEZ ET AL., PLAINTIFFS AND APPELLEES, VS.
FRANCISCO ENRIQUEZ ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 3535. September 20, 1907*

Ponente: WILLARD, J.

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The plaintiffs brought this action on the 10th day of December, 1901, asking that a deed made by the defendant Francisco Enriquez as attorney in fact for his father, Antonio Enriquez, on the 12th day of March, 1884, conveying to Victoriano Eeyes the property in question in this suit, and the deed executed by Victoriano Reyes on the 5th of April, 1884, conveying to the defendant Carmen ie la Cavada, wife of the defendant Francisco Enriquez. the same property, be declared fraudulent and void and be set aside. Judgment was entered in the court below in favor of the plaintiff Rafael Enriquez, as administrator of the estates of Antonio Enriquez and Ciriaca Villanueva, deceased, declaring the deeds above mentioned void and ordering judgment against the defendant Carmen de la Cavada for the rents and profits of the said real estate, amounting to more than 21,000 pesos. From this judgment the defendants Francisco Enriquez and Carmen de la Cavada have appealed. A former appeal in this case is reported in 3 Philippine Reports, 746.

On the 5th day of March, 1883, Antonio Emiquez executed a general power of attorney in favor of his son, the defendant Francisco Enriquez, by which the latter was authorized to sell and convey the property of Antonio Enriquez. It was by virtue of that power that Francisco Enriquez, during the lifetime of his father, executed the first of the deeds above mentioned. The property therein conveyed is described as follows: "Three tenement houses erected on land belonging to the owner thereof, made of brick and lumber and situated on Calle Riberita, corner of Barraca, in the district of Binondo." It is now known as numbers 76 to 84, Calle Numancia. The consideration stated in the deed executed by Francisco Enriquez was 2,500 pesos. The consideration stated in the deed executed three or four weeks later by Victoriano Reyes was the same amount, 2,500 pesos.

A great deal of evidence was introduced in the court below relating to these two transactions, the plaintiffs claiming that no money was paid by Reyes to Francisco Enriquez, nor was any money paid by Carmen de la Cavada to Reyes. A somewhat similar case (*Naval vs. Enriquez*, 3 Phil. Rep., 669) was decided in favor of the defendants. In this case, however, we do not find it necessary to resolve the question as to whether these two transactions were bona fide or not, for we think that the parties afterwards, and in 1897, so dealt with the property in question that the plaintiffs have now no interest therein.

The property was acquired by Antonio Enriquez in 1881, during his marriage with Ciriaca Villanueva. She died in the lifetime of her husband, and the claim of the plaintiffs is that this property belonged to the conjugal partnership; that upon the death of the wife the ownership of one half thereof passed immediately to her heirs, Antonio Enriquez being thereafter the owner only of the other undivided half, and that when, after the death of Ciriaca Villanueva, Francisco Enriquez, as attorney in fact for his father, attempted to convey all of the property to Victoriano Reyes, he, in fact, only conveyed an undivided half thereof, even on the assumption that the sale was in good faith and for actual value received. The appellants claim that no property can be considered as

conjugal property until after the affairs of the partnership are liquidated, and that, this liquidation not having taken place at the time of the conveyance in question, the property can not be considered as conjugal property. We do not find it necessary to decide this question and will assume, for the purpose of this case only, that the theory of the plaintiffs is correct and that upon the death of Ciriaca Villanueva her heirs became the owners of an undivided half of the land in question.

The plaintiffs in this action are Rafael Enriquez, as administrator not only of the estate of his father, who died in 1884, but also of the estate of his mother, Ciriaca Villanueva, who died in 1882, and some of the heirs at law of both Ciriaca Villanueva and Antonio Enriquez. So far as the undivided half belonging to Antonio Enriquez is concerned, the action is in effect one brought by the heirs of a principal against his agent to recover property which it is claimed the agent sold in violation of the terms of his appointment, or, in other words, property which the agent pretended to have sold but which, in fact, he never did sell.

So far as the undivided half belonging to the heirs of Ciriaca Villanueva is concerned, the action is in effect one brought by them to set aside a conveyance of their property made by a person who pretended to have authority to convey but who, in fact, had no such authority.

In 1897 the present plaintiffs, or the persons whom they represent, were all of full age and capable of making contracts. It is very evident that, assuming all that is claimed by the plaintiffs, namely, that the sale of the undivided half of the property belonging to Antonio Enriquez was fraudulent, and that the sale of the undivided half belonging to Ciriaca Villanueva was made by a person who had no authority to make it, it is nevertheless true that the parties interested, being, as has been before said, of full age, with capacity to make contracts, might make a contract by virtue of which they surrendered their rights to the property in suit; and the important question in the case is whether they did make such a contract or not.

It appears from the record that prior to 1891 the heirs had been in litigation among themselves over the estates left by their father and mother. On the 22d of April, 1891, a document was signed by which the heirs agreed to abandon litigation and proceed to the settlement of the estates in an amicable way. Prior to that time Francisco Enriquez, the eldest son of Antonio Enriquez, had been, and then was, the executor of his father's will. The purpose of that document was to secure a liquidation of his accounts, their examination and approval. On the 25th of August, 1896, the defendant Francisco Enriquez and the plaintiffs Rafael Enriquez and Antonio Enriquez executed another public document in which they referred to the document of the 22d of April, 1891. The document of 1896 stated the rules which should be followed in connection with the examination and approval of the accounts. In pursuance of these rules, the three brothers who signed the document, met from time to time in the office of Moreno Lacalle. Minutes of these meetings were kept and signed and some of them were offered in evidence in this case. Among these minutes so offered is that of the meeting of the 3d day of November, 1897. The accounting and the examination was to, and did, include not only the estate of Antonio Enriquez but also the estate of Ciriaca Villanueva, and it included not only the accounts of Francisco Enriquez as executor of his father's will but also his accounts as attorney in fact of his father prior to his death. In the minute of the meeting of the 3d of November, 1897, signed by Francisco, Rafael, and Antonio Enriquez, it is stated that the accounts are finally and definitely approved, and in regard to the property still belonging to the two estates it is stated that "the inventory is approved in accordance with the terms of the aforesaid draft" (proyecto de escritura).

The fifth clause of this minute is as follows:

"Fifth. Rafael and Antonio Enriquez stated that, according to their belief, the dwelling house No. 9 Calle David, the three tenement houses situated on Calle Barraca, all of them located in the district of Binondo, and another house located on Calle Baluarte (or Fundición) belonged to the estate, and in consequence of such belief they

requested that said property be included in the inventory. Francisco Enriquez replied that the house at No. 9 Calle David was sold by his late father to his wife in consideration of the sum of 8,000 pesos, by a deed executed on March 27, 1883, attested by Miguel Torres, a notary public, a copy of which is before the claimants. That the house on Calle Fundición was likewise sold by his late father on a date which he is unable to state on account of the lack of necessary data; that the tenement houses on Calle Barraca (or Riberita) were, on March 12, 1884, sold by Francisco, in his capacity of attorney in fact for his father, to Victoriano de los Reyes, for the sum of 2,500 pesos, which amount, plus 500 pesos, was sent in a draft to his father through Manuel Enriquez. The letter of acknowledgment of the latter amount as well as the deed of sale are at the disposition of the parties claimant.

"In view of the above, it is agreed upon by the parties to include in the inventory neither the house No. 9 Calle David nor the tenement houses on Calle Barraca, inasmuch as the conveyance thereof was duly explained. It is, however, agreed that the purchase price of the latter property be entered in the debit column of the accounts of the administration, pending the presentation by Francisco of the vouchers relating to the amount of said purchase price; and, as regards the house on Calle Fundición, it is resolved to obtain more data on which to act."

The minute of of this meeting was signed by Francisco, Rafael, and Antonio Enriquez. They thereby expressed their agreement therewith. On the 20th day of November, 1897, a public document was executed in due form before Enrique Barrera, a notary public of Manila. This document was signed by all of the present plaintiffs, or by the persons whom they represent, either personally or by attorneys in fact, duly authorized so to do. That document contains the following statement:

"First. That by deed No. 537 granted in this city by the parties now appearing, Francisco, Rafael, and Antonio Enriquez, on the 25th day of August, 1896, before the notary of the College of Manila, Jose Engracio Monroy, which deed is hereby ratified by the said parties, each of them in their own behalf and on behalf of the persons whom they represent (as stated at the beginning of the present document) agreed to the fact that the estates of their deceased parents, Antonio Enriquez y Sequera and Ciriaca Villanueva, were pending the formation of an inventory of the same, subject, in the first place, to the examination and approval of the administrator's accounts by the parties interested in the said estate, and, in the second place, to the determination of the property belonging to said estates; and, in order to carry on both purposes and all other requisites necessary for the division of the estates, among other particulars they agreed: (1) That the said parties, Rafael and Antonio Enriquez, should proceed to examine the accounts of the estates corresponding to the period from 1884 to the 30th of June, 1896, submitted by Francisco Enriquez as executor of his father, and the account of 1883, submitted by the same person as administrator of his father during the above year, which examination should be verified within a certain term; and, should any objections arise, that the same should be settled in accordance with the rules laid down in the abovementioned deed; and (2) that the said Francisco, as executor, should submit to his two brothers a statement of the property, in order that the latter might examine it in the manner provided in the said deed.

"Second. That both agreements have been executed by the said parties, the abovementioned accounts having been duly examined by Rafael and Antonio Enriquez, who made some objections thereto which were treated according to the stipulations, the same having been resolved by mutual agreement; and agreeing likewise that the executor's accounts from 1884 up to the end of June, 1896, as well as those of the administration of the estates of the deceased Antonio Enriquez during the year of 1883, be condensed in the following form:

ASSETS.

1.

Amounts collected by Francisco Enriquez y Villanueva from the beginning of 1883 up to June 30, 1896, as administrator of his father, Antonio Enriquez, during the first year, and as executor of the same from 1884 up

to the said month of June

\$216,401.97

2.

Sale price of a property consisting of three tenement houses situated in the Riberita, Binondo, belonging to the deceased Antonio Enriquez, which sale was effected on March 12, 1884, by Francisco Enriquez, as administrator of the former

2,500.00"

This document contains also the following provision: "4. The parties interested in the estates of Antonio Enriquez y Sequera and Ciriaca Villanueva y Solis, and in the name of all of them, the parties now appearing, with the respective representation claimed by each of them, as stated, fully approve (errors and omissions excepted) the accounts of the administration of the estates of the former during 1883 and those of the intestate estates of both deceased persons from 1884 up to June 30, 1896, which services have been performed by Francisco Enriquez y Villanueva, as appears in the said accounts as submitted and condensed in the form shown in second clause of this deed."

There follows in the document an inventory of the real and personal property belonging to the estates to be distributed among the heirs. The property here in question is not included therein.

These documents were before the court in the case of Enriquez vs. Enriquez (5 Phil. Rep., 668). The transaction relating to the house in Calle David was before the court in the case of Enriquez vs. Enriquez[1] (5 Off. Gaz., 665), just decided.

The documents of November 3 and November 20, 1897, evidence a contract between the parties thereto. By the terms of that contract the plaintiffs definitely gave up and surrendered all claim to the property here in question and accepted in lieu thereof the obligation of Francisco Enriquez to pay 2,500 pesos therefor. Francisco Enriquez, on his part by the document of the 3d of November, claimed that he had already paid the 2,500 pesos, but agreed that if he could not produce written evidence to show such payment he would pay it over again, and by the document of the 20th of November he definitely agreed to pay it, whether he had paid it before or not.

It is said by the plaintiffs in one of their briefs that the settlement contained in this contract was never carried out. So far as the approval of the accounts and the determination of the property still remaining undistributed, there was nothing to be carried out. The contract was a final settlement of those questions. By the terms of the document of the 20th of November it appears that there was a balance against Francisco Enriquez, the executor, of 77,028 pesos and 63 centavos, but the document also states that this balance was not in the possession of the executor because he had from time to time made advances to the plaintiffs and the other heirs, and it provided that he should submit statements of such advances, which would be examined for the purpose of determining the amount which each one of the heirs was entitled to. This is what remained to be done under the contract, but it has nothing whatever to do with the settlement of the question as to what property then belonged to the estate and nothing to do with the particular property here involved. Why the amount of the balance to which each one of the persons was entitled after deducting the advances was not determined does not appear in this case.

This contract, made between persons capable of contracting, is binding upon them as any other contract is unless it can be set aside for fraud, misrepresentation, or other similar reason. The documents above referred to were set out in the answer of the defendants and parts of the same were copied therein. The plaintiffs did not, by an

amended complaint or in any other way, attack the validity of the documents, nor allege that they were not binding on them or that they were obtained by fraud or misrepresentation, nor did they ask in any pleading to have them set" aside and declared void. At the trial of the action Rafael Enriquez and Antonio Enriquez, the persons who signed these documents for themselves and in representation of the other plaintiffs, testified as witnesses. In their testimony the documents are not mentioned, nor was any claim made by them therein that they were in any way deceived or defrauded in the execution thereof or that such execution was obtained by any fraud or misrepresentation on the part of Francisco Enriquez. In fact the documents are not in any way mentioned in their testimony. It is suggested that while the deed from Francisco Enriquez to Victoriano Reyes was exhibited to them when the documents were signed, yet the deed from Victoriano Reyes to the defendant Carmen de la Cavada was not so exhibited. Upon this point these witnesses remain silent. They did not testify that at the time they signed these documents they did not know that the property had been conveyed to Carmen de la Cavada, nor did they testify as to when they first learned of this transaction. Rafael Enriquez said that he came here in 1896 and has remained here ever since, and, as we judge from his testimony, his only object in coming here was to settle these matters. It is apparent that he devoted practically his whole time from his arrival until November, 1897, in examining the affairs relating to the estates. In his testimony he does not in any way indicate that he did not know when he signed these documents all that he now knows.

It was alleged in the complaint that the value of this property at the time it was sold in 1884 to Victoriano Reyes was 20,000 pesos. No evidence was offered by the plaintiffs in support of this allegation and no evidence whatever was offered by them relating to the value at that time of the property thus conveyed. It was, however, proven by the defendants that this same property was, on the 20th day of December, 1880, sold at public auction to one Antonio Lorenzo Barretto for the sum of 1,367 pesos; that on the 7th day of January, 1881, Barretto transferred to Antonio Enriquez all his interest in that purchase, and that on the 18th day of January, 1882, the then judge of the Court of First Instance of Manila conveyed the property of Antonio Enriquez for the said sum of 1,367 pesos. Parol evidence was also offered by the defendants which showed that at the time the property was conveyed to Victoriano Reyes in 1884 the houses thereon were in a ruinous condition and occupied by Chinese and that the entire property was worth no more than 2,500 pesos.

The contracts executed on. the 3d day of November and the 20th day of November, 1897, are now binding upon the plaintiffs. By the terms thereof they gave up and surrendered all their interest in the property here in question, and this action, therefore, can not be maintained. The judgment of the court below is reversed, without costs to either party in this court, and judgment is entered acquitting the defendants of the complaint, with the costs of the first instance against the plaintiffs and in favor of the defendants Francisco Enriquez and Carmen de la Cavada. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

[1] Page 565, supra.

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