

EMILIO GASTON, PLAINTIFF AND APPELLEE, VS. JOSE HERNAEZ AND ELEUTERIA CHONG VELOSO, DEFENDANTS AND APPELLANTS.

G.R. No. 36923. November 24, 1933

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-36923/>

IMPERIAL, J.:

This is an action brought by the plaintiff in the Court of First Instance of Occidental Negros for the annulment of the deed of sale Exhibit A executed by the defendant in favor of his co-defendant on August 17 and 19, 1925, whereby he conveyed to the latter all his rights, interests and participation in the hereditary estate of his deceased father Rosendo Hernaez, for the amount of P170,875, and to recover from the said defendants alleged damages in the sum of P20,000.

The defendants appealed from the judgment rendered by the trial court, the dispositive part of which reads as follows:

"Wherefore, the court renders judgment in this case holding that the transfer made by the defendant Jose Hernaez to his co-defendant Eleuteria Chong Veloso of his rights, interests and participation in the intestate estate of his deceased father Mr. Rosendo Hernaez, is null and void and without force and effect, and that said rights, interests and participation of Jose Hernaez in the intestate estate in question did not thereby pass to the defendant Eleuteria Chong Veloso on the ground that it was made with the intention to defraud the plaintiff herein, with the costs of this suit against the defendants. So ordered."

In its decision the trial court summarizes all the facts established by the evidence presented, as follows:

"1. That on September 17, 1920, Emilio Gaston, as joint and several surety, signed a deed executed by Jose Hernaez in favor of the firm Warner, Barnes and Co., for a loan of P30,040.12 payable on May 30, 1921.

"2. That on January 21, 1921, Emilio Gaston, as joint and several surety, likewise signed another deed in favor of the Philippine National Bank for a loan obtained by Jose Hernaez, in the sum of P8,000 payable on April 21, 1921.

"3. That when the aforesaid obligations fell due, Jose Hernaez failed to settle them. Whereupon the creditors Warner, Barnes and Co., and the Philippine National Bank brought actions against said Jose Hernaez and his guarantor Emilio Gaston, which were docketed as: Civil Case No. 5584 of the Court of First Instance of Iloilo, entitled Warner, Barnes and Co. vs. Jose Hernaez and Emilio Gaston, and Civil Case No. 4146 of the Court of First Instance of Occidental Negros, entitled the Philippine National Bank vs. Jose Hernaez and Emilio Gaston.

"4. That on March 23, 1926, judgment was rendered in civil case No. 5584 of the Court of First Instance of Iloilo, the dispositive part of which reads as follows: 'This court hereby renders judgment in this case in favor of the plaintiff firm, sentencing the defendants to pay to it jointly and severally "the principal sum of P19,575.84, Philippine currency, plus interest at 9 per cent per annum on the original debt of P30,040.12 from May 1, 1920, to August 3, 1921; on the sum of P22,016.72 from August 3, 1921, to March 15, 1923; on the sum of P21,016.72 from March 15, 1923, to February 4, 1924, and on the aforesaid principal sum of P19,575.84 from February 4, 1924, until fully paid, with the costs of this suit, without prejudice to the right of

the defendants to discuss the liability of one another between themselves" ';

"5. That on July 31, 1926, judgment was also rendered in said case No. 5584, relative to Emilio Gaston's cross-complaint against Jose Hernaez, the dispositive part of which reads follows:

"Wherefore, judgment is rendered in favor of the cross-complainant Emilio Gaston against the cross-defendant Jose Hernaez, sentencing the latter to pay to said Emilio Gaston the principal sum of P19,575.84, Philippine currency, plus interest at 9 per cent per annum on the original debt of P30,040.12 from May 1, 1920, to August 3, 1921; on the sum of P22,016.72 from August 3, 1921, to March 15, 1923; on the sum of P21,016.72 from March 15, 1923, to February 4, 1924; and on the aforesaid principal sum of P19,575.84 from February 4, 1924, until fully paid, with the costs of this suit. It is to be understood, however, that any sum which may be collected from the defendant Jose Hernaez by virtue of the execution upon the judgment rendered in favor of Warner, Barnes and Co. in said Civil Case No. 5584 wherein Warner, Barnes and Co. is the plaintiff and Jose Hernaez and Emilio Gaston are defendants, shall be credited on account of this judgment;

"6. That on September 2, 1927, judgment was rendered in case No. 4146 of this court, Philippine National Bank vs. Jose Hernaez and Emilio Gaston, the dispositive part of which reads as follows: 'Wherefore, judgment is rendered: (a) On the complaint, sentencing the defendants to pay to the plaintiff jointly and severally the sum of P8,000, with legal interest thereon from April 21, 1921, until fully paid, with costs; (b) ordering that execution of this judgment be made first on property of the defendant Jose Hernaez, if any, and in the absence thereof upon that of Emilio Gaston; and (c) on the cross-complaint, sentencing the cross-defendant Jose Hernaez to reimburse and pay the said cross-complainant Emilio Gaston the whole amount of this judgment or part thereof as may be paid by him or levied on his property through execution, with the costs';

"7. That when the judgment in favor of Warner, Barnes and Co. and that in favor of the Philippine National Bank were executed, the provincial sheriff could not locate any property belonging to the defendant Jose Hernaez to satisfy the judgment debts;

"8. That inasmuch as no property of Jose Hernaez could be found, the plaintiffs proceeded against Emilio Gaston who made arrangements with the firm Warner, Barnes and Co. and with the Philippine National Bank for the payment of said judgments, so that Emilio Gaston is now directly liable therefor to the said firm Warner, Barnes and Co. and to the Philippine National Bank. As a matter of fact he has already paid to Warner, Barnes and Co. the sum of P10,000, notwithstanding the fact that the plaintiff herein, Emilio Gaston, had not in the least been benefited by the loan obtained by Jose Hernaez from the firm Warner, Barnes and Co. and from the Philippine National Bank;

"9. That Emilio Gaston exerted every effort to locate properties of the principal obligor Jose Hernaez but found that the latter has nothing left inasmuch as those which he had at the time of the execution were encumbered and all his hereditary rights in the estate of Rosendo Hernaez had been conveyed by him to Mrs. Eleuteria Ch. Veloso (Exhibit A), for the sum of P170,875;

"10. That in the project of partition presented in the intestate proceedings of the deceased Rosendo Hernaez and approved by the court on January 5, 1927, the hacienda 'Panaogao' and another property of 21 hectares, 70 ares and 49 centares which, subject to the usufruct of Mrs. Teofila Conlu Vda. de Hernaez, were adjudicated to Jose Hernaez who bound himself to pay by long installments the total amount of the indebtedness contracted by the intestate estate of the deceased Rosendo Hernaez, in favor of the Talisay-Silay Milling Co., Inc. (Exhibits E and F);

"11. That in view of the transfer by Jose Hernaez in her favor, it was made to appear in the intestate proceedings of Rosendo Hernaez that Eleuteria Chong Veloso was an interested party therein as assignee of the hereditary rights of said Jose Hernaez, which were subject to whatever claim the intestate estate might have against the said assignor Jose Hernaez (Exhibit D);

"12. That at the time Jose Hernaez transferred all his rights, interests and participation in the intestate estate of his deceased father Rosendo Hernaez to his co-defendant and mother-in-law Mrs. Eleuteria Chong Veloso, on August 17, 1925 (Exhibit A), there were pending against said Jose Hernaez two unsatisfied judgments: one for P2,800, which was rendered by the Court of First Instance of Manila on August 15, 1922, in Civil Case No. 21818, entitled 'The Philippine Automobile Exchange, Inc., vs. Jose Hernaez' (Exhibit JJ-1), and another for P4,180, with interest thereon at 10 per cent per annum, which was rendered by the Court of First Instance of Manila on January 6, 1925, in Civil Case No. 24915, entitled 'Teal and Co., Inc., vs. Jose Hernaez' (Exhibit H-1);

"13. That at the time Jose Hernaez assigned his hereditary rights to his co-defendant and mother-in-law Eleuteria Chong Veloso, three other complaints were also pending against him, aside from the aforesaid two cases which had already been decided and pending execution, to wit: Civil Case No. 5584 of the Court of First Instance of Iloilo, entitled 'Warner, Barnes and Co., Ltd. vs. Jose Hernaez and Emilio Gaston' (Exhibit B), for the sum of P38,100.48; Civil Case No. 5727 of the Court of First Instance of Iloilo, entitled 'Walter A. Smith vs. Jose Hernaez', for P1,712.36, filed in January, 1925 (Exhibit 1); and Civil Case No. 27786 of the Court of First Instance of Manila, entitled 'Salmon, Dexter and Co. vs. Jose Hernaez', for the sum of P1,000, filed on March 18, 1925 (Exhibit JJ-4);

"14. That after the defendant Jose Hernaez had transferred all his rights, interests and participation in the intestate estate of his deceased father Rosendo Hernaez to his mother-in-law and co-defendant Eleuteria Chong Veloso, several complaints were filed against him, to wit: Hoskyn & Co. vs. Jose Hernaez (Civil Case No. 6101 of the Court of First Instance of Iloilo), filed on September 2, 1925 (Exhibit K); D. W. Fry vs. Jose Hernaez (Civil Case No. 28853 of the Court of First Instance of Manila), filed on October 8, 1925 (Exhibit JJ-8); Lizares vs. Hernaez (Civil Case No. 6328 of the Court of First Instance of Iloilo), filed in January, 1926 (Exhibit J); Pacific Commercial Co. vs. Jose Hernaez (Civil Case No. 6391 of the Court of First Instance of Iloilo), filed in May, 1926 (Exhibit L); Philippine National Bank vs. Jose Hernaez (Civil Case No. 4146 of the Court of First Instance of Occidental Negros), filed on May 31, 1927 (Exhibit F); Luneta Motor Co. vs. Jose Hernaez (Civil Case No. 31858 of the Court of First Instance of Manila), filed on May 28, 1927 (Exhibit JJ-12); Philippine National Bank vs. Jose Hernaez et al. (Civil Case No. 4147 of the Court of First Instance of Occidental Negros), filed on May 31, 1927 (Exhibit GG); Philippine National Bank vs. Jose Hernaez (Civil Case No. 4148 of the Court of First Instance of Occidental Negros), filed on May 31, 1927 (Exhibit II); Philippine National Bank vs. Jose Hernaez (Civil Case No. 4149 of the Court of First Instance of Occidental Negros), filed on June 4, 1927 (Exhibit HH). The total amount involved in the foregoing actions is more or less around P168,000.

"15. That the judgments entered in the foregoing nine cases had not yet been satisfied at the date of the trial of this case on the ground that no attachable property belonging to the defendant Jose Hernaez could be found."

From the foregoing facts the trial court arrived at the following conclusions:

"From the testimony of Jose Hernaez himself and all the evidence presented, consisting of complaints and judgments rendered against him, it may be inferred that he owed more than half a million pesos, excluding interest thereon, at the time he assigned his hereditary rights in the intestate estate of his deceased father Mr. Rosendo Hernaez. His liabilities, therefore, exceeded his assets, for although he attempted to prove that he still had several properties with which he intended to pay off other obligations then pending at the time he made such assignment, the truth is that all said properties remaining at the time he assigned his hereditary rights were encumbered. The creditors, who held judgments against him together with those who obtained judgments later, could not touch said properties on the ground that the encumbrances thereon were so great that it would not have benefited them at all to have said properties sold at public auction for the reason that the proceeds of such sale would not have been sufficient to defray even the expenses incurred therein, which happened in the execution of the judgment in favor of Warner, Barnes and Co. wherein the rights of Hernaez in the hacienda 'Bayusan' were sold for only P20 inasmuch as the hacienda in question had been mortgaged to the Philippine

National Bank for P12,000.

"Jose Hernaez attempted to prove that at the time he assigned his hereditary rights, he was in possession of some chattels such as horses, carabaos, cattle, trucks, tractors, and a portable railway, but during the cross-examination it was found that many of these properties were in the name of his wife and others were already conveyed by him to other relatives. Furthermore, the planting that he claimed to have done on the hacienda was in the name of his wife.

"Therefore, in view of all the evidence presented, the conclusion of the court, as hereinbefore stated, is that after Jose Hernaez had assigned his hereditary rights in the estate of his deceased father Mr. Rosendo Hernaez to his mother-in-law, the herein defendant Mrs. Eleuteria Ch. Veloso, he had no more property left with which to satisfy his other creditors, even in small amounts, thus rendering him to a state of insolvency.

"Having arrived at this conclusion, the court believes it unnecessary to analyze the other evidence presented for the purpose of proving that the assignment made by Jose Hernaez in favor of his mother-in-law, Mrs. Eleuteria Ch. Veloso, was fraudulent and intended to prejudice his creditors, inasmuch as the law establishes the presumption that alienations for valuable considerations, made by a person against whom any judgment in any instance has been previously rendered, or against whom any writ of attachment has been issued, are fraudulent. This presumption is corroborated by other evidence which clearly shows the existence of such intent to defraud creditors one of whom is the herein plaintiff, who, actuated by no other consideration than friendship, tried to extend a helping hand to Jose Hernaez by acting as a joint and several surety in order that the latter might obtain loans of considerable amounts. Such evidence proves that when the defendant Jose Hernaez assigned his hereditary rights there was not only a final judgment rendered against him but also three other actions pending involving the aggregate sum of P40,812.84, and that after the assignment in question was made, numerous other complaints were filed, involving an aggregate amount of P168,000. All of the judgments rendered in these cases against Jose Hernaez have not been satisfied on the ground that he has no property.

"The court is of the opinion that the defense set up by Jose Hernaez, to the effect that after the assignment he still had properties from the proceeds of which he expected to pay off his obligations, has failed, inasmuch as it has been proven by a preponderance of evidence that the properties in question did not belong to him. According to his own testimony the planting on the haciendas 'Bagtic' and 'Panaogao' was done by his wife; the automobile was in his wife's name and the carabaos have been sold, so that however great the efforts exerted by the creditors to have their judgments satisfied, they found no property belonging to Hernaez. Wherefore, the court concludes that after the assignment, Hernaez became absolutely insolvent. From this state of affairs coupled with the legal presumption that the alienation was made in fraud of creditors, which presumption is based on the fact that when the defendant Jose Hernaez assigned all his hereditary rights in the intestate estate of his deceased father to his mother-in-law and co-defendant Mrs. Eleuteria Chong Veloso, there were two unsatisfied final judgments and several pending complaints against him and that after the assignment in question numerous complaints involving the enormous sum of P168,000 were filed against him, and adding to this fact the statement made by Hernaez himself to the plaintiff that he had no more property left after the assignment by him of his hereditary rights, the court concludes that the alienation made under the deed Exhibit A is fraudulent."

From a careful examination of all the evidence of record, it has been found that all the facts and conclusions as stated in the decision are correct and, therefore, need no further comment. It is evident that the assignment made by the defendant in favor of his co-defendant, who is his mother-in-law, carries with it the presumption of fraud established by article 1297 of the Civil Code. Furthermore, the records show that several civil actions for the recovery of certain sums of money were pending against said defendant at the time of the execution of the deed of sale, Exhibit A, in which actions the judgments rendered later could not be executed nor satisfied on the ground that he did not have any property of any value worthy of mention. When the said defendant assigned his aforesaid participation to his mother-in-law, he knew perfectly well that it was the only property of value which he was to

receive and that he had no other means with which to settle his personal obligations, including the two in which the plaintiff had acted as surety. All of these circumstances, together with the sufficiently strong indications that the alleged sale was without actual consideration or cause, show conclusively that the contract in question was fictitious and executed for the sole purpose of defrauding his creditors.

The appellants contend that the question raised relative to the validity of the transfer under consideration already constitutes *res judicata* on the alleged ground that it was approved in the intestate proceedings of the deceased Rosendo Hernaez, and that, the co-defendant Eleuteria Chong Veloso received all the inheritance corresponding to the defendant with the approval of the court. It is obvious that the doctrine invoked is not applicable to the case at bar on the following grounds: (1) That the defendants did not set up such defense in their answers and only allege it for the first time in this appeal; (2) that the plaintiff did not intervene nor was a necessary party in the aforesaid special proceedings (sec. 306 [2] of the Code of Civil Procedure), and no question relative to the validity of such transfer had ever even been intimated, much less discussed, or decided therein; and (3) that the transfer in question is vitiated by the existence therein of the fatal defect of fraud which prevents the courts of justice from sanctioning the act already performed.

The foregoing considerations decide all the assignments of error stated in the appellants' brief, and finding that the judgment appealed from is in accordance with the law and supported by the evidence, it is hereby affirmed in toto, with the costs against the appellants. So ordered.

Malcolm, Villa-Real, Abad Santos, and Hull, 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.