

AGUSTIN G. GAVIERES, PLAINTIFF AND APPELLANT, VS. THE ADMINISTRATORS OF THE INTESTATE ESTATE OF LUISA PENA, AND WILLIAM ROBINSON, DEFENDANTS AND APPELLEES.

G.R. No. 4241. March 20, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

A demurrer was filed to the complaint in this case and was sustained, the plaintiff excepting thereto. The complaint not being amended, the case was dismissed; the plaintiff appealed and filed in this court his bill of exceptions.

The demurrer was sustained because, as the judge states in his order, "upon examining the demurrer and the complaint, I find that the plaintiff was the husband of Dona Luisa Pena, named in the complaint, and that he is one of the judicial administrators of her estate," and under these circumstances he "can not bring an action against himself for the purpose of declaring a contract made by his wife during her lifetime void."

The only facts alleged in the complaint are the following: (1) Residence of the plaintiff; (2) the marriage of the same with Luisa Pena in November, 1874, and the death of the latter on December 31, 1900; (3) the execution of a mortgage by Luisa Peña in favor of William Robinson, on December 29, 1906; (4) that the plaintiff was not aware of such execution, nor had he given his consent to the same, nor authorized his wife to do so; (5) that his wife, on the date of the execution of said mortgage, was dying; (6) that his wife was induced, through deceit, to sign said contract; (7) the date on which the plaintiff had knowledge of such execution; (8) the impossibility of his having knowledge of the original contract; (9) that he has obtained no profit from such contract, nor has the same benefited his home.

Section 91 of the Code of Civil Procedure is as follows:

"Demurrer to the complaint.—The demurrer is an allegation that, admitting the facts of the preceding pleading to be true, as stated by the party making it, he has yet shown no cause why the party demurring should be compelled by the court to proceed further. * * *"

In the case in question there is not a single fact alleged showing that the plaintiff is one of the administrators of the estate of Luisa Peña. For these reasons, the demurrer does not lie, and should have been dismissed by the court below.

Therefore we reverse the order of April 13, 1907, sustaining the demurrer, and also the judgment of the 24th of the same month and year which ordered the dismissal and the annulment of the writ. Let the case be returned to the court below to proceed with the trial, and a term be granted for the answer, without special ruling as to costs. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.

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