

VICENTE GUASH, ADMINISTRATOR OF THE INTESTATE ESTATE OF JOSE JIMENEZ Y MIJARES, PLAINTIFF AND APPELLEE, VS. JUANA ESPIRITU, DEFENDANT AND APPELLANT.*G.R. No. 4379. September 01, 1908*

Ponente: TRACEY, J.

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The plaintiff, as administrator, brought this action to set aside a written transfer by his intestate of certain household furniture to the defendant, the complaint alleging ownership, detention and demand, but stating no special reason for instituting this action. The demurrer to this complaint was overruled, and the plaintiff finally succeeded upon the ground that the transfer was fraudulent.

From the testimony it appears that in April, 1905, judgment was obtained against Jose Jimenez y Mijares, the plaintiff's intestate, by his wife, for future support; that, in order to avoid this judgment, the deceased proposed to mortgage the furniture in question to a Chinaman, but never did so, and that thereafter he sold it to defendant for P1,200, which she paid him in cash from moneys which she swore were her own, being the earnings and proceeds of a sale of a business which she had in the provinces. In this respect her testimony is not overcome and it is not shown that the price paid for the furniture, though cheap, was inadequate as a consideration. Consequently the defendant is in the position of a purchaser for value (a titulo oneroso). Nevertheless, her contract with the deceased is liable to be attacked and upon a proper showing to be set aside for the reason that a judgment for money had been rendered against him. (Art. 1297 of the Civil Code; *Bachrach vs. Peterson*, 7 Phil. Rep., 571.) Under article 1291 of the Civil Code, subdivision 3, contracts in fraud of creditors are declared to be voidable. But, by the concluding clause of this article, as well as by the terms of article 1294, an action for rescission of such contracts can be maintained only when the person injured shows that he has no other legal recourse. By section 712 of the Code of Civil Procedure, the like remedy given an administrator to maintain an action to set aside a fraudulent conveyance made by his intestate, is made dependent upon the condition that there shall be a deficiency of assets in his hands for the payment of debts and expenses. There is no proof and nothing justifying an inference either that no other remedy was available to the plaintiff or that there was a deficiency of assets wherewith to pay the debts of the deceased, or to make good the shares of his secured heirs (*herederos forzosos*). Consequently, this action can not be maintained. Moreover there was a failure to prove fraud, vitiating the sale, the defendant having established the payment of an apparently good consideration for the transfer. (Judgment of the supreme court of Spain of June 15, 1897.)

There is a defect in the certification of the stenographer's notes to which objection was taken by the appellant and a motion, made too late, to postpone the hearing of the case in order to procure a signature by the official stenographer. This motion the respondent opposed, and it is suggested that by this opposition he waived the defect. Whether or not such be the effect of his opposition becomes of no consequence, for the judgment standing alone, without the testimony, can not be sustained for the reason that 4 the judge has not found as a fact either that the plaintiff had no other remedy, or that there was a deficiency of assets, nor are there any such allegations in the

pleadings.

The judgment of the Court of First Instance is hereby reversed, and the defendant is absolved, without costs. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.

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