

44 Phil. 60

[ G. R. No. 19594. November 17, 1922 ]

**RAMON FERNANDEZ AND CARMEN GARCIA DE FERNANDEZ, PETITIONERS, VS. HONORABLE CARLOS A. IMPERIAL, JUDGE OF THE COURT OF FIRST INSTANCE, OF MANILA, AND CARMEN BELANDO VIUDA DE ITURRALDE, RESPONDENTS.**

**D E C I S I O N**

**OSTRAND, J.:**

This is a petition for a writ of certiorari, the purpose of which is to quash an attachment.

The writ of attachment in question was issued in an action brought upon a promissory note for the sum of P12,000, payable without interest within one year from the date of the note, June 30, 1921.

The writ of attachment was evidently issued under sub-section 4 of section 412 of the Code of Civil Procedure, which, in connection with section 424 of the same Code, provides that the writ may issue "when the defendant has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought." The order of the court below granting the writ is based solely upon the following allegations in the verified complaint in that action:

"2. That at the time of incurring the foregoing obligation the defendants obligated themselves verbally to pay to the plaintiff interest on said sum at the rate of 7 per cent per annum.

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"5. That the defendants have acted fraudulently in contracting the debt which is the object of the present complaint, inasmuch as, in order to obtain it, they

promised to the plaintiff that they would pay her interest thereon at the rate of 7 per cent per annum, and now they deny having obligated themselves to pay such interest.”

The allegations quoted are wholly insufficient to show that the defendants were guilty of fraud in contracting the debt. The fact that a person agrees to pay interest on a loan and afterwards repudiates the agreement, does not necessarily show that the borrowing was fraudulent in its inception; It will be observed that it is not even alleged that the loan was granted in consequence of the defendants’ promise to pay interest. Neither are facts alleged indicating that the defendants made the promise with fraudulent intent.

The petition for a writ of certiorari is therefore granted the writ of attachment in question is hereby declared null and void, and it is ordered that the memorandum of said attachment entered upon the petitioners certificates of title be cancelled. So ordered.

*Araullo., C. J., Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.*