

3 Phil. 704

[G.R. No. 1356. April 15, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. CHARLES BARNES,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

The crime of which the accused is charged is that of fraud by inducing another by means of deceit to sign a document, the prosecution being brought under the provisions of paragraph 7 of article 535 of the Penal Code. The document signed is a public instrument, executed before a notary public of the province in which Juana Trinidad, a person of full age, in the presence of her husband, Catalino Arao, and Pedro Arenal, also of age, freely and spontaneously—so the notary certified—executed an assignment or sale for a certain consideration of her rights to the hereditary estate of Ana Endicott to Charles Barnes, who also signed the document, accepting the same. Juana Trinidad and Pedro Arenal testified that it was not their intention to execute such an instrument of assignment or sale of their hereditary rights, but simply to execute a power of attorney in order that Barnes might take what action might be necessary to obtain a partition of the property and distribute the same among the participants, and this is alleged to constitute the deceit.

But no evidence whatever has been introduced to show that Barnes led them to understand, as interpreter or by taking part in any other way in the execution of the instrument, that they were signing a power of attorney instead of a deed of assignment or sale of hereditary rights. There is no evidence to show that it was Barnes who made Juana Trinidad and Pedro Arenal sign the document, or that he misrepresented its contents, leading them to believe that they were signing a power of attorney instead of telling them that the document was an assignment or sale of their hereditary rights. In the public instrument the recitals are made by the notary public and not by Barnes. In it the notary public says that those two persons freely and spontaneously executed the entire contents of the instrument, and bears testimony that “this document having been read in its entirety to all present, and they

having been informed of their right to read it for themselves, they, together with the witnesses, signed it.”

Consequently the case does not fall within the provisions of paragraph 7 of article 535 of the Penal Code.

If there has been any fraud in the contract, whether fundamental or incidental, there are civil actions to meet the case, but a. criminal action for swindling, within the terms of the definition of that article of the Penal Code, can not be based upon facts which can not be imputed to the accused.

We therefore acquit Charles Barnes of the charge of *estafa*, with the costs *de oficio*. So ordered.

Torres, Cooper, Mapa, McDonough, and Johnson, JJ., concur.
