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Present: Bertram C.J. and Schneider J.

PETER *et al.* v. CAROLIS *et al.*

491—D. C. Galle, 18,808.

*Lease by administratrix—Conveyance to heir after lease—Lessee ousted by administratrix after she became functus officio—Action for damages and cancellation of lease against administratrix by lessee—Judgment for lessee—Seizure of leased property by lessee under writ for damages—Action by heir under section 247, Civil Procedure Code—Paulian action—Wrongful seizure.*

The second defendant as administratrix leased a property to the first defendant in 1916, and in 1919 conveyed the leased property to plaintiff, who was an heir, and other properties to other heirs, and the administratrix became *functa officio*. In 1920 the second defendant ousted the first defendant from the leased property. The first defendant sued the second defendant for damages and cancellation of the lease and obtained judgment, and proceeded to seize their property. The plaintiff brought this action under section 247 of the Civil Procedure Code. The first defendant pleaded that the transfer was in fraud of creditors.

*Held*, that second defendant was not sued as administratrix and could not have been so sued, as she was *functa officio*.

(2) That the seizure was illegal, and that the transfer was not in fraud of creditors.

“ Upon the judgment recovered in that action against a person guilty of a personal tort, it was illegal to seize property vested in other persons who are not parties to the action, simply on the ground that at some previous time the judgment-debtor had been the administratrix of the property which was vested in the person now claiming it. ”

*J. S. Jayawardene* (with him *Soertsz* and *Obeyesekere*), for appellant.

*E. W. Jayawardene*, for respondent.

August 1, 1922. BERTRAM C.J.—

This is an appeal from a judgment of the Galle District Court in an action under section 247 of the Civil Procedure Code. The judgment of the learned Judge proceeds upon two grounds. In the first place, it deals with an allegation of fraud. The defendant in the action sets up a claim to cancel a conveyance made by the mother of the plaintiffs in the action in her capacity as administratrix on the ground that the conveyance was made to defraud creditors. In point of fact he sets up a claim in reconvention of

the nature of the Paulian action. Apart from that the learned Judge appears to hold that execution has been rightly issued against the property in question as the property of the plaintiffs, on the ground that it was part of the estate of which the plaintiff's mother was the administratrix.

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With regard to the question of fraud, I will consider that subsequently. I will deal first with the suggestion that execution in the original action was rightly issued against the property now claimed. The facts are as follows: On December 16, 1918, the mother of the plaintiffs, as administratrix of her husband, leased this property to the first defendant. Subsequently, the estate was duly administered, and was closed on May 29, 1919. Distribution was ordered on June 25, 1919, and on July 10, 1919, the administratrix executed a conveyance of this particular property on her minor children, taking as her own share under the estate certain other property. This property was thus definitely vested in the minor children, and the administratrix was *functa officio*. She had no further duties to discharge in connection with the estate, and under the conveyance of July 10, 1919, this property passed to her children, the minor heirs, subject to the lease already granted to the first defendant in this action. What now happened was, after the estate was closed and after it was vested on the minor children, that is to say, on February 14, 1920, the widow invaded this property and ousted the first defendant. The price of coconuts had gone up; she felt that the land had been disadvantageously leased, and she apparently desired to resume possession of the property. That act on her part was a tort, and she was liable personally for the tort. It is difficult to see how she could have been liable as administratrix. The lessee thereupon proceeded against her. On March 7, 1920, he brought an action claiming damages for her trespass, and at the same time claiming that the lease be cancelled. She was sued in her personal capacity; nothing was said about her as administratrix of the estate. The first defendant recovered judgment, and then proceeded to seize this property, which, as I have already explained, many months previously had been conveyed to the plaintiffs. The question is, was he entitled to do so? It seems to me that he clearly was not. Mr. Jayawardene argued, and the learned Judge found that though the action was launched against the second defendant in her personal capacity, yet in substance and intention it was directed against her in her capacity as administratrix, and ought to be so regarded. I am unable to accept that. It was not brought against her as administratrix, and I do not think that, in fact, it could have been so brought, long after she had handed over the administration of the estate. She was responsible for the tort, and I fail to see how any other person could have been made responsible. Indeed, I do not think that in this action a claim for cancellation of the lease should have been joined.

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It seems to be perfectly clear that upon the judgment recovered in that action, against a person guilty of a personal tort, it was entirely illegal to seize property vested in other persons who are not parties to the action, simply on the ground that at some previous time the judgment-debtor had been the administratrix of the property which was now vested in the person now claiming. It seems to me, therefore, that from that point of view the judgment of the learned Judge is wrong.

With regard to the question of the Paulian action, here it is obvious that the claim by the first defendant was wholly misconceived. In the first place, the conveyance to the minor heirs took place many months before any question could have arisen about the claim of the lessee. In the next place, it is obvious that no fraud could have been intended, as the real substance of the conveyance was an exchange of property. In the third place, it was not this conveyance which divested the first defendant of any property which could be used for the satisfaction of the judgment. If there is any transfer which has made her incapable of satisfying the judgment, it is the transfer to the Registrar of Magalla, and it is against this person, if anybody, that the claim in the Paulian action should be made.

On all grounds it seems to me the appellants are entitled to succeed. I would therefore allow this appeal, with costs.

SCHNEIDER J.—I agree.

*Appeal allowed.*

