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[G. R. No. 1167. December 16, 1903]

IN THE MATTER OF THE SUSPENSION FROM THE PRACTICE OF THE LAW OF R. S. MACDOUGALL.

D E C I S I O N

COOPER, J.:

On December 24, 1902, the Court of First Instance of the Province of Isabela made and entered an order against Robert S. MacDougall, esq., by which he was suspended in the exercise of his profession as attorney at law in all the courts of the Philippine Islands, and it was directed that a certified copy of the order of suspension and a statement of the facts upon which the same was based should be transmitted to this court for investigation and for the making of such final order of suspension or removal as the facts should warrant.

The suspension was for the alleged willful disobedience by the defendant of the order of the Court of First Instance made in a certain action of ejectment therein pending, in which the Compania General de Tabacos de Filipinas was the plaintiff and Miguel Tupeno and eighty-five others were defendants.

By this order a preliminary injunction was granted in the case and the defendants were enjoined from committing certain acts on the property involved in the litigation. The particular clause of the order which it is claimed was violated was that in which the defendants in the suit were prohibited from destroying the fences on the haciendas of San Luis and La Concepcion.

On the 17th day of March, 1902, this court appointed a commissioner to take proofs in the case. Additional testimony was taken and the same has been returned to this court.

It is contended by the defendant (1) that to constitute a violation of an injunction, the act complained of must be such as is directed against the interest in the litigation for the protection of which the injunction was issued; and that none of the eighty-five defendants,

parties to the original suit, claim any interest in the land upon which the fence cut was situated and therefore that there was no violation of the injunction; (2) that the cutting of the fence was necessary in order to open a public road which had been in use for thirty years and which was the only means of ingress and egress to the lands of one Lacaste, with whom the defendant had business relations, the entry of the defendant being for the purpose of visiting the house of Lacaste; (3) that if the conduct of the defendant in cutting the fence was in fact a violation of the injunction, still, the evidence indicates that the defendant's purpose was not a contumacious violation of the order of the court.

The most important question in the case is, Was the fence at the place where the cutting occurred covered by the order of injunction; or, in other words, has there been, in fact, a violation of the injunction?

The order restrained the defendants from doing certain enumerated acts on the haciendas San Luis and La Concepcion "and from destroying fences of the same."

To determine the question it becomes necessary to consider the evidence with reference to the situation of the haciendas San Luis and La Concepcion, the situation of the land the subject of the litigation, and the situation of the fences for the cutting of which the suspension proceedings were had.

The testimony shows that the haciendas San Luis and La Concepcion, in their entirety, comprise a Jarge body of land lying oh the Cagayan River, containing about 4,000 hectares; that within the bounds of these haciendas were located the lands involved in the litigation in the principal suit, embracing about 446 hectares; that there were also other lands situated within these haciendas, claimed by different persons, whose ownership was not disputed by the company, among which was a tract of land belonging to the wife of Lacaste and around which was constructed the fence cut by the defendant; that besides this there were other tracts of land held by persons who claimed adversely to the company and who were not joined in the suit, one of whom was Teodoro Bulasan; that the tract of Lacaste so inclosed, and upon which the fence cut was situated, was of the shape of a trapezium and contained about 4 hectares of land, one side of which lay along the River Cagayan; that the said fence was constructed by the company around the land of Lacaste with the evident view of segregating the land of Lacaste from the land of the company, and was so constructed as to completely cut off from all ingress and egress the land of Lacaste, except such as was afforded by the Cagayan River on the north of his tract; that there formerly was a road running through this Lacaste tract, dividing it into two nearly equal portions;

that this road had been the traveled route from the town of Ilagan, passing through Naguilian and crossing the Estero Cauayan, leading thence to Cauayan; that road passed through Lacaste's land from east to west.

The defendant, MacDougall, accompanied by others, was, at the time of the cutting of the fence, traveling along this road, proceeding from the house of Lacaste toward Cauayan, and, on encountering the wire fence across the road, caused the strands of wire to be cut and removed so far as they obstructed the passage. The fence so cut was situated at the point at which this road entered the west line of the Lacaste tract, the Lacaste tract lying within the inclosure, and the tract on the west, or outside of the fence, either belonged to Lacaste, Teodoro Bulasan, or the plaintiff company.

The testimony of the witness Lineau, as well as that of Lacaste, was to the effect that the land at the point where the fence was cut was owned on both sides of the fence by Lacaste; while the testimony of Bulasan Avas that lie owned the land on the .west side of the fence. The company also claims to own the land on the west side. The preponderance of evidence, we think, supports the view that the land on both sides of the fence cut belonged to Lacaste's wife. But it is immaterial whether the land on the exterior or west side of the fence was owned by Lacaste or by Bulasan or by the company, for it appears very clearly that it was not claimed by any one of the defendants in the original suit and that the fence cut was not on the tract of land in litigation.

The metes and bounds of the haciendas San Luis and La Concepcion were not shown in the order granting the injunction, nor is it shown in any document contained in the record of the case. The order was "against the cutting of the fences of the same." It appears from the evidence that there was no exterior fence completely inclosing these haciendas; that there were separate and distinct portions of fences on what is claimed to be their exterior lines; that besides, there were separate and distinct fences inclosing some of the lands held adversely by the defendants.

The question is, Are we to construe the order of injunction as prohibiting the cutting of any fence situated on the entire tract of 4,000 hectares, or did it refer to the fences on the tracts of land in litigation held by the defendants, containing only about 446 hectares?

The grounds upon which the application for the writ of injunction were based do not appear in the record; nor does it appear from the record or from the proofs in the case where the particular lands owned by the defendants were situated. This is left entirely to conjecture.

We infer from the order that the injunction was granted to prevent waste on the land involved in the litigation and that the application and order was based upon clause 3 of section 164, Code of Civil Procedure, which provides that a preliminary injunction may be granted when it is established to the satisfaction of the judge granting it "that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual."

The subject-matter of the action was the particular tracts of land claimed adversely by the defendants in the original suit, amounting to about 446 hectares. The land at the point at which the fence was cut was not the subject of the action, and nothing done at this point could in any way tend to render any judgment which might be rendered in favor of the plaintiff ineffectual. As before stated, neither Lacaste nor Bulasan were parties to the suit The plaintiff did not claim the land within the inclosure, nor was the land on the exterior of the fence at the point where it was cut claimed or held by any one of the defendants who were made parties to the original suit.

Our construction of the order granting the injunction is that the fences which the defendants were enjoined from destroying must be construed as being such fences as were situated on the land the subject of the action; otherwise the court in granting the injunction would have done that which it had no authority to do under the statute.

This construction harmonizes with the spirit and purpose of the order, which was to protect the rights of the plaintiff in the subject of the action.

It is not necessary to determine if order had specifically identified the fence at the point at which it was cut and had clearly embraced it,if the court acted in excess of its jurisdiction and the defendants could disregard the order, The proper prince in such cases would be to apply to the court for a modification of the injunction.

Upon the question as to whether the conduct of the defendant in cutting the. fence was such a willful disobedience of the order of the court as to justify his suspension or disbarment, had the injunction embraced the fence which jtfas cut, we are clearly of the opinion that it was not.

Robert Lineau, a witness for defendant, testifies that on the 23d day of November, 1902, in company with the defendant, MacDougall, he went from Ilagan on horseback, passing through Naguilian and following the public road which led from thence in the direction of

Oauayan. On arriving at the barrio at the north of the Estero de Cauayan, a short distance from its mouth, near the residence of Lacaste, they took a *banquilla* in order to enter the premises of Lacaste, leaving their' horses on the outside of the inclosure in the hands of some natives, who carried them from thence to the house of Lacaste by swimming them outside of the wire fence, which entered several meters into the river. The defendant and the witness arrived at the house of Laeaste about 1 o'clock in the afternoon, and on the same evening, about 4 o'clock, the defendant, having finished his business with Laeaste, mounted his horse, and, accompanied by the witness and other persons whom defendant had met at Lacaste's house on business, went down the road, their destination being Cauayan. When they reached the point on the road which was obstructed by the fence, finding their passage obstructed, the defendant, MncDougall, directed the wires to be cut. The fence was cut and the obstruction removed from the road. That there was no disturbance at this time and on this occasion is evident from the fact that none of the employees of the company were present at the time of the cutting of the fence. On the next day MacDougall and his party returned to where the fence was cut and found the employees of the company repairing the fence. The proof shows that a number of the party were armed with bolos, and the witness Ifcilfoas states that "their attitude at first was not very assuring but they committed no act of outrage against me or against my company." This seems ty have been the circumstance upon which the court based its order of disbarment and which, in the language of the decision of the judge, "almost constitutes the crime of sedition," but it is perfectly apparent that on this occasion the defendant's acts had no connection whatever with the cutting of the fence. After the exchange of some intemperate language the defendant and his party left, without in any manner interfering with the employees of the company engaged in the repairing of the fence.

As to whether the road at the point where the fence had been cut the day before was a public road, it is not necessary to determine. The testimony of Laeaste and other witnesses show that it had been traveled as a public road for thirty years and had only recently been closed by the company.

There is much evidence also contained in the record of acts of oppression upon the part of the plaintiff company, such as keeping an armed body of police, to the number of ten persons; as to unlawful arrests made by the employees of the company of the people living in the community; that on a certain occasion, a short time before, the sheriff, being instigated by the employees of the company, acting under a writ of restitution which did not embrace the property on which the house was situated, had torn down the residence of the wife of Lacaste, while she was in the house, on which occasion Lacaste and wife were

despoiled of a large amount of money and valuables by unknown persons; and such acts as the fencing in of the land of Lacaste without his consent so that no ingress or egress was left to him except through the Cagayan River. Evidence was also introduced concerning the illegal detention of the wife of Lacaste and the quartering by the sheriff of himself and those accompanying him id the house of one Respecio, against his consent, which acts appear to have been the principal cause of the disturbance occurring at this time.

If the defendant, MacDougall, or any of those persons attending him, or if the employees of the company were guilty of such conduct as would subject them to punishment under the criminal laws, the courts of the country should have been resorted to and criminal prosecutions instituted, instead of the attempt on the part of MacDougall to right the supposed grievances of the people of that community, or on the part of the company to protect itself against aggressions on the part of the defendant. AlacDougall, by disbarment proceedings. The evidence of such acts should not have encumbered the record in this case.

The language of the clause for which the suspension or disbarment was ordered is "for the willful disobedience of any lawful order oi the Supreme Court or the Court of First Instance." From this language it is to be inferred that something more was contemplated than a mere disobedience, which means, in common acceptation, neglect or refusal to obey. The Avord "willful" has been superadded and conveys the idea of flagrant misconduct such as would indicate a disposition of the defendant so refractory in its nature as to affect his qualification for the further exercise of his office as attorney.

The disbarment of an attorney is not intended as a punishment, but is rather intended to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable, and reliable; men in whom courts and clients may repose confidence. This purpose should be borne in mind in the exercise of disbarment, and the power should be exercised with that caution which the serious consequences of the action involves.

The profession bf an attorney is acquired after long and laborious study. It is a lifetime profession. By years of patience, zeal, and ability, the attorney may have acquired a fixed means of support for himself and family, of great pecuniary value, and the deprivation of which would result in irreparable injury.

For dereliction of duty on the part of an attorney, articles 356 and 357 of the Penal Code provide a punishment. By article 350 the attorney or solicitor who, in malicious abuse of his profession, or who, through inexcusable negligence or ignorance, shall prejudice his clients or disclose their secrets, of which he had gained knowledge in the course of his professional duties, is punished with a fine of from G25 to C,250 pesetas, with disqualification for a certain period of time. An attorney may also be punished under the provisions of section 232 of the Code of Civil Procedure, as for contempt, for "disobedience or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a, court or judge." And under section 236, one who is guilty of such contempt may be fined not exceeding 1,000 pesos or imprisonment not more than six months, or both. If the contempt consists in the violation of an injunction, he may, in addition, be compelled to make restitution to the party injured by such violation.

The punishment provided in the Penal Code and in the articles above referred to for contempt would seem to be sufficient to prevent a mere obstruction in the administration of justice, except where the facts are of such a character as to affect the qualification of an attorney for the practice of his profession.

The suspension of an attorney from practice, while it is correctional in its nature, should be directed with a due regard to the effect of such suspension upon the attorney as well as the client. As happened in this case, there was the interest of a large number of clients and important rights involved. The attorney was suspended before final judgment and before he had prepared the bill of exceptions for the revision of the case by this court on appeal, in the preparation of which his services could not well be supplied; besides, it has resulted in the interruption of his business as an attorney for nearly one year.

It is further to be observed that the Court of First Instance did not proceed in the case of the suspension or disbarment of the defendant with that regard to the rights of the defendant which should characterize the action of a court of justice. Section 25 of the Code of Civil Procedure provides that "No lawyer shall be removed from the roll or be suspended from the performance of his profession until he has had full opportunity to answer the charges against him and to produce witnesses in his own behalf and to be heard by himself and counsel, if he so desires, upon reasonable notice."

What is a reasonable notice is not stated in this section of the law, but in civil cases, ordinarily of no greater importance to the interest of a person than a disbarment proceeding to that of an attorney, and often not of a more complicated nature or presenting

questions of fact and law more intricate, after the complaint is filed, a summons must be issued requiring the defendant to appear within twenty days, if the summons is served in the province in which the action is brought; within forty days if served elsewhere. The rules of this court require that a defendant, after his appearance has been entered, shall serve and file his answer or demurrer to the complaint within ten days after he has entered his appearance. Besides, a party in an ordinary civil action, where he has exercised due diligence to produce his witnesses and at the day fixed for trial is unable to procure their attendance, is entitled to a postponement of the hearing until such time as he may be able to secure their attendance or take their depositions in a proper case.

In this case it appears from the affidavit of the defendant, MacDougall, that on the 28th day of November, 1902, ho was cited to appear by the Court of First Instance and show cause why he should not be disbarred or suspended from tho practice of his profession' as an attorney, on the complaint of the plaintiff in the original suit, the Compania General de Tabacos de Filipinas; that on the said 28th day of November, 1902, he was served with the order if tbe court to appear at 3:30 o'clock p.m. of said day and make his defense to the charges preferred by said company; that ho appeared at the said hour and, after making formal denial of the charges alleged against him, asked for reasonable time within which to present his defense by means of witnesses to be produced by him; that the judge denied the defendant the privilege of so doing, then and there ruling that he must present his defense within the space of twenty-four hours; that he objected to this ruling as being unreasonable and contrary to the statute; and asked to be given further time to have the attendance of material witnesses, one of whom had left the town of Ilagan for the military post of Salomague, Province of Ilocos Sur, three days prior and that it would be an impossibility to have this witness return within less than a week, nor could he obtain his deposition within a less time ythat other witnesses in his behalf lived at the ranchos of Minanga and Mabantad, district of Cauayan, and that it would not be possible to have them appear and testify in the limited time of tyenty-four hours; that the judge peremptorily ruled that he would be given twenty-four hours and no longer Avithin which to present his defense to the charges preferred against him; that by such ruling he was denied An opportunity to answer the charges and to produce his witnesses; that on the 1st day of December the case was reonmed to take the testimony of the sheriff, a witness for the plaintiff; that after the direct examination of the sheriff by the judge this witness was turned over to the defendant for cross-examination; that all material questions asked by him were objected to and disallowed by the court to which ruling he exeepted; that the exceptions were not noted in the record; that notwithstanding the summary manner in

which the defendant was forced to trial, the order of the judge suspending him from the practice of his profession was not made for twenty-six days and was rendered immediately after having decided the main case in favor of the plaintiff, in which case he was the only counsel for the defendants.

The action of the court in thus summarily placing the defendant upon trial without a due opportunity of making his defense and procuring the attendance of his witnesses not only resulted in depriving him of the right to which every citizen is entitled, but it has necessitated the taking of the testimony of the defendant's witnesses in this court, and has occasioned great delay in the disposition of the case, all of which could have been avoided by giving the defendant proper time for the preparation of his defense.

The judgment of the Court of First Instance suspending the defendant should be set aside and annulled, and it is so ordered. The costs of the prosecution are adjudged de oficio.

Arellano, C. J., Torres, Mapa, and *McDonough, JJ.,* concur.

Willard, J. : I concur in the result.

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