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[G.R. No. 1107. April 02, 1904]

IN THE MATTER OF THE PROCEEDINGS FOR THE DISBARMENT OF AUGUSTUS A. MONTAGNE AND FRANK E. DOMINGUEZ.

D E C I S I O N

MCDONOUGH, J.:

On or about the 15th day of November, 1902, the Attorney-General of the Philippine Islands presented to the Supreme Court of said Islands a petition, and on or about January 15, 1903, a supplemental petition, alleging that Augustus A. Montagne and Frank E. Dominguez were practicing attorneys at law in the courts of said Islands, and were members of the firm of lawyers known as Montagne & Dominguez; and in said petition and supplemental petition the said Attorney-General charged said lawyers and said firm with having violated their oaths of office as attorneys at law and with failure to faithfully perform the duties of their office as such attorneys toward their clients.

Upon notice to the parties, and on motion of the Attorney-General, this court appointed a commissioner to take the proofs of the parties.

In due time the commissioner made his report and filed in this court all the evidence taken in the proceeding, and thereafter the matter was ably and fully argued by the Attorney-General and the attorneys for the respondents.

This evidence is so voluminous that nothing more can be incorporated in the space given us to this opinion than a brief reference to it, and even that reference is to be confined to the facts of four of the most serious of the charges against the respondents, viz, the ” Balmori” charge, the hacienda ” Esperanza” charge, the ” Cordona” charge, and

the ” Sarmiento ” charge. These charges, and a brief statement of the evidence to sustain them, are as follows:

First. That the respondents accepted employment in February, 1902, to represent one Felix Balmori in a criminal case, on appeal to the Supreme Court, receiving a retainer in said case; and that after entering upon such employment and accepting a fee pursuant thereto, they abandoned and deserted their said client’s case, to his great prejudice.

In this case the respondents agreed, for the sum of $200, Mexican currency, to take an appeal to the Supreme Court, and to-conduct such appeal. The appeal was taken on or about the 15th of February, 1902. The respondents received f 100, Mexican currency, of their fee, and although it was stated that the fee was to cover ” expenses of translation, printing of briefs, and costs of going to Pasig,” they failed and neglected to make and file a printed brief in the Supreme Court, as required by the rules of that court, although requested so to do by the Solicitor-General and although their time to do so had been extended by the Solicitor-General.

Finally a motion was made by the Solicitor-General to have the case abandoned for failure to file the brief, and on the return day the respondents appeared and made an oral argument, and offered to prepare and file a typewritten brief. The court, holding that a printed brief was necessary, declared the appeal abandoned and dismissed it. That the respondents had ample time and opportunity to prepare and present a printed brief in the case appears clearly by reference to the dates of the several steps taken in the case.

Balmori was convicted in the Court of First Instance of *estafa* February 5, 1902, before the respondents were retained in the case. In the latter part of February the respondents made a motion to let the defendant Balmori to bail, and on March 31 he was let to bail in a bond of 500 pesos.

Nothing further seems to have been done in the case until after the

time for filing and serving defendant's brief had expired. Subsequently the Solicitor-General, at the request of the respondents, verbally extended their time to serve their brief, but such service was not made prior to August 8, 1902. On that day the Solicitor-General made a motion to have the appeal of Balmori declared abandoned, for the reason that the printed brief was not filed, and on the 18th of August the Supreme Court granted the
motion. At the hearing the respondents contended that a typewritten brief was sufficient to satisfy the law, although the evidence shows that their retainer covered, among other things, the expense of " printing a brief."

Balmori testified that the respondents gave him no notice of the dismissal of his appeal, and that he learned that fact at the office of the clerk of the court, and then sought another lawyer.

On October 1, Mr. Lawrence appeared as attorney for Balmori, and made a motion to have the case reinstated, and on October 10 the Supreme Court granted his motion, and gave him thirty days to prepare and file his brief. This brief, consisting of a few pages, Avas filed in time, and subsequently the defendant was acquitted. Balmori, not satisfied with the action of the respondents, demanded a return of the retainer given them in his case, and on the 14th of October they gave back a part of it, 60 pesos, retaining the remainder for certain disbursements.

The excuse advanced by the respondents for their neglect and failure to prepare and file a printed brief in this case is that the fee to be paid to them was to be $200, Mexican currency, and that only half of this had been paid, and that they desired to collect the remaining f 100 before filing the brief. They did not seek to retire from the case, after becoming attorneys of record, by obtaining the consent of their client, nor by making application, to the court for an order authorizing them to retire.

Second. That they entered into a contract of employment with thousands of Filipinos in the Province of Pangasinan, in December,

1901, to represent said inhabitants in a suit or suits involving the title and possession to a large tract of land, and, after accepting retainers from their said clients, and rendering certain professional services in connection with such suits, they deserted and abandoned their clients' cases at a critical time, in violation of their contract, and to the great injury of such clients.

It appears from the evidence in this charge that the respondents had consultations with a large number of Filipinos in the month of December, 1902, in the Province of Pangasinan, relative to the title and possession of the land occupied by those persons, which lands were claimed by Francisco Gonzales as a part of his estate, known as the Hacienda Esperanza, containing about 50,000 acres of land. The respondents, on or about December 12, 1902, entered into an agreement with these people to protect them in the enjoyment of the possession of and in their rights to the parcels of land which each one of them possessed, as against the demands of Francisco Gonzales y Kenado. (See contract, p. 19, Attorney-General's brief.) Public meetings of these people were held, which were addressed by the respondents, or one of them, and large sums of money, about 6,000 pesos, were subscribed by these clients and paid to the respondents pursuant to said agreement.

These people were assured by their attorneys that they had a good cause of action, and that they would win their case. Legal proceedings had been instituted by Gonzales against these clients, or some of them, in a justice's court, and those proceedings were attended by respondents; and two suits were brought in the Court of First Instance involving rights to said land. W. J. Rohde acted for a time as counsel in these matters with the respondents, but before the trial he withdrew from the cases. E. H. Lamme, who became a member of respondent's law firm, also acted with them, and remained in the cases until after the trial.

On the 1st of February, 1902, an order was made and entered, setting these cases down for trial at a special term of the court to be held March 10, 1902, thus giving the respondents over five weeks in which to get ready for trial.

When the trial day arrived Augustus A. Montagne and Edward H. Lamme appeared in court and made a motion to have their case continued, for the reasons, first, that it was not at issue, and secondly, because one of their important parties to the suit, upon whom they relied for information about the facts, was sick and could not be present.

It appears that in one of these two suits pending, that in which Gonzales was defendant, he served a supplemental answer on March 3,1902, alleging and praying for damages in the sum of $50,000 suffered because of the issuance of an injunction against him and it further appears that on March 6,1902, Gonzales filed a supplemental complaint in the second action, in which he was plaintiff, in which he alleged and prayed for damages in the sum of $50,000 suffered by him because of the dissolution of the receivership. After hearing argument the court denied this application for a continuance, but offered to let the cases go over if the attorneys for both sides could agree upon a time for trial. Such agreement was not readied, whereupon the court offered to suspend the hearing for one week to give the respondents an opportunity to prepare for trial. This offer was declined, and the respondents took an exception to the ruling of the court.

The court consolidated the two cases, against the objection of the respondents, and proceeded with the trial. Thereupon the respondent, Montagne, and his associate, Lamme, left the court room, and withdrew from the trial of the case.

It does not appear that the respondents had subpoenaed witnesses for the trial or notified their clients, other than Chinchilla, who was unable to attend on account of illness. No survey of the property had been made by respondents or for them. At the trial they claimed it was necessary to make a survey, and that that would take three months. The trial was finished and the judgment, which was in favor of Gonzales, was signed on Saturday, March 15, 1902. The special term of the court was closed on or about March 24, 1902.

The respondents say that no notice of the judgment was given to them by the clerk -of the court, but admit that through unofficial sources

they learned soon after the fact, that a judgment had been rendered against their client, for Mr. Lamme, on March 21, wrote to an attorney at Lingayen for a copy of the judgment and other papers in the case.

The respondents strongly contend that the court erred at the trial (1) in not granting a continuance; (2) in forcing them to trial when issue was not joined, inasmuch as they claimed the right to make reply to the allegations of Gonzales contained in his supplemental complaint and answer, and (3) because of the consolidation of the two actions. But no appeal was taken to the Supreme Court from these rulings of the court below.

The excuse given by the respondents for not appealing is:

First. The term of the court was closed before they were notified of the judgment, and that it was then too late to appeal.

Second. That Judge Lamme had principal charge of this case; that he intended to appeal, and was making preparation, when, to his great surprise, he learned that they "had been deprived of the power to appeal by the hurried closing of the term of the court within which they could so appeal."

Third. Because on June 7 and 12 two letters were received from some of their clients revoking their authority to proceed further and asking for an accounting for the money paid to respondents.

The respondents did not take any further proceedings in this case after they left the court, March 10.

At the hearing of these disbarment proceedings Mr. Montagne testified that when he examined copies of the title deeds of Gonzales, after the trial, he became dubious about the rights of their clients. These deeds standing alone, made a good title. Gonzales had a very good paper title.

It appears that respondents made no efforts to see these deeds or to ascertain their contents before beginning their action. Mr. Lamme was

not a member of the bar of these Islands. He had taken two examinations for admission, but failed to pass on both occasions.

Immediately after the decision of the court refusing a continuance, Mr. Dominguez and Mr. Lamme went into the Rosales country and told their clients there, who were interested in a similar question, that respondents would go right on with the case, and that the fight had only begun. They then and there collected from clients more money, 43 pesos at Santo Tomas, on March 13, and 400 pesos in Alcala.

Third. That they were retained in October, 1901, to defend one Juan Cardona, who was then held as a prisoner on a criminal charge in the Province of Tarlac. The accused received from Cardona a retainer in his case and afterwards deserted him and failed to appear for him in court when his case was called for trial.

It appears in this charge that one Juan Cardona, who had been secretary of the Province of Tarlac, was in prison at that place under several charges, and retained the respondents to defend him. The amount of the net sum to be paid to respondents for their professional services is disputed, but it is conceded that they were paid, through Mr.Dommguez, the sum of 500 pesos.

On or about the 18th of November, 1901, Lieut. Grant T. Trent was detailed to take charge of the prosecution of Cardona and was ordered to proceed to Tarlac for that purpose, and this fact was made known to Mr. Dominguez on or about the last-mentioned date.

On the 30th of November, 1901, Cardona appeared before the Court of First Instance for arraignment, and being informed that he was entitled to counsel, and his counsel not appearing for him, he was given three days' time to procure counsel.

On the 5th of December, 1901, Cardona was again taken to court. He stated that his lawyers, Messrs. Montagne & Dominguez, had not yet arrived from Manila, and asked for further time. He was granted three days' further time.

On the 12th day of December, 1901, the accused again appeared in court, and was asked to plead to the charge of highway robbery, which he did, through other counsel, and was granted three days' further time to prepare for trial.

The respondents did not attend the court on any of these dates to take charge of the interests of their said client. They contend that, in a conversation had between one of them and Mr. Trent on the train, December 7, 1901, Mr. Trent consented to an adjournment of the case for a few
days, whereas Lieutenant Trent says this conversation took place prior to November 27, and that the understanding was that Montagne & Dominguez would attend to the case within three or- four days.

On the 2d of December Lieutenant Trent mailed amended complaints against Cardona to Montagne & Dominguez at Manila. Lieutenant Trent telegraphed Mr. Dominguez at Manila December 2 that Cardona would be arraigned on Thursday. He telegraphed to Rosales December 10, to Dominguez, not to fail to stop on his way to Manila. He also telegraphed him at Lingayen December 12 to know when he could be present to look after the Cardona matter, and got no replies to any of these telegrams. The delivery sheet of the telegraph company showed that the dispatch to Manila was delivered to Dominguez on December 2. Cardona swore that he telegraphed and wrote to the respondents about the setting of his case for hearing, and requested their presence, and that because of their failure to appear for him he had to employ other counsel. Cardona contends that the fee for defending him in all his cases was fixed at 1,000 pesos, of which he paid in advance 500 pesos, whereas respondents claim that the fee was to be 5,000 pesos. Respondents showed that they examined papers and proceedings had at the preliminary hearing of Cardona, and took steps to have him let out on *habeas corpus* before trial, but without
success.

Fourth. That they undertook, in November, 1901, the defense of one Ramon Sarmiento, who was charged with the crimes of *estafa*

and falsification, and who was imprisoned on those charges in Manila; that though they were paid 500 pesos for their services, they subsequently, on an order of the court, obtained possession of 300 pesos
which had been deposited in court as the money of said Sarmiento, and retained said sum of 300 pesos and appropriated it to their own use and benefit, against the instructions of their said client and to his injury.

The facts are that Sarmiento had deposited $300, Mexican, with his chief of the customs service, to cover a shortage, and this sum was subsequently deposited in court.

The complaint for *estafa* was filed against him November 9
and for falsification November 12. The respondents defended Sarmiento. He was convicted of one of the offenses February 20, 1902, The 500 pesos paid to them were paid as follows; November 11, 1901, 300 pesos, and November 18, 1901, 200, pesos. The respondents claim
that their fees were to be 1,000 pesos. This statement is denied.

Before the judgment in the case (February 20) the respondents, on
the request of the wife of the defendant, Sarmiento, and on the consent of herself and husband, obtained an order of the court for the payment of the 300 pesos deposited in the court. This money was paid to the respondents, and they retained it, although the wife said she did not want them to do so; that it was for her and for the support of her children.

At the trial of Sarmiento, when it was proposed to introduce this
money in evidence, respondents consented on condition that the court authorize " the wife of the defendant to finally receive said sum,
since they are very needy." The wife testified in this proceeding that respondents wanted to retain this money to pay for conducting an appeal in her husband's case, and that she told them she did not want them to appeal the case.

Sarmiento subsequently sued the respondents for this money, and

recovered judgment for the same in the Court of First Instance, After this judgment was entered the respondents agreed with the attorney for Sarmiento to pay the same, and did pay a part thereof, but when they, ascertained that their conduct in the case was being investigated by the Attorney-General, and that the plaintiff gave a statement to the Attorney-General, they annulled their agreement and demanded and received from the said attorney the sum so paid to him.

Fifth. That in seven other cases, called the " Cuyapo " case, the " Pearsons " case, the " Dorr " case, the " Gleason " case, the " Finnick " case, the " Quiao " case, and the " Mauline " case, the accused, as such attorneys, at various times mentioned in said petitions, after being employed and retained by clients, and after,receiving fees from their clients, abandoned their cases, and failed and neglected to render such faithful services for said clients as the law required.

The Attorney-General states in his brief that "any one of the first six charges, as they appear in this brief, is sufficient to warrant disbarment. This is not true of any of the remaining five. The latter are cited for the purpose of throwing light upon respondents' conduct in general, and to establish the proposition that they are guilty of a line of conduct in which good morals and professional ethics are totally ignored."

We are of opinion .that there should be added to these latter five charges those against the respondents in the " Pearson " case and in the " Mauline " case, thus making in all seven charges, no one of which is sufficient to warrant suspension or disbarment, and these seven charges are therefore dismissed.

The respondents have filed with us, by one of their attorneys, a very lengthy and ingenious argument, in which they contend that these proceedings should be dismissed, without regard to the merits; for the reasons—

> " First. The acts alleged in the information are made the object of articles 356 and 357 of the Penal Code, and original

> jurisdiction thereof is vested in the Courts of First Instance.
>
> ” Second. If it be determined that articles
> 356 and 357 of the Penal Code have been repealed by section 21 of the Code of Civil Procedure, then the proceedings should be dismissed, because the respondents are deprived of the right granted them by section 5 of the act of Congress No. 235, approved on the 1st day of July, 1902, to be prosecuted for a criminal offense by due process of law, and to the equal protection of the law—rights and privileges Which we expressly invoke.”

Articles 356 and 357 of the Penal Code provide, in effect, for the punishment by a fine of an attorney who maliciously abuses his profession, or by inexcusable ignorance or negligence prejudices his client; and provide for punishment by-fine and suspension, in case an attorney having been retained to defend the cause of one party, subsequently without his consent, defends the opposite side in the same action.

Section 21 of the Code of Civil Procedure provides that a member of the bar may be removed or suspended from his office as lawyer, by the Supreme Court, for any deceit, malpractice, or other gross misconduct in such office, or by reason of his conviction of a crime involving moral turpitude, or for violation of the oaths prescribed in section 18, or for the willful disobedience of any lawful order of the Supreme Court or Courts of First Instance, or for corruptly or willfully appearing as a lawyer for a party, to an action or proceeding without authority so to do.

It will be noticed that under article 356 of the Penal Code the penalty for a violation of that article is a fine only; and, under article 357, a fine and suspension may be imposed only for one cause, viz, when an attorney is retained by one party and subsequently, and without the consent of that party, defends the opposite side in the same action.

Section 21 of the Code of Civil Procedure is much broader than these

articles of the Penal Code, for the reason that causes for a fine only, in article 356, are causes for suspension or disbarment under the provisions of the Code of Civil Procedure. Moreover, a violation-of these articles of the Penal Code constitutes a crime for the trial of which the Courts of First Instance have jurisdiction, whereas, this court has exclusive jurisdiction in proceedings of this nature, and the object of the proceedings before us is not to convict the respondents of a crime, but simply to protect the court and the public from the misconduct of officers of the court. It follows that this court has jurisdiction to hear and determine this proceeding, regardless of the provisions of the Penal Code.

As to the second point made by the respondents, that, inasmuch as section 5 of the act of Congress of July 1, 1902, provides that no one shall be prosecuted for a criminal offense except by due process of law, and that everyone shall be entitled to the equal protection of-the law, their rights and privileges are taken from them by this proceeding ; the answer is, first, that this is not a criminal proceeding, and secondly, it is conducted according to law—it is due process of law.

In Ex parte Wall (107 U.S., 265), where it appeared that an attorney had joined a mob and took part in the lynching of a man, the respondent insisted, in disbarment proceedings, that his acts constituted a crime under the State laws, and that, until tried and convicted in the State court he could not be lawfully disbarred. The Supreme Court of the United States held that his acts were such as to justify disbarment; that the proceedings do not violate the constitutional provision that no person shall be deprived of life, liberty, or property without due process of law; that a disbarment proceeding is not a criminal one; that it is not intended for punishment, but, but to protect the court from the official ministration of persons unfit to practice as attorneys therein; and that the proceeding itself, when instituted in proper cases, is due process of law.

It was held in Rochester Bar Association *vs.* Dorthy (152 N.Y., 596), where the defendant was charged with seven acts of deceit and

malpractice and was disbarred, that where the charges involved professional misconduct disbarment proceedings could be maintained even though the same acts may constitute crimes.

We are constrained to condemn the acts of the respondents complained of in the four charges not herein dismissed. It is the duty of the court, when complaint is made, to see to it that its own sworn officers shall be held to strict account for their behavior toward the court, their clients, and the public.

In re Percy (36 N.Y., 651) the court went so far as to hold that inasmuch as the right to admission to practice law depended on good moral character, joined with requisite learning, this character should be preserved after admission; and that where the acts of an attorney were such as to destroy his credibility and character, the court had authority to disbar him.

Inasmuch as in the case at bar the charges and proofs do not show that the practices of the respondents constituted the gravest offends, we are inclined to take a lenient view of the charges. While we can not excuse the respondents, yet we are of opinion that total disbarment would be too severe a penalty for their acts.

The court, therefore, is of opinion that the respondents, Augustus A. Montagne and Frank E. Dominguez, should be suspended from the practice of their profession as lawyers in these Islands for a term of one year. So ordered.

Arellano, C. J., Torres, Cooper, Willard, and *Mapa, JJ.,* concur.

Johnson, J., did not sit in this case.

Date created: January 24, 2019