44 Phil. 489

[G.R. No. 19205. February 13, 1923]

EDUARDO REYES CRISTOBAL, PLAINTIFF AND APPELLEE, VS. JOSE M. OCSON, DEFENDANT AND APPELLANT.

D E C I S I O N

STREET, J.:

The plaintiff in this case, Don Eduardo Reyes Cristobal, sues to recover an attorney's fee, claimed to be due from the defendant, Jose M. Ocson, by virtue of a written contract alleged to have been executed by the parties on September 20, 1921. Upon hearing the cause, his Honor, the trial judge, awarded to the plaintiff the sum of P6,500, with lawful interest from November 14, 1921, and with costs. From this judgment the defendant appealed.

It appears that shortly prior to the date of the making of the contract upon which this action is founded, the defendant's father, Don Lucio Ocson, a resident of the City of Manila, died intestate, leaving the defendant as his only son and heir; and it became desirable for the defendant to take out letters of administration, in order that the estate might be settled according to law. Having need of a lawyer to render advice and conduct the necessary proceedings through the courts, the defendant approached the plaintiff, with a view to obtaining: the professional services of the latter; and a written contract of employment was drawn up between the two in due form.

By this contract the plaintiff agreed to take upon himself as attorney the duty of conducting the intestate proceedings in the estate of Don Lucio Ocson, deceased, to a finality, including the effecting of the final partition, and the rendering of any professional service in the Supreme Court that might become necessary in case of an appeal. In consideration of the services thus to be rendered, the defendant agreed to pay to the plaintiff a fee equal to ten per

cent (10%) of the amount which should be received by the defendant as heir in the intestacy aforesaid.

To this contract was appended a special stipulation, which we quote in the precise words used in the contract itself, namely, "With the understanding, nevertheless, that if by the desire and will of the first party [Ocson] the second party [Cristobal] should be relieved of his services as attorney before the division, the fee shall be as stipulated and agreed in the present contract and thenceforth shall be deemed due and payable."

The plaintiff says that this contract was duly signed on the date shown therein by both parties in the presence of two subscribing witnesses, and so the trial judge found, notwithstanding the denial of this fact by the defendant. Upon this point we assume, without attempting to go into details, that the contract was made as stated.

It appears, however, according to the plaintiff's version of the matter, that the defendant repudiated this agreement within two or three days after it was made and employed another attorney to conduct the proceedings in the intestacy to which reference has been made. Upon this the plaintiff instituted the present action to compel the defendant to pay to the plaintiff a sum equivalent to ten per cent (10%) of the amount which would pertain to the defendant as his share of his father's estate.

Upon the evidence before him the trial judge found that the share of the defendant in his father's estate was of the approximate value of P65,000; and upon this basis he estimated the plaintiff's fee at P6,500, as already stated, assuming, of course, that the stipulation referred to above was valid.

As the case presents itself in this court, a question of law arises which we consider fatal to the plaintiff's effort to recover the stipulated fee.

In section 29 of the Code of Civil Procedure it is declared that a lawyer shall be entitled to have and recover from his client *no more* than a reasonable compensation for the *services rendered*. (Italics ours.) The purpose of this provision, we may perhaps assume, is primarily to indicate that the compensation of attorneys shall not rest upon a purely honorary basis; but said provision also undeniably prohibits the courts from allowing more as an

attorney's fee in any case than reasonable compensation for the services rendered. This proposition is, however, modified by the closing sentence in the same section, to the effect that when the contract between the lawyer and client is reduced to writing, this shall control as to the amount of the fee to be allowed, if found by the court not to be unconscionable or unreasonable.

Section 32 of the same Code declares that a client may at any time dismiss his lawyer or substitute another in his place. This means that the client can dismiss his lawyer at any time with or without cause; and every lawyer who assumes to render service in a professional capacity in any particular case does so in full knowledge of the fact that his services may be dispensed with at any time. It follows that the dismissal of an attorney by a client cannot be treated as the basis of legal liability, so far as concerns the mere act of dismissal. In such a case any idea of breach of contract on the part of the client is wholly out of the question. Any loss occasioned by such act is *damnum absque injuria*.

In the case before us the stipulation upon which the action is based was reduced to writing; but this circumstance does not abridge the right of the client to dismiss his attorney, nor does it authorize the court to allow an attorney's fee in excess of reasonable compensation for the services rendered. The closing sentence of section 29, with reference to written contracts, must be construed *in pari materia* with the related provisions.

Now, upon examination of the stipulation which is the subject of action here, it will be noted that it. attempts to save to the attorney the full fee contracted to be paid for the entire service, however trivial may be the value of the services rendered before the dismissal of the attorney; and if given the effect intended by the draftsman when said stipulation was inserted in the contract, it will secure to the plaintiff precisely the same benefit that would have accrued to him from a plain breach of the contract, if that conception of liability were here admissible. Obviously said stipulation imposes a condition upon the exercise of a right which the law unconditionally gives to the client.

It has been suggested that the purpose of the provision in section 32, to the effect that the client may at any time dismiss his attorney or substitute

another in his place, was intended merely to recognize the power of the client to terminate the authority of his attorney, leaving the effects of the violation of the contract, in case the dismissal is unjustified, to be determined by the same considerations that prevail in other cases of breach of contract. With this we are unable to agree. The provision in our opinion not only recognizes the power to dismiss, but gives the client the clear right to do so without thereby .incurring any legal liability whatever.

Under the doctrine prevailing in the United States, attorney's fees have never been considered to be upon a purely honorary basis; and it is there universally held that even in the absence of special contract, they are entitled, like any body else, to reasonable compensation for the services rendered. Nevertheless, it is also recognized that the relation between attorney and client is one of trust and confidence and this impresses certain features upon contracts between the two which are peculiar. This idea is evidently at the basis of the provisions in our Code of Civil Procedure to which we have referred.

Upon the case before us, it is our opinion that, under the conditions stated, the stipulation upon which the plaintiff relies is unavailing; and he is remitted to his right to recover strictly upon a *quantum meruit* to the extent of the value of the services rendered, as in Montinola *vs*. Hofileña (13 Phil., 339).

A decision from the Court of Appeals of the State of New York rendered in the case of Martin *vs*. Camp (219 N. Y., 170; L. R. A. [1917F], 402), fully sustains the conclusion reached by us in this case. In that State there does not appear to be in force any express statutory provision giving the client the right to dismiss his attorney; but the highest court of that State has for a hundred years maintained the proposition that the client has such right, and in this connection, in the case referred to, the Court of Appeals said:

> "That the client may at any time for any reason or without any reason discharge his attorney is a firmly established rule which springs from the personal and confidential nature of the relation which such a contract of employment calls into existence. If the client has the right to terminate the

> relationship of attorney and client at anytime without cause, it follows as a corollary that the client cannot be compelled to pay damages for exercising a right which is an implied condition of the contract. If in such a case the client can be compelled to pay damages to his attorney for the breach of the contract, the contract under which a client employs an attorney would not differ from the ordinary contract of employment. In such a case the attorney may recover the reasonable value of the services which he has rendered but he cannot
> recover for damages for the breach of contract. The discharge of the attorney by his client does not constitute a breach of the contract, because it is a term of such contract, implied from the peculiar relationship which the contract calls into existence, that the client may terminate the contract at any time with or without cause."

Again says the court: "* * * The rule secures to the attorney the right to recover the reasonable value of the services which he has rendered, and is well calculated to promote public confidence in the members of an honorable profession whose relation to their clients is personal and confidential. What has been said declaratory of the rule that the attorney is limited to a recovery upon a *quantum meruit* does not relate to a case where the attorney in entering into such a contract has changed his position or incurred expense, or to a case where an attorney is employed under a general retainer for a fixed period to perform legal services in relation to matters that may arise during the period of the contract. The plaintiff's right of action is limited to a recovery for the reasonable value of services rendered."

We are aware that a number of cases can be cited from American courts where actions for breach of contract have been successfully maintained by attorneys against clients for unjustifiable discharge from service (6 C. J., 724, note 14), but upon examining these cases no reference will be found to any statute or rule of law like that contained in section 32 of our Code of Civil Procedure, recognizing the right of the client to dismiss the attorney; and we believe the rule applicable in this jurisdiction must be substantially the same as that which prevails in the State of New York. Of course where legal services are completely rendered by an attorney as per written contract, the provision contained in section 29 of our Code of Civil Procedure to the effect that the

contract shall govern as to the amount of the recovery will have full effect.

Upon examining the record in the case before us, we find that the plaintiff, in reliance upon the contract in question, prepared a petition for letters of administration to be issued in favor of the defendant; and in connection with the preparation of this petition, it was necessary for him to make certain inquiries and secure accurate legal data relative to the death of the decedent. He is undoubtedly entitled to be compensated for this service; and upon taking into consideration the importance of the subject matter and other relevant considerations appropriate to the matter, the majority of the Justices who participate in this decision are of the opinion that the plaintiff should be allowed a fee of P200.

The judgment will accordingly be thus modified, and recovery will be entered in favor of the plaintiff for the amount of P200, with interest from November 14, 1921. So ordered, without special pronouncement as to costs.

Araullo,
C.J., Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,*
concur.
Johns, J., concurs in the result only.

DISSENTING

MALCOLM, J.:

I am unable to agree with the majority opinion in which the rule is announced that where a written contract for services is entered into by an attorney-at-law and a client, and where the attorney is discharged without cause before the work which he was employed to do is performed, there is no breach of contract. I take the stand, which I believe is fortified by the explicit provisions of our Code of Civil Procedure, and by the majority doctrine of other jurisdictions, that while a client may terminate the authority of the attorney to represent him, yet if there be a contract, he has breached such contract in doing so, and must

respond for the breach. So this dissent.

I agree with the majority decision when it finds as a fact that a contract was duly entered into by Eduardo Reyes Cristobal, attorney-at-law, and Jose M. Ocson, whereby the latter agreed to pay the attorney a fee equal to 10 per cent of the amount which should be received by the client as heir in intestate proceedings, an amount which the trial judge fixed at P6,500. I agree, further, that if there be no written contract of services, which, however, exists in this case, a lawyer is only entitled to have and recover from his client a reasonable compensation for the services rendered, all as provided in the first portion of section 29 of the Code of Civil Procedure. I agree, finally, that a client may, at any time, dismiss his lawyer with or without cause, as authorized by section 32 of the Code of Civil Procedure, and as sanctioned by the jurisprudence. But having conceded all this, I invite particular attention to the last sentence of section 29 of the Code of Civil Procedure, reading: "A written contract for, services shall control the amount of recovery if found by the court not to be unconscionable or unreasonable."

The question which the courts do not uniformly answer is whether there is a breach of contract where the attorney has been discharged without cause before the work which he was employed to do is performed. Turning to the authorities, we find the author of the article Attorneys-at-Law in 2 Ruling Case Law, p. 1048, stating the rule in the sense in which it appears in this dissenting opinion. It is there said:

> "While, as has been already seen, a client unquestionably has the right to terminate the relationship between himself and his attorney, yet where an attorney is discharged by the client, or is otherwise wrongfully prevented from performing the professional duties for which he was employed, without fault on the part of the attorney, the latter is entitled to compensation. * * * Where the contract is broken by the client without the fault of the attorney, the latter may recover on a *quantum meruit* for the reasonable value of his services, *or he may sue on the contract and recover damages for its breach*. The client, by wrongfully preventing the performance of the acts which entitled the attorney to the specific compensation, becomes liable in damages in such amount with interest from the time it became due. In some

> instances in cases of special contracts for legal services, which are wrongfully prevented by the client, and where the attorney holds himself continually ready to serve, the right of the latter to claim the whole compensation is subject to such abatement as would, in the natural course of things, have been incurred if the services had been continued. The value of the legal services proper will not be apportioned; but while, upon the one hand, the attorney will not be put upon the *quantum meruit*, he ought not to recover more than he would have made if he had gone on with the case."

The article on Attorney and Client, found in 6 Corpus Juris, pages 724, 725, is even stronger in its statements. Following decisions in many States, it is said:

> "Where an attorney has been discharged by his client without cause, the attorney may rescind the contract of employment and may recover on a *quantum meruit* for services rendered up to the date of his discharge; *or he may treat the contract as continuing, although broken by the client, and may recover damages for the breach*.
>
> "*According to the weight of authority, the measure of damages for such breach of contract is the full contract price*, especially when the attorney's work is substantially done, unless some other sum has been agreed upon. According to some decisions the measure of recovery is the contract price abated by such sum as is reasonably represented by the unperformed part of the service."

Section 29 of the Philippine Code of Civil Procedure finds its source in the laws of the State of Georgia. Following the practice of the court, we should, therefore, be guided by the decisions of Georgia. In the case of Watson *vs*. Columbia Mining Company ([1903], 118 Ga., 603), the Supreme Court of Georgia, speaking through its Chief Justice, said:

> "*Contracts between attorney and client stand upon much the same footing, in respect to binding effect, as do other contracts*. If the attorney violates a contract with a client and the latter is damaged, such client has the

same right to sue the attorney as he would have to sue any other person who had violated a contract made with him. If the client commits a breach of his contract with the attorney, he is liable in an action for damages therefor. The defendant in the present case undoubtedly committed a breach of its contract with its attorney. The evidence shows the contract and the breach. It shows beyond all question that Watson was retained by the defendant as its attorney at law in McDuffie county, and that he and the defendant had entered into a valid agreement under which he was to advise its manager and represent it in all its cases in that county. A suit was brought against it, and Watson tendered his services in compliance with his contract. He was ready, willing, and able to perform his part of the contract. The company declined to allow him to represent it in the case, upon the ground that it had made a contract with an insurance company, under which the latter had agreed to defend this suit. Of this contract or policy of insurance Watson knew nothing, and had no notice until after the Wellmaker case had been brought and his services had been tendered therein.

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"The company committed a breach of its contract when it refused to employ the plaintiff to represent it in the Wellmaker case, a case within the contract and one which was litigated in the name of the defendant.

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"It was argued that Watson's suit was prematurely brought; that he should have awaited the termination of the Wellmaker case. We think otherwise. When two
parties make a contract and one of them violates it, the other may sue immediately for such special damage as he has suffered. Just as the amount of a fee may be fixed upon by contract before the trial of the case in which the services are to be rendered, so a jury may fix the amount of a reasonable fee in a case still pending. The rule in ordinary contracts for services, as to lessening the damages by seeking other work, does not apply to a contract employing an attorney at law. All of his time is not contracted for, nor is he free to take the other side in a case of the client's. In such a case as this,

> we think the attorney may sue at once for the breach of the contract with him, without awaiting the termination of the case in which he should have been employed by the defendant."

The majority decision relies on the case of Martin *vs*. Camp ([1916], 219 N. Y., 170; L. R. A. [1917F], 402). The court there took the position that there is no breach of contract where the attorney is discharged without cause by the client. But, as pointed out by the editor of the Lawyers' Reports Annotated, the majority of the courts do not agree with the conclusion of Martin *vs*. Camp.

It must be recognized that the relation existing between attorney and client is a highly fiduciary one. But until the relationship is formed, attorney and client stand on equal terms, and can enter into written contracts just as other persons can enter into such contracts, provided the contract be not unconscionable or unreasonable. If the client has employed the attorney for a definite time or for a definite task, he has negatived his right to discharge the attorney by his contract. If the client terminates the authority of the, attorney to represent him, he has breached his contract, and must respond for the breach.

The doctrine announced in the majority opinion makes contracts formulated by attorneys and clients no more than pieces of paper.

Believing that this dissent is in accordance with the provisions of Philippine law, the weight of authority, and elemental justice, I vote for the affirmance of the judgment.

UPON MOTION TO RECONSIDER

April 16, 1923.

J. E. Blanco & R. Nepomuceno and *Antonio Gonzalez* for

appellant.

Thos. L. Hartigan, Thomas Cary Welch, Crossfield & O'Brien, Fisher, DeWitt, Perkins & Brady; Ross, Lawrence & Selph; Paredes & Buencamino, jr., Gabriel La O, Victoriano Yamzon, M. T. Boncan, M. G. Goyena, Fernando Gorospe, Javier Gonzalez, J. Perez Cardenas, Juan T. Santos, Epimaco Molina, and *Camus & Delgado* for appellee.

STREET, J.:

Upon the promulgation of the decision in this cause a motion to reconsider was promptly interposed by the plaintiff-appellee, assisted by various lawyers of the Manila Bar, who have intervened by leave of the court and have submitted in writing their respective memoranda in support of said motion. By this means the legal point decided by the court has been subjected to unusually careful scrutiny, and the case law of the United States has been thoroughly examined for precedents. It is needless to say that all of the authorities thus cited have been reexamined by us, and their bearing on the point in controversy considered, although the same ground had already been thoroughly investigated by this court, before the original decision was made or the case voted. The interest aroused in the case, rather than any difficulty in the point involved, must therefore serve as the main justification for this supplemental opinion; though, apart from this consideration, one or two facts have been brought out by the briefs on this motion, which, it seems to us, should be here stated.

The first point to be noted is that no case has been cited in which any court other than this has ever been called upon in an action of this character to consider the effect of a statutory provision such as is contained in section 32 of our Code of Civil Procedure, to the effect that "a client may at any time dismiss his lawyer or substitute another in his place." However, the courts of the State of New York, without the assistance of any express statutory provision, have maintained the same rule in that jurisdiction practically since the foundation of the Government.

Reference has been made to the fact that section 29 of our Code of Civil Procedure, declaring, among other things, that "A written contract for services shall control the amount of recovery if found by the court not to be

unconscionable or unreasonable," is taken verbally from the Statutes of the State of Georgia; and it seems to be supposed that this circumstance would justify this court in holding that the present plaintiff can recover the entire stipulated fee upon the same principles that would govern in other cases of breach of contract, as has been held in the State of Georgia. But this argument ignores the provision contained in section 32 of our Code of Civil Procedure, giving the client the right to dismiss his attorney at any time, which provision, so far as we are aware, has no antecedent in any statute of the State of Georgia. It was apparently adopted by the author of our Code from the jurisprudence of New York, though there is also something to the same effect in General Orders, No. 29, promulgated by the Military Commander in these Islands in 1899.

So vital is this provision of section 32 of the Code of Civil Procedure to the determination of the present case, and so clearly is the decision of this court planted thereon, that the plaintiff-appellee and the attorneys appearing for him have naturally sought to devitalize it or parry its effects; and we note that to this end the following propositions are advanced in one or another of the various memoranda submitted in support of the motion: First, that said provision should not be given effect because it impairs the obligation of contract, contrary to the third section of the Jones Law; secondly, that said provision should not be given effect because it is inconsistent with established principles underlying the law of obligations in these Islands and, in particular, as contrary to article 1255 of the Civil Code; thirdly, that even supposing that said provision be admitted to be valid, it can have no force when the contract for legal service is in writing, as already assumed in the dissenting opinion; fourthly, again supposing said provision to be valid, it should be interpreted as a bare recognition of the power of the client to effect a *de facto* rupture of the relation with his attorney, leaving the client subject, however, to an action for damages for the breach of contract; and fifthly, again supposing said provision to be valid, it can have no effect when the parties make an express agreement qualifying or abridging the right of the client to dismiss the attorney.

Some of these suggestions were in the mind of the court when the case was decided, and were passed upon inferentially, if not expressly, in the opinion already promulgated. Others are clearly beyond the range of serious discussion

and require no refutation at our hands.

But it is suggested that the Supreme Court of the State of New York, in the late decision of Greenberg *vs*. Remick & Co, (230 N. Y., 70), has impaired the doctrine of Martin *vs*. Camp (219 N. Y., 170) ; and it is supposed that the reasoning on which the decision in this case is based has been thereby impaired. On the contrary, in this later decision, the Supreme Court of New York has not only adhered to the doctrine of the earlier case but has gone further and made an express judicial pronouncement upon a point which in the earlier case had been formulated as mere *dictum*. That point is this: In Martin *vs*. Camp the court was careful to limit the doctrine there formulated to the case before it; and it was pointed out that the rule would be different with respect to contracts of general retainer. In Greenberg *vs*. Remick & Co., it was necessary to make a judicial pronouncement upon this point, and the court there gave its final sanction to the doctrine which had been advanced by way of *dictum* in Martin *vs*. Camp, to the effect that where an attorney is employed under a general retainer for a fixed period to perform legal services in relation to matters that may arise during such period, the contract is completely binding on both parties. In other words, the rule that the client has a right to dismiss his attorney at any time and substitute another in his place has special reference to the employment of lawyers to represent litigants in court in particular cases. As will be at once apparent this is not qualification but amplification of the doctrine of the earlier case.

In conclusion we have only to add that the provision from the Code of Civil Procedure which we have applied to the matter in hand has the effect of placing the legal profession in these Islands, in so far as this point is concerned, upon the same footing as that which it now occupies and always has occupied in the two greatest commercial communities of the earth, namely, England and New York, in both of which lawyers have prospered in the same measure as other elements of society. We are therefore undisturbed by any misgivings as to the effect of this decision on the membership of the learned and honorable body.

The motion to rehear, including the request that the cause be submitted again for oral argument, is denied.

Araullo, C. J., Villamor, and *Romualdez, JJ.,* concur.

Mr. Justice Avanceña also voted to deny the motion but he was absent at the time of the promulgation of this resolution and therefore his name does not appear signed thereto.

MANUEL ARAULLO
Chief Justice

DISSENTING

MALCOLM, J.:

The memoranda presented in support of the motion of reconsideration, by the appellee, in his own behalf, and by eminent members of the bar, as *amici curiae*, including the President of the Philippine Bar Association, the Vice-President for the Philippines of the American Bar Association, and the President of the Lawyers' Club, have served to consolidate the opinion of the members of the legal profession, and have served to convince me that the court made a mistake, which it has now reaffirmed, when it struck down, in effect, all contracts entered into by attorneys and clients.

The original majority decision accepted, as established, the written contract for services entered into by the attorney-at-law, the plaintiff, and the client, the defendant. In the dissenting opinion, now filed by two members of the court, the legal question is avoided, by discussion of this question of fact. I prefer to meet the issue as stated in the first decision, and as again announced in the majority decision upon motion to reconsider, and desire to say something further in amplification of my previous dissent.

The principles of contract law are established by our Civil Code, in relation with our Code of Civil Procedure. (Civil Code, particularly arts. 1091, 1101, 1254, 1255, 1256, 1278; Code of Civil Procedure, sec. 285.) As therein expressly provided by substantive law, and as expressly held by this Supreme Court, decisions with respect to the validity and performance of contracts cannot be left to the will of one of the contracting parties. (Civil Code, art. 1256;

Legarda *vs*. Zarate [1917], 36 Phil., 68.)

The provisions of Philippine civil law do not differ, in this respect, from the provisions of the Anglo-American common law. In the standard work, Street, Foundations of Legal Liability, volume 2, page 227, a principle applicable to the instant situation is stated as follows: "It is a general principle of law that where a special contract is made it is the exclusive source of legal rights and duties between the parties as regards the matters to which that contract pertains." Good law was also announced not long ago by the Supreme Court of the State of Washington in a case directly in point (Beck *vs*. Boucher [1921], 114 Wash., 574), when it was said: "The validity of a contract or retainer in whatsoever form or howsoever effected, whether sought by client or lawyer, is determined by the same rules of law as other contracts; and having the mutual assent of the parties, it withstands impeachment, unless unlawful,—*i. e.*, (1) contrary to the positive law; (2) contrary to positive morality; (3) contrary to public policy."

Section 29 of our Code of Civil Procedure relating to lawyers' fees merely embodies, in statutory form, a universal rule. Section 32 of our Code of Civil Procedure, when it recognizes the right of a client at any time to dismiss his lawyer, likewise merely announces a universal rule. Simply because these widely accepted principles have been declared by statute does not enshroud them with any greater sanctity, and does not change the situation in this jurisdiction from the situation in other jurisdictions.

In my previous dissent, it was pointed out that according to the weight of authority, the measure of damages for a breach of contract where an attorney has been discharged by his client without cause is the full contract price. To substantiate this statement, citations were made to Ruling Case Law and Corpus Juris, and to a case coming from the Supreme Court of Georgia, which is particularly applicable because of the fact that section 29 of the Philippine Code of Civil Procedure finds its source in the laws of the State of Georgia. Further research reveals corroborative authority so extensive as not to permit of citation, but including among other cases, decisions of the Supreme Court of California (Webb *vs*. Trescony [1888], 76 Cal., 621; Bartlett *vs*. Odd Fellows Savings Bank [1889], 79 Cal., 218), which have particular interest because the greater part of our procedural jurisprudence is derived from

California; a decision of the Supreme Court of the United States (McGowan *vs*. Parish [1914], 237 U. S., 285), inferentially in point; two decisions from the States of Oregon and Washington (Dolph *vs*. Speckart [1920], 94 Ore., 550 and Beck *vs*. Boucher, *supra*), later in time than the much-heralded New York decision, and a decision of the Supreme Court of Michigan, written by Mr. Justice Cooley (City of Detroit *vs*. Whittemore [1873], 27 Mich., 281). In the case last cited, Mr. Justice Cooley, whose eminent judicial services place him alongside Marshall and others in the galaxy of great American jurists, said: "An attorney employed to carry a suit through for an agreed sum has a vested right to the compensation when he accepts and begins the service; and he cannot be lawfully deprived of it except by his own consent or through his own default or misconduct. If he is discharged from the employment before the service is completed, he may recover the whole sum."

But reliance is again, as before, placed on the New York case of Martin *vs*. Camp ([1916], 219 N. Y., 170). Investigation reveals that the New York decision has now been adopted by the Supreme Court of Minnesota, with two judges dissenting, in Lawler *vs*. Dunn ([1920], 145 Minn., 281), has been followed in Lynn *vs*. Agnew ([1917], 166 N. Y. S., 274), and has been distinguished in Greenberg *vs*. Remick & Co. ([1920], 230 N. Y., 70). I would like to concentrate attention for the moment on this last expression of the New York view.

In Greenberg *vs*. Remick & Co., it was held that an agreement whereby defendant employed the plaintiff as its attorney and legal adviser for a period of one year at a fixed compensation for the year, *makes the defendant liable for a breach of the contract*. The following points are taken from the decision and compared with the facts and the law before us:

1. The New York Court said: "The compensation of an attorney or counselor for his services is governed by agreement, express or implied, which is not restrained by law." This, likewise, is accepted Philippine law.

2. The New York Court said: "A contract for professional employment may be made in this state between an attorney and client on such terms as they may agree." This, likewise, is accepted Philippine law.

3. The New York Court said: "Such contracts must be fairly made. An attorney must not use his position as such to obtain for himself an unconscionable advantage and no contract express or implied will be enforced when its enforcement would be contrary to public policy." This, likewise, is accepted Philippine law.

4. The New York Court said: "The relationship between attorney and client is peculiarly confidential. * * * Because of this peculiar and unusual relationship when a contract for professional employment is made between an attorney and one whom he is about to represent, there is read into the contract, *unless expressly or otherwise negatived*, an inference or implied condition assented to by the parties that while the attorney shall be bound by the terms thereof, the client shall have the power and the right to discharge the attorney at any time, with or without cause, leaving the attorney to recover for the value of his services to the time of the discharge. * * * *The decision in Martin vs. Camp does not extend to a case where it appears by the express terms of the contract or otherwise that a different rule was intended by the parties*." While I cannot assent to this reasoning, yet for our purposes, permit me to invite attention to the clause, "*unless expressly or otherwise negatived*" which, as will appear in a moment, is exactly the present situation.

While the New York decision attempts to draw a distinction between the situation of an attorney who conducts a particular suit or proceeding and of an attorney who receives a specified salary for a designated term, both the decision in Martin *vs*. Camp and the decision in Greenberg *vs*. Remick & Co. recognize that the rule limiting the recovery by an attorney upon discharge to a *quantum meruit* does not relate to a case where the parties have otherwise agreed. Now, what are the present facts? One clause of the contract between the plaintiff Cristobal and the defendant Ocson, which the majority decision validates, provided among other things, as follows: "*With the understanding, nevertheless, that if by the desire and will of the first party* [*Ocson*] *the second party* [*Cristobal*] *should be relieved of his services as attorney before the division, the fee shall be as stipulated and agreed in the present contract and thenceforth shall be deemed due and payable*."

Words could hardly express more clearly the positive intent and purpose, to

stipulate so as to prevent the operation of the dismissal clause of section 32 of the Code of Civil Procedure upon this particular contract of employment. The plaintiff and the defendant in this case had in mind and contracted most particularly with respect to the very implied condition which is now made to operate against the attorney. *Under the New York rule, which this Court adopts, the plaintiff could recover on his contract.*

The majority decision dismisses the suggestions of counsel with the remark that "some of these suggestions were in the mind of the court when the case was decided, and were passed upon inferentially, if not expressly, in the opinion already promulgated. Others are clearly beyond the range of serious discussion and require no refutation at our hands." But to me it appears that the points made by counsel are conclusive.

An attorney, just as any private citizen, may bargain as to his services. The principles of contracts apply as well to the attorney and the client as to other persons» If the client employs the attorney for a definite time or for a definite object, the client has negatived his right to dismiss the attorney by his contract. An implied condition that the client may discharge the attorney at any time is directly contrary to the agreement in the contract employing the attorney for a specified purpose. Moreover, from a purely practical standpoint, an attorney who has been engaged with respect to any matter, if discharged for any reason, is in honor bound not to accept employment from the other side. Even under the New York rule, which is not agreed to by the majority of the courts, general retainers, and contracts, which expressly negative the right of a client to dismiss the lawyer, are protected. In a sense, there is here an impairment of the obligation of the contract.

From whatever viewpoint, therefore, this case is considered, I arrive at the conclusion that judgment should be affirmed.

DISSENTING

JOHNS, J.:

At the time the original opinion was written, in the interest of harmony in the court, I concurred in the result only, which allowed the plaintiff P200 as a compensation for the service which he did perform. I was then and am now of the opinion that the contract in question was never legally made, and that it never became binding upon the parties. It appears from the evidence that it was prepared by the plaintiff in his own office. Assuming that at the time it was prepared the contract was formally signed by the defendant in duplicate in the plaintiff's office, it never became a valid, binding contract. After it was signed and before it was formally delivered to the plaintiff, the defendant stated, in effect, that before anything was done or any proceedings were taken, he wanted first to see his uncle and obtain from him the money with which to pay the filing fees. Both copies of the signed contract were then delivered to the defendant, who took them away with him and returned on the following day with his signatures to it torn off. He then called the attention of the plaintiff to the clause in the contract which provided that should he "be relieved of his services as attorney before the division, the fee shall be as stipulated and agreed in the present contract and thenceforth shall be deemed due and payable," to which the defendant made a formal objection and the plaintiff would not agree to any change resulting in this action.

As I construe the evidence, the minds of the parties never met. It is strange, indeed, that after the contract was signed in duplicate, plaintiff delivered his copy to the defendant, who left the office with both copies of the signed contract. In the very nature of things, if the minds of the parties had met and the contract had been formally entered into between them, the plaintiff would have kept and retained one copy and the defendant would have kept and retained the other copy of the contract after it was signed.

There is no claim or pretense that the defendant obtained plaintiff's copy without his knowledge or consent. As a matter of fact, the evidence tends to show that after it was signed in duplicate that plaintiff delivered both copies of the signed contract to the defendant.

After contracts have been formally signed, entered into and approved, in the ordinary course of business, it is the usual custom to deliver a copy to each

party to the contract.

Where, as in this case, the contract was prepared by the plaintiff and after it was signed in duplicate, the plaintiff personally delivered both copies to the defendant, who took them from the office for the purpose of seeing his uncle and returned the next day with his name torn off of both copies, it is strong and conclusive evidence that the minds of both parties never met, and that legally speaking there never was any valid contract between them. That was my construction of the evidence at the time that I concurred in the result only in the former opinion. But in the interest of harmony in the court, I am willing to allow the plaintiff P200 for the services which he performed in preparing the petition for letters of administration.

CONCURRING

OSTRAND, J.:

I agree with Mr. Justice Johns that there was no valid contract between the parties; it may even be seriously doubted that the document in question was ever signed by the defendant. The sum of P200 is, in my opinion, ample pay for the work the plaintiff claims to have performed and the motion for a reconsideration should be denied.

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