

[G.R. Nos. 20117-20130, 20261-20314. December 20, 1923]

LIBERATO ULANDAY, PLAINTIFF AND APPELLEE, VS. THE MANILA RAILROAD CO., DEFENDANT AND APPELLANT.

D E C I S I O N

MALCOLM, J.:

While the appeals in sixty-eight cases brought by more than two hundred plaintiffs to recover damages from the Manila Railroad Company, defendant and appellant, hereafter called the Bindow cases, were in process of development for submission to the court, Attorney Antonio de las Alas attempted to substitute Attorney E. G. Turner and associate counsel as the legal representatives of the plaintiffs. On resistance of Attorney Turner to the attempted substitution, the issue came down to a determination of whether or not the alleged power of attorney in favor of Ambrosio Erfe-Mejia pursuant to which Attorney De las Alas was assuming to act, is valid and controlling as claimed by Attorney De las Alas, or fraudulent, null, and void as claimed by Attorney Turner.

To get the issue into its immediate background, a little further explanation is advisable.

Attorney E. G. Turner, along with Attorneys C. W. Rheberg and Teofilo Sison, were looked upon as counsel for all of the plaintiffs in the Bindow cases until July 17, 1923, when Attorney Antonio de las Alas, signing himself as attorney for the plaintiffs, entered his appearance. On the same date, Attorney De las Alas for plaintiffs-appellees and Attorney Abreu for the defendant-appellant, stated to the court by motion that "they had terminated, adjusted, and settled each and everyone of these cases amicably. Wherefore, it is moved that all these cases be dismissed without costs." The court accepting the motion for

dismissal at its face value, granted the same two days later. That very day also, Attorneys Turner, Rheberg, and Sison, gave notice of a lien upon the judgments, which has been noted by the court.

If

the cases had stopped here, they would have terminated themselves, but on July 24, 1923, it having been brought to the attention of the court that the motion for dismissal in the Bindow cases was pursuant to an appearance by Attorney De las Alas which did not conform to the rules expressly laid down in the case of *United States vs. Borromeo* ([1911], 20 Phil., 189), it was ordered that the resolution of the court of July 19, 1923, granting the motion for dismissal be set aside. Incidental thereto, Attorney Turner asked for a restraining order against the Manila Railroad Company, its manager and attorney, and others who may represent said defendant, from paying to Ambrosio Erfe-Mejia the amount of P20,000 still in the possession of the company until further orders in the premises, which motion the court granted. About the same time also, Attorney Antonio de las Alas complied with the Rules of the Court in a motion for substitution which relied on a power of attorney in favor of Ambrosio Erfe-Mejia of June 21, 1923, acknowledged before the justice of the peace of San Fabian, Pangasinan, on June 22, 1923. But as was intimated in the beginning of the decision, Attorney Turner contending that the supposed power of attorney which Ambrosio Erfe-Mejia has, is fraudulent and obtained through deceit and misrepresentation, and Attorney De las Alas claiming the exact contrary, the court framed the issue for the parties and gave them full opportunity to demonstrate the correctness of their divergent theories. Both parties have taken full advantage of this permission and have overwhelmed the court with memoranda and argument, supported by affidavits and other documents.

To fit the issue into its proper setting, a more extended elucidation will now be begun.

In 1907 the Manila Railroad Company constructed a branch line from San Fabian, Pangasinan, to Camp One. This branch line skirted along the north side of the Bued River in the barrio of Bindow, San Fabian, and was built over the Bindow irrigation system, which had been in

operation for a long time. On September 17, 1911, on account of an unusually heavy rainfall, the Bued River rose, overflowing the dam and began to undermine the buttresses of the bridge of the railroad company. To prevent the water from destroying the bridge, the company cut the dam with resulting damage to the surrounding property owners.

To secure damages from the Manila Railroad Company for the value of the crops destroyed, the property owners first bethought themselves to transfer all their claims to Attorney E. G. Turner in order that their claims might be litigated in a single action. In the lower court, however, a demurrer was interposed for the railroad company alleging that it is not permissible for an attorney to accumulate distinct causes of action in himself, and to sue in his own name for the benefit of the clients directly interested. This demurrer was sustained by the trial judge and the order was affirmed on appeal to the Supreme Court. (Turner vs. Manila Railroad Co., R.G. No. 10165.)^[1]

On notification of the last cited decision of the Supreme Court, seventy one separate actions were instituted against the Manila Railroad Company. The first of the separate actions to be tried was that of Ambrosio Erfe vs. Manila Railroad Company wherein the decision of the trial court was in favor of the defendant railroad company. Upon appeal, the Supreme Court affirmed the decision of the court below. (Erfe vs. Manila Railroad Co., R.G. No. 11500.)^[2]

The next case to be called was that of Demetrio Maxion vs. Manila Railroad Company. The trial judge in this case found on the issues of the controversy favorably to the plaintiff and awarded to him the sum of P1,250 as damages. On appeal, this judgment was affirmed. (Maxion vs. Manila Railroad Co., 44 Phil., 597.)

Of the remaining sixty-nine cases, one was dismissed because of failure of the plaintiff to appear and the remaining sixty-eight were tried with favorable results to the plaintiffs. The aggregate judgments against the Manila Railroad Company were approximately P118,000 with interest and costs. These are the sixty-eight cases now affected by the

controversy between Attorney De las Alas on the one side, and Attorney Turner, on the other. (See statement of Attorney Rheberg and memorandum of Attorney Turner.)

To return again to the incidents relating to the development of the present issues, from Exhibit U presented by Attorney De las Alas, it appears that on May 26, 1913, the Binday property owners entered into an agreement with Ambrosio Erfe-Mejia which, in effect, authorized Erfe to secure lawyers to prosecute the claims and to pay them fifty per cent of the proceeds, Erfe to retain twenty per cent for his services. This document prepared in the dialect and signed by a large number of individuals but not ratified before a notary, reads as follows:

“CONTRATO

“Sicamin manfirmad lecsab to nia patuaen mi onguendan:

“Ta pasimbaloen mi sipan mi ed contrato ya fecha 13 de Junio, 1912, nipaacar ed:

“(a)

Impangiter mi poder ed Sr. Ambrosio Erfe ed pananap toy Abogados ya mangicolcol ed incaderal na tanaman ed dalin ya cad anum ed Payas na Binday nen taon a 1911.

“(b) Patuaen mi ta nayarian ton isipan ed saray Abogados so cincuenta por ciento ed bili nasingil a bayar na aderal a intanem.

“(c)

Patuaen mi ta iter mi ed Sr. Ambrosio Erfe so veinte por ciento na bayar a nabetangan mi. (Veinte por ciento na queran ibayar ed saray Abogados.)

“(d) Tan angapoy bayaran min bengat lan gastos ed panacar na sayan colcol.

“San Fabian, Pangasinan, Mayo 26, 1913.”

According to Exhibit A-3 presented by Attorney Turner, the agreement of

May 26, 1913, was partially confirmed by the property owners in June, 1923. This document reads as follows:

“We the undersigned do hereby state:

“That we are plaintiffs in a case against the M.R.R. Co., for damages caused to our properties.

“That
we ratify in all its parts the agreement executed on May 26, 1913, whereby Mr. Ambrosio Erfe-Mejia was given power to conduct negotiations and engage an attorney to be selected by him for the purpose of suing the M.R.R. Co.

“We hereby authorize Ambrosio Erfe, in conjunction with our attorney, Mr. Turner, to accept a compromise of the case upon previous instructions from the latter, but only in the manner to be indicated by said attorney, Mr. Turner; so that he should act only according to instructions and indication of Mr. Turner. That we give Mr. Ambrosio Erfe power to recover on our behalf such amount as may be awarded to us in the aforesaid case, and distribute the same among us according to the instructions he may receive from our attorney, Mr. E.G. Turner.

“That we authorize Mr. Ambrosio Erfe to retain twenty per cent of the net amount that may be awarded to us, the same to be spent in the dealings and transactions to be later specified by us in a resolution (registration of lands of property owners, donation, etc., etc.).

* * * * *

“NOTE.—I
have spoken with them for the registration and survey of their lands, and they gave me authority to engage your services in this case, but we have no surveyor.”

Presumably, in conformity with Exhibit U, the services of Attorney Ritchey were first secured to represent the Bindow property owners. After Mr. Ritchey left the Philippines, Attorney Turner became the legal representative of the claimants and he associated with himself Attorneys Rheberg and Sison.

The Maxion case being decided favorably to the plaintiffs and being in nature a test case, it was naturally for the benefit of the Manila Railroad Company to conclude a compromise agreement with the plaintiffs. Negotiations were entered into by Attorney Turner, on behalf of the plaintiffs, and Attorney Abreu and later by President Paez of the railroad, on behalf of the railroad. The effort of Mr. Turner apparently was to secure at least P100,000 for his clients and himself. At least such an offer by Mr. Turner limited until July 16, 1923, was finally made. (Exhibit H.) President Paez on the other hand would only agree to pay P80,000 in settlement of the Bindow cases. There the matter rested until Mr. Erfe and Attorney De las Alas produced the power of attorney in favor of Mr. Erfe-Mejia of June 21, 1923, when a settlement was speedily arrived at in the sum of P90,000. After the execution of the document of settlement, the sum of P70,000 was delivered to Erfe and the sum of P20,000 was retained by the Manila Railroad Company. (See affidavits, Exhibits, A and A, of Jose Paez and E. G. Turner.)

The contested power of attorney omitting the signatures of about two hundred persons at the end, which it is not feasible to try to decipher, as handed to President Paez, reads as follows:

“SPECIAL POWER OF ATTORNEY

“We,
who have signed below or placed our finger marks in the middle of our names, all of age, and residents of the municipality of San Fabian, Province of Pangasinan, and plaintiffs in Civil Cases Nos. 1884 to 1993; 1938 to 1954; 1979, 1980 and 1841 of the Court of First Instance

of Pangasinan, Philippine Islands, against the Manila Railroad Company, for damages caused by said company to our properties situated in the barrio of Binday, municipality of San Fabian, Province of Pangasinan, which cases are now pending in the Supreme Court upon an appeal taken by said defendant, except one of them, that numbered 1931, which is already definitely terminated;

“We do hereby voluntarily, freely and spontaneously declare and state that we give and grant Mr. Ambrosio Erfe-Mejia, of age, married, and resident of San Fabian, Province of Pangasinan, P. I., special power;

“1. To withdraw from the hands of Attorney E.G. Turner, resident of Lingayen, Pangasinan, our aforesaid cases in such a manner as to sever all connection with said attorney from the date said Mr. E.G. Turner is notified of this power of attorney by Mr. Ambrosio Erfe-Mejia;

“2. To annul any such power as we may have granted, or any such agreement as we may have executed prior to this date with any person or persons to compromise the aforesaid cases;

“3. To compromise on our behalf and in our place and stead directly with the defendant Manila Railroad Company the aforesaid cases for such sum and in such a manner as he may deem to be to our best interests;

“4. To recover on our behalf and in our place and stead from the Manila Railroad Company all such amount as may be awarded to us and paid by said company by virtue of such a compromise, should any be made;

“5. To engage, and pay for the professional services of an attorney or various attorneys for the purpose of protecting our rights and interests:

“(a) In the execution or making of the compromise;

“(b) In the prosecution in the Supreme Court of our aforesaid cases in the event that no compromise is made;

“(c) In any such action as any person may bring against us upon this special power of attorney;

“(6)

To pay Attorney E.G. Turner such fees as said Mr. Ambrosio Erfe-Mejia may deem just and reasonable or equitable, taking into account the professional services rendered by him up to this date in connection with said cases;

“7. To invest not more than twenty-five thousand pesos of the amount that may be recovered from the aforesaid company, that is, the M.R.R. Co., in the purchase of an agricultural land with Torrens title in any municipality of the Province of Pangasinan;

“8. To deduct from the total amount to be paid by the defendant company (the M. R. R. Co.) twenty per cent thereof as compensation for his labor, work, services, expenses and troubles in the institution, prosecution and termination of said cases;

“9.

Also to deduct 10 per cent (ten per cent) of the total sum to be paid by the aforementioned M. R. R. Company, the same to constitute a fund available for any purpose in case of emergency or any event that may affect our interests or cases;

“10. To distribute the money among all of us, giving each such portion as may be allowed in the judgments of the Court of First Instance of Pangasinan or in the Supreme Court (that is to say, in the Supreme Court) in the awarding of the damages claimed, after deducting all the amounts mentioned in the preceding paragraphs.

“We also do hereby ratify and approve and accept whatever Mr. Ambrosio Erfe-Mejia may do, perform or carry

out pursuant to the terms of this special power of attorney, and the same shall be considered by all and each of us for all legal purposes as if it were done, performed or carried out by us collectively or individually.

“In testimony whereof, we have hereunto set our hands in San Fabian, Pangasinan, this 21st day of June, nineteen hundred twenty-three.”

Having given more than enough attention to the past and present incidents connected with these sixty-eight cases, we are now in a position to approach more directly the issue and decide as best we may if the power of attorney in question is valid or invalid.

Attorney Turner in opposing the substitution of Attorney De las Alas complains of various fraudulent acts on the part of Erfe, De las Alas, and others. Attorney Turner claims that the power of attorney has been dressed up, added to, and changed in many ways since June 22, 1923 (Exhibit C). He claims that it contains a number of signatures of persons who are not legally qualified to sign a document of this class. He claims that of those who did sign the document many did so not understanding its contents, and under force and duress. (Exhibits in A-6V.) Attorney Turner says that “Erfe has not only availed himself of undue influence, misrepresentation, falsehood and deceit, but has also used force, intimidation and coercion in order to impose his acts and will upon the ignorant plaintiffs.” Therefore, in view of the fraud practiced by Erfe, De las Alas, Lamberto Siguion Reyna, and Paez, Attorney Turner argues that the fraudulent contract should be set aside and declared null and void.

Attorney De las Alas defends the power of attorney in favor of Ambrosio Erfe-Mejia as truly and legally executed by the plaintiffs. He endeavors to show how the power was executed, and how it was examined by the president and attorney of the Manila

Railroad Company who satisfied themselves of the genuineness of the document. Attorney De las Alas naturally takes the position that the plaintiffs signed the power of attorney with full knowledge of its contents, and that since then they have confirmed their action not only once but many times. In turn, Attorney De las Alas makes counter charges against Attorney Turner, Representative Camacho, and others. Attorney De las Alas argues that as the power of attorney is valid, he should be recognized as the counsel for the plaintiffs with power to enter into a settlement with the Manila Railroad Company.

The leading actors on either side are painted in the blackest of colors by their opponents. But as none of these alleged crimes and misdemeanors are properly before us, without even mentioning them, we are glad to pass immediately to matters of present interest. We only dip our fingers into the cauldron to pick out such facts as will illuminate the instant issue.

Getting at last to the facts, we must confess that the court is nearly helpless in the face of actuality. This situation results not because of lack of incentive on the part of opposing counsel or because of the paucity of the affidavits, but arises from the nature of the proof presented. The poor plaintiffs have been induced to sign affidavits of exactly contrary effect; have been told one thing by one party and another thing by another party, and finally, at the instance of the special investigator of the Governor-General, have been corralled to secure their statements. Probably, the plaintiffs are only too glad to sign any affidavit placed before them. Probably also they are not especially interested in whether Attorney Turner or Attorney De las Alas represents them. They align themselves with Attorney Turner because he promises them a larger return. They align themselves with Attorney De las Alas because he promises them a more prompt payment. What they have wanted is the money due them from the Manila Railroad Company.

To demonstrate the value of the affidavits. As illustrations, let us look into the affidavits presented by the plaintiffs Luis Sion (Repudiated Exhibits A and G, confirmed Exhibits A-5, A-6, G, H):

Marciano Zarate (Repudiated Exhibits D, Z, confirmed Exhibit BB); Esteban Manoot (Repudiated Exhibit XX, confirmed Exhibit A-1); Venancio Amansec (Repudiated Exhibit Y, confirmed Exhibit A-10); Inocencio Calicdan (Repudiated Exhibit QQ, confirmed Exhibit A-11); Antonio Tabito (Repudiated Exhibit UUU, confirmed Exhibit A-12); Filomena Generalao (Repudiated Exhibits GG, VVV, confirmed Exhibit A-13); Bernardo Mayugba (Repudiated Exhibit EE, confirmed Exhibit A-14); Carlos de Nieva (Repudiated Exhibits F, JJJ, and BBBB, confirmed before investigator). Other plaintiffs have been as easily duped if we had the patience to hunt out their respective cases. To please Attorney Turner, they have repudiated their act in signing the power of attorney. To please Erfe and Attorney De las Alas, they have ratified their act in signing the power of attorney.

Some cold facts

can be fixed upon to give assistance. The number of plaintiffs is something over two hundred. The power of attorney now contains two hundred and six signatures, although it is claimed that originally it had only one hundred and seventy-two signatures. The justice of the peace and notary and the two attesting witnesses affirm that the document was read in the dialect and signed in their presence by all of the principals. (Exhibits A-21, 2-6.) Doubt being cast upon the authenticity of the plaintiffs' act, ratification is disclosed in Exhibit H with something like two hundred and fifty names; in Exhibit I with something like two hundred names, and in Exhibits 1, G, and K in the local dialect with more than one hundred names. A comparison discloses that most of the persons, who signed the affidavits presented by Attorney Turner, have also ratified their action in taking part in the execution of the power of attorney, as is disclosed by the affidavits presented by Attorney De las Alas. The power of attorney is now available in the local dialect and known to the plaintiffs. Probably all of them have received money on account of their claims from Erfe. (See, for instance, Exhibits EE, JJ.) The *hacienda* Bindow has been transferred to the plaintiffs by Rafael Corpus. (Exhibit J.)

On suggestion of the parties, the Governor-General was led to send an attorney of the Bureau of Justice to San Fabian, Pangasinan, to

investigate the irregularities alleged to have taken place in the transactions between the landowners of that municipality and the Manila Railroad Company. While we entertain grave doubt as to the probative value of this report and of our right to look into the evidence before the investigator, inasmuch as both parties rely on the investigation and as no objection is made, we will make at least incidental mention of certain facts appearing in the report of Assistant Attorney Sabino Padilla, the representative of the Department of Justice and the Governor-General. It may be said parenthetically that on account of the agreement of the parties, the witnesses were heard before Attorney Padilla without either Attorney Turner or Attorney De las Alas being present.

The classification of the testimony of the plaintiffs as made by Attorney Padilla discloses the following: One hundred twenty-five plaintiffs accept the compromise with the Manila Railroad Company and agree that the signature of the power of attorney was their free, spontaneous, and voluntary action. Thirty-nine witnesses declare that they signed the document voluntarily on behalf of deceased and absent plaintiffs. One plaintiff testifies that he did not sign the power of attorney but that he had no complaint relative to the settlement. Eighteen persons whose names appear in the power of attorney did not testify. Four persons admitted that they signed the power of attorney in question and had no complaint against Erfe, but that they did not understand the terms of the document. Thirteen plaintiffs or their representatives testified that they signed without understanding the terms of the power of attorney in question and did not agree with the settlement or compromise concluded by Erfe. In other words, practically all of the plaintiffs, with the exception of thirteen against whom, however, some contrary testimony exists, agree with the compromise and admit that they signed the power of attorney voluntarily (Exhibits 2-6).

It at once comes to mind, as an easy resolution of the problem, to select those persons who have repented of the action taken on their behalf by Erfe and permit their appeals to go on, while recognizing the compromise agreement as to all

the other plaintiffs. The trouble with this suggestion is that it is impossible to know exactly which plaintiffs affirm the compromise and which plaintiffs disaffirm it. It is also evident that the plaintiffs have not been proceeding individually against the Manila Railroad Company, but that it was a community affair. They first made Erfe their representative. They next assigned all of their interests to Attorney Turner. They next proceeded with their individual cases under the guidance of Attorney Turner. They next signed the power of attorney in favor of Erfe. They have held meetings in San Fabian and have proceeded on the theory of joint action. The only recourse then is either to hold the power of attorney good as to all of the plaintiffs or hold it bad as to all of them.

This brings us to look into the actual financial status of the plaintiffs in these cases. The Maxion case was the first decided. The judgment was for P1,250 with interest and costs. According to the affidavit of Maxion, the total judgment reached P1,518.68; expenses, P460; balance, P1,058.68; attorney's fees, P529.34; amount received by Maxion, P529.34. This settlement does not take into consideration the possible twenty per cent due Erfe. In other words, Attorney De las Alas claims that through the machinations of Attorney Turner, Maxion obtained only about thirty-four per cent of the total adjudicated. (Exhibit DD.)

As to the plaintiffs in the remaining sixty-eight cases, Erfe has made a report which includes the following data: Amount adjudicated by the various judgments, P118,000; amount obtained through the compromise, P90,000; expenses, amount left with the Railroad Company to pay Attorney Turner and his companions, P20,000; honorarium of Attorney De las Alas P3,000; emergency expenses, P1,000; consultation of Attorneys Enage and Sison, P1,000; compensation of the agent and expenses, P18,000; paid in cash to the plaintiffs, P26,000; paid for the hacienda Bindow for the plaintiffs, P21,000. Total expenses, forty-eight per cent; total received by the property owners, fifty-two per cent.

Up to this point, we have

exerted ourselves to search out the facts. Before announcing our conclusions, a few words should be added relative to the applicable law.

The power of attorney created the relation of principal and agent. It was a contract which should be enforced unless vitiated by fraud or found to be an agreement contrary to public policy. It attempted, among other things, to dismiss the lawyer and substitute another, which may be done at any time by the client with or without cause (Code of Civil Procedure, sec. 32). The power of attorney further attempted to compromise pending cases, and in this connection, it is well to recall that, as provided by section 27 of the Code of Civil Procedure, lawyers "cannot, without special authority, compromise their client's litigation, or receive anything in discharge of the client's claim but the full amount in cash."

A contingent fee was originally provided for the attorney. Contingent fees are not prohibited in the Philippines, and since impliedly sanctioned by law "should be under the supervision of the court in order that clients may be protected from unjust charges." (Canons of Professional Ethics, No. 13.) Where it is shown that the contract for a contingent fee was obtained by any undue influence of the attorney over the client, or by any fraud or imposition, or that the compensation is so clearly excessive as to amount to extortion, the court will in a proper case protect the aggrieved party. (Taylor vs. Bemiss [1883], 110 U.S., 42.)

In this court, the liens of Attorney Turner are placed at thirty per cent of the judgments in one document and at P40,000 in another document. Considering the long and difficult litigation and the annoyance and trouble in connection with the trial of the cases, these charges for the lawyer's services are not unreasonable. We treat the liens as attaching to the proceeds of the settlement and propose to protect the right of the attorney to his liens. The fund will be considered as still in the hands of the defendant company and subject to court order. (*See* 2 R.C.L., 1076 *et seq.*; *Greenleaf vs. Minneapolis, etc. Railway Co.* [1915], 30 N. D., 112.)

As to the power of attorney, parts of it invite suspicion. P26,000 in cash for the plaintiffs out of a total of P90,000 is little enough under any view of the cases. On the supposition that the compromise reached P100,000, as will be explained in a moment, and on the further supposition that the terms of the power of attorney are given effect, Attorney Turner and associate counsel would receive P30,000, Erfe about P20,000, all expenses to be paid by the lawyers and the agent, and the litigants about P50,000. The plaintiffs do in fact obtain nearly P50,000, if we take into account the *hacienda* Bindow as belonging to them, which we do with hesitancy, for if they wish to enter into this community purchase, it of course is no affair of ours.

We conclude this distasteful and arduous task by making the findings which follow. We find that the power of attorney of June 21, 1923, in connection with the prior authorization in favor of Ambrosio Erfe-Mejia and subsequent ratification, is valid and controlling. We find further that as the power of attorney is valid and controlling, there has been a proper substitution of attorneys in this court, and that Attorney Antonio de las Alas must be recognized as counsel for the plaintiffs. We find further that Attorney E.G. Turner and associate counsel have liens on the judgments for professional services the reasonable value of which we fix at P30,000. Inasmuch as there only remains a balance of P20,000 available for the purpose of paying Attorney Turner and associate counsel, inasmuch as this happened through no fault of Attorney Turner, and inasmuch as to make him look to the plaintiffs for further payment would be unfair, the compromise agreement is modified and approved as of the amount of P100,000.

Subject generally

to the conditions above stated, and subject specifically to proof by the Manila Railroad Company that Attorneys Turner, Rheberg, and Sison have been paid P30,000 in satisfaction of their liens, the motion to dismiss the appeals in these sixty-eight cases, is approved. So ordered.

Johnson, Street, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

^[1] Promulgated March 31, 1915, not reported.

^[2] Promulgated February 8, 1917, not reported.

Date created: October 09, 2018