

VICTORIO DOMINGUEZ, PLAINTIFF AND APPELLANT, VS. ANTONIO LIM TAMA, DEFENDANT AND APPELLEE.*G . R. No. 16074. March 17, 1921*

Ponente: STREET, J.

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This action was instituted in the Court of, First Instance of the Province of Marinduque by Dr. Victorio Dominguez, a medical practitioner, to recover from the defendant, Antonio Lim Tama, a sum of money alleged to be due to the plaintiff for a surgical operation performed upon Protasio Sales and for surgical and medical services rendered to the same person. In the Court of First. Instance judgment was entered absolving the defendant from the complaint, and the plaintiff appealed.

The facts necessary to an understanding of the controversy are briefly these: In the month of April of the year 1913, the defendant was conducting a bakery in the municipality of Gasan, on the Island of Marinduque. Among the servants engaged in helping to run the said bakery was a boy, named Protasio Sales, of the age of 15 years, who earned a salary of 'Hi per month. Early in the morning of one of the days of April, 1918, Protasio was aroused from sleep by his master, and was told to clean a machine used in the shop for kneading flour. While engaged in performing this task the boy's hand was caught in the machinery and crushed to such a degree that the member had to be amputated. At this time, the plaintiff, Dr. Victorio Dominguez, who is a resident of Boac, happened to be casually present in Gasan, and he was called in to see the injured boy. Upon examining the wound, the doctor saw that an operation would be necessary, but as it was impracticable to perform it on that day, he applied remedies designed to give temporary relief, and returned with his surgical instruments early the next morning. Before the operation was undertaken, the defendant,, Lim Tama, agreed to be responsible for the expenses of the surgical operation and the medical services and supplies incident to the treatment of the case. Relying upon this promise, the plaintiff proceeded with the amputation, and in the subsequent treatment of the case forty-five visits were necessary before a cure was effected. The bill for all the expenses incident to the case, including P300 for the surgical operation, P8 for medical supplies, and P10 for each visit, amounts to P758, for which amount judgment is asked in the complaint.

The defense is based chiefly on the fact that Doctor Dominguez was, at the time the services mentioned were rendered, the president of the sanitary division which includes the municipality of Gasan. It is accordingly insisted that the services in question were rendered in the performance of official duty and that the plaintiff is incapacitated from recovering the value of these services by the express language of section 1035 of the Administrative Code, which is as follows:

"SEC. 1035. In no case shall an officer or physician whose duty it is to render free medical service receive any payment therefor, either directly or indirectly."

As this provision is clear and unequivocal, it only remains to inquire whether the services in question were rendered under such conditions that the plaintiff, as president of the sanitary division, was bound to render them

gratis. The answer to this question depends largely upon the interpretation of certain provisions contained in section 1006 of the same Code. In defining the duties of the president of a sanitary division, it is there said:

" (i) * * * He shall, whenever practicable, furnish free medicines to indigent patients, and when requested, he shall render, free of charge, medical services to all Government officers and employees, to all persons in custody, and to other persons entitled to such service.

" (j) In the case of accidents or serious injuries received by an indigent person whose condition is such as not to allow of removal to the municipal building, he shall when requested afford free treatment at the person's own house or elsewhere."

A related provision of the same Code, but which really does not contribute materially to the solution of the case, is found in section 1030, which imposes on district health officers the duty to render, or cause to be rendered by the local health officers, when practicable, such medical service as may be required for prisoners "or other persons entitled to free medical service." The provisions most to the purpose are those quoted above from section 1006, and the case turns upon the point whether, under the circumstances above stated, Protasio Sales was an indigent person in the sense intended by those provisions.

The word indigent, as used in English, has reference to a state of destitution, and is generally used of necessitous persons who have become a public charge. It is very evident that Protasio Sales was not indigent in this sense, prior to receiving the injury above described, for he was earning an honest livelihood, though of the modest character suited to his station in life. On the other hand, his resources were manifestly inadequate to sustain the expenses incident to the calamity which befell him; and there can be no doubt it was the inevitable duty of the plaintiff, as a public health officer, to render such aid to the boy as was within his power. Whether he was bound under the circumstances to render this service gratis is quite another question.

It should not escape attention in this connection that there existed between Lim Tama and Protasio Sales the relation of master and servant, which is everywhere recognized as entailing upon the master a moral responsibility for the welfare of the servant—a responsibility more pronounced where the servant, as in this case, is of immature years and not sui juris. Under these circumstances it was in our opinion competent for the defendant to bind himself to answer for the value of the services rendered by the plaintiff; and it cannot be said that the contract to this effect was illegal as being prohibited by law. Under the circumstances stated, Protasio Sales was a dependent person—not an indigent person as contemplated in the provisions of law above quoted and as he was a dependent person, it was lawful for his employer to obligate himself to pay for the surgical and medical service rendered to him by the plaintiff.

Upon the question of the value of these services, we are of the opinion that, upon the proof, the amount claimed in the complaint is just, and judgment will be entered accordingly.

The judgment appealed from is reversed, and the plaintiff will recover of the defendant the sum of P758, with interest at the rate of 6 per cent per annum from September 4, 1919, in accordance with section 510 of the Code of Civil Procedure, without express finding as to costs of either instance.

Mapa, C. J., Araullo, Malcolm, and Villamor, JJ., concur.

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