

IN RE H. V. BAMBERGER*. April 07, 1924*

Ponente: OSTRAND, J.

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At the instance of the Attorney-General, disbarment proceedings have been instituted against Attorney H. V. Bamberger for alleged malpractice in his profession. The matter has been investigated by the provincial fiscal of Iloilo, aided by an assistant attorney of the Bureau of Justice, and after receiving considerable testimony and other evidence, and after hearing the respondent, the fiscal summarizes the facts found as follows:

"First. That Mr. H. V. Bamberger was attorney for the plaintiff in the case No. 4076 of the Court of First Instance of Iloilo entitled 'S. M. Berger, plaintiff vs. Enrique de Valera, defendant' regarding a certain sum of money.

"Second. That Mr. Bamberger took possession of the personal property attached by the sheriff in said case, as well as other personal property not attached, and the respondent disposed of a certain amount of steel bars which the defendant Enrique de Valera had deposited with the Chinaman King Chio.

"Third. That Mr. Bamberger, as he admitted in his answer and statement, has disposed of a lot of 83 tins of canned peas at the price of 10 centavos per tin and one case of catchup at the price of P10, without due authorization.

"Fourth. That while all the merchandise was in the possession of Mr. H. V. Bamberger, the respondent, he collected and received the amount of P2,178.82 as he admitted, either from debtors of Enrique de Valera, especially the Chinaman King Chio, or for having disposed of some merchandise. It is also an admitted fact by him that he is accountable for P1,187 to S. M. Berger & Co.

"Fifth. That Mr. Bamberger has, on various occasions, required either by Mr. Block, in the name of S. M. Berger & Co., or by Messrs. S. M. Berger & Co. themselves, to render an immediate accounting, which he has disregarded without any reasonable cause.

"Sixth. That Mr. H. V. Bamberger, since the civil case No. 4076 above referred to has been decided, on July 22, 1921, and completely terminated as per the stipulation and agreement, Exhibit T and the answer of the defendant admitting all and every one of the allegations in the amended complaint of the plaintiff, has not made any effort to render an accounting to S. M. Berger nor has he been willing to send or deliver to his client the money collected at any time.

"Seventh. That the excuse of the respondent that he could not render an accounting to his client because Mr. Cedrun did not give him a list of the merchandise taken by the latter and because Mr. Berger took with him the receipt of King Chio, Exhibit H, and certain notes in connection with King Ohio's account, is not admissible:

"(a) Because Mr. Oedrun declared that he furnished Mr. Bamberger with the list in question, and the respondent made a note in his book of the merchandise turned over.

"(b) Because the evidence of the complaint shows clearly that Mr. Bamberger never asked Mr. Berger for Exhibit H and other notes he needed to render his account and if Mr. Berger [Bamberger] had written to Mr. Berger for

the papers he needed for his accounting, Mr. Berger would have, of course, given them to him with pleasure.

"(c) Because if it were true that he could not give a complete accounting in regard to King Ohio's account without such papers and notes, it is not understood why he prepared and acknowledged before a notary the document Exhibit 2,. which is an assignment of the account owed to King Ohio by the Talisay-Silay Milling Co. amounting to P5,390. This document was executed on April 25,1922."

Upon the facts stated the fiscal recommends that the respondent be suspended from the practice of law.

The findings quoted are amply supported by the evidence. Whether the respondent, after deducting proper attorney's fees, owes his client any considerable sum of money, we need not here decide; that must be determined in another and different proceeding. But attorneys are bound to promptly account to their clients for money or property received by them as such, and the fact that an attorney has a lien for fees on money in his hands does not relieve him from liability. (6 C. J., 693.) Notwithstanding repeated demands on the part of his client, the defendant has for several years failed to render an accounting of the money received by him on behalf of his client and the excuses offered for his failure to do so are so inadequate as to merit no consideration. The respondent is clearly guilty of professional misconduct in failing to account to S. M. Berger & Go. for money received by him as attorney for the latter.

It is therefore ordered that H. V. Bamberger be and he hereby is suspended from his office of lawyer for the period of six months beginning with the date upon which he is notified of this order.

Araullo, C, J., Johnson, Street, Avancena, Johns, and Romualdez, JJ., concur.

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