

IN RE THE COMPLAINT AGAINST ATTORNEY ANACLETO FILART.

G.R. No.. September 27, 1919

Ponente: MALCOLM, J.

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MALCOLM, J.:

These proceedings were instituted at the instance of thirty-seven residents of Asingan, Pangasinan, who filed a complaint against attorney Anacleto Filart for malpractice, alleging in substance:

- That while Filart was deputy fiscal of Pangasinan he received of them the sum of P111 as fees for drafting a memorandum in connection with Registration Case No. 3, Record No. 8540;
- That Filart was guilty of fraud and negligence in prosecuting the appeal to the Supreme Court, he having practically abandoned the case.

In connection with point No. 1, even admitting that Filart while deputy fiscal received such a sum of complainants, which respondent denies, Filart seems to have had a legal right to receive compensation as an attorney, the office of deputy provincial fiscal not being specifically included in section 36 of the Code of Civil Procedure as amended by Act No. 1702, as an official who shall not engage in private practice. It is also to be noted that Filart did not take up the case of his own volition but was ordered by the court to defend the rights of petitioners' because the attorney they formerly retained was almost always in a state of intoxication.

In connection with point No. 2, the following facts are important:

- That having resigned as deputy fiscal, and having engaged in the practice of law, complainants asked Filart to prosecute the appeal of their case;
- That Filart received from complainants sums of money, P870 according to complainants, and P160 according to respondent;
- That complainants were driven from their lands, and their houses were destroyed, by order of the court.

The facts which support the allegations of fraud and negligence on the part of respondent are:

- The lapse of fifty-one days between the receipt of notice of denial of motion for a new trial (March 7, 1917) until the filing of the bill of exceptions (April 27, 1917). when the statutory period is only thirty days (Act No. 2347, sec. 26)
- Failure to perfect a satisfactory bill of exceptions after repeated amendments and re-amendments;
- Failure to file a bond in order to prevent execution;
- Assurances made by respondent that all was right.
- This is explained by the fact that the record was not in the clerk's office. The date when the answers to Filart's questions from the Land Registration Office reached Filart, which were to be made a part of the bill of exceptions, does not appear in the record. Filart also alleges he made an oral motion to extend the period fixed

by law for the filing of the bill of exceptions, but that motion appears to have been overlooked by the judge;

- The parties are agreed that the bills of exceptions are voluminous. Respondent further pleads pressure of work in his law office;
- Respondent says that he believed execution would not be valid until after certiorari proceedings were decided;
- The exact nature of the assurances do not clearly appear in the record—possibly they are no more than what an attorney fairly confident of success would make to a client.

The Acting Attorney-General believes that the facts are not sufficient to support the complaint, and recommends dismissal of the case. We agree to the extent that such gross misconduct or negligence has not been shown as warrants disbarment or suspension pursuant to sections 21 and 22 of the Code of Civil Procedure. "That part of the profession/" said Lord Mansfield in *Pitt vs. Yalden*, ([1767], 4 Burr., 2060), "which is carried on by attorneys is liberal and reputable, as well as useful to the public, when they conduct themselves with honor and integrity; and they ought to be protected when they act to the best of their skill and knowledge. But every man is liable to error; and I should be very sorry that it should be taken for granted that an attorney is answerable for every error or mistake. * * * A counsel may mistake as well as an attorney. * * * Yet no one will say that a counsel who has been mistaken shall be charged. * * * Not only counsel but judges may differ, or doubt, or take time to consider. Therefore, an attorney ought not to be liable in case of reasonable doubt." "No attorney," said Chief Justice Abbott, "is bound to know all the law; God forbid that it should be imagined that an attorney or a counsel, or even a judge, is bound to know all the law." (*Montorious vs. Jefferys*, 2 Car. & P., 113.)

The court, having in mind the many appeals which have been dismissed because of the lack of diligence of counsel, cannot let the occurrence pass without expressing a strong disapproval of such criminal carelessness. While we would not wish to assume a harsh and uncompromising attitude towards attorneys-at-law, we would wish for them to know that by indulging in such unprofessional tactics they become unworthy of the trust which the law reposes in them. The lack of due care is a breach of the attorney's undertaking with his client, and is indicative of a disregard of the attorney's duties to the court. We bring to the notice of clients whose rights have been prejudiced by the failure or by the delay of an attorney in preparing or filing pleadings necessary in the proper conduct of a cause, and in taking such steps as may be required in the progress of the case, that the client who has suffered damages as the result of his attorney's negligence or misconduct may recover therefor. In *Drais vs. Hogan* ([1875], 50 Cal., 121), although many other cases might be cited, it was held that "if a judgment is obtained against a party upon a complaint which is radically defective, and he desires to appeal, and procures bondsmen, but his attorney neglects to do so until the time for appeal expires, the attorney is guilty of gross negligence, and is liable for the loss sustained by the client."

Without, therefore, desiring especially to overemphasize the dereliction of Attorney Anacleto Filart for, sad to relate, he is only one of a class, it does become our solemn duty to reprimand him for carelessness and misconduct in attending to the cause of poor clients. Let a copy of this order be furnished to the respondent for his information with a warning that a more severe punishment will be meted out to him in case of a repetition of similar acts and omissions; and let a copy hereof be filed with his personal papers in this court. So ordered.

Arellano, C.J., Torres, Johnson, Araullo, Street, and Avanceña, JJ., concur.

Respondent reprimanded.

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