

JOSE R. PAÑGANIBAN, COMPLAINANT, VS. ELIAS BORROMEO, RESPONDENT.*. September 09, 1933*

Ponente: MALCOLM, J.

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MALCOLM, J.:

These proceedings looking to the disbarment of the respondent attorney are before us on the representations of the Solicitor-General that the respondent appear and show cause, if any he has, why he should not be proceeded against for professional malpractice. The respondent admits that, in his capacity as notary public, he legalized the document which is the basis of the complaint against him, and that the document contains provisions contrary to law, morals, and good customs, but by way of defense disclaims any previous knowledge of the illegal character of the document.

On November 25, 1931, Alejandro Pabro and Juana Mappala, husband and wife, subscribed a contract before the notary public Elias Borromeo, who was at that time a regularly admitted member of the Philippine Bar. The contract in question had been prepared by the municipal secretary of Naguilian, Isabela. Attorney Borromeo cooperated in the execution of the document and had, at least, some knowledge of its contents, although he may not have been fully informed because of a difference in dialect. The contract in substance purported to formulate an agreement between the husband and the wife which permitted the husband to take unto himself a concubine and the wife to live in adulterous relationship with another man, without opposition from either one of them.

Two questions are suggested by the record. The first concerns the point of whether or not the contract sanctioned an illicit and immoral purpose. The second concerns the point, on the supposition that the contract did sanction an illicit and immoral purpose, of whether a lawyer may be disciplined for misconduct as a notary public.

The contract of the spouses, it will be recalled, was executed at a time when the Spanish Penal Code, as modified by Act No. 1773 was in force. Conceding, however, that the more liberal provisions of the Revised Penal Code should be given application, it is therein provided that the consent or pardon given by the offended party constitutes a bar to prosecution for adultery or concubinage. In this instance, if the spouses should retain their present frame of mind, no prosecution of either one by the other could be expected. Nevertheless, we think it far from the purpose of the Legislature to legalize adultery and concubinage. They still remain crimes, with the qualification that prosecution cannot be instituted if the offended party consent to the act or pardon the offender. This is a matter of future contingency and is not a matter for legalization in wanton disregard of good morals. We hold the contract to contain provisions contrary to law, morals, and public order, and as a consequence not judicially recognizable.

Passing to the second question, we think there can be no question as to the right of the court to discipline an attorney who, in his capacity as notary public, has been guilty of misconduct. To the office of notary public there is not attached such importance under present conditions as under the Spanish administration. Even so, the notary public exercises duties calling for carefulness and faithfulness. It is for the notary to inform himself of the facts to

which he intends to certify, and to take part in no illegal enterprise. The notary public is usually a person who has been admitted to the practice of law, and as such, in the commingling of his duties as notary and lawyer, must be held responsible for both. We are led to hold that a member of the bar who performs an act as a notary public of a disgraceful or immoral character may be held to account by the court even to the extent of disbarment. (See 2 Thornton on Attorneys At Law, pp. 1258, 1259; In re Chappell [1909], 115 N. Y. S., 868; In re Barnard [1912], 136 N. Y. S., 185; In re Arctander [1879], 1 N. W., 43; In re Ten-ell [1903], 2 Phil., 266; In re Adriatico [1906], 7 Phil., 173; U. S. vs. Kilayko [1916], 34 Phil., 796; De la Cruz vs. Capinpin and Albea [1918], 38 Phil., 492.)

It now becomes necessary to pronounce sentence. As mitigating circumstances, there may be taken into consideration (1) that the attorney may not have realized the full purport of the document to which he took acknowledgment, (2) that no falsification of facts was attempted, and (3) that the commission of the respondent as a notary public has been revoked. Accordingly, we are disposed in this case to exercise clemency and to confine our discipline of the respondent to severe censure. So ordered.

Avanceña, C. J., Street, Villa-Real, Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

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