

IN RE PEDRO CARMEN.

. October 09, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

This proceeding was instituted in this court upon the complaint of the spouses Leodegario Tumamao and Laureana de la Cruz, of the municipality of Guimba, Province of Nueva Ecija, alleging certain misconduct and abuses committed upon them by Pedro Carmen as their attorney. The matter was referred by this court to the Attorney-General, who, after due investigation, preferred four charges against the said attorney, namely: (1) Carelessness and neglect of professional duty; (2) deceit; (3) misappropriation of the property of his clients, and (4) fraud and misconduct towards his clients. Thereafter this court appointed the judge of the Court of First Instance of Nueva Ecija as commissioner to hear and receive the proofs in the case.

In his memorandum submitted to this court the Attorney-General urges only the first and fourth of the above-mentioned charges, he being of the opinion that the evidence adduced during the hearing was not sufficient to prove the second and third charges.

From the complaint, the answer, and the proofs adduced by both parties during the hearing, the following facts appear:

The complainants, Leodegario Tumamao and Laureana de la Cruz, husband and wife, on April 16, 1915, brought an action in the court of the justice of the peace of Guimba, Nueva Ecija, against the spouses Macario Barangan and Leoncia Agustin, for the recovery of about 24 cavanos of palay and P30 damages. That case was decided against the plaintiffs and the latter appealed to the Court of First Instance. They engaged Pedro Carmen, a practising attorney of Cabanatuan, Nueva Ecija, to prosecute their appeal in the Court of First Instance. Having no money with which to pay the expenses of the litigation and the attorney's fees, the complainants entered into a contract of "aparceria" with the said attorney, whereby the former were to work upon the land of the latter and receive one-half of the rice which they could produce. According to the complainants, the agreement or understanding between them was that they were to pay the attorney's fees out of the portion of rice that would correspond to them in the division; that said attorney's fees were fixed at P50, and that they also received from said attorney the sum of P20 with which to pay the filing fees, making their total liability P70. But according to the respondent attorney he agreed to prosecute the complainants' case gratuitously because they had agreed to become his aparceros, and that he never fixed the fees of P50 nor did he advance the sum of P20.

The complainants worked upon the land of the respondent for two agricultural years, producing 30 odd cavanos of rice in the first year and 40 odd cavanos in the second year, all of which were kept by the overseer (encargado) of the respondent in the camarin of the latter, and the complainants at the time of the hearing had not yet received any part of the 35 cavanos-their one-half share in the 70 cavanos so produced by them.

In the meantime, what had the respondent attorney done with regard to the complainants' case? It appears from the record that on June 15, 1915, he filed in the court of the justice of the peace of Guimba a notice of appeal to the

Court of First Instance, enclosing P16 in payment of the filing fees.

(NOTE.-In this connection, it may be noted in passing, that the respondent told a deliberate falsehood when he testified in his own behalf as follows: "Q. And do you know who paid the fees on appeal in the Court of First Instance?-A. I do not know who paid the fees on appeal, because I found the case here already duly appealed." P. 17, s. n.)

On June 18, 1915, the clerk of the Court of First Instance notified the parties to the action in question that the record of the case had been received from the justice of the peace of Guimba, and that the plaintiffs should file their complaint within two months. Nearly two months thereafter, to wit, on August 16, 1915, attorney Pedro Carmen filed a writing in the Court of First Instance stating that the plaintiffs relied upon and reproduced the complaint filed in the court of the justice of the peace. Since then nothing appears to have been done by the respondent as attorney for the plaintiffs. On October 2, 1916, nearly fourteen months since the filing of the last mentioned pleading, the clerk of court notified the respondent as attorney for the plaintiffs that if the case was not prosecuted (by having the defendants summoned) the same would be dismissed on October 28, 1916. The respondent knew that it was necessary to deposit in court an amount sufficient to cover the sheriff's fees for summoning the defendants; yet he paid no attention whatever to said notice, nor did he notify the plaintiffs of the necessity of making such deposit in court. Accordingly, on November 1, 1916, the court dismissed the case for failure of the plaintiffs to prosecute their action. The excuse now preferred by the respondent is that he was not legally bound to advance the sheriff's fees. These are the facts with reference to the first charge-carelessness and neglect of professional duty.

With reference to the other charge-fraud and misconduct toward his clients-the following are the facts:

The complainants, after working for two years on the land of the respondent, and realizing that nothing was being done by him to prosecute their case, abandoned the land and stopped working thereon. Because of such abandonment, the respondent attorney, on June 10, 1918, filed a criminal complaint in the court of the justice of the peace of Cabanatuan against the complainant Leodegario Tumamao for an alleged violation of Act No. 2098, that is, for failing to work on the land in accordance with the contract of aparceria, Exhibit A of the answer. In said contract of aparceria it is made to appear that the complainants received P60 from the respondent's wife as an advance; and as security for the payment of this debt and any other subsequent debts, the complainants delivered to the respondent the certificate of ownership of the former's carabao, which certificate had not yet been returned by him to the complainants at the time of the hearing. After the accused, Leodegario Tumamao, had been arrested and the case set for trial, the complaining witness, Pedro Carmen, failed to appear at the trial, whereupon the case was dismissed upon motion of the defendant. The respondent alleges that he failed to appear at the trial of that criminal case because he was very busy, having been appointed a law clerk in the Senate. The Attorney-General is of the opinion that the said criminal complaint was instituted by the respondent maliciously and for the sole purpose of harassing and intimidating the complainants so as to compel them to work on his land.

From the foregoing facts we are of the opinion that the charges urged by the Attorney-General against the respondent are substantiated by the evidence.

With reference to the first charge, while the respondent, as attorney for the plaintiffs, was not legally bound to advance the sheriff's fees, yet under the circumstances of the case, his conduct in the premises cannot in any way be justified. Fourteen months had elapsed since he filed his pleading in which he stated that the plaintiffs relied upon the complaint in the court of the justice of the peace, and he had not taken any step toward, having the defendants summoned. And worse than that, after he had been officially notified by the clerk of court that the case would be dismissed unless he prosecuted the same, he paid no attention whatever to such notice, upon the grounds

(1) that he was not legally bound to advance the sheriffs fees, and (2) that it appears from the notice that the plaintiffs themselves were also so notified. Considering that the respondent knew that the plaintiffs had no money, for which reason they had agreed to work on his land in return for his professional services; considering that the sheriff's fees could not amount too much, and considering that he also knew that the plaintiffs were ignorant of court procedure, we are of the opinion that the respondent owed it to his clients to advance the sheriff's fees, or at least advise them to procure the amount, in order that the case might not be dismissed. The respondent's lethargy in the prosecution of the case in question was apparently due to his desire to delay the case as long as possible so that his clients might so long remain his aparceros. This is evidenced (1) by the fact that after dismissal of the case he attempted, according to his own contention, to have the judge reconsider his order of dismissal, and (2) by the fact that when his clients left his land he tried to intimidate them into coming back by filing a criminal complaint against Leodegario Tumamao. All of this shows that the respondent wanted to exploit his clients to serve his personal interests.

With reference to the other charge against the respondent, namely, gross misconduct toward his clients, it is an undisputed fact that the complainants would not have agreed to become aparceros of the respondent were it not in consideration of the latter's agreement to act as their lawyer in their case. The contract of aparceria (respondent's Exhibit A) which the respondent had inveigled his clients into signing, was a monstrous sample of the rankest sort of usury. These are two of its provisions:

"(e) If I (the tenant on shares) should get money from my landlord not for the purpose of spending it for sowing, harvesting, and threshing, I shall pay one cavan for every peso and this shall be taken from the share corresponding to me.

"(g) If I should get palay then for each cavan that I get I shall return two cavan of palay and these shall be taken from my share."

No doubt, under such a usurious bargain, the respondent could claim, as he in effect does claim in his answer (respondent's Exhibit B), that his clients were still indebted to him in the sum of P78, after they had worked for him for two years and had delivered to him all the fruits of their labor. It was evidently for that alleged debt that the attorney attempted to prosecute his clients criminally. In other words, after neglecting and losing his clients case, the attorney wanted to compel them to remain his slaves.

That the criminal action instituted by the respondent against the complainant was malicious and intended to harass and intimidate his simple-minded and ignorant clients, would seem to be true. In the contract of aparceria itself it is stipulated that the carabao of the complainants stood as a guaranty for all of their present and future debts, and the certificate of that carabao was delivered to, and still remained in the possession of, the respondent. The respondent could attach that carabao if his clients really owed him anything instead of resorting to a criminal action. When the case was called for trial the respondent, as the complaining witness, failed to appear in court, showing bad faith on his part in filing the criminal complaint.

Section 21 of Act No. 190 provides as follows:

"A member of the bar may be removed or suspended from his office as lawyer by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, or by reason of his conviction of a crime involving moral turpitude or for any violation of either of the oaths aforesaid, or for the willful disobedience of any lawful order of the Supreme Court or Courts of First Instance, or for corruptly or willfully appearing as a lawyer for a party to an action or proceeding without authority so to do."

One of the oaths administered to a lawyer before he assumes his office is as follows;

"I do solemnly swear that I will do no falsehood, nor consent to the doing of any in court; I will not wittingly

or willingly promote or sue any false, groundless, or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, but will conduct myself in the office of a lawyer within the courts according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients. So help me God."

"The high trust and confidence which the client must repose in the attorney can only be attained if the attorney observes the utmost good faith toward the client." (Hernandez vs. Villanueva, 40 Phil., 775.)

Under the facts and the law above stated we believe that the respondent, attorney Pedro Carmen, should be suspended as a member of the bar for at least six months.

It is therefore hereby ordered and decreed that the said Pedro Carmen be suspended from the right to practice law or to appear as an attorney-at-law in any of the courts of the Philippine Islands for a period of six months from the promulgation of this order. So ordered.

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

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