

TRANQUILINO MARAVILLA, COMPLAINANT, VS. CORNELIO T. VILLAREAL, RESPONDENT.*Adm. Case No. 786. September 16, 1936*

Ponente: LAUREL, J.

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This is a complaint for malpractice filed by Tranquilino Maravilla against Attorney Cornelio T. Villareal. The complaint alleges that on or about the month of July, 1933, the complainant retained the services of the respondent in civil case No. 2221, Court of First Instance of Capiz, entitled "Tranquilino Maravilla, plaintiff, vs. Martiniano Bonifacio et al., defendants," in which case Antonio Padios, son-in-law of the complainant, was receiver; that due to an objection filed against the approval of the account of the said receiver, the Court of First Instance of Capiz appointed a commissioner to ascertain the improvements and produce of the land which was the subject matter of the controversy in that case; that in the hearing on the report filed by the commissioner the respondent without any justifiable cause, failed to appear and as a result the report submitted by the said commissioner was approved by the court; and that due also to the negligence of the respondent, no appeal was taken from the order approving the report of the commissioner. Complainant also alleges that the respondent, while acting as counsel for the receiver in the case above referred to, betrayed the trust of his client by acting as counsel for Pedro Perlas who was claiming an interest adverse to that of the receiver, as evidenced by a communication addressed by the respondent to the provincial sheriff of Capiz a copy of which is attached to the complaint as Exhibit A.

By resolution of this court of August 17, 1936, the complaint was referred to the respondent for answer.

In his answer, bearing date of September 1, 1936, and filed with this court on the 10th of the same month, the respondent admits having been retained as counsel for the receiver, Antonio Padios, in the aforesaid civil case No. 2221, Court of First Instance of Capiz. He states that in order to clarify certain doubts regarding certain items in the account of the receiver, Antonio Padios, the parties in that case, agreed to appoint Agaton Ignacio, deputy clerk of the Court of First Instance of Capiz, as commissioner, the parties stipulating that the report to be submitted by the said commissioner was to be final and binding upon them; and that no appeal was taken from the order issued by the court approving the commissioner's report because of this stipulation. We find that this allegation of the respondent is borne out by Exhibit 2 attached to his answer, which exhibit is a copy of the order of the lower court of April 16, 1934 disapproving the account of the receiver, Antonio Padios, and reciting among other things the following:

"Resulta de estas pruebas que el terreno cuestionado contiene una plantación de cocos con un número considerable de fructíferos desde el año 1924; que el depositario debió haber recogido de dichos cocos fructíferos desde el año 1924 hasta el año 1932, inclusive, coprax por valor de no menos de P500 como producto neto; y que dicho depositario dejó de pagar el amillaramiento del terreno durante su administración que importa P74.01, importe que los demandados hubieron de abonar cuando los fue devuelto el terreno. Por obviar toda duda sobre la producción de los cocos en el terreno cuestionado durante el período de

administracion del depositario judicial, por convenio de ambae paries, se nombro al escribano delegado de este juzgado como comisionado unico, cuyo informe iba de ser final para dichas partes, el cual, en presencia de las partes y de sus abogados, se constituyo en dicho terreno y obtuvo los datos que el Juzgado requirio en su orden de fecha 26 de febrero de 1934. El comisionado rindi6 su informe que se hace parte de esta decision, en el cual consta que, durante el periodo antes mencionado, el depositario judicial debid haber percibido del terreno cuestionado coprax por valor de no menos de P515." (Underscoring ours.) The respondent denied having failed to appear at the hearing on the report of the commissioner. On the contrary, he alleges that "in fact and in truth he was present at the said hearing in behalf of his client." (Page 2, respondent's answer.) Whatever might have been the case, however, we are of the opinion that the respondent can not be held guilty of negligence or infidelity to his client for his failure, to appeal from the order of the court below approving the report of the commissioner and disapproving the account of the receiver in view of the agreement between the parties in civil case No. 2221 regarding the appointment of the commissioner and the acceptance of the commissioner's findings by the parties. The respondent could not properly have repudiated this agreement as counsel for one of the parties thereto.

With reference to his intervention in the levy and execution of the properties of Pedro Perlas, one of the bondsmen of Antonio Padios, as shown by a copy of the letter addressed by him to the provincial sheriff of Capiz (Exhibit A), we find that all that the respondent did in this letter was to claim the benefit of exhaustion (excusion) in favor of the bondsman, Pedro Perlas, in view of the fact that the principal obligor, Antonio Padios, had sufficient properties which could be levied upon. We find nothing censurable in this conduct of the respondent. He called the attention of the sheriff to what, after all, is the law. While courts will not hesitate to mete out proper disciplinary punishment upon lawyers who fail to live up to their sworn duties they will, on the other hand, protect them from the unjust accusations of dissatisfied litigants.

The complaint against the respondent attorney is hereby dismissed. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Recto, JJ., concur.

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