

FELIX MELEGRITO, COMPLAINANT, VS. EUSEBIO C. BARBA, RESPONDENT.

. October 02, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

These charges of malpractice filed by Felix Melegrito on behalf of himself and 230 other persons against Attorney Eusebio C. Barba were referred in due course to the Solicitor-General for investigation and report. As the complainants were residents of the Province of Tarlac, the Solicitor-General entrusted the investigation to the fiscal of that province. At the instance of the respondent the investigation, after being transferred several times, was set for April 4, 1933, but the respondent did not appear on that date. The complainants, accompanied by an attorney, appeared and presented their evidence, consisting of the testimony of Felix Melegrito and various exhibits. The provincial fiscal found the respondent attorney guilty of serious malpractice committed by defrauding the complainants of P8,226, and recommended that the respondent be disbarred from the practice of law and ordered to return said amount to the complainants. The Solicitor-General in submitting his report to this court said:

"After a careful consideration of the evidence, oral as well as documentary, presented by the complainant in the case, the undersigned has found that the conclusions of the provincial fiscal are supported by the evidence of record, and, accordingly, concurs in his recommendation."

It appears from an examination of the record that Francisco Gonzales, the owner of the greater part of the "Hacienda Esperanza", transferred certain portions of it to his daughters Ramona, Guadalupe, Cristina, and Aurea Gonzales, and that in 1914 his daughters filed separate applications in the Court of First Instance of Nueva Ecija for the registration of their respective portions of the hacienda. The registration was opposed by Felix Melegrito and more than 230 other persons. In due course the opposition was overruled and the registration of the lands in the name of the applicants was ordered. The cases were appealed to this court, which remanded them to the lower court for a new trial and for amendment of the plans. The four cases were then consolidated with cadastral case No. 22 of the Province of Nueva Ecija, which had been instituted in the meantime. After additional evidence had been presented, the lower court again decided in favor of the applicants. From that decision four groups of opponents appealed to this court, which affirmed the decision of the lower court on March 30, 1929 (G. R. Nos. 28875-79).[1]

In February, 1930, the complainants engaged the respondent attorney to appeal their cases to the Supreme Court of the United States, and agreed to pay him P6,500. The respondent sailed for the United States in October, 1930, and returned in March, 1931. While in the United States he went to Washington and secured a letter of introduction from the Vice-President of the United States to the Governor-General of the Philippine Islands in the hope of being appointed a member of the Governor-General's staff. It does not appear that the respondent made any attempt, either in Manila or in Washington, to take the cases of the complainants to the Supreme Court of the United States, because, as the respondent states, the decision of this court had become final and unappealable, and

the records had been returned to the Court of First Instance of Nueva Ecija. The only thing which the respondent did, after examining the record, before leaving for the United States, was to go to Tarlac and have the complainants sign affidavits respecting their claims to the land, for which he collected P2.50 from each of the complainants; seven months after his return from the United States, when the complainants had already demanded the return of the money which they had paid him, the respondent petitioned the Governor-General to order a survey of the boundary line between Nueva Ecija and Tarlac Provinces. The object of this petition, the respondent asserts, was to show that the lands claimed by Felix Melegrito et al. were not situated in Nueva Ecija Province, but in Tarlac. The complainants informed the Governor-General that they were not interested in having the boundary line between the two provinces surveyed, but in recovering the money which they had paid the respondent.

Felix Melegrito testified at the investigation that he and the other complainants had paid the respondent or his agents a total sum of P8,226. Four thousand two hundred and twenty-eight pesos (P4,228) of this amount is supported by receipts signed by the respondent or his authorized agents. The respondent denies having received the sum of P8,226 or any such sum, but in his answer of December 29, 1932 he admitted that he had received P2,185.

The respondent alleges that after examining the records of the land registration cases, which had already been returned to the Court of First Instance of Nueva Ecija, he told the complainants that the decision of this court had already become final and could not be appealed, and that the amount involved in the different cases was not sufficient to entitle the claimants to a review in the Supreme Court of the United States, and that in case of an appeal it would be necessary for the appellants to file a supersedeas bond, which they said they were unable to do. Although the decision of this court appears to have been final and unappealable when the complainants consulted the respondent, we are satisfied that he never so informed them, but on the contrary led them to believe that the cases could be taken to the Supreme Court of the United States, and that to prosecute the appeal to the best advantage it was necessary for him to go to Washington. The respondent now maintains that he went to the United States for the purpose of revisiting his alma-mater in Kansas and securing the capital necessary for the development of a gold mine, and that he went to the United States at his own expense, but the receipts, Exhibits B, B-1 to B-6, show that the respondent collected at least P3,530 before he sailed for the United States; that in September, 1930, the respondent wrote a letter to Felix Melegrito, Exhibit F, inquiring whether the voyage was to be made or not, and urging Melegrito to advance P1,000 for the account of the respondent's compadre in order to make up the agreed amount. The respondent said that he wished to reach Washington by Christmas. After the respondent had sailed his wife and his agent, Benito Diaz, collected further sums from the complainants. Felix Melegrito went to the boat with the respondent when he sailed for the United States; and respondent's wife and his agent in their letters to the complainants refer to respondent's voyage and his arrival in Washington.

The respondent attorney is guilty of malpractice. He collected several thousand pesos from the complainants for the purpose of taking their cases to the Supreme Court of the United States, but he never removed said cases to that court or attempted to do so, because the decision of this court had already become final and unappealable, and he was guilty of deceit in concealing that fact from the complainants while collecting fees from them for the purpose of prosecuting the appeal.

Section 21 of the Code of Civil Procedure provides that 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.

It appears from the testimony of Felix Melegrito that in April, 1931, he made a demand on the respondent for the return of the money which the complainants had paid him, and the respondent promised to repay the sum of P1,500 at once and the remainder at the rate of P50 a month, but that the respondent has never repaid any sum to

the complainants.

For the foregoing reasons, the respondent is suspended from the practice of law for a period of two years from this date and until he shall have repaid to the complainants the sum of P4,228, payment thereof to be evidenced by receipts in due form, which shall be attached to the record of this case.

Avanceña, C. J., Street, Malcolm, Villa-Real, Imperial, and Butte, JJ., concur.

[1]Gonzalez vs. Domingo, not reported.

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