

DOMINGO AYA, COMPLAINANT, VS. JUAN BIGORNIA, RESPONDENT.

. July 26, 1932

Ponente: BUTTE, J.

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BUTTE, J.:

This is an administrative case against Juan Bigornia, an attorney-at-law, for non-professional conduct.

Under date of September 12, 1929, Domingo Aya addressed to the Attorney-General, a complaint against Attorney Juan Bigornia of Naguilian, Isabela, charging that said Bigornia, while his attorney, misappropriated funds belonging to Aya.

Under date of September 16, 1929, the Attorney-General, without comment, forwarded this complaint to this court. On September 20, 1929, this court referred the complaint to the Attorney-General for investigation, report and recommendation.

Under date of October 11, 1929, the respondent Bigornia filed his answer with the Attorney-General. On November 13, 1929, the Attorney-General detailed the provincial fiscal of Nueva Vizcaya to conduct hearings and make recommendations. The provincial fiscal conducted hearings, the respondent appearing in his own behalf.

Under date of March 8, 1930, the provincial fiscal submitted his report to the Attorney-General, in which he finds the respondent guilty of misappropriation of funds and of misconduct, grave enough to justify disbarment. However, he recommended a suspension of his license to practice for a period of six months.

Under date of April 9, 1932, the Attorney-General submitted his report. He does not agree that the facts, as he sees them, fully warrant infliction of disbarment or suspension. He states:

"Nowhere in the record does it appear that, through false pretenses, respondent converted to his own use the money in question, nor is there any showing that in the transaction he otherwise acted in bad faith or with fraudulent purpose.

"It is true that respondent has not as yet turned over to complainant all the money due the latter, but mere non-payment of money by an attorney is insufficient ground for disbarment, in the absence of fraud or dishonesty in the retention of the money."

He also finds:

"It is, however, clear that there was unreasonable delay on the part of the respondent in accounting funds collected by him for his former client, the complainant herein, for which irregularity the respondent herein should be disciplined."

His recommendation is that the respondent Juan Bigornia should be reprimanded.

The following facts are undisputed:

The relation of attorney and client existed between Aya and Bigornia at the time the transactions in question took place. On March 30, 1925, Bigornia, as Aya's attorney, obtained judgment in Aya's favor against Dionisio Cuntapay, for the sum of P1,000 plus interest and costs. This judgment was affirmed by the Supreme Court on March 31, 1926.[1]

Bigornia caused an execution to be issued on the judgment on May 11, 1926, and on or about June 24, 1926, he collected and gave the sheriff a receipt for P450. On April 12, 1927, he caused another execution to be issued on the judgment and the sheriff's return states: "That Cuntapay paid the amount of the judgment in full."

Bigornia admits receiving all of the money collected on this judgment. In his answer to the Attorney-General's report, which was filed May 6, 1932, he admits that there was unreasonable delay on his part in accounting for the funds collected by him for his former client.

On May 4, 1929, Aya signed a typewritten receipt for the sum of P50 which, together with P391 previously received, made a total of P441. This receipt contains the following language:

"El Sr. Bigornia pagara este resto de su deuda hasta el dia 31 del presente mes * * * El saldo que todavia queda y debe pagar, puede considerar como deuda suya, como asi lo considero yo. Y para que conste, firmo el presente recibo para resguardo del Sr. Bigornia, hoy a 4 de mayo de 1929, en Cauayan, Isabela."

The essence of the respondent's defense is that Aya agreed that Bigornia might collect and use the money in the nature of a loan from Aya. Until Aya signed the statement above quoted on the 4th of May, 1929, no evidence in this record, in our judgment, sustains the respondent's defense. On the contrary, the complainant was constantly demanding payment of the money Bigornia had collected and, doubtless, Aya signed that statement of May 4, 1929 "para resguardo del Sr. Bigornia * * *," relying on Bigornia's promise that the balance of the debt would be paid before the 31st of May, 1929. So far as this record shows, the balance due has not been paid to this date. During the hearing of the charges before the fiscal, Bigornia, offered to pay P259, the amount which Aya, in the said receipt of May 4, 1929, fixes as the balance then due.

This court is convinced from a careful examination of the record that Attorney Bigornia was guilty of breach of trust and misappropriation of funds at the time he collected the sums of money aforesaid on the judgment in favor of his client, and appropriated them to his own use. Moneys collected by an attorney on a judgment in favor of his client are trust funds and should be immediately paid over to the client, less such proper deductions as may be allowed by law.

In this case, there was gross abuse of such trust.

It is the opinion of the court that the license to practice law of the respondent should be suspended for six months from and after this decision becomes effective, and thereafter until he pays the balance, if any, which he owes to his former client Aya, such payment to be shown by proper receipt filed in this cause; it is so ordered this 16th day of July, 1932.

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

[1] G. R. No. 24632, Aya vs. Cuntapay, not reported

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