

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CESAREO DURBAN, DEFENDANT AND APPELLANT.

G.R. No. 12510. August 27, 1917

Ponente: STREET, J.

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STREET, J.:

It appears from the record in this case that upon November 30, 1914, the judge of the Court of First Instance of Iloilo, upon the petition and recommendation of Salvador Laguda, a practicing lawyer of Iloilo, named Cesareo Durban as procurador judicial, with the right to appear in the courts of the justices of the peace in the Province of Iloilo as the representative of said Salvador Laguda, subject to certain restrictions which were set out in the appointment. So far as affects the question involved in this case these restrictions were that the said Durban should only be permitted to appear in matters signed and presented by the said Laguda with his own signature and when the latter should send the said Durban to attend to such matters; that the said Durban should have no authority to make contracts to represent any person in any justice court; that all contracts and appearances should be made by the said Laguda, and that the latter could send the said Durban to represent him in said courts; and finally that said Durban should not collect any sum for any service.

Upon a certain occasion while Laguda was absent for two months an elderly woman, Eustaquia Montage by name, a resident of an outlying municipality, was brought to the office by a man named Adriano Coronado. They were seeking a lawyer to represent her in a complaint in the justice of the peace court in her municipality. Durban received the two and upon being informed of the nature of their errand gave her to understand through Coronado, who acted as the principal spokesman, that he could attend to the business for her. He was therefore engaged and did attend to that suit in the justice of the peace court successfully. He collected P10 from her that day, and P10 upon each of the three visits he made out into the country to attend to the proceedings in the justice of the peace court; and when the case was there concluded Coronado paid him another P10 from her money as a gratification. This made P50 in all which was received by Durban in respect to that business. The suit in the justice of the peace court involved no more than the possession of a piece of land worth about P20; and the fee collected by Durban was greatly in excess of what he should have received. Section 34 of the Code of Civil Procedure as amended by Act No. 1919 provides that the compensation of a procurador judicial shall not exceed P5 for all services rendered in any one case. But Durban claims that he was representing the office of Laguda and therefore was entitled to charge more.

There would seem to be no just grounds for questioning the power of the judge of the Court of First Instance to limit and restrict the activities of procuradores judiciales appointed under section 34 of the Code of Civil Procedure, as amended by Act No. 1919. It follows that the defendant was unauthorized by such appointment to represent Eustaquia Montage in the court of the justice of the peace or to collect money for services therein rendered. As to all these matters he is clearly in no better position than if he had never been appointed procurador judicial. Section 34 of the Code of Civil Procedure, as amended by Act No. 1919, says:

"No person not duly authorized to practice law may engage in the occupation of appearing for or defending

other persons in justice of the peace courts without being first authorized for that purpose by the judge of the Court of First Instance."

The defendant therefore has violated this provision of law; and the question is whether or not he is guilty of estafa, under subsection 1 of article 535 of the Penal Code, as having defrauded another by falsely pretending to possess a qualification not actually possessed by him.

As the accused successfully managed the litigation which he undertook to conduct there might at first view seem to be room for the contention that the complaining witness was not defrauded within the meaning of the provision of the Penal Code referred to above. But we believe that this position is not tenable. It would seem to be clear that one who, falsely representing his own qualifications, renders a service which the law expressly declares to be unlawful defrauds the person who in good faith receives and pays for such services. In *United States vs. Del Castillo* (35 Phil. Rep., 413), this court held that a man who obtains the title deeds of another upon the false representation that he is qualified to represent him in litigation in a court of a justice of the peace is guilty of estafa.

For the reasons stated we are constrained to affirm the judgment in this cause, with costs against the appellant, with the modification that the defendant be required to indemnify Eustaquia Montage in the sum of P50, instead of P30, as judged by the court below. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, and Malcolm, JJ., concur.

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