

## EMETERIO CUI, PLAINTIFF AND APPELLANT, VS. ARELLANO UNIVERSITY, DEFENDANT AND APPELLEE.

*G.R. No. 15127. May 30, 1961*

Ponente: CONCEPCION, J.

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### CONCEPCION, J.:

Appeal by plaintiff Emeterio Cui from a decision of the Court of First Instance of Manila, absolving defendant Arellano University from plaintiff's complaint, with costs against the plaintiff, and dismissing defendant's counterclaim, for insufficiency of proof thereon.

In the language of the decision appealed from:

"The essential facts of this case are short and undisputed. As established by the agreement of facts Exhibit X and by the respective oral and documentary evidence introduced by the parties, it appears conclusive that plaintiff, before the school year 1948-1949 took up preparatory law course in the defendant University. After finishing his preparatory law course plaintiff enrolled in the College of Law of the defendant from the school year 1948-1949. Plaintiff finished his law studies in the defendant university up to and including the first semester of the fourth year. During all the school years in which plaintiff was studying law in defendant law college, Francisco R. Capistrano, brother of the mother of plaintiff, was the dean of the College of Law and legal counsel of the defendant university. Plaintiff enrolled for the last semester of his law studies in the defendant university but failed to pay his tuition fees, because his uncle Dean Francisco R. Capistrano having severed his connection with defendant and having accepted the deanship and chancellorship of the College of Law of Abad Santos University, plaintiff left the defendant's law college and enrolled for the last semester of his fourth year law in the college of law of the Abad Santos University graduating from the college of law of the latter university. Plaintiff, during all the time he was studying law in defendant university was awarded scholarship grants, for scholastic merit, so that his semestral tuition fees were returned to him after the ends of semesters and when his scholarship grants were awarded to him. The whole amount of tuition fees paid by plaintiff to defendant and refunded to him by the latter from the first semester up to and including the first semester of his last year in the college of law or the fourth year, is in total P1,033.87. After graduating in law from Abad Santos University he applied to take the bar examination. To secure permission to take the bar he needed the transcripts of his records in defendant Arellano University. Plaintiff petitioned the latter to issue to him the needed transcripts. The defendant refused until after he had paid back the P1,033.87 which defendant refunded to him as above stated. As he could not take the bar examination without those transcripts, plaintiff paid to defendant the said sum under protest. This is the sum which plaintiff seeks to recover from defendant in this case.

"Before defendant awarded to plaintiff the scholarship grants as above stated, he was made to sign the following contract, covenant and agreement.

"In consideration of the scholarship granted to me by the University, I hereby waive my right to transfer to another school without having refunded to the University (defendant) the equivalent of my scholarship cash.

(Sgd.) EMETERIO CUI."

It is admitted that, on August 16, 1949, the Director of Private Schools issued Memorandum No. 38, series of 1949, on the subject of "Scholarships", addressed to "All heads of private schools, colleges and universities", reading:

"1. School catalogs and prospectuses submitted to this Bureau show that some schools offer full or partial scholarships to deserving students—for excellence in scholarship or for leadership in extra-curricular activities. Such inducements to poor but gifted students should be encouraged. But to stipulate the condition that such scholarships are good only if the students concerned continue in the same school nullifies the principle of merit in the award of these scholarships.

"2. When students are given full or partial scholarships, it is understood that such scholarships are merited and earned. The amount in tuition and other fees corresponding to these scholarships should not be subsequently charged to the recipient students when they decide to quit school or to transfer to another institution. Scholarships should not be offered merely to attract and keep students in a school.

"3. Several complaints have actually been received from students who have enjoyed scholarships, full or partial, to the effect that they could not transfer to other schools since their credentials would not be released unless they would pay the fees corresponding to the period of the scholarships. Where the Bureau believes that the right of the student to transfer is being denied on this ground, it reserves the right to authorize such transfer."

that defendant herein received a copy of this memorandum; that plaintiff asked the Bureau of Private Schools to pass upon the issue on his right to secure the transcript of his record in defendant University, without being required to refund the sum of P1,033.87; that the Bureau of Private Schools upheld the position taken by the plaintiff and so advised the defendant; and that, this notwithstanding, the latter refused to issue said transcript of record, unless said refund were made, and even recommended to said Bureau that it issue a written order directing the defendant to release said transcript of record, "so that the case may be presented to the court for judicial action". As above stated, plaintiff was, accordingly, constrained to pay, and did pay under protest, said sum of P1,033.87, in order that he could take the bar examinations in 1953. Subsequently, he brought this action for the recovery of said amount, aside from P2,000 as moral damages, P500 as exemplary damages, P2,000 as attorney's fees, and P500 as expenses of litigation.

In its answer, defendant reiterated the stand it took vis-a-vis the Bureau of Private Schools, namely, that the provisions of its contract with plaintiff are valid and binding, and that the memorandum above-referred to is null and void. It, likewise, set up a counterclaim for P10,000.00 as damages, and P3,000 as attorney's fees.

The issue in this case is whether the above quoted provision of the contract between plaintiff and the defendant, whereby the former waived his right to transfer to another school without refunding to the latter the equivalent of his scholarships in cash, is valid or not. The lower court resolved this question in the affirmative, upon the ground that the aforementioned memorandum of the Director of Private Schools is not a law; that the provisions thereof are advisory, not mandatory in nature; and that, although the contractual provision "may be unethical, yet it was more unethical for plaintiff to quit studying with the defendant without good reasons and simply because he wanted to follow the example of his uncle". Moreover, defendant maintains in its brief that the aforementioned memorandum of the Director of Private Schools is null and void because said officer had no authority to issue it, and because it had been neither approved by the corresponding department head nor published in the official gazette.

We do not deem it necessary or advisable to consider, as the lower court did, the question whether plaintiff had sufficient reasons or not to transfer from defendant University to the Abad Santos University. The nature of the issue before us, and its far reaching effects, transcend personal equations and demand a determination of the case

from a high impersonal plane. Neither do we deem it essential to pass upon the validity of said Memorandum No. 38, for, regardless of the same, we are of the opinion that the stipulation in question is contrary to public policy and hence, null and void. The aforesaid memorandum merely incorporates a sound principle of public policy. As the Director of Private Schools correctly pointed out in his letter, Exhibit B, to the defendant,

"There is one more point that merits refutation and that is whether or not the contract entered into between Cui and Arellano University on September 10, 1951 was void as against public policy. In the case of Zeigler vs. Illinois Trust and Savings Bank, 245 Ill. 180, 19 Ann. Case 127, the court said: 'In determining a public policy of the state, courts are limited to a consideration of the Constitution, the judicial decisions, the statutes, and the practice of government officers.' It might take more than a government bureau or office to lay down or establish a public policy, as alleged in your communication, but courts consider the practices of government officials as one of the four factors in determining a public policy of the state. It has been consistently held in America that under the principles relating to the doctrine of public policy, as applied to the law of contracts, courts of Justice will not recognize or uphold a transaction which in its object, operation, or tendency, is calculated to be prejudicial to the public welfare, to sound morality, or to civic honesty (Ritter vs. Mutual Life Ins. Co., 169 U. S. 139; Heding vs. Gallaghere, 64 L.R.A. 811; Veazy vs. Allen, 173 N.Y. 359). If Arellano University understood clearly the real essence of scholarships and the motives which prompted this office to issue Memorandum No. 38, s. 1949, it should have not entered into a contract of waiver with Cui on September 10, 1951, which is a direct violation of our Memorandum and an open challenge to the authority of the Director of Private Schools because the contract was repugnant to sound morality and civic honesty. And finally, in Gabriel vs. Monte de Piedad, Off. Gazette Supp. Dec. 6, 1941, p. 67 we read: 'In order to declare a contract void as against public policy, a court must find that the contract as to consideration or the thing to be done, contravenes some established interest of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights.' The policy enunciated in Memorandum No. 38, s. 1949 is sound policy. Scholarships are awarded in recognition of merit not to keep outstanding students in school to bolster its prestige. In the understanding of that university scholarships award is a business scheme designed to increase the business potential of an educational institution. Thus conceived it is not only inconsistent with sound policy but also good morals. But what is morals? Manresa has this definition. It is good customs; those generally accepted principles of morality which have received some kind of social and practical confirmation. The practice of awarding scholarships to attract students and keep them in school is not good customs nor has it received some kind of social and practical confirmation except in some private institutions as in Arellano University. The University of the Philippines which implements Section 5 of Article XIV of the Constitution with reference to the giving of free scholarships to gifted children, does not require scholars to reimburse the corresponding value of the scholarships if they transfer to other schools. So also with the leading colleges and universities of the United States after which our educational practices or policies are patterned. In these institutions scholarships are granted not to attract and to keep brilliant students in school for their propaganda value but to reward merit or help gifted students in whom society has an established interest or a first lien." (Italics supplied.)

Wherefore, the decision appealed from is hereby reversed, and another one shall be entered sentencing the defendant to pay to the plaintiff the sum of P1,033.87, with interest thereon at the legal rate from September 1, 1954, date of the institution of this case, as well as the costs, and dismissing defendant's counterclaim. It is so ordered.

Bengzon, C.J., Padilla, Labrador, Reyes, J.B.L., Barrera, Paredes, Dizon, De Leon and Natividad, JJ., concur.

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