

PAUL A. WEEMS, PLAINTIFF AND APPELLANT VS. ANASTASIA SHABOTUROFF IN PADOVANI AND AMZI B. KELLY, DEFENDANTS AND APPELLEES.*G.R. No. 26878. August 02, 1927*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Manila by Paul A. Weems to recover jointly and severally of Anastacia Shaboturoff In Padovani and Amzi B. Kelly the sum of P14,612.50, alleged to be due to the plaintiff for services rendered by him as commissioner in an action instituted by the first named defendant against one Carpi. The defendant Kelly is alleged to have made himself jointly and severally liable with his codefendant by entering into a conspiracy with her to prevent the plaintiff from obtaining the compensation to which he supposes himself to be entitled. On behalf of the defendants a writing was interposed to the amended complaint by Kelly, in his own behalf and as attorney for his codefendant, which writing was declared by the court to be in legal effect a demurrer; and upon consideration of the points raised therein, his Honor, Anacleto Diaz, as trial judge, sustained the same. The plaintiff having thereupon elected not to amend further, the complaint was dismissed. From this judgment the plaintiff appealed.

As the case was dismissed in the court below upon demurrer, the only question here to be considered is whether the complaint states a cause of action. It is therefore necessary to examine the allegations of the complaint with some care.

The plaintiff is alleged to be a certified public accountant, who, on August 1, 1925, was appointed commissioner by Judge Pedro Concepcion of the Court of First Instance of Manila for the purpose, among other things, of examining and making report concerning certain accounts which had been submitted by one Adolfo Carpi in a civil case then pending in the Court of First Instance in which Carpi was defendant and Anastasia Shaboturoff In Padovani was the plaintiff. This appointment was apparently made at the instance of the plaintiff in said civil action, and with the understanding that the fees of the commissioner were to be paid by her. There is nothing in the complaint from which it may be inferred that the plaintiff was appointed as a referee, under section 135 of the Code of Civil Procedure, since the complaint does not show that the appointment was made with the written consent of both parties as required in said section. The allegation of the complaint is that the plaintiff was appointed commissioner, and the real function which he was expected to fill was that of auditor of the accounts mentioned above. Soon after Weems had entered upon his labors as auditor, he addressed a letter to Shaboturoff, expressing a desire to have the agreement with respect to his fees as auditor reduced to writing and informing her as to the rate of his charges for auditing work. He therefore proposed that he would continue his labors with the understanding that he was to be paid P100 per day of from six to seven hours of labor, with surcharge for overtime and rush work, with reimbursement for incidental expenses. Shaboturoff expressed her conformity with this proposition by placing" these words at the bottom of the page on which the letter (Exhibit A) is written: "The above agreement confirmed. Anastasia Shaboturoff In Padovani."

In the fifth paragraph of the complaint the plaintiff alleges that, pursuant to his appointment as commissioner, he proceeded to examine the accounts referred to and was occupied therewith for a period of 116.9 days, at the end of which he was able to present his report to the court. He further alleges that, as compensation for said service, he is entitled to receive the amount of P14,612.50, no part of which has been paid. The remaining allegations of the complaint are concerned with the alleged contrivances by which the two defendants in this case, conspiring and confederating together, have contrived to frustrate the realization of the plaintiff's claim by compromising Shaboturoff's action against Carpi and dismissing the complaint, at the same time fraudulently disposing of the proceeds of the compromise, with a view to depriving the plaintiff of his rights.

The judgment of the trial court, dismissing the complaint in the present case on demurrer, proceeds upon the idea that the contract, Exhibit A, is void, and that no action can be maintained by the plaintiff thereon. In this connection attention is directed to section 8 of the Code of Civil Procedure which, among other things, declares that no referee shall sit in any cause in which he is pecuniarily interested; and it is said that the contract must be illegal, because, if valid, it would disqualify the referee. This of course assumes that the plaintiff was a mere referee appointed under section 135 of the Code of Civil Procedure, but this assumption is not correct. The plaintiff sues for services in the character of an auditor rendered by procuration and at the request of the plaintiff, and for those services he ought to be paid. Really, in performing this work as auditor, the plaintiff was apparently merely qualifying himself as an expert accountant and witness for the plaintiff; and it was not within the power of the court to confer upon him the judicial functions with which a referee is clothed when appointed, with the written consent of the litigant parties, under section 135 of the Code of Civil Procedure. The appointment of the plaintiff as commissioner was undoubtedly in some respects anomalous, as he was clearly not exercising¹ the functions of a commissioner to take testimony, though it is alleged in the complaint that the order of appointment gave him authority to summon witnesses. In section 128 of the Code of Civil Procedure there is a provision authorizing a court to order a reference to some suitable person to take an account and determine the amount to which the plaintiff may be entitled, if the taking of the account is complicated. But that provision is applicable only in case judgment has been taken by default.

In view of the fact that the plaintiff was not acting in the character of referee, it becomes unnecessary for us to decide whether an agreement by a litigant to pay a referee's compensation under circumstances similar to that involved in this case would be valid; and we pretermitt the determination of this point.

But, even supposing the contract, Exhibit A, to be invalid, the plaintiff would be entitled to recover, upon a quantum meruit, the reasonable value of the services rendered. Otherwise there would result an unjust enrichment of the person who supposed herself to be profiting by the plaintiff's labors.

It will be noted that this case was dismissed in the court below upon general demurrer, and it should always be borne in mind that, in passing upon a general demurrer, every intendment of the complaint is to be taken in the sense most favorable to the plaintiff, and the demurrer must be overruled if the plaintiff is entitled to recover in any aspect of the case. Judges of First Instance should therefore exercise the greatest caution in dismissing complaints upon demurrer, for if the ruling be erroneous, it tends to prolong litigation and increases expense, to the prejudice of justice and to the great embarrassment of litigants.

The judgment appealed from is reversed, the demurrer is overruled, and the cause is remanded for further proceedings in conformity with this opinion, without costs in this instance. Costs below to abide the outcome of the litigation. So ordered.

Avanceña, C. J., Johnson, Malcolm, Villamor, Johns, and Romualdez, JJ., concur.

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