

JOSE R. INFANTE, PLAINTIFF AND APPELLANT, VS. CATALINA MONTEMAYOR, DEFENDANT AND APPELLEE.

G.R. No. 4070. January 09, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff brought this action in the Court of First Instance of the Province of Pampanga to recover the sum of P2,000 claimed to have been paid by him as agent of the defendant for her account. Judgment was entered in the court below in favor of the defendant, and from that judgment the plaintiff has appealed.

The principal, in truth the only, question of fact litigated in the court below, was whether or not the defendant signed a document on the 14th day of March, 1906, appointing the plaintiff her attorney in fact and authorizing him to employ lawyers to attend to her legal business and to pay them.

The evidence upon thin question of fact is altogether in favor of the plaintiff. The plaintiff himself, Mariano Escueta, the lawyer who drew the power of attorney, Rafael Limson, the notary public who took the defendant's acknowledgment thereto, Arturo Bernia, and Ricardo E. Velez, the subscribing witnesses to the document, all swore positively that they were present and saw the defendant place her mark against her signature to the document.

To overcome this testimony, the defendant presented herself us n witness and also Juan Maransala. The latter said that he accompanied the defendant to the house of the plaintiff upon the 14th of March, but that the defendant signed no document at. that time. The defendant herself .said that this witness was not in the room where she was with the other witnesses who testified for the plaintiff. She denies that on that occasion she signed any document. It will be seen that both of these witnesses admit that the defendant was present at the time and place where the plaintiff's witnesses say she signed the power of attorney. The judge below found in favor of the plaintiff upon this question of fact and there is no doubt as to the correctness of his conclusion.

The defendant claims in her brief that she never consulted Mariano Escueta, the lawyer employed by the plaintiff by virtue of the power of attorney, and never consented to such employment. The evidence upon this point is conclusively against her. It is said in the brief in this court that she left the house of Infante on the 14th day of March and never returned. This statement is seen to be incorrect fay an examination of the proof, for it there appears that Mariano Escueta had an interview a week or so after this date in the same house with the defendant.

The court below based its judgment for the defendant upon the fact that although the power of attorney had been signed by her, yet if had lapsed or been revoked before the plaintiff had paid Mariano Escueta in full for his services. That the plaintiff did pay Mariano Escueta P2,000 for professional services is not denied by the defendant, nor was any proof presented by the defendant to show that this sum was not the reasonable value of the lawyer's services. The court below, however, said that it did not appear from the evidence when this amount of P2,000 was paid. Both Mariano Escueta and the plaintiff testified that quite a considerable amount of it had been paid before the 30th day of March, 1906, and that the balance was paid upon that day. The plaintiff testified that

whenever he made any payment to Mariano Escueta, except the last one, he reported it to the defendant, who expressed her satisfaction therewith.

The facts upon which the court based its finding that the power of attorney had been revoked prior to the 30th of March are the following: Mariano Escueta had commenced an action for the defendant against her husband, asking for a divorce. That action was pending in the Court of First Instance of the Province of Pampanga. About the 30th day of March, Mariano Escueta received a notice entitled in that case of the defendant against her husband, signed by Frederick Garfield Waite, as lawyer for the plaintiff, in which it was stated that on the 2d day of April he would move the court to dismiss the case on the ground that the lawyers who had commenced it were never authorized to do so by the plaintiff in that suit, the defendant in this suit, and that she had never employed them for that purpose.

The court apparently held that this notice was proof that the defendant had revoked the power of attorney given to the plaintiff on the 14th of March, 1906. The defendant herself did not testify to any such revocation. In fact, there is no evidence in the case upon that point. She did not testify that she had ever employed Frederick Gr. Waite as her lawyer, and the latter was not a witness at the trial. There is no evidence in the case to show that he had any authority whatever for presenting the motion above referred to. The defendant never notified either Mariano Escueta or the plaintiff that she had appointed Frederick Garfield Waite as her lawyer, nor that she had revoked plaintiff's power of attorney. Although the court below based its decision upon the revocation of the power, yet the brief for the defendant in this court is devoted almost exclusively to an argument of the question as to whether the defendant ever signed it and as to whether or not she ever consulted with Mariano Escueta in regard to her legal business.

Upon receiving the notice above mentioned; Mariano Escueta desisted from any further action in her matters, except to ask for a postponement of the hearing upon the said motion. All the services performed by him for the defendant had been performed before the notice was given.

We hold that there was no legal evidence in the case to show that the defendant had ever employed another lawyer to carry on her legal business and no evidence to show that she had ever revoked the power of attorney of the 14th of March, 1906. The judgment of the court below must, therefore, be reversed.

In her answer the defendant set up a counterclaim against the plaintiff, who admitted it to the amount of P80.46.

The judgment of the court below is reversed and judgment is entered in favor of the plaintiff and against the defendant for P1,919.54, with interest thereon from the 6th day of June, 1906, and the costs of the Court of First Instance. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J.. Torres, Mapa, Johnson, Carson, and Trucey, JJ., concur.

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