

## IN THE MATTER OF THE SUSPENSION OF L. PORTER HAMILTON FROM THE PRACTICE OF LAW.

*G.R. No. 7725. January 17, 1913*

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### PER CURIAM:

These are disbarment proceedings, instituted against L. Porter Hamilton, an attorney at law, who was practicing his profession in the Court of First Instance of Cebu and in other courts of these Islands, at the time the charges herein set forth were formulated.

The charges were filed by the fiscal upon the order of the Honorable Adolph Wislizenus, judge of the Eleventh Judicial District, and the formal accusation sets out four separate counts of professional misconduct, as follows:

"1. The attorney L. Porter Hamilton, being such for the plaintiff Luciano Andrada, in civil cause No. 1344, defended and counseled, without the latter's consent, the defendant Isabelo Alburo in the same matter or business.

"2. The attorney L. Porter Hamilton, having received from the plaintiff Luciano Andrada, in the above-cited case, various documents among which were vouchers or notes signed by some municipal policemen of Cebu and countersigned by the defendant Isabelo Alburo, did maliciously and willfully keep and deny that he had received said documents, for the purpose of thwarting the complaint of Luciano Andrada prepared by himself on said instruments, as he had undertaken the defense of the defendant Isabelo Alburo.

"3. The attorney L. Porter Hamilton, being such in various affairs of Isabelo Alburo, betrayed his client by instigating complaints against the latter, solely in order that his client should entrust him with the defense of said complaints instigated by him.

"4. The attorney L. Porter Hamilton, under date of April 8, 1911, proposed to S. L. Joseph of Cebu that he be employed as attorney for the concern known as the S. L. Joseph Lumber Yard, with a salary of P1,200 a year, under a threat to compel the said Joseph to accept his proposition.

"Therefore, the fiscal respectfully begs the court to proceed in legal manner to suspend the attorney L. Porter Hamilton from the practice of his profession and to recommend to the Honorable Supreme Court his exclusion from the list of those admitted to practice law in the courts of the Islands."

The defendant answered formally denying the charges, and the cause came on for final hearing before Honorable Jose C. Abreu, acting as a special judge for the trial of this case, on January 22, 1912, and upon the proofs adduced, an order of suspension from the practice of law was entered against the defendant, and the case is now before this court for review.

By agreement of counsel the case was submitted on briefs, and on the record of the proceedings had in the court below. The only matters which need to be inquired into at this time relate to the conduct of the defendant in civil cause No. 1344 in the Court of First Instance of Cebu, entitled Luciano Andrada vs. Isabelo Alburo, and his conduct in addressing to S. L. Joseph the letter referred to under the fourth count of the accusation and filed as Exhibit B for the prosecution, as to both of which matters the court below found the respondent guilty of

unprofessional conduct of so grave a character as to justify and require his suspension.

It appears from the record that the defendant advised and counseled with one Luciano Andrada in regard to a claim which the latter had against Isabelo Alburo, and that he prepared for Andrada a formal petition which was filed in the office of the clerk of the Court of First Instance of Cebu under the caption "Luciano Andrada vs. Isabelo Alburo, civil case No. 1344;" and that he also prepared for the plaintiff Andrada in that cause papers relating to attachment proceedings against the property of the defendant, Alburo. The petition as well as the other papers filed with the clerk in this case were signed by the plaintiff, Andrada, who himself delivered them to the clerk. Mr. Hamilton's name was not noted as attorney of record for Andrada. It appears that there was some formal defect in the papers relating to the attachment proceedings, and on September 16, 1911, the defendant Hamilton addressed the following communication to the clerk of the court :

"[L. Porter Hamilton, lawyer, Cebu, Cagayan, and Surigao, P. I]

"CEBU, CEBU, P. I., September 16, 1911,

"CLERK OF THE COURT OF FIRST INSTANCE,

Cebu, Cebu, P. L

"Sir: I beg that you permit Mr. Luciano Andrada to get the sworn statement in civil cause No. 1344, to be exchanged for another true and correct sworn statement; and further I desire to invite your attention to the rights this gentleman has under section 34 of Act No. 190, the Code of Civil Procedure.

"Respectfully,

(Sgd.) "L. PORTER HAMILTON."

On October 2 following, the defendant entered his appearance as attorney of record for the defendant, Alburo, in civil case No. 1344 as shown by the following, which forms a part of the record in that case:

" [United States of America, Philippine Islands. Court of First Instance of the Province of Cebu. Luciano Andrada, plaintiff, vs. Isabelo Alburo, defendant Civil cause No. 1344.J

"To the clerk:

"The clerk will please record my appearance for the defendant above-named, Mr. Isabelo Alburo,

"Cebu, Cebu, P. I., October 2, 1911.

(Sgd.) "L. PORTER HAMILTON,

"Attorney for the defendant"

On the 12th of October, defendant as attorney for Alburo entered the following demurrer to the petition which had been prepared by him for Andrada:

"[United States of America, Philippine Islands. Court of First Instance of the Province of Cebu. Luciano Andrada, plaintiff, vs. Isabelo Alburo, defendant. Civil cause No. 1344.]

"DEMURRER.

"The defendant in this cause through the undersigned attorney demurs to the complaint in this case on the following grounds:

"1. That the facts alleged do not constitute sufficient cause for action.

"2. That the complaint is vague and ambiguous.

"Cebu, Cebu, P. I., October 12, 1911.

(Sgd.) "L. PORTER HAMILTON,  
"Attorney for the defendant.

"Received to-day, October 12, 1911.

(Sgd.) "L. ANDRADA."

On the 13th of October an order was entered by the Court citing the defendant to appear before the court on the following day, and explain his action in appearing as the attorney for defendant in case No. 1344. As a result of the investigation made by the court at that time, the fiscal was instructed to file the formal accusation which forms the basis of the present proceedings.

On the 14th of October the court made this additional order in the case:

"The court provisionally directs that Mr. Porter Hamilton cease to act as attorney for the defendant in this cause and the clerk of this court is prohibited from receiving any document or paper presented in such character by Mr. Porter Hamilton; and the court further directs that immediately and without delay Mr. Hamilton deposit with the clerk of this court all the documents and papers of any nature which he has at anytime received from Mr. Luciano Andrada, plaintiff in this case.

"Cebu, Cebu, October 14, 1911.

(Sgd.) "ADOLPH WISLIZENUS,  
"Judge of the Eleventh Judicial District."

In compliance with the foregoing order the defendant remitted to the court all the papers and documents in his possession relating to case No. 1344, as evidenced by the following communication, which forms a part of this record:

(L. Porter Hamilton, lawyer, Cebu, Cagayan, and Surigao, P. I.]

"CEBU, CEBU, P. I., October 14, 1911.

COURT OF FIRST INSTANCE FOR THE PROVINCE OF CEBU, P. I.

"SIR: In compliance with the order of this court of this I have the honor to transmit to your possession all the papers, documents, etc., belonging to Sr. Luciano Anin the case of Luciano Andrada, plaintiff, vs. Isabelo defendant, civil cause, No. 1344, and also all of the papers of Sr. Andrada on all other matters which I found in my office.

Respectfully, (Sgd.) "L. PORTER HAMILTON."

Upon the hearing of the disbarment proceedings in the court Luciano Andrada testified that the defendant had advised and counseled with him in regard to his claim against Isabelo Alburo, and that an understanding had been entered into touching the fees to be charged for his services; that the latter was his attorney with respect to this claim, and that as such he delivered to him certain vales and papers relating to the claim, and that he was surprised when defendant appeared as attorney for Alburo.

The defendant does not offer any satisfactory explanation of his conduct in this matter. He admits that Andrada came to his office and consulted with him regarding this claim against Alburo, and that he prepared the petition and other papers in the case. He insists, however, that he did this solely as a favor to Andrada and that he told Andrada at the time that he could not act as his attorney in the matter. In his brief the defendant states that he refused to appear as the attorney of record for Andrada for two reasons: First, because he failed to secure him his

fee, and second, because Senores Martinez and Vamenta were Andrada's regular attorneys at that time. The record clearly establishes, however, that Andrada had no attorney of record in this matter. It is possible that he had consulted other attorneys with reference to his claim against Alburo, but so far as the record shows the defendant is the only person who assumed the relationship of attorney to Andrada. He accepted from him the papers relating to his claim, and to all intents and purposes he was his attorney so far as such relationship could be established by overt acts. He did all that was necessary to establish between himself and Andrada the confidential relationship of attorney and client. He accepted from Andrada such papers as he had relating to the claim against Alburo, papers which, as Andrada testified, disclosed both the strength and the weakness of his claim. He counseled with him regarding the subject matter of the suit and prepared all of the necessary papers for the institution of the litigation, and in fact he rendered all the necessary services of an attorney with reference to the whole matter up to the time of his appearance as attorney for the opposing litigant. The only thing that he had not done was to allow his name to be affixed to the papers filed in the office of the clerk, and this act, far from being to his credit, can only serve as cumulative evidence of the fact that he was not acting in good faith with the man to whom he was rendering professional services. Andrada claims that he was working for a stipulated fee, but it is not necessary to determine here whether or not he had been secured with his fee, or whether he was acting as he claims as a matter of favor to Andrada. He voluntarily assumed the relationship of attorney to Andrada and he received from the latter every confidence that such a relation implies; he assumed the obligation of preparing the petition and other papers in the case and of expediting the same to the point where an answer was forthcoming from the defendant to the suit; and then without warning to Andrada he entered his appearance as attorney for the defendant and filed a demurrer to the very petition which he had prepared for the plaintiff. At the very time that he appeared for the defendant he had in his possession paper belonging to Andrada which pertained to the litigation and which had been delivered to him as the attorney for the plaintiff, and these were only delivered up at the order of the court.

What may have been his motive in this matter we are only left to conjecture, but from every standpoint his conduct was reprehensible in the highest degree. The record clearly establishes the relationship of attorney and client between the defendant and Andrada, and the conduct of defendant was a violation of the confidence which naturally resulted from this relationship. It was a violation of his oath as an attorney and officer of this court, in that he did not offer his services in good faith to his client and failed to serve his client's interest as it was his sworn duty to do. If in serving Andrada in the capacity that he did, he was acting in good faith, and if there had been any reasonable grounds on which he could have justified his transferring his services to the opposing litigant, he should have, and, we take it, he would have, informed Andrada of his intentions and delivered up to him such papers as he had relating to his claim. But without seeking permission from Andrada or the court, and without disclosing his intentions in the matter, he suddenly and unexpectedly, to the surprise of his former client, appeared in opposition to the very suit he had instituted. His whole action in the premises reveals a distorted conception of the ethics of his profession and an utter disregard for his duty and his obligations to both his client and the court.

The second charge of professional misconduct against the defendant relates to the following letter addressed by the defendant to Mr. S. L. Joseph, viz:

"[L. Porter Hamilton, lawyer, Cebu, Cagayan, and Surigao, P. I.]

"CEBU, CEBU, P. I., April 8, 1911.

"Mr. S. L. JOSEPH, Cebu, Cebu, P. I.

"Dear Sir: It has been some time since we have had anything to say relative to the proposition of keeping up your collections and looking after your delinquent contract men during your absence in the U. S. What is your opinion relative to the proposition of P1,200 per year, or have you dropped your original idea?

"By the way, I have an offer of P500 to make a thorough investigation into the reason why the Mpl., Prov., and Ins. Govmts. buy so much lumber and so exclusively from the S. L. Joseph Lumber Yard, and P500 more if the investigation brings satisfactory results.

"What do you know about that and what do you think of the proposition?

"Very respectfully,

(Sgd.) "L. PORTER HAMILTON."

The lower court in passing upon this letter held that the second paragraph was in the nature of a threat inserted in this letter solely to influence Mr. Joseph in the employment of the defendant in the matter referred to in the first paragraph, and that the defendant in writing such a letter was guilty of such gross professional misconduct as showed him to be unworthy of that esteem and confidence which is necessary in one who aspires to discharge the important functions of an attorney.

The defense interposed by defendant to the charge of professional misconduct relating to this letter was that he did not use the language referred to as a threat in any sense, and that it was never so understood by Mr. Joseph; that he had been Mr. Joseph's attorney with reference to other matters and had advised him with reference to the best interests of his business, and that the information imparted in the second paragraph of the letter was simply referred to in an incidental way. It is further contended that the letter in question should have been considered as a privileged communication, it having been addressed by him as attorney to his client. Respondent claims that for that reason it is not proper to consider it as evidence in a proceeding of this nature.

The letter is self-explanatory and needs but little comment from the court. A careful examination of the language used by the defendant in the second paragraph of this letter discloses that the defendant does not say that he will not accept such employment, or that he refused to accept such employment. The only reasonable interpretation that the language conveys is that he has the matter under advisement and that he is holding his final decision in abeyance. It is further quite evident from the context of the first paragraph of the letter that Mr. Joseph had apparently dropped the question of employing defendant with reference to the matter proposed, and that defendant was anxious that he take the matter up for further consideration. No reasonable explanation was given for the incorporation of the second paragraph in this particular letter, nor does any reason suggest itself, unless it be that it was inserted there as a threat. Following as, it does immediately upon the solicitation for employment, the reasonable and logical interpretation which it bears is that it was used as a threat to induce Mr. Joseph to give favorable consideration to the proposition advanced in the first paragraph of the letter. This was the conclusion of the trial court and it is also our conclusion.

The contention that this letter is a privileged communication is not tenable. The general rule is well recognized that professional communications are privileged, but that statements made by a client to his attorney, or the statements of an attorney to his client fall within this rule only when it is shown that the relation of attorney and client existed with reference to the matter to which the communication relates. (23 Am. & Eng. Ency. of Law, 58.) Furthermore, in a proceeding of this nature, where the alleged client himself is not insisting on the privilege, counsel can not be permitted to shield himself behind the privilege.

The context of the whole letter in the present case shows conclusively that no such relation existed with reference to the subject matter of the letter. The defendant was soliciting employment, and this very fact is evidence that the relation of attorney and client did not exist. As to the second paragraph of the letter we can not accept the contention that this information was imparted as professional advice.

After a very careful examination of the whole record we have regretfully reached the conclusion that the facts

before us show a flagrant and willful violation on the part of defendant of his professional obligations, and a reckless disregard of the fundamental ethics of his profession.

We have encountered some difficulty in determining whether the name of the defendant in these proceedings should be permanently stricken from the roll, or whether, under all the circumstances, an order suspending him for a substantial period would sufficiently subserve the interests of justice, and of the administration of justice in these Islands.

Under the provisions of the Spanish Penal Code (art. 357) an attorney found guilty of the unprofessional conduct of which, as appears from the record in these proceedings, this defendant was guilty is liable to suffer the penalty of temporary special disqualification, that is to say, disqualification for a period of from six years and one day to twelve years; and after some hesitation we have concluded that the suspension of the defendant for a period of six years will secure the ends for which these proceedings were instituted. It is true, of course, that, as was said by Mr. Justice Hooker, *In re Shepard* (109 Mich. 631).

"This is not a proceeding by way of punishment, though the deprivation of the privileges of an attorney may be a matter of serious importance to a practitioner. It is a measure necessary to the protection of the public, who have a right to expect that courts will be vigilant in withholding, and, if already given, withdrawing, their certificates of qualification and character, upon which the public rely."

But in determining the question whether the defendant should be suspended or permanently disbarred, it would seem proper to have in mind the provisions of the statute fixing the penalty to be imposed in the event that a criminal action had been instituted against the defendant.

Let the proper orders be entered suspending the defendant in these proceedings from the practice of law for a period of six years from the date of his original suspension in the court below, with the costs of these proceedings against him.

Arellano, C. J., Johnson, Carson, and Trent, JJ., concur.

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