

ANTONIO M.A BARRETTO, PLAINTIFF AND APPELLANT, VS. JOSE SANTA MARINA, DEFENDANT AND APPELLEE.*G.R. No. 8169. December 29, 1913*

Ponente: TORRES, J.

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These cases were appealed by counsel for the plaintiff, through a bill of exceptions, from the judgment of January 17, 1912, and the order of February 5 of the same year, whereby the Honorable S. del Rosario, judge, sentenced the defendant to pay to the plaintiff the salary to which he was entitled for the first eight days of January, 1910, also that for the following month, at the rate of P3,083.33 per month, without special finding as to costs, and dismissed the second cause of action contained in the complaint presented in that case.

On January 5, 1911, counsel for the plaintiff Antonio M.a Barretto filed suit against Jose Santa Marina, alleging that the defendant, a resident of Spain, was then the owner and proprietor of the business known as the La Insular Cigar and Cigarette Factory, established in these Islands, which business consisted in the purchase of leaf tobacco and other raw material, in the preparation of the same, and in the sale of cigars and cigarettes in large quantities; that on January 8, 1910, and for a long time prior thereto, the plaintiff held and had held the position of agent of the defendant in the Philippine Islands for the management of the said business in the name and for the account of the said defendant; that the plaintiff's services were rendered in pursuance of a contract whereby the defendant obligated himself in writing to hire the said services for so long a time as the plaintiff should not show discouragement and to compensate such services at the rate of P37,000 Philippine currency per annum; that, on the aforesaid 8th day of January, 1910, the defendant, without reason, justification, or pretext and in violation of the contract before mentioned, summarily and arbitrarily dispensed with the plaintiff's services and removed him from the management of the business, since which date the defendant had refused to pay him the compensation, or any part thereof, due him and payable in full for services rendered subsequent to December 31, 1909; and that, as a second cause of action based upon the facts aforestated, the plaintiff had suffered losses and damages in the sum of P100,000 Philippine currency. Said counsel therefore prayed that judgment be rendered against the defendant by sentencing him to pay to the plaintiff P137,000 Philippine currency, and the interest thereon at the legal rate, in addition to the payment of the costs, together with such other equitable remedies as the law allows.

By an order of March 14, 1911, the Honorable A. S. Crossfield, judge, overruled the demurrer to the first cause of action, but sustained that to the second. Counsel for the plaintiff entered an exception to this order in so far as it sustained the demurrer interposed by the defendant to the second cause of action.

By his written answer to the complaint, on July 19, 1911, counsel for the defendant, reserving his exception to the order of the court overruling his demurrer filed against the first cause of action, denied each and all of the allegations contained in the complaint, relative to such first cause of action.

As a special defense of the latter, he set forth that the plaintiff had no contract whatever with the defendant in which any period of time was stipulated during which the former was to render his services as manager of the La

Insular factory; that the defendant revoked for just cause the power conferred upon the plaintiff; that subsequent to the revocation of such power, and on the occasion of the plaintiff's having sold all his rights and interests in the business of the La Insular factory to the defendant, in consideration of the sum received by him, the plaintiff renounced all action, intervention and claim that he might have against the defendant relative to the business aforementioned, whereby all the questions that might have arisen between them were settled.

On December 19, 1911, counsel for each of the parties presented to the court a stipulation of the following purport:

"In clause 11 of the will executed by Don Joaquin Santa Marina y Perez in Madrid before a notary public on August 4, 1901, and duly legalized in these Islands, there appears the following:

" 'The testator provides that the testamentary executor who is holding office as such shall enjoy a salary, allotment, or emolument of 4,000 pesos per annum which shall be paid out of the testator's estate; but that in case of consultation, the testamentary executors consulted shall not be entitled to this allotment, nor to any other, on account of such consultation.' "

According to the statement of the sums collected by Antonio M.a Barretto as the judicial administrator of the estate of Joaquin Santa Marina from November, 1908, to March, 1910, and during twenty-three days of April of the latter year, the total amount so collected was P5,923.28.

Antonio M.a Barretto ceased to manage the La Insular factory, as the judicial administrator of the estate of the deceased Joaquin Santa Marina, in October, 1909, and not on November 7, 1908, as erroneously set out in the stenographic notes.

The remuneration paid to Barretto as judicial administrator of the estate of Santa Marina was independent of that which pertained to him for his services as manager of the La Insular factory both before and after the date on which he ceased to administer the said factory as such judicial administrator.

In the stipulation before mentioned there also appears the following: "The facts above stated are true, but there is a controversy between the attorneys for the plaintiff and the defendant, as to whether such facts are relevant as evidence in the said case. They therefore submit this question to the court and if it determines that they are relevant as evidence they should be admitted as such, with exception by the defendant, but if it determines that they are not relevant as evidence they should be excluded, with exception by the plaintiff."

After the hearing of the case, with the introduction of evidence by both parties, the court, on January 17, 1912, rendered the judgment aforementioned, to which an exception was taken by counsel for the plaintiff, who by written motion asked that the said judgment be set aside and a new trial granted, because such judgment was not sufficiently warranted by the evidence and was contrary to law and because the findings of fact therein contained were openly and manifestly contrary to the weight of the evidence. This motion was denied, with exception by the plaintiff. By an order of the 5th of the following month of February, issued in view of a petition presented by counsel for the plaintiff, the court dismissed the second cause of action set out in the complaint, to which order said counsel likewise excepted.

Upon presentation of the proper bill of exceptions, the same was approved, certified, and forwarded to the clerk of this court.

Demand is made in this suit for the payment of the considerable sum of P137,000, together with the legal interest thereon. Two amounts make up this sum: One of P37,000, as salary for the year 1910, claimed to be due for services rendered by the plaintiff as agent and manager of the tobacco factory known as La Insular; and the other of P100,000, as an indemnity for losses and damages, on account of the plaintiff's removal without just cause

from his position as agent and manager of said factory, effected arbitrarily and in violation of the contract of hire of services between the parties, the plaintiff claiming to be still entitled to hold the position from which he was dismissed.

The most important fact in this case, which stands out prominently from the evidence regarded as a whole, is that of the plaintiff Barretto's renunciation or resignation of the position he held as agent and manager of the said factory, which was freely and voluntarily made by him on the occasion of the insolvency and disappearance of the Chinaman Uy Yan, who had bought from the factory products aggregating in value the considerable sum of P97,000 and, without paying this large debt, disappeared and has not been seen since.

Antonio M.a Barretto, the agent and manager of the said factory, said among other things the following, in the letter, Exhibit 3, addressed by him to Jose Santa Marina, on January 2, 1909:

"I have to report to you an exceedingly disagreeable matter. This Chinaman Uy Yan, with whose name I begin this paragraph, has failed and owes the factory the considerable sum of P97,000. We will see what I can get from him, although when these Chinamen fail it is because they have spent everything. I have turned the matter over to my attorney in order that he may sue the party. I am not attempting to make light of this matter. I acknowledge that I have been rather more generous with this fellow than I should have been; but this is the way of doing business here. * * *

"I have always thought that when the manager of a business trips up in a matter like this he should tender his resignation, and I still think so. The position is at your disposal to do as you like."

This letter is authentic and was neither denied nor rejected by the plaintiff, Barretto.

Although Santa Marina did not immediately reply and tell him what opinion he may have formed and the decision he had reached in the matter, it is no less true that the silence and lack of reply on the part of the chief owner of the factory were sufficient indications that the resignation had been virtually accepted and that if he did not reply immediately it was because he intended to act cautiously. As the addressee, the chief owner of the factory, knew of no one at that time whom he could appoint to relieve the writer, who had resigned, it was to be presumed that he was thereafter looking for some trustworthy person who might substitute the plaintiff in his position of agent and manager of the factory, for in fact eleven months afterwards the defendant communicated to the plaintiff that he had revoked the power conferred upon him and had appointed Mr: J. McGavin to substitute him in his position of manager of the La Insular factory, whereby the plaintiff's resignation, tendered in his aforesaid letter of January 2, 1909, Exhibit 3, was expressly accepted.

After the plaintiff had resigned the position he held, and notwithstanding the lapse of several months before its express acceptance, it cannot be understood that he has any right to demand an indemnity for losses and damages particularly since he ostensibly and frankly acknowledged that he had been negligent in the discharge of his duties and that he had overstepped his authority in the management of the factory, with respect to the Chinaman mentioned. The record does not show that Santa Marina, his principal, required him to resign his position as manager, but that Barretto himself voluntarily stated by letter to his principal that, for the reasons therein mentioned, he resigned and placed at the latter's disposal the position of agent and manager of the La Insular factory; and if the principal, Santa Marina, deemed it suitable to relieve the agent, for having been negligent and overstepping his authority in the discharge of his office, and furthermore because of his having expressly resigned his position, and placed it at the disposal of the chief owner of the business, it cannot be explained how such person can be entitled to demand an indemnity for losses and damages, from his principal, who merely exercised his lawful right of relieving the plaintiff from the position which he had voluntarily given up.

So, the agent and manager Barretto was not really dismissed or removed by the defendant Santa Marina. What did

occur was that, in view of the resignation tendered by the plaintiff for the reasons which he himself conscientiously deemed to warrant his surrender of the position he was holding in the La Insular factory, the principal owner of this establishment, the defendant Santa Marina, had to look for and appoint another agent and manager to relieve and substitute him in the said employment—a lawful act performed by the principal owner of the factory and one which cannot serve as a ground upon which to demand from the latter an indemnity for losses and damages, inasmuch as, in view of the facts that occurred and were acknowledged and confessed by Barretto in his letters, Exhibits 3 and 6, the plaintiff could not expect, nor ought to have expected, that the defendant should have insisted on the unsuccessful agent's continuance in his position, or that he should not have accepted the resignation tendered by the plaintiff in his first letter. By the mere fact that the defendant remained silent and designated another person, Mr. J. McGavin, to discharge in the plaintiff's stead the powers and duties of agent and manager of the said factory, Barretto should have understood that his resignation had been accepted and that if its acceptance was not communicated to him immediately it was owing to the circumstance that the principal owner of the factory did not then have; nor until several months afterwards, any other person whom he could appoint and place in his stead, for, as soon as the defendant Santa Marina could appoint the said McGavin, he revoked the power he had conferred upon the plaintiff and communicated this fact to the latter, by means of the letter, Exhibit D, which was presented to him by the bearer thereof, McGavin himself, the new manager and agent appointed.

Omitting consideration for the moment of the first error attributed to the trial judge by his sustaining the demurrer filed against the second cause of action, relative to the collection of P100,000 as the amount of the losses and damages occasioned to the plaintiff, and turning our attention to the second error imputed to him by his refusal to sentence the defendant, for the first cause of action, to the payment of P37,000 or of any sum over P3,083.33, we shall proceed to examine the question whether any period or term for the duration of the position of agent and manager was fixed in the verbal contract made between the deceased Joaquin Santa Marina, the defendant's predecessor in interest, and the plaintiff Antonio M.a Barretto—a contract which, after Joaquin Santa Marina's death, was ratified by his brother and heir, the defendant Jose Santa Marina.

The defendant acknowledged the said verbal contract and also its ratification by him after his brother's death; but he denied any stipulation therein that Barretto should hold his office for any specific period of time fixed by and between the contracting parties, for the deceased Joaquin Santa Marina, in conferring power upon the plaintiff, did not do so for any specific time, nor did he set any period within which he should hold his office of agent and manager of the La Insular factory; neither did he fix the date for the termination of such services, in the instrument of power of attorney executed by the defendant Santa Marina before a notary on the 25th of September, 1908. (Record, p. 20.)

From the context of the instrument just mentioned it can not be concluded that any time whatever was fixed during which the plaintiff should hold his position of agent. The defendant, in executing that instrument, whereby the agreement made between his brother Joaquin and Barretto was ratified, did no more than accord to the plaintiff the same confidence that the defendant's predecessor in interest had in him; and so long as this merely subjective condition of trust lodged in the agent existed, the time during which the latter might hold his office could be considered indefinite or undetermined, but as soon as that indispensable condition of a power of attorney disappeared and the conduct of the agent ceased to inspire confidence, the principal had a right to revoke the power he had conferred upon his agent, especially when the latter, for good reasons, gave up the office he was holding.

Article 1733 of the Civil Code, applicable to the case at bar, according to the provisions of article 2 of the Code of Commerce, prescribes: "The principal may, at his will, revoke the power and compel the agent to return the instrument containing the same in which the authority was given."

Article 279 of the Code of Commerce provides: "The principal may revoke the commission intrusted to an agent at any stage of the transaction, advising him thereof, but always being liable for the result of the transactions which took place before the latter was informed of the revocation."

From the above legal provisions it is clearly to be inferred that the contract of agency can subsist only so long as the principal has confidence in his agent, because, from the moment such confidence disappears and although there be a fixed period for the exercise of the office of agent, a circumstance that does not appear in the present case, the principal has a perfect right to revoke the power that he had conferred upon the agent owing to the confidence he had in him and which for sound reasons had ceased to exist.

The record does not show it to have been duly proved, notwithstanding the plaintiff's allegation, that a period was fixed for holding his agency or office of agent and manager of the La Insular factory. It would be improper, for the purpose of supplying such defect, to apply to the present case the provisions of article 1128 of the Civil Code. This article relates to obligations for which no period has been fixed for their fulfillment, but which, from their nature and circumstances, allow the inference that there was an intention to grant such period to the debtor, wherefore the courts are authorized to fix the duration of the same, and the reason why it is inapplicable is that the rights and obligations existing between Barretto and Santa Marina are absolutely different from those to which it refers, for, according to article 1732 of the Civil Code, agency is terminated:

"1. By revocation.

"2. By withdrawal of the agent.

"3. By death, interdiction, bankruptcy, or insolvency of the principal or of the agent."

It is not incumbent upon the courts to fix the period during which contracts for services shall last. Their duration is understood to be implicitly fixed, in default of express stipulation, by the period for the payment of the salary of the employee. Therefore the doctrine of the tacit renewal of leases of property, established in article 1566 of the Civil Code, is not applicable to the case at bar. And even though the annual salary fixed for the services to be rendered by the plaintiff as agent and manager of the La Insular factory, was P37,000, yet, in accordance with the custom universally observed throughout the world, salaries fixed for the year are collected and paid in monthly installments as they fall due, and so the plaintiff collected and was paid his remuneration; therefore, on the latter's discontinuance in his office as agent, he would at most be entitled to the salary for one month and some odd days, allowed in the judgment of the lower court.

Article 302 of the Code of Commerce reads thus:

"In cases in which no special time is fixed in the contracts of service, any one of the parties thereto may dissolve it, advising the other party thereof one month in advance.

"The factor or shop clerk shall be entitled, in such case, to the salary due for one month."

From the mere fact that the principal no longer had confidence in the agent, he is entitled to withdraw it and to revoke the power he conferred upon the latter, even before the expiration of the period of the engagement or of the agreement made between them; but, in the present case, once it has been shown that, between the deceased Joaquin Santa Marina and the latter's heir, now the defendant, on the one hand, and the plaintiff Barretto, on the other, no period whatever was stipulated during which the last-named should hold the office of agent and manager of the said factory, it is unquestionable that the defendant, even without good reasons, could lawfully revoke the power conferred upon the plaintiff and appoint in his place Mr. McGavin, and thereby contracted no liability whatever other than the obligation to pay the plaintiff the salary pertaining to one month and some odd days, as held in the judgment below.

Barretto himself acknowledged in his aforesaid letter, Exhibit 3, that he had exceeded his authority and acted negligently in selling on credit to the said Chinaman a large quantity of the products of the factory under the plaintiff's management, reaching the considerable value of P97,000; whereby he confessed one of the causes which led to his removal, the revocation of the power conferred upon him and the appointment of a new agent in his place.

The defendant, Jose Sanba Marina, in his letter of December 2, 1909, whereby he communicated to the plaintiff the revocation of the power he had conferred upon him and the appointment of another new agent, Mr. McGavin, stated among other things that the loan contracted by the agent Barretto, without the approval of the principal, caused a great panic among the stockholders of the factory and that the defendant hoped to allay it by the new measure that he expected to adopt. This, then, was still another reason that induced the principal to withdraw the confidence placed in the plaintiff and to revoke the power he had conferred upon him. Therefore, even omitting consideration of the resignation before mentioned, we find duly warranted the reasons which impelled the defendant to revoke the said power and relieve the plaintiff from the position of agent and manager of the La Insular factory.

In accordance with the provisions of article 283 of the Code of Commerce, the manager of an enterprise or manufacturing or commercial establishment, authorized to administer it and direct it, with more or less powers, as the owner may have considered advisable, shall have the legal qualifications of an agent.

Article 300 of the same code prescribes: "The following shall be special reasons for which principals may discharge their employees, even though the time of service of the contract has not elapsed: Fraud or breach of trust in the business intrusted to them * * * "

By reason of these legal provisions the defendant, in revoking the authority conferred upon the plaintiff, acted within his unquestionable powers and did not thereby violate any statute whatever that may have limited them consequently, he could not have caused the plaintiff any harm or detriment to his rights and interests, for not only had Santa Marina a justifiable reason to proceed as he did, but also no period whatever had been stipulated during which the plaintiff should be entitled to hold his position; and furthermore, because, in relieving the latter and appointing another person in his place, the defendant acted in accordance with the renunciation and resignation which the plaintiff had tendered. If the plaintiff is entitled to any indemnity in accordance with law, such was awarded to him in the judgment of the lower court by granting him the right to collect salary for one month and some odd days.

As for the other features of the case, the record does not show that the plaintiff has any good reason or legal ground upon which to claim an indemnity for losses and damages in the sum of P100,000, for it was not proved that he suffered to that extent, and the judgment appealed from has awarded him the month's salary to which he is entitled. Therefore that judgment and the order of March 14 sustaining the demurrer to the second cause of action are both in accordance with the law.

For the foregoing reasons, whereby the errors assigned to the said judgment and order are deemed to have been refuted, both judgment and order are hereby affirmed, with costs against the appellant.

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

Moreland, J., concurs in the result.

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