

TORIBIO P. PEREZ, PLAINTIFF AND APPELLEE, VS. SCOTTISH UNION AND NATIONAL INSURANCE CO., DEFENDANT, MIGUEL H. MITRE, APPELLANT.*CA-G.R. No. 8977. March 20, 1946*

Ponente: PARAS, J.

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The plaintiff is seeking to recover (1) P6,000, as attorney's fees in a criminal case for arson against the defendant Miguel H. Mitre who, in a written contract (Exhibit D), had covenanted to pay the same out of the proceeds of a fire insurance policy (No. 5518308), for P12,000, issued in his favor by the defendant Scottish Union and National Insurance Co., and (2) P1,485, unpaid balance of attorney's fees owing by the defendant Miguel H. Mitre in four other cases (CA-G. R. No. 6398; CA-G. R. No. 6499; civil case No. 3048, Court of First Instance of Sorsogon; and administrative case, Mitre vs. Arambulo). The defendant Miguel H. Mitre acknowledges the execution of Exhibit D and the fact that, the plaintiff had rendered professional services, but it is alleged, at the same time, (a) that the stipulated fee in the case of arson (P550) had been fully paid, Exhibit D being a simulation conceived by the plaintiff and intended merely to bar all claims to the insurance proceeds arising from defendant's criminal liability; (b) that the stipulated fee in CA-G. R. No. 6398 and CA-G. R. No. 6499 was P100 each, of which a total of P100 had already been paid in said cases; (c) that civil case No. 3048 was not a litigation of the defendant Miguel H. Mitre who was included therein for being the husband of the principal defendant Maria Perez de Mitre; and (d) that the plaintiff undertook to handle the administrative case against Arambulo as part of the arson case.

The judgment of the Court of First Instance of Albay, from which only the defendant Miguel H. Mitre has appealed, is in favor of the plaintiff and orders the Scottish Union and National Insurance Co. to pay, out of the proceeds of policy No. 5518308, first, to the Collector of Internal Revenue the sum of P1,205.15, as sales tax due from the defendant Miguel H. Mitre, and, secondly, to the plain-tiff the sum of P7,640.51, covering P6,000 (attorney's fees in the arson case) and P1,640.51 (unpaid attorney's fee in four other cases), with legal interest and costs. The plaintiff was absolved from the counterclaims of the defendants, Miguel H. Mitre and Scottish Union and National Insurance Co., for damages in the respective amounts of P500 and P1,000 alleged to have been suffered as a result of the institution of this suit.

In support of appellant's theory that Exhibit D was prepared merely to fool the insurance company and possible claimants of the proceeds that might be due under policy No. 5518308, it is argued that said contract was dated April 10, 1939, although in fact it was signed on August 26, 1939, when the plaintiff informed the appellant of his conviction by the trial court. Even admitting the verity of appellant's allegation of fact, it does not necessarily follow that the sense oi: the document was not as purported by its plain language. While third parties in whose fraud the alleged misrepresentation was made, might validly avail themselves thereof, the appellant certainly is not in a parallel situation. We surmise that the appellant, in his anxiety to be exonerated and to pay his attorney's fees in the arson case, had voluntarily become a party to the alleged misrepresentation. At any rate, if plaintiff's

reason for antedating Exhibit D. was to show its execution prior to appellant's conviction, said purpose could well have been served by dating it August 26, 1939, because the decision of the trial court in the arson case was not promulgated until August 31, 1939.

Appellant's disavowal of Exhibit D is evidently an afterthought brought about by his acquittal in the Court of Appeals. If the plaintiff had really conspired with the appellant in the scheme to protect the insurance proceeds, the contract would have been couched in terms sufficient to cover the full face value of the policy (P12,000) or every cent accruing thereunder. We have yet to look for an insurance company or a third person who would dare assail said contract after appellant's absolute right to the policy shall have been established.

Whether the plaintiff is entitled to the fee of P6,000 as provided in Exhibit D, in compensation for his professional services in the arson case, is the more fundamental question before us. The first point that comes up in this connection is appellant's intimation that the plaintiff, in view of his relationship with appellant's wife, not only had volunteered to defend him gratuitously, but had insisted in doing so, plaintiff's idea being to gain popularity as a criminal lawyer, a circumstance which would help his candidacy for a seat in the House of Representatives; that, notwithstanding the fact that he had his lawyers in Manila and Sorsogon, the appellant accepted the offer. Several considerations, however, militate against the latter's pretensions. First, the alleged relationship, even if admitted, does not necessarily carry the inference that the plaintiff could be capable of making such gratuitous offer, much less insistence, for any lawyer will be devoid of dignity and pride who will do what is imputed to the plaintiff. Secondly, appellant's claim is inconsistent with his admission that he agreed to pay, as he in fact had paid, the plaintiff the fee of P550. Thirdly, the appellant had retained plaintiff's services even after his conviction in the lower court. This would have been the propitious opportunity for the appellant to give an end to plaintiff's alleged insistence to be in the arson case. His failure to do so engenders the implication that the contract (Exhibit D) was binding on him and that he continued to have confidence in plaintiff's ability. Fourthly, the appellant does not appear to be so ignorant as to be easily and blindly inveigled into accepting the services of a lawyer whose capacity he doubted, and into signing an agreement which would deprive him of P6,000.

Exhibit D should be given its full force and effect. "A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable." (Rule of Court 127, section 22.) The arson case required several days of trial. The gravity of the situation confronted by the appellant after the rendition of the judgment of the court of first instance is shown by the fact that he was sentenced to undergo imprisonment for the period of from ten to twelve years and to pay an indemnity of P101,115. That the plaintiff had handled appellant's defense with competence and success cannot be gainsaid, it being enough to state that the appellant was acquitted in the Court of Appeals before which the plaintiff orally argued, in addition to a 78 page brief which he had filed therein. We are thus not prepared to rule that the amount of P6,000 is excessive or unjust, especially because said fee is in a sense contingent upon the acquittal of the appellant, since no insurance money (P6,000 of which was ceded to the plaintiff under Exhibit D) was of course forthcoming if the fire which destroyed the insured property could be proven to have resulted from incendiarism for which the appellant was criminally liable.

We need not seriously consider the implication that the appellant wishes to bring out by mentioning the facts that the plaintiff was admitted to the bar in 1933, that he was a justice of the peace with a monthly salary of P157, that the highest fee ever previously collected by him was only P1,500, and that he had to borrow money from the Philippine National Bank and Saturnino Benito, a circumstance not indicative of a lucrative practice. "The income of a lawyer is not a safe criterion of his professional ability. Many very good lawyers earn but small incomes while lawyers of inferior ability may prosper financially. Neither is the length of time a lawyer has practiced a reliable measure of his ability; his competency must be judged by the character of his work." (Moran, Rules of

Court, Vol. II, p. 669, citing Haussermann vs. Rahmeyer, 12 Phil., 350; Delgado vs. De la Rama, 43 Phil., 419; Panis vs. Yangco, 52 Phil., 499; Bachrach vs. Teal and Teal Motor Co., 53 Phil., 631; Ingersoll vs. Malabon Sugar Co., 53 Phil., 745; De Guzman vs. Visayan Rapid Transit Co., 68 Phil., 643.)

The validity of Exhibit D having been upheld, appellant's claim that plaintiff's stipulated fee was only P550 which had already been paid, necessarily becomes untenable. We may add, however, in plaintiff's favor that judicial actions for the recovery of fees, unless righteous and well founded and unless forced by an intolerable attitude assumed by clients, are seldom, if ever, resorted to, because they cannot fail to create the impression, however wrong it may be, that the lawyers instituting them are mercenary.

Upon the other hand, we are inclined to believe that the fees sought to be recovered for professional services in four other cases are not supported by a preponderance of the evidence. It was to be expected that, if any balance of said fees was outstanding, the same should have been included in the complaint, or made the subject matter of another case. Indeed, said fees were pleaded only in the reply filed by the plaintiff to appellant's answer, undoubtedly to ward off the weight of the payment alleged in said answer.

We are also of the opinion that the trial court erred in ordering the Scottish Union and National Insurance Co. to pay to the Collector of Internal Revenue the sum of P1,205.15 as sales tax. The latter has not filed any pleading whatsoever. Besides, there is no proof as to appellant's liability therefor. The latter's admission that a claim was presented by the Government against him for said amount, refers to the presentation of the claim and not to appellant's liability.

The appealed judgment will therefore be affirmed in so far as it sentences the appellant, Miguel H. Mitre, to pay to the plaintiff the sum of P6,000 as attorney's fees in the arson case, with legal interest from the date of the filing of the complaint, and orders the Scottish Union and National Insurance Co. to pay said amount to the plaintiff out of the proceeds of policy No. 5518308 accruing in favor of the appellant, Miguel H. Mitre. Said judgment is hereby reversed in all other respects, with costs against the appellant. So ordered.

Mora, C. J., Jaranilla, Feria, Pablo, and Briones, JJ.. concur.

Judgment modified.

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