

UY CHICO, PLAINTIFF AND APPELLANT, VS. THE UNION LIFE ASSURANCE SOCIETY, LIMITED, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 9231. January 06, 1915

Ponente: TRENT, J.

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TRENT, J.:

An appeal from a judgment dismissing the complaint upon the merits, with costs.

The plaintiff seeks to recover the face value of two insurance policies upon a stock of dry goods destroyed by fire. It appears that the father of the plaintiff died in 1897, at which time he was conducting a business under his own name, Uy Layco. The plaintiff and his brother took over the business and continued it under the same name, "Uy Layco." Sometime before the date of the fire, the plaintiff purchased his brother's interest in the business and continued to carry on the business under the father's name. At the time of the fire "Uy Layco" was heavily indebted and subsequent thereto the creditors petitioned for the appointment of an administrator of the estate of the plaintiff's father. During the course of these proceedings, the plaintiff's attorney surrendered the policies of insurance to the administrator of the estate, who compromised with the insurance company for one-half their face value, or P6,000. This money was paid into court and is now being held by the sheriff. The plaintiff now brings this action, maintaining that the policies and goods insured belong to him and not to the estate of his deceased father and alleges that he is not bound by the compromise effected by the administrator of his father's estate.

The defendant insurance company sought to show that the plaintiff had agreed to the compromise settlement of the policies, and for that purpose introduced evidence showing that the plaintiff's attorney had surrendered the policies to the administrator with the understanding that such a compromise was to be effected. The plaintiff was asked, while on the witness stand, if he had any objection to his attorney's testifying concerning the surrender of the policies, to which he replied in the negative. The attorney was then called for that purpose. Whereupon, counsel for the plaintiff formally withdrew the waiver previously given by the plaintiff and objected to the testimony of the attorney on the ground that it was privileged. Counsel, on this appeal, base their argument on the proposition that a waiver of the client's privilege may be withdrawn at any time before acted upon, and cite in support thereof *Ross vs. Great Northern Ry. Co.* (101 Minn., 122; 111 N. W., 951). The case of *Natlee Draft Horse Co. vs. Cripe & Co.* (142 Ky., 810), also appears to sustain their contention. But a preliminary question suggests itself, Was the testimony in question privileged?

Our practice Act provides: "A lawyer must strictly maintain inviolate the confidence and preserve the secrets of his client. He shall not be permitted in any court, without the consent of his client, given in open court, to testify to any facts imparted to him by his client in professional consultation, or for the purpose of obtaining advice upon legal matters." (Sec. 31, Act No. 190.)

A similar provision is inserted in section 383, No. 4, of the same Act. It will be noted that the evidence in question concerned the dealings of the plaintiff's attorney with a third person. Of the very essence of the veil of secrecy

which surrounds communications made between attorney and client, is that such communications are not intended for the information of third persons or to be acted upon by them, but for the purpose of advising the client as to his rights. It is evident that a communication made by a client to his attorney for the express purpose of its being communicated to a third person is essentially inconsistent with the confidential relation. When the attorney has faithfully carried out his instructions by delivering the communication to the third person for whom it was intended and the latter acts upon it, it cannot, by any reasoning whatever, be classified in a legal sense as a privileged communication between the attorney and his client. It is plain that such a communication, after reaching the party for whom it was intended at least, is a communication between the client and a third person, and that the attorney simply occupies the role of intermediary or agent. We quote from but one case among the many which may be found upon the point:

"The proposition advanced by the respondent and adopted by the trial court, that one, after fully authorizing his attorney, as his agent, to enter into contract with a third party, and after such authority has been executed and relied on, may effectively nullify his own and his duly authorized agent's act by closing the attorney's mouth as to the giving of such authority, is most startling. A perilous facility of fraud and wrong, both upon the attorney and the third party, would result. The attorney who, on his client's authority, contracts in his behalf, pledges his reputation and integrity that he binds his client. The third party may well rely on the assurance of a reputable lawyer that he has authority in fact, though such assurance be given only by implication from the doing of the act itself. It is with gratification, therefore, that we find overwhelming weight of authority, against the position assumed by the court below, both in states where the privilege protecting communications with attorneys is still regulated by the common law and in those where it is controlled by statute, as in Wisconsin." (*Koeber vs. Sommers*, 108 Wis., 497; 52 L. R. A., 512.)

Other cases wherein the objection to such evidence on the ground of privilege has been overruled are: *Henderson vs. Terry* (62 Tex., 281); *Shove vs. Martin* (85 Minn., 29); *In re Elliott* (73 Kan., 151); *Collins vs. Hoffman* (62 Wash., 278); *Gerhardt vs. Tucker* (187 Mo., 46). These cases cover a variety of communications made by an attorney in behalf of his client to third persons. And cases wherein evidence of the attorney as to compromises entered into by him on behalf of his client were allowed to be proved by the attorney's testimony are not wanting. (*Williams vs. Blumenthal*, 27 Wash., 24; *Koeber vs. Sommers*, supra.) It is manifest that the objection to the testimony of the plaintiff's attorney as to his authority to compromise was properly overruled. The testimony was to the effect that when the attorney delivered the policies to the administrator, he understood that there was a compromise to be effected, and that when he informed the plaintiff of the surrender of the policies for that purpose the plaintiff made no objection whatever. The evidence is sufficient to show that the plaintiff acquiesced in the compromise settlement of the policies. Having agreed to the compromise, he cannot now disavow it and maintain an action for the recovery of their face value.

For the foregoing reasons the judgment appealed from is affirmed, with costs. So ordered.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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