44 Phil. 567

[. March 03, 1923]

IN RE SUSPENSION OF VICENTE PELAEZ, ATTORNEY.

D E C I S I O N

MALCOLM, J.:
Following the suspension of Attorney Vicente Pelaez by Judge of First Instance Wislizenus for a period of one year, the case has been elevated to this court as provided by law, for full investigation of the facts involved, and for the rendition of the appropriate order.

The respondent Vicente Pelaez is a member of the Philippine Bar, residing at Cebu, Cebu. On March 20, 1918, he was appointed guardian of the minor Gracia Cabrera. As such guardian, he came into possession of certain property, including twenty shares of the E. Michael & Co., Inc., and ten shares of the Philippine Engineering Co. While Pelaez was still the guardian of the minor, he borrowed P2,800 from the Cebu branch of the Philippine National Bank. Shortly thereafter, to guarantee the loan, Pelaez, without the knowledge or consent of the Court of First Instance of Cebu, deposited with the Cebu branch of the Philippine National Bank the shares of stock corresponding to the guardianship. On April 13, 1921, Pelaez executed a written agreement in favor of the Cebu branch of the Philippine National Bank, pledging, without the authority of the Court of First Instance of Cebu, the shares of stock in question, to guarantee the payment of the loan above referred to.

These are the facts, taken principally from the memorandum filed in this court on behalf of the respondent, which caused the judge of First Instance to suspend him from the legal profession. To quote counsel for the respondent, “the misconduct of which the respondent in this case is guilty consists of having pledged the shares belonging to his ward, to guarantee the payment of his

personal debt."

Two questions present themselves for resolution. The first question is this: Are the courts in the Philippines authorized to suspend or disbar a lawyer for causes other than those enumerated in the statute? The second question is this: May a lawyer be suspended or disbarred for non-professional misconduct?

Section 21 of the Code of Civil Procedure provides that a member of the bar may be removed or suspended from his office as lawyer by the Supreme Court for any of the causes therein enumerated. It will be noticed that our statute merely provides that certain causes shall be deemed sufficient for the revocation or suspension of an attorney's license. It does not provide that these shall constitute the only causes for disbarment, or that an attorney may not be disbarred or suspended for other reasons.

It is a well-settled rule that a statutory enumeration of the grounds of disbarment is not to be taken as a limitation of the general power of the court in this respect. Even where the Legislature has specified the grounds for disbarment, the inherent power of the court over its officers is not restricted.

The prior tendency of the decisions of this court has been toward the conclusion that a member of the bar may be removed or suspended from his office as lawyer for other than statutory grounds. Indeed, the statute is so phrased as to be broad enough to cover practically any misconduct of a lawyer.

Passing now to the second point—as a general rule, a court will not assume jurisdiction to discipline one of its officers for misconduct alleged to have been committed in his private capacity. But this is a general rule with many exceptions. The courts sometimes stress the point that the attorney has shown, through misconduct outside of his professional dealings, a want of such professional honesty as render him unworthy of public confidence, and an unfit and unsafe person to manage the legal business of others. The reason why such a distinction can be drawn is because it is the court which admits an attorney to the bar, and the court requires for such admission the possession of a good moral character.

The principal authority for the respondent is the case of People *ex rel.*

vs. Appleton ([1883], 105 Ill., 474). Here it was held, by a divided court, that where property is conveyed to an attorney in trust, without his professional advice, and he mortgages the same, for the purpose of raising a sum of money which he claims is due him from the *cestui que trust*, and the trustee afterwards sells the property and appropriates the proceeds of the sale to his own use, the relation of client and attorney not being created by such trust, his conduct, however censurable as an individual occupying the position of a trustee, is not such as to warrant the summary disbarring of him on motion to the court to strike his name from the roll of attorneys, but the injured party must be left to his proper remedy by suit. The Illinois court, however, admits that although the general rule is, that an attorney-at-law will not be disbarred for misconduct not in his professional capacity, but as an individual, there are cases forming an exception where his misconduct in his private capacity may be of so gross a character as to require his disbarment.

The Attorney-General relies principally on the case of *In re* Smith ([1906], 73 Kan., 743). In the opinion written by Mr. Chief Justice Johnston, it was said:

> "It is next contended that some of the charges against Smith do not fall within the causes for disbarment named in the statute. As will be observed, the statute does not provide that the only causes for which the license of an attorney may be revoked or suspended are those specified in it, nor does it undertake to limit the common-law power of the courts to protect themselves and the public by excluding those who are unfit to assist in the administration of the law. It merely provides that certain causes shall be deemed sufficient for the revocation or suspension of an attorney's license. (Gen. Stat., 1901, sec. 398.) In the early case of *Peyton's Appeal* (12 Kan., 398, 404), it was held that this statute is not an enabling act, but that the power of the court to exclude unfit and unworthy members of the profession is inherent; that 'it is a necessary incident to the proper administration of justice; that it may be exercised without any special statutory authority, and in all proper cases, unless positively prohibited by statute; and that it may be exercised in any manner that will give the party to be disbarred a fair trial and a full opportunity to be heard.' If there is authority in the Legislature to restrict the discretion of the courts as to what shall constitute causes for disbarment,

> or to limit the inherent power which they have exercised from time immemorial, it should not be deemed to have done so unless its purpose is clearly expressed. It is generally held that the enumeration of the grounds for disbarment in the statute is not to be taken as a limitation on the general power of the court, but that attorneys may be removed for common-law causes when the exercise of the
> privileges and functions of their high office is inimical to the due administration of justice * * *.
>
> "The nature of the office, the trust relation which exists between attorney and client, as well as between court and attorney, and the statutory rule prescribing the qualifications of attorneys, uniformly require that an attorney shall be a person of good moral character. If that qualification is a condition precedent to a license or privilege to enter upon the practice of the law, it would seem to be equally essential during the continuance of the practice and the exercise of the privilege. So it is held that an attorney will be removed not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties, which shows him to be unfit for the office and unworthy of the privileges which his license and the law confer upon him."

We are of the opinion that the doctrines announced by the Supreme Court of Kansas are sound.

The relation of guardian and ward requires of the guardian the continual maintenance of the utmost good faith in his dealings with the estate of the ward. The bond and the oath of the guardian require him to manage the estate of the ward according to law for the best interests of the ward, and faithfully to discharge his trust in relation thereto. Moreover, it has not escaped our attention that in the petition by Vicente Pelaez, asking the court to appoint him the guardian of Gracia Cabrera, he begins his petition in this manner: "El abogado que subscribe, nombrado tutor testamentario, etc." (The undersigned attorney, appointed testamentary guardian, etc.), which indicates that petitioner might not have been named the guardian in this particular case had he not at the same time been a lawyer.

Counsel argues that the misconduct for which the respondent has been suspended by the lower court is single and isolated. “It forms,” he says, “the only blot upon the escutcheon.” We feel, however, that the trial court has been extremely considerate of the respondent, and that were we sitting in first instance, we would probably incline to a more severe sentence.

Judgment affirmed. So ordered.

Araullo, C.J., Street, Avanceña, Ostrand, and *Romualdez, JJ.,* concur.

DISSENTING

JOHNS, J.:

Upon the facts shown the period of suspension should be for the period of two years.

Date created: October 03, 2018