

44 Phil. 62

[G. R. No. 19695. November 17, 1922]

**JUAN S. RUSTIA, PETITIONER, VS. THE JUDGE OF FIRST INSTANCE OF
BATANGAS, THIRTEENTH JUDICIAL DISTRICT, HONORABLE FRANCISCO
DOMINGUEZ, ROSA H. DE PORCUNA AND HER HUSBAND JUSTO M. PORCUNA
AND EULALIA MAGSOMBOL, RESPONDENTS.**

D E C I S I O N

OSTRAND, J.:

This is a petition for a writ of certiorari, the petitioner alleging that the respondent Judge of the Court of First

Instance exceeded his jurisdiction in dismissing a pending action at the instance of the parties but without the intervention of the attorney for the plaintiff in the case, the herein petitioner.

It appears from the record that on July 31, 1921, the respondent Justo Porcuna, for himself and on behalf of his wife, the respondent Rosa H. de Porcuna, by means of a written contract, retained the petitioner to represent them as their lawyer in case No. 1435 then pending in the Court of First Instance of Batangas and in which Rosa H. de Porcuna was the plaintiff and one Eulalia Magsombol was the defendant. The contract fixed the petitioner's fee at P200 in advance with an additional contingent fee of P1,300. It was also provided in the contract that Justo Porcuna should not compromise the claim against the defendant in the case without express consent of his lawyer, the herein petitioner.

After trial, the petitioner then being plaintiffs' attorney of record, the Court of First Instance, under date of December 24, 1921, rendered judgment in favor of Justo Porcuna and Rosa H. de Porcuna ordering the defendant Eulalia Magsombol to return to them 602 pieces of cloth or in default thereof to pay to them the sum of P3,250. On January 14, 1922, Eulalia Magsombol filed her exception to the judgment and on the following day presented a motion for a new trial, which was denied on the 21st of the same month. She thereupon

gave notice of appeal and presented a bill of exceptions which was approved on February 20, 1922. On March 2, 1922, and before the transmission of the bill of exceptions to this court, the plaintiffs presented the following motion in the Court of First Instance:

“The plaintiffs, without any further intervention of their attorney, now appear before this Honorable Court and respectfully aver:

“That, through Mr. Miguel Olgado, they already settled this case with the herein defendant.

“That the basis of the compromise is that we, the plaintiffs, finally agree that we should be paid the amount of eight hundred pesos (P800) in two installments; P300 to be paid on this same date, and the remaining five hundred pesos (P500) at the end of March, 1922.

“That we, the plaintiffs, recognize not to have any further rights in this case than to the aforesaid amount of eight hundred pesos (P800) and that this is the total amount the defendant Eulalia Magsombol should pay us, and *we have no right whatever to any other amount than the aforementioned.*

“That we have not sold to any other person our rights as plaintiffs in this case.

“Wherefore, the plaintiffs respectfully request the dismissal of this case without any pronouncement as to costs, and that the appeal interposed by the defendant be further dismissed.

“Batangas, Batangas, P. I., March 2, 1922.

(Sgd.) “ROSA H.
PORCUNA
Plaintiff
“JUSTO M.
PORCUNA
Plaintiff.”

The defendant, through her attorney, Jose Mayo Librea, having signified her assent to the motion, the Court of First Instance on the same day, March 2, dismissed the action without

notice to counsel for the plaintiffs.

The petitioner alleges that he did not discover the dismissal of the action until April 4, 1922. After an unsuccessful effort to obtain a reconsideration of the order of dismissal from the trial court, he filed the present petition for a writ of certiorari. By resolution dated October 24, 1922, this court denied the petition and upon motion of the petitioner we shall now briefly state our reasons for such denial.

The burden of the petitioner's contention is (1) that he, as attorney of record, was entitled to notice of his client's motion to dismiss the case, and (2) that after the approval of the bill of exceptions the lower court had lost jurisdiction of the case and had no power to dismiss it. A moment's reflection should make it clear that neither of these propositions is tenable.

Both at the common law and under section 32 of the Code of Civil Procedure a client may dismiss his lawyer at any time or at any stage of the proceedings and there is nothing to prevent a litigant from appearing before the court to conduct his own litigation. (Sec. 34, Code of Civil Procedure.) The client has also an undoubted right to compromise a suit without the intervention of his lawyer.

"Though there is a valid agreement for the payment to the attorney of a large proportion of the sum recovered in case of success, this does not give the attorney such an interest in the cause of action that it prevents plaintiff from compromising the suit." (4 Cyc., 990, and authorities cited in Note 6; *see also* Louque vs. Dejan, 129 La., 519; Price vs. Western Loan and Savings Co., 19 Ann. Cas., 589 and Note.)

In the present instance the clients did nothing that they did not have a perfect right to do. By appearing personally and presenting a motion they impliedly dismissed their lawyer. The petitioner's contingent interests in the judgment rendered did not appear of record. Neither as a party in interest nor as an attorney was he therefore entitled to notice of the motion.

As to the second proposition that the court below could not dismiss the case after the bill of exceptions had been approved, it is very true that upon such approval the lower court loses its jurisdiction over all contentious matters connected with the issues in the case. But there is nothing to prevent all of the parties by agreement to withdraw the bill of exceptions with the consent of said court and resubmit the case to the jurisdiction of the court. That was all that was done in this case. A valid agreement between the parties to a case is the law of the case in everything covered by the agreement. (Civil Code, art. 1091; *Compañía General de Tabacos vs. Obed*, 13 Phil., 391.) The petitioner might have protected his interests by

entering an attorney's lien under section 37 of the Code of Civil Procedure.

The petition for a writ of certiorari was therefore properly denied. So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.

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