

7 Phil. 427

[ G.R. No. 2409. February 07, 1907 ]

**IN RE DISBARMENT PROCEEDINGS AGAINST FELIPE G. CALDERON.**<sup>[1]</sup>

**D E C I S I O N**

**WILLARD, J.:**

On the 29th of January, 1904, one of the judges of the Court of First Instance of Manila ordered the suspension of Felipe G. Calderon, a member of the bar, in accordance with the provisions of section 22 of the Code of Civil Procedure, and in accordance with the provisions of section 23 of that code the proceedings were certified to this court.

The first charge which the Attorney-General makes here is to the effect that the respondent intentionally disobeyed an order of the court made on the 25th of July, 1903, in proceedings then pending in the Court of First Instance relating to the estate of Francisca Hilario. That order was as follows:

“Se tienen por presentadas las cuentas que se acompañan las que se ponen a disposicion de los interesados en la escribania; se autoriza al administrador Don Jose Mas para que del saldo metalico existente entregue a los herederos Rosa Domingo y herederos de Francisco Quintana, la septima parte de dicho saldo, a cuenta de su porcion hereditaria, siempre que no exceda dicha suma de la porcion hereditaria que les corresponda; se le autoriza asi mismo para depositar el metalico remanente en uno de los bancos de esta capital hasta la resolucion de estas actuaciones.”

No money was deposited in accordance with this order. But an examination of it shows that it did not order the deposit of any money but simply authorized the administrator to make such deposit if he saw fit. It appears that the administrator applied for this order, and its purpose, evidently, was to relieve him from responsibility for the loss of the money in

certain cases. A failure to deposit money in accordance with this authority can in no sense be called a disobedience of a lawful order of the court.

The second charge relates to the refusal of the attorney to deposit certain money claimed to be in his hands in the office of the clerk of the court. The first order referring to this matter is that of the 27th of August, 1904, in which the administrator, Jose Mas, was required to deposit in the office of the clerk of the court 4,607.89 pesos. It is claimed that this money was in the possession of the attorney, Calderon, and that he advised the administrator not to comply with the order. The second order was made on the 26th of September, 1904, and by its terms the administrator was directed to pay into the clerk's office 10,514.14 pesos, which was in the possession of the attorney. No money was ever paid into the clerk's office by virtue of these orders.

It appears that Francisca Hilario died testate on the 2d of January, 1898. On the 28th of January, 1901, Attorney Calderon, acting for Rosa Domingo, one of the heirs of the deceased, commenced proceedings in the Court of First Instance for the settlement of the estate, and on the 8th of February of the same year Jose Mas was appointed administrator, Calderon acting as his attorney. Proceedings for the settlement of the estate continued from that time up to the fall of 1904. Several actions were commenced by the administrator against third persons to recover property of the estate. At the end of every year the attorney presented to the administrator his bill for services and disbursements and these were paid by the administrator. The attorney's bill for 1901 amounted to 2,185.77 pesos; for 1902, to 3,583.36 pesos; for 1903 there were two bills amounting to 4,144.48 pesos; and for 1904 no bill had been presented or paid at the time these proceedings were commenced in the court below.

In August, 1904, the court below, apparently of its own motion and believing that the estate was being wasted by the administrator and his attorney, made an order directing the clerk of the court to examine the record and make a report as to the condition of the estate, and as to the amount of money which had been paid to the attorney as fees. The clerk made this report and the court, after examining it and the records of the case, determined that the amount of fees paid to the attorney was excessive, and that in no event should such fees exceed 5,000 pesos, and without determining that he should be allowed even that sum, directed the administrator and the attorney to pay into the clerk's office all the money in their hands in excess of 5,000 pesos.

In the several hearings which were had in the court below, the attorney always contended

that the money in his hands was his property; that it had been lawfully paid to him by the administrator for services rendered; and that his bills therefor had been approved by all of the heirs.

It is apparent that the real controversy in the court below related to the right of the attorney to retain this money as counsel fees, and testimony was taken as to the nature of the services rendered by the attorney, and the extent and importance of the litigation in which he had been engaged for the estate. The decision of the court below was in effect that the attorney was not entitled to retain the amount which had been paid to him, and that all in excess of 5,000 pesos should be paid into the clerk's office. Just what the effect of these orders of the court below were, and whether they amounted to a final determination of the right of the attorney to retain this money, it is not necessary now to determine. An appeal was presented by him from every order made by the court during these proceedings. Under the circumstances we do not think his failure to pay the money into the court after he had appealed or attempted to appeal from the order constituted an act for which he should be suspended or disbarred from practice.

The third charge, according to the Attorney-General, is for malpractice or illegal conduct, in that he was an interested party in the sale of a pottery belonging to the estate for which he was attorney. He instigated a public sale and induced Enrique Ayllon to buy the same, and they divided it between them. Enrique Ayllon did this, and a partnership was formed as agreed. This fact alone, according to the Attorney-General, is sufficient to justify the suspension ordered by the court below, because the act constitutes a violation of the two oaths which the attorney took when admitted to the practice of his profession, and is also an infraction of article 1459 of the Civil Code, which applies to lawyers and solicitors and prohibits their buying even at public auction property which is the object of litigation and in which they are interested professionally or officially.

The attorney in his brief says:

“The Attorney-General is right in holding this to be a grave offense, for, as he says, it not only involves mere disobedience of the orders of the court, but more, it affects the honor and integrity of the lawyer in the practice of his profession—all this, and much more, might be said of me if what the Attorney-General alleges is true; if all that he alleges were true it would show in me a degree of ignorance which would warrant the appellation of a foolish trickster

and would doubly merit, not only suspension, as the Attorney-General says, but expulsion for inability and immorality. As I have said before, if I had done that which the Attorney-General alleges, acquiring for myself the factory in question, there would be reason for classifying me as *immoral* and *ignorant*, since article 1459 of the Civil Code prohibits the purchase by lawyers of property which may be in litigation and in which they are interested professionally and officially \* \* \* .”

By these assertions the attorney himself admits that the charge, and the grounds upon which it is based, is a proper charge if established.

From the evidence adduced in this court, the following is found:

1. That Ayllon affirms and reiterates all that he testified to in the court below.
2. That he positively stated that it was the proposition of the attorney “that we should make the purchase between us, each of course contributing one-half of the capital for the purchase” (p. 12). “He informed me at first that we could use the names of his wife and my children \* \* \* that is how the wife of Mr. Calderon and my children were named as partners;” but afterwards Inocencia Macareig was named in place of Mrs. Calderon.
3. In regard to the public sale, he said: “There were only present myself, who was the only bidder, Jose Mas, I believe he was so called, and Mr. Calderon; at least I saw no others there.” On cross-examination, being asked if at the time of the sale anyone else had offered a higher price than that offered by the witness, he answered, “No; if others had offered a higher price, it would have gone to them \* \* \*” (p. 15). Being cross-examined as to whether the document had been rewritten, he said “yes,” and that he had manifested surprise to Calderon that Inocencia Macareig should appear therein and that he did not know who she was, but that afterwards he learned that she was an old woman who lived in the house of Calderon and that she appeared to be a servant of the house, for which reason he said to Calderon that he was unwilling that his children should appear therein with a servant, and for this reason the document was rewritten and Josefa Amurao, wife of Calderon, was substituted therefor.

At the examination held by the Attorney-General for the purpose of investigating how the

sale of the pottery was held, Mas, administrator of the estate, as well as Attorney Calderon, testified that other persons were present, but they were unable to establish the fact that there was any bidding or reservation at the sale, Mas saying that the persons present were unknown to him, except Ayllon and Calderon, and that the one who had bid highest was a client of Calderon, surely alluding to Ayllon, who was repeatedly referred to in the evidence as the client of Calderon, with whom, according to both, the idea of the purchase and of the company started, each of them stating the same, although in different manners. The accused, Calderon, being asked, "Were there other bidders than Sr. Ayllon?" replied, "Yes sir; and you have the proof of that in the fact that the price went above that of the fixed minimum." "Do you remember who were the other bidders besides Sr. Ayllon?" "I believe that one of them was the agent of the Chino Francisco and I know him because he has a *camarin* which is next to mine in San Felipe Neri." In his brief he had said before: "There were no other bidders except Sr. Ayllon and in my desire to increase somewhat the minimum, I looked up various persons who might bid, but without result, and the property was turned over to Enrique Ayllon at an increase over the minimum value fixed" (pp. 6, 7).

Up to the 7th of August, 1903, no bill of sale of the pottery was executed in favor of Enrique Ayllon (Exhibit H of the defense), nor up to the 20th of the same month had the company composed of Enrique Ayllon and Inocencia Macareig been formed (Exhibit G of the defense). But Exhibit 1 of the Government, dated the 22d of July, 1903, is literally as follows: "Received from Doña Victoria and from Doña Maria Ayllon, unmarried women of legal age, the sum of two thousand one hundred and sixty-three pesos, Mexican currency (\$2,163, Mex.), one-half of the price of the factory for the making of tile situated in the barrio of Sapa of the district of Santa Ana of this city, *bought by us* in public auction and for the exploitation of which we have formed a company, one-half belonging to these women and the other half to the undersigned.—Manila, July 22, 1903.—P.P. de Doña Josefa Amurao de G. Calderon by Felipe G. Calderon (attorney in fact). \$2,163, Mex."

The context of this document, admitted by the accused, corroborates the testimony of Enrique Ayllon.

It appearing that the partnership evidenced by the instrument of the 20th of August, 1903, was entered into between Enrique Ayllon and Inocencia Macareig, the fiscal extended his inquiry as to the manner in which the former had entered into this partnership with the latter. The defendant states in his brief: "Ayllon proposed to me to ask her to become a partner with him in the *camarin* deal, to which I paid no attention. Ayllon, in view of my refusal to interfere in the purchase of the *camarin*, went to my clerk, Isidro Mutyangpili, a

relative of Inocencia Macareig, and asked him to persuade the woman to enter into this partnership with him, the said Mutyangpili to represent the said woman” (p. 6). This was said on November 20, 1905. On the 16th of April, 1906, having been asked by the fiscal whether he had taken any steps in order to have Inocencia Macareig become the partner of Ayllon, he said that “as Ayllon was looking for a partner and Inocencia Macareig desired to invest her money received from the estate of her deceased husband in some business, I put her in communication with Sr. Ayllon” (p. 42).

Two months after this, according to Ayllon, or three or four months thereafter, according to Calderon, the wife of Calderon was substituted for Mrs. Macareig in said partnership, until later on when she made herself absolute owner of the pottery by purchasing Ayllon’s interest therein.

If, according to the defendant, he had refused to interfere in the purchase, one of his clerks having made the arrangements to the effect that Ayllon and Mrs. Macareig should form a partnership, the clerk representing the latter in the transaction, we find no explanation of the following letter (Exhibit 6 of the Government), dated August 21, 1903, the day following the execution of the articles of partnership: “Mr. Enrique Ayllon—Dear friend: I send you a bill of accounts of the *camarin* of Sapa, paid up to date, calling your attention to the fact that Tano did not bring the bill for Saturday last nor that for to-morrow. According to this bill, there exists a balance of \$913.75, to which the sum of \$40, the value of the partnership’s articles, should be added, making a total value of \$953.75; that is to say, \$456.87 for each one of *us*; out of this sum you have paid \$225, leaving a balance against you of \$233.87½ \* \* \*. I am also sending you the document of purchase and the articles of partnership, as well as the list of expenses. Yours very affectionately. Felipe G. Calderon.” And of this tenor is all the correspondence which passed between Ayllon and Calderon presented as evidence by the Government. All these documents corroborate the testimony given by Ayllon, a witness for the prosecution.

In view of the evidence brought out by the letter of July 22, 1903, wherein it is clearly said that the *camarin* had been *adjudged by auction to us*, speaking of Attorney Calderon, who signed it in the name of his wife, the said Calderon at the final hearing attempted to explain this fact as follows: “In this doubt of whether Doña Inocencia Macareig was or was not going to buy the said part, and as, on the other hand, there was pending between us (between Doña Inocencia Macareig and my wife) the question of partition \* \* \*, and with the circumstance on the other hand that Doña Inocencia Macareig did not know how to read or write and left everything regarding the purchase of the *camarin* to the care of Doña Josefa

Amurao, my wife, that is the reason why I signed said receipt as agent of my wife” (p. 78). This was said on April 26, 1906. But in his brief of November 20, 1905, he had said: “This being the present state of things and the partnership being agreed upon between Doña Inocencia Macareig and Sr. Ayllon’s daughters and Cayetano de Jesus as industrial member thereof, Sr. Ayllon went to the auction \* \* \*” (p. 6). And some lines above there was written: “Said Doña Inocencia Macareig was living in my house \* \* \*; she is a country woman, who, although she did not know how to write, was acquainted with business transactions better than many others, and like almost all of our old and rich country women looks like a beggar. She was at that time taking care of my children and was helping us in our domestic labors.”

It is impossible, therefore, not to appreciate the relevant and strongly supported testimony of the witness for the prosecution, Ayllon, which was reaffirmed by him in this court, and which was objected to by the defendant in his brief.

The judgment must incline toward the side of this accumulated evidence, which becomes conclusive by the facts on which the fiscal bases his conclusion.

This court does not consider this case as a violation of article 1459 of the Civil Code, but, according to the argument of the Attorney-General, as a grave offense which involves malpractice or serious illegal conduct on the part of a lawyer in the practice of his profession, constituting a violation of his oath. The defendant himself has said that “If I had done that which the Attorney-General alleges, there would be reason not only for suspending me from practice but for classifying me as *immoral* and *ignorant*.” (Brief, p. 4.) And the witness Ayllon had stated: “But later on I heard ‘so and so,’ that it was ‘*chanchulleria*’ (malpractice) of Mr. Calderon, but as for me I was cheated, and from that time I tried to separate myself from that business” (p. 14).

The defendant was suspended from the practice of his profession on December 29, 1904, and the penalty which we now impose is the suspension from such practice which he has already suffered, the publication of the judgment in this proceeding terminating such suspension. So ordered.

*Arellano, C. J., and Torres, J., concur.*

*Carson and Tracey, JJ., concur in the result.*

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<sup>[1]</sup> See 5 Phil. Rep., 658.

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