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fatal to their case (Calo *vs.* Fuertes, et al., G.R. No. L-16537, June 29, 1962). To place petitioners' case beyond the pale of this rule, they must show that their case falls—which it does not—within the cases where, in accordance with our decisions, the aggrieved party need not exhaust administrative remedies within his reach in the ordinary course of the law (Tapales *vs.* the President and the Board of Regents of the U.P., G.R. No. L-17523, March 30, 1963; Mangubat *vs.* Osmeña G.R. No. L-12837, April 30, 1959; Baguio *vs.* Honorable Jose Rodriguez, G.R. No. L-11078, May 27, 1959; Pascual *vs.* Provincial Board, G.R. No. L-11959, October 31, 1959; Marinduque Iron Mines, etc. *vs.* Secretary of Public Works, G.R. No. L-15982, May 31, 1963; Alzate *vs.* Aldaba, G.R. L-14407, February 29, 1960 and Demaisip *vs.* Court of Appeals, G.R. No. L-13000, September 25, 1959).

WHEREFORE, the writ prayed for is hereby denied, with costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Sanchez, Fernando, Teehankee and *Barredo, JJ.,* concur.

Capistrano, J., did not take part.

Concepcion, C.J., and *Ruiz Castro, J.,* are on official leave.

Writ denied.

[G.R. No. L-24163. April 28, 1969]

REGINO B. ARO, petitioner, *vs.* THE HON. ARSENIO NAÑAWA, Presiding Judge of Branch 1V, Court of First Instance of Laguna, LUIS MAGTIBAY, PABLO MAGTIBAY, AURELIA MARTINEZ, GREGORIO LONTOK, MARIA MENDOZA, MAXIMO PORTO and ROSARIO ANDAYA, respondents.

SYLLABUS

1. ATTORNEY-AT-LAW; ATTORNEY'S FEES; COMPROMISE ENTERED INTO BY CLIENT WITHOUT INTERVENTION OF

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LAWYER IS SUBJECT TO ATTORNEY'S FEES.— While We here reaffirm the rule that "the client has an undoubted right to compromise a suit without the intervention of his lawyer, We hold that when such compromise is entered into in fraud of the lawyer with intent to deprive him of the fees justly due him, the compromise must be subject to the said fees, and that when it is evident that the said fraud is committed in confabulation with the adverse party who had knowledge of the lawyer's contingent interest or such interest appears of record and who would benefit under such compromise, the better practice is to settle the matter of the attorney's fees in the same proceeding, after hearing all the affected parties and without prejudice to the finality of the compromise in so far as it does not adversely affect the rights of the lawyer.

2. ID.; ID.; ATTORNEY CANNOT BE DEPRIVED OF COMPENSATION UNLESS HE CONSENTS TO SETTLEMENT, COMPROMISE OR DISMISSAL OF THE CASE.— The client cannot, by settling, compromising, or dismissing his suit during its pendency, deprive the attorney of his compensation for the agreed amount, unless the lawyer consents to such settlement, compromise or dismissal, for the attorney is or "shall be entitled to have and recover from his client a reasonable compensation (not more) for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney," albeit, under Canon 12 of the Canon of Professional Ethics, "in fixing fees, it should not be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade."

3. ID.; ID.; RECOVERY OF FULL COMPENSATION, REQUISITES.— True it is also that "a client may, at anytime, dismiss his attorney or substitute another in his place," (Sec. 26, Rule 138) but it must be emphasized that the same provision, which is an incorporation of Republic Act 636 into the Rules of Court, also provides that "if the contract between client and attorney had been reduced into writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client full compensation."

4. ID.; ID.; ID.; ID.; PETITIONER ENTITLED TO FULL COMPENSATION IN INSTANT CASE.— In the case at bar, by entering into the compromise agreement in question and even inserting therein a prayer to the court to dismiss the case filed by petitioner, petitioner's clients impliedly dismissed him. Such implied dismissal

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appears to Us to have been made without justifiable cause, none is urged anywhere in the record, and so Section 26, Rule 138 applies here. Hence, petitioner is entitled to recover the full compensation.

5. ID.; ID.;CLIENT IN INSTANT CASE HAS NO RIGHT TO WAIVE PORTION OR THEIR ACKNOWLEDGED RIGHT TO THE PREJUDICE OF THE LAWYER.— Through the services of petitioner, his clients secured, in effect, a recognition, which had been previously denied by their aunt-in-law, that they were entitled to a 1/4 share in the estate left by their uncle. We hold that under these circumstances, and since it appears that said clients have no other means to pay petitioner, since they instituted their case as paupers, and that their aunt-in-law was aware of the terms of their contract of professional services with petitioner, said clients had no right to waive the portion of their such acknowledged rights in favor of their opponent to the extent that such waiver would prejudice the stipulated contingent interest of their lawyer and their aunt-in-law had no right to accept such waiver unqualifiedly.

6. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION BY THE COURT *A QUO*.— Considering that petitioner's clients were able to secure recognition of their right to 1/4 share in the estate of their deceased uncle and that their case was instituted as paupers and that these were presented to respondent judge before he issued the challenged order of dismissal and all the parties were heard thereon, it was incumbent upon His Honor, in equity and to avoid multiplicity of suits, particularly, because the amount claimed by petitioner is only ₱1,000.00 to have directly passed upon petitioner's claim, and not having done so, it would appear that the court *a quo* abused its discretion gravely enough to warrant the writ of certiorari herein prayed for in so far as the questioned order prejudiced petitioner's right to the fees for the professional services which appear to have been creditably rendered by him.

7. ID.; ID.; ID.; ORDER OF DISMISSAL BY RESPONDENT COURT IS NOT FINAL.— Respondents allege that the judgment of dismissal in question is already final because no appeal was taken therefrom, but since We hold that the same was rendered with enough grave abuse of discretion to warrant the certiorari prayed for, such alleged finality could not have materialized; obviously, petitioner could not have appealed, not being a party in the case.

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APPEARANCES OF COUNSEL

Regino B. Aro in his own behalf.
Enrique C. Villanueva for private-respondents.

DECISION

BARREDO, *J.*:

Original petition: (1) for certiorari to annul the order of the Court of First Instance of Laguna, dated November 21, 1964, dismissing its Civil Case No. SC-525 "without prejudice to the right of Atty. Regino B. Aro (petitioner herein) to file a separate action against both the plaintiffs and defendants (private respondents herein) with respect to his alleged attorney's fees," as well as its order dated January 9, 1965, denying petitioner's motion for reconsideration thereof for lack of merit and (2) for mandamus to compel respondent Judge to take cognizance of petitioner's opposition and counter-motion or petition dated November 3, 1964 and to resolve the same on the merits.

There appears to be no dispute as to the following facts alleged in the petition:

"2. That the services of herein petitioner, as practicing attorney, was engaged by respondents Luis Magtibay and Pablo Magtibay for the prosecution of their claim, as heirs, in the estate of their deceased uncle Lucio Magtibay, consisting of properties which were in the possession of the respondents Aurelia Martinez,[1] spouses Gregorio Lontok and Maria Mendoza and spouses Maximo Porto and Rosario Andaya.

"3. That being without means to prosecute their claim against the persons concerned, respondents Luis Magtibay and Pablo Magtibay agreed with herein petitioner to avail of his services and entrust the prosecution of their claim on a contingent basis, as shown in the agreement, copy of which is hereto attached as Annex 'A' and is made an integral part hereof.[2]

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[1] Widow of the deceased Lucio Magtibay and aunt-in-law of petitioner's clients.

[2] Annex A is the written agreement dated July 10, 1964 by which respondent Luis and Pablo Magtibay contracted the services of petitioner and under which it was stipulated that petitioner would be entitled to a contingent fee of one-half of whatever his clients might be awarded either by the court or by extrajudicial agreement.

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"4. That by virtue of said agreement, herein petitioner took the necessary steps to gather the needed papers and documents for the filing of a petition to litigate as pauper and a complaint in the Court of First Instance of Laguna, in which respondents Luis Magtibay and Pablo Magtibay were the plaintiffs and the other respondents, excepting the respondent Judge, were the defendants, ...

"5. That said petition to litigate as pauper filed by herein petitioner for respondents Luis Magtibay and Pablo Magtibay was granted by the respondent Judge as per the order dated September 10, 1964, ...

"6. That to plaintiffs' complaint in Civil Case No. SC-525, the defendants in said case interposed a motion to dismiss dated September 29, 1964, ...[3]

"7. That to the said motion to dismiss, herein petitioner, as attorney for the plaintiffs (now respondents Luis Magtibay and Pablo Magtibay) filed an opposition dated October 5, 1964, ...[4]

"8. That after the hearing of the motion to dismiss filed by the defendants and the opposition thereto by the plaintiffs, which finally took place on October 24, 1964, the respondent Judge issued its resolution or order dated October 24,1964, denying the motion to dismiss, ...[5]

"9. That on the very day of and after the hearing of the motion to dismiss, or on October 24, 1964, before receipt of a copy of the said order (Annex 'G'), there was a conversation which took place between herein petitioner and the attorney of the defendants, Atty. Rustico de los Reyes, Jr., in the civil case and one who was then acting as a sort of spokesman for the defendants (Ex-mayor Cordova of Sta. Maria, Laguna) for the amicable settlement of the case between the plaintiffs and the defendants to the effect that a certain property of the spouses Lucio Magtibay (deceased) and respondent Aurelia Martinez, worth ₱3,000.00, would be given to the plaintiffs in full settlement of their claim, as share in the properties left by their deceased uncle Lucio Magtibay, if having been agreed by herein petitioner and Atty. de los Reyes and the spokesman of the defendants that for the purpose of said amicable settlement, the plaintiffs or one of them and herein petitioner would go to Sta. Maria, Laguna, on October 23, 1964.

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[3] The motion to dismiss was based on the ground that the complaint failed to alleged that earnest efforts towards compromise had been made, the suit being one between members of the same family, citing Section 1 (j) of Rule 16.

[4] Petitioner claimed that the suit was by nephews-in-law against their aunt-in-law and, therefore, not between members of the same family within the contemplation of the rule cited by movants.

[5] Petitioner's contention indicated in footnote 4 was upheld by the court.

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"10. That having given notice to the plaintiffs (now respondents Luis Magtibay and Pablo Magtibay) at their given address in Calauag, Quezon to come to Candeleria for the purpose of going to Sta. Maria, Laguna on October 23, 1964, petitioner had waited for said plaintiffs to go to his office on or before said date for the engagement mentioned, but due to their (plaintiffs') failure to come to Candelaria, petitioner had to send a telegram to Ex-Mayor Cordova notifying him of his (petitioner's) and plaintiffs' not being able to go to Sta. Maria because of the failure of any of the plaintiffs to come to Candelaria,. . ..

"11. That it was only on October 28, 1964, when herein petitioner received a copy of the order dated October 24, 1964 (Annex 'G') and to his surprise he also received on the said day a second motion to dismiss dated October 26, 1964, together with Annex 'A' of said motion, which is entitled KASULATAN NG PAGHAHATIAN NA LABAS SA HUKUMAN AT PAGPAPALABI, dated October 23, 1964 at Sta. Cruz, Laguna and signed by the plaintiffs and defendant Aurelia Martinez (the three being now respondents in this case), it having been made to appear in said Annex 'A' of the second motion to dismiss, among others, that the plaintiffs and defendant Aurelia Martinez had made an extrajudicial partition of the properties of the deceased Lucio Magtibay and the said Aurelia Martinez adjudicating to the plaintiffs one-fourth (1/4) share in the properties of the spouses and three-fourth (3/4) share of the defendant Aurelia Martinez, but making it appear also that said plaintiffs waived their share in favor of Aurelia Martinez, . . ., thru which fraudulent waiver, herein petitioner was deprived of his contingent fees, agreed upon, as evidenced by Annex 'A' of this petition. [6]

. . . . . .

"14. That petitioner filed by registered mail, on November 4, 1964, his 'OPPOSITION TO THE SECOND MOTION TO DISMISS AND COUNTER-MOTION OR PETITION TO SET ASIDE DEED OF EXTRAJUDICIAL PARTITION AND WAIVER DATED OCTOBER 23, 1964 AND TO RECORD ATTORNEY'S LIEN,' dated November 3, 1964,

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[6] Paragraph 8 of the Kasulatan contains a request to the court to dismiss the case in the following words:

"8. Matapos maipaliwanag sa amin ang lahat, ay wala na kaming hangad na maghabol pa sa aming mana kaya't hinihiling namin sa Hukuman ng Unang Dulugan ng Laguna, Sangay IV (Court of First Instance of Laguna, Branch IV), na putulin na ang aming sakdal na kaso Civil Blg. 525, sapagkat ang nais namin ay katahimikan at iwasan ang usapin sa hukuman."

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wherein he (petitioner) prayed, among others, invoking the provisions of Section 5(d) and Section 6, Rule 135 of the Revised Rules of Court, for the protection of the rights of herein petitioner as an officer of the Court, to wit:

'(a) to deny the second motion to dismiss and set aside and annul the deed of extrajudicial partition and waiver dated October 23, 1964;

'(b) to fix the compensation of herein counsel in the proportion of one-third (1/3) of the shares of plaintiffs, if in land, or in the amount of ₱1,000.00, if in cash, and to record the same and expenses advanced by him for the plaintiffs in the sum of ₱22.15 as lien in favor of herein claimant-petitioner over the properties in litigation, particularly over the one-fourth (1/4) share of the plaintiffs in all the properties of the spouses;

. . . . . .

'(d) as an alternative to prayer (a) above, to grant the second motion to dismiss, subjecting, however, the properties in litigation and subject-matters of the extrajudicial partition and waiver to the lien for attorney's fees and expenses in favor of herein claimant-petitioner, after fixing said attorney's fees, as prayed for in (b) above.

. . . . . .

"15. That on the day finally set for the hearing of the second motion to dismiss, as well as of the counter-motion or petition, or on November 21, 1964, because of the inquiries or interpellation made by respondent Judge to herein petitioner as to whether there is a Philippine precedent which allows or directs the protection by the Court of the rights of any of its officers (lawyer) against any collusion perpetrated by the parties in a case to defraud or cheat an attorney of his compensation agreed upon by him and his clients, and his answer that insofar as his researches were concerned, he could not find any, although there are a number of cases to that effect in American jurisdiction, the respondent Judge had opined in open court that the claim for and the fixing of the attorney's fees should better be done in a separate action and, in spite of petitioner's memorandum citing American authorities to the effect that,

'Though a party may without the consent of his attorney make a *bona fide* adjustment with the adverse party and dismiss an action or suit before a judgment or a decree has been rendered thereon, if it appears, however, that such settlement was collusive and consummated pursuant to the intent of both parties to defraud the attorney, the court in which the action was pending may interfere to

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protect him as one of its officers, by setting aside the order of dismissal, . . .' (Jackson *vs.* Stearns, 48 Ore. 25, 84 Pac. 798).

. . . the respondent Judge, instead of denying the second motion to dismiss and fixing his attorney's fees in the said case and recording the same as lien, . . . dismissed the case and refused to give herein petitioner any kind of immediate protection to safeguard his rights . . . in said Civil Case No. SC-525 of the Court of First Instance of Laguna.

"16. That by the express terms of the agreement, Annex 'A' of this petition, plaintiffs in Civil Case No. SC-525 had expressly ceded to herein petitioner one-half (½) [*later verbally reduced to one-third (⅓) or ₱1,000.00*] or whatever share they would get from the estate of their deceased uncle Lucio Magtibay, and the defendants in said Civil Case had full knowledge of said right of herein petitioner in the properties in controversy from and after the time they were served with summons and copies of the complaint in said civil case—because of the allegations contained in par. 10 thereof.[7] [Italics supplied]

"18. That on December 5, 1964, herein petitioner filed his motion for reconsideration dated December 4, 1964 asking for the reconsideration of the order dated November 21, 1964, ...

"19. That the motion for reconsideration was denied by the court, thru the respondent Judge, as per the order dated January 9, 1965, ..."

Upon these facts, petitioner tries to make out before this Court a case of certiorari for grave abuse of discretion on the part of respondent Judge in dismissing the case on the basis of the compromise agreement of the parties, entered into at the back of petitioner, notwithstanding the reservation made in his favor to file an action against both parties "with respect to his alleged attorney's fees," as well as a case of mandamus "to order and command the said respondent judge" to take cognizance of and resolve his opposition and counter-motion for the court to fix the compensation he should be paid. Unable to find any local precedent to support his position, he cites American authorities thus:

"In the American jurisdiction, it would seem that, even without the specific provisions of the rules of court cited above, courts had always intervened,

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[7] The contract Annex A, for professional services, was also annexed to the complaint as part of Paragraph 10 thereof.

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in the mere exercise of their inherent powers, to protect attorneys against collusive agreements or fraudulent settlements entered into by the parties in a case to cheat attorneys out of their costs or of their fees. Thus, it was held or had been stated in:

"(a) Coughlin *v.* N.Y. Cont. & H.R.R. Co., 71 N.Y. 443, 27 Am. Rep. 75.

'. . . But since the time of Lord Mansfield, it has been the practice of courts to intervene to protect attorneys against settlement made to cheat them out of their costs. If an attorney has commenced an action, and his client settles it with the opposite party before judgment, collusively, to deprive him of his costs, the court will permit the attorney to go on with the suit for the purpose of collecting his costs. Swain *v.* Senate, 5 Bos. & Pul. 99; Cole *v.* Bennett, 6 Price, 15; Moore *v.* Cook, 13 id., 473; Talcott *v.* Bronson, 4 Paige, 501; Rusquin *v.* The Knickerbocker Stage Col., 12 Abb. Pr. 324; Ward *v.* Syme, 9 How. Pr. 16; McDonald *v.* Napier, 14 Ga. 89.

'There are many cases where this had been allowed to be done. It is impossible to ascertain precisely when this practice commenced, nor how originated, nor upon what principle it was based. It was not upon the principle of a lien, because an attorney has no lien upon the cause of action before judgment for his costs; nor was it upon the principle that his services had produced the money paid his client upon the settlement, because that could not be known, and in fact no money may have been paid upon the settlement. So far as I can perceive, it was based upon no principle. It was a mere arbitrary exercise of power by the courts; not arbitrary in the sense that it was unjust or improper, but in the sense that it was not based upon any right or principle recognized in other cases. The parties being in court, and a suit commenced and pending, for the purpose of protecting attorneys who were their officers and subject to their control, the courts invented this practice and assumed this extraordinary power to defeat attempts to cheat the attorneys out of their costs. The attorney's fees were fixed in definite sums, easily determined by taxation and this power was exercised to secure them their fees.' (pp. 76-77)

"(b) Randall *v.* Van Wagenan et al., 22 N.E. 361, 362.

'. . . But where such settlement is made collusively for the purpose of defrauding the attorney out of his costs, courts have been accustomed to intervene, and to protect the attorney by permitting him to proceed with the suit, and, if he is able to establish a right to recover on the cause of action as it originally stood, to permit such

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recovery to the extent of his costs in the action. Coughlin *v.* Railroad Co., 71 N.Y. 443, and cases cited. And the court will set aside an order of discontinuance if it stands in the way. This is an adequate remedy, and we think the exclusive remedy where the suit has been fraudulently settled by the parties before judgment to cheat the attorney out of his costs. We have found no case of an equitable action to enforce the inchoate right of an attorney under such circumstances, and no such precedent ought, we think, to be established.'

"(c) Jackson *v.* Stearns, et al., 43 Ore. 25, 84 Pac. 798.

'. . . Though a party may, without the consent of his attorney, make a bona fide adjustment with the adverse party, and dismiss an action or suit before a judgment or a decree has been rendered therein, if it appears, however, that such settlement was collusive and consummated pursuant to the intent of both parties to defraud the attorney, the court in which the action or suit was pending may interfere to protect him, as one of its officers, by setting aside the order of dismissal and permitting him to proceed in the cause in the name of his client to final determination to ascertain what sum of money, or interest in the subject-matter, if any, is due him for his services when fully performed. Jones *v.* Morgan, 99 Am. Dec. 458; Randall *v.* Van Wagenen (N.Y.) 22 N.E. 361, 12 Am. St. Rep. 828.' (p. 800)

'Before a court will set aside an order dismissing a suit or an action, made upon stipulation of the parties, without the consent of plaintiff's attorney, and allow the latter to proceed with the cause in the name of his client, to determine the amount of fees due him, it must appear that the defendant participated in the fraudulent intent to deprive the attorney of his compensation. Courtney *v.* McGavok, 25 Wis. 619. When no adequate consideration is given by the defendant for the settlement and discharge of an action or a suit, the insufficiency of the inducement to the contract affords evidence of his bad faith. Young *v.* Dearborn, 27 N.E. 324. It will be remembered that the complaint alleges that the value of the real property in question is $3,000.00, and that Stearns executed to Wilson a deed to the premises for a nominal consideration. This is a sufficient averment of the defendants intent to deprive the plaintiff of his compensation thereby imputing to Wilson bad faith.' (p. 800)

"(d) Desaman *v.* Butler Bros., 118 Minn. 198, 136 N.W. 747.

'We have recently held that a client has always the right to settle his cause of action and stop litigation at any stage of the proceeding,

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subject, however, to the right of the attorney to receive compensation for services rendered. Burho *vs.* Camichael, 135 N.W. 386. It is therefore contended by defendant that a litigant retains the unrestricted right to determine for what amount the cause of action may be settled, and, having so done, the lien of his attorney for services is measured by the amount determined on and actually settled for. Conceding, without deciding, that this may be true at any time prior to the rendition of a verdict in the action which the attorney has been employed to bring, we are of opinion that after verdict fixing the amount of a plaintiff's cause of action a secret and collusive compromise between parties litigant does not affect the amount of the attorney's lien. . . .; but therein is also clearly indicated by Mr. Justice Brown that, if there be fraud and collusion to deprive the attorney of his lien, the settlement will not be permitted to accomplish such result.' (p. 748)

To be sure, these authorities are quite persuasive, but contrary to petitioner's impression, there is already a precedent setting decision of this Court handed down way back in 1922 in a case very similar to his, that in Rustia *vs.* the Judge of First Instance of Batangas, et als., 44 Phil. 62. As it is very brief, it can be quoted in full:

"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 ₱200 in advance with an additional contingent fee of ₱1,300. 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 plaintiff's 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

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to pay to them the sum of ₱3,250. 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 (₱800) in two installments; ₱300 to be paid on this same date, and the remaining five hundred pesos (₱500) 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 (₱800) 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

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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 has 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 & Savings Co., 19 Am. 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; Compaña 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."

The difference We perceive, however, between petitioner's case, on the one hand, and that of Atty. Rustia, in the above decision,

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on the other, is that in the latter's case, neither the court nor the party adverse to his clients were aware of the exact agreement as to his fees, whereas in the case of petitioner, both the court and the other parties knew the terms of the contract for professional services between petitioner and his client, the Magtibay brothers, because the written contract therefor, Annex A, was made part of the complaint, and none seriously disputes its authenticity. Besides, the court had already dismissed the case when Atty. Rustia raised the question of his fees before the court; in petitioner's instance, he opposed the motion to dismiss and pleaded with the court to protect his rights as officer of the court before the first order in question was issued by respondent judge. Were it not for these differences, We would have inclined towards denying the herein petition in line with the Rustia ruling that, in any event, certiorari is not the appropriate remedy, the American authorities cited by petitioner notwithstanding.

Withal, there is another Philippine case which moves Us to sustain petitioner. In the case of Recto *vs.* Harden, 100 Phil. 440, Atty. Claro M. Recto found himself practically in the same situation as petitioner herein. After Atty. Recto had rendered services to Mrs. Esperanza P. de Harden in a protracted suit against her husband for the purposes of securing an increase of her and her daughter's monthly support, (the spouses were separated), to ₱10,000.00 and of protecting and preserving her rights in the properties of the conjugal partnership, which suit lasted from 1941 to 1949, and after the Court of First Instance of Manila had rendered a judgment favorable to Mrs. Harden acknowledging, *inter alia,* her rights to the assets of the conjugal partnership, which turned out to be ₱4,000,000, and awarding her a monthly support of ₱2,500, practically as prayed for in Atty. Recto's pleadings, while the case was already pending on appeal before this Court, Mrs. Harden and her husband, Mr. Fred Harden, entered into a compromise of their case, without the knowledge of Atty. Recto, whereby said spouses "purportedly agreed to settle their differences in consideration of the sum of ₱5,000 paid by Mr. Harden to Mrs. Harden, and a monthly

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pension of $500 to be paid by him to her; (2) Mr. Harden had created a trust fund of $20,000 from which said monthly pension of $500 would be taken; and (3) Mr. and Mrs. Harden had mutually released and forever discharged each other from all actions, debts, duties, accounts, demands and claims to the conjugal partnership, in consideration of the sum of $1." (p. 435)

Whereupon Atty. Recto filed a motion with this Court praying that:

"a) Pending the resolution of this motion, the receiver appointed herein be authorized to continue holding the properties above mentioned in his custody in order not to defeat the undersigned's inchoate lien on them;

"b) A day set aside to receive the evidence of the undersigned and those of the plaintiff and the defendant Fred M. Harden, in order to determine the amount of fees due to the undersigned, by the appointment of a referee or commissioner for the reception of such evidence;

"c) After due hearing, the undersigned be declared entitled to the sum of ₱400,000 as his fees for services rendered in behalf of the plaintiff in this case, under paragraph 3 of the contract, Annex 'A', and to that end a charging lien therefore be established upon the properties above-mentioned;

"d) And the receiver be ordered to pay to the undersigned the full amount of the fees to which the latter is found to be entitled."

This motion was objected to by Mr. Harden's counsel, who in turn, moved for the dismissal of the case, to which Atty. Recto objected. Under these circumstances, this Court acceded to Atty. Recto's prayer that the case be not dismissed, that the receivership be maintained except as to certain properties not material to mention here, and that the case be remanded to the lower court so that his fees may be determined and ordered paid. Upon the remand of the case to the lower court, a commissioner was appointed to hear the matter of the amount of the fees in question, and after the commissioner had submitted a report recommending the payment to Atty. Recto of the 20% attorney's fees stipulated in the contract for his services, equivalent to ₱369,410.04, the court rendered judgment as follows:

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"The contingent fee to which the claimant is entitled under paragraph 3 of the contract, Exhibit JJJ or 20, is 20% of ₱1,920,554.85 or the sum of ₱384,110.97.

"WHEREFORE, this Court hereby approves the recommendation of the Commissioner with the above-stated modification, and finds that Attorney Claro M. Recto is entitled to the sum of THREE HUNDRED EIGHTY-FOUR THOUSAND ONE HUNDRED AND TEN PESOS AND NINETY-SEVEN CENTAVOS (₱384,110.97), representing 20% of Esperanza P. de Harden's share in the conjugal properties owned by her and her husband, Fred M. Harden, as contingent fee stipulated in paragraph 3 of the Contract of Professional Services, Exhibit JJJ or 20, and the said Esperanza P. de Harden is hereby ordered to pay the said amount above-stated."

On appeal from this judgment to this Court, the same was affirmed, the decision stating pertinently in part:

"The last objection is based upon principles of equity, but, pursuant thereto, one who seeks equity must come with clean hands (Bastida, et al., *vs.* Dy Buncio & Co., 93 Phil. 195; 30 C.J.S. 475), and appellants have not done so, for the circumstances surrounding the case show, to our satisfaction, that their aforementioned agreements, ostensibly for the settlement of the differences between husband and wife, were made for the purpose of circumventing or defeating the rights of herein appellee, under his above-quoted contract of services with Mrs. Harden. Indeed, having secured a judgment in her favor, acknowledging her rights to the assets of the conjugal partnership, which turned out to be worth almost ₱4,000,000 in addition to *litis expensae* in the sum of ₱175,000, it is inconceivable that Mrs. Harden would have waived such rights, as well as the benefits of all orders and judgments in her favor, in consideration of the paltry sum of $5,000 allegedly paid to her by Mr. Harden and the additional sum of $20,000 to be paid by him *in installments,* at the rate of $500 a month. In fact, no explanation has been given for this most unusual avowed settlement between Mr. and Mrs. Harden. One can not even consider the possibility of a reconciliation between the spouses, the same being inconsistent with the monetary consideration for said alleged settlement. What is more, the records show that the relations between said spouses—which were bad indeed, not only in July, 1941, when Mrs. Harden engaged the services of the appellee, but, even, before, for Mr. and Mrs. Harden were separated since 1938—had worsened considerably thereafter, as evidenced by an action for divorce filed by Mr. Harden in New Jersey, in July 1948, upon the ground of repeated acts of infidelity allegedly committed by Mrs. Harden in 1940 and 1941."

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On the same consideration of equity, and for the better protection of lawyers, who, trusting in the good faith of their clients, render professional services on contingent basis, and so that it may not be said that this Court sanctions in any way the questionable practice of clients of compromising their cases at the back of their counsel with the consequence that the stipulated contingent fees of the lawyer are either unreasonably reduced or even completely rendered without basis, as in this case—wherein the clients waived the whole of their rights in favor of their opponent after the latter had acknowledged, in effect, the correctness of said clients' contention—We have decided to grant the herein petition, in so far as the rights of petitioner have been prejudiced by the questioned compromise agreement. While We here reaffirm the rule that "the client has an undoubted right to compromise a suit without the intervention of his lawyer,"[8] We hold that when such compromise is entered into in fraud of the lawyer, with intent to deprive him of the fees justly due him, the compromise must be subject to the said fees, and that when it is evident that the said fraud is committed in confabulation with the adverse party who had knowledge of the lawyer's contingent interest or such interest appears of record and who would benefit under such compromise, the better practice is to settle the matter of the attorney's fees in the same proceeding, after hearing all the affected parties and without prejudice to the finality of the compromise in so far as it does not adversely affect the rights of the lawyer. Surely, "the client cannot, by settling, compromising or dismissing his suit during its pendency, deprive the attorney of his compensation for the agreed amount, unless the lawyer consents to such settlement, compromise or dismissal," (Legal and Judicial Ethics by Martin, 1967 Rev. Ed., p. 121) for the attorney is or "shall be entitled to have and recover from his client—a reasonable compensation (not more) for his services, with a view to the importance of the subject-matter of the controversy, the extent of the services rendered, and the

[8] Laid down in Rustia *vs.* The Court, etc., et als., *supra.*

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professional standing of the attorney," (Sec. 24, Rule 138, on Attorney and Admission to Bar) albeit, under Canon 12 of the Canons of Professional Ethics, "in fixing fees, it should not be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade."

True it is also that "a client may, at anytime, dismiss his attorney or substitute another in his place," (Sec. 26, Rule 138) but it must be emphasized that the same provision, which is an incorporation of Republic Act 636 into the Rules of Court, also provides that "if the contract between client and attorney had been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client full compensation . . .." In the case at bar, by entering into the compromise agreement in question and even inserting therein a prayer to the court to dismiss their case filed by petitioner, (see footnote 6, ante) petitioner's clients impliedly dismissed him. (Rustia *vs.* the Court etc. *supra.*) Such implied dismissal appears to Us to have been made without justifiable cause, none is urged anywhere in the record, and so, the abovequoted provision of Section 26, Rule 138 applies here. The terms of the compromise in question, as spelled out in Annex A of Annex I of the petition, indicate clearly that Aurelia Martinez, the defendant aunt-in-law of petitioner's clients, acknowledged that the rights of said clients were practically as alleged by petitioner in the complaint he filed for them. In other words, through the services of petitioner, his clients secured, in effect, a recognition, which had been previously denied by their aunt-in-law, that they were entitled to a ¼ share in the estate left by their uncle. We hold that under these circumstances, and since it appears that said clients have no other means to pay petitioner, since they instituted their case as paupers, and that their aunt-in-law was aware of the terms of their contract of professional services with petitioner, said clients had no right to waive the portion of their such acknowledged rights in favor of their opponent to the extent that such waiver would prejudice the stipulated contingent interest of their lawyer and their aunt-

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in-law had no right to accept such waiver unqualifiedly. The Civil Code enjoins that:

"Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

Under the circumstance extant in the record, it is clear that the compromise agreement in question falls short of the moral requirements of this quoted article of the Civil Code. If for this reason alone, it should not be allowed to prejudice the rights of petitioner. Accordingly, as all of these circumstances were presented to respondent judge before he issued the challenged order of dismissal and all the parties were heard thereon, it was incumbent upon His Honor, in equity and to avoid multiplicity of suits, particularly, because the amount claimed by petitioner is only ₱1,000.00, to have directly passed upon petitioner's claim, and not having done so, it would appear that the court *a quo* abused its discretion gravely enough to warrant the writ of certiorari herein prayed for in so far as the questioned orders prejudiced petitioner's right to the fees for the professional services which appear to have been creditably rendered by him. Respondents allege that the judgment of dismissal in question is already final because no appeal was taken therefrom, but since We hold that the same was rendered with enough grave abuse of discretion to warrant the certiorari prayed for, such alleged finality could not have materialized; obviously, petitioner could not have appealed, not being a party in the case.

IN VIEW OF THE FOREGOING, the orders of the respondent court dated November 21, 1964 and January 9, 1965 in Civil Case No. SC-525 are hereby set aside in so far as they prejudice the payment of petitioner's claim of attorney's fees in the form of either one-third of the ¼ share acknowledged as his clients in the compromise in question or ₱1,000.00, which should constitute as a lien on the said share, in spite of the waiver thereof in favor of respondent Aurelia Martinez. It is unnecessary to consider the petition for mandamus. Costs against private respondents.

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Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Fernando and *Teehankee, JJ.*, concur.

Concepcion, C.J., and *Ruiz Castro, J.*, are on leave.

Capistrano, J., did not take part.

Orders set aside.

[G.R. No. L-24813. April 28, 1969]

DR. HERMENEGILDO SERAFICA, plaintiff-appellant, *vs.* THE TREASURER OF ORMOC CITY, THE MUNICIPAL BOARD OF ORMOC CITY, HON. ESTEBAN C. CONEJOS, as Mayor of Ormoc City and ORMOC CITY, defendants-appellees.

SYLLABUS

1. TAXATION; SALES TAX; VALIDITY OF CITY ORDINANCE IMPOSING SALES TAX ON LUMBER; DOUBLE TAXATION NOT PROHIBITED.— A city ordinance imposing a tax on the sale of lumber cannot be declared null and void on the ground that "the ordinance in question imposes in effect double taxation because the business of lumber yard is already regulated under the Charter and the sale of lumber is 'a mere incident of the business of lumber yard.' " Suffice it to say that regulation and taxation are two different things, the first being an exercise of police power, whereas the latter is not, apart from the fact that double taxation is not prohibited in the Philippines.

2. ID.; ID.; ID.; PRESUMPTION OF VALIDITY STANDS IN THE ABSENCE OF PROOF THAT TAX IN QUESTION IS OPPRESSIVE.— Where the validity of the tax imposed on the sale of lumber is assailed on the ground that it is "unfair, unjust, arbitrary, unreasonable, oppressive and contrary to the principles of taxation" but there is no proof of the fact that the tax in question is imposed regardless of the class of lumber sold although there are several categories thereof commanding different prices, nor of the prices corresponding to each category, the Court has no means to ascertain the accuracy of the unfairness of the tax and must, accordingly, rely upon the presumption that the ordinance is valid unless and until the contrary has been duly established.