

[G.R. No. 923. January 16, 1903]**DOMINGO GARCIA Y CASANOVA, PLAINTIFF AND APPELLEE, VS. EMETERIO RUIZ Y URBINA, DEFENDANT AND APPELLANT.****D E C I S I O N****TORRES, J.:**

On the 12th day of July, 1898 (record, p. 1), Don Domingo Garcia y Casanova filed a complaint in an action of lesser import praying that after the regular procedure judgment be rendered against the defendant, D. Emeterio Ruiz y Urbina, for the payment of the salary accruing in favor of the plaintiff from the 11th of June, 1898, until such time as the plaintiff could return to this city of Manila, together with his passage money, \$60 damages, and the costs of the action. The plaintiff alleged that on the 22d of August of the preceding year, 1897, he took command as skipper of the merchant steamer *Irene Urbina*, under a verbal contract with its owner the defendant Ruiz entered into in this city of Manila, under which the plaintiff was to command the steamer in its voyages between the ports of Misamis and in service as a tug; that this contract did not stipulate the time it was to continue in force or during which the services were to be rendered; that on the 11th of June, 1898, upon the plaintiff's arrival with the steamer in the port of Lapinig, of the town of Talisayan de Misamis, the shipowner Ruiz wrote him a letter discharging him; that none of the causes which justify the dismissal of the captain or other member of the crew were present; that therefore the defendant Ruiz was under the obligation of paying him the salary of \$100 per month which he had been receiving until such time as the plaintiff could return to Manila, together with his passage money, and \$60 by way of indemnification for the damages suffered by his having been abandoned at a place where it was impossible for him to support himself by the exercise of his calling; that this claim having been made to the marine authorities the defendant Ruiz in reply denied the right of the plaintiff, and stated among other things that he would only accede to the demand in case the law compelled him to do so, and that the marine authorities had declared themselves to be incompetent to try

the case. In support of his complaint, to which he attached two petitions presented to the marine authorities, and the reply of the defendant, the plaintiff cited several articles of the Code of Commerce, the Civil Code, and the law of civil procedure.

On the 13th of July, 1898, the court ordered that service of the complaint be had on the defendant Ruiz. Upon being notified by the justice of the peace of the said town, who delivered him a copy of the summons and of the complaint, the defendant refused to accept the copy of the complaint or to sign the notification. (Record, p. 25.) For this reason, on motion of the plaintiff, the defendant having failed to appear, the latter was declared in default and the complaint admitted as answered. The suit continued its course, and the decision was notified by reading in open court in accordance with the provisions of articles 265 and 266, in addition to the publication of the edicts prescribed by article 267 of the law of Civil Procedure.

Upon the grounds set forth in the order of August 27 of the same year, made on motion of the plaintiff, the parties were cited to appear on the 31st of that month. At the time set no one appeared except the plaintiff and his attorney, who stated that in view of the allegations of law and fact set forth in his client's pleadings he believed that the question at issue was solely one of law, and that, therefore, in view of the tacit admission on the part of the defendant Ruiz of the facts alleged in the complaint nothing was to be done other than to determine the question of law to be passed upon by the court in rendering judgment in accordance with Garcia's complaint.

On motion of plaintiff an order was made for the attachment of the real and personal property of Ruiz in the sum of \$700. No personalty having been found, a preventative annotation was by judicial mandate entered on the books of Recorder of Property showing the attachment of a house of substantial material with an iron roof, belonging to Don Emeterio Ruiz, situated in the square of the town of Tagoloan of the said district. (Record, pp. 54 and 55.) On motion of the plaintiff personal service of the judgment rendered in the action was had on the defendant Ruiz, who thereupon filed written notice of appeal (Record, p. 50) to the former Audiencia, which appeal was allowed by an order entered on folio 61.

The original record was sent up, both parties entered their appearance, and the abstract of the case was prepared. At this stage of the proceedings counsel for the appellant Ruiz raised an incidental issue in the appellate court by asking that all the proceedings in the action from and after the order of August 8, 1898, entered on page 21 of the record, be set aside, advancing such argument in support of this motion as seemed to him available. This

petition was opposed by the appellee, whereupon after notice to the parties the incidental issue was decided by judgment of the 15th of November, 1900, denying the annulment solicited by the appellant, but without special judgment for costs.

This action of lesser import was prosecuted against the defendant Ruiz in default, he not having appeared to answer the complaint, notwithstanding service upon him of the order, directing that a copy of the complaint and the summons be delivered to him, and after the expiration of the respective terms of eighteen and nine days which were successively granted him for that purpose. The order declaring him in default and the complaint admitted, as well as subsequent orders, were all notified by reading the same in open court, with the exception of the judgment, of which personal service was had, on motion of the plaintiff. (Articles 665, 668, and 752 of the old Code of Civil Procedure.)

The documents attached as exhibits to the complaint show that the defendant Ruiz was fully aware of the terms of the complaint as also of the facts therein alleged, because the written claim filed by Garcia with the governor of the district as subdelegate of the marine authorities, which claim was subsequently reproduced in the complaint upon the same statement of facts, was replied to by the defendant Ruiz by a statement of the reasons for his conduct, and subsequently upon being cited and notified to appear in the court of Misamis to answer to it in due form he refused to accept a copy of the complaint or to sign an acknowledgment of services, thereby voluntarily becoming in default, inasmuch as he absolutely failed to appear and did not allege that he was prevented by force majeure from doing so.

Upon this supposition, nothing having occurred to have prevented him from appearing in the action to defend himself against the facts alleged by the plaintiff, the silence of the defendant must be taken as an admission to these facts. The question is therefore reduced to determining whether the plaintiff Garcia was entitled to receive his salary from the 11th of June, 1898, at the rate of \$100 per month, until his return to the city of Manila, in which place the contract was entered into under which he was to command the steamer Irene Urbina as skipper, notwithstanding the fact that the defendant Ruiz as shipowner discharged him on the day mentioned in the month of June. The principle established by article 604 of the Code of Commerce is a legislative sanction and recognition of Garcia's right; nothing appearing in any way tending to deprive him of his unquestionable right to receive his salary until his return to the port where his contract for an unlimited time was entered into, and consequently the propriety of his claim is unquestionable. (Article 636 of the Code of Commerce.)

The judge of first instance in his decision limited the right of the plaintiff to receive his salary to the time of the notification of the judgment, which took place on the 12th of September, 1898, and it does not appear that Garcia has taken any exception to this decision.

The defendant did nothing but appeal from the judgment rendered against him by default, and upon the record his counsel in the appellate court raised the incidental issue of the annulment of the proceedings (in the court below from page 21 of the record forward; but the former Audiencia denied appellant's motion to set aside the proceedings by its decision of November 15, 1900, upon the grounds expressed in said order. We are therefore precluded from discussing in this decision the formal defects or errors of procedure which have thus been passed upon by a final decision. On the other hand, no other error complained of appearing in the appealed judgment, we are of the opinion, on the foregoing grounds, that the same must be affirmed, with the costs against the appellant, and it is so ordered.

Arellano, C. J., Cooper, Willard, Mapa, and Ladd, JJ., concur.
