

**CANUTO E. LARROBIS, PETITIONER, VS. ADOLPH WISLIZENUS,
JUDGE OF THE COURT OF FIRST INSTANCE OF CEBU, AND SMITH,
BELL & CO., LTD., RESPONDENTS.***G. R .No. 18015. November 28, 1921*

Ponente: STREET, J.

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Upon demurrer to petition for writ of certiorari.

It appears from the petition that on May 24, 1919, Smith, Bell & Co. Ltd. filed in the Court of First Instance of the Province of Cebu an application to register, in accordance with the Land Registration Act, certain land particularly described in the technical plan and description attached to the application. On December 22, 1919, an interlocutory order was entered in that proceeding declaring general default against all persons, with the exception of the Government of the Philippine Islands, for failure to appear and answer within the time allowed by law. On February 18, 1920, one Canuto E. Larrobis appeared and filed a motion in the same proceeding, asking that the default be set aside as to him for the reasons stated in said motion, and that he be allowed to make opposition to the registration of a portion of the land included in the application. The trial judge, acting in the exercise of the discretion which he supposed himself to possess in such matters, granted this motion, and the opposition of Larrobis was accordingly entered. Meanwhile the proceedings continued their course, no final decree having been entered at any time, until April 18, 1921, when a motion was interposed by the attorneys for the applicant, asking the court to reconsider its order permitting Canuto E. Larrobis to make opposition and to reinstate the default order as against him. On June 15, 1921, this motion was granted, and although the attorney of Larrobis promptly moved for a reconsideration of the action thus taken, the court remained firm. As a consequence Larrobis was effectually excluded from the proceedings, and the present petition was thereupon filed in this court.

The motion interposed in the lower court on April 18, 1921, by the attorneys for the petitioner Smith, Bell & Co. proceeds on the following line of reasoning, to wit, that general default against all persons, with the exception of the Government of the Philippine Islands, had been declared on December 22, 1919; that any application for the setting aside of such default should have been made within thirty days thereafter; that the motion of Canuto E. Larrobis to set aside this default as to himself and to permit him to enter opposition was not interposed until more than thirty days after the default was entered, that is to say, until February 18, 1920; and that as a consequence the court was wholly devoid of jurisdiction to entertain and grant said motion. Although the order of the lower court of June 15, 1921, does not specifically so state, it is evident that the action taken by that court in making the default again effective against Canuto E. Larrobis was based on the ground thus indicated, namely, want of jurisdiction to set the default aside.

The action of the court in reinstating the default order to which allusion has been made and thus disabling Canuto E. Larrobis, the petitioner herein, from continuing his opposition in the proceeding referred to, was clearly mistaken; and the error was due to a failure to discriminate between an interlocutory order declaring default and

the final judgment which is based upon such default. That the two species of orders, or judgments, are entirely different may be collected from section 128 of the Code of Civil Procedure, wherein the court is first required to order judgment for the plaintiff to be entered by default, in case the defendant fails to appear or answer at the time required, after which the plaintiff submits his proof and final judgment is rendered for the plaintiff.

The power of the court, in the exercise of its discretion, and in accordance with the immemorial usage of courts of justice operating under our system of procedure, to set aside an interlocutory default order and permit a person to come in and make defense for any good cause shown cannot be questioned. The power to set aside such a judgment is a power inherent in courts of general jurisdiction, and may, so it has been declared, be exercised without the grant of statutory authority. (23 Cyc, 889.) Moreover, an interlocutory judgment or order remains under the control of the court, in the absence of provision to the contrary, until the final decision of the case, and may be modified or rescinded, on sufficient grounds shown, at any time before the entry of final judgment. Even the rule prevailing in many jurisdictions to the effect that the power of a court over its orders ceases with the expiration of the term has no application except to final judgment, and not while the proceedings are in fieri. (Hastings vs. Cunningham, 35 Cal., 549, 552.) As regards interlocutory orders and decrees, no question can be made as to the authority of the court to change or reverse them, in accordance with the principles governing the exercise of judicial power, so long as the cause remains undetermined before the court.

The ordinary interlocutory order declaring default against a party for failure to appear or answer is precisely the same sort of order as that known to the practice of courts of equity as the taking of a bill pro confesso. Such an order is grantable as of course upon any of the contingencies justifying the taking of a bill as confessed; and when taken, such order becomes the foundation for the subsequent final decree. It is the uniform practice of courts of equity to allow pro confesso orders to be set aside upon timely application and any reasonable showing that the defendant probably has a meritorious defense and that he was not culpably negligent in failing to put in his defense sooner.

Since the enactment of the Code of Civil Procedure the power to set aside default orders in the courts of the Philippine Islands seems to have been generally exercised under section 113 of said Code; and for present purposes it is unnecessary to inquire whether any more extensive power can be exercised by our courts with reference to this matter than that conferred by that section. Suffice it to say that, under that section, the court below undoubtedly had the power to entertain the motion of Canuto E. Larrobis to have the default against him set aside; and the action of said court in granting that motion involved an exercise of discretion the propriety of which cannot be here questioned.

That a Court of First Instance acting in land registration proceedings has identically the same power over interlocutory orders that it has in ordinary civil actions is evident from the second paragraph of section 10 of Act No. 2347, which is to the effect that in all matters of procedure not provided in the Land Registration Act (No. 496), the rules and provisions contained in the Code of Civil Procedure in civil actions and proceedings shall be applied in registration cases in so far as the same may be applicable. Again, there is express provision in the Cadastral Act to the effect that "Orders of default and confession shall also be entered in the same manner as in ordinary cases in the same court and shall have the same effect." (Act No. 2259, sec. 11.)

But it is supposed that the decision of this court in Caballes vs. Director of Lands and Court of First Instance of Laguna (41 Phil., 357), has limited the exercise of the power of setting aside a default order in land registration cases to the situation where the motion to this end is filed within thirty days after the default order is entered. The decision referred to was not intended to have this effect; and when the facts on which that decision is based are examined, it will be seen that no such doctrine is properly deducible therefrom.

The judgment from which relief was sought in that case was a decree which had been entered upon default, and said decree was so framed as to constitute a final adjudication of title. The petition addressed to this court was before us for consideration in one aspect or another for two and a half years; and the case was repeatedly examined by more than one member of the Tribunal, but no expedient suggested itself which would have justified us in ignoring the finality of the judgment. The matter was considered to have passed into *res judicata*. Upon this state of facts it was held, among other points decided, that section 113 of the Code of Civil Procedure could not be invoked to relieve a person included in the default and who had not up to that time appeared in the proceedings. The reason for this is that the particular conditions under which relief can be obtained from a final decree in registration proceedings are specified in section 38 of Act No. 496, as amended, and that provision is incompatible with the application of section 113 of the Code of Civil Procedure in respect to final decrees.

In the case now under consideration the default order was of a purely interlocutory nature and the proceedings in the court below have not even yet arrived at the point where a final judgment could be entered. Under these conditions the doctrine of *Caballes vs. Director of Lands and Court of First Instance of Laguna*, *supra*, is inapplicable. It is to be regretted that the first proposition in the syllabus prefixed to that decision, as it appears in the Official Gazette of February 26, 1921, is expressed in terms so broad as to be misleading, and said proposition has been reformed, for reproduction in the official edition of the Philippine Reports, to read as follows:

"1.REGISTRATION OF LAND; CADASTRAL PROCEEDINGS, RELIEF FROM ERRONEOUS JUDGMENT; POWER OF COURTS OF FIRST INSTANCE.—The remedy by motion provided in section 113 of the Code of Civil Procedure cannot be successfully invoked in a Court of First Instance for the purpose of obtaining relief from a final decree adjudicating title in a land registration or cadastral proceeding."

We wish to add that when said case was here under discussion, we were not unmindful of the second paragraph of section 10 of Act No. 2347; but we made no reference to it in the opinion for the reason that the granting of relief after final judgment is governed by special provisions, as already indicated.

From what has been said it is apparent that the order of the respondent judge, dated June 15, 1921, making the default for a second time effective against Canuto E. Larrobis was based upon a mistaken view of the law, in that his Honor supposed that his previous order setting the original default aside was void for want of jurisdiction in him to make it. This being true, it results that the making of said order of June 15, 1921, was itself an act which constituted an irregular exercise of judicial power, and the same is remediable by means of a petition for the writ of *certiorari*. After the original default had been set aside and the petitioner had been admitted to make opposition, he was on the same footing before the court as any defendant party in any ordinary proceeding; and even conceding that the court might in the exercise of its interlocutory powers have reviewed the order setting the default aside for good cause shown, nevertheless where the action excluding the petitioner from the proceeding was clearly based on no other ground than a mistaken view of the law, such act must be treated as an irregular exercise of jurisdiction even if not as altogether beyond the court's power. A Court of First Instance cannot eject a litigant from court without some legitimate basis being laid therefor.

From what has been said it is evident that the demurrer is not well taken. The same will therefore be overruled, and judgment will be entered to the effect that the order of June 15, 1921, entered by the respondent judge be vacated, and that the petitioner be admitted to continue his opposition, unless within five days after notification of this decision the respondents shall interpose a sufficient answer to the petition. So ordered.

Johnson, Araullo, Avancena, Villamor, and Romualdez, JJ., concur.

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