

GUILLERMO COMEDA, PETITIONER AND APPELLANT, VS. E. Q. CAJILOG, ETC., ET AL., RESPONDENTS AND APPELLEES.*G. R. No. L-18258. April 27, 1963*

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/47470e0e0bc8/>**BAUTISTA ANGELO, J.:**

On April 15, 1958, Cornelio O. Tan filed an action against Guillermo Comeda for recovery of a sum of money before the justice of the Peace Court of Lopez Jaena, Misamis Occidental. Summons was issued requiring Comeda to appear before said court on April 28, 1958. On said date, Comeda appeared and requested the court for time to file his answer and there being no objection there- to the hearing was reset on May 5, 1958. On this date, Comeda, having failed to appear, the justice of the peace court declared him in default and received plaintiff's evidence.

Barely 1 hour and 15 minutes after his declaration of default, Comeda appeared and presented his written answer asking at the same time that he be given a new trial, to which the court merely stated that the request will be considered. However, on May 12, 1958, Comeda received a copy of the decision on the merits, whereupon he riled a motion for new trial which was forthwith denied. His motion for reconsideration having also been denied and believing that the justice of the peace court committed a grave abuse of discretion in depriving him of his right to be heard, Comeda filed a petition for certiorari with the Court of First Instance of Misamis Occidental seeking to annul not only the order declaring him in default but also the decision on the merits.

Instead of filing an answer, respondent Tan moved to dismiss the petition based on the ground that the relief prayed for cannot be granted by certiorari but by appeal, and finding the motion well-taken, the court a quo dismissed the petition. Comeda interposed the present appeal.

The appeal is well-taken. It appears that on the date set by the Justice of the Peace Court of Lopez Jaena for the hearing of this case, defendant Guillermo Comeda appeared and requested that the hearing be deferred to another date which was granted, but on the date newly set he failed to appear for which reason he was declared in default. However, barely 1 hour and 15 minutes after his declaration of default, he showed up and requested that he be given an opportunity to be heard. This plea however was disregarded and the court decided the case- on the merits.

We believe that the justice of the peace court abused its discretion not only in declaring Comeda in default because he actually appeared on the date originally set for hearing but also because on the second hearing he only was late for barely one hour and immediately requested that he be given an opportunity to present his evidence. Fairness and justice demand that such hearing be given Comeda considering that when the request was made the court had, not yet rendered Its decision on the merits (Section 14, Rule 4, Rules of Court). In the circumstances, the step he took for the redress of his grievance is justified.

The case of Carballo vs. Encarnacion, et al., 92 Phil., 974 is in point. This Court said:

"We agree that decision by default rendered by an inferior court is not appealable (*Lim Toco vs. Go Fay*, 80 Phil., 166; 45 Off. Gaz. No. 8, p. 3350). The question now is whether defendant (now petitioner Carballo) defaulted in the municipal court of Manila. True, he filed no answer, but his counsel filed a written appearance. In addition, said counsel filed a motion or manifestation asking for postponement of the hearing on the ground that he was ill. In the case of *Flores vs. Zurbito*, 37 Phil. 746, this Court held that an appearance in whatever form without expressly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction' of the court over the person. It is, therefore, clear that petitioner Carballo made an appearance in the municipal court. Could he then be declared in default just because he filed no answer? The answer must be in the negative. In the case of *Quisan vs. Arellano*, .G. R. No. L-4461, December 28, 1951, the Supreme Court said that in the Justice of the peace court failure to appear, not failure to answer is the sole ground for default. What really happened in the municipal court was that the defendant though he filed no answer to the complaint, nevertheless, he made his appearance, and in writing at that, but because of his failure and that of his counsel to appear on the date of the trial, a hearing ex-parte was held and judgment was rendered thereafter. The judgment, therefore, was not by default. So defendant Antonio Carballo had a right to appeal as in fact he appealed, and the Court of First Instance should not have declared the decision appealed from final and executory under the theory that it was not appealable.

"The present petition is granted and the respondent judge is hereby directed to proceed with the trial of the case. Respondent Mariano Ang will pay the costs."

Wherefore, the order appealed from is set aside. The case is remanded to the court a quo for further proceedings. Costs against Appellee, Cornelio O. Tan.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.