

PEOPLE'S SURETY & INSURANCE CO., PETITIONER AND APPELLANT, VS. PAZ PUEY VDA. DE LIMCACO, HON. FERNANDO C. VILLAROSA, AS JUDGE OF MUNICIPAL COURT OF PASAY CITY, AND THE SHERIFF O...

G.R. No. L-12170. April 18, 1960

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/4bd5ca000a66/>

CONCEPCION, J.:

This is an appeal from an order of the Court of First Instance of Rizal, denying the petition for a writ of certiorari filed by the People's Surety & Insurance Company, Inc., hereafter referred to as the Company, for the purpose of nullifying certain orders issued and a decision rendered in Civil Case No. 1362 of the Municipal Court of the City of Pasay, entitled "Paz Puey Vda. de Limcaco, plaintiff, vs. People's Surety and Insurance Company, Inc., defendant."

Said case No. 1362 was instituted by Mrs. Limcaco, on December 9, 1954, for the recovery of a sum of money. Although duly summoned, the company did not answer or appear before said Municipal Court on December 21, 1954, the date set for hearing of the case. Inasmuch as the sheriff's return of the service of summons had not, as yet, been attached to the record, the hearing was postponed to December 24, 1954. On this date, the Company again failed to appear, it having been given no notice of said postponement. The Company was then declared in default, on motion of Mrs. Limcaco, and the latter presented her evidence. However, judgment was rendered, on January 8, 1955, dismissing the complaint for lack of evidence to sustain the averments thereof. On motion of Mrs. Limcaco, the court granted ex parte, on January 21, 1955, a new trial, which was held on February 6, 1955, without notice to the Company. Upon consideration of the evidence then introduced by Mrs. Limcaco, the court rendered, on February 11, 1955, another decision reversing its former decision dated January 8, 1955, and sentencing the Company to pay the sum claimed in the complaint. Copy of this second decision was not served upon the Company.

On August 18, 1955—or soon after the lapse of the period of six (6) months within which relief may be sought under Rule 38 of the Rules of Court—Mrs. Limcaco filed a motion, for the issuance of a writ of execution, which motion was granted forthwith. Upon receipt of copy of said writ from the Sheriff of Manila, or on August 29, 1955, the Company moved to set aside and for a reconsideration of the decision of February 11, 1955, upon the ground of nullity of all the proceedings leading thereto, for lack of the requisite notice. This motion was denied on September 28, 1955, whereupon, or on October 8, 1955, the Company instituted the case at bar, in the Court of First Instance of Rizal, against Mrs. Limcaco, the Municipal Judge of the City of Pasay and the Sheriff of Manila, for the annulment, by a writ of certiorari, of the aforementioned orders of December 24, 1954, January 21 and August 18, 1955, and of the decision of February 11, 1955, in said case No. 1362. The Company prayed, also, in its complaint, for a writ of preliminary injunction. Meanwhile, said Sheriff of Manila had garnished a deposit of the Company with the People's Bank and Trust Company. After the filing of the answer of respondents herein, or on October 29, 1955, the Court of First Instance of Rizal issued, on motion of the Company, a writ of preliminary

injunction, restraining said Sheriff from proceeding with the execution of the aforementioned decision, except with respect to the amount already garnished, as above stated. Upon submission of the case for decision, the Court of First Instance of Rizal issued the appealed order, dated January 19, 1957, denying the petition for certiorari, "for lack of merits". Hence, this appeal.

Respondents seek to justify the above-mentioned absence of notice to the Company, upon the ground that, having been declared in default, it was not entitled to said notice. The Company maintains, however, that the order of December 24, 1954, declaring the same in default is null and void, it having been given no notice of the hearing to be held on that date. Upon the other hand, respondents contend, in effect, that the Company was already in default prior thereto, and was, consequently, not entitled to any notice, it having been in default since it failed to answer the complaint and appear in court on December 21, 1954. Section 13 of Rule 4 of the Rules of Court provides that:

"If the defendant does not appear at the time and place designated in the summons, he may be declared in default, and the court shall thereupon proceed to hear the testimony of the plaintiff and his witnesses, and shall render judgment for the plaintiff in accordance with the facts alleged and proved." (*Italics ours.*)

This provision merely authorizes the court to declare the defendant in default for failure to appear at the time and place designated in the summons. Unlike section 6 of Rule 35 of the Rules of Court (regulating the procedure in courts of first instance), which provides that "if the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff, order judgment against the defendant by default," it does not make such declaration of default mandatory upon the inferior court, which, may, therefore, refrain from making it, if, in its sound judgment, the interest of justice will best be served thereby, in the light of the attending circumstances.

In the case at bar, the Company had not been declared in default prior to December 24, 1954, and, hence, was entitled to notice of the hearing scheduled on that date. Consequently, the hearing then held and the order then issued, declaring it in default, for non-appearance at such hearing, were null and void, and so were the subsequent proceedings held without such notice, predicated upon said invalid declaration of default.

Moreover, the complaint of Mrs. Limcaco was dismissed by respondent Judge in his decision of January 8, 1955, upon the ground of insufficiency of the evidence presented by her on December 24, 1954. However, a new trial was granted ex parte, on motion of, Mrs. Limcaco, and the Company was not notified, either of the date of the new trial, or of the decision rendered on February 11, 1955, reversing that of January 8, 1955, and sentencing the Company to pay the amount claimed by Mrs. Limcaco. Consequently, the Company had no knowledge of this second decision or of the proceedings leading to its promulgation, until sometime late in August, 1955, when it received copy of the writ of execution, issued on August 18, 1955, upon ex parte petition of Mrs. Limcaco, filed on the same date, shortly after the expiration of the period of six (6) months within which the relief provided in Rule 38 of the Rules of Court could have been availed of. It is thus clear, that petitioner herein has been denied due process of law, and that, accordingly, the order of December 24, 1954, declaring him in default, as well as the decision, rendered on February 11, 1955, and the writ of execution, issued on August 18, 1955, are null and void.

Wherefore, the writ prayed for is hereby granted, with costs against respondent, Mrs. Limcaco. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

Padilla and Endencia, JJ., on leave.

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.