

## LEON O. MANZANILLA, PLAINTIFF AND APPELLEE, VS. JOSE G. JARAMILLA, DEFENDANT AND APPELLANT.

*G.R. No. L-594. October 31, 1949*

Ponente: REYES, J.

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### REYES, J.:

This is an appeal from a judgment by default rendered by the Court of First Instance of Manila.

The action is for a sum of money. Under the first cause of action, plaintiff seeks to recover P500 as unpaid balance of the purchase price of tobacco sold by him to defendant, while the second cause of action is for the recovery of P3,100 as the unpaid balance of the price of another quantity of tobacco obtained by defendant from plaintiff through fraudulent machination.

Having failed to answer the complaint within the time prescribed by the Rules, defendant was declared in default in an order issued on February 5, 1946, which at the same time set the case for the reception of plaintiff's evidence on the 15th of that month. On February 9th, defendant filed a motion to have the order of default lifted, alleging that he was out of town when summons was served at his residence in Manila on January 10, 1946 and was not informed thereof until February 5th. The motion, however, makes no showing that the summons could not have been communicated to defendant in time for him to answer the complaint within the period allowed by the Rules or to file the necessary petition for an extension of that period. And while he was asking for an opportunity to state his defense, there was no intimation as to what that defense was going to be. The motion was therefore denied and the trial court, after receiving plaintiff's evidence, rendered judgment against defendant on both causes of action.

The order denying the motion is not reproduced in the record on appeal, but there can be no question that the motion was in fact denied, for it is so admitted in defendant's petition of March 18, 1946, asking for asking for reconsideration of the judgment.

In this motion for reconsideration defendant alleged, for the first time, that his inability to return to Manila and file his answer on time was due to "circumstances beyond his control, such as the swelling of the river at Naguilian and Timawini which impossibilitated travel, and the breaking down of his truck." He also, for the first time, made known his defense by alleging, in substance, that the tobacco mentioned in the first cause of action was merely consigned to him and that the balance of P500 which plaintiff seeks to recover represents the uncollected price of tobacco which plaintiff himself sold on credit without defendant's fault; and that with reference to the transaction described in the second cause of action, defendant's obligation was merely that of a guarantor for Francisco Dayao. The motion asks that the decision be set aside and a new trial granted.

The motion for reconsideration having been denied, defendant appealed to the Court of Appeals, alleging in his assignments of error that, in refusing to set aside its order of default, the lower court deprived him of his day in court and that the judgment below is contrary to law and the evidence adduced at the trial. The appeal has, however, been indorsed here on the ground that it involves only a question of law.

Defendant has no valid reason to complain against the denial of his motion of February 5, 1946, for the lifting of the order of default. The motion admits that the summons was received at his residence in Manila on January 10 of that year. He, therefore, had until January 25 to file his answer or to ask for an additional period for that purpose. Granting that he was in the province of Isabela at the time, no showing is made that he could not have been communicated with in time for him to do either of those things, or that anything at all was done or attempted to be done by the one who accepted the summons on his behalf to apprise him thereof. Neither does the motion show that he has a meritorious defense. In short, the motion does not show that defendant's failure to answer the complaint on time was legally excusable or that anything would be gained by having the order of default set aside. In the circumstances, we do not think the lower court abused its discretion in denying the motion.

The correctness of the trial court's ruling denying the motion for the lifting of the order of default should be judged on the basis of facts brought out before the ruling was rendered and not those alleged for the first time thereafter, no reason having been given why those latter facts were not alleged in the motion to have the declaration of default set aside.

Having arrived at the above conclusion, it would be idle to discuss here the correctness of the lower court's findings of fact and the judgment based thereon, it not appearing that the said judgment goes beyond the bounds of plaintiff's complaint. In the present appeal, appellant has no standing to discuss the sufficiency of plaintiff's evidence in the light of the defense which he has belatedly asserted and which is not properly before us because the case has not been reopened. As the Court of Appeals states in its resolution elevating the record to this Court, the appeal "concerns purely questions of law." And those questions refer to the lifting of the order of default.

In view of the foregoing, the judgment appealed from is confirmed, with costs against the appellant.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Padilla, Tuason, and Torres, JJ., concur.

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