

PAZ NATIVIDAD, VDA. DE ZOLUETA, PLAINTIFF AND APPELLEE, VS. BERNARDO MARQUEZ, DEFENDANT AND APPELLANT.*G.R. No. 13392. September 18, 1918*

Ponente: MALCOLM, J.

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On May 19, 1915, action was begun in the Court of First Instance of Tayabas to recover the sum of P5,202 claimed to be due under a written document set out in the complaint, with interest. On July 17, 1915, the defendant answered alleging deceit and setting up a special defense, but not specifically denying under oath the genuineness and due execution of the instrument. After various delays, the cause was assigned for trial on January 22, 1917. On January 18, 1917, the defendant presented a motion asking for the transference of the hearing to the month of February because of his grave illness; in corroboration of this fact, there was made a part of the motion, Exhibit A, the certificate of Dr. Domingo Antonio, Midico-Cirujano, reading as follows:

"January 17, 1917.

"I certify that I am rendering medical services to Mr. Bernardo Marquez for amoebic dysentery, and that he has to stay in bed for at least two weeks in order to be completely cured; and I issue this certificate for such purposes as it may serve.

(Sgd.) "D. Antonio."

On the day set for the hearing of the cause, the Honorable Jose C. Abreu, judge of first instance, denied the motion for postponement because "en frente de su alegacion y el certificado medico con que se trata de corroborarla que no estan jurados, existe la afirmacion bajo juramento de la demandante de que en el dia de ayer estuvo a visitar al demandado en su casa y le encontro en circunstancias tales que no hay motivo para presumir que estaba guardando cama para no poder venir a este Juzgado," (as against his allegation and the medical certificate with which he endeavors to corroborate it, neither of them being sworn to, we have the plaintiff's statement, made under oath, that yesterday she visited the defendant in his house and found him in such condition as to leave no room to presume that he was sick and was therefore unable to come to this court). In other words, the court declined to postpone or adjourn the cause under the power granted by sections 130 and 131 of the Code of Civil Procedure. On the same date or, to use the words of the appellant, immediately after resolution of the motion, the court proceeded to hear the plaintiff and his witnesses, and to render judgment. This judgment condemned the defendant to pay to the plaintiff the sum of P5,202, with legal interest from May 19, 1915, and the costs. On January 29, 1917, defendant excepted to the judgment and moved for a new trial. In this motion for a new trial, there was included, Exhibit A, the sworn statement of Dr. Domingo Antonio, and Exhibit B, the sworn statement of Dr. Antonio Vasquez, Medico-Cirujano, the latter reading as follows:

"I, Antonio Vasquez, after being duly sworn, do hereby declare:

"1. That I am a physician and surgeon, residing in the city of Manila, Philippine Islands.

"2. That I am acquainted with Mr. Bernardo Marquez.

"3. That I had rendered medical services to the said Bernardo Marquez from the 20th to the 27th, inclusive, of January, 1917, on account of his having gastrontestinal troubles; and that I recommended to Mr. Marquez to stay in bed during the said period of time.

"Manila, January 29, 1917.

(Sgd.) "A. Vasquez."

The plaintiff through her attorney opposed the granting of the motion of the defendant. The trial court denied the motion for a new trial. Having received notice of this order of the court, the defendant duly excepted thereto, and through Attorney Pascual B. Azanza gave notice of his desire to prosecute a bill of exceptions to the Supreme Court.

Appellant makes three assignments of error all of which simmer down to a resolution of the question of whether or not the trial judge abused his discretion in insisting on the cause coming to trial on the date assigned, and in later denying the motion for a new trial.

To corroborate his argument, counsel for appellant quotes from Volume 9, Cyc, page 96, as follows:

"The illness of a party is not ipso facto a cause for continuance of the cause; but where a party's presence at the trial is indispensable and the character of his illness is such as to render his presence at the trial impossible a continuance should be granted, if it appears that he has been guilty of no negligence."

Had counsel continued the quotation a little further and had he thus been entirely frank with the court, he would have found the following:

"A continuance is properly refused where it appears that the party is not too ill to attend trial. The fact of illness must be established by some satisfactory sworn statement, either in the shape of an affidavit or the certificate of a physician that satisfies the court of the inability of the party to be present. From the very nature of the relief asked the decision of the question must necessarily rest almost entirely within the discretion of the trial court, and such discretion will not be interfered with unless the same has been abused to the extent of prejudicing the applicant's right to a fair trial of the cause.

In one of the cases cited in the Encyclopedia, coming from the Supreme Court of Georgia, it was held that "where there was much evidence pro and con as to whether an absent party 'was able to attend court, and what was his condition,' the discretion of a trial judge in refusing to continue a case on the ground of the sickness of such party will not be interfered with." (Fletcher vs. Collins [1900], 111 Ga., 253.)

The rule above set forth is a proper one. Applying it to our facts, we note that it does not appear that defendant was too ill to attend the trial, and that the fact of illness was not established by a satisfactory sworn statement of a physician. We cannot, in this instance, fairly say that the trial judge abused his discretion to the extent of prejudicing the applicant's right to a fair trial of the cause, for, considering the state of the pleadings and the admitted genuineness of the written document, there was left little or nothing to be proved.

Judgment is affirmed with interest and costs. So ordered.

Arellano, C. J., Torres, Johnson, Street, Avanceña, and Fisher, JJ., concur.

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