

PATRICIA ABOLENCIA, PLAINTIFF AND APPELLEE, VS. GUILLERMO MAANO DEFENDANT AND APPELLANT.

G.R. No. 2366. September 29, 1905

Ponente: WILLARD, J.

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WILLARD, J.:

A judgment was entered in this case on the 16th day of October, 1902, in favor of the plaintiff. On the 3d day of November of the same year the defendant made a motion for a new trial. On the 4th day of the same month the court continued the hearing of this motion to the next term of the court. At that term, and on the 18th day of April, 1903, the court set the motion down for hearing for the 25th day of April, and in the order directed that the parties be notified. On the 25th day of April, the defendant not appearing, the court made an order denying the motion for a new trial, to which order the defendant excepted.

The only error assigned is that the defendant was not duly notified of the day assigned for the hearing of the motion for a new trial. The claim of the appellant is that he should have been notified in the manner pointed out by section 390 and subsequent sections of the Code of Civil Procedure. Those sections, however, have nothing to do with such a notice as the one here in question. They relate exclusively to the issuance and service of the original process for bringing a defendant into court when a complaint has been filed against him.

It nowhere appears in the case that the defendant did not have notice of the day assigned for the hearing of his motion. It appears that notices were duly issued by the clerk and given to the sheriff, and the appellant relies exclusively upon the fact that the sheriff never filed any return in the clerk's office showing that the notices had been given. It appears that at the opening of this term of court in April a calendar was made up, showing the cases to be heard and the dates of hearing. This case was included in that calendar. If the defendant was in any way informed that his motion was to be heard on the 25th of April, there was a sufficient compliance with the order of court. As has been said before, there is nothing to show that he was not so informed.

The judgment of the court below is affirmed, with the cost of this instance against the defendant, and at the expiration of twenty days judgment should be entered in accordance herewith and the cause remanded to the court below for execution of said judgment. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

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