

JOS. N. WOLFSON, PLAINTIFF AND APPELLEE, VS. CAYETANO CHINCHILLA, DEFENDANT AND APPELLANT.*G. R. No. 3630. August 31, 1907*

Ponente: WILLARD, J.

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This case was commenced in the court of a justice of the peace, and from the judgment therein entered an appeal was taken to the Court of First instance of Manila. After the case had been entered in that court, the plaintiff gave notice in writing that he would rely upon his complaint presented before the justice of the peace. This notice was served on the 7th day of July, 1906, on the lawyer who acted for the defendant in the last-named court. On the 11th day of July this lawyer filed a motion in the court below stating that the defendant had gone to the Province of Pangasinan, and asking that a citation be served upon him at the place of his residence in such province. Citation was issued and delivered to the sheriff of Manila for service, who returned that he served it upon the 20th day of July, 1906, on the defendant at his residence in Manila, by leaving a copy thereof with his sister who lived in the house with the defendant.

The defendant did not appear within twenty days after service of the summons and on the 16th day of August judgment by default was entered against him. On the 28th day of August final judgment was entered in favor of the plaintiff and against the defendant. The 10th day of September the defendant moved that the judgment be set aside and that he be allowed to answer. This motion was made by the lawyer who had appeared for him in the court of the justice of the peace, With the motion he presented affidavits and a proposed answer. The motion was denied by the court, and to the order denying it the plaintiff excepted, and he has brought the case here for review.

Waiving the question as to whether the service of the original notice upon the lawyer who appeared for the defendant in the court of the justice of the peace was or was not sufficient, it appears that the only question in the case is whether the defendant at the time the citation was served resided in Manila or Pangasinan. Upon this point the court, in its order denying the motion to set aside the default, found as a fact that the defendant lived in Manila. This finding is not only supported by the evidence but there is scarcely any evidence against it. In fact, in the proposed answer which the defendant presented on the 10th day of September, he admitted the allegations of the first paragraph of the complaint, which were to the effect that the plaintiff and the defendant resided in Manila.

The appellant makes the further point that the judgment was entered twenty-six days after the citation was served upon him; that he was allowed by the law twenty days in which to appear and ten days additional in which to answer, and that the thirty days thus allowed him had not expired when the judgment by default was entered.

We have already held in the case of Behn, Meyer & Co. vs. Arnalot Hermanos (7 Phil. Rep., 742) that if a defendant does not appear within the time allowed him by law, judgment by default may be entered against him, and that it is not necessary to wait for the expiration both of the time to appear and the time to answer before such default can be taken.

The judgment of the court below is affirmed, with the costs of this instance against the defendant. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

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