

GO CHANGJO, PLAINTIFF AND APPELLEE, VS. SANTIAGO ROLDAN SY-CHANGJO, DEFENDANT AND APPELLANT.

G.R. No. 3817. February 21, 1911

Ponente: MAPA, J.

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MAPA, J.:

As the evidence taken in this case was not forwarded to this court, we can not review any question of fact and must accept the findings of facts as set forth in the judgment appealed from.

The facts declared to have been proved are the following: That the plaintiff rendered services to the defendant, as his employee and clerk, from April 17, 1889, until December 9, 1905, at a salary, previously stipulated, of P460 per annum; that on the plaintiff's quitting the defendant's service, a settlement was made between them of the salary owing to and uncollected by the plaintiff, whereby it was determined that there was a balance due the latter of P1,021.97, which the defendant bound himself to pay to the plaintiff, in Cebu, in the month of January, 1906, and that, notwithstanding such obligation assumed, the said defendant did not pay the latter anything on account of the aforementioned debt until the date of the judgment, November 27, 1906; these facts evidently support the said judgment, that the defendant should pay to the plaintiff the said sum of P1,021.97, together, with the legal interest thereon already due or which might be due, at the rate of 6 per cent per annum, from the month of February, 1906, until the date when actual and total payment of the debt should be made, and also the costs of the suit. Admitting the facts hereinbefore mentioned, justice would allow the rendering of no other sentence than that contained in the judgment appealed from, which, therefore, must be sustained.

The defendant and appellant assigns the following errors as grounds for his appeal:

"1. The court committed an error of fact and of law by setting aside, omitting or not deciding, by allowing or denying on the day of the hearings on motions (called Law Day, which is Monday) the defendant's motion, duly and properly filed in the office of the clerk of the court twelve days before the hearing of the case, for a suspension of the new trial, notwithstanding the practice of the court of deciding on such day analogous motions on other matters pending final hearing.

"2. The court also committed an error of fact and of law by allowing the furtive and illegal motion presented by the plaintiff and by allowing judgment by default against the defendant, who had duly appeared, filed his answer and a counterclaim for P5,000, establishing as a foundation for such ruling three gratuitous and false suppositions against the defendant, and by disallowing the motion for a revocation of the said judgment by default.

"3. The court committed an error of fact and of law by sentencing the defendant in its judgment of November 27, 1906, to the payment of P1,021.97, with interest, for salary claimed by the plaintiff to which the latter was not entitled, nor did he present as proof any document whatever in support of his pretended credit, or any other proof of his claim.

"4. The court also committed an error of law by denying the defendant's motion for the annulment of the judgment and for a new hearing of the case on the grounds that the sentence was contrary to law and the

evidence.

"5. It was an error of law and a capital one for the court to have executed its judgment without therein having ordered such execution, and not to have annulled the execution of the judgment which had not become final when the excepting defendant's motion for a new trial was still pending decision.

"6. The court committed essential and prejudicial errors and irregularity in its proceedings by not having notified the defendant or his attorney in the matter of the formation of the docket of cases for trial, by not summoning him for the hearing of the present case or granting his petition that he be furnished copies of the plaintiff's briefs, and by not ordering a record made of the defendant's exceptions and of his notice of intention to file a bill of exceptions, thus compelling the defendant to record them himself in a petition."

The assignments of error designated under numbers 3 and 4 must immediately be dismissed, since, as already stated, the sentence has been found to be manifestly proper and just, in view of the facts declared in the judgment to have been proved, and certainly this court must accept them as such, as no review of the evidence can be had for the reasons before set forth.

The first error alleged by the appellant, even supposing it really to be such, can not, in the least affect the judgment appealed from, inasmuch as it relates to a proceeding commended to the discretion of the court, as is that of the suspension of the hearing of the case, not subject to exception, according to the definite and express provisions of the law. (Sec. 141, Code of Civil Procedure.)

The facts connected with the third ground of the appeal, are the following: The defendant having been summoned by virtue of the complaint which gave rise to the action, appeared at the hearing in due time and filed his answer in which he made a counterclaim for the sum of P5,000. On the day set for the hearing of the case the plaintiff appeared, but not the defendant nor his attorney, wherefore, and upon written motion made for the purpose by the plaintiff, the court declared the said defendant to be in default and ordered the trial to proceed, hearing the plaintiff's evidence and rendering afterwards, grounded thereon, the judgment which is the subject of the present appeal.

Section 128 of the Code of Civil Procedure provides as follows:

"In case a defendant fails to appear at the time required in the summons, or to answer at the time provided by the rules of court, the court shall, upon motion of the plaintiff, order judgment for the plaintiff by default which shall be entered upon the docket; and the court shall thereupon proceed to hear the plaintiff and his witnesses and assess the damages or determine the other relief to which the plaintiff may be entitled, including the costs of the action, and render final judgment for the plaintiff to recover such sum or to receive such other relief as the pleadings and the facts warrant. * * *"

In accordance with this provision, only the defendant who fails to appear at the hearing within the time set in the summons or who, having appeared, does not answer the complaint within the period fixed by the rules of the court, may be declared to be in default. The herein appellant is not within this rule since he did appear and did file his answer to the complaint in due time, as shown by the bill of exceptions. The order of the court whereby he was declared to be in default is, therefore, erroneous and consequently the second assignment of error made in the appellant's brief is well founded.

Such error, however, turns out to be merely technical in the present case. In reality it has had no bearing whatever on the course or on the decision of the case, neither has it in the slightest degree prejudiced the defendant's rights. The complaint having been answered, and the assignment of the date for the hearing of the case having been publicly made, as it was, in the docket of the court for a certain day, the 26th of November, 1906, and the defendant being duly informed of the setting of such date, as shown by his petition of November 14th, wherein he

moved for a suspension of the hearing (p. 4 of the bill of exceptions), even though he may have mistakenly believed that the date set was that of November 16th instead of the 26th, on the arrival of this latter date it was entirely optional and discretionary on the part of the court either to suspend or proceed with the hearing on that day, even in the defendant's absence and without the need of declaring him in default as it seems, was erroneously done. Therefore the declaration of default has neither altered nor impaired the defendant's status upon the trial, for even without such pronouncement the case would have followed exactly the same course which it has in fact, as its hearing on the day set was not suspended by the court. Practically, nothing was done at the trial after the declaration of default that could not have been done with perfect legality though no such declaration had been made. Hence, the pronouncement of default has not in reality prejudiced any real right of the defendant and can not, therefore, even though erroneous, serve as a ground for a reversal of the judgment appealed from. It is a firmly established rule of this court and a definite provision of the law, that no judgment shall b.e, reversed on formal or technical grounds, or for such error as has not prejudiced any real rights of the appellant party. (Sec. 503, Code of Civil Procedure.)

The fifth assignment of error refers to the execution of the judgment, that is, to the proceedings had subsequent to the latter and can not, for this very reason, affect its execution in any case. Besides, it is beyond all doubt that judges may order the execution of a positive judgment pronounced by them, even before it becomes final and executory, whenever there are special reasons therefor, the determination of which is of course left to their good judgment and discretion. (Sec. 144, Code of Civil Procedure.)

With respect to the sixth and last ground of appeal, it is sufficient to say, in order to show that it lacks real and practical importance, that the defendant was in fact informed of the date set for the hearing of the case, as proved by his having asked, before the holding of the trial, for a suspension of the said hearing until the next session of the court. His acknowledgment at the trial of his cognizance of the setting of the date for the hearing produces, in law, the effect of remedying the omission of the summons or notification of the said date, even supposing that there really was such an omission, which certainly appears to be denied by the bill of exceptions in the records of the court. And the mistake into which the defendant apparently fell, according to his own allegation, can not avail against the statements made in the preceding paragraph, because reference is made only to dates and not to the setting in itself of a date. Once informed that the case was set for trial, it was extremely easy to ascertain the true date determined for the hearing, had he really desired to be present at the trial. We find nothing in the record to show that the defendants' nonappearance at the trial was due to any other cause than that of his own neglect and carelessness.

The judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Carson and Moreland, JJ., concur.

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