

JOSE G. CAMUS, PLAINTIFF AND APPELLEE, VS. LEONOR PAULINO, DEFENDANT AND APPELLANT.

G. R. No. 39811. January 29, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the defendant to set aside the judgment rendered by the Court of First Instance of Rizal whereby the marriage she had contracted with the plaintiff, as well as the marriage certificate issued to that effect, was declared null and void.

The plaintiff brought this action for the annulment of the marriage in question, which was celebrated before Paulino D. Enriquez, minister of the "Iglesia Cristiana Trinitaria" at Caloocan, Province of Rizal, on March 21, 1931. In his complaint, he alleged as his cause of action that on or about the 18th day of March, 1931, the defendant and her relatives, who were in connivance with the aforesaid minister, by means of deceit, fraud and intimidation, forced him to sign various papers the contents of which were unknown to him, but which he discovered later to be a marriage certificate and an application for a license to contract the same. He alleged further that neither before nor after the alleged marriage did he and the defendant live together as husband and wife.

The complaint was filed on December 8, 1932, and a summons was served upon the defendant at Malabon, Rizal, on the following day. On the 29th of the same month, on which date the period allowed for the appearance of the defendant was to expire, the plaintiff prepared a motion to declare the defendant in default, which was filed with the clerk's office on December 31st. On this latter date the court entered an order of default against the defendant for not having appeared nor filed a demurrer or an answer to the complaint. On January 3, 1933, that is, three days after she was declared in default, the defendant filed her answer. In the said order of default the case was set for hearing on any day of the first week of January. On January 6th, the case was heard in the absence of the defendant and her counsel, during which the plaintiff, his father and another witness named Tomas Lasmarifias testified. A certified copy of the alleged marriage certificate and a simple copy of the defendant's application for enrollment at the National University were presented as documentary evidence therein.

On January 10, 1933, before judgment was rendered therein, the defendant filed a petition to set aside the order of default alleging as her grounds that her answer to the complaint had not been received at the clerk's office on time for the reason that December 30th and January 1st and 2d were legal holidays; that said answer was dated December 29th, the day on which the period allowed for her appearance expired, and that it was mailed on that same date. Furthermore, to justify her petition she stated that she had a meritorious defense and that she would prove that the marriage had been contracted with the plaintiff's full knowledge. The petition in question was duly sworn to, and reference made therein to the affidavits of the minister, who solemnized the marriage, and of one of the witnesses who signed the marriage certificate. The affidavit of the aforesaid minister, wherein he stated that he solemnized the marriage at the instance of the plaintiff himself, was likewise attached thereto. Said plaintiff filed his opposition to the petition in question, which petition was denied on January 16th.

On the 17th of the same month, the court entered judgment therein holding that the marriage certificate in question, and consequently the marriage itself, which was contracted by the parties, were null and void. The defendant excepted to the order of default as well as to the judgment thus rendered and filed a motion for a new trial wherein she reiterated that she had a good and meritorious defense. A copy of the affidavit of the minister Enriquez and an affidavit of the witness Cecilio Martin, were attached thereto. She also attached thereto as Appendix A, a copy of the application filed by the plaintiff for a license to contract marriage with her, which application was dated February 19, 1931, and was ratified before notary public Jose Advincula. Said motion for a new trial was denied, whereupon the defendant excepted to the order entered therein and filed her bill of exceptions.

The appellant assigns four alleged errors all of which relate to the denial by the trial court of her motions to set aside the order of default and for a new trial.

It has already been held in various decisions that the setting aside of an order of default rests entirely in the sound discretion of the court and, as a general rule, such order should not be vacated or set aside unless the defendant shows that she has a good and meritorious defense. Therefore, it is necessary to determine in the case at bar whether or not the defendant had a valid defense, otherwise it would not be worth even the trouble to review the same. An examination of the record shows the undisputed fact that the marriage certificate in question was signed by the plaintiff and that on February 19, 1931, that is, about thirty-two days before the celebration of the marriage in question, he had signed the application for a marriage license before a notary public. Aside from this, there are the affidavits of the minister, who solemnized the marriage, and of the witness who signed the marriage certificate. With such evidence, we doubt very much that the court would have arrived at the same conclusion if the defendant had been given the opportunity to present it. We are of the opinion that the defendant has shown sufficiently in her motions that she had a meritorious defense and that, after the decision had been rendered, the order of default should have been set aside or a new hearing held in order to give the defendant an opportunity to present the evidence which she claimed to have in her possession. We reiterate that an exception to the rule of discretionary power of the courts in such cases is when the defendant has a good defense, and this is the doctrine laid down in the case of *Larrobis vs. Wislizenus and Smith*, Bell & Co. (42 Phil., 401, 404), to wit:

"The ordinary interlocutory order declaring default against a party for failure to appear or answer is precisely the same sort of order as that known to the practice of courts of equity as the taking of a bill pro confesso. Such an order is grantable as of course upon any of the contingencies justifying the taking of a bill as confessed; and when taken, such order becomes the foundation for the subsequent final decree. It is the uniform practice of courts of equity to allow pro confesso orders to be set aside upon timely application and any reasonable showing that the defendant probably has a meritorious defense and that he was not culpably negligent in failing to put in his defense sooner."

Under the circumstances surrounding the late filing of the answer to the complaint and taking into consideration the fact that it was delayed only five days, we are of the opinion and so hold that the defendant's negligence in this case was excusable.

Wherefore, the judgment appealed from is hereby set aside and it is hereby ordered that the record of the case be remanded to the trial court so that, upon admission of the answer to the complaint, it may proceed to hold a new hearing thereof at which the defendant shall be permitted to present her evidence and the plaintiff, his additional evidence and evidence in rebuttal, without the necessity of retaking what has already been presented by him, with the costs of this instance against the plaintiff-appellee. So ordered.

Malcolm, Villa-Real, Hull, and Goddard, JJ., concur.

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