

**TOLARAM MENGHRA, PLAINTIFF AND APPELLEE, VS. BULCHAND
TARACHAND AND CHOTIRMAL REWACHAND, DEFENDANTS.
BULCHAND TARACHAND, APPELLANT.**

G.R. No. 45515. April 12, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant Bulchand Tarachand from the judgment of the Court of First Instance of Manila sentencing him to pay jointly and severally with his co-defendant Chotirmal Rewachand the sum of P2,302.31, claimed under the first cause of action alleged in the complaint, with corresponding interest from March, 1930, and the sum of P7,550, claimed under the second cause of action, with legal interest from October 29, 1930, until full payment, and the costs of the action.

In support of his appeal the appellant assigns, as supposed errors of the lower court, the latter's failure to hold that its judgment of August 19, 1935, the dispositive part of which has been hereinabove referred to, is absolutely null and void for lack of jurisdiction over his person, and its failure to set aside said judgment on the ground that it was obtained through excusable negligence of said defendant-appellant in accordance with the provisions of section 113 of the Code of Civil Procedure.

In support of his first assignment of supposed error, the appellant maintains that as the action did not relate to personal or real properties situated in the Philippine Islands in which the defendant had or claimed a lien or interest, actual or contingent, the court which took cognizance of the case did not acquire jurisdiction over his person by means of the publication of the corresponding summons in the territory of Hawaii where said defendant-appellant resided. Even supposing that the lower court did not acquire jurisdiction over the person of the defendant-appellant with the publication in the territory of Hawaii of the summons issued against him, nevertheless he submitted to the jurisdiction of the court when he filed a motion wherein he contested the jurisdiction of the court over his person and at the same time prayed that he be relieved from the effects of said judgment, presenting an affidavit of merit consisting of an answer with special defenses, with the result that he thereby impliedly waived his special appearance assailing the jurisdiction of the court over his person, and voluntarily submitted to the jurisdiction of said court (*Monteverde vs. Jaranilla*, 60 Phil., 297; *Vergel de Dios vs. Abucay Plantation Co.*, 59 Phil., 924; *Central Azucarera de Tarlac vs. De Leon*, 56 Phil., 169; *Marquez Lim Cay vs. Del Rosario*, 55 Phil., 962; *Bank of the Philippine Islands vs. De Coster*, 47 Phil., 594; *Ocampo vs. Mina and Arejola*, 41 Phil., 308; *Flores vs. Zurbito*, 37 Phil., 746).

With reference to the second assignment of supposed error, the fact that, when the defendant-appellant Bulchand Tarachand was declared in default the latter was in the territory of Hawaii and could not appear in order to answer the complaint filed against him, constitutes an excuse for his failure to appear, and it appearing that the facts alleged in his verified answer and special defenses may alter the result of the decision rendered against him by default if it is set aside and he is allowed to prove said facts, it becomes proper to set aside said judgment in

conformity with the provisions of section 113 of the Code of Civil Procedure.

Wherefore, the appealed judgment is set aside and it is ordered that the case be remanded to the court of origin so that it may be reopened, the answer of the defendant-appellant Bulchand Tarachand admitted, and a new trial had, after which the corresponding judgment must be rendered, with costs against the appellee. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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