

**JUAN POIZAT, PLAINTIFF AND APPELLEE, VS. GEORGE MORGAN
AND THE NEGROS PHILIPPINE LUMBER CO., DEFENDANTS. THE
NEGROS PHILIPPINE LUMBER CO., APPELLANT.**

G.R. No. 9504. December 05, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from an order of the Court of First Instance of Manila denying a motion to set aside a judgment against the appellant, based upon the ground that there was no service of summons on it.

The appellant is a foreign corporation doing business in the Philippine Islands. In pursuance of the provisions of section 68 of Act No. 1459, known as the Corporation Law, the appellant company, prior to the beginning of the action which culminated in the judgment complained of, had filed in the division of archives a written statement under oath containing, among other things, the name of an agent residing in the Philippine Islands authorized by the corporation to accept service of summons and processes in all local proceedings against the corporation and of all notices affecting it. The summons in the action in which the judgment was entered was admittedly not served on the agent so named by the corporation but upon a person who was, the appellant claims, simply an employee thereof.

There is much discussion by counsel as to whether or not the person upon whom the summons was actually served was, under section 396 of the Code of Civil Procedure, the "managing agent" of said corporation. We do not believe it necessary to enter upon a consideration of that matter. We are of the opinion that, where a foreign corporation has designated a person to receive service of summons in judicial proceedings and other notices affecting the corporation, that designation is exclusive and that service of summons is without force or effect unless made upon him. Where such a person has been designated, section 396 of the Code of Civil Procedure above referred to is not applicable, and the only person upon whom summons can be served is the person so designated. Where, however, the foreign corporation has neglected or refused to designate such a person, then the provisions of section 396 of the Code of Civil Procedure and section 72 of Act No. 1459 are applicable and control the service.

It being undisputed that the foreign corporation had, prior to the beginning of the action, designated the person upon whom summons should be served, and it being also undisputed that the summons in the action in which the judgment complained of was entered was not served upon that person, it necessarily follows that the summons was not served in accordance with the law and that the court, therefore, obtained no jurisdiction over the person of the appellant. It not appearing from the record that jurisdiction was obtained by the voluntary general appearance of the appellant in the action, the court in entering the judgment lacked jurisdiction over the person of the appellant and its judgment was accordingly subject to attack upon that ground.

Where judgment is defective by reason of the failure of service of summons upon the defendant, it may be attacked by motion made to set it aside. The motion in this case was properly made and should have been

sustained.

The judgment [order] appealed from is reversed and the judgment in controversy is set aside and declared of no force and effect. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

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