

34 Phil. 506

[G.R. No. 9550. March 29, 1916]

**BACHRACH GARAGE AND TAXICAB CO., PLAINTIFF AND APPELLANT, VS.
HOTCHKISS & CO., DEFENDANT AND APPELLEE.**

D E C I S I O N

JOHNSON, J.:

On the 5th day of February, 1913, the plaintiff commenced an action in the Court of First Instance of the city of Manila against the defendant for the purpose of recovering the sum of P6,500. The complaint alleged that the plaintiff was a corporation duly organized and registered under the laws of the Philippine Islands, with its principal office in the city of Manila; that the defendant, Hotchkiss & Co., is a corporation duly organized under the laws of France, having its principal office in Saint Denis, Paris, France, and is engaged in the business of manufacturing and selling automobiles.

The record shows that personal service of the defendant could not be obtained. The plaintiff therefore asked that service by publication be had.

At the termination of the effort to obtain service by publication, the cause was set down for trial. The defendant did not appear. At the conclusion of the trial the Honorable A. S. Crossfield, judge, reached the conclusion that the evidence showed that the plaintiff had suffered damages by reason of the rescission of a contract in the sum of P1,500 and rendered a judgment in favor of the plaintiff and against the defendant for that amount, with interest at 6 per cent from February 5, 1913, with costs. From that judgment the plaintiff appealed to this court.

In this court, after the presentation of the bill of exceptions and brief on behalf of the plaintiff, a suggestion was made of record by Attorneys Lawrence, Ross & Block, that the record failed to show that the plaintiff had secured substituted service upon the defendant, as required by law.

Upon that suggestion we have carefully examined the record for the purpose of ascertaining whether or not such service had been had upon the defendant. Courts cannot render judgment against persons who have not been served with notice of the pendency of an action against them. That service must be personal, unless the law permits what is sometimes called "substituted service." But few rules of law are better established than the one which requires, in case of substituted service, a strict compliance with statutory provisions. If the law has not been followed, if the parties have omitted any of the provisions necessary to secure substituted service, then the courts will not obtain jurisdiction over the defendant to render judgment. To allow a judgment to stand, rendered against a person over whom the court had no jurisdiction, is not only repugnant to justice, but contrary to the organic law of the Philippine Islands. A judgment rendered against a defendant without, an opportunity to be heard is null and void. (*Jordan vs. Giblin*, 12 Cal., 100; *Ricketson vs. Richardson*, 26 Cal., 149; *Cohn vs. Kember*, 47 Cal., 144).

Unless the statute providing for substituted service has been strictly complied with, the courts are without jurisdiction to render a judgment. A strict compliance with the statute is a jurisdictional fact. Without jurisdiction the whole proceeding is *coram non judge*. If courts should be permitted to render judgments without having jurisdiction of the persons, persons and estates of individuals would be subject to hazard. (*Galpin vs. Page*, 18 Wallace [U. S.], 350; *Guaranty Trust, etc., Co. vs. Green Cove, etc., R. Co.*, 139 U. S., 137; *Hunt vs. Wickliffe*, 2 Peters [U. S.], 201; *Webster vs. Reid*, 11 Howard [U. S.], 437; *Cheely vs. Clayton*, 110 U. S., 701; *Noble vs. Union River, etc., R. Co.*, 147 U. S., 165, 173.) It is the duty of the court to require the fullest compliance with all the requirements of the statute permitting service by publication. Where service is obtained by publication, the entire proceeding should be closely scrutinized by the courts and a strict compliance with every condition of law should be exacted. Otherwise great abuses may occur, and the rights of persons and property may be made to depend upon the elastic conscience of interested parties rather than the enlightened judgment of the court or judge.

Section 398 of Act No. 190 and section 399 of the same Act authorize service upon absent or unknown defendants by publication. Section 398 provides:

"Service upon absent or unknown defendants.—Where the person on whom service is to be made resides out of the Philippine Islands, or has departed therefrom, or can not, after due diligence, be found within the Islands, or conceals himself to avoid the service of summons, or is a foreign corporation

having no managing or business agent, cashier or secretary within the Islands, and the fact appears by affidavit to the satisfaction of the judge of the court where the action is pending, and it also appears by such affidavit that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a necessary or proper party to the action; and when it appears by such affidavit, or by the complaint on file that it is an action which relates to, or the subject of which is, real or personal property within the Islands, in which such person defendant or foreign corporation defendant, has or claims a lien or interest, actual or contingent, or in which the relief demanded consists wholly or in part in excluding such person or foreign corporation from any interest therein, such judge may make an order that the service may be made by publication of the order which shall fix the date on which the defendant is required to appear."

Section 399 provides:

"Order for service by publication.—The order must direct the publication to be made in such newspaper or newspapers, to be designated by the judge, as is, or are most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, at least once a week for three consecutive weeks; but the last publication against a defendant residing out of the Islands, or absent therefrom, must not be less than two months before the day on which the defendant is required to appear. In case of publication, where the residence of a nonresident, or absent defendant is known, the judge must direct a copy of the summons and complaint to be forthwith deposited by the clerk in the post office, postage prepaid, directed to the person to be served, at his place of residence. When publication is ordered, personal service of a copy of the summons and complaint outside of the Islands, is equivalent to publication and deposit in the post office, and in either case the service of the summons is complete at the expiration of the time prescribed by the order of publication."

Section 400 of the same Act provides the method by which such service by publication must be made. Section 400 provides :

"Proof of the service.—Proof of the service of summons and complaint must be

made, as follows:

“1. If served by the governor or his deputy, by his certificate thereof on the summons.

“2. If by any other person, by his affidavit thereof; or

“3. In case of publication, by the affidavit of the printer, or his foreman, or principal clerk, to which affidavit a copy of the publication shall be attached; and an affidavit showing the deposit of a copy of the summons, in the post-office, that the same has been deposited; or

“4. The written admission of the defendant.

“The certificate or affidavit must state the time and place of service.”

While there are many defects existing in the effort to obtain service by publication appearing in the record, it is sufficient, under the necessity of a strict compliance with the statute, to examine one only.

Paragraph 3 of section 400 provides that in case of publication, proof of service of summons and complaint must be made by the *affidavit of the printer, or his foreman, or principal clerk*, to which affidavit a copy of the publication shall be attached, and an affidavit showing the deposit of a copy of the summons in the post office. By an examination of the record we find that the affidavit which was presented in court as proof of the service of the summons and complaint shows that it was not made by the printer, or his foreman, or his principal clerk, but was made by one who signs himself as “adv. manager” of the newspaper *The Manila Daily Bulletin*. It is assumed that the person who made such affidavit was the advertising manager of the newspaper.

Without discussing the other defects of the record or the question whether or not substituted service may be had at all under facts like those appearing in the present record, we are of the opinion that, without prejudice to the writing of a more extensive opinion hereafter, the statute requiring substituted service by publication was not strictly complied with, and therefore the judgment of the lower court is hereby revoked and the defendant is hereby relieved from any liability under the complaint, and without any finding as to costs, it

is so ordered.

Torres and Araullo, JJ., concur.

Arellano, C. J., concurs. The courts of these Islands have no jurisdiction over the defendant company. It would be still better to declare all the proceedings null and void.

Moreland and Trent, JJ., dissent.

Date created: May 29, 2014