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[G.R. No. 2239. January 22, 1906]

WILLIAM GITT, PLAINTIFF AND APPELLANT, VS. MOORE & HIXSON, DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

On the 14th of October, 1903, one Jose Arnaiz commenced an action in the Court of First Instance of Manila against William Gitt, the plaintiff in this case. No summons in that case was ever served upon Gitt, but it was left with the defendant Moore. At the time of presenting the complaint in that action Arnaiz applied to the court for the appointment of a receiver for the goods described in the complaint, and an order was made to that effect. The defendants, Moore & Hixson, lawyers, were employed by Gitt to represent him in that suit, and were paid therefor. As such attorneys they filed in court in that case a document, the commencement of which is as follows:

> "And now comes William Gitt, above named, by Moore & Hixson, his attorneys, and files this his motion for an order of the court annulling and vacating the order of the court made and entered on the first day of October, 1903, appointing a receiver in this case, for that."

The ending of this document is as follows:

> "Wherefore said defendant prays that his said motion be granted and that said cause against him be dismissed, and that he have and recover judgment against said plaintiff for his costs and disbursements herein expended, including his attorney's fees, and for such other and further relief as may be equitable and just.

"MOORE & HIXSON,
"Attorneys for Defendant"

This was sworn to by Gitt on the day it was presented. The defendants appeared in court as lawyers for Gitt in support of their motion for an order vacating the appointment of a receiver, which motion was granted. The defendants did nothing more in the case, and never,presented therein anything which could he called an answer, except the paper above referred to. Judgment by default was entered against Gitt for want of an answer; execution was issued thereon, and he was compelled to and did pay to the plaintiff in that suit $315.67, money of the United States. He then brought this action against the defendants to recover the money so paid, together with the amount of $50, paid them as attorneys' fees in connection with the matter, alleging that they were negligent in the conduct of his defense in that suit, and that by reason of their negligence he had suffered damages in the amount above stated. At the trial of this case he proved that he had a good defense to that action. Judgment was entered by the court below in favor of the defendants. Plaintiff moved for a new trial, which was denied, and he has brought the case here by bill of exceptions.

The only charge of negligence set out in the complaint is that the defendants failed to present an answer in the case of Arnaiz *vs*. Gitt. It is not charged in the complaint that the defendants were negligent in not taking an appeal from the judgment by default, or in not moving for a new trial in the court below. If, therefore, the defendants did in fact present an answer in the case above referred to, this action of the plaintiff must fail. If they presented an answer which the court below disregarded, and entered judgment by default, an error of law was committed by that court for which the defendants can not be made responsible. There can be no doubt concerning this proposition, but the question is, Are the defendants responsible if they presented a document which raised a doubtful question of law as to whether it could be called an answer or not? If it were clear that the document could in no sense be called an answer, as, for example, if it were a mere appearance, or if it merely asked for a postponement, then liability would arise; but if lawyers of ordinary skill and ability might differ upon the question as to whether the paper presented was or was not an answer, if there were no well-known or well-established rules of law by which it could be determined whether it was or was not an answer, then we do not think it can be said that there was a lack of ordinary diligence on the part of the defendants in conducting the suit. Lawyers can not be made liable for mistaken judgment upon a doubtful question of law. If they could, every unsuccessful litigant might recover damages from them after his defeat.

Upon a careful consideration of the paper presented by the defendants in that suit we can not say that it is clear that it was not sufficient as an answer. Taking it in connection with the complaint it appears that it is a complete answer to all the allegations thereof, and that if the facts stated in the document were proven, judgment would necessarily have to be entered for the defendant. In addition to this denial and explanation of the facts alleged in the complaint, the paper also contains an allegation that the plaintiff had never been served with process in the suit. The prayer with which it terminates is entirely appropriate to an answer. It asks that the suit be dismissed; that the appellant recover his costs, and for such other relief as may be just and equitable. If the word "answer" had been placed in the caption of this paper there can be but little doubt that it would have been good as an answer, and the court would have erred in disregarding it. The doubt arises from the first clause, in which it is said that the defendant appears and "files this his motion for an order of the court annulling and vacating the order" appointing a receiver. We are not in this case called upon to decide, and we do not decide, whether this was sufficient as an answer or not. It is enough to hold, as we do, that the question is not so free from doubt that a lawyer can be said to be guilty of negligence for thinking that it was good as an answer.

A further question, however, is presented. The evidence clearly shows that the defendants considered the whole proceeding in the suit of Arnaiz *vs*. Gitt terminated by the order annulling the appointment of the receiver. It is not quite clear whether this was due to the erroneous belief that they had properly presented the objection that the summons had not been duly served, or to the equally erroneous belief that the motion for a receiver was a separate proceeding, independent of any suit. They did not, therefore, believe that the document thus presented was an answer. And the question is, Does their belief as to the matter affect the result? We think it does not. If through ignorance they presented a document which as a matter of law was sufficient as an answer, their belief that it was not could not change its essential character. While it remained on the files it had to be treated by the court as a sufficient answer, although the persons who presented it did not know that it was such.

We conclude that this action can not be maintained, though for different reasons than those set out by the trial court in its decision. The judgment of the court below is affirmed, without costs, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court of its origin for execution. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and *Carson, JJ.,* concur.

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