

2 Phil. 628

[G.R. No. 1384. October 29, 1903]

THE CALIFORNIA-MANILA LUMBER COMMERCIAL COMPANY, PLAINTIFF AND APPELLEE, VS, JOSE GARCHITORENA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This is an action to recover 1,192 pesos for lumber furnished to the defendant. The answer was a general denial. Upon the day assigned for the trial, April 6, 1903, the defendant did not appear. A trial was had, proofs submitted by the plaintiff, and on the same day a decision was filed and judgment ordered against the defendant for the amount claimed. On April 14 the defendant moved the court to set aside the judgment on the grounds (1) that by the neglect of one of the lawyers for the defendant, the lawyer making the motion was not notified of the day set for the trial, and (2) that he had an agreement with the lawyer for the plaintiff that the case should be settled out of court. The plaintiff's lawyer filed an affidavit denying the existence of any agreement that the case should be settled out of court. The motion was denied on April 21 and the judgment of April 6 confirmed; the defendant then excepted to the judgment. The record contains no other exceptions.

The first two assignments of error made by the appellant in this court relate to the sufficiency of the evidence. None of the evidence received at the trial is contained in the bill of exceptions. There was no motion for a new trial on the ground that the decision was not justified by the evidence. Under the provision of section 497 of the Code of Civil Procedure, we are prohibited from deciding the questions presented by these two assignments.

The other assignment of error relates to the order of the judge below refusing to set aside the judgment, the appellant citing as infringed sections 145, No. 1, and 146 of the Code of Civil Procedure. It does not clearly appear from the bill of exceptions that the appellant excepted to this order. We will assume, however, that he did. Section 146 provides that an order granting or denying such a motion can not be made the subject of an exception. The

appellant in his brief seems to claim that there was an abuse of discretion in this case which the court can review. Assuming without deciding, that we have such power, yet we see no abuse of discretion in the order made.

The judgment is affirmed, with the costs of this instance against the appellant. Judgment will be entered accordingly twenty days after the filing of this decision.

Arellano, C. J., Torres, Cooper, Mapa, and McDonough, JJ., concur.

Johnson, J., did not sit in this case.
