

**CAYETANO JORDAS, ET AL., PLAINTIFFS AND APPELLANTS VS.
SALOMON VEDAD, ET AL., DEFENDANTS AND APPELLEES.***G.R. No. L-13692. July 31, 1959*

Ponente: BENGZON, J.

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Because plaintiffs had failed to appear at the trial, and had neglected to prosecute their action, the court of first Instance of Camarines Norte dismissed their complaint to quiet title to a parcel of land. Their motions to reconsider having been denied, they went to the Court of Appeals; that Court, however, forwarded the record to us inasmuch as no factual questions remained in dispute, the appellees having manifested their conformity to the statement of facts in appellants brief. From such statement, it appears that after the defendant Salomon Vedad had answered on September 3, 1951, asserting ownership over the land, the following procedural steps took place, in the very words of the plaintiffs-appellants: "The case was scheduled for hearing on November 28, 1951, but plaintiffs-appellants moved for postponement which the Court granted, at the same time setting the case anew for September 15, 1952. On September 11, 1952, however, the Court *motu proprio*, postponed the scheduled hearing.

"On December 31, 1952, plaintiffs-appellants' counsel moved for postponement of the scheduled hearing on January 13, 1953 which the Court granted on January 10, 1953. On February 18, 1953, plaintiffs-appellants' counsel again moved for postponement of the hearing set for February 25, 1953, and said motion was granted on February 25, 1953.

"The case was heard on March 12, 1953, but upon motion of counsel for plaintiffs-appellants, an employee of the District Engineer's office was appointed commissioner to verify the extent of the property under litigation.

"The case was scheduled for hearing anew for July 8, 1953. On July 7, however, defendants-appellees' counsel moved for postponement which was granted on July 8, 1953. * * *.

"The case was again scheduled for hearing on October 15, 1953. On October 7, 1953, plaintiffs-appellants' counsel moved for postponement. On August 12, 1954, the same counsel also moved for postponement and the motion was granted. * * *."

The petition for preliminary injunction was once again set for hearing for October 23, 1954. On October 21, 1954, however, counsel for plaintiffs-appellants moved for postponement. * * *.

" On February 2, 1955, the Court ordered the issuance of a writ of preliminary injunction, and the Clerk of Court issued the writ on February 3, 1955.

"The case was once more set for hearing on March 11, 1955. On March 1, however, the plaintiffs-appellants' counsel moved for postponement. Again, on August 17, 1955, counsel for plaintiffs-appellants filed a Manifestation and Motion for postponement, and the Court granted the motion on August 20, 1955.

"On September 17, 1955, a new counsel for the plaintiffs filed his appearance and asked for the postponement of the hearing set for September 21, 1955. The motion was denied, and on September 21, 1955, the Court ordered the case dismissed. On the same day, however, plaintiffs-appellants' counsel moved for the

reconsideration of the order of dismissal, and the Court on October 3, 1955, reconsidered its previous order, setting the case for hearing on October 27, 1955.

"Four days before the scheduled hearing on October 23, 1957, plaintiffs-appellants' counsel moved for postponement, and the hearing was postponed to January 4, 5 and 6, 1956. On December 28, 1955, however, counsel for plaintiffs-appellants moved for continuance. Said motion was denied by the Court and the case was finally ordered dismissed." (On January 4, 1956, when plaintiffs failed to appear.)

Bearing in mind that the trial had previously been postponed nine times at plaintiffs' request, that once it had been dismissed through their failure to appear, that the case had been pending for more than four years^[1] and that a preliminary injunction had been issued which showed the urgency of the matter, we think the Hon. Melquiades Ilao, Judge, had rightly used the discretion vested in him by Rule 30, sec. 3, which provides that when plaintiff fails to appear at the trial or neglects to prosecute his action for an unreasonable length of time, the action may be dismissed upon the court's own motion. Indeed, the many postponements requested by plaintiffs, coupled with their failure to show up at the trial could only mean lack of interest to vindicate their claim or absence of proofs to support it. Worse still, it could indicate a desire merely to harass defendants.

The only argument presented by appellants here is that as the case was scheduled to be heard on January 4, 1956, and as they filed a motion for postponement on December 29, 1955, reiterated in a telegram on January 3, 1956, their motion had been seasonably filed and the Court should not have dismissed the case outright. The argument assumes that the dismissal rested only upon their failure to appear, which assumption is unfounded: the dismissal rested partly or mainly in the delay caused by the various postponements. Appellants admit they should not have presumed that their motion for postponement would be granted; but they insist they were entitled to a notice of its denial, as held in *Siochi vs. Tirona*, 53 Off. Gaz., 4086. But the holding in such case took into account the circumstance that the motion to postpone was filed more than six working days before the trial, i. e. sufficiently in advance to afford time for notice of denial. But in this instance, considering that December 30 is Rizal Day, that December 31 is usually declared a holiday, that January 1, 1956, fell on Sunday and, therefore, January 2 became a holiday, there were only two working days available for the submission of the motion, action thereon and notice.

The dismissal was clearly justified. Double costs against appellants.

Paras, C. J., Padilla, Montemayor, Bautista Angela, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

[1] *Elser Inc. vs. De la Rama, et al.*, 94 Phil., 812; *Smith Bell & Co. vs. American President Lines*, 94 Phil., 879.

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