

**INTERNATIONAL HARVESTER MACLEOD, INC.,
PLAINTIFF-APPELLEE, VS. CO BAN LING & SONS CO., ET. AL.,
DEFENDANTS-APPELLANTS.**

G.R. No. L-26863. October 26, 1968

Ponente: CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a39413252e78/>

CASTRO, J.:

This is an appeal from the order of August 15, 1966 of the Court of First Instance of Manila in civil case 65385, dismissing the appeal of the defendants from the city court for their failure to appear at the pre-trial.

On September 10, 1965 the plaintiff International Harvester Macleod, Inc. filed a complaint in the city court of Manila for the recovery of the sum of P2,500. The defendants' answer of October 5, 1965 admitted indebtedness, but denied the correctness of the amount demanded.

On April 14, 1966 the case was tried on the merits, and judgment was forthwith rendered ordering the defendants, jointly and severally, to pay the plaintiff the sum of P2,500, with legal interest thereon from June 1, 1965, until fully paid, the sum of P300 in the concept of attorney's fees, plus costs. From this decision the defendants appealed to the Court of First Instance.

In the Court of First Instance the defendants, on July 9, 1966, filed an ex parte motion to set the case for pre-trial. The motion was granted, and the case was accordingly set for pre-trial conference for August 15, 1966. On this latter date, the defendants-appellants did not appear, and instead filed an ex parte motion for postponement, upon the allegation that their counsel, prior to receipt of notice of the date of the pre-trial conference, had committed himself to appear in another case set for hearing in Branch XXII of Manila on the very same day. Taking a dim view of this motion for postponement and regarding it as one intended for delay, because it was filed on the last minute evidently to compel the court to transfer the pre-trial, the defendants having received notice of pre-trial a full month before, that is, on July 26, 1966, the court denied the motion, dismissed the defendants' appeal, and ordered remand of the case to the city court for execution of the judgment. Their motion for reconsideration was denied; hence the present appeal, which poses this single issue: Did the Court of First Instance err in dismissing the appeal duly perfected by the defendants for the latter's failure to appear at the pre-trial?

The order of dismissal must be affirmed.

The correctness of the denial of the motion for postponement is not disputed. It is the thesis of the defendants, however, that the perfection of their appeal from the decision of the city court to the Court of First Instance operated to vacate the judgment of the city court, and the action thereafter stood for trial "de novo" upon the merits; that when the CFI denied the motion to postpone the pre-trial, it should not have dismissed the appeal but instead should have proceeded ex parte with the trial of the case, it being the duty of the court to make its own findings of fact and render an appropriate decision.

On the other hand, by way of refutation, the plaintiff-appellee argues that the defendants' thesis is negated by

section 9 of Rule 40 of the Rules of Court the last sentence of which reads, "If the appeal is withdrawn or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith be re-manded to the justice of the peace or municipal court for execution." The appellee further argues that although the perfection of an appeal technically operates to vacate the judgment appealed from, the dismissal of the appeal before it is finally decided by the CFI does not result in the wiping out of the appealed judgment, but on the contrary said judgment shall stand as if no appeal had been taken. Stated otherwise, the contention is that because the appeal was dismissed by the CFI the judgment of the city court was revived and the case became remandable to the latter court for execution of the judgment

The law conferring upon a court of first instance discretion to dismiss a case for failure of a party to appear at the pre-trial is found in sections 1 and 2 of Rule 20 of the Rules of Court, which inter alia, state: "Pre-Trial Mandatory. - In any action after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for conference to consider: (a) the possibility of an amicable settlement or of submission to arbitration. x x x Failure to appear at the pre-trial conference. - A party who fails to appear at the pre-trial may be non-suited or considered as in default." This Court, interpreting these provisions, has uniformly emphasized that pre-trial is mandatory, that the parties as well as their counsel are required to appear thereat, and that dismissal of the suit for non-appearance of the appellant at the pre-trial is sanctioned by the Rules.[1]

In the case at bar, when the defendants (who are the appellants and who themselves moved for the scheduling of the pre-trial conference) failed to appear at the pre-trial the Court of First Instance correctly dismissed their appeal for failure to prosecute. And since according to section 9, Rule 40, of the Rules of Court the judgment of the city court was thereby deemed revived, the case should therefore forthwith be remanded to the city court for execution of the judgment - which the Court of First Instance precisely ordered to be done.

ACCORDINGLY, the order a quo is affirmed, at defendants-appellants' cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., on leave.

[1] American Insurance Co. vs. Republic of the Philippines, et al., L-25478, October 23, 1967, 21 SCRA 464, 1967D PHILD 63; American Insurance Co. vs. Manila Port Service, et al., L-27776, January 31, 1968, 22 SCRA 482, 1968A PHILD 405; Home Insurance Co. vs. United States Lines Co., et al., L-25593, November 15, 1967, 21 SCRA 863, 1967D PHILD 400.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.