

**FEDERAL FILMS, INC., PETITIONER, VS. POTENCIANO PECSON,
JUDGE OF FIRST INSTANCE OF BULACAN, ET AL., RESPONDENTS.***G.R. No. L-2146. August 26, 1948*

Ponente: BENGZON, J.

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The Federal Films, Inc., a domestic corporation, seeks to annul the decision of Hon. Potenciano Pecson in the civil case No. 182 of the court of first instance of Bulacan wherein the respondents the Santos couple, were the plaintiffs and said entity, the defendant. Grave abuse of discretion is imputed to the judge because, according to the petitioner, (a) at the trial he permitted defendant's attorney to withdraw without complying with the rules and immediately allowed plaintiffs to present their evidence, (b) he decided the case without hearing the defendant and (c) he illegally refused to give due course to defendant's appeal to the higher courts of the land.

In their answer the respondents aver that "on the day of the hearing of Civil Case No. 182 supra, the defendants counsel, Atty. Pedro B. Gonzales, appeared and informed the trial Court that he was being induced by his client to apply for postponement on the ground that they did not have transportation expenses, a fact which he knew to be false and preposterous; that he could not allow himself to be an instrument in, or an accomplice to such a deliberate obstruction of justice, and that he was, therefore, withdrawing from the case as counsel for the defendant; * * * considering the stand of Atty. Gonzales to be justified and laudable, the trial Court allowed him to withdraw from the case, and inasmuch as the absence of the defendant was unwarranted and at the same time it attempted to maliciously delay judicial proceedings, the plaintiffs, upon their petition in open court, were allowed to present evidence in support of their complaint; * * * bus fare is only fifty centavos P0.50, per passenger from Manila to Malolos and it is inconceivable that a corporation or even the poorest litigant cannot have one peso P1.00 for a round trip ticket. To say the least, the pretext is altogether unfounded and Atty. Gonzales only complied with his sworn duty as a lawyer when he refused to be an accomplice to said attempt to delay court proceedings and frustrate, as a consequence, the ends of justice".

Replying to the blocking of defendant's appeal, respondents assert that the trial judge's action was justified, the notice of appeal having been filed out of time, the motion for new trial not having suspended the running of the period because, among other things, said motion was a mere "scrap of paper" or was purely pro-forma. Respondent's hasten to add in this connection, that the question of defendant's right to appeal has already been decided by this Court in a previous expediente with the same parties, G. R. No. L-2074, wherein this Court dismissed a petition for mandamus to require the respondent Judge Pecson to give due course and certify the record on appeal in the aforesaid civil case No. 162 for substantially the same arguments presently rehashed or expanded. This dismissal should be conclusive upon this aspect of the litigation. In G. R. No. L-2074 in March of this year, this Supreme Court ruled in effect that Judge Pecson had correctly refused to give due course to the appeal. That ruling is now final and binding upon the parties hereto.

The point concerning the attorney's withdrawal of appearance; and the defendant's consequent defeat was a matter reviewable on appeal; of course upon laying the proper foundations. If any error had been committed by the trial

judge, it could have been straightened out by seasonable proceedings for appellate review. But surely it was no mistake affecting the jurisdiction, nor such a departure from regular procedure as to call for the remedy of certiorari, specially where, as in this case, the petition is obviously utilized for the purpose of securing the revision of a judgment which has become final through the failure of the interested party to appeal in due time.[1]

Premises considered, this petition must be declared without merit. It will therefore be dismissed, with costs against the petitioner.

So ordered.

Paras, Actg. C.J., Feria, Pablo, Perfecto, Briones, Padilla, and Tuason, JJ., concur.

[1]See *Profeta vs. Gutierrez David*, 40 Off. Gaz. (14th Sup.), 152, 156; *Government vs. Judge of First Instance*, 49 Phil., 495.

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