

APOLINARIO VALERIO, PLAINTIFF AND APPELLANT, VS. HON. SECRETARY OF AGRICULTURE AND NATURAL RESOURCES, ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 12380. September 23, 1958

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from the order of Judge Bienvenido Tan of the Court of First Instance of Manila, dismissing the case for failure of the plaintiff to appear at the trial. Notice of trial set for August 3, 1954, at 1:00 o'clock p.m. was received by the plaintiff only on August 2, 1954, at 3:40 o'clock p.m. At 5:55 o'clock in the same afternoon of August 2, his attorney filed a motion for postponement, alleging that he had another trial on August 3 in Norzagaray, Bulacan. Still, the lower court dismissed the case, making no mention of plaintiff's motion to postpone.

It is true that the plaintiff and his counsel failed to appear at the trial; but this failure, the records show, was due to the fact that plaintiff's attorney had another case in Norzagaray, Bulacan, on the same day, set previously, and that there was no sufficient notice to give the parties opportunity to prepare for trial. The dismissal complained of clearly deprived the plaintiff of his day in court through no fault or negligence on his part. We have already held that "when a party, without malice, fault, or inexcusable negligence, is not really prepared for trial, the court would be abusing its discretion if a reasonable opportunity is denied him for preparing therefor and for obtaining due process of law." (Cing Hong So vs. Tan Boon Kong, 53 Phil. 437.)

Wherefore, the appealed order is hereby reversed and the case remanded to the lower court for further proceedings. So ordered without costs.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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