

**AUGUSTUS PHILIP BRANDT, HENRY BERNHARD BRANDT, AND
RUDOLPH ERNST BRANDT, PARTNERS DOING BUSINESS UNDER THE
FIRM NAME OF “WILLIAM BRANDT’S SONS &
CO.,” PLAINTIFFS AND APPELLANTS,...**

G.R. No. 12556. July 19, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

Plaintiffs appeal from an order of the Court of First Instance of the city of Manila dismissing the action for want of prosecution.

STATEMENT OF THE CASE.

A statement of the case must be given up principally to the setting down of certain dates. Action was begun by complaint filed on January 21, 1916. The first averment was that plaintiffs are subjects of Great Britain and residents of London, England. The second averment was that defendant is a corporation existing under and by virtue of the laws in force in the British Colony of the Straits Settlements, duly authorized to do business in the Philippine Islands. Passing the other allegations not here of moment, judgment was asked for P11,050, with the corresponding interest alleged to be due. Defendants answered on March 13, 1916. On July 15, 1916, the case was set for trial, upon the calendar of the Court of First Instance of Manila, on August 22, 1916. On said July 15, 1916, the parties agreed that the trial of the action be continued without date, to be again set for trial by the court only upon the request of one of the parties. The grounds for this agreement were: (a) That the trial required the depositions of witnesses to be taken in foreign countries; and (b) that there were hopes and expectations of an extrajudicial adjustment and settlement of accounts between the parties. On July 17, 1916, this stipulation was approved by the trial court. Thereafter, without the request of either party, the case was assigned for hearing on December 20, 1916. The day previous, December 19, 1916, plaintiffs presented the following petition, agreed to by attorneys for defendant, to the court:

"Now come the plaintiffs in the above entitled cause and respectfully represent to this Honorable Court that inasmuch as they are at present negotiating with the liquidator of the defendant firm, at Singapore, Straits Settlements, for the payment of the claim herein sued upon, they respectfully request that the hearing of this case be continued to some future day, to be determined by the court at the request of the parties or either of them; that by reason of the continued pendency of the said negotiations, plaintiffs herein have refrained from taking depositions abroad which will be necessary to enable them to make proof of their causes of action against defendant herein."

The trial court in an order of December 20, 1916, dismissed the case without express finding as to costs, reserving to plaintiffs the right to present a new action. In this order the facts were related and the statement was made that the cause had already been suspended for five months, the necessity was mentioned of making an annual report to

the Secretary of Finance and Justice, and it was emphasized that it was not well for cases to lie dormant without prosecution. To this order plaintiffs excepted, perfected a bill of exceptions, and now bring the question of the propriety of the order before this court by various assignments of error.

DECISION.

Courts have an inherent right to dismiss a suit for failure to prosecute it with due diligence. The Code of Civil Procedure of these Islands puts this principle in statutory form when in section 127 it is provided that an action may be dismissed with costs to the defendant in either of four specific cases. Case No. 3 is "by the court, when the plaintiff fails, for an unreasonable length of time, to prosecute his action."

An order of a court, in pursuance of an inherent and a statutory power, dismissing an action for want of prosecution, will not be reversed by the appellate court unless there has been an abuse of discretion. Every presumption is in favor of the correctness of the court's action. It is incumbent on the appellant to establish affirmatively that there has been an abuse of discretion by the trial court. Of course, each case must be determined upon its own peculiar circumstances. (*Grigsby vs. Napa County* [1869], 36 Cal., 585. See also *Kerr's California Code of Civil Procedure*, sec. 581, and annotations.)

The only question before us, therefore, is whether or not the court abused its discretion in dismissing the action for laches.

The object in view by the judge was most commendable. His wish was to clear the calendar of cases in which there had been a failure to prosecute for an unreasonable length of time. The court seized upon the opportunity which the approach of a new year furnished to determine why certain cases were still pending and to dismiss those whose prosecution had been virtually abandoned. The reason behind such a mandatory order is obvious, for without such a periodic judicial "house cleaning" attorneys might capriciously fail to push their actions to judgment.

As to the one reason assigned in the petition relating to continuance without date, to the effect that the trial required the depositions of witnesses to be taken in foreign countries, it having been disclosed that the parties had made no effort to obtain such depositions, the cause could properly be dismissed for want of prosecution. (See *Herbst vs. Keystone Driller Co.* [1917], 163 N. Y. Supp., 831.)

The other reason for not proceeding contains two branches, both of which lead to the conclusion that the trial court made a mistake in dismissing the action. This ground was that there were hopes and expectations of an extra-judicial adjustment and settlement of accounts between the parties. An action should not be dismissed on a nonsuit, granted for want of prosecution, when the delay was caused by arrangements between the parties looking to a settlement. More important still, as it is asserted and not denied that the affairs of the defendant corporation are in process of liquidation in the courts of Singapore and, as this discloses, that the members of the corporation are subjects of an alien and enemy nation, one should not expect to apply the normal rules of pleading to a situation brought about through the abnormal upheaval of war. The "unreasonable length of time" mentioned by section 127 of the Code of Civil Procedure is not absolute, but relative. What would be an "unreasonable length of time," within the meaning of the Code section under peace conditions, would not necessarily be an "unreasonable length of time" under war conditions. While numerous cases can be found in which for a specific period of dormancy, as two, three, or four years, cases have been dismissed, such a classification would not be appropriate, when a war produces impossibility or impracticability of performance. Just as a foreign or international war will suspend the operation of the statute of limitations between the citizens of the countries at war so long as the war lasts, and just as the Federal Courts of the United States will suspend an action during the war when it is found that the plaintiff is an alien enemy, so should the courts permit litigants affected by the war, especially those who

are mutually agreed, to continue an action for a period reasonable under the circumstances.

The order appealed from is reverse'd and the case shall be returned to the court from whence it came to be restored to the calendar of the court. No costs will be allowed either party in this instance. So ordered.

Torres, Johnson, Araullo, Street, and Avanceña, JJ., concur.

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