

MOODY, ARONSON & CO., PLAINTIFF AND APPELLANT, VS. HOTEL BILBAO, DEFENDANT AND APPELLEE.*G.R. No. 26386. March 30, 1927*

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-26386/>**MALCOLM, J.:**

The court in banc has before it the motion for reconsideration presented by counsel for the defendant and appellee in which it is prayed that, notwithstanding the motion to dismiss made in the lower court by the defendant and the judgment of this court, the record be remanded to the court below with instructions to allow the defendant to produce evidence in its defense.

The case was begun by the plaintiff filing a complaint in the justice of the peace court of Iloilo to recover of the defendant the sum of P455.76. Judgment having been rendered in favor of the defendant and against the plaintiff, the latter appealed to the Court of First Instance. The defendant there filed an answer. The bill of exceptions discloses that "When the case was called the plaintiff submitted its evidence and then the defendant made an oral motion to dismiss and the court took the said motion under consideration." Thereafter, the trial court examined the evidence and handed down a decision dismissing the complaint without costs. On appeal, the Second Division reversed the judgment and entered another in favor of the plaintiff and against the defendant for the sum of P455.76, without interest and costs.[1] It is of this action which counsel for the defendant now complains.

The Code of Civil Procedure is silent on the subjects of motions to dismiss, motions for non-suit, demurrer to the evidence, and analogous subjects. Section 132 merely provides for the order of trial. The effect of the motion to dismiss after the prosecution rests has, however, been given some consideration in criminal cases. (U. S. vs. Abaroa [1903], 3 Phil., 116; U. S. vs. Romero [1912], 22 Phil., 565; U. S. vs. De la Cruz [1914], 28 Phil., 279; U. S. vs. Choa Chiok [1917], 36 Phil., 831.) Also as to election cases, it has recently been decided that the protestee cannot be permitted to present a motion to dismiss or to demur to the evidence of the protestant unless he renounces the presentation of his evidence in case the resolution on the motion or demurrer shall be adverse, in which event the court that considers the case shall decide the same definitely. (Demeterio vs. Lopez [1927], No. 26550.)(1) The question now is whether the same principle shall be carried over into other civil actions.

Everything considered, we believe that better results will be obtained if the burden be placed on the defendant who submits a motion to dismiss. The defendant who, after the plaintiff has submitted his evidence, makes a motion to dismiss which the trial court in a decision grants, and who, on appeal of the plaintiff, has the judgment reversed, cannot then be permitted to produce evidence in defense. The defendant in offering a motion to dismiss in effect elects to stand on the insufficiency of the plaintiff's case. Otherwise, the result will be to invite unnecessary litigation. As a shining example is the case at bar involving some P400 brought on appeal in two instances, and which in addition, if we accede to the petition of the defense, will have to be retried with the possibility of still another appeal.

The efforts of the courts should be concentrated in providing rules which will avoid lengthy and expensive

litigation and which will assist in the speedy disposition of cases.

The court, therefore, rules that the objection of the defendant is not well taken, and that its motion must be denied.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

[1] Promulgated February 15, 1927, not reported.

[(1)] Page 45, ante.

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.