

INES MELGAR AND PEDRO NOEL, PLAINTIFFS AND APPELLEES, VS. TOMAS DELGADO AND ALBERTA ALQTJIZOLA, DEFENDANTS AND APPELLANTS.

G. R. No. 30892. March 25, 1930

Ponente: OSTRAND, J.

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OSTRAND, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } On December 28, 1926, the spouses Ines Melgar and Pedro Noel brought the present action against Tomas Delgado and his wife, Alberta Alquizola. In their complaint, the plaintiffs alleged that Ines Melgar was one of the testamentary heirs of her father, Juan Melgar, and that upon his death on June 19, 1925, she became the owner of a tract of land of over 200 hectares, which was bounded on the north by the River Hibaiyo and the lands of Pelagio Villegas; on the south by the Creek Cabatuan; on the east, by the sea; and on the west with the lands of Felix Infiel. It is further alleged that the defendants, nine years ago, fraudulently took possession of a portion of said land, which portion embraced 105 hectares, more or less, and that notwithstanding various demands made by the plaintiffs, the defendants refused to return the possession of the usurped portion to said plaintiffs. It was therefore prayed (a) that the land be delivered to the plaintiffs, and (b) that the defendants be ordered to pay to said plaintiffs the sum of P2,000 annually as damages and to pay the costs.

In their lengthy answer, the defendants, in effect, deny the essential allegations of the complaint and set up as special defenses *res adjudicata* and *prescription*.

Upon trial, the Court of First Instance, Judge Capistrano presiding, rendered judgment in favor of the plaintiffs ordering the defendants to deliver the land in question to the plaintiffs and to pay to them the sum of P4,950 annually from the month of September, 1917, until paid. From this judgment the defendants appealed and, in substance, assign as errors that the court below erred:

- In not giving the defendants an opportunity to present the depositions of various witnesses who did not reside within the Province of Oriental Negros;
- In declaring in its decision that the deceased Juan Melgar did not execute Exhibits A-1 and A-2;
- In not declaring in its decision that the plaintiffs, on previous occasions having recognized the defendants as

owners of the land in question, they were estopped from questioning the defendants' title;

- In not holding that the issues in the present case are res adjudicata;

- In not declaring in its decision that the judgment in civil case No. 833 could not be annulled by the lower court and that, in any event, the present action Had prescribed;

- In ordering the defendants to pay to the plaintiffs the sum of P4,950 annually from September, 1917, and to pay the costs; and

- In not absolving the defendants from the complaint and in not ordering the plaintiffs to maintain perpetual silence.

With the exception of the third, all of the assignments of error are well taken, but only the fourth and fifth need be discussed, inasmuch as they are conclusive of the case.

The defendants plea of res adjudicata is based on civil case No. 338 of the Court of First Instance of Oriental Negros. In that case, Tomas Delgado, on September 1, 1915, brought an action against Diosdado Melgar, as administrator of the estate of Juan Melgar, and against Ines Melgar for the partition of the land described in the first paragraph of the present decision. On September 28, 1915, Ines Melgar, by her attorney, Tomas Alonso filed her appearance and answer. Thereafter, on October 11, 1915, the defendant, Diosdado Melgar, as administrator, filed a demurrer to the complaint, which demurrer was sustained. What subsequently occurred is thus stated in the decision of Judge Carter D. Johnston, then presiding over the Oriental Negros Court of First Instance:

"An amended complaint dated November 4, 1915, was filed in the case and a copy thereof was furnished Mr. Alonso by plaintiff, according to the affidavit made in said amended complaint. (Subsequently, in January, 1917, Mr. Tomas Alonso, attorney for Ines Melgar, orally admitted to the court, when he was in Dumaguete, that he had received a copy of that amended complaint.) On November 18, 1915, Diosdado Melgar appeared by his attorney and filed a demurrer to the amended complaint, and the plaintiff filed an answer to said demurrer of Diosdado Melgar, on November 20, 1915. This demurrer of Diosdado Melgar was overruled by the Honorable W. E. McMahon, Judge of this District, on January 4, 1916. Notice of the overruling of this demurrer was sent to Mr. Tomas Alonso, attorney for Ines Melgar, by registered mail and his receipt therefor is attached to the record. Thereafter, Diosdado Melgar, on February 7, 1916, filed an answer by his attorneys Messrs. Urello & Jakosalem,

"On October 31, 1916, Messrs. Urgello & Jakosalem as attorneys for Diosdado Melgar filed a motion showing that Diosdado Melgar had been substituted as administrator of the estate of Juan Melgar by Mr. Broadwell Hagans, duly appointed executor of the will by the Court of First Instance of Cebu, and prayed the court to substitute the said Broadwell Hagans as administrator of the estate of Juan Melgar for the defendant Diosdado Melgar.

On November 10, 1916, Mr. p. E, del Rosario, attorney for plaintiff, filed a motion in which it is shown that

the motion last referred to stated the facts correctly, and that Broadwell Hagans had been properly appointed by the Court of First Instance of Cebu as administrator or executor of the estate of the deceased Juan Melgar, and the plaintiff, likewise in said motion, prayed that the said Hagans be substituted as defendant for Diosdado Melgar, and that summons be issued to cause him to appear. On the same day, November 16, 1916, Messrs. Block and Greenbaum filed an appearance for Broadwell Hagans as administrator of the property of the deceased Juan Melgar, in substitution of the defendant Diosdado Melgar,, and prayed to be substituted as a party defendant in this case in place of the said Diosdado Melgar. "On November 16, 1916, there was filed in the case a motion signed by Tomas Alonso, attorney for Ines Melgar in which the court was requested to transfer the hearing on this case until the next session. The case came on for hearing on November 17, at which time Messrs. Block & Greenbaum, attorneys for the defendant Hagans, administrator, filed an amended answer on behalf of the administrator Hagans, only. When the case was called for trial attorney for plaintiff made a motion for judgment by default against the defendant Ines Melgar, which motion was sustained, as the said Ines Melgar had not filed demurrer or answer to the amended complaint dated November 4, 1915, although duly notified of the filing of this complaint, and on said November 17th, attorney for plaintiff Mr. Del Rosario and Mr. Block, of counsel for the administrator Hagans both being present at court in pursuance of notice issued October 23 and insisted upon trial. Further, the motion of Mr. Alonso, attorney for Ines Melgar, was dated Manila, November 8th on which date his certificate showing that he had mailed a copy of this motion for a continuance to Mr. Del Rosario, only, at Cebu; and further reason for sustaining the motion for judgment by default is the fact that the pleadings in the case show that, so far as this case is concerned, the rights of Ines Melgar in and to the property in question were derived by her under the will of her deceased father Juan Melgar (see Exhibit L), and the adjudication of the rights of the administrator in this case would, necessarily, adjudicate fully the rights of the said Ines Melgar.

"In pursuance of the pleadings and motion as above briefly reviewed, the case is accordingly dismissed as to the defendant Diosdado Melgar, former administrator of the property of the deceased Juan Melgar, and the said Broadwell Hagans, administrator or executor of the deceased Juan Melgar, is substituted as party defendant. In consequence, the only pleadings which it is necessary for the court to consider is the amended complaint dated November 4, 1915, and the answer of the said Broadwell Hagans filed November 17, 1916.

"At the trial held November 17, 1916, Mr. P. E. del Rosario appeared for the plaintiff, and Mr. Edmond Block as attorney for the administrator Hagans, there being no appearance for the defendant Ines Melgar.

"On January 15, 1917, Mr. Tomas Alonso, attorney for Ines Melgar, filed a motion in which he recited the fact that an examination of the record shows that said attorney had not filed any answer to the amended complaint and that this defendant had not been notified of the decision of the court on the motion to transfer the hearing of the case based upon the absence of her attorney who was unable to appear on the day of the trial with the other attorney, notwithstanding her ability to give evidence that the land claimed by plaintiff was the exclusive property of the deceased Juan Melgar and had been left by will, duly legalized, to the defendant Ines Melgar. (The motion referred to, that on November 16, 1916, shows that Mr. Alonso was unable to appear at Dumaguete because of his attendance on the sessions of the House of Representatives as representative from the Seventh District of Cebu.) Accordingly, said attorney for Ines Melgar prayed the court to allow him to file his answer to the amended complaint and to order a new trial so that he might present his evidence. With said motion Mr. Alonso as attorney for the defendant Ines Melgar presented an answer to the amended complaint and alleged: That each and all of the facts alleged in the complaint are denied, and as a special defense, that in his lifetime Juan Melgar was the sole and exclusive owner of the land described in the amended complaint; that plaintiff was simply an attorney-in-fact of the said Juan Melgar; and that any document existing which appeared to show a transaction between the said Juan Melgar and plaintiff with regard to said land is false and was not executed by the said Juan Melgar. This motion of January 15, 1917, is hereby overruled for the reason that it is not alleged that there is any new or material evidence to be presented to the court. There is no allegation that this defendant Ines Melgar was not notified on the date of trial or did not have an opportunity to be herself present or represented by her attorney. The case having been submitted on the evidence heard and

after judgment by default was entered against the defendant Ines Melgar on November 17, 1916, and the answer to the amended complaint filed by the said Ines Melgar having only been presented to the court, on January 15, 1917, it is held that this answer of Ines Melgar cannot be taken into consideration at this time, and the said answer of the said Ines Melgar is disallowed. A further reason for not allowing the filing of the answer of Ines Melgar as of January 15, 1917, is the fact that her interests are protected, in the trial celebrated, by her codefendant the administrator Hagans, as a decision in his favor would virtually be a decision in favor of Ines Melgar, under the will existing in her favor which, it is agreed, has been admitted to probate in the Court of First Instance of Cebu.

"Briefly stated the amended complaint alleges: (2) That on or about the year 1907 in the municipality of Dumanjug, Province of Cebu, the plaintiff and Juan Melgar made a contract in writing under which a partnership was formed between them with regard to a piece of agricultural land situated in the barrio of Hibaiyo, municipality of Guijulngan, Province of Oriental Negros, having an area of about two hundred hectares and bounded as therein shown; (3) that in accordance with the partnership so formed the plaintiff had the right to the possession and administration of the partnership property and was required to plant same with coconut trees and other trees, render accounts for the labor, animals and constructions of houses for the tenants, on the condition that all of the products of said property were to be equally divided between plaintiff and Juan Melgar, after deducting all expenses of cultivation until the harvesting of the crops; (4) that after the formation of the partnership above stated, the plaintiff, from the date first mentioned, entered into possession of the land described in the complaint, giving same his personal attention, cleared the land, planted more than two thousand cocoanut trees thereon, and constructed various camarines and dwelling houses thereon, acquired some thirty-two head of cattle and work stock, and from that time until the present time has continued as administrator in charge of the property above described, invariably, in conformity with the said contract, accounting to the said Juan Melgar for half of the products until the time of his death; (5) that on or about the 19th of June, 1915, Juan Melgar died in the municipality of Dumanjug, leaving a will which was legalized on the 9th of August of said year before the Court of First Instance of Cebu, having named as executor of said will the defendant Diosdado Melgar, who obtained letters of administration, and, from the 20th of August, 1915, has exercised the office of administrator of said estate; (6) that notwithstanding the fact that the property described was not the exclusive property of Juan Melgar, the said Juan Melgar in the sixth paragraph of his will left to the defendant Ines Melgar the said land together with the improvements thereon, without reserving to plaintiff the half which belonged to him as partner; and the said Ines Melgar with the defendant Diosdado Melgar in his capacity as administrator, without foundation, pretend to claim that the land, animals and improvements are the exclusive property of the deceased Juan Melgar; that by reason of said clause in the will they have refused to recognize plaintiff as a partner of said deceased, claiming that all of said property belongs to the legatee Ines Melgar; (7) that the plaintiff undertook to divide between himself and the administrator of the property of the deceased Juan Melgar the products of said land prior to the death of the said Juan Melgar, but defendants declined, insisting that plaintiff had no interest in the land or the products thereof; (8) that the pretension of the defendants is unjust, illegal and without foundation, and their refusal to recognize the partnership formed between plaintiff and Juan Melgar constitutes a violation of the agreement made; (9) that plaintiff desires that the property be partitioned between himself and the defendants as successors of the deceased Juan Melgar, but they refuse to submit to such partition, And the court is prayed to render a decision in favor of plaintiff declaring that the property mentioned pertains to a partnership in equal shares, formed between the deceased Juan Melgar and plaintiff, and that in this character plaintiff has a right to half of said property, and to order in consequence, that partition be made in legal form between plaintiff and defendants as successors of the said deceased, and that the court adjudicate to plaintiff the portion which corresponds to him in pursuance of this partnership agreement, and that the defendant be required to pay the costs.

"As we have seen before, Diosdado Melgar, prior to the date of the trial, was the administrator of the estate of his deceased father Juan Melgar, and that Broadwell Hagans was duly substituted by proper motions as a party defendant in this action. The answer of the said administrator Hagans alleges, first, a general denial, and as a special defense that the property, subject matter of the complaint, belongs to the estate of Juan Melgar in fee

simple, and as a cross-complaint this defendant alleges that plaintiff has been the manager of the property described in the complaint since 1908 and that it was the duty of said plaintiff to pay all taxes on said property; that said plaintiff neglected to make said payments and thereby subjected said property to a penalty for non-payment of taxes for the years 1911 to 1916, inclusive; that said taxes with penalties aforesaid amount to nine hundred pesos; and defendant prays that he be dismissed from the complaint with costs and for judgment against plaintiff in the sum of nine hundred pesos.

"The preponderance of evidence in this case establishes the following¹ facts: In the year 1908 Juan Melgar of Dumanjug, Cebu, executed on his possessory information for the land in question in this case, Exhibit A, a note which, translated into Spanish reads, as shown in Exhibit A-1, as follows:

'Nota.—He endosado esta informacion posesoda de mi terreno en Hibaiyo, Municipio de Guijulan, Negros Oriental, I. F., para acreditar nuestro convenio por el cual, desde hoy dicho terreno nos pertenece ya a los dos del Sr. Tomas Delgado, porque como era ya poco lo que quedaba del susodicho terreno por haberlo usurpadlo los que hoy estan en posesi6n, y como hemos convenido que el mismo Delgado sera el que se encargue de recuperar los terrenos usurpados segun sus propios medios, sus trabajos y esfuerzos equivaldrian el pago para mi.

" 'Tomas Delgado dirigira y dispondra de todos Jos trabajos y lo hara limpiar y arreglara todo, y todos los productos se repartiran por mitad entre Jos dos despues de sacados y descontados todos ios gastos.

" 'En el dia en que nos separaremos y dispondremos Ja disolucion de nuestra sociedad, hemos convenido tambien en que, si llegamos a nn acuerdo, yo pagare la mitad que le corresponde a el de los terrenos, cocos que se sembraren y de los carabaos; pero si no se pudiese ser esto, partiremos por mitad todo de la mejor manera posible.

" 'Dumanjug, 11 de junio de 1918.

""(Fdo.) Juan Melgar

" '(Fdo.) Antonio Garcia

" 'Testigo'

""(Fdo.) Primitivo Fernandez."

Prior to this time the land therein referred to was in charge of a son-in-law of Juan Melgar for about two years and the plaintiff at that time, in pursuance of the agreement, entered into, Exhibits A and A-1, proceeded to the land in question. Part of the land was in the possession of twenty- six people (see Exhibit J), the same having been usurped, and much of the land was grown up with trees The plaintiff cleared the land, has continued to administer same until the present time, has cultivated same, accounted to his partner Juan Melgar (until his death in June, 1915) for the products of the land, and thereafter sought to account to the administrator Diosdado Melgar for the share of the crops belonging to the administration, after deducting the expenses pertaining thereto, which the administrator refused to accept. This latter share consisted of half of 940 cavanos of corn which plaintiff sold at the rate of P.50 a cavan, which plaintiff testified he was ready to pay to the estate of Juan Melgar if called upon by the court to do so. (With regard to this item the evidence is insufficient upon which to base a final judgment in favor of the defendant, and it will be necessary to have accurate and definite accounting rendered in regard to this 940 cavanos of corn.) In 1908 the plaintiff found some 260 cocoanut trees on the property, and testified that at the present time there are some 3,000 cocoanut trees thereon which he has planted; that he has erected some seventy dwellings for tenants; and that the hacienda has thirty-six carabaos registered in plaintiff's name, half of which belong to the administration of the Melgar estate.

"The original possessory information called for about two hundred hectares of land and no accurate measurement of this property was made until the land was reassessed for taxation purposes in the year 1916, and a sketch of the land, Exhibit K, shows the area to be 164 hectares, 40 ares and 55 centiares, the larger part of which plaintiff succeeded in recovering from, the various persons named by him and as shown by Exhibit J, who had usurped same.

"There is no question of the genuineness of the signature of Juan Melgar upon the document Exhibit A or the signatures of the two witnesses to that signature, one of whom was heard at the trial; A son-in-law of Juan Melgar, husband of Susana Melgar, as a witness testified that when he relinquished the management of this estate at the time the partnership was entered into between the plaintiff and Juan Melgar, that the latter stated to him (witness) the character of the transaction. Susana Melgar, daughter of the deceased Melgar, also testified that only about a month before the death of Juan Melgar, the deceased in the presence of his children explained to them the situation with reference to this land in question, and informed them that the partnership with the plaintiff was to be continued by the children after his (Juan Melgar's) death. The plaintiff also presented in evidence letters from Juan Melgar with the dates 1911 and 1912 which show a reference to 'our hacienda' (Exhibit D), and in 1912 reference is made to 'our corn' 'our tobacco and so on (Exhibit I) There does not appear to have been any rescission of the contract between Melgar and the plaintiff, and the contract itself (Exhibit A-I) has specifically stated that from, the date thereof 'said land now belongs to Tomas Delgado and me/ that the said Delgado was to take charge of recovering the usurped land, cultivate it, and do everything necessary, 'his work and efforts being equivalent to me to payment therefore. The said document further specifically provided that in the event of the dissolution of the partnership, Juan Melgar was to pay for the half of the land corresponding to Delgado, and that otherwise they were to divide everything equally in the best possible way. The plaintiff has complied faithfully with his part of the agreement, and that agreement was made prior to the execution of the will of the deceased Juan Melgar, May 19, 1915, at which time, under his contract with Delgado, Juan Melgar Was only owner of the one-half of this property in question.

"The evidence further shows, and, in fact it was admitted by counsel for plaintiff, that plaintiff neglected to declare for taxation more than a small portion of this land, and that in consequence of said negligence, for which plaintiff is responsible, there has accrued for delinquent taxes and penalties the sum of P851.20. With regard to this sum of P851.20 the court finds in favor of the defendants and the said defendants as between themselves and Tomas Delgado are absolved from responsibility for any part thereof, the whole amount thereof pertaining to the share of the plaintiff Tomas Delgado. This finding however, is without prejudice to the rights of the Government to recover the amount provided by law for these delinquent taxes, irrespective of the personal interest of the plaintiffs and defendants in this case.

"Accordingly it is adjudged, ordered and decreed that the property in question in this case be partitioned, one-half in favor of the plaintiff and one-half in favor of the administrator of the estate of the deceased Juan Melgar, Broadwell Hagans. Said land is described in paragraph two of the amended complaint as bounded on the north by the Hibaiyo River and land of Pelagio Villegas, on the south by the Cabatuan Creek, on the east by the sea, and on the west by the lands of Felix Infiel, A more recent and accurate description of the property is shown by the evidence to be the description set out in Exhibit K, whereon the north boundary is shown to be the Hibaiyo River, and the lands of Simplicio Villegas, Procopio Bayawa and Benito Tabilon, on the east by the sea, on the south by the Batuan Creek and the lands of Andres Morden, Francisco and Cecilio Bayawa, and Felipe Avila, and on the west by the land of Victoriano Bayawa and Dionisio Ordaneza, having an area of 164 hectares, 40 ares and 35 centiares. In pursuance of the foregoing it is ordered that the parties plaintiff and defendant made an amicable partition of the land above described by proper instruments of conveyance, the said amicable agreement to include, likewise:

"In equal shares, half of the animals (36 carabaos). "The item of the P851.20, delinquent taxes is hereby ordered to be charged against the interest of the plaintiff.

"To include a settlement with reference to the half of the 940 cavanos of corn, after deducting expenses, at P2.50 a cavan, which pertain to and should be accounted for to the administrator of the deceased.

"The parties are granted three months from the date of this decision within which to effect the said amicable partition and agreement with reference to the foregoing items and to present their agreements for approval by the court; or, failing to effect an amicable partition within said three months, to notify the court of their desire to have commissioners appointed under a writ of partition.

"This not being a final decision of this case pending report of the parties with regard to the amicable partition, the court reserves the right to adjudicate costs and to make such other orders and findings in this case as may be necessary from time to time pending final disposition."

The partition of the land was accomplished in accordance with the decision quoted, and the court was notified thereof on December 28, 1917. Thereafter, on April 30, 1918, Judge Lukban then presiding, erroneously dismissed the case. As a result, several incidents occurred which delayed the termination of the case. It may be noted that Ines Melgar, through her attorney, intervened in the matter and opposed the revocation of Judge Lukban's order. The order was finally revoked by Judge Fermin Mariano, then presiding, and the partition was approved and the registration of the document of partition with the register of deeds was ordered. Ines Melgar by her attorney Tomas Alonso, filed a motion for a new trial which was denied, and after several other motions, she appealed to this court, which unanimously confirmed the orders and decisions of the court below.[1]

Though civil case No. 338 differs slightly from the present case in some respects, the issues are identical, and the controversy in both cases is in reality between Ines Melgar and Tomas Delgado. The determination of the former case hinged on the authenticity of Exhibits A and A-I and so it did in the present case where the defendants allege that the first judgment was obtained by forgery and premeditated fraud. In his standard work on judgments, Freeman says in regard to collateral attacks on former adjudications:

"Suits for Obtaining Judgments by Fraud, Conspiracy, or Perjury.—The settled policy of the law forbidding that a matter once adjudicated shall be again drawn in issue while the former adjudication remains in force does not permit the prosecution of an action for obtaining a judgment by false and fraudulent practices, or by false and forged evidence. Neither can a party against whom judgment has been recovered sustain an action against his adversary and the witnesses for damages occasioned by their conspiring together and procuring a judgment by fraud or perjury, as long as the judgment remains in force and unreversed; because the charges made in the second action are conclusively negated by the former adjudication." (Freeman on Judgments, vol. 2, 5th ed., par. 782.)

This is good law and, in our opinion, opposite to the present case. Cases may be cited where equity has interfered with final judgment, but such cases are rare and petitions for such interference must be timely presented. As stated in 15 R. C. L., 740:

"Not only is negligence not a ground for granting relief, but it is a ground for refusing relief, and the general rule is that a party seeking aid from a court of equity from judgments at law must be without fault, or negligence, and if he is negligent or careless either in preparing or trying his action at law, the doors of chancery will remain closed and relief will be denied."

Notwithstanding the fact that it was stated under oath in a motion filed in September, 1919, by Tomas Alonso on behalf of Ines Melgar, that she could prove that the documents relied on by Tomas Delgado were forgeries, she did not bring the present action until December 28, 1926, over seven years later. That was inexcusable laches and

placed her beyond equitable relief. It may also be noted that as the action in effect is one for relief on the ground of fraud, its limitation is only four years (sec. 43, Code of Civil Procedure) and that consequently it was brought too late.

But Ines Melgar asserts that no summons was served on her in case No. 338, that she was not a party to that case, and that she, as a matter of fact, knew nothing about it. She also denied that she employed the lawyers Tomas Alonso, Gullas, Briones, Cabahug and Leopoldo Rovira, who represented her in the Court of First Instance as well as in the Supreme Court. If these assertions were true, the plaintiffs would have a good cause of action, but, unfortunately for them, their statements are completely refuted by the facts appearing in the bill of exceptions in the appeal taken by Ines Melgar in case No. 338. It is there shown that summons and a copy of the complaint were served on her personally on September 13, 1915; a sheriff's certificate of service can only be overcome by clear and convincing evidence, and no such evidence can be found in this case. It is further shown that Judge Mariano granted a continuance of the case on the statement of Doctor Mereader, the son-in-law of the plaintiffs, that Tomas Alonso was the attorney of Ines Melgar, but was absent from the province and could not appear in court on that occasion. It is also evident from the same bill of exceptions that the lawyers mentioned had the welfare of Ines Melgar in mind and did their best to further her interests. They would hardly have done so if they had not been retained by her.

The appealed judgment is reversed, and the case' is dismissed without costs. So ordered.

Johnson, Malcolm, Villamor, Johns, Romualdez and Villa- Real, JJ., concur.

[1]Delgado vs. Melgar, G. R. No. 18153, promulgated September 29, 1922, not reported.

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