

## **DIEGO TAGABUMA, PLAINTIFF AND APPELLANT, VS. ANGELA GUZMAN ET AL., DEFENDANTS AND APPELLEES.**

*G. R. No. 40560. September 22, 1934*

Ponente: HULL, J.

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### **HULL, J.:**

This action was instituted in the Court of First Instance of Isabela for of certain parcels of farm land and for damages for their unlawful detention.

Shortly after plaintiff had begun to introduce his witnesses, his attorney asked for a continuance on the ground of sickness, whereupon the court denied the motion for a continuance and stated that in its opinion the statute of limitation had run and dismissed the complaint. Whereupon this appeal was brought, and the second assignment of error reads:

"II. The lower court erred in dismissing the plaintiff's complaint at such stage of the proceedings, when only one of the five witnesses of the plaintiff has testified."

At the time the court acted, there was no motion before it, and plaintiff by the action of the court was prevented from presenting his case. After issue has been duly joined, plaintiff is entitled to that right.

Seldom does departure from orderly procedure bring satisfactory results. In the instant case the second assignment of error must be sustained.

The orders appealed from are reversed and vacated and the record is remanded to the court below to continue the trial on its merits. Costs against appellees. So ordered.

Avancena, C. J., Street, Vickers, and Diaz, JJ., concur.

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