

**ESCOLASTICO BUENAVENTURA, PLAINTIFF AND APPELLANT, VS.
GERINO LAYLA Y ZORRILLA, DEFENDANT AND APPELLEE.***G.R. No. 45915. May 02, 1939*

Ponente: IMPERIAL, J.

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The plaintiff commenced the action in the Court of First Instance of Manila to recover damages from the defendant in the sum of P2,500. The defendant's answer denied all the material allegations of the complaint. On November 25, 1935, in the absence of the defendant who had been duly notified, the case was heard and after the presentation of the plaintiff's evidence, the court rendered judgment ordering the defendant to pay to the plaintiff the sum of P,200 by way of damages, deducting therefrom P140 which had already been paid, plus P80 as fees credited to said defendant; with legal interest on the amount of P980 from the filing of the complaint until fully paid, and the costs. On December 26, 1935 the defendant filed a motion for new trial dated the 19th of said month alleging that the decision thus rendered is not supported by the evidence and is contrary to law, and that his inability to appear for trial was due to the fact that days before said trial he had prepared a motion asking for the postponement thereof, but the said motion did not arrive on time because the ship which was to take it had been delayed. After considering it, the court by its order of January 8, 1936, set aside its judgment and reset the case for trial. The defendant secured the postponement of the trial. On February 26, 1936, the plaintiff filed a motion excepting to the order setting aside the judgment and reopening the case. The defendant filed an amended answer wherein he set up a special defense and a counterclaim against the plaintiff for the sum of P1,500. The plaintiff opposed the admission of the amended answer, but the court admitted it by an order dated April 8, 1936. On April 23, 1936, the plaintiff excepted to the order admitting the amended answer and at the same time asked, in a motion which he presented to that effect, that the court set aside the order reopening the case and enforce the judgment formerly rendered, alleging as ground thereof that the court had lost jurisdiction to revoke the judgment and to reopen the case. The defendant objected to this prayer of the plaintiff, and the court, by order of May 2, 1936, denied the said petition. On March 1, 1937, the court dismissed the case. The plaintiff moved for a reconsideration of the order of dismissal. By another order of March 20, 1937, the court set aside the order of dismissal and reset the case for trial on the 30th of the same month. On April 27, 1937 the court denied the verbal motion of the defendant of March 20th of the same year asking for the dismissal of the case. On May 20, 1937, the plaintiff filed another motion asking that the court give effect to the judgment of November 25, 1935. This motion was denied by the court by its order of June 5, 1937. The plaintiff again moved for a new trial of the order denying his motion of May 20th. Finally the court, by its order of July 27, 1937, dismissed the case upon petition of the attorney for the defendant, for failure of the plaintiff to appear at the last trial. The plaintiff excepted to this last order and asked for a new trial, and after his motion for this purpose was denied, he noted his exception and filed the amended bill of exceptions which was approved.

The plaintiff addresses eleven errors to the various orders issued by the court, but the only Question for resolution is whether the court still had jurisdiction when it for the first time set aside the judgment rendered on November 25, 1935. The question should be answered affirmatively in view of the facts and of what appears in the record. It

will be recalled that the motion for new trial filed by the defendant was dated December 19, 1935 and was docketed on the 26th of the same month. The court granted the same and set aside the judgment of November 25, 1935 by its order of January 8, 1936. It does not appear when the defendant was notified of the judgment of November 25th, but it is to be supposed that the motion for new trial was presented within thirty days fixed by law when the court assumed jurisdiction. and granted it over the objection interposed by the plaintiff. There being no showing to the contrary in the bill of exceptions or in any part of the record, it cannot be presumed that the defendant was duly notified of the judgment of November 25, 1935 on the same date, particularly in view of the fact that he was residing in the municipality of Dipolog, Province of Zamboanga.

As the court had jurisdiction to continue hearing the case, there is no basis for the plaintiff's contention that all the proceedings had until then should be deemed terminated and that the court should put in force and execute the judgment which it promulgated on November 25, 1935.

Overruling all the errors assigned, we affirm all the appealed orders excepted to, principally that which dismissed the case for the last time, with the costs of this instance to the plaintiff-appellant So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, and Moran, JJ., concur.

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