

MASATO OUYE, PLAINTIFF AND APPELLEE, VS. AMERICAN PRESIDENT LINES, LTD., DEFENDANT AND APPELLANT.

G.R. No. 48029. November 18, 1946

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is an action for damages. When the case was called for trial on July 16, 1940, plaintiff failed to appear, and upon defendant's motion, the action was dismissed by the Court of First Instance of Manila. Plaintiff was notified of such order of dismissal on July 19, 1940. Such dismissal, under Rule 30, section 3, had the effect of an adjudication upon the merits, since the court failed to provide otherwise. Plaintiff on July 24, 1940, filed a motion for reconsideration which was denied on August 6, 1940. On August 31, 1940, another motion for reconsideration was filed, asking that the dismissal be without prejudice, and the motion was granted. Defendant appealed on the sole ground that the second motion for reconsideration was filed out of time and, therefore, the last order of the court was issued without jurisdiction.

The 30-day period within which the lower court may amend its order commenced to run on July 19, 1940, when plaintiff was notified of the order of dismissal dated July 16, 1940. Such 30-day period was interrupted on July 24, 1940, when the first motion for reconsideration was filed and started to run again on August 6, 1940, when plaintiff's motion for reconsideration was denied, assuming that he was notified of such denial on the same date. Thirteen days, therefore, should be deducted in the computation of the 30-day period. The second motion for reconsideration was filed on August 31, 1940. From July 19, 1940, to August 31, 1940, deducting thirteen days, there are exactly thirty days. The second motion for reconsideration was, therefore, timely filed, and the court had jurisdiction to amend its order by providing that the dismissal be without prejudice.

The order appealed from is hereby affirmed, with costs against appellant.

Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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