

SONG FO & CO., PLAINTIFF AND APPELLEE, VS. MAXIMINA CHIONG VELOSO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 8333. January 16, 1914

Ponente: CARSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-8333/>

CARSON, J.:

This is an appeal from a judgment of the Court of First Instance of Manila declining to grant a new trial to the defendants and appellants, against whom a default judgment had been entered for the sum of P2,242.43.

Defendants and their attorney, all of whom are residents of Cebu, based their motion for a new trial on the ground that they had no notice of the date set for the trial of the case.

It appears that there is a rule of practice in the Court of First Instance of Manila whereby the clerk is directed to "place on the trial calendar all causes pending" and at issue," and that in such cases "Notices of trial will not be sent to attorneys or litigants, and failure to receive said notices will not be considered an excuse for non-appearance." It further appears that this case was pending and at issue prior to the beginning of the October term of the trial court, and that the clerk, pursuant to the rule of practice above referred to, placed the case on the calendar to be heard on the 9th of October, 1911. It further appears that no notice was sent defendants or their counsel, who were residents of the Province of Cebu, and that they did not have actual notice of the date set for the trial. It nowhere appears that either the defendants or their counsel had any knowledge of the above-mentioned rule of practice adopted in the Court of First Instance of Manila.

In the case of *Muerteguy & Aboitiz vs. Delgado* (22 Phil. Rep., 109), we recognized as one of the most elementary rules in the administration of justice that "Parties have a right to be present at the trial of their causes, either by themselves or by their attorneys. They are also entitled to reasonable notice of the time fixed for trial."

Manifestly, the defendants in this case were entitled to a new trial unless, under the above-mentioned rule of practice adopted in the Courts of First Instance of Manila, they can be said to have had constructive notice of the date set for the trial of this case.

Section 6 of Act No. 190 provides the conditions under which rules of court may be adopted in this jurisdiction so as to bind the litigants and their counsel. It is as follows:

"The judges of the Supreme Court shall prepare rules regulating the conduct of business in the Supreme Court and in the Courts of First Instance. The rules shall be uniform for all Courts of First Instance throughout the Islands. Such rules, when duly made and promulgated and not in conflict with the laws of the United States or of the Philippine Islands, shall be binding and must be observed, but no judgment shall be reversed by reason of a failure of the court to comply with such rules unless the substantial rights of a party have been impaired by such failure."

The rule in question has not been put in force as provided in this section. It has no uniform application throughout this jurisdiction. Indeed it is in direct conflict with the practice followed in many of the courts throughout the

Islands wherein actual notice is always required under the circumstances wherein the Manila rule undertakes to do away with the necessity therefor. Without deciding how far a rule of practice of this character can be held to be binding upon counsel or litigants who are affirmatively shown to have been advised of its existence, it is very clear that it can have no effect to deprive any person who is unacquainted with its existence of any right to which he would be entitled in the absence of the rule. Defendants and their counsel were clearly entitled to notice of the date of the trial, unless they can be charged with constructive notice under the rule in question. It does not appear that they were advised of the existence of the rule, and we are of opinion and so hold that it was reversible error to proceed with the trial in the absence of notice to the defendants or their counsel, and that the new trial, which was prayed for in the court below, should have been granted.

It appears that some time prior to the hearing of the application for a new trial the amount of the judgment was paid, and it is contended that the amount of the judgment having been paid there remained at that time, in the language of the trial judge, "no actual controversy or right to new trial or appeal." It appears, however, that by special order of the trial judge, execution was issued on the judgment and manifestly payment made under such conditions cannot be given the effect of a voluntary settlement putting an end to the litigation.

Under the provisions of section 443 of Act No. 190 the trial judge is expressly authorized to issue execution immediately upon the entry of final judgment; but the right so to do should not be construed so as to deprive the defendant of his rights to a new trial and appeal, in the event that the amount of the judgment is recovered under the levy of the execution, or paid by the defendant in order to avoid the costs, expense and damage which would necessarily result from the levy of the execution.

The judgement entered in the court below should be reversed and a new trial granted, without costs in this instance. So ordered.

Arellano, C. J., Torres and Trent, JJ., concur.

Moreland, J., concurs in the result.

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.