

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLEE, VS. ILONE CONSTRUCTION GO., INC., AND PIO JOVEN, DEFENDANTS AND APPELLANTS.

G.R. No. 9636. May 15, 1959

Ponente: ENDENCIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-9636/>

ENDENCIA, J.:

This appeal has been certified to this Tribunal by the Court of Appeals in its Resolution of July 14, 1955, not only because the lone question raised is purely of law, but also for the reason that the amount involved exceeds P50,000.

After the issues have been joined in civil case No. 14121 of the court of first instance of Manila, entitled Philippine National Bank, plaintiff, versus Hone Construction Co., Inc., and Pio Joven, defendants, for the collection of an aggregate amount of P134,623.93 spread over six causes of action, plus interest and attorney's fees; and after several postponements, its hearing was finally set for September 18, 1953, at 2:30 p.m., with due notice to the parties. On September 17th, the day prior to the scheduled hearing, however, Atty. Jimenez B. Buendia for the defendants filed an urgent motion dated September 15th and served upon plaintiff's counsel on September 16th, praying for the postponement of the hearing "to another date next week or soon thereafter as the Court calendar permits," by reason of the illness of his client expressed in a telegram from Bangued, Abra. which was attached to said motion. The record does not show any written or verbal order of the lower court either denying the motion or postponing the hearing to another date; neither is there a showing of any notice to the parties relative to the action taken thereof, if any, by the court. For unknown reasons, however, and without written or verbal notice to defendants or their counsel, the hearing was calendared for October 15, 1953, at 8:30 a.m. Again there is no showing what transpired on that date and hour as there was no order issued by the court, either written or verbal, nor minutes taken of the proceedings.

From the transcript of stenographic notes purportedly taken down on the morning of October 17, 1953, we gather that presiding Judge Demetrio B. Encarnacion allegedly commissioned deputy clerk of court Vicente Guasch who, in turn, supposedly deputized stenographer B. Ma. Punsalan, ;to receive the evidence in the case. Said transcript is prefixed in the following language;

"TRANSCRIPT

of the stenographic notes taken down by the undersigned Court Stenographer during the hearing of the above-entitled and numbered case had in open court, before him, duly deputized or commissioned, thru the Deputy Clerk of the Branch of this Court, by the Hon. DEMETRIO B. ENCARNACION, Judge presiding over this Sala, to receive the evidence in said case. (See Court Order to the effect.)

October 17, 1953

Morning Session"

It appears, however, that there was no written order of deputation, or minutes showing it other than the aforementioned headnote of stenographer Punsalan made in his transcript. Neither was there a written order setting the hearing before the stenographer on October 17, 1953, or any notice to defendants' counsel to that effect.

On the aforesaid date, plaintiff presented its evidence before the stenographer in the absence of defendants and their counsel, and on the basis of the evidence thus taken, Judge Encarnacion rendered a decision in favor of the plaintiff, dated May 4, 1954, at Pasig, Rizal, for Manila, wherein, among others, His Honor stated "Celebrose la vista de esta causa el dia 17 de Octubre de 1958, comparecio el abogado Angel Ilagan, en representation de la entidad demandante, no habiendolo hecho los demandados, ni ninguna persona en su representacion." Upon receipt on May 12, 1954, of the copy of the decision, Atty. Buendia for the defendants filed a verified motion to set aside the judgment not only on the ground that it was based upon an ex-parte hearing conducted merely by a stenographer who was not duly deputized, but that counsel never has been notified of the hearing. Judge Froilan Bayona, who took the place of Judge Encarnacion and before whom said motion was heard, denied the petition in his order dated July 12, 1954. On July 17, 1954, Atty. Buendia, now in representation only of Hone Construction Co., Inc., filed a verified motion for reconsideration. Meantime, the other defendant, Pio Joven, engaged the services of the law firm of Diaz & Baizas who, on July 18, 1954, also filed a verified motion for the reconsideration of the order of July 12th. Both motions having been denied, the two defendants filed separate motions for new trial, which were likewise denied by the court in its order of July 31, 1954. Hence the appeal.

Appellant Pio Joven claims that the lower court erred

"in trying the above-entitled case on October 15, 1958, without previous proper notice thereof to the defendants-appellants or their counsel, resulting in the failure of the latter to attend and to present their evidence at such trial, and in subsequently rendering judgment on the basis, solely of the plaintiff-appellee's evidence, in violation of the fundamental constitutional right of every person of due process before he may be deprived of either life, liberty or property."

and appellant Ilone Construction Co., Inc., assigns quite the same error in the following language:

"The lower court erred in deciding this case on May 4, 1954, a copy of which was received on May 12, 1954, because said decision was rendered after an ex-parte hearing, without notice to the defendants-appellants who filed their answer with counterclaim in accordance with the Rules of Court and the law, and the decision is in violation of the fundamental constitutional right of every person to be heard under the due process clause of the Constitution before he may be deprived of life, liberty or property,"

The appeal is justified. As related in the facts set down hereinbefore, the petition for postponement filed by appellants on September 17th has never been acted upon by the court, otherwise the action taken would have appeared in a written order. This, however, does not exist. And even if such order were ever entered, the defendants or their counsel were never notified thereof.

With regard to the authority given to deputy clerk Vicente Guash to receive the evidence, no formal order to that effect is found in the record; neither was any written order issued authorizing stenographer Punsalan to receive the evidence, and were such authority given verbally, the defendants were certainly never notified thereof.

As to the reception of evidence before the stenographer scheduled for the morning of October 17, 1953, again no order was issued to that effect, nor notice sent to defendants for the purpose. It could not be said, either, that said defendants were in default and therefore not entitled to notice, as they have duly filed their answer to the complaint. The mere fact that defendants failed to appear at the scheduled hearing on September 18th on account of their having filed an urgent petition for postponement the day before, does not deprive them of their right to be notified of any and all ulterior proceedings, specially with regard the presentation of evidence.

Considering that the sum claimed in the complaint amounts to P134,623.93, plus interest, the lower court, in deciding the case in favor of the plaintiff without giving defendants any opportunity, for lack of notice, to present their defense and adduce evidence in support of their counterclaim in the sum of P292,000, has certainly denied them their right to due process and to have their day in court; consequently, the decision is null and void ab initio. Under the Rules of Court, the clerk of court is charged with the duty to serve notice of hearings and postponements to the parties, either personally or by mail, so that they could appear and have their day in court during the trial of their cases. In the case at bar, however, the defendants were not notified 1) of the resolution, if any regarding their urgent motion for postponement dated September 15th, and 2) of the hearing before either deputy clerk Guash or stenographer Punsalan, by reason of which they failed to appear.

Plaintiff contends, however, that the defendants have no right to ask this Tribunal to set aside the decision because they did not take any step to ascertain the status of the case, thus they were guilty of negligence and have abandoned their interest. This reasoning does not merit serious consideration, for it is a naked fact that the court never entered a formal order either granting or denying the motion for postponement of September 15th, and if there were a verbal resolution at all on the matter, the defendants were certainly not notified thereof. Plaintiff likewise claims that the defendants have no right to assume that their motion for postponement would be granted by the court; but again it is undisputed that the presentation of evidence was postponed because the court delegated its reception to deputy clerk Guash who, in turn, deputized stenographer Punsalan to receive and take it down. Indeed this is a case wherein glaringly improper procedure has been adopted notwithstanding that the amount involved is quite considerable.

Wherefore, the decision appealed from is hereby set aside, and the case remanded to the court of origin for further proceedings, without costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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.