It is the contention of the petitioners that respondent Judge acted in excess of his jurisdiction or with grave abuse of discretion in trying the case appealed to him for the reason that under Section 10, Rule 40 of the Rules of Court, which read as follows:

> "Sec. 10. *Appellate powers of Courts of First Instance where action not tried on its merits by inferior courts.* — Where the action has been disposed of by an inferior court upon a question of law and not after a valid trial upon the merits, the Court of First Instance shall on appeal review the ruling of the inferior court and may affirm or reverse it, as the case may be. In case of reversal, the case shall be remanded for further proceedings.",

he should have remanded the case to the Justice of the Peace Court of Pili for further proceedings after he evidently had reversed the ruling of said Justice of the Peace Court, dismissing the case. We agree with petitioners. According to Section 10, Rule 40 of the Rules of Court, where a justice of the Peace Court disposes of a case not on its merits but on a question of law as when it dismisses it, and it is appealed to the Court of First Instance, the latter may either affirm or reverse the ruling or order of dismissal. In the present case, it presumably reverses said order; instead of trying the case on the merits, as it did, it should have returned the same to the Justice of the Peace Court for further proceedings.[1]

IN VIEW OF THE FOREGOING, the petition is granted. The decision of respondent Judge is hereby set aside and he is directed to remand the case to the Justice of the Peace Court for further proceedings. No costs.

Although we are ordering the remand of the case by respondent Judge to the Justice of the Peace Court, nevertheless, there is reason to believe that said case is already barred on the ground of *res adjudicata* and that the Justice of the Peace Court was correct in dismissing the same. If the plaintiff seeks damages due to the failure of the defendants in the first case to deliver the carabao to him within a reasonable time after said decision became final and executory, a separate action might be necessary not for the delivery of the carabao, but for damages suffered, if any, after the rendition of that decision.

As to the delivery of the carabao, the decision of the Court of First Instance in Civil Case No. 3453 in favor of plaintiff Paladin was rendered on January 14, 1957. Within five years thereafter, Paladin may yet file a motion for its execution. This is what he should have done, instead of filing the second case, Civil Case No. 87, in the Justice of the Peace Court.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, and J.B.L. Reyes, JJ., concurred.

Barrera, J., concurred in the result.

VI

Nicanor E. Gabriel, et al., Plaintiffs-Appellants, vs. Carolino Munsayac, et al., Defendants-Appellees, G. R. No. L-12143, June 30, 1960, Bautista Angelo, J.

CIVIL PROCEDURE; PRO-FORMA MOTION FOR NEW TRIAL; MOTION FOR RECONSIDERATION.—Where the order of the trial court denying the motion for new trial on the ground that it is merely *pro-forma* has already become final for failure of appellant to ask for its reconsideration within the period of thirty days from the date it was received by counsel, but instead gave notice of his intention to appeal from the decision on the merits, appellant can not attack the validity of said order for the first time on appeal.

D E C I S I O N

Nicanor E. Gabriel brought this action before the Court of First Instance of Isabela to recover from Carolino Munsayac and Rafael de Leon certain sums of money allegedly advanced by the former to the latter in connection with the construction of a government project known as the "Pinakanawan Bridge Approach" along the Cagayan valley road which was the subject of a contract entered into between plaintiff and the government on June 5, 1950, plus damages and attorney's fees.

Defendants filed separately their respective answers setting up certain special defenses and a counterclaim. After trial, the court rendered judgment ordering defendant Munsayac to pay to plaintiff the sum of ₱674.35, but plaintiff in turn was ordered to pay defendant Rafael de Leon the sum of ₱4,351.92 as prayed for in the latter's counterclaim.

On September 28, 1955, plaintiff filed a motion for new trial, which was denied by the court in an order entered on October 15, 1955. And on October 19, 1955, plaintiff gave notice of his intention to appeal from the decision rendered by the court on August 24, 1955.

On November 11, 1955, defendant Munsayac filed a motion to dismiss the appeal on the ground that the notice of appeal was filed beyond the reglementary period considering that the motion for new trial filed by plaintiff was merely *pro-forma* as it does not conform with the rule relative to a motion for new trial. On December 10, 1955, plaintiff filed a petition for relief praying that the order of the court of October 15, 1955 denying plaintiff's motion for new trial on the ground that it was merely *pro-forma* be set aside, to which defendant Munsayac filed an opposition on January 23, 1956. On October 29, 1956, the court, considering the reasons alleged in the opposition founded, denied the motion for relief. Plaintiff interposed the present appeal seeking to set aside the order denying his petition for relief as well as the order denying his motion for reconsideration.

It should be noted that the decision of the trial court on the merits was rendered on August 24, 1955, copy of which was received by plaintiff's counsel on September 3, 1955. On September 28, 1955, plaintiff's counsel filed a motion for new trial with the request that it be included in the calendar for October 15, 1955 stating as reason the fact that counsel for plaintiff will be busy appearing before the House Electoral Tribunal in an election case then pending before it. The purpose of counsel was to appear before the court on said date and argue his motion orally and if necessary "supply" his oral argument with a written memorandum. However, he sent a telegram on October 14, 1955 praying that the hearing be postponed to October 18, 1955 alleging again as reason the fact that he was busy attending to the electoral protest. But when he went to Ilagan, Isabela on October 18, 1955 ready to argue on his motion for new trial he was surprised to find that his said motion was denied on October 15, 1955.

Plaintiff's counsel advanced as reasons for his petition for relief the following facts; that it was his intention to support his oral argument on the motion for new trial with a written memorandum so much so that he started its preparation in Ilagan, Isabela after filing the motion for new trial, but could not finish it on time as he had to leave for Manila in order to overtake the hearing of the electoral case between Albano and Reyes; that instead of finishing the memorandum, counsel prepared a supplementary petition for new trial wherein he pointed out in detail the errors which in his opinion were committed in the decision, putting the original and the copies in different envelopes ready to be sent to court and to the parties, but when he went to the post office to mail them he found the same already closed; that in the morning of September 13, 1955, being indisposed because he was then suffering from severe headache, plaintiff's counsel decided to see his doctor for treatment and entrusted the three envelopes to his housemaid, one Virginia de Vera, with the request to mail the same, but unfortunately Virginia lost the three envelopes and failed to inform counsel for her failure to mail them. Counsel now claims that the trial court committed a grave abuse of discretion in denying the petition for relief.

[1] Mirano vs. Diaz, 75 Phil. 274; Saavedra vs. Pecson, 76 Phil. 330.

There is no merit in the appeal. The record shows that appellant as well as his counsel received notice of the decision of the court on September 3, 1955. On September 23, 1955, appellant's counsel filed a motion for new trial which he asked that it be calendared for hearing on October 15, 1955. On October 15, 1955, the trial court issued an order denying the motion on the ground that it was merely *pro-forma*. On October 15, 1955, appellant's counsel received copy of the order denying the motion, and on October 19, 1955, he filed a notice of appeal from the decision on the merits. On November 11, 1955, appellee's counsel filed a motion to dismiss the appeal on the ground that it was filed beyond the reglementary period. On December 10, 1955, appellant's counsel filed a petition for relief, which the trial court denied on October 29, 1956.

It is apparent that the order of the trial court rendered on October 15, 1955 denying the motion for new trial on the ground that it is merely *pro-forma* has already become final for failure of appellant to ask for its reconsideration within the period of thirty days from the date it was received by counsel, inasmuch as instead of filing a motion for reconsideration he gave notice of his intention to appeal from the decision on the merits. It would appear, therefore, that appellant cannot now attack its validity for the first time in this instance.

But counsel may claim that the validity of said order has in fact been assailed in his petition for relief wherein he asked that it be set aside considering the explanation he has advanced justifying his failure to appear at the hearing of the motion for new trial, as well as his failure to send the supplementary petition wherein he set forth the reasons pinpointing the errors allegedly committed by the trial court. But the trial court acted correctly in not according merit to the alleged attempt to file a supplementary petition for new trial, considering that the petition for relief was filed on December 10, 1955, or almost a month after appellee's counsel had filed his motion to dismiss the appeal. This fact proves the groundlessness of counsel's claim that he prepared such supplementary petition and gave it to one Virginia de Vera for mailing, because if such claim were true counsel would have immediately filed a motion for reconsideration setting forth the reason for his failure to comply with the rule. But, as the record shows, instead of filing such motion, he gave notice of his intention to appeal, apparently in the belief that he could do away with such technicality thru an oversight on the part of appellee's counsel. Verily, the alleged preparation of a supplementary petition is but an afterthought or a last-minute effort to obviate the objection that the motion for new trial was merely *pro-forma* which scheme cannot justify a petition for relief.

> "The granting of a motion to set aside a judgment or order on the ground of mistake or excusable negligence is addressed to the sound discretion of the court (See Coombe vs. Santos, 24 Phil., 446; Daipan vs. Sigabu, 25 Phil., 184). And an order issued in the exercise of such discretion is ordinarily not to be disturbed unless it is shown that the court has gravely abused such discretion. (See Tell vs. Tell, 48 Phil., 70; Macke vs. Campo, 5 Phil., 185; Calvo vs. De Gutierrez, 4 Phil., 203; Manzanares vs. Moreta, 38 Phil., 821; Salva vs. Palacio & Leuterio, G. R. No. L-4247, January 30, 1952.) Where, as in the present case, counsel for defendant was given almost one month notice before the date set for trial, and upon counsel's failure to appear thereat, the trial court received the evidence of the plaintiff and granted the relief prayed for, the trial court did not abuse its discretion in refusing to reopen the case to give defendants an opportunity to present their evidence." (Palileo v. Cosio, 51 O.G., No. 12, 6181)

Wherefore, the order appealed from is affirmed, with costs against appellant.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, J.B.L. Reyes, Barrera and Gutierrez David, JJ., concurred.

WHAT THE WORD "SUCCESS" MEANS

by Joaquin R. Roces

Many young men and women define success in terms of a big house, two or three cars, and a large bank deposit.

I would measure a man's success by the extent he has helped his fellow men on this earth in a positive manner, and conversely, his success could be measured by the way mankind in general and his friends in particular have learned to love him. That is, as judged by his neighbors, his friends, his brothers, his in-laws, and not by those self-anointed and self-appointed judge of mankind who have set definite moral standards where God himself has not.

I would measure a man's success not by the work he has achieved but by the effort he put into it. I would measure a man's success not by the virtues he accumulated but by the manner of weaknesses he learned to overcome. And lastly, I would measure his success by the happiness and joy he got out of his youth, his life, the beauty that God laid around him.

As for the big house, two or three cars, and a large bank deposit, —they certainly are not the measure of success. But let me tell you. A small house, one car, and a small bank deposit would help.

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