I

George McEntee, Plaintiff-appellant, vs. Perpetua Manotok, Defendant-appellee, G.R. No. L-14968, October 27, 1961, Labrador, J.

1. PLEADING AND PRACTICE; MOTIONS FOR POSTPONEMENT OF TRIAL AND NEW TRIALS; CIRCUMSTANCES TO BE CONSIDERED IN GRANTING OR DENYING THE SAME. — In the consideration of motions for postponement of trials, as well as in those for new trial, two circumstances should be taken into account by the court, namely, first the merits of the case of the movant and second, the reasonableness of the postponement, the rules pointing out to accident, surprise or excusable neglect as reasons therefore. So, with respect to the first circumstance the rules require an affidavit of merits, with respect to the second, an affidavit showing the accident, surprise or excusable neglect. There may be an accident, surprise or excusable neglect justifying postponement or reconsideration, but if movant does not present a meritorious claim or defense, denial of his motion for postponement may not be considered as an abuse of the discretion of the court. Note that discretion is lodged in the presiding judge, and this discretion should be used in considering the circumstances above mentioned.

2. ID.; ID.; SUDDEN ILLNESS OF COUNSEL; ABSENCE OF MEDICAL CERTIFICATE. — In the case at bar, the accident that had prevented appearance of counsel for plaintiff on the day set for trial was sudden illness. There may have been no certificate of illness, but this circumstance is explained by the sudden appearance or aggravation of the illness, rendering it inconvenient if not difficult, for counsel to secure the required certificate of illness. Accidents or illness, if sudden and unexpected, can not always be subject to a certificate; the circumstances may render it impossible to secure in time the medical certificate that is needed, or the person making the affidavit may not be available at the time to prepare opportunely the affidavit explaining the excusable neglect.

3. ID.; ID.; WHEN COURT SHOULD NOT BE TOO STRICT IN DEMANDING THAT ILLNESS OF COUNSEL BE ATTESTED BY MEDICAL CERTIFICATE. — Where plaintiff had asked for postponement of trial for the first time because counsel was ill, and inasmuch as his sickness is an accident that could not have been foreseen at the time of the trial, the court should not have been too strict in demanding that illness be attested by a medical certificate of a competent physician.

4. ID.; RULES OF PAOCEDURE; TECHNICAL, AND RIGID ENFORCEMENT SHOULD NOT BE MADE. — Rules of procedure are used only to help secure substantial justice. (Rule 1, Sec. 2) If a technical and rigid enforcement of the rules is made, their aim would be defeated. In the case at bar, it appears that the rules which are merely secondary in importance are made to override the ends of justice; the technical rules had been misapplied to the prejudice of the substantial right of a party.

Pedro Magsalin, for the plaintiff-appellant.
Antonio Gonzales, for the defendant-appellee.

D E C I S I O N

Appeal from a decision dismissing plaintiff's complaint and an order denying his motion for reconsideration and new trial in Civil Case No. 9742 of the Court of First Instance of Laguna. The appeal was originally taken to the Court of Appeals but was endorsed to this Court for decision because the issue raised therein is purely one of law.

George McEntee filed the instant action against Perpetua Manotok to recover the possession of a parcel of land situated in Barrio Bangbang, Los Baños, Laguna. In his amended complaint dated February 26, 1954, plaintiff substantially alleges that he is the registered owner of that parcel of land covered by Original Certificate of Title No. P-56 with an area of 7,273 sq. meters, more or less, which is located in the above-mentioned place; that he acquired his title over the said land by means of a free patent grant from the Government in 1952; that he, personally and through his predecessor in interest, had been in actual, continuous and peaceful possession over the same since 1926 until sometime in the month of November, 1952 when the defendant unlawfully entered and occupied the northern portion of said land of approximately 1,000 sq. meters which is covered within the above-stated certificate of title; that the defendant also gathered and took the harvest of the improvements which he had introduced therein consisting of fruit-bearing trees and plants, and appropriated them for her own use and benefit and that by reason of these alleged illegal acts of defendant, plaintiff also claims to have suffered damages in the amount of ₱1,000 plus a similar sum for attorney's fees.

On March 18, 1954 the defendant answered the complaint setting up, among other things, the defense that plaintiff's free patent title was obtained from the Bureau of Lands through fraud and misrepresentation; that the plaintiff, either personally or thru his predecessor in interest, had never occupied and cultivated the land in question so as to entitle him to a free patent thereto; that he has not posted the corresponding notice of his application as required by law; that he has not caused the same to be investigated by a land inspector, and if there is any investigation, he gave false testimony and caused the report to contain false findings; that the land in question is embraced and included in her (defendant's) prior and subsisting Miscellaneous Lease Application No. V-194 of the Bureau of Lands; and consequently, plaintiff acquired no free patent title or right over the same. By way of counterclaim, defendant reproduced the above-material allegations as integral parts of said counterclaims, and prays that plaintiff's title be annulled and that damages amounting to ₱3,000 be awarded to her. Attached to the answer with counterclaim are the original and supplemental petitions to invalidate and annul plaintiff's title which the defendant filed with the Bureau of Lands and the order of the Director of said Bureau causing the investigation of defendant's charges which consist mostly of those defenses embodied in the answer.

In answer to defendant's counterclaim, plaintiff specifically denied its material allegations, and averred that his title was secured by him through legal proceedings and after he had complied with all requirements of the law for its issuance. He also alleged that his title over the land was acquired for more than one year already, hence it can no longer be revoked or cancelled.

Thereafter, defendant presented a motion for leave to file a supplemental answer which was granted by the trial court. This supplemental answer attaches the order of the Director of Lands finding the charges of defendant adverted to in the original an-

swer well founded. Plaintiff in turn submitted his reply contending that the order of the Director is not yet final and still subject to a motion for reconsideration, and the same is also appealable to the Secretary of Agriculture and Natural Resources. He further alleges that said order was issued without jurisdiction and, is, therefore null and void. In the meantime defendant prayed for the issuance of a preliminary injunction to restrain the plaintiff from disturbing her possession. After a preliminary hearing on May 19, 1955, the trial court granted the injunction.

The trial court set the case for hearing on July 1, 1955 but the hearing was postponed as requested by defendant who claimed that she was going to take the bar examinations to be given on August of that year. The hearing was reset for September 8, 1955 but on this date, plaintiff's counsel, Atty. Bernardo Q. Aldana, failed to appear. Instead he filed an urgent petition for transfer of said hearing on the ground that he is seriously ill and it is physically impossible for him to travel on account of said illness. This petition was however, not verified nor was there a medical certificate attached. On defendant's objection, the trial court denied the motion for continuance and allowed the defendant to present her evidence *ex parte*. Said counsel, upon learning of this incident, moved but failed to have this order reconsidered. Several days later the trial court rendered its decision dismissing plaintiff's complaint for failure to prosecute, i.e., absence of counsel, and making the injunction previously issued permanent.

Upon receipt of the decision, said counsel for plaintiff asked for its reconsideration and new trial on the ground that his failure to appear on the day of trial was due to sickness which constitutes an accident or excusable negligence to warrant the reopening of the case. Furthermore, he asserted the indefeasibility of his free patent title which can no longer be cancelled by the Director of Lands, invoking the case of Sumail vs. Judge of Court of First Instance of Cotabato, G..R. No. L-8278, April 30, 1955. The trial court denied this motion, so plaintiff prosecuted this appeal to the Court of Appeals. Before the said appellate court, plaintiff-appellant presented a new motion for new trial based on the same grounds previously raised in the court below but this time he attached thereto the following as annexes: (a) affidavit of the physician, Dr. Eugenio S. De Leon, who attended to the alleged illness of plaintiff's counsel; (b) a photostatic copy of the permit from the United States Army for plaintiff's predecessor in interest to occupy the land in question; (c) a copy of the decree for the issuance of a free patent by the Director of Lands; and (d) a copy of plaintiff's original certificate of title issued by the Register of Deeds of Laguna.

In his brief, plaintiff-appellant contends that the trial court erred or committed at least a grave abuse of discretion in denying his urgent petition for transfer of hearing on September 8, 1955 and in not giving him an opportunity to present his evidence to support the complaint. He claims that the failure of his former counsel (the late Atty. Bernardo Q. Aldana) to attend said hearing on that date on account of illness is an accident which consitutes a valid ground that would entitle him to a favorable continuance of said hearing; and that this fact had been satisfactorily explained by said counsel in his motion for reconsideration and new trial. Thus, the late Atty. Aldana explained that although he had been sick for about a month he did not present the urgent petition for transfer earlier because he hoped and believed that he will recover and get well before said date, but unfortunately his illness, became more serious and such illness, according to his attending physician, would endanger his life, if he traveled by any means of transportation; that said motion was not accompanied by a medical certificate because he was not able to contact his attending physician at the time he prepared it, and at any rate this defect has been cured or supplied by the affidavit of Dr. De Leon attached to the motion for new trial filed in the Court of Appeals; that although said petition was not verified, the fact that it is the counsel himself who asks for the continuance due to his own illness should have been given merit by the trial court and that said court should have taken and believed his word because it was made by the lawyer himself who is deemed to be an officer of the court. And to demonstrate the seriousness of former counsel's illness, the present counsel for plaintiff has manifested that Atty. Aldana's illness became worse from September to November, 1955 and he was operated on the stomach for cancer of the intestines which eventually caused his death on May, 1956. Furthermore, plaintiff contends that he has a valid and meritorious cause of action against the defendant, the land in question being covered by a Torrens title which has already become indefeasible, and that he should have been respected in his possession. Hence, he concludes that he was deprived of his day in court and should have been granted a new trial because there is a great probability that the judgment will be altered should he be allowed to adduce evidence in his favor.

On the other hand, the defendant-appellee contends that the trial court correctly dismissed the complaint for failure to prosecute on the part of the plaintiff, because the absence of plaintiff's counsel during the hearing is not excusable; that the petition for transfer was presented only during the day of hearing when he could have done it earlier because he received notice thereof as early as July 25, 1955; that said petition was defective because it was not verified and was unaccompanied by a medical certificate. He further maintains that the free patent title issued in plaintiff's favor is no longer effective because the Director of Lands has already recommended its cancellation and the same was later affirmed by the Secretary of Agriculture and Natural Resources.

The principal issue to be resolved in this case is whether the denial of plaintiff's motion for continuance constitute an abuse of discretion which will entitle plaintiff to a grant of new trial.

In the consideration of motions for postponement of trials, as well as in those for new trial, two circumstances should be taken into account by the court, namely, first the merits of the case of the movant and second, the reasonableness of the postponement, the rules pointing out to accident, surprise or excusable neglect as reasons therefor. So, with respect to the first circumstance the rules require an affidavit of merits; with respect to the second, an affidavit showing the accident, surprise or excusable neglect. There may be an accident, surprise or excusable neglect justifying postponement or reconsideration, but if the movant does not present a meritorious claim or defense, denial of his motion for postponement may not be considered as an abuse of the discretion of the court. Note that discretion is lodged in the presiding judge, and this discretion should be used in considering the circumstances above mentioned.

Going now to the case at bar, we find that there was an accident that had prevented appearance of counsel for plaintiff on the day set for trial, and that is, sudden illness. There may have been no certificate of illness, but this circumstances is explained by the sudden appearance or aggravation of the illness, rendering it inconvenient if not difficult, for counsel to secure the required certificate of illness. Accidents or illness, if sudden and unexpected, can not always be subject to a certificate; the circumstances may render it impossible to secure in time the medical certificate that is needed, or the person making the affidavit may not be available at the time to prepare opportunely the affidavit explaining the excusable neglect.

In the case at bar, we also find that while the defendant had been asking for postponement, because he was waiting a certain resolution of the Lands Department, it does not appear that postponement has been granted at any time upon motion of the plaintiff. This fact is apparent from the record on appeal as well as from the decision of the trial judge. Since this was the first time that plaintiff had asked for postponement because counsel was ill, and inasmuch as his sickness is an accident that could not have been foreseen at the time of the trial; the court should not have been too strict in demanding that illness be attested by a

medical certificate of a competent physician.

Going now to the other circumstances, the merits of the cause of action of the plaintiff, the pleadings show that the plaintiff has a certificate of title by reason of the grant of a free patent to him; that the land subject of the action is covered by the patent and the certificate of title; and that the same land is in the possession of the defendant. Not to allow plaintiff an opportunity to present his side of the case would certainly result in a clear injustice to plaintiff. As a matter of fact the decision in itself, which dismisses the action of the plaintiff, causes him an injustice because by an error of the judge, plaintiff has been deprived of the right to possess a certain portion of his titled property. The court reasons out that a certain resolution of the Director of Lands has cancelled the certificate of title. That is a matter which should have been threshed out at the trial or hearing of the case.

At this stage of the proceedings we must remind judges and counsel that the rules of precedure are not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure substantial justice. (Rule 1, Sec. 2) If a technical and rigid enforcement of the rules is made, their aim would be defeated. In the case at bar, it appears that the rules which are merely secondary in importance are made to override the ends of justice; the technical rules had been misapplied to the prejudice of the substantial right of a party.

For the foregoing considerations, the decision and the proceedings in the court below are hereby set aside and the case remanded to said court for further preceedings in accordance herewith. No costs.

Bengzon, Padilla, Bautista Angelo, Concepcion, J.B.L. Reyes, Paredes and De Leon, JJ., concurred.

II

Enrique Icasiano, Plaintiff-Appellee vs. Felisa Icasiano, Defendant-Appellant G.R. No. L-16592, October 27, 1961, *Concepcion, J.*

1. COUNTERCLAIM; ORDER DISMISSING IT INTERLOCUTORY; WHEN APPEALABLE.— The order granting plaintiff's motion to dismiss a counterclaim is interlocutory in nature and, hence, not appealable, until after judgment shall have been rendered on plaintiff's complaint.
2. COMPENSATION; REQUISITES.— When all the requisites mentioned in Article 1279 of the Civil Code are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors are not aware of the compensation.
3. COUNTERCLAIM; MAY BE SET UP TO REDUCE MONEY CLAIM BY PLAINTIFF.— Counterclaim may be set up, not so much to obtain a money judgment against plaintiff, as by way of set-off, to reduce the sum collectible by the latter, if successful, to the extent of the concurrent amount (Moore's Federal Practice, Vol. 1, pp. 695-696) (See also Wisdom vs. Guess Drycleaning Co., 5 Fed. Supl., 762-767).

Jaime R. Nuevas for the plaintiff-appellee.
Jose W. Diokno for the defendant-appellant.

D E C I S I O N

Appeal from an order of the Court of First Instance of Manila granting plaintiff's motion to dismiss defendant's first counterclaim and dismissing the latter.

The facts are simple enough. In his complaint, dated July 31, 1959, plaintiff Enrique Icasiano sought to recover ₱20,000, plus interest and attorney's fees, from the defendant, Felisa Icasiano. Within the reglementary period, or on November 9, 1959, the latter filed an answer admitting some allegations of the complaint, denying other allegations thereof and setting up special defenses, as well as two (2) counterclaims — one for the sum of ₱150.00 allegedly borrowed by plaintiff from the defendant, and another for moral and exemplary damages, attorney's fees and expenses of litigation, allegedly suffered and incurred by the defendant in consequence of this suit, in such sum as the court may find just and reasonable.

On November 17, 1959, plaintiff moved (a) to dismiss the first counterclaim; (b) to strike out paragraph (2) of defendant's answer; and (c) to set the case for hearing on the merits. Despite defendant's objection thereto, on December 7, 1959, the lower court granted the first prayer, denied the second prayer and set the case for hearing on a stated date. Notice of the order to this effect was served on the defendant on December 17, 1959, who, three (3) days later, filed her notice of appeal and appeal bond. Plaintiff countered with a motion to strike out defendant's appeal "in so far as said notice refers to the setting for hearing of the above entitled case on January 7, 1960, at 8:30 a.m., for the simple reason that said order, in so far as it sets a date for the hearing of the above entitled case is interlocutory and, therefore, not appealable, and for the further reason that the intended appeal from said setting order is plainly frivolous and interposed only for the purpose of delay". This motion was denied in an order dated December 19, 1959, which allowed defendant's appeal "from the order of December 7, 1959, insofar as it orders the dismissal of defendant's first counterclaim, and setting the hearing of this case on January 7, 1960, at 8:30 a.m." Upon denial by the lower court of plaintiff's motion for reconsideration of its last order, defendant filed her record on appeal, which after its amendment, was approved "there being no opposition thereto."

Sometimes after the transmittal of the amended record on appeal to this Court, or on February 4, 1960, plaintiff filed a motion to dismiss the appeal upon the ground that defendant's appeal "from the order of the trial court dated December 7, 1959, dismissing her first counterclaim is manifestly and palpably frivolous" and that her appeal from said order insofar as it set the case for hearing is "ostensibly dilatory, aside from the fact that such setting order is interlocutory and, therefore, not immediately appealable". This motion was denied by a resolution of this Court dated February 17, 1960. We, likewise, denied plaintiff's motion for reconsideration of said resolution.

The main issue in this appeal is whether or not the lower court erred in holding itself without jurisdiction to entertain defendant's first counterclaim. Before passing upon the merits of such question, it should be noted, however, that the order granting plaintiff's motion to dismiss said counterclaim is interlocutory in nature, and, hence, not appealable, until after judgment shall have been rendered on plaintiff's complaint (Cuano, et al. vs. Monteblanco, et al., L-14871, April 29, 1961; Villasin vs. Seven-Up Bottling Co. of the Philippines, L-13501, April 28, 1960; Caldera, et al. vs. Balcueba, et al., 84 Phil. 304).

However, plaintiff did not object to defendant's appeal from said order, except *insofar only as it set the case for hearing*. In other words, it acquiesced to said appeal as regard the dismissal of the aforementioned counterclaim. In fact, plaintiff interposed no objection to defendant's amended record on appeal. Hence, even if the lower court should have disapproved it, for the reason that said order of dismissal is interlocutory in character, its order approving the amended record on appeal entailed, at most, an error of judgment that does not affect our jurisdiction to entertain the appeal (Gatmaitan vs. Medina, L-14400, August 5, 1960; Salazar vs. Salazar, L-5823, April 29, 1953). It may not be amiss to add that the allegation in the motion, filed by plaintiff with this Court to dismiss the appeal, to the effect that the same is frivolous insofar as it seeks a review of the order dismissing defendant's first counterclaim, has no merit, not only because a party can not be barred upon such ground from appealing by writ of error, but, also, because we find that the lower court had erred in issuing the order complained of.

Indeed, regardless of whether the court of first instance may entertain counterclaims for less than ₱5,000, it must be noted that