

The “Two-Dismissal” Rule in the Rules of Court

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A welcome new feature of the Rules of Court, which took effect on 1 July, 1940, is the so-called “two-dismissal rule” in civil procedure. Section 1, Rule 30 of the Rules of Court states that “a civil action may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.” The new rule, taken from Rule 41 (a) of the Federal Rules of Civil Procedure, is designed to protect the defendant against “vexatious” litigation, or litigation that only serves to harass a defendant and subject him to groundless and wasteful litigation.

Being a new addition into the Rules of Court, the Article looks into the purpose, intent and effects of the rule by surveying a mass of American Jurisprudence involving its application. To provide further understanding and appreciation of the rule, the Article contains an examination of the meaning of the relevant terms contained in it: (1) “Notice;” (2) “Filed;” (3) “By Plaintiff;” (4) “Once dismissed;” (5) “Competent Court;” and (6) “action based on or including the same claim.” The Article concludes with the hope that the new rule will speed up the disposition of civil cases.