

6 Phil. 335

[ G.R. No. 2699. July 31, 1906 ]

**FRANCISCA SIMON, PETITIONER, VS. CLAUDIA CASTRO AND IRENE CASTRO,  
RESPONDENTS.**

**D E C I S I O N**

**WILLARD, J.:**

In the month of February, 1904, Claudia Castro and Irene Castro commenced an action in the Court of First Instance of Pampanga against Francisca Simon and Jose de Castro. The summons in that action was duly served upon Francisca Simon on the 10th day of February, 1904. Within the time required therefor by law she duly entered an appearance in the said action and afterwards, within the time prescribed by the rules, presented a demurrer to the complaint. This demurrer was overruled and, as we assume, in the order overruling it a period was fixed within which she might answer the complaint. She never presented any answer, and judgment was rendered against her on the 3d day of April, 1905, whereof she was duly notified on the 4th day of April of the same year.

Within sixty days thereafter, and on the 18th day of May, 1905, she presented this petition in this court, asking for the relief provided for in section 513 of the Code of Civil Procedure. That section is in part as follows:

“When a judgment is rendered by a Court of First Instance upon default, and a party thereto is unjustly deprived of a hearing, by fraud, accident, mistake, or excusable negligence, and the Court of First Instance which rendered the judgment has finally adjourned so that no adequate remedy exists in that court, the party so deprived of a hearing may present his petition to the Supreme Court within sixty days after he first learns of the rendition of such judgment, and not thereafter, setting forth the facts and praying to have such judgment set aside \* \* \*.”

In the case of Blanco vs. Guerra, No. 2979, November , 1905 (not reported), it appeared that Blanco and others who were defendants in a suit brought by Guerra against them in the Court of First Instance of Masbate had appeared and answered, that a day had been fixed for the trial of the case, and that the lawyer whom they had employed to represent them had made arrangements to be present at the trial but that he died suddenly as he was about to embark for that island; that the then defendants knew nothing of his death and by reason thereof they were not represented at the trial and judgment was rendered against them. They then filed a petition in this court, in accordance with the provisions of section 513 of the Code of Civil Procedure. In deciding the case this court said:

“It appearing that the petitioners, Blanco, Sendagorta, and Urrutia appeared and answered the complaint: *Held*, That section 513 of the Code of Civil Procedure is not applicable, and in consequence the petition is denied and costs are adjudged against the petitioner.”

In the case at bar it appears that the petitioner, Francisca Simon, had duly appeared in the action and had presented a demurrer and that the demurrer was overruled. While, by virtue of the provisions of section 101 of the Code of Civil Procedure, she had a right to answer, she was not bound to do so. She could stand upon her demurrer if she saw fit. We do not think that it can be said that the judgment which was rendered thereafter in accordance with the provisions of section 101 was a judgment rendered by default. The word “default” as used in section 513 is, we think, the “default” defined in section 128 of the Code of Civil Procedure.

The petitioner is therefore not entitled to the relief asked for, and the petition is dismissed with costs. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.*

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