

6 Phil. 674

[ G.R. No. 2095. November 13, 1906 ]

**MARIA ADELA, PETITIONER, VS. THE JUDGE OF THE COURT OF FIRST INSTANCE OF ILOCOS SUR, RESPONDENT.**

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

**WILLARD, J.:**

This is an original proceeding in this court brought under the provisions of section 513 of the Code of Civil Procedure, which provides 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, \* \* \* 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.”

It appears that Jose Bona commenced an action in the Court of First Instance of Ilocos Sur against Celestino Mina to recover the sum of 5,825.75 pesos. The summons in the action was duly served upon the defendant therein on the 24th of November, 1902. At the time of the service the defendant, Celestino Mina, delivered to the municipal president who made the service a statement in writing to the effect that by reason of sickness he could not make a journey in order to appear before the Court of First Instance, and he presented at the same time a doctor's certificate to the effect that he was suffering from a disease of the lungs and could not travel either in a vehicle or on horseback. On the 25th of February, 1903, the plaintiff amended his complaint, reducing the amount claimed therein to 5,725.75 pesos. A new summons was issued and duly served upon the defendant, Celestino Mina, on the 9th of March, 1903. The defendant then delivered to the municipal president who made

the service a statement in writing of the same nature as the one delivered in November, and another doctor's certificate to the same effect as the former one. These papers were forwarded to the office of the clerk of the court and were united to the expediente in the case.

Mina never appeared nor answered, and on the 15th of August, 1903, final judgment was entered against him by default for the recovery of the sum of 5,725.75 pesos, and costs. The defendant, Mina, died on the 7th of November, 1903. This proceeding was instituted by his widow, who claims to be a person interested in the case.

The defendant, Jose Bona, in his answer in this proceeding, alleges that plaintiff can not maintain it. We have not found it necessary to decide this question because we think the facts in the case do not bring it within the provisions of section 513. The defendant, Celestino Mina, was duly served with process. It was not necessary for him to appear personally in the Court of First Instance; he could have employed a lawyer to appear for him. The fact that he was sick and not able to travel, while it might have been an excuse for his not attending personally in court, was no excuse for his failure to employ some one to appear for him. It is probable that his failure to appear was due to his erroneous belief that he must, appear there personally. This was a mistake of law and for such mistakes relief can not, as a general rule, be granted. (*Zulueta vs. Zulueta*, 1 Phil. Rep., 254; *Guevara vs. Tuason & Co.*, 1 Phil. Rep., 27.) We hold that the petition should be denied, with costs. After expiration of ten days let judgment be rendered in accordance herewith. So ordered.

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

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