

1 Phil. 748

[ G.R. No. 1195. February 20, 1903 ]

**TRANQUILINA ALMADIN, PETITIONER, VS. CELESTINO ALMADIN, RESPONDENT.**

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

**COOPER, J.:**

This is an application to set aside a judgment of the Court of First Instance of Laguna rendered on the 1st day of October, 1902. It is made under section 513 of the Code of Civil Procedure, 1901, relating to procedure in cases of defaults caused by fraud, accident, or mistake.

The application shows that on the 6th day of October the defendant made a motion in the Court of First Instance for a new trial, supported by affidavit which presented excuse for his failure to attend on the day fixed for the trial of the case, the day on which the judgment was rendered.

This motion was filed in this court on the 2d day of February, 1903.

The section under which the application is made requires that the petition to the Supreme Court shall be made "within sixty days after the complainant first learns of the rendition of such judgment and not thereafter."

It will be unnecessary to consider the case presented on its merits, as it clearly appears that the application has not been made within sixty days after the defendant first was informed of the rendition of the judgment against him.

It is stated in the application that on the 31st day of January following, after the adjournment of the term of court at which the judgment was rendered, the Court of First Instance entered an order overruling the motion for a new trial.

The petitioner contends that the sixty days should be calculated from the date of the

rendition of the judgment of the Court of First Instance overruling his motion for a new trial, but the language of the statute is explicit upon this point.

The knowledge of the defendant of the rendition of the judgment by default must be attributed to him as of the date on which he filed his motion for a new trial in the Court of First Instance, to wit, the 6th day of October, 1902, and the sixty days for the filing of the application consequently expired on the 6th day of December, 1902.

The application to set aside the judgment comes too late, and the same must be overruled, which is accordingly done, with costs of proceedings against, the petitioner.

*Arellano, C.J., Torres, Willard, Mapa, and Ladd, JJ., concur.*

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