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Pleading–Default Judgement and New Trials

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was provided by a West Virginia statute. W. VA. CODE ch. 24, art. 5, § 1 (Michie 1966). While a petitioner is not entitled to a trial *de novo* under this provision, the fact that the statute empowers the court to set aside decisions of administrative agencies is sufficient to satisfy the requirements of a plain, speedy and efficient remedy.

The companies contended that they failed to make a timely application for a writ of certiorari because they did not receive the customary personal notice of the disposition of their case from the West Virginia Supreme Court. The district court noted that, in the absence of a statute requiring personal notice, the companies were not deprived of their right to due process since the decision had been read in open court. Therefore, the expiration of the time period in which a writ of certiorari could have been sought did not deny the companies the remedy contemplated by the Johnson Act.

**Pleading—Default Judgment and New Trials**

Defendants, husband and wife, failed to list plaintiff's claim in a bankruptcy proceeding. After defendant husband was adjudicated a bankrupt, plaintiff sued both defendants to recover principal and interest on a loan made before the bankruptcy proceedings. Defendant wife filed no answer to the complaint, but did appear in court. The jury rendered a verdict against defendants for one dollar, but the circuit court on plaintiff's motion set aside the one dollar judgment against defendant husband, and entered judgment against him, and a default judgment against defendant wife, for the total amount of the loan, including interest.

The West Virginia Supreme Court of Appeals reversed and remanded for a new trial, citing as errors: failure to give defendant wife, who had appeared in the action, at least three days prior notice of application for default judgment, a violation of Rule 55 (b) (2) of the West Virginia Rules of Civil Procedure; and failure to comply with Rule 59 (a) of the West Virginia Rules of Civil Procedure by entering a new judgment against defendant husband after setting aside the one dollar judgment. Rule 59 (a) permits the court to direct the entry of a new judgment in an action tried without a jury, but permits only a new trial, when, as in this case, there has been a trial by jury. *Investors Loan Corporation v. Long*, 166 S.E. 2d 113 (W. Va. 1969).