

GEORGE WHALEN, PETITIONER, VS. B. ROSE ET AL., RESPONDENTS.*G. R. No. 10950. August 26, 1915*

Ponente: TRENT, J.

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The plaintiff brought this original action of certiorari in the Supreme Court for the purpose of having reviewed a judgment entered in the justice of the peace court of the municipality of Iloilo. The justice of the peace, and B. Rose of Iloilo, and the sheriff of Manila are defendants. B. Rose instituted in the justice of the peace court of the city of Iloilo on the 21st of April, 1915, a civil action against the herein plaintiff, George Whalen, to recover the sum of P100, with interest and costs. On the 22d of April, 1915, a summons was issued by the justice of the peace directing the therein defendant Whalen to appear on the 12th of May of that year to answer and defend the action, otherwise judgment by default would be taken. The summons was served upon the defendant on the 28th day of April, 1915. He did not appear on the day set for trial and judgment was entered in favor of the plaintiff for the amount sued upon. The herein plaintiff now insists that the justice of the peace did not have jurisdiction over his person for the reason that he was a resident of the city of Manila at the time the action complained of was instituted and at the time he was served with a copy of the complaint, citing section 51 and chapter 15 of the Code of Civil Procedure as amended by Act No. 1627.

The Courts of First Instance under section 217 of the Code of Civil Procedure are authorized to issue writs of certiorari where it appears that an inferior tribunal, board, or officer has exceeded its jurisdiction, and section 514 confers upon the Supreme Court concurrent jurisdiction with the Courts of First Instance in certiorari proceedings over inferior tribunals. In those cases, like the one under consideration, where both the Supreme Court and the Court of First Instance have jurisdiction to issue the writ of certiorari, the law does not state in which court the action shall be instituted, and the question arises whether we should take cognizance of this case in view of the fact that the Court of First Instance is open to the plaintiff, and the further fact that both the justice of the peace and the principal defendant live in Iloilo. After a consideration of all the elements entering into this case, we have decided that the better practice is for the plaintiff to seek his remedy in the Court of First Instance in the city of Iloilo. There is absolutely no reason why he should have entered this court except that he is a resident of Manila. This reason is overcome by the fact that, as we have stated, the justice of the peace and the principal defendant are residents of Iloilo. If it were shown that the Court of First Instance was not open in Iloilo or that the plaintiff could not for some other valid reason obtain relief in that court, then we would take jurisdiction and determine whether or not the writ ought to issue. But where it is sought to review a simple judgment of the justice of the peace in a province where the Court of First Instance is in session, we think we should decline to take jurisdiction and say that the plaintiff must first seek his remedy in that court.

Herrera vs. Barretto and Joaquin (25 Phil. Rep., 245) and Gonzalez vs. Moir (27 Phil. Rep., 256) were both original actions of certiorari in this court wherein the plaintiffs sought to have certain orders, issued by the defendant judges, vacated or modified. We declined to take jurisdiction for the purpose of determining the merits of the cases. We held that the better practice required the plaintiffs to seek their relief in the Courts of First Instance. Our ruling in the case under consideration is in line with the doctrine announced in the cases above

cited.

For the foregoing reasons, without deciding whether or not the writ of certiorari should issue, judgment will be entered dismissing this action, with costs against the plaintiff. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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