

**WALTER E. OLSEN AND HARTFORD BEAUMONT, PETITIONERS, VS. FRESSEL & #038; CO. AND SIMPLICIO DEL ROSARIO, JUDGE OF FIRST INSTANCE OF MANILA, RESPONDENTS.**

*G.R. No. 12955. November 08, 1917*

Ponente: JOHNSON, J.

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**JOHNSON, J.:**

This is an original action commenced in the Supreme Court. Its purpose was to obtain the writ of mandamus to require the said Simplicio del Rosario to proceed to the trial and determination of the case of Olsen vs. Fressel & Co. (No. 14354), pending in the Court of First Instance of the city of Manila, as soon as may be, and not later than a date to be fixed in the order of the Supreme Court.

It appears from the record that on or about the 21st day of August, 1916, the petitioners herein commenced an action against Fressel & Co. in the Court of First Instance of the city of Manila for the purpose of recovering the sum of P3,498.65, with interest and costs; that on the 11th day of September, 1916, the defendants filed a demurrer, alleging that the facts stated in the complaint did not constitute a cause of action; that said demurrer was overruled on the 27th day of September, 1916; that the defendants duly answered the complaint in said cause on the 14th day of November, 1916; that the cause was set down for hearing on the 8th day of February, 1917. On the 29th day of January, 1917, the defendants presented a motion praying that the trial of said cause be postponed "until a reasonable time after the conclusion of the present war." Said motion was based upon the affidavit of one E. Nottebohn. Said affidavit asserted that one George Ludewig was an indispensable witness for the defendants; that said witness had been the manager of the defendant company during all of the time mentioned in the complaint; that said witness was at present a prisoner in Russia; that he was a partner of the defendant company and would return to the Philippine Islands upon being released from imprisonment, or give his testimony by deposition, which testimony could not be taken while he was a prisoner. The motion to postpone the trial was finally brought on for hearing before the Honorable Simplicio del Rosario, judge, and was by him granted on the 8th day of February, 1917, The dispositive" part of the order granting said motion is as follows:

"The trial of this case is hereby suspended and the term applied for by the defendant granted, which shall expire on the 31st day of December of this year; within said term the presence of the witness, or at least his deposition, shall be procured; on the understanding that if at the expiration of same the defendant shall not have obtained either evidence, the trial of the case will be continued."

While the writ of mandamus may be invoked for the purpose of setting inferior courts in motion, and, to compel them to act when action has been either refused or delayed, yet it should not be invoked for the purpose of directing or controlling courts in matters resting within their sound discretion. (High on Extraordinary Legal Remedies, sees. 147-198; and cases cited.)

The granting or a refusal to grant a postponement of a trial is a matter addressed to the discretion of the court in the performance of its duty, and unless that discretion has been abused, the superior courts will not interfere by

the remedy herein prayed for. (Sec. 141, Act No. 190; Pellicena Camacho vs. Gonzalez Lique, 6 Phil. Rep., 50.)

The reasons given for the postponement of the trial in the present cause are fully supported by the affidavit presented in support of the said motion for postponement of the trial. The lower court, under the facts given, was fully justified in granting said motion.

The remedy prayed for, therefore, is hereby denied, with costs. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

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