

VICENTE SOTTO, PETITIONER, VS. ADOLPH WISLIZENUS, RESPONDENT.

G. R. No. 26102. July 21, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is a petition for a writ of prohibition to compel the respondent to desist from further proceedings in civil case No. 6489 of the Court of First Instance of Cebu, in which case Isabelo and Emilia Alburo are the plaintiffs and Paulino Gullas, the defendant.

Case No. 6489 was instituted in the beginning of the month of April of the present year. The distribution of cases among the various judges of the Cebu court is regulated by Administrative Order No. 16, issued by the Secretary of Justice February 27, 1925. In accordance with this order the filing number of the case in question required its assignment to the second branch of the court, presided over by Judge De la Kama, who, being unable to try it before the court vacation, continued it to the July term of the court. During the court vacation both Judge De la Rama and the Auxiliary Judge of the district were absent, the former on leave and the other on duty in Leyte, leaving the Honorable Adolph Wislizenus, the judge of Branch I, as the only judge on duty in Cebu. On May 3d, Judge Wislizenus, in view of the fact that the defendant in the aforesaid case No. 6489 was a member of the Legislature and was anxious to have the case disposed of before the opening of the legislative session, assigned the case for trial in his branch of the court on May 24, 1926. A motion for continuance presented by the plaintiff was denied, and these proceedings were thereupon instituted.

The petitioner argues that the respondent judge exceeded his jurisdiction in taking cognizance of a case pertaining to another branch of the Court of First Instance of Cebu, There is, as far as we can see, no merit in this contention. Paragraph 4 of Administrative Order No. 16, *supra*, reads as follows:

"Where any of the District Judges or the Auxiliary Judge having official station at Cebu shall have been granted leave of absence or shall be otherwise incapacitated to perform his official duties for a considerable period of time, the remaining judges shall forthwith proceed to the equitable distribution of the court business assigned to the judge so absent or incapacitated, in accordance with the above rules."

In view of the provision quoted, it seems clear that the respondent being the only judge on duty in the district and the other judges being absent for undetermined periods, he had full power to try any of the cases at that time pending in the court and did not exceed his jurisdiction in taking cognizance of the case in question. In these circumstances a writ of prohibition will not issue.

The petition is denied, and the present proceedings dismissed, with the costs against the petitioner.

Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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