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New Jersey State Library

1874

1874

Writ of Certiorari.

(Filed Dec. 21, 1929.)

THE STATE OF NEW JERSEY.

10

New Jersey, ss.:

To: HONORABLE BENJAMIN GREEN, one
of the Justices of Peace of the County
of Bergen.

(Seal)

GREETING:

We being willing, for certain reasons,
to be certified of and concerning a cer-
tain verdict made and rendered by Benjamin
Green, Esq., one of the Justices of Peace of the
County of Bergen, which verdict was rendered No-
vember 20th, 1929, in a certain proceedings brought
by Peter Lazorchak, plaintiff against Milton Dem-
arest, trading as Demarest Oil Company and in the
alternative Demarest Oil Company, a corporation,
defendant, to recover damages due to an accident
which occurred on January 11th, 1929, in the Bor-
ough of Hasbrouck Heights, County of Bergen, do
command you that the said verdict proceedings
and judgment together with all things touching
and concerning the same as fully as before you,
they remain or are in your custody or control,
you do certify and send together with this writ,
to our Justices of our Supreme Court of Judica-
ture, at Trenton, on the 16th day of December,
1929, that therein may be done what of right and
according to law ought to be done.

20

30

WITNESS, William S. Gummere, Esq., Chief Jus-

40

Return.

tice of our Supreme Court, at Trenton, aforesaid,
this 26th day of November, 1929.

FRED L. BLOODGOOD,
Clerk.

10 COLLINS & CORBIN,
Attorneys.

I allow this writ. Let it be sealed.

C. W. PARKER.

Dated November 23, 1929.

Filed December 21, 1929.

FRED L. BLOODGOOD,
Clerk.

20

Return.

(Filed Dec. 21, 1929.)

*To the Honorable, William S. Gummere, Esq.,
Chief Justice of our Supreme Court at Tren-
ton, New Jersey:*

30 In obedience to the command of this writ to
Milton Demarest and the Small Cause Court in
the County of Bergen held before me Benjamin
Greene, one of the Justices of Peace in and afore-
said County of Bergen, directed, I the said Jus-
tice of Peace do hereby certify and send to the
Honorable, William S. Gummere, Chief Justice of
our Supreme Court at Trenton, New Jersey, the
judgment, order and proceedings with the origi-
nal Process, State of Demand, Pleas of Defendant
and return all papers and touchings concerning the
40 proceedings in the Small Cause Court arraigned
before me in the cause referred to in said writ
as fully and entirely as they may remain before
me.

Summons.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of December, 1929.

BENJAMIN GREENE.

(Seal)

10

Summons.

SMALL CAUSE COURT SUMMONS.

State of New Jersey, }
Bergen County, } ss.:

To any Constable of said County:

THE STATE OF NEW JERSEY,

S U M M O N

20

L.S.

MILTON DEMAREST

to appear before me, the subscriber, one of the Justices of the Peace holding THE SMALL CAUSE COURT in and for the County of Bergen to be held at my offices in the Greene Building, 64 Passaic Street, in the City of Garfield in said county, on the 1st day of October One Thousand Nine Hundred and 29 at nine-thirty o'clock in the forenoon, to answer unto,

30

Peter Lazorchak

in an Action in Tort Contract to the damage of the Plaintiff 200.00 Dollars.

Given under my hand and Seal of said Court the 20th day of September in the year One thousand Nine hundred and 29.

BENJAMIN GREENE.

40

Return of Service.

10 The defendant Milton Demarest could not be found and I served the within summons on him the 23 day of Sept., 1929, by leaving a copy thereof at his place of abode in the presence of a person of with Mother in Law family over the age of fourteen years, whom I informed of the contents thereof.

ERNEST TRAINOR,
Constable.

20 I served the within summons Milton Demarest 19— on September 23, 1929, by leaving same with a member of the Defendant, by reading the same to.... h.... and delivering to.... h.... a copy thereof.

.....
Constable.

30

40

State of Demand.

SMALL CAUSE COURT

BEFORE BENJAMIN GREENE, ONE OF THE JUSTICES
OF THE PEACE OF THE COUNTY OF BERGEN.

<p style="text-align: center;">PETER LAZORCHAK, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>MILTON DEMAREST, Trading as the Demarest Oil Company or Demarest Oil Company, a cor- poration, In the Alternative, <i>Defendant.</i></p> <p>66 Maple Ave., Oradell</p>	}	10
	{	In Tort. State of Demand.

Plaintiff demands of the defendant the sum of
Two Hundred (\$200.00) Dollars, for this:

1. On January 11th, 1929, plaintiff was lawfully
operating a Durant 1928, automobile on and along
a certain highway known as Tedeboro Road, a
public street and highway situate in the Borough
of Hasbrouck Heights, County of Bergen and State
of New Jersey.

2. On the aforesaid date, the defendant, Milton
Demarest was the operator of a certain automo-
bile which he caused to be operated as the agent
and servant of the Demarest Oil Company, on and
along a certain highway, known as Williams Ave-
nue, another public street and highway situate in
the said Borough of Hasbrouck Heights, County
of Bergen and State of New Jersey, and at or near
the intersection of the aforesaid Tedeboro Road.

3. On the aforesaid date, the defendant, Milton

40

State of Demand.

10 Demarest, operated said automobile on and along said public street, in a careless, reckless and negligent manner and at an excessive, illegal and unlawful rate of speed, without regard to the other motor vehicles on and along said highway, and failed and neglected to keep the mechanism of his said automobile in a good working condition so that on the application of its several parts, the same would immediately respond thereto; and failed and neglected to give any signal or warning of approach; and failed and neglected to keep a proper control over said automobile and carelessly, recklessly and negligently crashed into and against the automobile of the said plaintiff.

20 4. As a result of the premises aforesaid, said plaintiff's automobile was greatly damaged, demolished and depreciated in value and said plaintiff will be obliged to expend divers sums and incur various debts for the repair of said automobile, to his great damage.

Wherefore plaintiff demands damages in the sum of Two Hundred (\$200.00) Dollars, together with costs of suit.

30

FEDER & RINZLER,
Attorneys of Plaintiff.

40

State of Demand.

SMALL CAUSE COURT

BEFORE BENJAMIN GREENE, ONE OF THE
JUSTICES OF THE PEACE OF THE
COUNTY OF BERGEN.

PETER LAZORCHAK,

Plaintiff,

10

v.

MILTON DEMAREST, Trading as the
DEMAREST OIL COMPANY or DEMA-
REST OIL COMPANY, a corporation,
In the Alternative,

Defendant.

66 Maple Ave. Oradell

20

IN TORT

STATE OF DEMAND.

Judgment Deft.

\$200.00

Milton Demarest

FEDER & RINZLER,

Counselors at Law,

Liggett Building,

Passaic, N. J.

30

40

Judgment.

(Entered Nov. 14, 1929.)

STATE OF NEW JERSEY

BERGEN COUNTY

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SMALL CAUSE COURT

BEFORE BENJAMIN GREENE, ONE OF THE JUSTICES
OF THE PEACE OF THE COUNTY OF BERGEN.

No.....

PETER LAZORCHAK,
Plaintiff,MILTON DEMAREST,
Defendant.

20

A summons was issued tested September 20, 1929, returnable October 1, 1929, at 9:30 o'clock in the forenoon at the offices in the Greene Building, 64 Passaic St., Garfield, N. J. The Constable returned the summons as follows, viz.: I served the within summons September 23, 1929, on defendant's Mother-in-Law defendant by reading same and delivering to him a copy thereof.

30

ERNEST TRAINOR,
Constable.

Defendant's set off was filed 192
the plaintiff appeared and the defendant
appear . The trial of the cause
was proceeded with as follows, viz.:

On the part of the plaintiff Francis V. Dobbins
Attorney of Feder & Rinzler.

40 On the part of the defendant F. P. Clancy, Col-
lins & Corbin.

Reasons.

Whereupon it is on this 14th day of November, 1929, by this Court considered and adjudged that said plaintiff shall recover against the defendant Milton Demarest the sum of 200.00 dollars and 14.70 cents costs.

10

Reasons.

(Filed Dec. 27, 1929.)

NEW JERSEY SUPREME COURT.

PETER LAZORCHAK,
Plaintiff-Respondent,

v.

MILTON DEMAREST, trading as
Demarest Oil Company and in
the alternative, Demarest Oil
Company, a corporation,
Defendant-Prosecutor.

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On Certiorari.
Reasons.

The prosecutor presents the following reasons why the judgment of the small cause court in and for the County of Bergen held by the Honorable Benjamin Green, one of the Justices of Peace of the County of Bergen, should be reversed:

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1. The small cause court in and for the County of Bergen, held by the Honorable Benjamin Green, one of the Justices of Peace of the County of Bergen at 64 Passaic Street, in the City of Garfield, County of Bergen, had no jurisdiction in this matter and any judgment rendered by said court or the said judge acting as such court is null and void.

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Reasons.

10 2. The small cause court in and for the County of Bergen held by the Honorable Benjamin Green, one of the Justices of Peace of the County of Bergen at 64 Passaic Street, in the City of Garfield, County of Bergen had no jurisdiction over the person of the defendant who resided at 66 Maple Avenue, Oradell, Bergen County, New Jersey, because under Chapter 211, P. L. 1921, no Justice of Peace or small cause court shall have jurisdiction over any cause or proceeding cognizable before a district court where the defendant resides within any judicial district where a district court is established and the said defendant did reside within a judicial district where a district court was established, to wit, the Fifth Judicial District Court of the County of Bergen created by Chapter 20 145, P. L. 1929.

30 3. The small cause court in and for the County of Bergen held by the Honorable Benjamin Green, one of the Justices of Peace of the County of Bergen at 64 Passaic Street, in the City of Garfield, County of Bergen, had no jurisdiction over the cause of action in this case or over the person of the defendant in this case because the plaintiff resided in the County of Passaic, the cause of action arose in Hasbrouck Heights in the County of Bergen and the defendant resided in Oradell, County of Bergen.

40 4. The small cause court in and for the County of Bergen held by the Honorable Benjamin Green, one of the Justices of Peace of the County of Bergen at 64 Passaic Street, in the City of Garfield, County of Bergen, had no jurisdiction in this cause because the said Justice of Peace or the said small cause court under Chapter 211, P. L. 1921, is

Reasons.

without power to exercise any civil jurisdiction whatsoever where the said Justice of Peace resides within the limits of any judicial district where a district court is established and the said Justice of the Peace residing in the City of Garfield, is within the limits of the Third Judicial District Court of the County of Bergen located at Hackensack, New Jersey.

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COLLINS & CORBIN,
Attorneys of Defendant-Prosecutor.

[Served December 27, 1929.]

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Opinion of Supreme Court.

(Filed Aug. 2, 1930.)

NEW JERSEY SUPREME COURT.

Nos. 233 and 246.

10

January Term, 1930.

PETER LAZORCHAK,
Plaintiff,
Defendant-in-Certiorari,

v.

MILTON DEMAREST,
Defendant,
Prosecutor-in-Certiorari.

On Certiorari.

20

Submitted January Term, 1930. Decided
 , 1930.

Before—Justices TRENCHARD, LLOYD and CASE.

For defendant-in-certiorari, FEDER & RINZLER.

For prosecutor-in-certiorari, COLLINS & CORBIN.

Per Curiam:

30

Peter Lazorchak recovered judgment against Milton Demarest in a small cause court held by a justice of the peace of the County of Bergen. The defendant below caused a writ of certiorari to issue to review the proceedings and alleges that the court had jurisdiction over neither the subject-matter nor the person of the defendant. The reasons advanced are that, under sec. 1, ch. 165, Pamph. L. 1903, 3 Comp. St., p. 2979, amended, ch. 175, Pamph. L. 1923, the small cause court has no

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Opinion of Supreme Court.

jurisdiction where any defendant resides within a municipality wherein a district court is established; and that, under sec. 31, ch. 228, Pamph. L. 1898, amended ch. 49, Pamph. L. 1908, and again amended ch. 211, Pamph. L. 1921, no justice of the peace or court for the trial of small causes (with certain in applicable exceptions) has jurisdiction over any cause or proceedings cognizable before a district court where the defendant resides within any city or judicial district where a district court is established, and no justice of the peace resident within the limits of any city or judicial court where a district court is established shall exercise any civil jurisdiction. But the record does not disclose where either the justice of the peace or the defendant resided and this citation of statutes therefore fails of its point.

10

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The record discloses that the defendant appeared at the trial and also was represented thereat by the attorneys who appear for him here; and it does not show the making of objections of any character.

The judgment below will be affirmed, with costs.

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Judgment of Affirmance.

(Filed Aug. 22, 1930.)

NEW JERSEY SUPREME COURT.

Nos. 233 and 246.

January Term, 1930.

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PETER LAZORCHAK,
Plaintiff,
Defendant-in-Certiorari,
v.
MILTON DEMAREST,
Defendant,
Prosecutor-in-Certiorari.

On Certiorari.
Judgment of
Affirmance.

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At the trial of the above cause in the Small Cause Court before Benjamin Greene, Esq., one of the Justices of the Peace of the County of Bergen, the said Justice rendered a verdict for the plaintiff and against the defendant, upon which verdict a judgment was entered for the plaintiff against the defendant in the Small Cause Court; and the said defendant having obtained a writ of certiorari to review the said judgment and proceedings; and the arguments of counsel for the plaintiff, defendant-in-certiorari and of the defendant, prosecutor-in-certiorari having been heard, and the questions brought up by said certiorari and the proceedings thereunder having been duly considered at the January Term of this Court:

40

It is, thereupon, on this 20th day of August, 1930, ORDERED, that the aforesaid judgment be and the same is hereby affirmed with costs to be taxed in

Notice and Grounds of Appeal.

favor of the plaintiff and against the defendant, and the record is ORDERED remitted to the court below to be proceeded with according to law and the practice of said court;

And it is further ORDERED, that the defendant, prosecutor in certiorari pay the plaintiff, defendant-in-certiorari his costs of the certiorari.

10

Entered August 20th, 1930.

On motion of

FEDER & RINZLER,
Attorneys of Plaintiff,
Defendant-in-Certiorari.

20

Notice and Grounds of Appeal.

(Filed Aug. 20, 1930.)

NEW JERSEY SUPREME COURT.

PETER LAZORCHAK,
Plaintiff-Respondent,

v.

MILTON DEMAREST,
Defendant-Appellant.

Action at Law.
On Appeal from
Supreme Court.

Notice and
Grounds of
Appeal.

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To

Messrs. FEDER & RINZLER,
Attorneys for Respondent.

SIRS:

PLEASE TAKE NOTICE, that Milton Demarest, appellant, appeals to the New Jersey Court of Errors

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Notice and Grounds of Appeal.

and Appeals from the whole of the judgment entered in this cause, upon the following grounds:

10 1. The Supreme Court erred in affirming the judgment of the small cause court of Bergen County, whereas it should have reversed the judgment for one or more of the following reasons:

20 (a) The Small Cause Court in and for the County of Bergen, held by the Honorable Benjamin Green, one of the Justices of Peace of the County of Bergen at 64 Passaic Street, in the City of Garfield, County of Bergen, had no jurisdiction in this matter and any judgment rendered by said court or the said judge acting as such court is null and void.

30 (b) The Small Cause Court in and for the County of Bergen held by the Honorable Benjamin Green, one of the Justices of Peace of the County of Bergen at 64 Passaic Street, in the City of Garfield, County of Bergen had no jurisdiction over the person of the defendant who resided at 66 Maple Avenue, Oradell, Bergen County, New Jersey, because under Chapter 211, P. L. 1921, no Justice of Peace or Small Cause Court shall have jurisdiction over any cause or proceeding cognizable before a District Court where the defendant resides within any judicial district where a District Court is established and the said defendant did reside within a judicial district where a District Court was established, to wit, the Fifth Judicial District Court of the County of
40 Bergen created by Chapter 145, P. L. 1929.

Notice and Grounds of Appeal.

(c) The Small Cause Court in and for the County of Bergen held by the Honorable Benjamin Green, one of the Justices of Peace of the County of Bergen at 64 Passaic Street, in the City of Garfield, County of Bergen, had no jurisdiction over the cause of action in this case or over the person of the defendant in this case because the plaintiff resided in the County of Passaic, the cause of action arose in Hasbrouck Heights in the County of Bergen and the defendant resided in Oradell, County of Bergen. 10

(d) The Small Cause Court in and for the County of Bergen held by the Honorable Benjamin Green, one of the Justices of Peace of the County of Bergen at 64 Passaic Street, in the City of Garfield, County of Bergen, had no jurisdiction in this cause because the said Justice of Peace or the said Small Cause Court under Chapter 211, P. L. 1921, is without power to exercise any civil jurisdiction whatsoever where the said Justice of Peace resides within the limits of any judicial district where a District Court is established and the said Justice of the Peace residing in the City of Garfield, is within the limits of the Third Judicial District Court of the County of Bergen located at Hackensack, New Jersey. 20 30

Dated August 19, 1930.

Respectfully,

COLLINS & CORBIN,
Attorneys of Defendant-Appellant. 40

(Served on Aug. 19, 1930.)

[3205]

New Jersey Court of Errors and Appeals

PETER LAZORCHAK,
Plaintiff-Respondent,

v.

MILTON DEMAREST,
Defendant-Appellant.

On Appeal
from Supreme
Court.

BRIEF OF COLLINS & CORBIN IN FAVOR OF THE APPELLANT.

(1)

Statement of the Case.

Peter Lazorchak, the defendant-respondent (hereinafter called the plaintiff), instituted suit in the small cause court held by the Honorable BENJAMIN GREENE, one of the Justices of the Peace of the County of Bergen, to recover damages sustained by his automobile as a result of a collision with an automobile operated by Milton Demarest, prosecutor-appellant (hereinafter called the defendant). The accident occurred on January 11th, 1929, at the intersection of Teteboro Road and Williams Avenue in the Borough of Hasbrouck Heights, Bergen County, New Jersey.

The small cause court held by the Honorable BENJAMIN GREENE is located as shown by the summons in his office at 64 Passaic Street, in the City of Garfield, Bergen County (p. 3, lines 20-30). The City of Garfield is located in the Second Judicial

District of Bergen County (P. L. 1908, p. 290). The defendant resided and was served with process in this action at 66 Maple Avenue, Oradell, Bergen County, New Jersey (p. 4, lines 1-20; p. 5, line 20; p. 7, line 20). Oradell is located in the Fifth Judicial District of the County of Bergen (P. L. 1929, p. 257).

The case was tried over the objection of the defendant to the jurisdiction on November 14th, 1929, and resulted in a judgment in favor of the plaintiff and against the defendant for \$200 (p. 8). A writ of certiorari in this case was allowed to review the jurisdiction of the small cause court. The reasons filed raised the legal question of whether or not the small cause court held by the Honorable BENJAMIN GREENE, one of the Justices of the Peace of the County of Bergen, located at 64 Passaic Street, within the territory of the Second Judicial District of the County of Bergen, had jurisdiction of the defendant when he resided and was served in the Town of Oradell, situated in the Fifth Judicial District of the County of Bergen (pp. 9-11). The Supreme Court affirmed the judgment in an opinion filed August 2, 1930 (pp. 12, 13). Judgment of affirmance was entered August 20, 1930 (pp. 14, 15). It is from the judgment of the Supreme Court that this appeal is taken.

(2)

Grounds of Appeal.

There is but one ground of appeal, namely—that the Supreme Court erred in affirming the judgment of the small cause court of Bergen County for one or more of the grounds urged in the Supreme Court (p. 15, line 40; pp. 16-17).

The grounds of appeal argued in the Supreme Court raised the single question of whether or

not the small cause court held by the Honorable BENJAMIN GREENE, one of the Justices of the Peace of the County of Bergen, located at 64 Passaic Street, within the territory of the Second Judicial District of Bergen County, had jurisdiction of the defendant when he resided and was served in the Town of Oradell, situated in the Fifth Judicial District, in the County of Bergen (pp. 9-11).

(3)

BRIEF OF THE ARGUMENT.

In order to determine the legal question involved, it is necessary to examine and consider the statutes giving jurisdiction to the small cause court and the curtailment of that jurisdiction as the result of the establishment of the district courts. In 1903 there was a revision of the statutes dealing with the courts for the trial of small causes (P. L. 1903, Chap. 165; N. J. Comp. St., Vol. 3, p. 2979). By Section 1 of that Act, the court for the trial of small causes was given jurisdiction in the following language:

“Every suit of a civil nature at law, where the matter in dispute does not exceed, exclusive of costs, the sum of two hundred dollars, shall be cognizable before any justice of the peace of any county, who is hereby authorized to hold a court within such county, to hear, try and determine the same according to law, although the cause of action did not arise in said county; which court shall be known as ‘the small cause court’ and shall be a court of record and vested for the purpose aforesaid with all such power as is usual in courts of record of this State; provided, this act shall not extend to any action of replevin, slander, trespass for assault, battery or imprisonment, nor to any action wherein the title to lands shall come in ques-

tion; provided further, the said court shall not have jurisdiction over any cause or proceeding cognizable before a district court, where any defendant resides within a municipality wherein a district court is established."

It will be observed that the court for the trial of small causes under this provision did not have jurisdiction over any cause cognizable before a district court where the defendant resided within a municipality wherein a district court was established. This was for the reason that under an act concerning district courts in certain *cities* of this State (Rev. St. of N. J. 1877, Vol. 2, p. 1301; General St. of N. J. 1895, Vol. 1, p. 1214) it had been provided that there should be constituted in certain cities of the State, district courts to be designated as district courts of the cities respectively wherein said courts may be established. That the said district court should have jurisdiction exclusive of all other courts whatsoever in all cases arising under the act where the party defendant resides within the corporate limits of a city where the said court or courts shall be established. (Rev. St. 1877, Vol. 2, p. 1302, Sec. 6; General St. of N. J. 1895, Vol. 1, p. 1249, Sec. 190; P. L. 1898, Chap. 228, p. 564.)

The Revision of 1903 concerning the court for the trial of small causes, as far as the jurisdiction of the court is concerned, was amended by P. L. 1923, Chap. 175, page 462. That amendment provides as follows:

"Section one of the act to which this act is amendatory be and the same is hereby amended so as to read as follows:

"Every suit of a civil nature at law, where the matter in dispute does not exceed, exclusive of costs, the sum of two hundred dollars, shall be cognizable before any justice of the

peace of any county, who is hereby authorized to hold a court within such county, to hear, try and determine the same according to law, although the cause of action did not arise in said county, which court shall be known as 'The Small Cause Court' and shall be a court of record and vested for that purpose aforesaid with all such power as is usual in courts of record of this State; *the Small Cause Court shall also have jurisdiction in proceedings between landlords and tenants, and in actions of forcible entry and detainer;* provided, this act shall not extend to any action of replevin, slander, trespass for assault, battery or imprisonment, nor to any action wherein the title to lands shall come in question; provided, further, the said court shall not have jurisdiction over any cause or proceeding cognizable before a District Court, where any defendant resides within a municipality wherein a District Court is established."

The only change made in the original act is the part which has been italicized giving to the small cause court jurisdiction in proceedings between landlords and tenants and in actions of forcible entry and detainer where the small cause court otherwise would have had jurisdiction.

In 1898 there was a revision of an act concerning district courts (N. J. Comp. St., p. 1951). This revision provided for the continuance of all district courts heretofore established *in cities* (Sec. 1). It further provided that in cities of certain specified population there shall be thereafter established district courts to be known as the district court of the respective cities. It further provided that by special act a *judicial district* could be created, comprising one or more municipalities in the same county (other than a city entitled to a district court) and containing a combined population of not less than 17,000 inhabi-

tants, which district court should be called the District Court of the (number of district) of the Judicial District of the (name of county). The statute then proceeded to specify the judicial districts created and from time to time the Legislature has under the power contained therein created additional judicial districts.

The Revision of 1898 Concerning District Courts, Section 31, P. L. 1898, page 564, provides:

“No justice of the peace or court for the trial of small causes shall have jurisdiction over any cause or proceedings cognizable before a district court where the defendant resides within the limits of any city where a district court is established, nor shall any justice of the peace resident within the limits of a city where a district court is or may be established, exercise any civil jurisdiction whatever.”

The above section deprived the small cause court or the justice of the peace from jurisdiction not only where the defendant resided within a city in which there was a district court, but also where the justice of the peace resided within a city where there was a district court.

This section was again amended in 1908 (P. L. 1908, Chap. 49, p. 77), to read as follows:

“No justice of the peace or small cause court shall have jurisdiction over any cause or proceedings cognizable before a District Court, where the defendant or defendants reside within any city or judicial district where a District Court is established, nor shall any justice of the peace, resident within the limits of any city or judicial district where a District Court is or may be established, exercise any civil jurisdiction whatever.”

This amendment deprived the small cause court and the justice of the peace of their civil juris-

diction, not only where the defendant or the justice of the peace were residents of any *city* in which a district court was established, but in addition, in any cause where the defendant or the justice of the peace were residents of a *judicial district* where a district court was established.

In 1921, Section 31 of the Revision of 1898 Concerning District Courts was again amended (P. L. 1921, Chap. 211, p. 689) as follows:

“No justice of the peace of small cause court shall have jurisdiction over any cause or proceedings cognizable before a District Court where the defendant or defendants reside within any city or judicial district where a District Court is established, nor shall any justice of the peace resident within the limits of any city or judicial court where a District Court is or may be established, exercise any civil jurisdiction whatever.

“Provided, however, that in judicial districts that are or may be created in counties of this State bordering on the Atlantic ocean, the justice of the peace or small cause court shall have jurisdiction in every such District Court district in every suit of a civil nature where the debt, balance, damages or other matter in dispute does not exceed exclusive of costs the sum of fifty dollars as if there were no judicial district in said county.”

The only change made by the amendment of 1921 to the amendment of 1908 was to except from its provisions counties of the State bordering on the Atlantic Ocean and as to such counties permitting the justice of the peace or small cause court to have jurisdiction even within the judicial district of a district court in any civil suit where the sum of controversy did not exceed \$50. There can be no contention in this case that the County of Bergen borders on the Atlantic Ocean and in

addition to that, the sum in controversy was \$200, and not \$50 or less.

In the case at bar, the small cause court or the justice of the peace holding said court resided in the City of Garfield. The City of Garfield has no district court as such, but Garfield is within the judicial district of the Second Judicial District of the County of Bergen (P. L. 1908, p. 293, as amended P. L. 1909, p. 39). It would, therefore, appear that as the justice of the peace was a resident within the judicial district where a district court was established, he was deprived by the above statutes of his right to exercise any civil jurisdiction whatever.

The defendant resided and was served in the Borough of Oradell, New Jersey, which is within the territorial limits of the Fifth Judicial District of the County of Bergen (P. L. 1929, Chap. 145, p. 257).

It would, therefore, appear from the statutes above quoted that as the defendant resided within a judicial district where a district court was established, the justice of the peace or small cause court had no civil jurisdiction whatever over him or in the cause.

It will probably be the contention of our adversary that as P. L. 1923, Chap. 175 (amending the Act Concerning the Trial of Small Causes) is later in point of time than P. L. 1921, Chap. 211, page 689 (amending the District Court Act), it, therefore, follows that the Act of 1923 has impliedly repealed the amendments to the District Court Act. A study, however, of the statutes dealing with the trial of small causes as far as the jurisdiction is concerned as we have attempted to point out, will disclose that the very same language has been carried throughout from the earliest statutes and the only purpose of the 1923

amendment was to provide jurisdiction in proceedings between landlords and tenants and in actions of forcible entry and detainer, which jurisdiction the justice of the peace did not theretofore have. It seems to us that if the Legislature had intended to give the justice of the peace jurisdiction of civil causes where the justice of the peace or defendant resided within a judicial district of a district court, in the amendment of 1923 it would have clearly said so. This for the reason that it is specifically provided therein that the justice of the peace shall not have jurisdiction where the defendant resides within a municipality where a district court is established and having taken the trouble to specifically provide that, they certainly would have expressly mentioned any jurisdiction they intended to confer where the defendant might reside within a judicial district of a district court.

Both of these statutes can be construed together for there are some counties, as for example: Union County, Middlesex County, Passaic County, etc., where there are no *judicial districts* created in which there are district courts. The only district courts those counties have are the district courts created in the *cities* as provided by Section 1 of the Revision of 1898 known as the district court of the respective city. For example, in Union County there is the Elizabeth District Court and the Plainfield District Court. In Passaic County there is the Passaic City District Court and the First and Second District Courts of the City of Paterson. In those counties the justice of the peace or small cause court would have jurisdiction where the sum claimed was \$200 or less and the justice of the peace or the defendant did not reside within the *city* in which the district court was established. This is according to the provi-

sions of the Small Cause Court Act. In the counties, however, such as Bergen, where this cause arose, or Hudson or Morris, where there are judicial districts created for a district court in addition to the district courts created in the cities, the justice of the peace would have no jurisdiction where he or the defendant resided within the judicial district of one of those district courts.

The only exception to the above would be in counties bordering on the Atlantic Ocean where the justice of the peace would have jurisdiction up to \$50, even though he or the defendant resided within the judicial district of a district court. That, however, has no application to this case.

According to the provisions of the Small Cause Court Act, it is apparent that the Legislature intended that where a defendant or the justice of the peace were within a city where a district court was established, that district court should exercise the exclusive civil jurisdiction. The intention of the Legislature was to curtail the civil jurisdiction of the small cause court or the justice of the peace. With the creation later of judicial districts for district courts to cover territory outside of cities, it adopted the same policy of curtailing the justice of the peace's jurisdiction by providing in the District Court Act, that when the justice of the peace or the defendant resided in a judicial district where a district court was established, the justice of the peace should have no civil jurisdiction.

Reference will undoubtedly be made to the case of *Weishaupt v. Weishaupt* (104 N. J. L., p. 465). In that case the plaintiff, the defendant, and the justice of the peace were residents of the City of Rahway. There was no district court in the City of Rahway. A writ of certiorari was taken to

review the judgment of the justice of the peace. This court held that as the parties and the justice of the peace were all residents of the same city and that there was no district court established in that city, the justice of the peace had jurisdiction. This case, however, is not controlling in the case at bar, because the County of Union has no judicial districts in which district courts are established. In that case, it was contended that because there was a district court located in the county, the justice of the peace had no jurisdiction but the only district courts located in that county are the district courts of the City of Elizabeth and the City of Plainfield. In that case, therefore, the justice of the peace did have jurisdiction and the case was correctly decided because the provisions of the District Court Act as contained in P. L. 1908 and P. L. 1921 did not apply.

In the case at bar, however, there is according to statute, a judicial district both in the territory where the justice of the peace resided and held his court and where the defendant resided and was served. We respectfully contend, the justice of the peace or small cause court in this case did not have jurisdiction to hear this civil cause and render a judgment of \$200 but that the defendant must be sued in one of the district courts.

(4)

Comments on the Opinion of the Supreme Court.

The Supreme Court in its opinion gave as the reason for affirming the judgment below, the following reason:

“But the record does not disclose where either the justice of the peace or the defend-

ant resided, and this citation of statutes therefore fails of its point.”

We respectfully submit that the Supreme Court was in error in this respect. Our brief pointed out the page and lines showing the facts as to the residence of the justice of the peace and the defendant. So that there will be no question about the record in this respect, we take the liberty of quoting from it.

The residence of the justice of the peace is disclosed in the summons (p. 3). That document says:

“To any constable of said county: The State of New Jersey, summons Milton Demarest to appear before me, the subscriber, one of the justices of the peace holding the small cause court in and for the County of Bergen, to be held in my office in the Greene Building, 64 Passaic Street, in the City of Garfield in said County.”

The judgment recites (p. 8):

“A summons was duly tested September 20, 1929, returnable October 1, 1929, at 9:30 o'clock in the forenoon, at the office in the Greene Building, 64 Passaic Street, Garfield, New Jersey.”

The constable returned the summons as follows, viz.,

“I served the within summons September 23, 1929, on defendant's mother-in-law, defendant, by reading same and delivering same to him, a copy thereof.”

The residence of the defendant is shown on the state of demand (p. 5). It reads:

“Peter Lazorchak, plaintiff, *vs.* Milton Demarest, etc., defendant, 66 Maple Avenue, Oradell.”

The same is endorsed on the cover of the state of demand (p. 7). The return of the constable shows service at the residence (p. 4).

The City of Garfield, where the justice of the peace resides, is located in the Second Judicial District of Bergen County (P. L. 1903, p. 290). Oradell, the residence of the defendant, as shown on the state of demand, is located in the Fifth Judicial District of Bergen County (P. L. 1929, p. 257).

The second reason for affirming the judgment below is stated by the Supreme Court as follows:

“The record discloses that the defendant appeared at the trial and also was represented thereat by the attorneys who appear for him here; and it does not show the making of objections of any character.”

We concede that the record does not disclose the making of such objection. No stenographer was present and the record is therefore silent in that respect. We contend, however, that the Supreme Court apparently overlooked the fact that an objection to the jurisdiction of the court does not have to be made at the trial of the action, but may be raised at any stage of the proceedings.

In the case of *Hadelman v. Harris*, 93 N. J. L. 66, the fundamental question decided was the jurisdiction, if any, of a justice of the peace in a summary proceeding to dispossess a tenant where the premises were in a city which had a district court. The Supreme Court concluded that the justice of the peace did not have jurisdiction and it was contended that the point had been waived by appearance and defenses on the merits, without objection. Justice PARKER in writing the opinion for the Supreme Court said:

“The point is made that there was an appearance and a defense on the merits, and the

objection to jurisdiction was therefore waived. But waiver is not applicable in cases where the tribunal had no jurisdiction of the **subject-matter.**"

In *Collins v. Keller*, 58 N. J. L. 429, a suit was commenced in the Union Circuit and the record showed that the trial took place in the Union Pleas. There was nothing to show by virtue of what authority the Union Pleas tried the case. Chief Justice BEASLEY in reversing the judgment said (p. 430) :

"It is suggested that as the parties tried their case, without objection, before the Pleas, they now must be deemed to have waived their right to object to the jurisdictional power of the court. But it is evident that the question is not one relating to the pretermis- sion of a personal right over which the liti- gants have control, but to the investiture of the court with power to take cognizance of the cause. Many years ago in the case of *School Trustees v. Stocker*, 13 Vroom 115, 116, it was declared by this Court that 'jurisdiction over the *subject-matter of a suit* cannot be conferred by consent, nor can the right to ob- ject to the want of it be lost by acquiescence or neglect.' * * *

"In the second place, on another ground, it appears from the record now in our hands, that the Common Pleas, in this instance, has taken cognizance of a controversy that is plainly outside of its jurisdiction. The action was for damages by reason of the cutting down of certain trees which it was claimed stood on certain lands of the plaintiff, and at the trial this title was disputed. * * *

"This was a question that the Common Pleas could not adjudicate. This tribunal is an ancient one, having been constituted by the ordinance of George II. and the lords of his privy council in 1723, its jurisdiction being defined in these words, viz., 'to try and deter-

mine all suits, controversies, quarrels and differences that may arise within the said counties between our loving subjects, for any sum above the value of forty shillings (causes wherein the right or title of any lands, tenements or hereditaments, is in anywise concerned, excepted).’ This restriction upon the province of the court has never been abolished or relaxed, and, so far as is known, no court of this class has attempted, until the present occasion, to pass upon the title to land.”

In the case at bar, under the statutes which we have quoted at length under point three of this brief, the justice of the peace in this case was stripped of the right to exercise a civil jurisdiction. He had no more right to issue a summons, hear the case and render a judgment, than any layman who resided in the county. Chapter 211, P. L. 1921, specifically provides:

“No Justice of the Peace or small cause court shall have jurisdiction over any cause or proceedings cognizable before a district court where the defendant or defendants reside within any city or judicial district where a district court is established, nor shall any Justice of the Peace resident within the limits of any city or judicial court where a district court is or may be established, exercise any civil jurisdiction whatever.”

It is perfectly clear that this statute divested the justice of the peace from hearing the subject-matter in this suit, just as clearly as the Common Pleas Court was without power to hear the controversy involving title in the case of *Collins v. Louis Keller*, 58 N. J. L. 429. The summons might just as well have been issued and the judgment have been rendered by one of the criminal courts of the county as by the justice of the peace in this

case after he had been stripped by the statute of all civil jurisdiction.

We respectfully contend that for these reasons the Supreme Court erred in its conclusion, first, that there was no evidence to show the residence of the justice of the peace and of the defendant; and secondly, in determining that because the record did not show an objection by the defendant, that the justice of the peace thereby obtained jurisdiction of a subject-matter which he otherwise did not have.

No authority is cited in the Supreme Court's opinion for the conclusion that because the record fails to disclose any objection to the jurisdiction of the District Court, therefore the jurisdiction of that Court was waived. The cases that the Supreme Court has in mind are cases where the trial court obtains jurisdiction of the case when it inherently has jurisdiction of the subject-matter, when the defendant by an appearance waives the lack of jurisdiction to his person, such as where there is improper service. Where the trial court has no jurisdiction of the **subject-matter** none can be conferred and the attack on the jurisdiction can be made at any time. Even consent cannot confer jurisdiction where there is none of the subject-matter. This has been repeatedly held in the courts of this State and universally elsewhere.

Chicago, Burlington & Quincy R. R. Co. v. Willard, 220 U. S. 413;

Continental National Bank of Memphis v. Buford, 191 U. S. 119;

Defiance Water Co. v. Defiance, 191 U. S. 184, 194;

Great Southern Fireproof Hotel Co. v. Jones, 177 U. S. 449, 453;

Morris v. Gilmer, 129 U. S. 315; 32 L. Ed. 690;

Mansfield, etc., Ry. Co. v. Swan, 111 U. S. 379; 28 L. Ed. 462; 38 Fed. (2nd) 420 (8th C. C. A.);

Colgate & Co. v. Proctor Co., 25 Fed. (2nd) 116 (D. C. E. D. N. Y.);

Lackawanna Foundry Co. v. Goodman, 25 Fed. (2nd) 290 (3rd C. C. A.).

The case of *Venghis v. Commonwealth Casualty Co.*, 101 N. J. L. 151, upon which counsel for the respondent relies, was one where this Court is particular in its opinion to point out, "the Court of Common Pleas had jurisdiction of the **subject-matter** of the controversy." In short, the Supreme Court lost sight of the distinction between a court having jurisdiction of the subject-matter in which case it can acquire jurisdiction of the person by the appearance, waiver or consent of the defendant, and a case where the trial court has no jurisdiction of the subject-matter, in which event it cannot acquire it even by consent of the parties.

(5)

CONCLUSION.

The bringing of this case before a justice of the peace was clearly an attempt to evade and get by the salutary legislation which deprived those officials of any jurisdiction in civil matters, except in the outlying country districts where a district court was not available. Here this claim for property damage was brought before the justice of the peace while at the same time the suit for personal injuries arising out of the same accident was brought before a District Court, the latter suit

resulting in defeat for the plaintiff and his present attorneys. There was no reason why both the property damage claim and the personal injury claim should not have been brought in the District Court. The only reason why it was brought before the justice of the peace was because counsel realized that he could not win in the District Court. In short, this is an attempt to get back where we were before justices of the peace were deprived of their jurisdiction. It is clearly contrary to the statute and every effort should be made to enforce the salutary legislation which has brought about the present fair trial of small causes in district courts.

We respectfully submit that the judgments below of the small cause court and of the Supreme Court should be reversed, set aside and for nothing holden, with costs to the defendant-appellant.

Submitted October Term, 1930.

EDWARD A. MARKLEY,
CHARLES W. BROADHURST,
Of Counsel.

COLLINS & CORBIN,
Attorneys of Defendant-Appellant.

New Jersey Court of Errors and Appeals

PETER LAZORCHAK,
Plaintiff-Respondent,

vs.

MILTON DEMAREST,
Defendant-Appellant.

On Defend-
ant's Appeal
from
Supreme
Court.

BRIEF FOR PLAINTIFF-RESPONDENT.

(1)

Statement of the Case.

The plaintiff, Peter Lazorchak, instituted suit against the defendant to recover damages which he sustained as a result of a collision that occurred between the plaintiff's automobile and that of the defendant (Case, p. 5).

At the trial in the Justice's Court, counsel for the plaintiff and for the defendant appeared, as well as the parties themselves, and each party was sworn in his own behalf, and counsel for the defendant examined the witnesses and participated in the whole trial, and after hearing and considering the case, the judge of the Justice's Court, sitting without a jury, gave judgment for \$200.00, in favor of the plaintiff and against the defendant.

In the brief for the appellant, counsel say that the defendant resided, and was served with process, at No. 66 Maple Avenue, Oradell. The first part

of this statement is not supported by the record. *The record does not show where the defendant resided and the evidence did not disclose the residence of the defendant.*

Counsel for the appellant, in their brief, say that the case was tried over the objection of the defendant to the jurisdiction. This too is a mis-statement of fact. On the contrary, *the fact is, that at no time during the trial was any objection made to the jurisdiction or right of the court to hear or try the case. Objection was made by appellant, for the first time, under the writ of certiorari which was allowed by the Supreme Court to review the judgment and proceedings of the trial court.*

(2)

The defendant contended, for the first time, under the Writ of Certiorari allowed by the Supreme Court, that the trial court had no right or jurisdiction to hear the cause.

Section 31 of the Revision of 1898, Concerning District Courts, as amended by P. L. 1921, Chap. 211, p. 689, provides as follows:

“No justice of the peace or small cause court shall have jurisdiction over any cause or proceedings cognizable before a District Court where the defendant or defendants reside within any city or judicial district where a District Court is established, nor shall any justice of the peace resident within the limits of any city or judicial court where a District Court is or may be established, exercise any civil jurisdiction whatever.

“Provided, however, that in judicial dis-

districts that are or may be created in counties of this State bordering on the Atlantic ocean, the justice of the peace or small cause court shall have jurisdiction in every such District Court district in every suit of a civil nature where the debt, balance, damages or other matter in dispute does not exceed exclusive of costs the sum of fifty dollars as if there were no judicial district in said county."

However, the amendment to the act concerning the trial of small causes, P. L. 1923, Chap. 175, page 462, provides as follows:

"Section one of the act to which this act is amendatory be and the same is hereby amended so as to read as follows:

"Every suit of a civil nature at law, where the matter in dispute does not exceed, exclusive of costs, the sum of two hundred dollars, shall be cognizable before any justice of the peace of any county, who is hereby authorized to hold a court within such county, to hear, try and determine the same according to law, although the cause of action did not arise in said county, which court shall be known as 'The Small Cause Court' and shall be a court of record and vested for that purpose aforesaid with all such power as is usual in courts of record of this State; The Small Cause Court shall also have jurisdiction in proceedings between landlords and tenants, and in actions of forcible entry and detainer; provided, this act shall not extend to any action of replevin, slander, trespass for assault, battery or imprisonment, nor to any action wherein the title to lands shall come in question; provided, further, the said court shall not have jurisdiction over any cause or proceedings cognizable before a District Court, where any defendant resides within a municipality wherein a District Court is established."

It should be observed that the first mentioned act, viz: Act of 1921, provides that the small cause court or justice of the peace shall not have jurisdiction over any cause or proceedings cognizable before a District Court where the defendant or defendants reside within any *city or judicial district* where a District Court is established; whereas, the second mentioned act (the later one) viz: the Act of 1923 provides that the small cause court or justice's court shall not have jurisdiction over any cause or proceedings cognizable before a District Court, where any defendant resides within a *municipality* wherein a District Court is established.

Moreover, even if it should be considered that Section 31 of the District Court Act as amended in 1921 controls, yet it does not appear in the record whether (1) the defendant resides within any city or judicial district where a District Court is established; or (2) whether the justice of the peace was resident within the limits of any city or judicial court where a District Court is or may be established.

It should be observed that the printed record does not show what testimony or evidence was presented in the case by either side.

The return of service of the summons (Case, p. 4), reads as follows:

“The defendant Milton Demarest could not be found and I served the within summons on him the 23 day of Sept., 1929, by leaving a copy thereof at his place of abode in the presence of a person of with Mother in Law family over the age of fourteen years, whom I informed of the contents thereof.

ERNEST TRAINOR,
Constable”.

It is important to keep in mind that whilst the return on the summons recites that the constable served the defendant "by leaving a copy thereof at his place of abode in the presence of a person of with Mother in Law family over the age of fourteen years", that it does not indicate where the place of abode of the defendant is, or the place where such service was made, other than that it was at the place of abode, without indicating where that is.

Therefore, the statute upon which defendant relies does not apply even if it should be assumed that the act would otherwise govern. The result is, the statute upon which the defendant relies has no application.

Moreover, since the record shows that the defendant and his attorney appeared at the trial, and made no objection to the court on the ground of jurisdiction, but took part in the trial to the extent of cross-examining the plaintiff as to the merits of the case, and to the extent of the defendant himself being examined, he, thereby, submitted himself to the jurisdiction of the court.

The record shows that the plaintiff and the defendant appeared and that the trial of the cause was proceeded with as follows, viz: "On the part of the plaintiff Francis V. Dobbins, Attorney of Feder & Rinzler. On the part of the defendant, F. P. Clancy, Collins & Corbin" (Case, p. 8, ll. 30-40).

Counsel for the defendant examined the plaintiff as to the merits of the case, and produced the defendant, as a witness in his own behalf, and examined him, on the merits of the case.

The record is devoid of any objection at any stage of the proceeding to the jurisdiction of the court, or of any mention concerning the alleged

lack of jurisdiction of the court. The first time that any mention was made regarding the jurisdiction of the court to try the case was on the application for a writ of certiorari in the reasons that were filed, and which are printed in the record (Case, pp. 9-11).

In the absence of any showing in the record that there was any objection to the jurisdiction, the fair presumption is that no such objection was ever made.

When, at page eight of their brief, counsel for the appellant say that the justice of the small cause court resided in the City of Garfield, and that the defendant resided, and was served, in the Borough of Oradell, they are making a statement which does not appear by the record. As already indicated, the record does not show what testimony or evidence was produced with regard to the residence of either the justice of the peace or the defendant, and the residence of either of these persons is not anywhere shown in the record. The record only shows that the summons was served upon the defendant at his place of abode, but it is not indicated where such place of abode is, or where such service was made, other than that it occurred at the place of abode.

Accordingly, the Supreme Court, in its opinion, aptly said:

“But the record does not disclose where either the justice of the peace or the defendant resided and this citation of statutes therefore fails of its point.”

(4)

Comments on the Opinion of the Supreme Court.

Counsel for the appellant, under this head, criticizes the Supreme Court in pointing out that:

“But the record does not disclose where either the justice of the peace or the defendant resided and this citation of statutes therefore fails of its point.”

They argue that the residence of the justice of the peace is disclosed by the summons (Case, p. 3). To say that the summons discloses the residence of the justice of the peace is to distort its language. The summons reads:

“To any constable of said county: The State of New Jersey, summons Milton Demarest to appear before me, the subscriber, one of the justices of the peace holding the small cause court in and for the County of Bergen, to be held *in my office* in the Greene Building, 64 Passaic Street, in the City of Garfield in said County.” (Case, p. 3, ll. 20-40; our italics)

The summons merely states that court will be holden in the *office* of the justice of the peace, which is located in the Greene Building, 64 Passaic Street, in the City of Garfield. Nowhere is the word “residence”, or a synonym for it used, and nowhere in the summons is any language used which indicates even inferentially where the residence of the justice of the peace is.

Counsel for the appellant, at page 12 of their

brief, quote from the judgment (Case, p. 8), which recites:

“A summons was duly tested September 20, 1929, returnable October 1, 1929, at 9:30 o'clock in the forenoon, at the *office* in the Greene Building, 64 Passaic Street, Garfield, New Jersey.” (our italics)

And from the constables return of the summons:

“I served the within summons September 23, 1929, on defendant's mother-in-law, defendant, by reading same and delivering same to him, a copy thereof.”

Thus, it is clear that the judgment merely shows that the summons was returnable at the *office* of the justice of the peace, and not at his residence, and that the judgment does not disclose the *residence* of the justice of the peace or of the defendant, and the constable's return of the summons, as already demonstrated, merely shows that the officer served the summons on the defendant's mother-in-law, but it does not even suggest that the mother-in-law was served at the defendant's residence, or indicate where the residence was.

Then counsel for the appellant say that the residence of the defendant is shown on the state of demand (Case, p. 5), which, they say, reads:

“Peter Lazorchak, plaintiff, vs. Milton Demarest, etc., defendant, 66 Maple Avenue, Oradell.”

The state of demand merely indicates where the defendant may be served, or may be found for that purpose, but it does not suggest or indicate that 66 Maple Avenue, Oradell, is the residence of the defendant, and it does not appear anywhere in the state of demand or on the backing that 66 Maple

Avenue, Oradell, is the residence of the defendant, or where his residence is.

A defendant may be a resident in Albany, New York, or in some more distant place and state, elsewhere than in New Jersey, and yet he may be found by reason of his employment, or whatever the cause, at some place in New Jersey; and in such a situation, the place where he might ordinarily be found in New Jersey, and where he could be served with process would thus be indicated, but that would not constitute the place of service, the residence of the defendant.

At page 13 of their brief, counsel for the appellant again say that the justice of the peace resided in Garfield, yet such fact is not supported by the record.

Counsel for the appellant criticize the opinion of the Supreme Court, in which it is said:

“The record discloses that the defendant appeared at the trial and also was represented thereat by the attorneys who appear for him here; and it does not show the making of objections of any character.”

And then counsel makes this concession:

“We concede that the record does not disclose the making of such objection.”

All proper and lawful inferences in favor of the regularity and proceedings of a justice of the peace will be drawn.

Wooley on D. Prac. sec. 938; Millaway etc. v. Wilas, 4 Houst. 283; Elliott v. Morgan, 3 Har. 316.

An objection to jurisdiction must be made at the earliest possible moment, and it is too late to

object to the jurisdiction of the justice of the peace on an appeal from a judgment rendered by him.

16 R. C. L. p. 368, sec. 47, under the title "Justices of the Peace."

A case which is applicable to the situation existing in the case at bar, is *Venghis vs. Commonwealth Casualty Co.*, 101 N. J. Law 151, decided by the Court of Errors and Appeals. That case, it appears, was brought in the Supreme Court. The case coming on for trial at the January Term of the Atlantic courts, 192, it was "referred to Hon. William H. Smathers and a jury for trial," by Ralph W. E. Donges, Judge, the latter being a Circuit Court judge and the former being the judge of the Common Pleas Court of Atlantic County. The order was entered nunc pro tunc as of January 8, 1924. The case was, by order of Judge Smathers, set for trial for April 16, 1924. On that day, when the case was moved for trial, Mr. Reed appeared for the defendant and objected "to proceeding with the case in that court, because the court is without jurisdiction."

It also appears in the opinion of the court filed in *Venghis vs. Commonwealth Casualty Co.*, supra, that the objection of Mr. Reed, the attorney for the defendant, to the authority of the common pleas judge to try the case was overruled by the judge, to which there was an exception noted. The trial of the case then proceeded in the presence of Mr. Reed, the attorney for the defendant. Mr. Reed made objection regarding the pleadings, and regarding the admission and rejection of the evidence during the trial, and took exception to the trial court's rulings, and examined two witnesses. When the plaintiff rested, a motion for a non-suit was made by Mr. Reed, the attorney for the

defendant, and being overruled, an exception was noted:

In dealing with this situation, the Court of Errors and Appeals held:

“We think from these facts this case is governed on the question of jurisdiction by the principle; that, when the attorney for the defendant takes part in the trial of the case to the extent of cross-examining the witnesses as to the merits of the litigation, it is equivalent to a general appearance. *Laura v. Puncerelli*, 91 N. J. Law, 38, 102 A. 433. As was said by *this court*, a defendant, who in one breath challenges the jurisdiction of the court in a pending suit and in the next, asks relief against the plaintiff on the merits of the same litigation, submits himself to the jurisdiction of the court. *McGuinness v. McGuinness*, 72 N. J. Eq. 384, 68 A. 768. Those cases were cited with approval by this court in the case of *Laure v. Singer* (N. J. Err. & App.) 125 A. 245. See *Polhemus v. Holland Trust Co.*, 61 N. J. Eq. 654, 658, 47 A. 417; 4 Corp. Juris, p. 1318, Sec. 5; 7 R. C. L. p. 1042, secs. 75 to 78. *That principle, applied to the facts of the case under discussion, makes unnecessary any further discussion of the irregularity, in the order of reference, to Hon. William H. Smathers. The court of common pleas had jurisdiction of the subject matter of the controversy. The case could have been brought in that court.*”

In the case at bar counsel participated in the trial without making any objection to the jurisdiction. The facts, therefore, which estop the defendant in this case from objecting to the jurisdiction of the trial court now for the first time are stronger in bar of his right than were the facts in the cited case; for, in the cited case, although the at-

torney for the plaintiff participated in the trial of the case, he first objected to the jurisdiction of the court; whereas, in the case at bar, no objection to the jurisdiction was made.

It is the order of reference that gives a common pleas judge the jurisdiction to try a Supreme Court issue. Yet, by participating in the trial, the defendant in the case of *Venghis vs. Commonwealth Casualty, Co.*, supra, lost his right to object to the jurisdiction; it was considered waived although no order of reference was made.

Handelman vs. Harris, 93 N. J. Law 66, cited by our adversaries, does not apply to the case at bar. In *that* case, the fundamental question was with regard to the jurisdiction of a justice of the peace in summary proceedings to dispossess a tenant, where the premises are in a city which has a district court.

Justice Parker pointed out in the opinion in *that* case that:

“The facts are not disputed; the premises are in the city of Paterson; that city has a district court; and in this case a justice of the peace entertained the landlord’s complaint, issued a summons, and took cognizance of the case to judgment and warrant of dispossession.”

So that it is clear that in the case of *Handelman vs. Harris*, supra, the record disclosed, in fact it was admitted, that the premises involved in the summary proceedings to dispossess the tenant were located in a city which had a district court. In the case at bar, the record does not disclose where the justice of the peace resided, or where the defendant resided.

Moreover, the case of *Handelman vs. Harris* in-

volves a different statute. The statute involved in that case is P. L. 1903, 3 Comp. Stat. 3070, commonly known as the Landlord and Tenant Act.

Under the statute involved in the case at bar, a justice of the peace has jurisdiction of the subject matter, and the parties unless the record shows (a) that the defendant resides within a municipality wherein a district court is established; or (b) that the justice of the peace is resident within the limits of a city where a district court is or may be established.

In the case at bar, it is not shown (a) that the defendant resides within a municipality wherein a district court is established; or (b) that the justice of the peace is resident within the limits of a city where a district court is or may be established. It is not shown where the defendant resided.

On the other hand, in the case of Handelman vs. Harris, supra, the justice of the peace had no jurisdiction of the subject matter, because the conceded fact was that the premises involved in a summary proceedings to dispossess the tenant were located in a city which had a district court, and, therefore, under the landlord and tenant act, the justice of the peace lacked jurisdiction of the subject matter.

The language of the statute applicable to the case at bar itself demonstrates that a justice of the peace has jurisdiction of the subject matter, for it says:

“Every suit of a civil nature at law, where the matter in dispute does not exceed, exclusive of costs, the sum of two hundred dollars, shall be cognizable before any justice of the peace of any county, who is hereby authorized to hold a court within such county, to hear, try and determine the same according to law, although the cause of ac-

tion did not arise in said county, which court shall be known as 'The Small Cause Court' and shall be a court of record and vested for that purpose aforesaid with all such power as is usual in courts of record of this State; the Small Cause Court shall also have jurisdiction in proceedings between landlords and tenants, and in actions of forcible entry and detainer; provided, this act shall not extend to any action of replevin, slander, trespass for assault, battery or imprisonment, nor to any action wherein the title to lands shall come in question; provided, further, the said court shall not have jurisdiction over any cause or proceeding cognizable before a District Court, where any defendant resides within a municipality wherein a District Court is established." P. L. 1923, Chap. 175, p. 462.

The case at bar did not involve an action of replevin, slander, trespass, assault, battery, or imprisonment, or any action wherein the title to lands came into question, which are the exceptions contained in P. L. 1923.

The record does not show that the defendant resides within a municipality wherein a district court is established. Moreover, the record did not show that the defendant resides within any city or judicial district where a district court is established, or that the justice of the peace was resident within the limits of any city or judicial court where a district court is or may be established, as is the exception in the act of 1921.

That the justice of the peace has jurisdiction, save for the excepted cases enumerated in the statute, was decided by our Supreme Court in *Weishaupt vs. Weishaupt*, 104 N. J. Law 465, where Justice Kalisch, in the opinion of the court, said:

"While it is true that the *district court*

also had jurisdiction in the case, it *did not have exclusive jurisdiction.*" (our italics)

Counsel for the appellant, in their brief, say that *Weishaupt vs. Weishaupt*, supra, does not apply to the case at bar on the ground that in *that* case the parties resided in Union County where there are no judicial districts in which district courts are established. If such is the fact, it does not appear in the opinion of the appellate court, and the Supreme Court, in its opinion in that case, did not indicate that to be the basis for its decision.

Collins vs. Keller, 58 N. J. Law 429, cited in the appellant's brief, has no application to the case at bar, because in *that* case the opinion shows the court had no jurisdiction over the *subject-matter* of the suit. In the case at bar, the court had jurisdiction over the subject-matter of the suit.

(5)

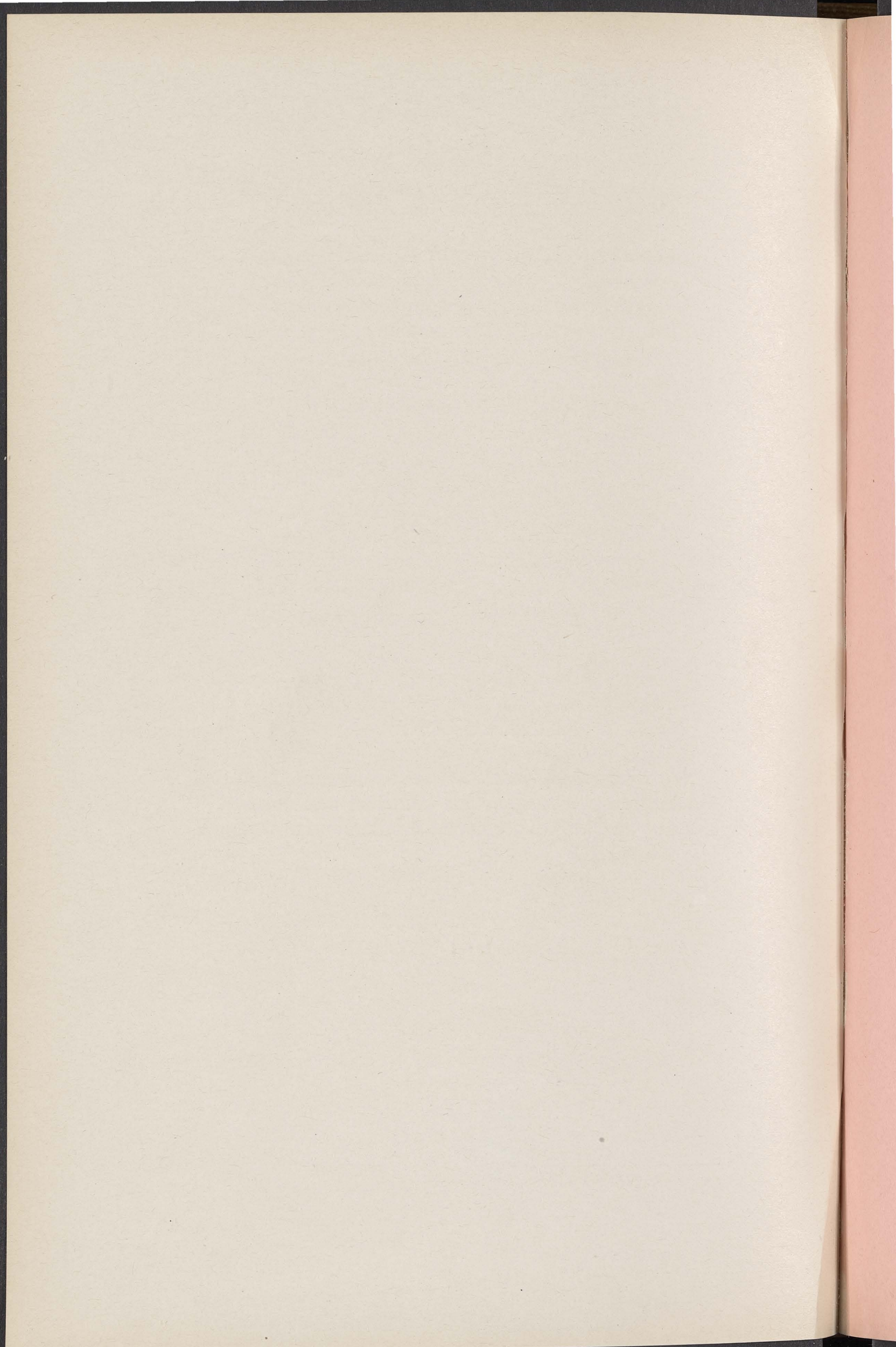
CONCLUSION.

We respectfully submit that the judgment of the Supreme Court, which affirmed the judgment of the small cause court, should be affirmed.

Respectfully submitted,

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