

DAILY vs. DOE.

1 LLR 21; LRSC 1 (1864) (1 January 1864)

[January Term, A. D. 1864.]

Appeal from the Court of Quarter Sessions and Common Pleas, Montserrado County.

Writ of Error—Practice.

The court is of opinion that as the legality of the writ was not made a point in the declaration, it could not be made a question in the case. Therefore, if the search warrant was illegal in any of its features the plaintiff in error should not be made to suffer while pursuing a proper course, which was confined by his oath and legalized by the warrant of law. The law, by all means, authorized the magistrate to act within the precincts of the court in which he resides.

It does not appear that the magistrate committed any error by the issue of the warrant, and the constable in acting could only perform his duty by the authority embraced in the warrant, as an officer of search. The court is also of the opinion that the law guarantees the right to individuals to cover any and all places by a warrant in which he may have suspicion that his property is concealed, and the warrant under oath is the security. The law in the statute, page 10, section 49, declares if the writ shall have been improperly obtained, the law would give a remedy at law against the party procuring the writ, but if properly obtained, no action can lie; then if a writ is obtained in a proper form and by the requirement of law by the party seeking it, he is secured against all actions. The oath of the party, the designation of the place or places, as well as the property, is the form proper, and if the magistrate confines himself within his jurisdiction, that is, the county in which he and the party reside, he will also be considered to be in form.

In all these relations this court is of the opinion that the appellant and Justice of the Peace have confined themselves to law and form. Therefore, the decision of this court is that this case be and is hereby reversed, and that the appellee in error be ruled to pay all costs.