FRANCES C. WILSON, et al., Appellants, v.

A. DASH WILSON, JR., et al., Appellees.

APPEAL FROM RULING OF JUSTICE GRANTING ISSUANCE OF A WRIT OF CERTIORARI TO THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued May 29, 1978. Decided June 30, 1978.

1 The provision of the Civil Procedure Law, Rev. Code 1:1.3, abolishing the distinction between actions at law and suits in equity, and the form of those actions and suits heretofore existing, does not require a trial by jury in cases of an equitable nature such as suits for cancellation of a deed.

2 A writ of certiorari will issue to correct the error of a lower court in ruling that a jury trial is necessary to try the issue of fraud in a suit for cancellation of a deed.

This was a bill for cancellation of a deed for fraud. The Circuit Judge held that the case must be tried by jury since fraud was an issue. The petitioners challenged that decision by applying to the Justice in chambers for a writ of certiorari, which was ordered issued. Respondents in the cancellation suit appealed from that ruling.

The Supreme Court held that the statutory abolition of the distinction between actions at law and suits in equity, and the form of those actions and suits heretofore existing did not confer a right to trial by jury in an equitable suit for cancellation, and that certiorari was the correct procedure to obtain a review of an interlocutory ruling. The *ruling* of the Justice in chambers granting the writ was *affirmed.*

Moses K. Yangbe and *Edward Carlor* for appellants.

J. Dossen Richards for appellees.

MR: JUSTICE TULAY delivered the opinion of the Court.

On August 26, 1974, appellants before this Court were 182 summoned to appear before the Fourth Judicial Circuit, Maryland County, to answer the complaint of the appellees herein in a bill in equity for cancellation of a certain fraudulent deed. Respondents below appeared and answered the complaint. The case was called for trial under the then resident Judge for Maryland County, His Honor John A. Dennis, on January 10, 1975. The judge held that although cancellation of a deed was traditionally an equitable action not requiring a trial by jury, nevertheless the distinction between actions at law and suits in equity and the forms of those actions and suits heretofore existing, have been abolished by statute, Rev. Code: 1.3, and the issue of fraud is one which must be tried by jury. In support of his holding he cited *Beysolow v. Coleman,* 9 LLR 156 (1946), an action of ejectment involving fraud. His opinion concluded: "In consequence thereof, since this matter relates to realty and there being only one form of action presently and all such trial being required by a jury under our present statute, this case is hereby ordered ruled to a jury trial."

Petitioners below, now appellees, considering this ruling to be adverse to their interest, applied for a writ of certiorari to the Justice in chambers who declared the judge's ruling to be erroneous and granted the petition for the writ of certiorari. Appellants appealed from the ruling and have brought the case to the Court *en banc.*

Appellants here have argued that the court below correctly ruled the case to trial by jury because fraud was pleaded as the sole basis of the bill for cancellation, and whenever and wherever fraud is pleaded, the court must permit the introduction of evidence, both written and oral, before determining the case, and this can only be done with the aid of a trial jury. They referred us to *Beysolow v. Coleman, supra,* as supporting their position.

They also advanced the argument that the right to trial by jury is a constitutional one and that this right is applicable to cancellation proceedings. They correctly stated that whenever fraud is pleaded the court must permit the introduction of evidence, both oral and written, before determining the case. But we refuse to be convinced by the *Beysolow v. Coleman* case relied upon by them, as the issue therein is not analogous to the one before us. In that case, an action of ejectment, the lower court judge denied the defendant the right to have the jury pass upon the evidence in support of the allegation of fraud in his answer. The petition for a writ of certiorari now under review had its origins in a bill in equity for cancellation of a fraudulent deed. Besides, trial by the court alone does not bar the admission of evidence both oral and written in the determination of the case. In fact this is the only legal method open to the court.

In *Davies v. Republic,* 14 LLR 249 (196o), this Court, speaking through the then Mr. Justice Pierre, confirmed the decree of cancellation entered in favor of the Republic against appellant's contention that an ejectment suit, instead of cancellation, should have been instituted in order to have his right to the lawful possession of the property be tried by jury. Similarly, in *Banks v. Hayes,* 10 LLR 98 (1949), Mr. Justice Reeves, speaking for this Court, affirmed the lower court's decree.

The two cases cited above are only a few of the many cancellation cases heard and determined by the court alone without the aid of jury. Nowhere in these cases has it been shown that evidence, when called for, was not admitted. We do not, therefore, subscribe to the view held by appellants that the constitutional right to trial by jury is applicable to cancellation cases.

The abolition of all forms of action including equity and their substitution by the simple form, civil case #2, civil case #3, etc., did away with the Probate Division as well. But that does not mean that in the counties where the Circuit Court has jurisdiction over probate matters it cannot entertain them. What the Civil Procedure Law, quoted and relied upon by the trial judge, imports is that the forms—probate, admiralty, equity sittings, and actions in assumpsit, torts, trespass—are abolished, but the essence still remains the same. Under this statute the Circuit Court no longer *closes in law and opens in probate,* admiralty, or in equity; neither are actions henceforth to be styled *assumpsit, torts,* or *trespass,* but the method of trial of such cases still remains.

We, therefore, feel no hesitancy in holding that the judge below erred in ruling the cancellation case to trial by jury because of the abolition of forms of action and divisions of the Circuit Court.

Counsel for appellants have endeavored to foist on us a novelty when they plausibly argued before us that certiorari does not lie against rulings given piecemeal—in other words, against interlocutory rulings; and as the judge's ruling, that the cancellation suit be tried with the aid of a jury, was only an interlocutory one, petitioners could not legally apply for a writ of certiorari against it. What a fallacy! Certiorari properly obtains against any ruling—except final judgment—which the petitioner considers adverse to his interest. In *Vamply of Liberia, Inc. v. Kandakai,* **22** LLR 24.1 (1973), it was held that certiorari will not lie when the writ is sought to review the final judgment of a court. "Certiorari is a special proceeding to review and correct the proceedings of any administrative board or agency or of any court of record other than the Supreme Court." 1956 Code 6:1200.

"If the issue is determined in favor of the applicant, the Supreme Court or Justice shall direct such order to the court or agency below as may be necessary to carry out the ends of substantial justice. If it is decided against the applicant, the writ shall be quashed and the original
action or proceeding shall continue in the court or agency below."1956Code 6:1203. Certainly, the purpose of certiorari is to afford relief to a party from prejudicial action of a subordinate court. *Nyekan v. Havens,* 14 LLR 480 (1961). Certiorari is intended to correct errors committed by s subordinate court while the matter is still pending, not after it is terminated. *Williams v. Clarke,* 2 LLR 130 (1913).

Concluding, as we do, that the trial judge manifestly erred in ruling the case to jury trial upon a wrong theory of law, when the court alone could have admitted evidence, both oral and written, to help determine whether fraud, as pleaded in the bill, was actually practiced by the respondents below, and that the Justice in chambers correctly granted the writ of certiorari prayed for against the ruling considered adverse to the interest of the petitioners, now appellees, we hold that said ruling of the Justice in chambers from which this appeal is taken ends the matter.

The Clerk of this Court will now send a mandate to the court below commanding it to resume jurisdiction over the cause and determine it in the light of this opinion. Costs to abide final results. And it is so ordered.

Ruling *affirmed.*