

DAVID ATTIA, Plaintiff in Certiorari, v. **ARTHUR RIGBY**, Agent for William A. Drury, Defendant in Certiorari.

Petition for a Writ of Possession. On writ of certiorari from the Court of Quarter Sessions and Common Pleas for Grand Bassa County.

COURT'S RULING ON DEFENDANT'S MOTION TO QUASH.

1. A writ of certiorari possesses all the characteristics of a writ of error, and performs the same offices to an inferior summary tribunal as the writ of error does to an inferior court of record.
2. An appeal court has power to examine upon the merits every decision, both as to law and facts, the proceedings of an inferior tribunal.

This motion is before the court because of a writ of certiorari directed to the Court of Quarter Sessions and Common Pleas of Grand Bassa County in which David Attia is complainant, and Arthur Rigby, agent for William A. Drury, is respondent on a writ of possession determined in the court below at its December term, A. D. 1906.

At the call of this case the respondent submitted to the consideration of this court a motion to quash the writ of certiorari.

1. Because the summary proceedings on a writ of possession had been finally disposed of when the said writ of certiorari was issued.
2. Because there being no statutory provisions for a writ of certiorari, the provisions of the common law are to be adhered to.
3. Because the writ of certiorari was obtained by false representations.
4. Because the writ of certiorari can only be had during the pendency of a cause, and not after judgment.

5. Because the certiorari in this instance is in the nature of an appeal and that for the want of bail and payment of cost the writ should be quashed; and also because the judge to whom the writ is directed should make returns thereto. These constitute the important issues submitted in the motion which this court proceeds to consider. In doing so this court says: The general nature of the writ of certiorari in its office of removing final adjudication for review possesses all characteristics of a writ of error under the system and practice of our laws, and performs the same office to the inferior summary tribunal that a writ of error did to an inferior court of record.

The common law certiorari proper removes only the record or entry in the nature of a record of the proceedings of the court below, whereby the jurisdiction and the regularity of the proceedings are reviewed; but when the writ is authorized by the statute, as in this case, the authority of the court is not limited to jurisdiction and regularity. It has power to examine upon the merits every decision of the court or officer upon questions of law, and to look into the evidence and affirm, reverse or quash the proceedings as justice shall require. (See Abbott's Digest of the Decisions of the Supreme Court, U. S. A., New Series, vol. 1, p. 137.)

The authority to issue writs of certiorari is found in the statute laws of the Republic of 1875, p. 13, *sec. 5*, which reads:

"Upon satisfactory application to the Chief Justice or either of the Associate Justices during the recess of the Supreme Court, it shall be lawful for either of them to issue such writs or processes as are usual in the Common Law and the practice of the Supreme Court of the United States of America or order the same issued from the clerk's office."

The application for the writ forms no part of the pleadings since the granting of the writ is in the discretion of the Justice or Associates issuing the same.

The foregoing conclusions fully settle the 1st, 2nd, 3rd, 4th and all other issues raised in the motion, the question of the return of the writ by the judge excepted.

The attorney representing this motion cites to this court its rulings in the case of *Celas McLes, prisoner, v J. W. Toles* also, the case *McMuller v. J. W. Goods, Sheriff*.

The rulings in these cases were upheld by law as no returns whatever were made to the writs. In this case the form of the returns of Judge S. P. Gross is questioned upon the ground of informality. To this the court says it reserves to itself the right to say and to know when lawful and satisfactory returns are made to its mandates. For the reason above stated the motion is not sustained by this court.

Given under our hands this 17th day of January, A. D. 1908.
By the Court.