

VIETOR & HUBER, Plaintiff in Certiorari, v. **PHILLIP A. THATCHER**,
Defendant in Certiorari.

ARGUED JULY 10, 1912. DECIDED JULY 17, 1912.

Toliver, C. J., MoCants-Stewart and Johnson, JJ.

Unreasonable delay of a party to seek redress in a cause amounts to laches on his part; and the judgment will not be disturbed, especially when the *status quo can* not be restored.

Mr. Chief Justice Toliver delivered the opinion of the court :

Debt—Appeal from Judgment. It appears from the records that the plaintiffs in certiorari filed an action of debt in the Court of Common Pleas and Quarter Sessions for the County of Grand Bassa, at its September term, A. D. 1906, and obtained a verdict and judgment in their favor on the 5th day of October, for the sum of three thousand two hundred and nineteen dollars and seventy-six cents (\$3,219.76).

After rendition of said judgment, and before plaintiff in certiorari proceeded further, at the said September term of the court, A. D. 1906, the defendant petitioned the court and applied for permission to assign his property for the general benefit of his creditors. Upon the application being made, the defendant in certiorari entered into a bond usually given by persons taking the benefit of the Insolvent Act. (See Lib. Stat., sec. 9.) When the defendant in certiorari applied for the return of said bond a year afterwards, the court ordered the clerk to return same if the time had expired; this occurred in open court on the 9th day of October, A. D. 1907. The plaintiff in certiorari by his attorney was present in court and objected and called the court's attention to the Insolvent Act (Lib. Stat., ch. 19, p. 47) and a section unknown. The clerk of the court, acting upon the court's order, returned the bond, thereby releasing the insolvent debtor. It appears that after the lapse of over four years, the plaintiff in certiorari applied for and obtained the issuing of a writ of certiorari in order that the cause might be reviewed by the Supreme Court.

From the records in this case it is clear that the proceedings in the court below were not conducted strictly according to the statute laws of the Republic.

A writ of certiorari is a writ issued out of a superior court to a subordinate court, commanding said court to return the records in a cause then pending, or in a particular case, and operates, as has been said, as a supersedeas. It has been said by eminent law writers that the place which certiorari occupies in remedial jurisprudence is extremely difficult to define; its use has been often erroneously resorted to. It was held that for lathes the writ may be quashed, notwithstanding the proceedings in the court below were not strictly in accordance with law. The records show that the plaintiff in certiorari was represented by his counsel in the court below, stood by, and allowed the matter to rest over four years before seeking relief, which this court considers lathes on part of plaintiff in certiorari. To allow matters to remain such a length of time before pressing their claim, there would be no end to litigation if such was allowed. There should be limit in point of time in which actions should be brought to this court, and such time depends upon the facts in each case. And it may be said, that where the parties cannot be placed in the *status quo* existing at the time of the action or proceedings by the court to which the appeal is taken, the action of the court below will not be disturbed.

Court, therefore, adjudges, that the decision of the court below in discharging the insolvent debtor, Phillip A. Thatcher, defendant in certiorari, be and is hereby affirmed ; and the clerk is hereby directed to issue a mandate to the Circuit Court, Second Judicial Circuit, Grand Bassa County, to this effect.

C. B. Dunbar, for plaintiff in certiorari.

P. J. L. Brumskine, for defendant in certiorari.