

S. J. TAYLOR, Petitioner, v. His Honor E. J. S. WORRELL, D. E. HOWARD, N. B. SETON, DIXON B. BROWN, Board of Arbitrators, and W. SAMPSON BROOKS, Respondents.

APPLICATION FOR A WRIT OF CERTIORARI TO THE FIRST JUDICIAL CIRCUIT COURT, MONTSERRADO COUNTY.

Decided February 3, 1928.

1. Whenever it is discovered that gross irregularities existed in the proceedings of a board of arbitrators, the trial court is not bound to wait for objections but may proceed *sua sponte* to set aside the award and adopt such a course as will ensure justice to the parties concerned.
2. It is the evidence that determines the issue of fact in all litigation, and where it appears that a court, tribunal, or officer proceeded without the proper evidence for both parties, it creates an irregularity in the trial and no judgment should be pronounced thereon.

The case is stated in the opinion. *Certiorari denied.*

*N. H. Sie Brownell* for petitioner. *Barclay & Barclay* for respondents.

MR. JUSTICE MCCARTHY delivered the opinion of the Court.

This was an action of debt entered by S. J. Taylor, plaintiff in the court below and now petitioner in certiorari against W. Sampson Brooks, one of the respondents in certiorari and defendant in the court below.

The petition for the writ of certiorari submits:

"1. That on the 28th day of March, 1927, petitioner brought an action of debt against W. Sampson Brooks, one of the respondents in this cause and defendant in the Court of the First Judicial Circuit, Montserrado County, in its law division.

"2. That the case involving complicated accounts too difficult for the jury to unravel, His Honour

Nugent H. Gibson, presiding Judge for the First Judicial Circuit aforesaid, by consent of both parties to the action, referred the matter to a Board of Arbitrators composed of the following persons: N. B. Seton, Dixon B. Brown and Cephas Acolatse.

"3. That the said Board examined the case and after mature consideration made an award in favour of petitioner, as will more fully appear by a copy of said award hereto attached and forming part of this petition.

"4. That said award was duly filed in Court by said Arbitrators on the 26th day of September, 1927, with the Clerk of the Court and copies of same were served on each party to the cause.

"5. That no objections have been filed against said award by W. Sampson Brooks but that His Honour Nugent H. Gibson, Judge as aforesaid, *sua sponte*, asked the said Board by letter to rehear the matter, to which request the said Board returned a negative reply to the effect that no objections had been filed against this said award and therefore they could not proceed.

"6. That the said Judge N. H. Gibson thereafter appointed another Board whose personnel are as follows: D. E. Howard, N. B. Seton, and Dixon B. Brown, to resume jurisdiction and rehear the matter, without any reference to petitioner, plaintiff in the Court below, and without objections to the award filed in this Court.

"7. That petitioner has conformed with the award of the Arbitrators by returning to them the books and other articles awarded W. Sampson Brooks.

"8. That on the 17th day of November, 1927, in consequence of there being no objections filed against the award in Court, when the November Term of said Circuit Court met, petitioner filed an application before His Honour E. J. S. Worrell, assigned

Judge presiding, praying for judgment to be entered on the said award already filed in Court.

"9. That before the hearing of the said application, the newly constituted Board cited petitioner to appear before it; that petitioner appeared by counsel and objected to their jurisdiction on the grounds: (1) that an award has already been filed in Court and that without objections; (2) that on those grounds one Board refused to further arbitrate; (3) that the petitioner had already filed in Court an application for a judgment on the award. The said Board of Arbitrators overruled the objections of the petitioner and are determined to proceed in the matter before this application has been disposed of.

"10. That petitioner complains that the proceedings in the Court below as taken by His Honour Nugent H. Gibson and the proceedings now about to be had before the new Board of Arbitrators are illegal, materially prejudicial to his rights and erroneous in law, and that the said Board is without jurisdiction.

"Wherefore your humble petitioner respectfully prays that your Honour will cause a Writ-of-Certiorari to issue, commanding His Honour E. J. S. Worrell, Judge presiding by assignment, to cause a full and complete record of the proceedings below in the subject matter on trial to be certified and returned to this Honourable Court in order that the errors therein complained of may be reviewed by your Honours, and the same corrected if Your Honours find the Court below to be in error, and the same made certain; and that a mandate may issue, commanding the Judge below to enter judgment upon the award now pending before him. And that Your Honours will grant unto your humble petitioner any and other further relief in the premises as to justice and equity shall appertain, and to Your Honours shall seem meet and just."

The petition is supported by a copy of the award in

favor of the petitioner and constitutes the grounds upon which the issuance of the writ of certiorari is prayed. Addressing ourselves to the petition and the legality of granting the writ upon the contention of petitioner we shall only consider those issues which in our opinion will enable us to arrive at a just conclusion.

And first in count 5 of said petition it is contended that no objections were filed to the award, but that His Honor Nugent H. Gibson as aforesaid *sua sponte* asked the Board by letter to rehear the matter, to which request the Board returned a negative reply that no objections had been filed against the award and therefore they could not proceed. And also in count 6 it is contended *inter alia* that the Judge appointed another Board of Arbitrators to resume jurisdiction and rehear the matter without reference to the petitioner, plaintiff in the court below, and without objections to the award filed in court. To this position of the case we are called upon to intervene by proceedings in certiorari. While according to some leading authorities the writ of certiorari will not issue until after final adjudication of the matter under review, yet there are many others which warrant the issuance of the writ at that state of the case when it is necessary to promote justice and the like.

This is supported by Rule 4, Section 4 of this Court. But it is not this phase of the matter we are considering. Laying aside all others, we proceed to consider whether the contention set forth in the said counts 5 and 6 of the petition are sufficient to warrant our intervention by proceedings in certiorari. The statute laws of the Republic of Liberia require that all objections to an award must be made within four days after the filing of the award.

While this is the positive language of the statute, yet we are of the opinion that it is subject to limitation. For whenever it is discovered that gross irregularities existed in the proceedings of the Board of Arbitrators, the trial court is not bound to wait for any objections, but may

proceed *sua sponte* to set aside said award and to adopt such course as will ensure justice to the parties concerned. Under such condition of the matter, this Court will not intervene in proceedings in certiorari as we do not feel that the acts of the trial court were erroneous.

Another material point we will notice with reference to the evidence in the matter. It was brought out in the arguments that the proper evidence was never before the Board to enable them to arrive at a just conclusion. The evidence that was said to be submitted to the Annual Conference of the Church of which W. Sampson Brooks, one of the respondents, is a member was not submitted. The award was unsupported by proper evidence and was therefore an irregularity which the court should have noticed; having noticed such irregularity, it has the power to correct the same and to pursue the course that the justice of the case may demand. For it is the evidence that determines the issues of fact in all litigation, and where it appears that a court, tribunal or officer proceeded without the proper evidence for both parties, it creates an irregularity in the trial, and no judgment should be entered thereon.

Having carefully considered this matter, we have to deny the petition for a writ of certiorari and remand the case with instructions to the court below to resume jurisdiction and determine the matter according to law, costs to abide the final determination of the matter; and it is hereby so ordered.

*Petition denied.*