

Certiorari.

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An act relative to the writ of certiorari.

Revision—Approved March 27, 1874.

1. That writs of certiorari and of supersedeas may be allowed in term or vacation (a) by a justice or judge of the court, out of which they may issue, and such justice or judge is hereby authorized at any time to make all necessary orders thereon. (b)

2. That no writ of certiorari shall be granted to remove into the supreme court any indictment, judgment, order, process or other proceedings, unless it be signed by one of the justices of the supreme court, and for want thereof, such writ shall be absolutely void and of no effect.

3. That every writ of certiorari for the removal of any indictment, judgment, or order from any court of oyer and terminer, or court of general quarter sessions of the peace, shall be delivered to the same in open court.

4. That the supreme court or any justice thereof may, in its or his discretion, at the instance of any person indicted, on application in term time or vacation, award a writ of certiorari to remove into said court any indictment before trial, from any court of oyer and terminer and general jail delivery, or court of general quarter sessions of the peace, upon the following and no other terms, that is to say: that the person indicted and prosecuting such certiorari, shall, before the allowance thereof, with two sufficient sureties, enter into recognizance to the state of New Jersey before the supreme court, or any justice thereof, in such sum as the said court or justice shall direct, with condition that the person so indicted and prosecuting the certiorari shall, at its return, appear and plead to the said indictment in the said supreme court, and, at his own cost and charges, (c) cause and procure the issue that shall be joined upon the said indictment or presentment, or any plea relating thereto, to be tried at the next circuit court to be held for the county wherein the said indictment was found, after such certiorari shall be returnable, if the said supreme court shall not appoint any other time for the trial thereof, and if any other time be so appointed, then at such other time; and shall not depart the said supreme court until discharged by the same, and shall pay costs, if convicted of the offense charged in the said indictment; and upon further condition, that, if the supreme court

R. S. 200, 928, 983, 984.

P. L. 1865, p. 799.
" 1871, p. 124.
" 1873, p. 165.

May be allowed by judge in term or vacation.
P. L. 1865, p. 799.
Judge may make orders thereon.

Allowance of.
R. S. 983.

To be presented in open court.

On indictments.
R. S. 983.
P. L. 1873, p. 165.
Amended.

Recognizance required.

Condition of.

367-1
Rev 08-348

367-1
aws04-295

(a) A certiorari in a road case may be allowed in vacation. *Powell v. Hitchener*, 3 Vr. 211. For cases before act of April 6th, 1865, where application was made to a judge at chambers, and where applied for at bar, see *Ludlow v. Ludlow*, 1 South, *387 (a); also *Griscom v. Gilmore*, 3 Gr. 475, and *Ex parte Shough*, 1 Har. 264.

(b) The court from which a certiorari issues, is to decide on its legality; the inferior court must obey it. *The State v. Hunt*, Coxe 287. A certiorari may issue although there may be an appeal as in case of commissioners, &c. *Kingsland v. Gould*, 1 Hal. 161. *New Jersey R. R. Co. v. Suydam*, 2 Har. 25. But not in cases in justices' courts. *Post*, JUSTICES' COURTS, Sec. 96. A mandamus was issued to the common pleas where they had ordered proceedings on an appeal to be stayed until a certiorari should be decided. *Budd v. New Jersey R. R. Co.*, 2 Gr. 468. See *White v. McCull*, Coxe 93. *State v. Bidleman*, 1 Har. 267.

The writ may be served by any person and in any manner by means of which the person to whom it is directed may reasonably be made aware of the fact of issuing the writ and its requirements. *State, Chambers v. Dwyer*, 12 Vr. 93. Should be directed to person or body having legal custody of record to be certified. *Kirkpatrick v. Commissioners*, 13 Vr. 510. Operates as a supersedeas to suspend proceedings removed. *Hunt v. Lambertville*, 17 Vr. 59. Cannot be issued to test right to office or franchise. *Haines v. Freeholders*, 18 Vr. 454. *Loper v. Millville*, 24 Vr. 382.

(c) Where a defendant removes an indictment into the supreme court and carries it down to the circuit for trial, the attorney for the state cannot tax his costs as in a civil suit, but is entitled only to his regular fees as in criminal cases. *State v. Reed*, 3 Hal. 178.

shall so order, the said person so indicted shall appear in the court from which such indictment was removed, at any term thereof which the supreme court shall order, and plead to the said indictment and abide the judgment of the court, and pay costs, if convicted of the offense charged in the said indictment. (a)

Recognizance,
where filed.
R. S. 984.

5. That every recognizance, taken by virtue of the preceding section, shall be delivered to the court to which the certiorari, is directed, together with the said writ; and the recognizance so taken, shall be certified into the said supreme court, with the said certiorari and indictment, and there filed; and if such recognizance be not delivered, together with the certiorari, to the court as directed, then it shall be the duty of the said court to proceed to the trial of the said indictment in the same manner as if no such certiorari had been allowed or presented.

Proceedings in
supreme court
on certiorari.
P. L. 1873, p. 165.
Amended.

6. That upon the removal of any indictment into the supreme court, if the said court shall determine that the said indictment is not sufficient in law, the person or persons so indicted shall thereupon be discharged, and all further proceedings thereon cease; and in case the said court shall determine that the said indictment is sufficient in law, the said court may in its discretion retain the same in said court, to be carried down for trial before the proper circuit court, or may order that the same be returned by the clerk of the said supreme court to the court from which the same was removed, and the said court to which such indictment shall be remanded, shall in such case proceed thereon in the same manner as if the said writ had not been allowed.

368-6
33V-665

Recognizances
required in other
cases.
R. S. 984.

7. That no writ of certiorari shall be allowed to remove into the supreme court of this state any judgment or order, given or made by any justice or justices of the peace, or court of oyer and terminer, or of general quarter sessions of the peace, unless the party prosecuting such certiorari, or some responsible person in his behalf, shall, before the allowance thereof, with two sufficient sureties, enter into recognizance to the state of New Jersey, before the supreme court, or before one of the justices of the said supreme court, in the sum of one hundred and fifty dollars, with condition that the party obtaining such certiorari shall prosecute the same to effect without delay, and shall perform such judgment or order as the said supreme court shall give or make thereon, with costs, if costs be awarded; and every recognizance taken by virtue of this section shall be delivered, together with the writ of certiorari, to the justice or justices, or court, to which such writ shall be directed, and be certified into the said supreme court, with the said certiorari, and the judgment or order removed thereby, and there filed; and if such recognizance be not so delivered with the certiorari, then it shall be the duty of the said justice or justices, or court, to proceed on such judgment or order in the same manner as if no certiorari had been allowed or presented; *provided always*, that this section shall not extend to orders or judgments in actions for debts or demands between party and party, made cognizable before any justice of the peace by the act entitled "An act constituting courts for the trial of small causes." (b)

368-7
33V-451

Condition of.

Where delivered
and filed.

8. That the court on the hearing of any certiorari, may in its discretion, give judgment for costs in favor of either party. (c)

9. [This section amended by Secs. 16 and 18, *post*.]

Allowance of
costs.
P. L. 1871, p. 124.

368-8
30V-199, 340

(a) A certiorari cannot be allowed until after appearance entered by defendant. *Soiler* ads. *The State*, 1 *Har.* 357. An indictment against a corporation may be removed from the sessions, upon individuals entering into recognizance on behalf of the company. *The State v. The Morris Canal Co.*, 1 *Gr.* 192. A recognizance binds defendant, 1st, to appear to answer; 2d, to stand to and abide the judgment of the court; 3d, not to depart without leave of the court, until discharged, although no indictment should be found against him, or although he be tried and found not guilty by a jury. *State v. Stout*, 6 *Hal.* 124. But where on a *scire facias* on his recognizance the defendant showed that he appeared at the sessions and was tried and acquitted, the recognizers were dismissed with costs. *State v. Saunders*, 3 *Hal.* 177. Relief may be granted by petition, on death of principal after forfeiture. *State v. McNeal*, 3 *Har.* 333. *S. C.*, 2 *Har.* 191. Against several recognizers there may be one

scire facias, one judgment and one execution. *The State v. Stout*, 6 *Hal.* 124, 362. The recognizance creates a lien on the land from the time of its acknowledgment. *State v. Stout*, 6 *Hal.* 362. *State v. Cruise*, 3 *Vr.* 318. After an acquittal the state cannot show that the return of the court below was untrue. *State v. Jones*, 6 *Hal.* 289. See *Newton v. Gloucester*, 1 *Hal.* 405. The right to apply for writ is in the prosecutor of pleas of county and not the attorney-general. *State v. N. J. Jockey Club*, 23 *Vr.* 493. The writ may be allowed by judge at chambers. *Id.* (b) A recognizance must be given in a bastardy case. *Teukelbury* ads. *Sutton*, 3 *Vr.* 235. But not in a pauper case. *Bethlehem v. Alexandria*, 2 *Vr.* 368. Nor in forcible entry and detainer. *Martin v. Hülyer*, 6 *Hal.* 22. *Delancy v. Lawrence*, 6 *Hal.* 25, 100.

(c) See *Lehigh Valley R. R. Co. v. Newark*, 15 *Vr.* 323.

10. That whenever any assessment for the costs and expenses of laying out or opening any public road or street, or for paving or otherwise improving the same, or for the construction of any sewer or other local or public improvement, shall be set aside or reversed on certiorari, it shall be lawful in such case for the supreme court to appoint commissioners to make a new assessment of the costs and expenses thereof; which commissioners shall be the same in number, and shall possess the same qualifications as are required for commissioners in making such assessments by the statute under which the original assessment was made; and the commissioners so appointed, shall proceed to make a new assessment and report thereon upon the same principles and in the same manner as if they had been appointed under such statute; and their assessments, when made, shall be collected in the manner provided in such statute for collecting assessments for such improvements; *provided*, that the commissioners in making such new assessment, shall include therein the costs and expenses of such new assessment, together with the interest due on certificates of indebtedness or bonds (if any), which may have been issued on account of such improvement. (a)

On reversal of assessment for public improvements the court may appoint commissioners to make a new assessment.
P. L. 1871, p. 123.

11. That all judgments, orders and proceedings in the courts for the trial of small causes, and in the courts of common pleas upon appeals from said courts for the trial of small causes, and all judgments, orders and proceedings before justices of the peace and police justices under any statute or ordinance, may be removed into the circuit court of the same county by writs of certiorari and supersedeas thereon, allowed by any judge of such circuit court in the same manner and upon like terms as such writs are issuable out of the supreme court, and the bond given upon the allowance of such writs of certiorari shall be modified so as to conform to the provisions of this section, and be filed with the clerk of the said circuit court. (b)

Jurisdiction of circuit court.
R. S. 200.
Amended.

369-11
36V-68

12. That no writ of certiorari shall be allowed or issued on any judgment, order or proceeding that shall have been entered or obtained in any court of record of this state, or that shall hereafter be entered or obtained, unless the same be issued in eighteen months after the entering or obtaining the same. (c)

Limitation of certiorari.
R. S. 929.

369-12
34V-193

Supplement.

Approved February 24, 1876.

P. L. 1876, p. 20.

13. SEC. 1. That in all cases of writs of certiorari brought to remove any tax or assessment or other order or proceeding touching any local or public improvement, when reasons for reversal are filed, founded on any omission or defect in the return of said assessment or proceeding which, in the opinion of the court out of which said certiorari is issued, may be supplied by a new or supplemental certificate of the commissioners or other person making such return, it shall be lawful for the said court, on the application of either party to said writ of certiorari, or on their own motion at any time before said writ of certiorari shall be finally determined, to grant a rule upon the commissioners or other persons making such assessment, to certify to said court touching such omission or defect, and to stay the final determination of such cause for a reasonable time, until said rule shall be returned to said court; and if it shall appear by the return of said commissioners, or a majority of them, to said rule, that their action or determination in respect of which said reason for reversal is filed was really had, made or taken by said commissioners in making said assessment, and was accidentally or inadvertently omitted from their said return or report of assessment, the return of said commissioners or other persons to said rule shall have the same force and effect as if the facts therein certified had been

Proceedings when the return of assessment in a case touching public improvement is defective.

369-13
30V-335

(a) See *State, Ryerson v. Passaic*, 11 Vr. 118.

(b) The jurisdiction of the circuits is limited to suits originating in the justices' courts; they have no jurisdiction over matters of taxation. *State, Dufford v. De Cue*, 2 Vr. 302. *Perth Amboy v. Holton*, 5 N. J. L. J. 56. *State, Haurand v. Connett*, 7 N. J. L. J. 188.

(c) Where a party applied for a certiorari at November term, 1828, and had a rule to show cause on which the argument did not take place until May term, 1831, the writ then granted was

considered as within the time. *Stevens v. Enders*, 1 Gr. 271. It may well be doubted whether the act as to limitation of time is not so imperative that it must be submitted to even in case of fraud. *Chamberlain v. Barclay*, 1 Gr. 244. It may be issued to bring up an order of two justices in a pauper case after eighteen months. *Bethlehem v. Franklin*, 2 Dutch. 210. See *Carman v. Carman*, Pen. *633. Prohibition relates only to such writs as are issued to bring up orders, judgments or proceedings of courts of record. *Bowme v. Logan*, 14 Vr. 421.

contained in the said original report or return; and said original report or return shall be considered as amended by said return to said rule. (a)

Action respecting costs of writ of certiorari.

14. SEC. 2. That in all such cases it shall be lawful for the court to take such action respecting the costs of said writ of certiorari as it shall deem equitable and just, whether the proceeding reviewed by said certiorari shall be affirmed or set aside.

Supplement.

Approved March 14, 1879.

P. L. 1879, p. 196.

Notice of re-assessments for public improvements, how given.

15. SEC. 1. That whenever any assessment for the costs, charges and expenses of laying out or opening any public road, avenue or street, or of grading, paving, flagging or otherwise improving the same, or of the construction of any sewer, or of any other local or public improvement, shall have been or shall be set aside or reversed on certiorari, either in whole or in part, and commissioners shall be or shall have been appointed by the supreme court to make a new assessment, in whole or in part, or whenever by reason of the setting aside or reversal as aforesaid, the same commissioners which have already acted (including any other commissioner legally substituted in the place of any of them), shall have power to make a new assessment, in whole or in part, and the statute or statutes under which said commissioners are required to perform their duties make no special provision or a defective provision, for a notice to be given to the parties interested, for a hearing before the said commissioners, it shall be lawful, and the supreme court or a justice thereof is hereby empowered to prescribe the nature of the notice to be given, and to order its publication for such length of time, in any of the newspapers of this state, as the court or justice may consider proper and sufficient.

Amendatory act.

Approved February 17, 1881.

P. L. 1881, p. 34.

16. SEC. 1. [This section, amending Sec. 9, *ante*, is amended by Sec. 18, *post*.]

Repealer.

17. SEC. 2. That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and this act shall take effect immediately.

Amendatory act.

Approved March 23, 1895.

P. L. 1895, p. 756.

18. SEC. 1. That section nine of "An act relative to the writ of certiorari," approved March twenty-seventh [see Secs. 9 and 16, *ante*], one thousand eight hundred and seventy-four, is hereby amended so as to read as follows:

Court shall determine disputed questions of fact and law in certain cases.

[That in all cases of writs of certiorari, now pending or hereafter brought, to remove any tax or assessments or other order or proceeding touching any local or public improvement, or to review the proceedings of any special statutory tribunal, it shall be the duty of the court to determine disputed questions of fact, as well as of law, and to inquire into the facts by depositions taken on notice, or in such other manner as is according to the practice of the court; *provided, however*, that it shall and may be lawful for either party to use the testimony taken on its, his or her side, before the tribunal whose action is being reviewed, which said testimony shall be considered by the court the same as if it had been taken by deposition on notice, and either party may take such additional testimony on notice as they may deem necessary to properly present the questions involved to the court; and the court shall thereupon reverse or affirm, in whole or in part, such tax assessment or other order or proceeding according to the justice of the case.] (b)

Proviso.

Repealer.

19. SEC. 2. That all acts or parts of acts inconsistent herewith be and the same are hereby repealed, and that this act take effect immediately.

(a) Where the commissioners in their original report of assessments failed to certify with such clearness as is desirable that they had assessed all the lands benefited, an amendment was made under a rule granted for that purpose. *State, Skinkle v. Clinton*, 10 Vr. 659.

(b) The supreme court will not determine disputed questions of fact arising in the justices' courts or common pleas. *Craft v. Smith*, 6 Vr. 302. *Jeffrey v. Owen*, 12 Vr. 260. *Overseer of Madison v. Monroe*, 13 Vr. 493. *Britton v. McDonald*, 14 Vr. 591. *Lush v. Foster*, 15 Vr. 378. *Sloan v. Wills*, 15 Vr. 584. *Teuks-*

370-18
34V-509
617

370-18
39v-486

A general act in relation to assessments for roads, streets or sewers, where the same have been or shall be set aside or reversed by any court only as to the prosecutor or prosecutors of any writ of certiorari, and providing for a re-assessment, in all such cases, by the court setting aside such assessment.

Approved April 2, 1888.

P. L. 1888, p. 370.

20. SEC. 1. That whenever any assessment heretofore made or hereafter to be made for any road, street or sewer, has been or shall be set aside or reversed only as to the prosecutor or prosecutors of any writ or writs of certiorari, by any court of law or equity in any action, suit or proceeding for any cause whatsoever, and the property upon which such assessment was or is assessed or laid, is or shall be in fact liable to assessment in respect to the purposes for which such assessment was or shall be assessed or laid, the court in which the action, suit or proceeding was or shall be taken, and wherein said assessment has been or shall be set aside, is empowered and required, upon application for that purpose made, to ascertain and determine for what sum such property is liable to be assessed and by order or decree to fix the amount thereof, and the sum so fixed shall be the amount of assessment for which such property shall be liable, and the same shall be and remain a first lien or charge upon the property, and collectible in the manner provided by law, the same as if such assessment had been legally assessed in the first instance by the city, town, township, commission, board or other authority attempting to make, impose or levy the same; and it shall be the duty of the court (upon application as aforesaid) to make a proper assessment in all cases in which, at the time of such application, there may lawfully be an assessment, and such court is hereby given full and ample authority to make a lawful assessment; *provided, however*, that this act shall not apply to any assessment or assessments that may have been or shall be set aside more than three years before said application.

When assessment set aside, court empowered, upon application, to determine sum property is liable to be assessed.

371-20
R04-296

Court to make assessment.

Proviso.

21. SEC. 2. That all acts and parts of acts inconsistent herewith be and the same are hereby repealed, and this act shall take effect immediately.

Repealer.

An act concerning proceedings to review judgments or other judicial proceedings of any city judge, police court or other inferior court had for or on account of alleged violation of city ordinances or ordinances of city boards of health.

Approved March 28, 1895.

P. L. 1895, p. 764.

22. SEC. 1. That in order to establish uniformity in the premises in all the cities of this state, all judgments or other judicial proceedings of any city judge, police court or other inferior court, had for or on account of alleged violation of city ordinances or ordinances of city boards of health, and whether had with or without a trial by jury, shall be reviewable by writ of certiorari, in accordance with the rules and practice of the supreme court and not otherwise. (a)

Judicial proceedings of city judge or city courts may be reviewed.

371-22
37V-248
A98-534

23. SEC. 2. That all acts and parts of acts, general or special, inconsistent herewith, be and the same are hereby repealed, and that this act shall take effect immediately. (1)

Repealer.

bury v. Branchburg, 15 Vr. 595. *Herbert v. Cutts*, 26 Vr. 87. *Rochers v. Bemhoff*, 26 Vr. 475. They will look into the facts on a certiorari to township officers proceeding under the act to remove encroachments on a highway. *Gulick v. Groendyke*, 9 Vr. 114. In reviewing the proceedings of commissioners appointed to ascertain the line between Union and Essex counties, it was held that the supreme court had power, by virtue of the above act, to review the facts. *Freeholders of Union v. Freeholders of Essex*, 14 Vr. 391. But the act is not applicable to a judgment of the court of quarter sessions in a settlement case. *Tewksbury v. Branchburg*, 15 Vr. 595. The court may review

the facts where two justices of the peace and two surveyors of the highways have determined the question of encroachment upon the public highway. *Newbold v. Taylor*, 17 Vr. 133. *Somerset v. Hunterdon*, 28 Vr. 512. Disputes as to the value of ratables cannot be determined on certiorari. *Conover v. Davis*, 19 Vr. 112. Provisions of section apply to special statutory tribunals only. *South Brunswick v. Cranbury*, 23 Vr. 298. It must clearly appear that some injustice has been done before an assessment will be set aside. *Simmons v. Passaic*, 26 Vr. 465. (a) See *Morgan v. Orange*, 21 Vr. 389.

(1) On March 14th, 1895, an act was approved (P. L., 1895, p. 296) in all respects like this act, excepting the title, that providing only for reviewing judgments had on account of violation of "city ordinances of city boards of health." The act of March 28th, 1895, was undoubtedly intended to, and did, repeal this act.