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THE PROCEDURAL ASPECTS OF CERTIORARI

During the January term of 1949, better than 75 percent of the petitions for certiorari in the Supreme Court of Florida were denied. Such a high rate of rejections is indicative of the fact that either the writ has come to be regarded as a final, desperate grasp at a possibility of gaining a review regardless of the merits of the cause, or else there is a lack of understanding as to the basic principles involved in obtaining a review by means of the extraordinary writ of certiorari.

It is the purpose of this paper to give the basic constitutional and statutory provisions relating to certiorari in Florida, and to describe briefly the fundamental characteristics of the writ. Next, it is proposed to point out some of the procedural pitfalls along the path from initial accrual of right of application to the final disposition of the cause upon review.

In addition to the use of certiorari as it was exercised at common law, Florida also uses the writ to review a judgment of the circuit court rendered as an appellate court; to review interlocutory decrees in equity; to review decisions of quasi-judicial boards and officers; and to bring up additional records in a cause already before the court. The use of the writ to review decisions of quasi-judicial boards¹ and to bring up additional records is not included in this comment.

At common law, certiorari was an original writ issuing out of the court of chancery or the king's bench, and directed in the king's name to the judges or officers of inferior courts, commanding them to certify or to return the record or proceedings in a cause pending before them, for the purpose of judicial review of their action.²

The Constitution of Florida has provided that, ". . . the (Supreme) court shall have the power to issue writs of . . . certiorari . . . and all writs necessary or proper to the complete exercise of its jurisdiction . . ." ³ and, "...the Circuit Courts and Judges shall have the power to issue writs of . . . certiorari . . . and all writs proper and necessary to the complete exercise of their jurisdiction." ⁴ By these provisions, the supreme court and the circuit courts are empowered to issue what is usually called the common law writ of certiorari. The writ, for all practical purposes, is the same as the old common law writ; the only difference being that at common law the writ was used to transfer proceedings from one trial court to another. Such use is not necessary today.⁵

1. See Comment, *Judicial Review of Administrative Actions in Florida*, 2 MIAMI L.Q. 181 (1947).

2. *Basnet v. Jacksonville*, 18 Fla. 523 (1882).

3. FLA. CONST. Art. 5, § 5.

4. FLA. CONST. Art. 5, § 11.

5. *Kilgore v. Bird*, 149 Fla. 570, 6 So.2d 541 (1942).

Otherwise, the writ has retained its characteristic discretionary quality. Where previously it issued according to the prerogative of the king, it now issues in the sound judicial discretion of the court.⁶ That the writ is discretionary is not difficult to understand when its purpose and function is considered. As at common law, the purpose of the writ is to provide the higher courts with the means by which they can supervise the operations of the lower court. By issuance of the writ, the higher court commands the lower court to send up the record of the proceedings so that it can be determined if the lower court has acted without jurisdiction.⁷ But what is meant by this broad term, "without jurisdiction"? Usually, jurisdiction is defined as the power of a tribunal to hear and determine a cause and to render a judgment which, in most cases, is not subject to collateral attack. The RESTATEMENT OF JUDGMENTS has classified into four categories the limitations on a court's power to render a binding judgment. There must be (1) control by the state over the parties' property or status; (2) reasonable notice and hearing; (3) allocation of power to hear the suit (competent court); (4) compliance with conditions precedent to the exercise of the power.⁸ As used in reference to certiorari, however, lack of jurisdiction does not mean a basic lack of power, as in (1)-(3) above, as would render the judgment subject to collateral attack, but actually means a lack of authority to act except in a particular manner or to give certain kinds of relief, or to act without the concurrence of certain procedural requisites.⁹ Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, statute, or rules developed by the court, are in excess of jurisdiction insofar as that term is used to indicate that those acts may be annulled on certiorari.

Another characteristic of the common law writ is that it is not issued where the petitioner has a remedy by appeal.¹⁰ Though it is true that the proceedings have the aspect of being appellate, in that the successful petitioner is entitled to a partial review of the lower court's decision against him, the writ is issued more in the nature of an original proceeding.¹¹ The petitioner, theoretically, is not appealing his cause, but is pointing out to the higher court that the lower court has not proceeded according to the essential requirements of the law and that the higher court should correct the mistake in the proper exercise of its jurisdiction. The court will then, in its discretion, issue the writ, not to provide a complete review nor to determine if justice has been

6. *Young v. Stoutamire*, 131 Fla. 535, 179 So. 797 (1938); *Jacksonville T. & K. W. Ry. v. Boy*, 34 Fla. 389, 16 So. 290 (1894).

7. *Nation v. State*, 155 Fla. 858, 22 So.2d 219 (1945).

8. RESTATEMENT, JUDGMENTS §§ 5-8 (1942).

9. See Goldberg, *Extraordinary Writs and the Review of Inferior Court Judgments*, 36 CALIF. L. REV. 558 (1948).

10. *Lorenz v. Lorenz*, 152 Fla. 779, 13 So.2d 806 (1943); *Saffran v. Adler*, 152 Fla. 405, 12 So.2d 124 (1943).

11. *Atlantic Coast Line R.R. v. Florida Fine Fruit Co.*, 93 Fla. 161, 112 So. 66 (1927).

done, but to determine the specific issue of whether the court below has proceeded according to the fundamental requisites of the law.¹²

Though the writ is supervisory in its nature and effect, it was not intended that the court should issue the writ of its own accord. The issuance of the writ must be duly invoked by proper application for the authorized and appropriate writ.¹³ The supreme court may adjudicate legality or applicability of particular writs when applied for, but it does not determine what writ or procedure is legal or appropriate.

In summation, the supreme court and the circuit court will issue the common law writ upon proper application, in its discretion, to review proceedings in any lower court where the lower court has acted without authority or essential requirements of law have been violated, and no other adequate appellate review is afforded by law.

The first of the statutory enactments concerning certiorari came when the legislature created the civil court of record and adopted a statute which provided that,

Where the circuit court has rendered a judgment in any case appealed from the civil court of record . . . it shall be competent for the Supreme Court to require by certiorari or otherwise upon the petition of any party thereto any such case to be certified to the Supreme Court for its review and determination *with the same power and authority in the case as if it had been carried by a writ of error to the Supreme Court.* . . .¹⁴ (Italics added)

This statute seems to imply the writ was to be certiorari in form only, and that an additional means of appeal was thereby provided for the litigant whose case had originated in the civil court. However, the court promptly adopted the view that the statute does not authorize a review of the circuit court judgment as on appeal, since such a procedure would conflict with the purpose of the constitution to give the circuit court final appellate jurisdiction in all cases arising in inferior courts.¹⁵ The court warned that care should be taken in order that the scope of certiorari should not be unduly enlarged lest it come to be employed to serve the purpose of appeal.¹⁶ The principal reason for the limitation is to prevent the unsuccessful litigant in the civil court from having, in effect, two appeals while the circuit court litigant is limited to one appeal. Thus, being careful not to extend the common law writ, the court has treated this statutory provision as being the common law writ applied to a specific situation and has employed the writ in the manner that its scope and use under the law had already been developed.

12. *Edwards v. Knight*, 104 Fla. 16, 143 So. 441 (1932).

13. *State ex rel. Watson v. Lee*, 150 Fla. 486, 8 So.2d 19 (1942).

14. FLA. STAT. § 33.12 (1941).

15. *Mutual Benefit Health and Accident Ass'n v. Bunting*, 133 Fla. 646, 183 So. 321 (1938).

16. *Flash Bonded Storage Co. v. Ades*, 152 Fla. 482, 12 So.2d 164 (1943).

Another form of review by means of certiorari which has been provided by statute is the review of interlocutory decrees in equity. In order to expedite review of interlocutory decrees where delay was likely to cause injustice, the legislature passed a statute which provided that interlocutory decrees in equity could be reviewed either by appeal or by writ of certiorari, and that the provisions of the statute would remain suspended during the existence of a court rule pertaining to the manner of review.¹⁷ The supreme court then adopted Rule 34 which stated, "All appeals from interlocutory decrees . . . shall be prosecuted to this court by certiorari in the manner provided by the rules relating to the constitutional writ of certiorari."¹⁸ Revision of the statutory provisions has resulted in the present statute, which states, "Review of interlocutory orders and decrees in equity including those after final decree, may be by proceedings in the nature of certiorari. . . ." ¹⁹ The court has taken the view that this form of the writ, as provided by statute and court rule, is a form of appeal and should be so regarded.²⁰

With the foregoing discussion of enactments and basic principles as a background, some of the procedural aspects of obtaining review by means of a writ of certiorari will now be investigated.

PARTIES

Generally, only a party to the proceedings sought to be reviewed can obtain the writ. Thus, a party who was not a party to a suit, and claims to be prejudiced by the judgment therein, must seek redress in a court of equity and cannot have the judgment quashed on certiorari.²¹ However, persons who were not parties to the original proceedings have successfully prosecuted the writ. The court has held that an heir who was not a party to the proceedings in probate can obtain the writ.²² Also, the court has held that the appropriate method of attack on an invalid order or judgment rendered by a court against a complaining party who was never legally bound in the court rendering the attacked judgment or order is by certiorari.²³ And, further, where there has been an adjudication which should not be finally determined adversely to the claims of a third party unless he is made an actual party to the proceedings, the third party can prosecute the writ.²⁴ Thus, it appears that, if the petitioner was not a party to the original proceedings, mere interest or a prejudicial decision will not entitle him to prosecute the writ. If, however, he should have

17. FLA. STAT. § 67.02 (1941).

18. The issuance of the constitutional writ is governed by supreme court Rules 27 and 28 (1941).

19. FLA. STAT. § 59.02(3) (Cum. Supp. 1947).

20. See notes 54, 55, 56 and 57, *infra*.

21. United Mutual Life Insurance Co. v. Sholtz, 121 Fla. 260, 163 So. 690 (1935).

22. Deans v. Wilcoxon, 18 Fla. 531 (1882).

23. Pitts v. Pitts, 120 Fla. 363, 162 So. 708 (1935).

24. Ryan's Furniture Exchange v. McNair, 120 Fla. 109, 162 So. 484 (1935).

been made a party to the proceedings, or was not given notice, he may obtain a writ of certiorari to review the judgment. But, even if the petitioner was a party to the proceedings sought to be reviewed, he must show injury as a result of the judgment, and where the judgment contains nothing adverse to him, the writ will not be issued.²⁵

TIMELINESS OF APPLICATION

The common law writ and the writ to review judgments of the circuit court acting as an appellate court normally issue only after final judgment, and the application will be refused when it is premature.²⁶ However, in actions at law, where authority is illegally used or so abused as to cause injury which cannot be adequately remedied by appeal after final judgment, the common law writ may issue before final judgment.²⁷ A complete discussion of finality of judgments is beyond the scope of this paper, but some mention should be made concerning judgments rendered by the circuit court sitting as an appellate court. The general rule is that the judgment of the circuit court should be a final judgment disposing of the cause on its merits in order to be reviewed on certiorari. So, if the judgment of reversal merely directs further proceedings, the circuit court judgment should not be regarded as a final judgment to which certiorari will be applied by the supreme court. But, if in reversing and remanding a cause the circuit court directs a proceeding to be had by the civil court of record violative of basic requirements of the law, the supreme court may review such judgment on certiorari, even though it is not in form a final judgment.²⁸ The essential considerations are whether the judgment or the directions made a part of it require an unauthorized proceeding or a departure from the essential requirements of the law and reasonably may cause substantial injury for which no other adequate remedy is afforded by law.²⁹

Of course, finality of judgment is no factor in the issuance of writs for the review of interlocutory decrees; but it is necessary for the attorney to weigh the cost and trouble of an interlocutory, and probably incomplete, review against the possibility of harm due to delay, remembering that the interlocutory decree may be questioned just as well after final judgment.³⁰

Court rules governing the common law writ and the interlocutory writ provide that application must be made within 60 days.³¹ The statute providing for review of appellate proceedings in the circuit court state that the applica-

25. *Emerson v. Hughson*, 120 Fla. 109, 141 So. 877 (1932).

26. *Saffron v. Adler*, 152 Fla. 405, 12 So.2d 124 (1943).

27. *Kilgore v. Bird*, 149 Fla. 570, 6 So.2d 541 (1942).

28. *Ibid.*

29. *Dudemaine v. Shaw*, 153 Fla. 16, 13 So.2d 444 (1943).

30. *Sirman v. Conklin*, 154 Fla. 303, 17 So.2d 298 (1944).

31. Supreme court Rules 28 and 34 (1941).

tion must be made within 30 days.³² However, the court has held that this 30-day provision does not curtail the power to issue writs of certiorari which the court already possessed under the constitution, at least where such proceedings were had without jurisdiction.³³ Also, the court has held that the common law writ, confined to its legitimate scope, may issue within the discretion of the court at any time to correct the procedures of courts wherein the essential requirements of the law have not been observed. The court declared that, "A judgment void for lack of jurisdiction or a proceeding characterized by tyranny in the failure to observe essential requirements of law should be subject to correction at the discretion of the court."³⁴

The holdings in these cases, which were all concerned with the 30-day limitation, seem to indicate that no specific time limitation would be observed if the court felt that such limitation would circumscribe the provisions of the constitution. Thus, it is likely that even the 60-day limitation, which supreme court Rule 28 specifies for applying for the constitutional writ, would be waived if the court decided it necessary to do so in order to maintain the proper exercise of its jurisdiction under the constitution.

THE PETITION

Upon the proper preparation and presentation of the petition usually hangs the success or failure of the applicant's cause. Supreme court Rule 28 states that, "Application for writ of certiorari shall be by petition . . .," and, "The petition shall contain a concise statement of the cause and the reasons relied on for granting the writ." It is essential, therefore, to perceive the distinction between an extended argument on the merits of the case and a concise argument on the issue whether certiorari should be granted. Only in exceptional cases would any but a cursory discussion of the merits be appropriate, since the court is only interested in determining if the lower court has acted without jurisdiction. Therefore, it is essential that the court be made to see clearly the ground of complaint, and where the petition fails to make it clearly appear that the lower court committed error, the writ will be refused.³⁵ Also, it is proper to show that injury will result to the petitioner because of the judgment or decree;³⁶ that the petitioner is not guilty of laches in seeking the review;³⁷ that no adequate remedy exists by means of appeal;³⁸ and, if the error is based on evidence, such evidence should be set forth.³⁹

32. FLA. STAT. § 33.12 (1941).

33. *Palmer v. Johnson*, 97 Fla. 479, 121 So. 466 (1929).

34. *Brinson v. Tharin*, 99 Fla. 696, 698, 127 So. 313, 314 (1930).

35. *Smith v. Burch*, 30 So.2d 647 (Fla. 1947).

36. *Yandell v. Yandell*, 160 Fla. 164, 33 So.2d 869 (1948).

37. *Leonard Bros. Transfer and Storage Co. v. Douglas*, 159 Fla. 510, 32 So.2d 156 (1948).

38. *Pasco County v. Lang*, 129 Fla. 387, 176 So. 430 (1937).

39. Note 36, *supra*.

Rule 28 also states that the petition, ". . . shall be accompanied by a certified transcript of the record of the proceedings . . . or so much thereof as is essential." Thus, in designating an alleged harmful error, if matters supporting the charge of error are too lengthy to be copied into the record, they should be pleaded according to their tenor and effect with appropriate page references to the record.⁴⁰ It must be remembered that the primary purpose of the petition is to advise the court, and allegations therein must be supported by page references to the record, and petitioner must present therein such of the proceedings as he desires to have reviewed. Material exhibits may be attached to the petition or pleaded therein according to their tenor and effect, or if short, copied therein, with proper page references to the record. So, where a petition, which was to quash an order of the circuit court setting aside a judgment previously entered in the cause, failed to set out a copy of the judgment so set aside, the writ was denied, for in such a case the court was not able to say whether the court below departed from fundamental requirements.⁴¹

For an example of a proper petition, see *Finston v. Finston*,⁴² wherein the court complimented the petitioning attorney by stating that the petition "so clearly presents the case that it is copied in full."

HEARING ON APPLICATION

Before a hearing can be had on the application, the opposing party must have been given five days notice *and proof thereof must be filed with the Clerk of the Court*.⁴³ Regardless of the expert preparation and the appropriateness of the application, hearing will be refused if this detail of filing of proof of notice is overlooked. Though it has been held that notice is not necessary where the opposing party voluntarily appears,⁴⁴ this holding was prior to the adoption of the present rules and subsequent cases have affirmed the necessity of notice.⁴⁵ It is also essential to serve the respondent or his counsel with copies of the petition, transcript and brief at the time notice of application is filed with the Clerk of the Court.⁴⁶ Writs raising issues of fact which will require the taking of testimony will not be heard,⁴⁷ and oral argument will be heard on the application for the common law writ only when granted.⁴⁸

Upon application for a writ of certiorari to review interlocutory decrees

40. *Schupler v. Eastern Mortgage Co.*, 160 Fla. 72, 33 So.2d 586 (1947).

41. *Ex parte Jones*, 92 Fla. 1015, 110 So. 532 (1926).

42. 160 Fla. 935, 41 So.2d 549 (1949).

43. Supreme court Rule 27 (1941).

44. *Great American Insurance Co. of New York v. Peters*, 105 Fla. 380, 141 So. 322 (1932).

45. *State Beverage Dept. v. Willis*, 159 Fla. 698, 32 So.2d 580 (1947).

46. Supreme court Rule 28 (1941).

47. Note 43, *supra*.

48. Note 46, *supra*.

in equity, if it affirmatively appears that the appeal is frivolous, was not taken in good faith, was taken for delay, or is without substantial merit, the writ will be denied and opinions on such applications will be written only when required to settle the law of the case or when shown to be essential or necessary as a guide to the court⁴⁹ and litigants in subsequent steps in the cause. Arguments not exceeding ten minutes to each side will be permitted on the day application is made.⁵⁰

Upon consideration of the application, the court determines if the writ should issue. If certiorari is granted, the writ is issued to the lower court directing it to send up the record or that part thereof which is essential. The writ should be prepared by the petitioner and it is not required that it should contain the allegations of error presented in the petition.

But if the petition for the writ is denied, what is the effect of such denial? The court has consistently held that the issuance of the common law writ involves only the question of whether the lower court has acted without jurisdiction;⁵¹ that the writ is discretionary and not an appeal;⁵² and that a determination upon the petition does not constitute an adjudication of the merits of the case.⁵³ However, the court has regarded the writ of certiorari to review interlocutory decrees in equity as being a form of appeal adopted to simplify and expedite appellate review of such orders and decrees, and that it is not to be confused with the common law writ of certiorari.⁵⁴ The court has held that, though certiorari at common law was not available as a substitute for appeal, it has been extended by statute and court rule so as to become a substitute for appeal from all interlocutory orders or decrees in chancery.⁵⁵ Such appeals are by statute made a matter of right, the right in no sense affected by the method of its exercise.⁵⁶ Further, that a writ of certiorari is simply a method of procedure by which appeals authorized by statute can be brought to the supreme court, and its denial constitutes an adjudication of the propriety of the order involved and the order cannot be again questioned.⁵⁷ However, in *Davis v. Strople*,⁵⁸ and *Howey-in-the-Hills v. Graessle*,⁵⁹ the dissenting judges interpreted the writ differently. They maintained that the legislature was well aware of the distinction between appeal and certiorari when it provided that the method of review should be determined by court rule. Therefore, when the court adopted Rule 34, stating

49. *Greater Miami Development Corp. v. Pender*, 142 Fla. 390, 194 So. 867 (1940).

50. Supreme court Rule 34 (1941).

51. *First National Bank v. Gibbs*, 78 Fla. 118, 82 So. 618 (1919).

52. *Harrison v. Frank*, 75 Fla. 22, 77 So. 663 (1918).

53. *Great American Insurance Co. of New York v. Peters*, 105 Fla. 380, 141 So. 322 (1932); *Basnet v. Jacksonville*, 18 Fla. 523 (1882).

54. *Sirman v. Conklin*, 154 Fla. 304, 17 So.2d 298 (1944).

55. *Greater Miami Development Corp. v. Pender*, 142 Fla. 390, 194 So. 867 (1940).

56. *Ibid.*

57. *Hunter v. Tyner*, 151 Fla. 707, 10 So.2d 492 (1942).

58. 39 So.2d 468 (Fla. 1949).

59. 44 So.2d 90 (Fla. 1949).

that review would be by certiorari, review of interlocutory decrees by appeal as a matter of right was discontinued. It is interesting to note that after revision and recompliation of Chapter 67 of FLORIDA STATUTES (1941) into Chapter 59, the 59th chapter speaks of *appeal* in other subsections but in § 59.02(3), it says, "Review of interlocutory orders and decrees in equity. . . . may be by proceedings in the nature of certiorari. . . ." It is also interesting to note that the legislature, in its last session, adopted chapter 25116, Laws of Florida (1949) which states, "The denial of a petition shall have the force and effect upon the act, order, decree or judgment of which review is sought only to the extent that the court may affirmatively and expressly act, but the mere denial of such petition shall have no greater force and effect than to deny the further exercise of jurisdiction." It thus appears that, hereafter, denial of neither the common law writ nor the interlocutory writ shall constitute an adjudication of the merits of the case.

CERTIORARI AS A SUPERSEDEAS

Originally, supersedeas was a writ directed to an officer of the court commanding him to desist from the execution of another writ which he was about to execute. Today, however, the term is often used as synonymous with a "stay of proceedings," and is employed to designate the effect of an act or proceeding which of itself suspends the enforcement of a judgment from which the appeal has been taken.⁶⁰

When certiorari is granted in Florida, it acts as a supersedeas on further proceedings of the lower court, by removing the record and cause from the lower to the higher court,⁶¹ leaving nothing there to be prosecuted or enforced by executions and operates as a stay of execution. Where there is pending consideration of the disposition of the petition for certiorari to review a judgment of the circuit court, supersedeas should be granted, when there is an application for it, by the court to which the application is addressed. This follows since it has the same prerogative as the supreme court would have under the same circumstances, if the record presents a question that the supreme court will review.⁶² Where the supersedeas is granted, it is on condition that the petitioner post a "good and sufficient bond,"⁶³ payable to the adverse party, and upon the condition that the petition be duly presented to the court within twenty days and upon other conditions the lower court may fix in case the order which is reviewed is not modified, quashed or reversed.⁶⁴ The

60. Lickley v. Board of Education of Los Angeles County, 62 Cal. App. 527, 217 Pac. 133 (1934).

61. State Beverage Dept. v. Willis, 159 Fla. 698, 32 So.2d 580 (1947); State *ex rel.* Tullidge v. Driskell, 117 Fla. 717, 158 So. 277 (1934).

62. Wyman v. Nussbaum, 159 Fla. 813, 32 So.2d 824 (1947).

63. As to a "good and sufficient" bond, see FLA. STAT. § 59.13 (1941).

64. Supreme court Rule 35 (1941).

above rule applies to appeals from injunctions and all other decrees and the circuit court must hear such application, but its order is reviewable.⁶⁵ If the appeal is from a money judgment or final decree, the stay or supersedeas shall be as of right on posting the bond.⁶⁶

RETURN OR ANSWER TO THE WRIT

The return or answer is a formal transcript of the record, or so much of it as the writ requires, and a statement, where proper or necessary, of relative matters not appearing on the record. It must contain everything commanded by the writ and must disclose something on which the reviewing court can pass or act.⁶⁷ It should also contain a full and complete transcript of the proceedings and orders, in the nature of a record of the inferior tribunal.⁶⁸ This record of the court generally consists of the process, pleadings, verdict and judgment; and the record to be certified is the one which existed at the time of issuance or service of the writ.⁶⁹

Records presented to the supreme court must be governed by the rule requiring omission of all pleadings, evidence and other matters which are not essential to the decision of the questions involved, and the exclusion of formal parts of all exhibits and by omitting all irrelevant material.⁷⁰ The return is generally treated as conclusive and no extrinsic evidence will be received, either to support or overthrow the proceedings, order or judgment sought to be reviewed. When the return is defective, the proper move is to obtain an amended return and not impeach the return by affidavits or other proof. When a return is complete it imports absolute verity. At the hearing, the court should proceed on the assumption that it has all the record before it and should reject all affidavits and papers or other proof which is introduced in an attempt to impeach or support the record.

DISMISSAL OR QUASHING OF WRIT

A writ of certiorari generally may be superseded before a return has been made to the writ, but it may be dismissed or quashed only after the return. Overruling is practically the same as dismissing. The proper plea or practice after a return of the writ is a move to quash or dismiss the writ.⁷¹

If there has been no return, the writ is not before the court, even though it has been served, thus the proper move is to supersede, this being in the

65. *Seaboard Rendering Co. v. Conlon*, 151 Fla. 617, 10 So.2d 136 (1942).

66. Note 64, *supra*.

67. *Lorenz v. Lorenz*, 152 Fla. 779, 13 So.2d 805 (1943).

68. *Janet Realty Corp. v. Hoffman's Inc.*, 154 Fla. 144, 17 So.2d 114 (1944).

69. *Moorehead v. Moorehead*, 159 Fla. 470, 31 So.2d 867 (1947).

70. *Ibid.*

71. *Edwards v. Knight*, 104 Fla. 256, 139 So. 899 (1932).

court to which the writ is returnable.⁷² Where a record presents no question of jurisdiction or abuse by the court this will be grounds for dismissing or quashing.⁷³ If the writ has been improvidently granted, the writ may be dismissed, quashed or superseded. And, where the allegations do not show that the petitioner is entitled to the writ,⁷⁴ this, too, is grounds for quashing the writ. Other grounds include insufficient bond or laches in seeking a remedy.⁷⁵

The motion to quash is generally addressed to the discretion of the court. So where the petition is void, the court has power only to dismiss and enter judgment.

SCOPE OF REVIEW

Having successfully prosecuted the writ, what is the scope of the review to which the petitioner is now entitled? Will the reviewing court consider only the question of jurisdiction, or will it also consider questions of fact and matters outside of the record?

The common law writ, while originally limited to jurisdictional questions, has been extended so that it now issues to determine whether or not there is illegality prejudicial to the complainant in the order or judgment.⁷⁶ The reviewing court will not generally review a case, as if the case were before it on a broad appeal.⁷⁷ While certiorari is generally granted in cases where no remedy is provided by appeal,⁷⁸ the fact that there is no right of appeal does not enlarge the scope of review on certiorari.⁷⁹

A reviewing court may, in a proper case, dispose of all relevant matters.⁸⁰ But where the question is moot, the court will not review.⁸¹

As to questions of fact, the general rule is, in the absence of statute, questions of fact in the inferior tribunal are not reviewable or certiorari,⁸² and that evidence which is made part of the record cannot be examined in order to ascertain whether or not it supported or justified the findings on which the decision was made.⁸³ This is especially true when the findings of the trial court have been affirmed by or concurred in by an intermediate appellate court.⁸⁴

72. *Tivas v. Tivas*, 140 Fla. 385, 191 So. 774 (1939).

73. *Nation v. State*, 155 Fla. 858, 22 So.2d 219 (1945); *Standard Mutual Benefit Corp. v. Cox*, 147 Fla. 787, 3 So.2d 521 (1941).

74. *Ross v. Calamia*, 153 Fla. 151, 13 So.2d 916 (1943).

75. *Leonard Bros. Transfer and Storage Co. v. Douglass*, 159 Fla. 510, 32 So.2d 156 (1948).

76. *Martinez v. Martinez*, 153 Fla. 753, 15 So.2d 842 (1943).

77. *Edwards v. Knight*, 104 Fla. 16, 139 So. 582 (1932).

78. *Nation v. State*, 155 Fla. 858, 22 So.2d 219 (1945); *Wolkowsky v. Goodkind*, 153 Fla. 267, 14 So.2d 398 (1943).

79. *Mutual Benefit Health and Accident Ass'n v. Bunting*, 133 Fla. 646, 183 So. 321 (1938).

80. *Valdez v. State*, 142 Fla. 123, 194 So. 388 (1940).

81. *Jacksonville v. Wilson*, 157 Fla. 838, 27 So.2d 108 (1946).

82. *Metropolitan Life Insurance Co. v. Poole*, 147 Fla. 686, 3 So.2d 385 (1941).

83. *State Beverage Dept. v. Willis*, 159 Fla. 698, 32 So.2d 580 (1947).

84. *Mutual Benefit Health and Accident Ass'n v. Bunting*, 133 Fla. 646, 183 So. 321 (1938).

The supreme court will review rulings of the appellate court to ascertain whether the appellate court has correctly determined legal conclusions from the facts found or how it applied the law to such facts on the theory that this presents a question of law.⁸⁵ A review of certiorari does not extend to the consideration of the probative force of conflicting testimony where there is no jurisdictional fact in dispute. If there is evidence to support the decision, the determination will not be reviewed.⁸⁶ However, a review of the evidence is admissible in order to determine whether the decision is so clearly against the evidence that it would not stand if it were a jury verdict. Its sufficiency may be questioned for the purpose of determining whether the lower court has exceeded its jurisdiction.⁸⁷ But harmless error is disregarded.⁸⁸

Matters dehors the record will not be considered by a review court.⁸⁹ So, too, matters in pais are not within the purview of the court.⁹⁰ A matter which should have been urged by motion in the lower court, and was not, has been held not reviewable.⁹¹ Also, points not referred to in the argument or briefs of counsels will not be considered.⁹²

There is a presumption of the correctness of the determination⁹³ of the proceedings below.⁹⁴ All irregularities and ambiguities will be construed, if reasonably possible, to sustain the verdict and judgment.⁹⁵

DETERMINATION AND DISPOSITION OF CAUSE

As a general rule, judgment on certiorari would be a quashing or affirming of the writ or proceedings below.⁹⁶ The reviewing court has no power to direct the lower court to enter any particular order or judgment.⁹⁷ Where the reviewing court decides in favor of the respondent, or where there is nothing on which the court can act, the writ should be dismissed and the proceedings affirmed.⁹⁸ If a lower court has acted without jurisdiction, or has proceeded irregularly, the record or the proceedings below will be quashed or vacated.⁹⁹ In cases where the parts of a proceeding are such that they are dependent upon each other, the whole of the proceedings must be set aside,

85. Guaranty Life Insurance Co. v. Hall Bros., 138 Fla. 176, 189 So. 243 (1939).

86. Janet Realty Corp. v. Hoffman, 154 Fla. 144, 17 So.2d 114 (1943).

87. Western Union Telegraph Co. v. Michel, 120 Fla. 511, 163 So. 86 (1935).

88. Goodkind v. Wolkowsky, 151 Fla. 62, 9 So.2d 553 (1942).

89. Miller v. Security Peoples Trust Co., 144 Fla. 425, 198 So. 73 (1940).

90. Tivas v. Tivas, 140 Fla. 385, 191 So. 774 (1939).

91. Florida Dry Cleaners and Laundry Board v. Economy Cash and Carry Cleaners, 143 Fla. 859, 197 So.550 (1940); Nelms v. St. Petersburg, 149 Fla. 197, 5 So.2d 408 (1941).

92. Riesen v. Maryland Casualty Co., 153 Fla. 205, 14 So.2d 197 (1943).

93. Roney v. Miami Beach, 151 Fla. 518, 10 So.2d 325 (1942).

94. Goodkind v. Wolkowsky, 151 Fla. 62, 9 So.2d 553 (1942).

95. Bryant v. Lakeland, 158 Fla. 151, 28 So.2d 106 (1946).

96. Becker v. Merrell, 155 Fla. 379, 20 So.2d 912 (1944).

97. Okeechobee Co. v. Norton, 149 Fla. 651, 6 So.2d 632 (1942).

98. Becker v. McCabe, 143 Fla. 353, 196 So. 858 (1940).

99. Cassara v. Wofford, 159 Fla. 293, 31 So.2d 276 (1947).

if quashing one part would leave the other incomplete.¹⁰⁰ If the court has the power to correct or modify the judgment complained of, it need not reverse the judgment absolutely,¹⁰¹ or a case may be remanded for further proceedings with instructions to the court below.¹⁰² The decision of the court on review is the law of the case.¹⁰³

In Florida, an appeal may be resorted to for review of the determination made on the certiorari proceedings.¹⁰⁴ The only question reviewed on appeal is the jurisdiction of the court whose proceedings are sought to be reviewed.¹⁰⁵

CONCLUSION

In an address before the American Law Institute in 1934, Chief Justice Hughes said, "I recognize that in many cases the question of whether certiorari should be granted is a matter permitting debate. But we find that a very large proportion of the applications are without substantial grounds . . . and there is an utter absence of any good reason for asking our review. *That review, we must emphasize, is in the interest of the law, not in the interest of particular parties.*"¹⁰⁶ (Emphasis added). If the practitioner will always keep in mind this admonition of Justice Hughes, and set his procedural course in careful compliance with the existing rules, his chances for success will be greatly enhanced.

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100. *American Railway Express Co. v. Fegenbush*, 107 Fla. 145, 144 So. 320 (1932).

101. *Sheffield v. Barry*, 153 Fla. 144, 14 So.2d 417 (1943).

102. *Klimis v. Klimis*, 158 Fla. 159, 28 So.2d 112 (1946). *Contra*: *Finlayson v. Monticello*, 144 Fla. 724, 198 So. 577 (1940).

103. *Goodkind v. Wolkowsky*, 147 Fla. 415, 2 So.2d 723 (1941).

104. *Laney v. Holbrook*, 149 Fla. 670, 6 So.2d 623 (1942).

105. *Knott v. State*, 140 Fla. 713, 192 So. 472 (1939).

106. 20 A.B.A.J. 341 (1934).