

MEREDITH, J.A.:—The prisoner, who was accused of the crime of perjury, elected to be tried without a jury, and was tried accordingly in the County Judge's Criminal Court, and was found guilty. An application was made at the trial for a reserved case, on several questions of law, but it was refused; the pronouncement of the judgment of the Court upon the prisoner was, however, postponed to enable him to appeal to this Court. An application was accordingly made to this Court for a reserved case, but that was also refused. Subsequently a writ of habeas corpus was obtained on the prisoner's behalf, in the High Court, and after that a writ of certiorari in aid, as it is called, of the habeas corpus. A return was made to the writ of certiorari, and the prisoner was brought up on the other writ, and then an application for his discharge from custody was in due course brought on. That application was refused, and the prisoner was remanded for sentence in the inferior Court, on the ground that the writ of habeas corpus, and consequently the writ of certiorari, had been improvidently issued, because habeas corpus does not lie to a court of record (ante 35). The judgment of the inferior court upon the prisoner for the indictable offence of which he had been there found guilty was thereupon moved for, and it was pronounced, without any sort of objection being made on account of the writ of certiorari or of anything that had been done under it.

The return to the writ of certiorari was never filed in the superior court, nor were any of the papers which were returned with it, nor was the writ, but these papers had not been brought back to the custody of the Clerk of the Peace when the judgment was pronounced; they were apparently yet in the hands of one of the officers of the superior court. Some time after the sentence had been so pronounced, the point in question was for the first time raised, and an application was then made for a reserved case in respect of it, which was refused, and this application is an appeal from that refusal.

It is not necessary to determine the point, but I may say that I am far from being convinced that the judgment so pronounced was invalid. The case is very different from that of a conviction of a justice of the peace brought up to the High Court and then filed, on a motion to quash it. The purposes of a writ of certiorari, issued, as this writ was, under the 5th section of the Act for more effectually securing the liberty of the subject, are by that enactment expressly