

Province of Ontario.

COURT OF APPEAL.

From Anglin, J.] THE KING v. WHITESIDE. [Oct. 10, 1904.

Habeas corpus—Irregularity in caption—Warrant of commitment—Execution in another county without endorsement—Conveying prisoner to first county—Liquor License Act (Ont.), ss. 72, 101—Cr. Code, s. 844.

1. The Court will not upon habeas corpus enquire into any irregularity in the caption.

2. Where a warrant of commitment was issued in one county against the accused who was not then in custody, and he was arrested thereunder in another county without any endorsement of the warrant, and was brought back to the county in which the warrant issued, and there imprisoned as the warrant directed, the irregular arrest is not a ground for releasing the accused on habeas corpus.

The distinction between civil and criminal proceedings pointed out.

Cartwright, K.C., for Crown. Tremear, for the prisoner.

HIGH COURT OF JUSTICE.

Falconbridge, C.J.K.B., Street, J., Britton, J.] [Nov. 1, 1904.

DINI v. FAUQUIER

Executors and administrators—Action by administrator before issue of letters of administration—Stranger to estate—Order for issue—Judicial act—Time—Relation back.

Letters of administration issued after action and before the trial, where the plaintiff brings his action as administrator, are sufficient to support the action, even where the plaintiff has no interest in the estate.

Fell v. Lutwidge, Barnardiston Ch. 319, followed. *Humphreys v. Humphreys*, 3 P. Wms. 349; *Trice v. Robinson*, 16 O.R. 433; *Chard v. Rae*, 18 O.R. 371; and *Doyle v. Diamond Flint Glass Co.*, 7 O.L.R. 747; 40 C.L.J. 783, considered.