this issue. This was determined in a civil suit, but at common law, there exists no difference between the rules governing criminal and civil pleading. A material defect in any proceeding coming within this scope, affects the whole record, and is ground for writ of error. Final judgments, or awards in the nature of judgments, are decidedly subject to review in Error, because they determine the legal validity of premises or conclusion, (Grady & Scotland, 332, and authorities there collected, and *Samuel* v. *Judin*, 6 Ea. 336.) "But *an* order, says Mr. Justice Badgley, is simply an order; it is not a judgment—it has none of the attributes of a judgment—it could not be got rid of by writ of error . . . .; 10 L. C. J., 42, for the words of the writ are, *si judicium redditum sit*, Co. Lit. 288, b; Bac. Abr. (A), 2. Such orders, says Tindal, C. J., addressing the Lords in the name of all the Judges of England, in *Mellish* v. *Richardson* "do not "fall within the description of any part of the "record; but *they* are strictly and properly "matters of practice in the progress of the "cause . . . The practice of the courts below "is a matter which belongs by law to the exclu- "sive discretion of the court itself; it being "presumed that such practice will be controlled "by a sound legal discretion. It is, therefore, "left to their own government alone, without "any appeal to or revision by a superior court." Thus is Mr. Justice Mondelet's assertion, "Is it "not certain as elementary, that a 'man may not "be delivered from the commitment of a Court "of Oyer and Terminer by *habeas corpus*, with- "out a writ of error? (Salk. 348,)"—not sustained by a reference to the authority, which, on the contrary, is manifestly at variance with his views. There, the King's Bench at Westminster would not discharge Bethell on a *habeas corpus* alone, because the commitment showed only a formal defect. They left him to his writ of error; but the commitment was based on a final judgment, judgment of fine, or imprisonment until payment, after conviction.

There is still another great reason why a writ of error should not be granted in this case. Writs of error issue but from superior to inferior courts, and though our extraordinary system of judicature offers the singular instance of the writ of error issuing, and it issues in no other way, from one side of a court to the other, from the Appeal side of our Queen's Bench to its Crown Side, still the principle of superiority of jurisdiction is preserved, the appellate jurisdiction of the Queen's Bench being above its original criminal jurisdiction. But the jurisdiction conferred by *habeas corpus* is not superior to the other, it is only co-ordinate with it. The different concurrent powers will adjudicate upon the same premises, and remand, bail or discharge. But they will not even look to previous conclusions or orders, and much less will they review and, perhaps, reverse them for error.

The other writ providing for the removal of records, *certiorari*, does not appear to be more serviceable than the writ of error; for it likewise moves from a superior jurisdiction to an inferior one. The principle is formally recognized by statute, in the present case also. 29–30 Vic. ch. 45, sec. 5, allows it from Superior Courts or Judges, to coroners and justices of the peace. The general supervising and reforming control of the Superior Court over the other courts, does not extend to the Queen's Bench, C. S. L. C. ch. 78, sec. 4; and the *certiorari* issued from the latter court for the sole purpose of removing indictments from the Sessions to its Crown side for trial, Ib., ch. 77, sec. 69, but the Sessions are now abolished.

Were it not for that principle, the *certiorari* would answer our object. No error is assignable; what is wanted is *to make certain—certiorari*, there is in the record no cause of detention. *Long's* case, Cro. El. 489, supported by *Groenvelt v. Burwell*, 1 Ld. Raym., 469, is exactly in point A *certiorari* was awarded to Long, to remove an indictment for felony, where on conviction he suffered punishment, but no judgment had been given; for it was determined that a writ of error did not lie.

"Since there is no other mode of bringing "the *record* before the court *or judge*, it "is sufficient," says Baron Parke, *in re Allison*, 29 Eng. Law & Eq. 406, "to produce it verified "by affidavit." "If the court *or judge* cannot "look at a *record* unless it is regularly brought "before it by a writ of *certiorari*, a prisoner, "who was improperly *imprisoned*, could never "obtain relief by *habeas corpus*" (*Per* Alderson, B. Ib.) in the Superior Court or before a judge of the same. With regard to the Queen's Bench and its judges, it is quite different, as it is their own record that is required. And accordingly on account of the words "until otherwise ordered by this Court," the Clerk of the Crown laid the record before the Court in Appeal with-