

wherein one Joseph Elliott was plaintiff and J. McKee McLennan and another were defendants, for an order for the issue of a writ of certiorari to remove into the Supreme Court of Ontario the examination of the plaintiff for discovery taken in that action.

The applicant appeared in person.

No one opposed the motion.

BRITTON, J., said that he was of opinion that certiorari would not lie upon the facts presented. *Rex v. Woodhouse*, [1906] 2 K.B. 501, was not an authority for certiorari in a case like this. The object of certiorari was to get rid of the judgment. It was argued that, the answers to the questions put to the plaintiff by counsel being the only evidence, there would be nothing upon which the judgment could rest, and the plaintiff would be at liberty to go to trial.

The action was dismissed by the County Court Judge. It was said that the reasons given were not in fact reasons; and it was said that there was no power on examination for discovery to elicit—and particularly in the absence of the plaintiff's solicitor—the alleged fact that the plaintiff did not authorise the bringing of the action. Apart from collusion between the plaintiff and the defendant's solicitor—which was alleged—the case was just one of a decision alleged to have been given upon improper evidence. If the case had been decided upon improper evidence, an appeal would lie; and, that being so, certiorari ought not to be granted.

Motion refused.

SUTHERLAND, J.

FEBRUARY 14TH, 1916.

MILLAR v. PHILIP.

Principal and Agent — Agency for Sale of Land — Purchase by Agents in Name of Third Person — Contract under Seal between Principal and Third Person — Liability of Agent as Undisclosed Principal — Liability for Damages for Loss Occasioned by Sale to Person without Means — Damages — Return of Commission — Costs.

Action by Charles Millar against William Philip, R. B. Rice & Sons, and W. C. Tolton, to establish a joint liability of all the defendants for an indebtedness under an agreement for the sale of land by the plaintiff to the defendant Philip, upon the ground that the other defendants were undisclosed principals