WHEN THE WRIT OF CERTIORARI WILL LIE IN MISSOURI.

The operation of the common law writ of certiorari is to bring before the court for inspection the record of the inferior tribunal or body, and its judgment affects the validity of the record alone, determining its validity or invalidity. It is generally considered as reaching to all errors of law but not to errors of fact. The functions of certiorari are simply to ascertain the validity of proceedings, either on a charge that the necessary forms of law were not observed, or that there was a lack of jurisdiction in the lower court.

Like all other proceedings for review, it is regulated by statute in almost every jurisdiction; therefore its scope and also the procedure for obtaining it vary to a great extent. Under Missouri procedure the office of the writ is the same as at common law, if in other respects consistent with existing statutes. Thus in *State ex rel. Ruppel v. Wiethaupt,*[1] it was held that the office of the writ, following the precedents of the common law, is to bring the record of the proceedings of inferior courts before a superior court to determine whether the lower court had jurisdiction, or, having it, abused the same.

Certiorari, however, is not limited to reviewing questions of jurisdiction, but lies to review any error appearing upon the face of the record which cannot be reached by appeal or writ of error. In the case of *State ex rel. Iba v. Mosman,*[2] which was a suit by the relator in a Missouri court for damages for her husband's death due to the alleged negligence of a railroad, the circuit court sustained the defendant's motion for a removal of the case to the United States circuit court. The relator then applied for certiorari to bring

1. 254 Mo. 319.
2. 231 Mo. 474.

the record to the Supreme Court of Missouri for review. It was held that such an order of the lower court was not a final judgment within the meaning of the Missouri statute, nor did it come under any special class of orders mentioned in the statute from which an appeal was allowed. The relator, if the order had been sustained, would have had no appeal to the supreme court of either the state or the United States. Therefore the court conceded that certiorari would be the proper remedy for review.

It is also a proper remedy to restrain public officers when they act in excess of their jurisdiction.[3] But it is not appropriate to review acts and decisions of non-judicial bodies or officers, such as a committee of a political party.[4] It can be used where an inferior court exceeds its authority in *habeas corpus,* although the court may have jurisdiction; the error may be reached by certiorari, there being no remedy by appeal or writ of error. But where an inferior tribunal or officer has jurisdiction to act and is invested with discretionary powers, such action, however improperly exercised, cannot be controlled by certiorari by a superior tribunal. In the case of *In re Saline Co. Subscription,*[5] it was held that the act of a county court in subscribing to railroad stock and issuing bonds for payment thereof was a discretionary and not a judicial proceeding, and therefore not subject to review by certiorari.

Where the writ is applied for by the chief law officer of the state, the Attorney-General, it goes as a matter of course, provided there is apparent on the face of the application, absence, excess or abuse of jurisdiction, or absence of the right of appeal, or lack of any other adequate remedy.[6] But it does not take the place of *mandamus* to compel the making of a record in a case, but takes the record as it

3. 138 Mo. App. 306; 109 Mo. App. 482.
4. 201 Mo. 1.
5. 45 Mo. 52.
6. 254 Mo. 561.

finds it[7] after the final adjudication of the whole matter involved.[8]

A county court, having no power to remove a member of the county highway board, may have its action reviewed by certiorari to determine its legality in such a removal proceeding.[9] Likewise, courts can review the authority of a mayor and city council by certiorari. The case of *State ex rel. Heimburger v. Rolla Wells,*[10] was a certiorari to review the proceedings of the mayor of St. Louis, in which the mayor held a hearing on certain charges against the Commissioner of Public Buildings and removed him from office for incompetency and neglect of duty. It was held that the writ would lie but would have to be determined upon the record alone, and the evidence taken at the hearing would not be considered by the court.

In *State ex rel. Bentley v. Reynolds,*[11] a circuit court issued a writ of certiorari to direct election commissioners and judges to bring the ballots and ballot boxes into court to have a count made by certain appointees of the court. It was held that certiorari is not the appropriate remedy to review and correct errors in the acts of ministerial officers. A circuit court cannot, by use of certiorari, transform itself into a judicial election board to determine who was elected or nominated.

One of the extensive grounds for the use of certiorari is upon the refusal of an inferior court to follow the rulings of a superior court. The supreme court will, on certiorari, review and quash a judgment of a circuit court or court of appeals when such court refuses to follow the last previous rulings of the supreme court.[12] In *State ex rel. Curtis v.*

7. 254 Mo. 123.
8. 257 Mo. 40.
9. 256 Mo. 683.
10. 210 Mo. 601.
11. 190 Mo. 578.
12. 257 Mo. 19; 272 Mo. 571.

Broaddus,[13] it was held that a decision by the supreme court in a case, as to all matters therein decided, became *res adjudicata* not only at a subsequent trial of the same case in the circuit court, but on appeal to the court of appeals, upon a subsequent appeal, upon the same facts, in the same case, is not at liberty to disregard the former decision in the supreme court. If it does disregard the former decision, it was held that certiorari will lie.

In *State ex rel. Kans. and Tex. Coal R. R. v. Shelton,*[14] it was held that certiorari cannot be used as a substitute for an appeal or writ of error, and that where a circuit court has jurisdiction of a proceeding, and its action can be reviewed on appeal or writ of error, certiorari will not lie. But this case was modified in part by *State ex rel. Hamilton v. Guinotte,*[15] in which a writ of certiorari was issued from the Supreme Court of Missouri to a probate court which had erroneously revoked letters of administration, even though there was a statutory appeal allowed from a probate court to a circuit court. In that case Judge Sherwood stated that there were marked exceptions to the Kansas and Texas R. R. case *(supra).* He asserted that where the exigencies of the case are such that the ordinary methods of appeal or error may not prove adequate either in point of promptness or completeness so that a partial or total failure of justice may result, then certiorari may issue since it is a summary and more effective remedy for judicial excesses than writ of error or appeal.

In a later case of *State ex rel. Combs v. Staten,*[16] the relator was an owner of land who objector to the order of a county court establishing a public road, on the ground that the legal requirements were not complied with. It was held that where a party has an adequate remedy by appeal the writ would not lie in cases of this character.

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13. 238 Mo. 189.
14. 154 Mo. 670.
15. 156 Mo. 513.
16. 268 Mo. 288.

Under the constitution of Missouri[17] the supreme court, by certiorari, has power over all inferior trial courts and also superintending control over the courts of appeals. Power to issue the writ is also given to the courts of appeals[18] to control trial courts. And under the Missouri statutes[19] a circuit court may issue a writ of certiorari to a justice of the peace court[20] to have a record of its proceedings certified to the circuit court for review.

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17. Amend. of 1884, Art. VI, Sec. 8.
18. Amend. of 1884, Art. VI, Sec. 12.
19. R. S. Mo. 1919, Sec. 3031.
20. R. S. Mo. 1919, Sec. 3038.