CHEVROLET MOTOR COMPANY *v.* LANDERS CHEVROLET COMPANY.

Opinion delivered April 20, 1931.

1. CERTIORARI—SUBSTITUTE FOR APPEAL.—The writ of certiorari cannot be used by the circuit courts, in the exercise of their appellate powers and superintending control over inferior courts, for the mere correction of errors, as a substitute for appeal.
2. CERTIORARI—VOID JUDGMENTS.—When it appears upon the face of the record of an inferior court that it has no jurisdiction of the subject-matter or of the person, its judgment may be quashed, on certiorari, by the circuit court.
3. CORPORATIONS—VENUE.—Service of summons on a domestic corporation in a county in which it has no office, and in which its chief officer does not reside, *held* invalid under Crawford & Moses' Dig., § 1171, and a judgment based thereon should be quashed by the circuit court on certiorari as provided by § 2237, *Id.*
4. JUSTICES OF THE PEACE—VOID JUDGMENT—REMEDY.—Where a judgment against a defendant in a justice's court was void, defendant need not appeal, but may resort to certiorari under Crawford & Moses' Dig., § 2237.

CHEVROLET COMPANY.

Appeal from Fulton Circuit Court; *John C. Ashley,* Judge; reversed.

STATEMENT OF FACTS.

This appeal is prosecuted from a judgment of the circuit court refusing to quash on certiorari the judgment of the justice court complained of as being void for want of service of summons on appellant.

Appellee company, a partnership, brought suit against appellant, a domestic corporation with its principal and only place of business located in Little Rock, Pulaski County, Arkansas, in a justice court in Fulton County for damages for breach of contract in the sum of $240. The summons issued was directed to any constable of Fulton County, commanding him to summon "Sadler of the Chevrolet Motor Company." The officer's return recites: "Writ came to hand on 28th day of January, 1930, I have this ..... duly served the same by delivering a true copy hereof to W. H. Sadler, agent for Chevrolet Motor Company, the president, manager and chairman of the board of trustees are absent from Fulton County, Arkansas, as therein commanded." On February 18, 1930, the appellant company appeared specially and moved to quash the service and dismiss the suit, alleging that it "is a corporation, domiciled and having its place of business in the city of Little Rock, Pulaski County, Arkansas; that it has no place of business and maintains no office in Fulton County, Arkansas; that no legal service has been obtained in this court upon this defendant, so as to give this court any jurisdiction over the defendant in this cause."

The justice transcript states that the appellant company appeared by its attorneys for the sole and only purpose of filing its motion to quash the service in the case. The court overruled the motion and adjourned until 1 o'clock and then returned judgment by default against appellant company in the sum of $240 and costs. Thereupon appellant filed its petition in the Fulton Circuit Court, February term, 1930, for a certiorari alleging

that it was a domestic corporation domiciled and having its place of business in Little Rock, Pulaski County, Arkansas, where its officers resided, and that it has no place of business in Fulton County, Arkansas, and that none of its officers reside in Fulton County; alleged further the filing of the suit in the justice court against it, that the summons issued against the petitioner was served in Fulton County, Arkansas, upon some person who was not an official of the corporation; that it had appeared specially and objected to the jurisdiction of the court, moving to quash the service; that the motion was overruled, and judgment rendered against the defendant; stated further that appellant had a valid defense to the suit, and a writ of certiorari was prayed, etc.

Appellee filed a general demurrer to the petition for certiorari and also answered, admitting that appellant was a domestic corporation with its principal place of business in Little Rock, Pulaski County, Arkansas, and denied that the said company had no place of business in Fulton County, and all the other allegations of the petition; alleged that the service of summons was legal and in accordance with the statute, and that petitioner was present and filed its motion to quash, had notice of the said action as required by law, and that, if it has any rights herein, it was by appeal, which was not lost to petitioner through any act of plaintiff, but through the carelessness or negligence of the petitioner.

The court, after a statement by counsel, said: "The question, as I see it, would be, is the judgment void upon its face, or, did you have a right of appeal, and, if so, have you lost that right, without fault on your part."

The court said further that he did not think the judgment was void upon its face; that it was not an action on tort, but one on contract; that the court had jurisdiction of the subject-matter, and the only question for the court to determine is, "is the service sufficient?" and, if the service is not sufficient, would remedy lie in appeal from the ruling of the court in overruling your motion to quash service? "and, in my opinion, that would

have been the proper remedy." The court then overruled and denied the petition for certiorari. From this judgment objections and exceptions were saved, and the appeal is prosecuted therefrom.

Barber & Henry and *Troy W. Lewis,* for appellant.

KIRBY, J., (after stating the facts). The statute authorizes the circuit court to issue writs of certiorari (§ 3237, Crawford & Moses' Digest); but in *Baskins* v. *Wylds,* 39 Ark. 347, this court said:

"The writ of certiorari cannot be used by the circuit courts, in the exercise of their appellate powers and superintending control over inferior courts, for the mere correction of errors, as a substitute for appeal, but when it appears upon the face of the record of the inferior court that it has no jurisdiction of the subject-matter, or of the person, its judgment may be quashed, on certiorari, by the circuit court." See also *Miller* v. *McCullough,* 21 Ark. 426; *Burgett* v. *Apperson,* 52 Ark. 213, 12 S. W. 559; *Knight* v. *Creswell,* 82 Ark. 330, 101 S. W. 754, 118 Am. St. Rep. 74; *Beal-Doyle D. G. Co.* v. *Odd Fellows,* 109 Ark. 77, 158 S. W. 955.

Our statutes provide how service of summons may be had upon corporations created by the laws of this State, and where such actions may be brought. Sections 1147, 1152 and 1171, Crawford & Moses' Digest.

The record herein shows appellant is a corporation created by the laws of this State, having its principal office or place of business in Little Rock, Pulaski County, Arkansas, in which its chief officers also reside; and that it does not keep or maintain in Fulton County, where this suit was brought, "a branch office or any other place of business," and had no such office or place of business in that county at the time service was attempted to be made.

Appellant appeared specially for the purpose and moved to quash the service of summons, but the court overruled its motion and rendered judgment by default against it. These facts are all alleged in the petition

for certiorari, to which a general demurrer was filed and also an answer admitting appellant was a domestic corporation with its principal place of business in Little Rock, Pulaski County, Arkansas.

The court in passing upon the petition appeared to think that, if the court had jurisdiction of the subject-matter, then the only question for determination was the sufficiency of the summons, expressing the view that if the summons was insufficient even, appellant's remedy would be by appeal and not certiorari, and denied the petition and affirmed the judgment.

This holding was erroneous, since appellant had the right to resort to the remedy of certiorari provided by the statute in such cases for the relief of void judgments, and was not compelled to appeal from such judgment, since under our holdings such appeal, without regard to the result of the determination, would enter its appearance to the suit. Since the record shows the justice acquired no jurisdiction to hear and determine the cause on the service of summons, it should have quashed the service and dismissed the suit upon appellant's motion duly made.

The judgment rendered without service upon appellant company was void, and the circuit court erred in not so holding upon appellant's petition for certiorari and quashing such judgment. The judgment is accordingly reversed, and the cause remanded with directions to the circuit court to quash the judgment of the justice court against appellant company, being void for want of proper service. It is so ordered.