

Then take the Record of the Indictment, and close it within the Schedule, and seal and send them up both together with the *Certiorari*.

Now to shew what is farther meet for the Justice of peace to know concerning this Writ of *Certiorari*, and their Certifying or Return thereof.

After an Indictment found before Justices of peace, a *Certiorari* is procured by the means of some party indicted or grieved, thereby to remove such Indictment from the said Justices, and to convey it to Justices of a higher Authority, to the end the party may either traverse such Indictment above, or may there avoid it for insufficiency of form or matter.

Hob. 135. ' Although the *Custos Rotulorum* keep the Records, yet must the Justices ' return the *Certiorari*; for the Writ is directed to them, and not to him; and the Record it self must be returned, and not *Tenor Recordi*.

And this *Certiorari* is the Kings Writ, issuing sometimes out of the Chancery, and sometimes out of the Kings Bench, and may be directed to any inferiour Court of Record, or Officer of Record, (as to a Justice of peace, Sheriff, Coroner or Escheator) to be certified of any Record which is before any of them. And first an *Alias*, then a *Pluries*, and lastly an Attachment lieth against them that should send it, (if the Record be not certified accordingly.) Or it seemeth a *Sub pœna* is used at this day.

If it be returnable into the Chancery, then the words are, *In our Chancery*; and if into the Kings Bench, then the words are, *Nobis mittatis*; and if into the Court of Common Pleas, then *Coram Just' nostris de Banco*.

' This Writ is not to be slighted, nor are any Proceedings to be after ' the delivery thereof, although the Return be past; for by the delivery the hands of the Justices are closed. A Forcible Entry was found, and Restitution awarded but not executed. A Writ of *Certiorari* comes to a Justice of peace, and he refuses to open it till he had spoke with his Companions. Restitution was given in the Kings Bench, and Restitution prayed and granted, and the Justice of peace much chid. *Yelo. 32.*

Plo. 393. The *Certiorari* may be sometimes to remove and send up the Record it self, and sometimes but only the Tenor of the Record, (as the words therein be) and it must be obeyed accordingly.

Fitz. 245. b. If there be variance between the *Certiorari* and the Record which is to be removed, the Justices need not to certifie such Record, *Lamb. 500.*

Gro. 130. a & 131. b. A Justice of peace may deliver or send into the Kings Bench an Indictment found before him, or a Recognizance of the peace taken by him, or a Force recorded by him, without any *Certiorari*: but if a Justice of peace having a Record in his hands be discharged of his Office, now he cannot certifie it without a *Certiorari*, although he be made a Justice of peace again, *See 8 H. 4. f. 5. Br. Record 64.*

6 Ed. 4. 5. If a *Certiorari* be to send up the Indictment of *A*, in which Indictment some others be indicted with the same *A*, yet need not the Justice of peace to make Certificate concerning any but *A*. For although they be named joyntly, yet they be indicted severally, and the King may pardon *A*. without forgiving the other, *6 Ed. 4 5.*

4 H. 7. 16. Br. Jud. 17. If a *Certiorari* shall come to the Justices of the peace to remove an Indictment, and the party sueth not to have it removed, but suffereth it to lie still after the day of the Return of the *Certiorari*; yet it seemeth the Justices of peace ought *ex officio* to send it away, because the Writ containeth in it self a Commandment to them so to do; and so is a *Sn.*