

Case No. 6,655.

HOMANS v. MOORE.

[5 Cranch, C. C. 505.]¹

Circuit Court, District of Columbia.

Nov. Term, 1838.

JUSTICE OF PEACE—JURISDICTION.

1. A certiorari does not lie to a justice of the peace in a case of which he has jurisdiction.
2. A plaintiff may relinquish interest upon an open account and bring his action for the principal sum only, before a justice of the peace, if the principal does not exceed the sum of fifty dollars, although, with interest, the debt would exceed that sum.

Certiorari, to Mr. Justice Thompson, issued by the chief judge of this court on the 21st of March, 1838, in vacation, upon the petition and affidavit of the debtor, Benjamin Homans, which stated, in substance, that W. W. Moore had warranted him, before Mr. Justice Thompson, for \$47.20, which, if due at all is due with interest from November, 1834, and that the debt and damages exceed the sum of \$50, and the warrant and all proceedings under it are illegal and coram non judge. That to prevent an appeal, the creditor claimed a trial by jury; who rendered a verdict against the petitioner, upon which the justice rendered judgment. That he has a fair, bona fide, legal defence, which was not allowed him upon the trial. The petition was accompanied by another affidavit, stating that since the trial before the justice he has discovered that he can prove his set-off, which he did not know at the time of the trial; and that the present application is not for delay, but that substantial justice may be done. The certiorari was returned at the last term, and a rule laid upon Mr. Moore, the plaintiff, to file his declaration.

Mr. Hoban, for plaintiff, now moved the court to quash the certiorari and all the proceedings thereon.

Mr. Bradley, contra, relied upon the order of the chief judge for the certiorari.

THE COURT (CRANCH, Chief Judge, not sitting) decided that the creditor may relinquish the interest upon the claim and recover the principal before a justice of the peace, if the principal does not exceed \$50; the claim being understood to be upon open account. Certiorari quashed.

¹ [Reported by Hon. William Cranch, Chief Judge.]