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Summer 1945

## Coram Nobis, Prohibition, and Appeal

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### Recommended Citation

(1945) "Coram Nobis, Prohibition, and Appeal," *Indiana Law Journal*: Vol. 20 : Iss. 4 , Article 8.  
Available at: <https://www.repository.law.indiana.edu/ilj/vol20/iss4/8>

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## COURTS

## CORAM NOBIS, PROHIBITION, AND APPEAL

Continuing the long series of proceedings following his conviction for murder 20 years ago, D. C. Stephenson by petition for writ of error *coram nobis* asserted that he should have another trial. The State, through the Attorney General sought a writ of prohibition to restrain the circuit court from acting upon the writ. *Held*, writ denied and rule of court established permitting appeal by the State from an order granting or denying a petition for writ of error *coram nobis*. *State v. Hamilton* Circuit Court ———, Ind. ———, 61 N.E. (2d) 182 (1945).

The instant case decided under difficult circumstances goes far toward clarifying the law of prohibition in Indiana and bringing its rule in accord with the weight of authority.<sup>1</sup>

It is clear that the circuit court has jurisdiction.<sup>2</sup> It must be assumed that the circuit court will exercise that jurisdiction properly. Thus, the present action does not appear to fall within the statutory ground for prohibition to restrain and confine "such courts to their respective, lawful jurisdiction" or to compel "the performance of any duty enjoined by law."<sup>3</sup> Thus, unless the court was prepared to give undue significance to the single sentence of the section which reads "Writs of mandate and prohibition may issue out of the Supreme and Appellate Courts of this state in aid of the appellate powers and functions of said courts, respectively,"<sup>4</sup> the decision is obviously sound.<sup>5</sup> Having gone this far in returning prohibition to its proper limits,<sup>6</sup>

1. High, Extraordinary Legal Limitations § 770; Comment 22 Calif. L. Rev. 537 (1934); Note 36 Harv. L. Rev. 863 (1923).
2. ". . . the object of the writ of prohibition is to prevent a court of peculiar, limited or inferior jurisdiction from assuming jurisdiction of a matter beyond its legal cognizance." *Smith v. Whitney*, 116 U.S. 167 (1886).
3. Ind. Ann. Stat. Burn's (1923) § 3-2201.
4. The practice in federal courts is consistent with the decision in the instant case. Thus the phrase in 262 of the Judicial Code—"necessary to the exercise of their respective jurisdiction"—has been interpreted as limiting the Supreme Court and Circuit Courts of Appeals to cases where they would be deprived of appellate jurisdiction. *Keaton v. Kennamer*, 42 Fed. 2d. 814 (1930). The phrase has not been used by the courts affirmatively as a reason for taking jurisdiction, see Note 43, Col. L. Rev. 899, 902 (1934) cf Note 42 Col. L. Rev. 295 (1942).
5. Cf. *Irwin v. State*, 220 Ind. 228, 41 N.E. (2d) 809 (1942) criticized in Note 22 BU L. Rev. 600 (1942). For a general history of the writ of error *coram nobis* see Freeman, the Writ of Error *coram nobis*, 3 Temple L. Q. 365 (1939); Comment 11 Wis. L. Rev. 248 (1936); Note 19 Neb. L.B. 150 (1940); Note 8 Ind. L.J. 247 (1933); 18 Chi. Kent L. Rev. 304 (1940); Note 6 J. Marshall's L. Q. 304 (1940).  
Newly discovered evidence has been sufficient for the issuance of the writ. *Jones v. Commonwealth*, 269 Ky. 799, 108 S.W. (2d) 816 (1937) Discussed in 31 Ky. L. J. 86 (1942); but see *People v. Dabbs*, 372 Ill. 160, 23 N.E. (2) 343 (1939).
6. "The use of two extraordinary limitations is thus sought to prevent the anticipated abuse of the other. Each has its proper

it is to be regretted that the court did not continue the clarifying processes to the point of overruling the now inconsistent decision of *State ex rel Fry v. Superior Court*.<sup>7</sup>

Of much greater importance to the development of dynamic judicial leadership is that portion of the opinion which recognized that the denial of the writ might, in turn, prejudice the interests of the state.<sup>8</sup>

To guard the State against such hazards the court adopted a rule providing for state appeal from orders granting or denying petitions for writ of error *coram nobis*.<sup>9</sup> This is exactly the type of action which the legislature must have intended when it withdrew from the field of procedural legislation.<sup>10</sup> It is the type of action which the bar most certainly commends for it permits the court to establish rules which will protect the interests of all parties concerned without perverting the normal application of established procedures in order to provide satisfactory results in particular cases.

In the principal case the Supreme Court points out that an order denying a writ of error *coram nobis* had been held to be a final judgment from which an appeal was allowed. The Court emphasizes the fact that the new rule changes the law on this point and that in such a case the appeal must now be perfected and briefed as an appeal from an interlocutory order.

The Supreme Court's action in extending the privilege of appeal to an interlocutory order granting a writ of error *coram nobis* suggests that consideration might well be given to a similar extension in other fields. The privilege of appeal from interlocutory orders in Indiana is a very restricted one and there are undoubtedly other instances where provision for appeal might well be made.

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function. Neither should be perverted." *State v. Hamilton Circuit Court* ——— Ind. ———, 61 N.E. (2d) 182 (1945).

7. 205 Ind. 355, 186 N.E. 310 (1933).
8. "Relators are aware of the difficulties of marshalling in 1945 evidence to prove facts that existed and were susceptible of proof in 1925. They fear the possibility of an erroneous ruling by respondent court resulting in the unwarranted release of a guilty convict" who has already brought 39 separate proceedings including six petitions for writs of error *coram nobis* and habeas corpus actions upon the same subject matter. *State v. Hamilton Circuit Court*. *Supra* n. 6.
9. "RULE 2-40. An appeal may be taken to the Supreme Court from an order granting or denying a petition for writ of error *coram nobis*. The sufficiency of the pleadings and of the evidence to entitle the petitioner to the writ will be considered upon an assignment of error that the order is contrary to law. The transcript of so much of the record as is necessary to present all questions raised by appellant's proposition shall be filed with the Clerk of the Supreme Court within thirty (30) days after the date of the order. The provisions of Rule 2-15 applicable to appeals from interlocutory orders shall govern as to the time of filing briefs. All proceedings in the lower court shall be stayed until the appeal is determined. This rule shall apply to any order made on or after May 29, 1945, granting or denying a petition for writ of error *coram nobis*."
10. Ind. Ann. Stat. (Burn's Supp., 1942) § 2-4718.