ISSAC K. DOE, et al, Petitioners, *v.* **HER HONOUR LUVENIA ASH-THOMPSON,** Judge, People's Monthly and Probate Court for Montserrado County, THE PROPOSED LIBERIA ACTION PARTY, by and thru its Chairman, and the Registrar of Deeds, Montserrado County, Republic of Liberia, Respondents.

Heard: May 23 and 27, 1985. Decided: June 21, 1985.

1. An appeal is a compliant to a superior court of an injustice done or error committed by an inferior court whose judgment or decision the appellate court is called upon to correct or reverse.
2. Supersedeas is a suspension of the power of a trial court to issue an execution on the judgment appealed from, or if a writ of execution has been issued, it is a prohibition emanating from a court of appeal against execution of the writ.
3. If a party, although not served with process, takes such step in an action, or seeks relief at the hands of the court as is consistent only with the proposition that the court has jurisdiction of the cause and his person, he thereby submits himself to the jurisdiction of the court, and is bound by its action as fully as if he had been regularly served with process.
4. Where a party to a judicial proceeding admits by some act or conduct the jurisdiction of the court, he may not thereafter, simply because his interest has changed, deny the jurisdiction of the court, especially where the assumption of a contrary position would be to the prejudice of another party who has acquiesced in the position formally taken.
5. The fact that a statute provides that "on announcement of an appeal by a defendant, no execution shall issue on a judgment against him, nor shall any proceeding be taken for its enforcement until final judgment is rendered, except that on an appeal from an order dissolving an order granting a preliminary injunction, such preliminary injunction shall be in force pending decision on the appeal", is not deemed exclusive so as to preclude a plaintiff from its application when he announces an appeal. The privilege accorded the defendant will and must be deemed accorded to the plaintiff also when he announces an appeal though he was not mentioned by the statute.
6. Supersedeas should be granted where the loss or damage occasioned by the stay can or "cannot" be met by a money award; or important questions of law are raised which, if decided in favor of the appellant or plaintiff-in-error, will require a reversal; or to avoid a

multiplicity of suits; or to protect the appellate court's jurisdiction.

7. Supersedeas operates only in favor of those who ask for it and have done the things necessary to obtain it.
8. Anyone who is entitled to an appeal from a judgment which may be superseded is entitled to a stay of execution of such judgment by proper supersedeas, but one who has not the right to an appeal or who is not a party to the proceeding in which the judgment in the court below complained of was rendered, cannot obtain a supersedeas; nor can a party obtain a supersedeas to stay execution of a judgment or decree which does not affect him, or of part thereof by which he is not affected.
9. Every person against whom a final judgment is rendered shall have the right to appeal from the judgment of the court, except from the Supreme Court, whose decision is absolute and final.
10. In order to operate as a supersedeas or stay, or to entitle an appellant or plaintiff-in-error to a supersedeas or stay, an appeal must generally be taken or allowed by the court, or the writ of error sued out and served or filed, and it must be done in the manner and within the time prescribed by statute or valid rule of court.
11. Supersedeas may also be allowed where irreparable injury might result by carrying the judgment instantly into effect.
12. In taking an appeal, the following steps are necessary in order to confer jurisdiction on the Supreme Court: (1) The oral announcement of the appeal at the rendition of the final judgment in open court; (2) the filing of an approved bill of exceptions within ten days from the date of the rendition of the judgment; (3) the filing of an approved appeal bond within sixty days from the date of the rendition of the final judgment; and (4) the issuance and service of the notice of completion of appeal on the appellee within sixty days from the date of rendition of the final judgment.
13. The trial court, even when it has jurisdiction to proceed in the main case, after an appeal or writ of error from an incidental, interlocutory matter (or even a main suit), may in its discretion decide to await the determination of the appellate proceeding, especially where the statute makes no provision for a supersedeas or stay of the judgment or final order as a matter of right.
14. The lower court cannot proceed in such manner as to lead to a decision, pending the appeal, of the very question involved on the appeal, or of a question which cannot properly arise or be determined until after the determination of the appeal; nor may it dispose of the case as to interfere with the jurisdiction or orders of the appellate court.

15. When the circuit court grants an appeal, its jurisdiction in the case is transferred to the appellate court, and the exercise of all other judicial function is arrested in so far as the trial court is concerned, whether or not a bond is filed.
16. In the absence of specific statutory directions to the contrary, an appeal operates as a supersedeas and stays the enforcement of the judgment until the appeal is finally decided. Likewise, in the absence of positive provisions of the statute to the contrary, an appeal perfected as the law requires does *proprio vigore* (or by its own intrinsic meaning) stay proceedings under the orders appealed from.
17. Statutes giving and regulating the right of appeal are recognized as remedial in their nature, and should therefore receive a liberal construction in furtherance of the right of appeal. In accordance with this principle, where the right of appeal or to the writ of error is given in general terms by one statute, another statute dealing with the review of particular proceedings and granting the right to appeal or to a writ of error to one party, without making provision for the other party, will not be deemed exclusive as to prevent a review as to the party not mentioned.
18. Under the statute, once the procedural steps for perfecting an appeal have been taken, the execution of the judgment must be superseded or stayed pending a final determination of the appeal, with the exception of those cases specifically provided for by statute. Compliance with these steps are however conditions precedent for supersedeas or a stay of the judgment or final order.
19. An appeal is treated as pending in the appellate court from the time of its perfection, and this suspends the power of the trial court to execute the judgment or decree.
20. Where the statute provides that a supersedeas may be obtained by taking certain prescribed steps, a supersedeas follows as a matter of law, from strict compliance with the procedure prescribed by the statute.
21. Aside from any specific statutory provision, an appellate has inherent power, in the exercise of its discretion, to order supersedeas to maintain the *status quo* pending review and to preserve the subject matter of the appeal.
22. Acts or proceedings in violation of or after the granting of a supersedeas or stay of proceedings are a nullity and may be vacated or set aside, and damages may be recovered by the appellant in a proper case; and any attempted violation may be restrained.
23. Where a stay is perfected by the execution of a bond as prescribed by statute and the trial court proceeds to exercise unauthorized jurisdiction pending such stay, it may be restrained by a writ of prohibition issued by an appellate court.

24. Prohibition is a preventive rather than a corrective remedy, and it issues only to prevent the threatened commission of a future act and not to review, nullify or undo an act or correct judicial proceedings which have already been performed or completed. Accordingly, it will not be granted when the act or proceedings sought to be prevented or prohibited has already been done or completed, and no further judicial acts are contemplated or to be performed.
25. If the procedure and method adopted by a trial court is declared illegal and unwarranted, prohibition will lie to prevent what remains to be done as well as undo what has already been done.
26. Prohibition is designed and will issue to prevent a trial tribunal from doing what remains to be done or from enforcing its judgment, and to undo what has illegally been done, where there has been a notice of appeal.

Petitioners, objectors in the trial court, filed a petition for a writ of prohibition to prevent the co-respondent judge of the Monthly and Probate Court for Montserrado County from proceeding with the probation and the registrar of deeds from registering the articles of incorporation and other documents of the proposed Liberia Action Party, following the court's dis-missal of the objections to the probation and registration of the aforementioned documents, and its decision to proceed with the probation of same, notwithstanding an appeal had been announced and granted. The co-respondent Liberia Action Party had presented its articles of incorporation and certification documents to the Monthly and Probate Court for Montserrado County for probation and registration following its certification by the Special Elections Commission (SECOM) as a full fledged political party, as required by the Elections Law. The petitioners had objected to the probation and registration of the documents, contending that the co-respondent Liberia Action Party had secured its voting list by fraudulent means. The judge of the Probate Court dismissed the objections, holding that the objectors were without standing to file objections to the documents. The petitioners thereupon announced an appeal.

However, before the judge could grant the appeal, the correspondent Liberia Action Party made a submission praying that the court grant the appeal without prejudice to the proba-tion and registration of the co-respondent's documents. The trial judge, agreeing with the submission, granted the appeal without prejudice to the Liberia Action Party and proceeded thereupon to admit its articles of incorporation and other certification documents into probate. The Probate Court noted that the statute prescribed that a stay was applicable

only in the case where the appeal was taken by the defendant in a case and not by a plaintiff. It was from this ruling that petitioner sought prohibition.

On appeal, the respondents contested the jurisdiction of the Supreme Court, filing a motion to dismiss the petition and returns to the petition, wherein they contended that service of the writ of summons had been made upon the yard boy of the co-respondent judge and on the messenger of the counsel for co-respondent Liberia Action Party, neither one of whom was authorized to receive summons for the respondents.

The Supreme Court denied the motion and the contentions raised in the returns, stating that while the respondents may not have been brought under the jurisdiction of the Court because of the improper service of the writ of summons, the respondents had submitted themselves to the jurisdiction of the Court by pleading to the merits of the petition. The Court noted that if a party, although not served with process, takes such steps in the action or seeks relief at the hands of the court as is consistent only with the proposition that the Court has jurisdiction of the case and his person, he thereby submits himself to the jurisdiction of the court and is bound by its action as fully as if he had been regularly served with process. In such a case, the Court said, the person contesting the jurisdiction of the court may not thereafter deny the same simply because his interest has changed. The respondent, it observed, had pled to the merits of the petition and requested relief from the Court. As such, it said, it had acquired jurisdiction of the person of the respondents, and that it was justified in going into the merits of the petition.

In ruling on the question presented in the petition, that is, whether the appeal taken by the petitioners served as a supersedeas and stay to prevent the trial judge admitting into probate the articles of incorporation and other certification documents of the Liberia Action Party, the Court opined that indeed the announcement of the appeal served as a supersedeas and stay, notwithstanding the statute referred to a stay only in the case of an appeal taken by a defendant. The Court observed that the lack of any mention of the plaintiff by the statute did not preclude its application to a plaintiff so as to also serve as a supersedeas in the case of an appeal taken by a plaintiff. The Court noted that supersedeas applied to stay further action by a trial court, once an appeal is announced and the prerequisites for an appeal complied with, if the matter involved an important question of law which, if decided in favor of appellant, will require a reversal of the judgment of the trial court; if the stay would serve to avoid a multiplicity of suits; and if the stay would protect the appellate court's jurisdiction. The Court held all of these reasons to be applicable to the instant case, and therefore ruled that the trial court should have stayed all

further action pending the final determination of the case by the Supreme Court.

Regarding the respondents contention that prohibition would not obtain to undo an act already done and completed, the Court opined that while ordinarily this was true, as prohibition is a preventive rather than a corrective remedy, the contention cannot hold where a trial court proceeds to exercise unauthorized jurisdiction pending appellate determination of the case, or where the trial court adopts a method or procedure declared illegal and unwarranted.

In the instant case, the Court said, the trial court had adopted an illegal and unwarranted procedure and had exercise unauthorized jurisdiction. Hence, it said, prohibition would lie to undo what had illegally been done. The act of the probate judge in admitting the documents into probate after the appeal had been announced, the Court observed, was unwarranted and illegal. As such, it said, prohibition was a proper remedy to undo the act of the probate judge, even though the act had already been completed. In like manner, it said, the registrar of deeds could be made to undo what he had done based upon the illegal and unwarranted act of the probate judge. The Court therefore *granted* the petition and declared the act of the co-respondent judge in probating the documents of the Liberia Action Party and the registrar of deeds in registering said documents *null and void*, and it *ordered* that the same be set aside.

Flawgaa MacFarland and *Moses White* appeared for petitioners. *Philip A. Z. Banks, III*, and *Tuan Wreh* appeared for respondents.

MR. JUSTICE MORRIS delivered the opinion of the Court.

This prohibition proceeding emanates from an objection to the probation and registration of the documents of the proposed Liberia Action Party, filed by Isaac K. Doe et. al. in the Monthly and Probate Court for Montserrado County. The records reveal that after arguments were entertained by Her Honour Luvenia V. Ash-Thompson, Judge of the Monthly & Probate Court, she dismissed the objection. The objectors then excepted to the ruling and announced an appeal to the Honourable People's Supreme Court of Liberia, sitting in its October 1985 Term. Before the judge could rule on the exception and an appeal announced by the objectors, the co-respondent, the proposed Liberia Action Party, made a sub-mission to the effect that the appeal prayed for be granted without prejudice to the co-respondent, that is to say, that the granting of the appeal should not supersede the admission

of the documents into probate because, according to co-respon-dent, under the Civil Procedure Law, Rev. Code 1:51.20, only an appeal by a defendant can stay the enforcement of the judgment. The objectors, they said, being in the category of plaintiffs, the court should grant their appeal without prejudice to the respondents.

The judge sustained the submission, ordered the documents objected to by the objectors probated and registered, and simultaneously granted the appeal. The objectors then fled to the Chambers Justice with a petition for a writ of prohibition. The Justice in Chambers ordered the issuance cf the alternative writ against the judge, the registrar of deeds for Montserrado County and The Proposed Liberia Action Party, as per the prayer of the petitioners. In order to expedite the hearing of this petition, the Justice in Chambers ordered that the petition be forwarded to the full bench for disposition. No exceptions were taken by the parties to this order. Hence this petition is now before the Court *en banc*.

The respondents filed their returns, along with a motion to dismiss the petition, stating as ground that the judge and the proposed Liberia Action Party had not been brought under the jurisdiction of the Court, in that the writ of summons was served on the yard boy of the co-respondent Judge Luvenia V. Ash-Thompson and the writ was also served on the messenger of Counsellor Philip A. Z. Banks, III, the legal counsel of the proposed Liberia Action Party. These people, the messenger and yard boy, respondents said, were not authorized to receive summons for the Party and the judge. With regard to the registrar of deeds, the respondents maintained that prohibition will only restrain the taking of an action by a person who is not vested with authority to so do or who is acting beyond the authority vested in him, or who is performing an act contrary to law. No such allegations are made against the registrar of deeds, nor was he a party to any proceeding to the court below out of which these proceedings grew, they said. In addition, they also filed a replying affidavit in response to the answering affidavit filed by petitioners.

At the hearing, the motion and the petition were consolidated upon application of both parties.

We would like to correct the misconception of the public regarding the case that is before us for determination because some are of the opinion that we are deciding the issue between Isaac K. Doe et. al. versus the proposed Liberia Action Party relating to the objection filed by Isaac K. Doe et. al. against the probation and registration of the documents of the proposed Liberia Action Party. No, this is not the issue brought before us for disposition. The issue relating to the merits and demerits of the appeal will be disposed of when the appeal is being deter-mined since an appeal was prayed for and granted. Therefore, whether

Isaac K. Doe, et. al. had any legal standing to file the objection or whether in fact Isaac K. Doe et. al. do exist or not, or whether the probate judge illegally or correctly dismissed the objection, or whether The Proposed Liberia Action Party is a full fledged political party are not the issues before us for determination. The only issue before us is a general issue regarding the construction of section 51.20 of volume one Liberian Code of Law Revised of 1972. However, as a matter of judicial precedence, we shall first pass upon the motion filed to dismiss the petition. We note however that the pertinent issue in the petition and the returns is the construction of section 51.20 relative to appeal not being a supersedeas when taken and perfected by a plaintiff, a petitioner, or an objector. We shall therefore concentrate our minds on this important legal issue which we feel may affect generations yet unborn in our legal system.

An appeal in civil practice, as defined by Black's Law Dictionary, is:

> "The complaint to a superior court of an injustice done or error committed by an inferior one, whose judgment or decision the court above is called upon to correct or reverse." BLACK'S LAW DICTIONARY 124 (4th ed.).

A supersedeas is also defined as:

> "A suspension of the power of a trial court to issue an execution on the judgment appealed from, or if a writ of execution has been issued, it is a prohibition emanating from a court of appeal against execution of the writ. 4A C. J. S., *Appeal and Error*, note 62 (3), page 420.

We have carefully listened to the arguments on both sides and perused the records, and we now pass on the issues raised, commencing with the motion to dismiss. The main jurisdic-tional issue raised in both count one of the motion and the returns for the dismissal of the petition is that the respondents were not personally served with the summons for the prohibi-tion, even though they accepted the process and pled to the merits in both their motion to dismiss and returns, and also in their replying affidavit. They assert that because of the lack of service, this Court lacks jurisdiction over their persons. The consistent holding of this Court on this issue has been and is, that if a party, though not served with process, takes such steps in an action, or seeks relief at the hands of the court as is consistent only with the proposition that the court has juris-diction of the cause and his person, he thereby submits himself to the jurisdiction of the court, and is bound by its action as fully as if he had been regularly served with process. Where a party to a judicial proceeding admits by some act or conduct the jurisdiction of the court, he may not thereafter simply because his interest has changed, deny the jurisdiction, especially where the assumption of a contrary position would

be to the prejudice of another party who has acquiesced in the position formally taken. *King v. Williams*, 2 LLR 523, 525 (1925); *Koroma. v. Parker Paint Company, Inc.,* 23 LLR 133, 135 (1974); *Lloyd's Insurance Company v. Africa Trading Company*, 24 LLR 70, 82 (1975) and *Gallina Blanca. S. A et. al. v. Nestle Products Ltd. et. al.*, 25 LLR 116, 130 (1976).

The respondents in the case at bar did not leave the yard boy and the messenger to their own devices; rather, they accepted the process and retained Counsellors Philip A. Z. Banks, III and Tuan Wreh as their counsel. The counsels then filed their returns to the petition and a motion to dismiss the petition. They pled to the merits of the petition and requested the court for relief: In the cases *Koroma v. Parker Paint Company, Inc.* and *Gallina Blanca, S. A. et. al. v. Nestle Products, Ltd. et. al. supra*, the same contention was raised. In the former case, it was contended that the writ of summons in the prohibition was served on the lawyer and not on Zondell Jallah, the party in the ejectment action. In the latter case, the writ of summons was also served on a Mr. Dennis who, according to the corporation, was not an authorized agent for the corporation to receive process. Yet, the court held the same, as we have stated *supra.* Moreover, by virtue of the registrar of deeds position and function, the writ was rightly served on him. The other issues raised in the motion are to the merit which will be passed upon later while passing on the petition and returns. In view of the consistent holding of this Court, supported by the statute, the motion to dismiss crumbles and is denied.

The issue in the petition which we consider germane to the determination of the petition is the construction of the Civil Procedure Law, Rev. Code I:51.20, which we quote below verbatim:

> "On announcement of an appeal by a defendant, no execution shall issue on a judgment against him nor shall any proceedings be taken for its enforcement until final judgment is rendered, except that on an appeal from an order dissolving an order granting a preliminary injunction, such preliminary injunction shall be in force pending decision on the appeal."

The judge has construed this statute to mean that whenever a plaintiff or an objector or a petitioner takes an appeal, the judgment from which the appeal is taken will be enforced while the appeal is pending. The question then is what useful purpose will the appeal serve the appellant in such a case? The construction of this statute should be of great concern to all party litigants, especially Liberians covered by our legal system.

Although supersedeas is regulated by statute, the authorities on the issue hold that it should be allowed on the following grounds:

" ...It should be granted where, since the judgment ap-pealed from has been rendered,

the doctrine on which it was founded has been overruled by the appellate court, where the loss or damages occasioned by the stay can be met by a money award, where important questions of law are raised, which, if decided in favor of appellant or plaintiff-in-error, will require a reversal, to avoid a multiplicity of suits, or to protect the appellate court's jurisdiction." 4A C. J. S., *Appeal and Error*, § 636.

We strongly feel that three of these grounds, namely (a) where important questions of law are raised which, if decided in favor of appellant or plaintiff-in-error, will require a rever-sal, (b) to avoid a multiplicity of suits, and (c) to protect the appellate court's jurisdiction, are applicable to the instant case, especially as the question regarding the construction of section 51.20 is an important legal issue that needs construction by the Supreme Court. A supersedeas or stay of the enforcement of the judgment should therefore have been allowed by the judge pending the construction of the above statute by the Supreme Court.

Who are the persons entitled to supersedeas as a matter of right? It is provided that supersedeas operate only in favor of those who ask for it and have done those things necessary to obtain it. Anyone who is entitled to appeal from a judgment which may be superseded is entitled to stay the execution of such judgment by proper supersedeas, but one who has not the right to appeal, or, as a rule, person not a party to the proceed-ing in which the judgment of the court below complained of was rendered cannot obtain a supersedeas; nor can a party obtain a supersedeas or stay execution of a judgment or decree which does not affect him, or of part thereof by which he is not affected. 4A C. J. S., *Appeal and Error,* § 631.

In this case, the petitioners are parties to the action out of which these proceedings grew and they are entitled to appeal as per section 51.2 which provides:

> "Every person against whom any final judgment is rendered shall have the right to appeal from the judgment of the court except from that of the Supreme Court. The decision of the Supreme Court shall be absolute and final." Civil Procedure Law, Rev. Code 1 :51.2.

Secondly, the judgment is superseded by virtue of the provision of the statute in favor of the defendant, should he appeal. The respondents are claiming that because the plaintiff is not specifically mentioned in section 51.20, he is excluded from the stay of an execution of a judgment from which he has appealed. We hold a contrary view and we shall talk more on this later.

The practice hoary with age in this jurisdiction has been that the taking of an appeal stays further proceedings on the judgment appealed from prior to the enactment of this statute

which we have been called upon to interpret. In this regard, the authorities hold that in order to operate as a supersedeas, or entitle an appellant thereto, an appeal or writ of error must generally be taken or allowed according to the prescribed practice. The authorities continue:

> "In order to operate as a supersedeas or stay, or to entitle appellant or plaintiff in error to a supersedeas or stay, an appeal must generally be taken or allowed by the court, according to the practice, or the writ of error sued out and served or filed, and it must be done in the manner and within the time prescribed by statute or valid rule of court. It is held, however, that where irreparable injury might result by carrying the judgment instantly into effect, a reasonable time for filing the appeal may be allowed before the judgment is executed, and, in Louisiana, that where an appeal to the court of appeals is denied by the district court the Supreme Court may, and in proper case will stay proceedings in the district court until the judges of the court of appeals, who are absent from the state, can act on a demand for a mandamus to compel the allowance of the appeal." 4A C. J. S., *Appeal and Error*, § 630.

In Liberia, there are prescribed steps provided by statute for the taking and perfecting of an appeal in order to confer appellate jurisdiction upon the Supreme Court of Liberia. These procedural steps include (1) the oral announcement of the appeal at the rendition of the final judgment in open court, (2) the filing of the bill of exceptions within ten days from the date of the rendition of the judgment, (3) the filing of an approved appeal bond within sixty days from the date of the rendition of the final judgment and (4) the issuance and service of the notice of the completion of the appeal on the appellee within sixty days from the date of the rendition of the final judgment. Civil Procedure Law, Rev. Code. 1: 51.6, 51.7, 51.8 and 51.9.

The crucial issue in this case is that no mention was made to stay the execution of the judgment in favor of the plaintiff should he appeal, but only the defendant was specifically mentioned. The statute states that "no execution shall issue on the judgment against him nor shall any proceedings be taken for its enforcement until final judgment is rendered...." The question now is, is the plaintiff precluded from the benefit of this provision of the statute because he was not mentioned in said statute? This is the first time such issue has been raised and therefore we shall resort to common law for aid in the construction of this statute in conformity the General Construction Law, 1956 Code, (previously title 16, but now title 15) cited as 15:40.

Law writers are in agreement that:

> "The trial court, even when it has the jurisdiction to proceed in the main case, after an appeal or writ of error from an incidental or interlocutory matter, may in its

discretion decide to await the determination of the appellate proceeding. Furthermore, the lower court cannot proceed in such manner as to lead to a decision, pending the appeal, or of the very question involved on the appeal, or of a question which cannot properly arise or be determined until after the determination of the appeal, nor may it so dispose of the cause as to interfere with the jurisdiction or orders of the appellate court." 4A C. J. S., *Appeal and Error*, § 609.

We think that the question of plaintiff not being entitled to a supersedeas is an important legal question and therefore the probate judge should not have ordered her judgment executed until this important legal issue was finally disposed of by the Supreme Court. The authorities further hold that:

"When the circuit court grants an appeal, its jurisdic-tion in the case is transferred to the appellate court, and the exercise of all other judicial function is arrested in so far as the trial court is concerned, whether or not a bond is filed." *Ibid.*, p. 393, note 32.

With reference to the argument that since there was no specific mention in section 51.20 that the statute was also applicable to a losing plaintiff, it means that a plaintiff is not entitled to benefit from a supersedeas or a stay of the judgment if he should appeal, law writers have a different view. This is what they say regarding the argument:

"In the absence of specific statutory directions to the contrary, an appeal operates as a supersedeas, and in the absence of positive provisions of the statute to the contrary, an appeal perfected as the law requires does *proprio vigore* stay proceedings under the order appealed from." *Ibid.*, § 92.7 (a), last paragraph at p. 423.

According to the above law, where there is no specific direction or positive provision of the statute to the contrary, an appeal operates as a supersedeas and when the appeal is perfected as the law requires it does *proprio vigore* (a Latin phrase, meaning by its own force or by its intrinsic meaning), stay proceedings under the order appealed from. In the case under review, there is no specific direction nor any positive provision stating that the plaintiff shall not be entitled to supersedeas or that the execution of the judgment will not be stayed if he should appeal from a final judgment. In fact there is no mention made of the plaintiff. It is therefore safe, in view of the law just quoted, to give the following construction to 51.20 and that construction is, since there is no specific statutory direction or positive provision to the contrary, an appeal taken by a defendant or a plaintiff operates as a supersedeas and stays the enforcement of the judgment until the appeal is finally decided. Thus, an appeal taken and perfected by a defendant or plaintiff as the law requires does by its own force, or by its intrinsic meaning, stay proceedings under the order appealed from.

In Volume 2 of Ruling Case Law, at section 1 (6), pp. 29-30, under General Construction of Statute, it is provided that

> "Statutes giving and regulating the right of appeal are recognized as remedial in their nature, and should receive a liberal construction in furtherance of the right of appeal. In accordance with this principle, where the right of appeal or to the writ of error is given in general terms by one statute, another statute dealing with the review of particular proceedings and granting the right to appeal or to a writ of error to one party will not be deemed exclusive so as to prevent a review by the party not mentioned. For example, a statute granting the right to a writ of error to the defendant in summary proceedings and making no provision with regards to the plaintiff does not preclude the issuance of a writ of error at the instance of the plaintiff under a general statute." *Brodner v. Swirsky*, 86 Conn. 32, 84 Atl. 104, 42 L. R. A., § 654.

It is true that according to modern trend appeal and supersedeas are regulated by statute, and in special cases where the statute provides that an appeal does not serve as a supersedeas for the execution of the judgment appealed from, it will be strictly followed. However, where a general statute provides that an appeal will supersede or stay the execution of the judgment and another statute providing that when one of the parties appeals no action will be taken on the judgment against him until final judgment on the appeal without making any provision for the other party, the latter will not be deemed exclusive so as to preclude the other party not mentioned from the stay of the execution of the judgment against him when he appeals, as provided by the above principle of law just quoted. This principle of law was upheld in the cases State ex rel. *Ellis v. Ferguson*, 154 La 233, 97 So 415; *State v. Odd Fellows Hall Asso.*, 123 Neb. 440, 243 NW 616; *Brodner v. Swiraky*, 86 Conn. 32 and 84 A 104 as recorded in 4 AM. JUR. 2d., p. 558, note 17.

Our statute has specifically provided the procedural steps to pursue in perfecting an appeal and once those steps are taken and the appeal perfected, the execution of the judgment must be superseded or stayed pending final disposition of the appeal, with the exception of those cases specifically provided for by statute. To do otherwise will be opening floodgates for the courts of justices of the peace, magistrates, subordinate courts of record and administrative tribunals which will utilize such opportunity to arbitrarily deny the rights of plaintiffs, petitioners and objectors. And where the party litigants cannot get redress from the courts, violence may be invoked as an alterna-tive. We are in full agreement with the holding in *Barnes v. Chicago Typographical Union*, 23 ILL. 402 and 83 N.E. 932 that an appeal is treated as pending in the appellate court from the time of its perfection, and that this suspends the power of the trial

court to execute the decree. We also agree with the holding in *Epps v. Bryant*, 219 S.C. (South Carolina) 307 and 65 S.E. 2nd (South Eastern Reporter, 2nd Series) 112, that an appeal stays further action in the court below relating to the order appealed from, and that an order modifying the order of an appeal by increasing a required undertaking was void. How-ever, in agreeing with this holding, the exceptions provided by our statute are recognized and incorporated.

In fact our statute has specifically provided in plain lan-guage the classes of actions where appeal will not act as a supersedeas or stay for the enforcement of the judgment pending the disposition of the appeal. These are action of maintenance and support, action of summary proceeding to recover possession of real property when instituted in the circuit court, habeas corpus, and an appeal from an order dis-solving an order granting a preliminary injunction. Therefore where there is no specific provision of the statute to the contrary, an appeal will serve as a supersedeas or stay of a judgment pending final disposition of the appeal by the appellate court.

Further, law writers are in agreement that where a statute provides that a supersedeas may be obtained by taking certain prescribed steps, a supersedeas follows, as a matter of law, from strict compliance with the procedure prescribed by the statute; and, aside from any specific statutory provision, an appellate court has inherent power in the exercise of proper discretion, to order supersedeas to maintain the *status quo* pending review, and to preserve the subject matter of the appeal. The trial court may also, in exercising its discretion, allow a supersedeas or stay, although the statute makes no provisions for a supersedeas or a stay of the judgment or final order as a matter of right. 4 AM. JUR. 2d, *Appeal and Error*, § 366.

We consider strict compliance with the statutory procedural steps enumerated *supra* for the perfection of an appeal as condition precedent for supersedeas or a stay of the judgment or final order until the appeal is disposed of. When these procedural steps are taken by either defendant or plaintiff, a supersedeas or stay of the judgment is imposed as a matter of law.

We shall now pass on the issue of whether or not prohibi-tion will lie in this case. It is provided at section 675 of 4A C.J.S. *Appeal and Error*, pages 508-509 that:

> "Acts or proceedings in violation of a supersedeas or stay of proceedings may be vacated or set aside, and damages may be recovered by appellant in a proper case; and attempted violations may be restrained. Action taken after the granting of a supersedeas which are in defiance thereof have been held to be a nullity."

In conformity with the above law, the action taken by the court relative to the execution of the final judgment after the announcement of the appeal must be set aside, and the same

is hereby ordered set aside as though said action was never performed.

Section 677 at page 510 of the same book provides that:

> "Where a stay is perfected by the execution of the bond as prescribed by statute, if the trial court undertakes to proceed to exercise an unauthorized jurisdiction pending such stay, it may be restrained by a writ of prohibition issued by an appellate court." *Ibid.*

Therefore, prohibition will lie in this case in keeping with the above law just cited.

Should we uphold the construction given by Judge Luvenia Ash-Thompson to the Civil Procedure Law, Rev. Code I:51.20 this would mean that all rulings, decisions, judgments and decrees rendered against a plaintiff, or a petitioner, or an objector must be enforced pending the disposition of the appeal in all cases and in all courts, be they administrative or courts of justice. Wouldn't this mean that the appellate courts exist only to determine appeals taken by the defendants? For the sake of argument, let us say that Mr. A dies leaving legal heirs and that at the time of his death he was seized with both real and personal properties. A distant relative who is not entitled to inherit Mr. A's properties, as per our Decedent Estates Law, presents a supposed will and last testament of the late Mr. A. The children and other legal heirs file an objection to the probation and registration of said purported will, raising other issues, including fraud. The probate judge, instead of forwarding the will to the circuit court to be proven with the aid of a jury, arbitrarily dismisses the objection, as is some-times done, and admits the will to probate and registration. The legal heirs of Mr. A appeal to the Supreme Court. What useful purpose will the appeal serve the legal heirs of Mr. A if, prior to the disposition of the appeal, the lower court's judgment has already been enforced? What would happen if the Supreme Court reverses the judgment of the probate judge, especially so when all Mr. A's real properties have been sold, the bank accounts completely exhausted and the other personal pro-perties misapplied or misused? Some people may advance the argument that in that case, because of irreparable injury, the judge must stay the enforcement of the judgment to preserve the estate. But the language of the statute under review is clear; it makes no exceptional provision for plaintiff or objector in case an injury results to the plaintiff or the objector, the others may argue. What will be the authority of the judge then to make such discretional provision since the statute is plain and unambiguous on the point, as was argued before us. Should this Court of dernier resort leave party litigants to the whims and mercies of subordinate and administrative courts?

Respondents, relying on 73 C. J. S., *Prohibition,* § 10 (c), at pp. 30-32, maintain that:

> "Prohibition is a preventive rather than a corrective remedy, and it issues only to

prevent the threatened commission of a future act and not to undo an act performed; and similarly, not to review or nullify an act which has already been performed, or to annul or correct proceedings already terminated. It will not be granted when the act sought to be prevented or prohibited has already been done or completed, and no further judicial acts are contemplated or to be performed, as in the case of the making or entry of an order, or the rendition of a final judgment, even where such an act has been done pending the application for the writ; and it can not be used to annul or correct erroneous judicial proceedings already had, where no further judicial acts remains to be per-formed, or to review proceedings already completed."

Prohibition will issue to prevent a trial tribunal from enforcing its judgment where there has been a notice of appeal. *Fazzah v. National Economic Committee et al.,* 8 LLR 85 (1943).

This Court held in the case *Ayad v. Dennis*, 23 LLR 165, 181 (1974) that:

"Moreover, if the procedure and method adopted is declared illegal and unwarranted, prohibition would lie to prevent what remains to be done as well as undo what has been done."

In the *Dennis* case, at Syl. 9, on page 166 of the same book, this Court held:

"The writ of prohibition is designed to prevent what remains to be done as well as to undo what has illegally been done."

The contention of the respondents on this issue is not conceded because the probate judge's act in admitting the documents into probate and registration after an appeal has been announced was unwarranted and illegal. They also quoted the following from 73 C. J. S., *Prohibition*, § 8, pp. 26-28:

"In general, three things are necessary to justify the issuance of a writ of prohibition that the court, officer, or person against whom it is directed is about to exercise judicial or quasi-judicial power; that the exercise of such power by such court, officer, or person is unauthorized by law; and that it will result in injury for which there is no other adequate remedy. It is important that proceedings in prohibition be restricted to the field for which they were meant and that reasonable restrictions be placed on the use of the writ ...The writ usually issues only to prevent great impending present injury or extraordinary hardship, or where the public good demands or to prevent some great outrage on the settled principles of law and procedure; unless it is shown that injury would result from the act sought to be prohibited, or that damage is likely to follow such act, prohibition will not lie. The writ should not be used where it would be an instrument of injustice or oppression. . .or where its issuance would be against public

policy, or would create turmoil and chaos, or where a greater injustice would be done by its issuance that would be prevented by its operation."

We have taken the above citation into consideration and therefore we are ordering the issuance of the extraordinary writ of prohibition in order to avoid great injury or extraordinary hardship which party litigants may undergo now and hereafter, and to prevent some great outrage on the settled principles of law as expounded supra. Further, we are ordering the extra-ordinary writ to curb the injustice that plaintiffs, petitioners, and objectors may suffer at the hands of judges of our subordinate courts as well as administrative courts for the arbitrary decisions or judgments or decrees they may render in exercise of the construction of section 51.20 as was given by Probate Judge, Luvenia Ash Thompson. These elements therefore do exist in this case.

Referable to Counsellor Richard Flawgaa McFarland not having a license, Counsellor McFarland produced a lawyer's license dated March 4, 1985, with numbers 939593 in the amount of $300.00 from the Finance Ministry, while the petition for prohibition was filed on April 19, 1985. There being no statement from the Ministry of Finance, nor any investigation held to establish that the license was falsified, or that any fraud was perpetrated in the procurement of his license, the court has no other alternative but to accept the license issued from the Ministry of Finance as genuine.

In closing, this Court reiterates its construction or interpretation of the Civil Procedure Law, Rev. Code. 1: 51.20, that "on an announcement of an appeal by a defendant, no execution shall issue on a judgment against him nor shall any proceedings be taken for its enforcement until final judgment is rendered...." is not deemed exclusive so as to preclude the plaintiff when he announces an appeal. In other words, the same privileges accorded to the defendant when he announces an appeal will and must be accorded to the plaintiff when he announces an appeal.

In view of the facts stated, the laws relied upon and the surrounding circumstances, we hold that the motion to dismiss be and the same is hereby denied. The petition for prohibition, being sound in law and well grounded, is hereby granted. The peremptory writ is ordered issued, restraining the respondent judge from further proceeding with the execution of her judgment other than those acts facilitating the perfection of the appeal; and her ruling admitting the documents of the proposed Liberia Action Party into probate and registration is hereby declared null and void, and ordered set aside. The appeal is ordered forwarded to this Court for disposition. And it is so ordered.

Ruling declared null and void.