

EMMETT A. GOODING, Substituting for NAOMI GOODING (deceased),
Manager, MIM'S PIGS PART, and **A - Z SUPERMARKET**, represented by
KAMAL MERHI, Petitioners/ Informants, v. **HIS HONOUR M. WILKINS
WRIGHT**, Resident Circuit Judge, Sixth Judicial Circuit, and **THE INTESTATE
ESTATE OF THE LATE THOMAS T. TOOMEY**, represented by JOSEPH G.
TOOMEY, et al., Respondents.

APPEAL FROM THE RULING OF THE CHAMBERS JUSTICE DENYING
THE PETITION FOR ISSUANCE OF A WRIT OF PROHIBITION.

Heard: May 20 & 21, 1992. Decided: September 4, 1992.

1. No court has authority to render judgment against a party who has not been served with process to bring him under its jurisdiction or who has not voluntarily appeared, and any judgment rendered contrary to this rule is void as to the party against whom it is rendered.
2. Day in court is defined as the time appointed for one whose rights are called judicially in question, or likely to be affected by judicial action, to appear in court and be heard in his own behalf.
3. 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.
4. Prohibition will issue to prevent a trial tribunal from enforcing its judgment where there has been a notice of appeal therefrom.
5. Prohibition will lie to give relief whenever a subordinate court proceeds in the hearing of a case in a manner which is contrary to known and accepted practice and in violation of proper and ethical procedure.
6. Although prohibition is usually used as a remedy where a tribunal has unwarrantedly assumed or exceeded its jurisdiction, it will also lie when a tribunal has proceeded by rules contrary to, or different from those which regularly obtain in the disposition of such cases.

The A-Z Supermarket was an assignee of a lease agreement that had passed through several assignments since its initial execution in 1968 between Thomas Toomey, as

lessor, and Mounir Nahra, as lessee.

After the death of the lessor, his son, Joseph G. Toomey brought an action to cancel the lease, which was then held by Emmett Gooding and his wife, Mimi Gooding. The lower court ruled to cancel the lease and the defendant appealed. While the appeal was pending, the trial court judge, M. Wilkins Wright, ordered the enforcement of his judgment, which involved the eviction of the current assignee/tenant, A-Z Supermarket. It is noteworthy that A-Z Supermarket was never a party to the cancellation proceedings and was the current occupant of the premises. The assignor, Mim's Pig Parts, represented by its manager, Emmett Gooding, petitioned the Chambers Justice for a writ of prohibition.

The Chambers Justice confirmed the ruling of the trial court judge, maintaining that A-Z Supermarket had knowledge that the cancellation proceedings was pending and that the defendant/ assignor had the duty to bring in A-Z Supermarket as a party to the suit.

The Supreme Court reversed the ruling of the Chambers Justice, holding that it was not convinced that A-Z Supermarket had actual knowledge of the pendency of the cancellation proceedings and that a judgment is not binding "upon a party who has neither been duly cited to appear before the court nor afforded an opportunity to be heard". *Prohibition was therefore granted.*

Joseph P. Findley of Findley & Associates appeared for petitioners. *H Varney G. Sherman* of Sherman & Sherman in association with *David D. Kpomakpor*, appeared for respondents.

MR. JUSTICE SMALLWOOD delivered the opinion of the Court.

During the lifetime of a Mr. Thomas T. Toomey, he purchased a tract of land "out of lot No. 118", situated on Center Street in the City of Monrovia, County of Montserrado, Republic of Liberia. On the 26th day of March, A. D. 1968, Thomas T. Toomey leased the tract of land to Mounir Nahra, a Lebanese National, for a period of twenty calendar years, at an annual rental of one thousand (\$1,000.00) dollars. On January 10, 1973, an addendum to the lease agreement of March 26, 1968, was executed between the lessor, Thomas T. Toomey, and lessee Mounir Nahra, granting an additional period of fifteen years, to commence upon the expiration of the twenty years certain. Exercising his rights to sublet or assign the leased property, lessee Mounir Nahra, on the 5th day of October, A. D. 1973, assigned his rights in and to

the leased property to Hage Brothers Supermarket under an assignment of lease probated and registered in Vol. 30-75, pages 310-314. Thereafter, on the 2nd day of February, A. D. 1977, the lessor, Thomas T. Toomey, executed another addendum to the original agreement of lease, this time with the assignee to the assignment of lease, Hage Brothers Supermarket, Inc., represented by its President, Eshaia J. Hage. This addendum was the result of an approach made to the Hage Brothers Supermarket, Inc. by Thomas T. Toomey for re-consideration of the addendum to the lease agreement dated January 10, 1973. In this addendum of February 2, 1977, the lessor, Thomas T. Toomey, re-affirmed his desire to further lease his property and honour his signature under the addendum of January 10, 1973. The lessor, Thomas T. Toomey, also in this addendum of February 2, 1977 extended the period by two years to April 15, 2005, thereby making the optional period seventeen years instead of fifteen years as mentioned in the addendum of January 10, 1973. It was also agreed that Hage Brothers would be responsible for and would pay all Government taxes, including real estate and coast guard taxes, without deduction from the lease money. It is worthy to mention that in the original lease agreement it was provided that the lessee will pay all taxes and deduct the same from the lease money. The addendum of January 10, 1973 is silent on the question of taxes. Further, in the addendum of February 2, 1977, subject of the cancellation proceedings, it is provided:

"That with the exception of count five of the original lease agreement which placed the tax burden on lessor, all other terms and conditions contained in the original lease agreement dated April 15, 1968, shall remain the same and the same is hereby incorporated into this addendum and covers the entire new terms granted as per addendum dated January 10, 1973."

Hage Brothers Supermarket, Inc. assigned its leasehold right in the subject property to Mim's Pig Parts on the 8th day of December, A. D. 1983. On the 3rd day of March, A. D. 1984, an agreement of lease was executed between Mim's Supermarket, Inc., represented by its Manager, Emmett A. Gooding, and A-Z Corporation, represented by its General Manager, Kamal Morhi, for a period of five years from March 5, 1984 to March 4, 1989, with an optional period of five years. Again, on the 29th day of January, A. D. 1988, an addendum to the lease agreement of the 3rd day of March, A. D. 1984, was entered into by and between Mim's Supermarket, Inc., represented by its Managing Director, Naomi A. C. Gooding and A-Z Corporation, granting the corporation two optional periods of five years each, thereby extending the optional period provided for in the lease agreement of March 3, 1984 to ten years, which would end on March 4, A.D. 1999. The lessor, Thomas T. Toomey, died and his property, the subject of these proceedings, is being administered by one

administratrix and two administrators, one of whom, Joseph G. Toomey, is the plaintiff in the cancellation proceedings and correspondent in these prohibition proceedings.

Co-respondent Joseph G. Toomey, on behalf of the Intestate Estate of the late Thomas T. Toomey, instituted a bill in equity for the cancellation of the addendum to lease agreement for fraud. That addendum is the one dated February 2, 1977, between his father Thomas T. Toomey, as lessor, and Hage Brothers Supermarket, Inc., as lessee. The petition for cancellation was filed in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in the March 1990 Term of the said court. Trial was conducted by His Honour M. Wilkins Wright, presiding over the March 1992 Term of the court.

On March 12, 1992, the presiding judge rendered his final judgment granting the petition in cancellation, ordering the addendum of February 2, 1977 between Thomas T. Toomey and Hage Brothers cancelled and "respondent evicted and ousted from the subject premises and the petitioner repossessed of his property". The judge relied on the case *Liberia Fisheries, Inc. v. Badio et al.*, 36 LLR 277 (1989). From this final judgment the defendant, Naomi A. Gooding, substituted by her husband, Emmet C.A. Gooding, excepted and announced an appeal to the Supreme Court of Liberia in its March, A. D. 1992 Term. The exception was noted and the appeal granted as a matter of right. After granting the appeal, the trial judge proceeded to have his judgment enforced as follows:

"In the meantime, and since the Supreme Court might not likely sit in its March Term, the court orders that the premises being vacant should not be left unattended and therefore the petitioner may take possession of the same; in this connection, the clerk will issue a writ of possession against the respondent ordering the sheriff to place the petitioner in immediate possession of the subject premises at this point, since title to the premises is no longer in issue, pending the disposition of the appeal by the Supreme Court. And it is so ordered." (Emphasis ours)

We should like to mention here that we have two final judgments in this case which we consider to be strange in this jurisdiction. One is a prepared judgment which the judge read in open court and the other is found in the records of the court, sheet seven, 12th day's chambers session, March, A. D. 1992 Term, Thursday, March 1992, which the judge dictated into the minutes of court after reading the prepared judgment.

For the benefit of this opinion, we quote hereunder the concluding portion of the prepared judgment and the entire judgment as given on sheet seven of the minutes of court. The concluding portion of the prepared judgment reads as follows:

"Wherefore and in view of the foregoing, it is the final judgment of the court that the petition has been sufficiently established in law and fact; therefore, the petition is hereby granted. The court hereby orders that the addendum of February 2, 1977 between Thomas Toomey and Hage Brothers be and the same is hereby cancelled, set aside and declared null and void to all intents and purposes. In consequence of the above cancellation, the court hereby orders the respondent evicted and ousted from the subject premises and the petitioner repossessed of his property. For reliance, see the case *Liberia Fisheries, Inc. v. Radio et al.*, 36 LLR 277 (1989). The Clerk of this Court is hereby ordered to issue a writ of possession and place same in the hands of the sheriff for service on respondent and placing petitioner in possession. Costs of these proceedings are ruled against the respondent. And it is hereby so ordered."

The following is the text of the judgment recorded in the records of court, sheet seven, Thursday, March 12, 1992. "COURT'S FINAL JUDGMENT" "The judgment in this case is separately written and for the details of that judgment see the said judgment itself; however, and in summary, the court held that the petition had been sufficiently established in law and in fact in consequence of which the petition was granted and the addendum dated February 2, 1977 ordered cancelled and set aside and declared null and void to all intents and purposes; and in consequence of that cancellation, the court ordered the respondent evicted and ousted from the subject premises and the petitioner repossessed of his property. The court relied upon the case *Liberia Fisheries, Inc. v. Radio et al.*, 36 LLR 277 (1989). Also the clerk of this court is hereby ordered to issue a writ of possession and place same in the hands of the sheriff for service on respondent, ordering the sheriff to evict the respondent and place petitioner in possession. Costs of these proceedings are ruled against respondent. And it is hereby adjudged." The writ of possession was accordingly issued on the 13th day of March, A. D. 1992. It was during the service of the writ of possession that A-Z Supermarket came into the picture of the case, as A-Z Supermarket was in possession of the subject property and was actually the one being evicted according to the "inventory report of May 6, 1992 signed by Samuel E. Moore, Deputy Sheriff, Montserrado County, R.L. and witnessed by Emma K. Johnson, a bailiff of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, and Joseph G. Toomey, as owner and the plaintiff in the cancellation proceedings, even though A-Z Supermarket was not a party to the cancellation proceedings.

It is because of the trial judge's attempt to enforce his final judgment that the petitioner herein fled to the Chambers of Associate Justice Boimah K. Morris for relief by the filing of a petition for a writ of prohibition. The alternative writ was ordered issued on March 17, 1992, and served. After the issuance and service of the alternative writ of prohibition, the petitioner again fled to the Chambers Justice and filed a bill of information. For the benefit of this opinion, we quote hereunder counts three and four of the bill of information, as follows:

3. "That after service of the alternative writ on the respondent, Co-respondent Judge M. Wilkins Wright delivered the keys to the Marshal who removed the locks from the building and kept the keys. Later on Judge Wright ordered the co-respondent sheriff of the Civil Law Court to put new locks on the premises as a means of enforcement of his original orders given on the 12 th day of March, A. D. 1992, after he had noted petitioners' exception and appeal from his final decree that the premises be turned over to Co-respondent Joseph G. Toomey, and after the judge had notice of the prohibition proceedings.

4. Informants submit that the judge was right in the first instance when he had the locks removed after the alternative writ was served on him because prohibition does not only stay further action but will also revoke all irregular and non jurisdictional acts pursuant thereto. Therefore, the fact that the judge resumed jurisdiction after the writ had been served by the Marshal, by sending the sheriff to put new locks on the premises and turn same over to Co-respondent Toomey, is certainly contemptuous on the part of the respondents."

Respondents in this information countered these two counts of the information in counts six and seven of their amended returns, the original having been filed by Counsellor Joseph B. Sando and withdrawn by additional Counsel David D. Kpomak-por, which reads as follows:

6. "That further to counts three and four of the information, with particular reference to the allegations that Judge Wright delivered keys to the sheriff who removed locks from the building in question, and that the judge later ordered the co-respondent sheriff of the Civil Law Court to put new locks on the premises, respondents categorically deny the truthfulness of the averments in said counts three and four of the information.

7. "And also because respondents say that from the listing of the events shown in count five of these returns, it is clear that the informants are attempting to mislead

this Honourable Court and, of course, they want this Court to do for them that which they have failed to do for themselves; that is to except to the final decree of Judge Wright when he granted the appeal but ordered enforcement of his judgment immediately. This they cannot do at this stage".

We shall now turn our attention to the petition in prohibition and the returns thereto. Petitioners filed a six-count petition and, for the benefit of this opinion, we shall give consideration to only counts three, five and six.

Petitioners maintained in count three that the final decree ordering Co-respondent Joseph G. Toomey to be put in possession of the property would affect Co-petitioner A-Z Supermarket and its rights of possession under the sublease with the addendum. Petitioners maintained in count five, that notwithstanding the exceptions noted and appeal announced and granted, the judge proceeded to order the clerk to issue a writ of possession ordering the sheriff to put Co-respondent Joseph G. Toomey in immediate possession. In count six, petitioners maintained that the judge, in his ruling putting Co-respondent Joseph G. Toomey in immediate possession of the property, exceeded his jurisdiction and proceeded by rules contrary to those that should be observed at all times.

On the 24th day of March 1992, respondents filed a six-count returns signed by Counsellor-at-Law Joseph B. Sando, which was withdrawn by additional counsel, Counsellor David D. Kpomakpor, and an amended returns filed on March 31, 1992, containing nine counts. For the benefit of this opinion, we will consider only counts one, three, four and seven.

In count one, the respondents maintained that counts one to five of the petition deal with the facts, evidence and procedures followed by the judge in reaching his final decree, to which decree an appeal had been announced and granted; and that any review of the issue raised in the said counts must be by the Supreme Court sitting *en bane*.

In count three the respondents admit that petitioner did except to the final decree and announced an appeal from the decree to the Supreme Court of Liberia, sitting in its March Term, A. D. 1992.

In count four the respondents admitted that the trial judge noted the exception made by petitioner's counsel and granted the appeal but, nevertheless, ordered the clerk to issue a writ of possession against the petitioner herein, which was executed.

In count seven, the respondents maintained that count six of the petition should be overruled because petitioner, being present, did not except to the judge's orders to enforce his final judgment after granting the appeal.

Our distinguished colleague, the Chambers Justice, combined both the prohibition and information in a single ruling which he delivered on the 5th day of May, A. D. 1992, and from which an appeal was taken to this Court *en banc*.

The Chambers Justice, in his ruling, said the prohibition and information presented two main issues on which he ruled. They are:

1. Whether the contention of petitioners/informants that the trial judge committed a reversible error when he granted the appeal announced and then ordered his final decree enforced and, therefore, the records in this case and laws of this jurisdiction support a petition for a writ of prohibition?

2. Whether or not the final decree of Judge Wright is binding upon Co-petitioner A-Z Supermarket, although this company was not a party to the cancellation proceedings?

We are in full agreement with the two issues but we have not been able to reconcile our answers to these two questions with that of our distinguished colleague. He resolved the two issues in the reversed order. On the question of whether the final decree of Judge Wright is binding on A-Z Supermarket, although not made a party in the cancellation proceedings, this is what the Chambers Justice said:

"This Court is convinced that the answer to the second question is in the affirmative."

However, he contended that A-Z Supermarket and their lawyer knew of the pendency of the cancellation proceedings but chose to wait until final judgment had been rendered before seeing "prohibition". He based his assertion on the fact that, according to him, "both A-Z Supermarket and their lawyer knew that the lease agreement between the Toomeys and Naomi Gooding had expired since 1988 and, therefore, if Naomi Gooding had no vested legal and equitable interest she could give nothing to A-Z Supermarket". It is to be remembered that A-Z Supermarket was and is in possession of the subject property and therefore all of the agreements, including the original lease of 1968 now belongs to it. Further, the addendum of 1977 between

Hage Brothers Supermarket and Thomas T. Toomey granted a further two years optional period to the fifteen years granted in the lease of 1968, making the optional period a total of seventeen years, to expire in the year 2005. We shall not pass on the legality or illegality of the addendum of 1977 since it is the subject of the cancellation proceedings which is already on appeal.

The Chambers Justice further asserted: "A recourse to the records revealed again that as far back as August 1986, Findley and Associates offered for probate an addendum to agreement of lease, assignment of lease between Hage Brothers Supermarket, Inc. and Mim's Pig Parts, by its Manager, Naomi Gooding". These are separate and distinct documents. The assignment of lease between Hage Brothers Supermarket, Inc. and Mim's Pig Parts was executed on December 8, A. D. 1983. The addendum of lease was not executed between Mim's Supermarket, Inc., and A-Z Corporation until the 29th day of January A. D. 1988. The records reveal that Counsellor Joseph Findley was acting as counsel for Mim's Pig Parts and A-Z Supermarket when he probated the assignment of lease between Hage Brothers Supermarket, Inc., and Mim's Pig Parts. The Chambers Justice went on to assert that another point which convinced him that Naomi Gooding and her lawyer, Counsellor Joseph Findley, were aware of the pendency of the cancellation proceedings was the fact that in count five of the petition in the cancellation proceedings, it was stated that instead of the respondent, meaning Naomi Gooding, performing by signing the said addendum, she proceeded to erect an additional storey to the building on the demised premises. The Justice contended that the petition in cancellation was sufficient to put Naomi Gooding and her lawyer, Counsellor Joseph Findley, on notice "that they must ask the trial court for A-Z to be joined in the action or to intervene". He concluded his ruling on the second issue in these words:

"If anybody owes a duty to have brought in A-Z in the cancellation proceedings, it was Naomi Gooding and/or the legal counsel or both of them. Therefore, the contention of their legal counsel that the final decree in the cancellation proceedings should not effect A-Z Supermarket is rejected and overruled by this Court."

We are not convinced that A-Z had knowledge of the pendency of the cancellation proceedings, for knowledge by defendant Naomi Gooding and her lawyer should not be taken to mean that A-Z had actual knowledge of the pendency of the cancellation proceedings. If Naomi Gooding and her counsel did not bring the corporation, A-Z Supermarket, into the cancellation proceedings, that should not be considered a waiver on the part of A-Z Supermarket or as warranting its eviction from the premises which it is in possession of, even though it had not been served with

process to appear and defend its right of occupancy. It should be remembered that the action was a cancellation proceedings, an action in equity, and not one of ejectment. Furthermore, A-Z Supermarket is not a signatory to the addendum sought to be cancelled but it is in actual possession of the premises covered by the said addendum under a different agreement. This Court has held that a judgment is not binding upon a party who has neither been duly cited to appear before the court nor afforded an opportunity to be heard. See *Gbae v. Geeby*, 14 LLR 147 (1960). It is a settled rule that no one shall be personally bound until he has had his day in court, by which is meant until he has been duly cited to appear and has been afforded an opportunity to be heard. *Id.* at 150. Again, this Court held a similar position in the case *Gabbidon v. Flomo et al.*, 26 LLR 214, 218 (1977), when it said: "No court has authority to render judgment against a party who has not been served with process to bring him under its jurisdiction, or who has not voluntarily appeared, and any judgment rendered contrary to this rule is void as to the party against whom it is rendered. 'Day in court' is defined as the time appointed for one whose rights are called judicially in question, or liable to be affected by judicial action, to appear in court and be heard in his own behalf." This phrase "day in court", as generally used, means not so much the time appointed for hearing as the opportunity to present one's claim or rights in a proper forensic hearing before a competent tribunal. BLACK'S LAW DICTIONARY 507 (3rd ed. 1933). A litigant has his "day in court" when he has been duly cited to appear and has been afforded an opportunity to appear and be heard.

The Chambers Justice, in his ruling on the first issue as to whether prohibition will lie because Judge Wright granted the appeal and ordered his decree enforced, answered the question in the "negative". He went on to say "while it is true in this jurisdiction that the announcing and granting of an appeal serves as a stay of further proceedings, Civil Procedure Law, Rev. Code 1:51.20, *Effect of Appeal as a Stay*, it is also true that if an adverse ruling is made against a party who is under no disability and he fails to except to such ruling, that party *acquiesces* and must forever hold his peace". Let us now consider the adverse ruling referred to by the Chambers Justice.

As stated earlier in this opinion, the trial judge in his prepared final judgment ordered the respondent/petitioner evicted and ousted from the subject property and ordered a writ of possession issued. After the noting of exceptions and the granting of the appeal from these two final judgments, the trial judge, for the third time, ordered the respondent evicted, the issuance of a writ of possession and the putting of the petitioner/respondent in immediate possession of the subject property. It is this third order of the judge, ordering the enforcement of his final judgment, the very things

against which he had granted an appeal, that the Chambers Justice contends the petitioner did not except to, even though an appeal had been announced by the petitioner herein and granted by the trial judge.

The judge based his attempt to enforce his decree on three things: Firstly, that "the Supreme Court might not likely sit in its March 1992 Term". One is left to wonder how many others of Judge Wright's final judgments he ordered enforced because he felt that the Supreme Court might not sit in the March 1992 Term of Court. So far, none has been brought to our attention. However, it is important to state that whether or not the Supreme Court sits is no justification for a judge to violate the law which makes the right of appeal mandatory. Furthermore, we cannot accept the implication that Judge Wright felt the Supreme Court might not sit in March 1992, when on March 10, 1992, there was a press release issued by the Minister of Justice, Counsellor Philip A. Z. Banks, III, of the Interim Government and Counsellor J. Laveli Supuwood, of the NPRAG, informing the public that the present members of this Court had been recommended and accepted and that they were to meet March 10, 1992, for the purpose of deciding on a Chief Justice, the time of induction, and the opening date of Court. Further, it was announced that a Justice would be designated to serve in Chambers immediately following the swearing in of the Justices. It is the very Judge Wright who had been performing the duties of a Chief Justice, and who made all the preparations for the sitting of this Court. The swearing in of the Justices was performed on March 16, 1992, and the seating of the Court and the opening of the March 1992 Term was on March 23, 1992.

Secondly, Judge Wright ordered his judgment enforced on grounds that since "the premises were vacant, they should not be left unattended." That assertion is not supported by the records, as we shall show later in this opinion.

Thirdly, the judge further asserted that his action was predicated on the fact that "title to the premises is no longer in issue." One is left to wonder why the judge would make such assertion, especially when the cancellation proceedings was contested before him and he had granted an appeal from his decree ordering the cancellation of the addendum of February 2, 1977.

The respondent before this Court refused to address the central issue in the prohibition and information, that is, whether the trial judge's action in ordering the enforcement of his decree after he had granted an appeal therefrom was in keeping with law. The amended returns to the petition for prohibition, as well as the amended returns to the information have nine counts each, and in no count did they attempt to

support the judge's action in enforcing his final judgment after granting an appeal taken from said final judgment. They have contended, instead, that because the petitioners/informants did not again except to the judge's orders enforcing the judgment from which an appeal had been taken and granted, prohibition will not lie. To support this contention of respondent's counsel, as well as that of the Chambers Justice, would be giving sanction to the judge's action in violating the law that prohibits a judge from enforcing his judgment against a defendant who has announced an appeal from his final judgment.

According to the marshal's returns to the writ of prohibition, Judge Wright was served on March 17, 1992. Nevertheless, notwithstanding the delivery of the keys to the A-Z Supermarket and to the marshal, the judge later ordered the sheriff of the Sixth Judicial Court to put new locks on the doors.

Our distinguished colleague, the Justice presiding in Chambers, rendered his ruling on the 5th day of May, A. D. 1992 upholding Judge Wright's ruling. In the said ruling, the Chambers Justice also ordered that the keys to the building be given immediately to the respondents. Exceptions were noted and an appeal prayed from his ruling. Here is what the Justice said:

"Appeal being a matter of right under the law, same is hereby granted. However, since the ruling of the co-respondent judge, Micah Wilkins Wright, to the effect that the keys to the building be immediately turned over to the respondent was not excepted to in the lower court, same is hereby ordered enforced immediately. And it is hereby so ordered".

The circumstances in the case *Gaignea v. Morris*, 20 LLR 163 (1973), cited by the Chambers Justice, and the circumstances in the present case, on the question of the noting of exceptions, are not analogous. In the *Gaignea v. Morris* case, the defendant did not except to, nor announce an appeal from a judgment of the stipendiary magistrate adjudging him liable and ordering his immediate eviction. In the present action the defendant had noted an exception and prayed for an appeal from the final judgment of the trial judge, which was granted. However, on the 6th day of May, A. D. 1992, the day following the ruling of the Chambers Justice, Judge Wright again ordered his sheriff to return to the subject property, A-Z Supermarket on Center Street, and to take an inventory. The inventory report, dated May 6, 1992, states as follows: "By directive of His Honour M. Wilkins Wright, Resident Circuit Judge, presiding, ordering that I take an inventory of the premises of Thomas T. Toomey, Joseph G. Toomey, versus Naomi Gooding, Emmett C. A. Gooding, Manager,

Mim's Pig Parts and A-Z Supermarket, Monrovia, Liberia." The items were listed and the end the inventory closed in these words: "We now make this as our official returns to the office of the clerk of this Honourable Court this 6 th day of May, A.D. 1992." It is signed by Samuel E. Moore, Deputy Sheriff, Montserrado County, R.L. and witnessed by Emma K. Johnson and Joseph G. Toomey, as owner. These actions were undertaken even though the writ of prohibition ordered the judge to "stay all further proceedings until otherwise ordered." The judge's behavior in exercising jurisdiction over the matter after being served with the writ of prohibition is reprehensible and therefore contemptuous. We have, however, refrained from holding him in contempt at this time because of a letter found in the records before us. The said letter is quoted hereunder verbatim:

"May 6, 1992 His Honour M. Wilkins Wright Resident Circuit Judge Sixth Judicial Circuit Montserrado County

May It Please Your Honour:

You are hereby mandated to enforce the attached copy of minutes of the judgment entered by this Court for the immediate turning over of the keys of the building to the respondent in these proceedings pending the appeal announced therefrom.

By orders of the Justice presiding in Chambers, His Honour

Boimah K. Morris.

And have you there this mandate.

Respectfully submitted:

Sgd. Samuel Bedell-Fahn

Samuel Bedell Fahn

ASSISTANT CLERK, SUPREME COURT

Mr. Justice Mitchell, speaking for the Court in the case *Shilling & Company, et al, v. Tirait and Dennis*, 16 LLR 164 (1965), text at 171-172 said: ". . and although the records before us establish that an appeal was granted to the October Term, 1964, of this Honourable Court, yet on the selfsame day and date on which the aforesaid ruling was made, the Chambers Justice ordered his said ruling completely enforced by dispatching the necessary mandate to the lower court commanding immediate action thereof."

"It is obvious that such procedure presents a strange drift from our prescribed provisions of law with regards to the rights of parties desiring to appeal for further

review and, if accepted by this Court, would evidently be a dangerous procedure of denying parties their rights of an appeal in contravention of the provision of the statute. . . ."

Also, Mr. Justice Harris, speaking for the Court in the case *In re: James Doe Gibson*, 16 LLR 202 (1965), text at 206, said: "The act of the Chambers Justice in enforcing his ruling, sentencing Counsellor James Doe Gibson to a fine of three hundred (\$300.00) dollars for contempt of court, or imprisonment upon failure to pay, when notice of appeal was announced and granted from said ruling, was arbitrary, oppressive and an abuse of the rule cited in this opinion; hence, it is hereby declared illegal and a misinterpretation of the rule."

Mr. Justice Morris, also speaking for this Court in the case *Doe et al. v. Ash-Thompson, The Proposed Liberia Action Party, et al.*, 33 LLR 251 (1985), said: "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 on 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."

The Liberian Constitution of 1986, at Article 20(b), states: "The right of appeal from a judgment, decree, decision or ruling of any court or administrative board or agency, except the Supreme Court, shall be held inviolable. The Legislature shall prescribe rules and procedures for the easy, expeditious and inexpensive filing and hearing of an appeal."

In the Civil Procedure Law, Rev. Code 1: 51.20, chapter 51, at pages 254-255, under "*Effect of Appeal as a Stay*," we have the following:

"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." (Emphasis ours).

In addition to a preliminary injunction, we also have appeals from judgment for summary proceedings to recover possession of real property when the action is filed before the circuit court. Civil Procedure Law, Rev Code 1:62.24. The action on which the final judgment was rendered by the judge in the court below was neither a preliminary injunction nor summary proceedings to recover possession of real

property. It was an action for the cancellation of an addendum to a lease agreement.

We shall now consider whether prohibition would lie to prevent a judge of a lower court from enforcing his final judgment from which an appeal has been taken and granted. Mr. Justice Tubman, speaking for the Court in the case *Fazzah v. National Economy Committee, etc.*, said: "Prohibition will issue to prevent a trial tribunal from enforcing its judgment where there has been a notice of appeal therefrom." 8 LLR 85 (1943). Also, in the case *Sadatonou et al. v. Bank of Liberia, Inc.*, this Court held that: "An appeal, when announced, serves as a supersedeas to any further disposition of the particular matter by the court from whose judgment an appeal has been so announced." 20 LLR 512 (1971) , This Court further said that where a judge can obey the writ by undoing what he has ordered done, prohibition will lie and the judge of the lower court shall be held accountable for disobeying such order even if the writ issues from the Chambers of a Justice of the Supreme Court and not the Full Court. 20 LLR 512 (1971).

In the case *Montgomery v. Findley and McGill-Haddad*, 14 LLR 463 (1961), text at 476, Mr. Justice Pierre, speaking for the Court, said:

"Prohibition will lie to give relief whenever a subordinate court proceeds in the hearing of a case in a manner which is contrary to known and accepted practice and in violation of proper and ethical procedure".

Three years later, in 1964, in the case *Dweb v. Findley et al.*, Mr. Justice Pierre said again: "Where there is no statute or precedent to support an act of an inferior court, prohibition will lie if it can be shown that such an act adversely affects the rights of the petitioning party." Continuing, he said: "Although prohibition is usually used as a remedy where a tribunal has unwarrantedly assumed or exceeded its jurisdiction, it will also lie when a tribunal has proceeded by rules contrary to, or different from those which regularly obtain in the disposition of such case. Prohibition is principally directed against a tribunal, rather than against the party to the present case." 15 LLR (1964) 638, text at 645-646.

The counsellors on both side of this matter were very eloquent in their arguments before this Court and, in doing so, they argued all of the issues in the cancellation proceedings such as title, consideration, and privity of contract. Petitioners/appellants have, on the other hand, asked us to reverse the ruling of the Chambers Justice and to stay the execution of the orders given by both the Chambers Justice and trial judge. The respondents/appellees, on the other hand, have asked us to

affirm and confirm the ruling of the Chambers Justice, deny the petition and bill of information, and order the enforcement of the judgment of the trial judge.

We have refrained from ruling on the cancellation proceedings as we feel that the issues therein should be passed on in a separate opinion of this Court. The trial judge cited *Liberia Fisheries, Inc. v. Radio et al.* Consideration will be given to that opinion when the appeal case is decided.

In view of the foregoing, we are of the opinion that the peremptory writ of prohibition should have been ordered issued. The ruling of the Chambers Justice in the prohibition and information proceedings are hereby reversed and the peremptory writ of prohibition is therefore ordered issued. The locks placed on the supermarket upon orders of the trial judge are ordered removed and A-Z Supermarket is to continue its occupancy thereof until the appeal in cancellation is determined by this Court. The Clerk of this Court is hereby ordered to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction over the case and enforce this judgment. Costs are ruled against the respondents. And it is hereby so ordered.

Prohibition granted.