THE INTERNATIONAL TRUST COMPANY OF LIBERIA, Petitioner/Appellant, v. **HIS HONOUR VARNIE D. COOPER**, Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, and **DORIS COOPER-HAYES**, Respondents/Appellees.

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

Heard: November 18, 1998. Decided: December 4, 1998.

1. The judge of a subordinate cannot review the judicial acts of another judge of concurrent jurisdiction. Such review can only be done by the Supreme Court.

2. At the end of a pre-trial conference, the trial court shall make a pre-trial order, signed by the court and attorneys for the parties, and reciting the action of the conference; and, which, when entered, shall become part of the records, superseding the pleadings and controlling the subsequent course of the court's action.

3. Following a pre-trial conference, all facts agreed upon by counsel for the parties and approved by the trial judge shall be presented to the trial jury during the trial of the case.

4. It is a reversible error for a succeeding trial judge to set aside the agreement of the parties, approved by his predecessor after a pre-trial conference, and to proceed thereafter to dismiss a party's pleadings concluded at such pre-trial conference.

5. The fundamental principle of pleading is the giving of notice to the adversary party, and when notice if given after an act has been performed, it cannot be said that the notice was timely given.

6. Rule 28 of the Circuit Court Rules requires the making of assignment of cases and the service of notice upon counsel of record or the party. The Rule cannot therefore be invoked unless it is satisfactorily established that counsel has been notified in sufficient time to allow for his attendance.

7. When a notice of assignment on a party after the time specified in the notice, for hearing of the matter, it cannot be said to have been served.

8. A hearing conducted on the law issues prior to the time specified in the notice of

assignment cannot be deemed to constitute a sufficient notice requiring the attendance of the party.

9. Certiorari will issue to review a ruling on law issues by a trial judge which rules to trial a case which had been finally terminated by the same court.

10. There are exceptions to the general rule that certiorari will not issue to review a ruling on law issues, as where the party has not been served with notice of assignment for the hearing on the law issues, or when the rights of a party are manifestly prejudiced by the ruling of an inferior court during the pendency of a case. In such cases, the ruling of the trial judge will be deemed reversible.

Co-respondent Doris Cooper-Hayes maintained two separate accounts with the petitioner bank, one in United States dollars and the other in Liberian dollars. When she trial to make a withdrawal from her United States dollar account, Co-respondent Cooper-Hayes was refused, being informed verbally that she could not receive any United States currency. After an exchange of letters between the petitioner bank and the co-respondent, the latter instituted an action of damages for breach of deposit contract.

Following the exchange of pleadings, the parties submitted to a pre-trial conference where agreement was reached as to the issues of fact to be submitted to a trial jury and the issues of law which were to be disposed of by the trial judge. The agreement was duly signed by the counsel for the parties and approved by the trial judge. However, the judge did not dispose of the law issues which the parties had agreed the court would dispose of before submitted the case to a jury trial prior to losing jurisdiction. The succeeding judge, upon assuming jurisdiction, assigned the case for continuation of the pre-trial conference and disposition of law issues. After several assignments for the conference and hearing, at which the judge was unable to attend to the same, the judge, in the absence of the petitioner bank, concluded the pre-trial conference and disposed of the issues of law. In ruling on the law issues, the judge dismissed the petitioner bank answer, ruled it to a bare denial of the facts.

From the aforementioned ruling, petitioner noted exceptions and thereafter filed a petition for a writ of certiorari before the Justice in Chambers. The Justice in Chambers, after entertaining a hearing on the petition, denied the same. In an appeal to the Full Bench, the ruling of the Chambers Justice was reversed. The Court held that while it was true, as contended by the respondents, that certiorari could not be entertained by the Supreme Court from a subordinate court's ruling on the law issues,

there were exceptions to the rule, as where the court disposed of the law issues without issuing and serving a notice of assignment on a party to the proceedings. The Court noted that in the instant case, the minutes of the trial court, exhibited by the respondents, indicated that while the hearing was assigned for one time, the co-respondent judge had disposed of the law issues at another time. The Court observed that the fundamental purpose of pleading was to give a party notice and that where such notice was not given a party for hearing and disposition of the issues of law, certiorari would lie to review the act of the judge and to determine whether, in disposing of the issues of law, he committed any error.

The Court opined further that the co-respondent judge had committed a reversible error when he dismissed the petitioner's answer and ruled it to a bare denial of the facts, since his predecessor had already held a pre-trial conference and had ruled on the issues to be disposed of by the court and those which were to be submitted to the jury for trial. The act of the co-respondent judge, it said, was tantamount to a review of the ruling of his predecessor, which under the law he could not do. The Court therefore ordered that the ruling made by the co-respondent judge be reversed and that the case be remanded for a new disposition of the law issues consistent with the order issued out of the pretrial conference issued by the prior trial judge on agreement of the parties.

Salia A. Sirleafof the Henries Law Firm, in association with H. Varney G. Sherman of Sherman & Sherman appeared for petitioner/appellant. Marcus R. Jones of the Jones and Associates Legal Consultants appeared for respondents/appellees.

MR. JUSTICE SACKOR delivered the opinion of the Court.

The facts gathered from the certified records transmitted to this Court reveal that Doris Cooper Hayes, co-respondent/coappellee herein, opened two separate accounts with The International Trust Company of Liberia, petitioner herein, in 1985, in Liberian and United States dollars, and operated both accounts until sometime in May 1992 when she went to the petitioner bank to make withdrawal from her United States dollar account, an amount intended for her daughter's wedding on May 22, 1992, but to no avail. Co-respondent Hayes-Cooper was later informed verbally that she could not receive any United States currency, but could only receive her deposit in Liberian currency on a one-to-one parity. The co-respondent consulted her legal counsel, and, after an exchange of letters with the petitioner bank, she instituted, in the September Term, A. D. 1992, of the Civil Law Court, Montserrado County, an action of damages for breach of deposit contract against the appellant bank.

Co-respondent Hayes-Cooper alleged substantially in her ten count complaint that she opened and maintained two United States dollar accounts with the petitioner bank on December 2, 1985 in her name. She alleged that the petitioner bank refused to pay her in United States dollars which she considered as a breach of her deposit contract, and therefore claimed the sum of US$1,042.00 and L$5,000 as special damages, and US$1.5 million as general damages. The petitioner bank filed a thirty count answer denying the co-respondent's complaint, and alleging, inter alia, that the co-respondent's accounts were a mixture of United States and Liberian dollars and that as the Liberian dollar and the United States dollar are legally and statutorily on par at one to one, it offered to pay her in Liberian dollars. The petitioner bank also alleged that its offer to honour the co-respondent's withdrawals in Liberian dollars was legal and proper since her deposits were general and there was no special agreement on the currency of payment. Petitioner further attacked co-respondent's complaint for not being verified, stating that the affidavit attached to the complaint did not carry the caption of the case. The pleadings rested upon the filing of the reply.

Following arguments on the law issues, the trial judge dismissed the co-respondents' complaint and sustained petitioner's answer on ground that her affidavit was not verified. Co-respondent Hayes-Cooper excepted to the ruling and appealed to this Court for review. This Court, during its March Term, A. D. 1993 Term, rendered judgment on the 23` d day of July, A. D. 1993, reversing the ruling of the trial judge on the law issues dismissing the complaint, and remanded this case to the court below to be tried by a jury on the merits.

The records in this case reveal that the co-respondent's counsel prayed for a pre-trial conference on May 15,1994 and that the petitioner's counsel conceded. The trial judge, His Honour William B. Metzger, Sr., subsequently granted and entertained the pre-trial conference on May 21 and 25, 1994. The parties simplified and agreed on the law issues to be passed upon by the trial court as well as the factual issues to be submitted to the jury. Both parties also agreed on the number of witnesses to testify before the jury. These minutes, as shown by the records in this case, were signed by counsel for both parties in this proceeding and approved by Judge Metzger.

The records show further that thereafter, the newly assigned trial judge assigned the case for continuation of the disposition of the law issues and pre-trial conference on September 16, 1994. The notice of assignment to the effect was acknowledged by counsel for both parties. However, Judge Varnie D. Cooper, the newly assigned

judge, who now presided over the court, did not take up the matter on that day. A notice of assignment was issued on September 20, 1994 for hearing of the matter on September 23`d, 1994 at 1:00 p.m. The notice was served and returned served, but again the trial judge did not proceed with the case. The disposition of law issues and the pre-trial conference was again reassigned on the 28th day of September, A. D. 1994 for a hearing on October 3, 1994 at 10:00 a.m. The notice was served, acknowledged and returned served. However, again, the trial judge did not proceed with the case.

The records indicate that the trial judge disposed of the law issues on the 6th day of October, A. D. 1994 in the absence of appellant's counsel. The trial judge, His Honour Varnie Cooper, ruled on the law issues on the 2n d day of December, A. D. 1994, dismissing petitioner's answer and ruling it to a bare denial of the facts. Petitioner excepted to this ruling and fled to this Court upon a thirteen-count petition for a writ of certiorari.

On the 25th day of April, A. D. 1995, our distinguished colleague, His Honour Frank W. Smith, then Associate Justice presiding in Chambers, heard and denied petitioner's petition. Mr. Justice Smith relied on the case Raymond Concrete Pile v. Perry, reported in 13 LLR 552 (1960), wherein this Court held that certiorari will not be issued to review the ruling on the issues of law. Petitioner excepted to this ruling and appealed to the Court en bane for our review and determination.

Appellant contended in count two of the petition that on the 6th day of October, A. D. 1994, Judge Cooper heard the law issues in the case, in the absence of the petitioner and its counsel, without the issuance of a notice of assignment for the hearing of said law issues. In counts 4, 5 and 6 of the petition, petitioners contended that Judge Cooper passed and ruled on the law issues that were not stipulated by the parties and by his predecessor, His Honour William Metzger. Petitioners argued that as Judge Metzger had concurrent jurisdiction with Judge Cooper, the latter could not review the act of his colleague. In other words, petitioner contended that Judge Cooper ignored all of the issues raised in its legal memorandum, and agreed upon by the counsels for the parties to be decided by the court, which agreement was subsequently approved by Judge Metzger. Petitioner averred that the ruling on the law issues dismissing its answer and ruling it to a bare denial was also illegal, prejudicial and erroneous, not only because the trial judge heard the law issues without the issuance of a notice of assignment, but also because the said judge erroneously ruled on the issues contrary to those agreed upon by counsels of both parties and approved by Judge Metzger to be decided by the court.

Additionally, petitioner strongly contended that the trial judge in his ruling on the law issues, decided factual issues which were triable by a jury, thereby invading the province of the jury. It maintained that the trial judge undertook to declare sections 71.5 and 71.6 of the Revenue and Finance Law as being of no legal effect and dead letter law, thereby usurping the function of the Supreme Court. The petitioner therefore prayed that the writ of certiorari be issued to review and correct the erroneous acts of the trial judge.

The respondents herein filed a twenty-five-count returns to the petition on the 3rd day of February, A. D. 1995. Respondents contended that there was a regular notice of assignment for the continuation of the pre-trial conference and for the disposition of law issues; that the notice was served, acknowledged by counsels of both parties, and returned served; and that petitioner and its counsel failed and neglected to appear. Respondents also contended that the co-respondent judge legally passed upon the issues of law in the absence of the petitioner and its counsel in that law issues can be passed upon in the absence of counsel when a notice of assignment for disposition of such law issues has been duly served and returned served. Hence, they said, the co-respondent judge did not commit any error prejudicial to the rights and interests of the petitioner.

Respondents further strongly argued that the writ of certiorari cannot lie to review and correct rulings on issues of law, and that such ruling should await a regular appeal, in keeping with our practice and procedure. Hence, they said, petitioner should have noted its exceptions to the judge's ruling on the issues of law and reserve same for a regular appeal. Respondent also contended that petitioner's answer was dismissed strictly on the issues of law, which is not reviewable by certiorari.

In addition, respondents vehemently contended that the co-respondent judge did not ignore the issues as stipulated by the parties and approved by Judge Metzger, in that, petitioner's memorandum and that of Co-respondent Cooper Hayes were consolidated in the ruling and that only issue number six was specifically and separately passed upon. Respondents maintained in count 23 of their returns that a regular appeal was the proper remedy available to the petitioner to review the allegation that Judge Cooper reviewed the act of Judge Metzger since indeed said allegation, as contained in the petition, raised issues of law on the ruling of law issues. Respondents therefore prayed the Honourable Supreme Court to deny and dismiss petitioner's petition and order the court below to resume jurisdiction over the case and proceed with the trial.

The paramount issues for the determination of this case are:

1. Did the co-respondent judge commit a reversible error when he set aside the agreement of the parties at the pretrial conference simplifying factual issues to be submitted to jury trial and dismissed petitioner's answer.

2. Whether or not certiorari will lie on a ruling of law issues where the petitioner was not duly served with a notice of assignment for the disposition of law issues.

We shall decide these issues in the order in which they were raised. As to the issue relating to the trial judge setting aside factual issues agreed upon by the parties for a jury trial, we observe that Judge William B. Metzger, Sr. approved the agreement of the parties at a pre-trial conference on May 21, 1994 which simplified the factual issues to be submitted to the jury and the issues of law to be decided by the court.

A recourse to the records of the pre-trial conference revealed, at paragraph 2 thereof, that the parties specifically agreed that issue #4 of petitioner's memorandum was one of mixed issues of law and facts for the jury, and that this was confirmed by both plaintiff and defendant's counsels; that issues 5 and 7 of petitioner's memorandum were factual issues, and that issue #6 was one of law for the trial court to pass upon. We however observe that His Honour Varnie D. Cooper, who succeeded Judge Metzger, Sr., set aside the issues as simplified, agreed upon by the parties and approved by Judge Metzger and dismissed the petitioner's answer, thereby placing petitioner on a bare denial. The petitioner contended that the trial judge committed a reversible error when he set aside the agreement of the parties, approved by his predecessor, and dismissed petitioner's answer. As such, it said, certiorari was the proper remedy to review the error of the trial judge as he had reviewed the judicial act of his colleague having concurrent jurisdiction. Respondents, on the other hand, contended that the corespondent judge did not set aside the agreement of the parties, as approved by Judge Metzger, and that in any event, a regular appeal was the proper remedy available to the petitioner to review petitioner's allegation that Judge Cooper had reviewed the act of his predecessor, since the said ruling related to the disposition of law issues.

This Court, in the case Donzo v. Tate, 39 LLR — (1998), Supreme Court Opinions, March Term. A. D. 1998, held that "a judge cannot review the judicial acts of another judge except this Court of last resort." The question to be resolved is, did the approval of the order of the pre-trial conference by Judge Metzger constitute a

judicial act? The answer to this question is in the affirmative. Section 12.5 of the Civil Procedure Law, Rev. Code 1, provides that at the end of a pre-trial conference, the court shall make a pretrial order, reciting the action at the conference; the order shall be signed by the court and attorneys, and when entered, it shall become part of the records, superceding the pleadings and controlling the subsequent course of the action. This Court holds therefore that the pre-trial order which recited the action at the conference, and which was signed by Judge Metzger and counsels for the parties, became part of the records, superceding the pleadings and controlling the subsequent course of the action. Thus, all factual issues agreed upon by counsels of the parties and approved by Judge Metzger should have been presented to a jury trial rather than Judge Cooper dismissing petitioner's answer and ruling it to a bare denial. The co-respondent judge therefore committed a reversible error when he set aside the agreement of the parties, approved by his predecessor, and subsequently dismissed petitioner's answer and ruled it on a bare denial. This Court holds that a judge of a subordinate court cannot review the judicial acts of another judge with concurrent jurisdiction as in the instant case, except this Court.

The second and final issue in this case is whether or not certiorari will lie to review a ruling on the law issues where the petitioner was not duly served with a notice of assignment for the disposition of the said law issues.

Petitioner strongly contended that the co-respondent judge, His Honour Varnie Cooper, heard the law issues in this case on October 6, 1994, in the absence of the petitioner and its counsel, and without the issuance and service of a notice of assignment for the hearing of said law issues. Petitioner argued that a notice of assignment should have been issued and served for the hearing of the law issues in this case, and that the hearing of the law issues without a notice of assignment being served on the petitioner was prejudicial to its rights and interests.

The respondents contended that a notice of assignment was duly issued, served, acknowledged by both counsels, and returned served, for the pretrial conference and the disposition of law issues on October 3, 1994 at 10:00 a.m.; that counsels for both parties were present but that the pretrial conference and the disposition of law issues were continued to the 6th day of October, A. D. 1994 at 10:00 a.m.; and that under the circumstances, a formal written notice of assignment was not necessary, as agreed upon by the parties in accordance with the practice and procedure in this jurisdiction. Respondents requested this Court to take judicial notice of their exhibit, being the trial court's records of October 6, 1994 in this case. Respondents also averred that when both counsel appeared on October 6, 1994 at 10:00 a.m., the trial judge

informed them to remain in court until he could charge the jury. However, petitioner's counsel was absent at the call of the case, and hence, Corespondent Hayes-Cooper invoked Rule 7 of the Circuit Court Rules and was permitted to proceed with arguments on the law issues presented in the case.

We deem it expedient to hereunder quote verbatim respondents' exhibit, being the minutes of the trial court of October 6, 1994, for the benefit of this opinion.

"Exhibit October 6

Doris Cooper Versus International Trust Company ACTION OF DAMAGES
Pretrial conference continues on Thursday, October 16, 1994. All parties present. Hour 10:00a.m."

It is clear from the face of respondents' "exhibit 6" that the trial judge, on October 6, 1994, deferred the pretrial conference for Thursday, October 16, 1994 at 10:00 a.m. and expected the presence of the parties in this case. Respondents' exhibit does not in any way constitute a notice of assignment for the hearing of the law issues on October 6, 1994, since indeed and in fact said "exhibit" was written on October 6, 1994 by the trial judge, His Honour Varnie Cooper, for the continuation of the pretrial conference on October 16, 1994 at 10:00 a.m. Respondents' exhibit therefore negates their averment before this Court that the co-respondent judge informed the parties herein to remain in court for the hearing of the law issues on October 6, 1994 after charging the jury. The records in this case are also devoid of any evidence that the hearing of the law issues was scheduled for October 6, 1994.

In the case The Liberian Bank for Development & Investment v. Badio and Liberia Fisheries Industries, Inc., 37 LLR 63 (1992), this Court speaking through Mr. Justice Smallwood during its March Term, A. D. 1992, held:

"It is our opinion that the notice of assignment was not properly served since it was served after the hour specified for the hearing and argument on the law issues. Under our practice, the fundamental principle of pleading is that of giving notice and when notice is given after an act is to be performed, it can not be said that the notice was timely given.

Rule 28 of the Circuit Court Rules, as revised, provides that the judge shall assign a day for passing upon the issues of law and hearing all cases not dismissed on question of law, whether or not the counsel previously notified are present. It is our opinion that this portion of rule 28 requires the making of assignment of cases and the service

of notice upon counsel of record or the party. The rules therefore can not be invoked unless it is satisfactorily established that counsel has been notified in sufficient time to allow his attendance. When the notice is served on the party after the time specified in the notice of assignment for the hearing of the matter, it can not be said to have been served."

In that case, this Court reversed the judge's ruling on the law issues upon a petition for certiorari, and remanded the case with instruction to issue and serve another assignment for the hearing of arguments on the law issues and the disposition thereof. In the instant case, we observed not only the absence of a notice of assignment for the hearing of the law issues, but also that respondents' exhibit indicates that the trial judge continued the pre-trial conference in the case to the 16' h of October, A. D. 1994 at 10:00 a.m. We further observed from the records that notwith-standing the continuance of the hearing to October 16, 1994, at 10:00 a.m., the trial judge proceeded to conduct a hearing on the law issues on October 6, 1994 in the absence of the appellant and its counsel. It is our opinion that petitioner was not given notice, 6 fundamental principle of pleadings in our jurisdiction, for the hearing of the law issues on October 6, 1994. Further, we hold that a hearing conducted on the law issues prior to the time specified in the notice of assignment, as in the instant case, can not be deemed to constitute a sufficient notice requiring the attendance of petitioner.

This Court, in the case Monrovia Breweries Inc. v. Hilton and Tarplah, 37 LLR 408 (1993), decided during the October Term, A. D. 1993, stated:

"We therefore hold that certiorari will issue to review a ruling on law issues by a trial judge which rules to trial a case which had been finally terminated by the same court as in the present case."

The two recent cases cited supra are exceptions to the general rule that certiorari will not issue to review a ruling on law issues. In the Liberian Bank For Development and Investment case, this Court, relying on Williams v. Horton and Bull, 13 LLR 444 (1960), text at 446, said that "certiorari will lie when the rights of a party are manifestly prejudiced by a ruling of an inferior court during the pendency of a case." We therefore hold that certiorari will lie to review the ruling on the law issues where the petitioner has not been served with a notice of assignment for the hearing on the law issues. Thus, the ruling of the trial judge on the law issues is reversible.

Wherefore, and in view of the foregoing, it is the considered opinion of this Court

that the ruling of our former colleague, Mr. Justice Smith, denying the petition for the writ of certiorari should be, and the same is hereby reversed, and the peremptory writ of certiorari ordered issued reversing the trial judge's ruling on the law issues. The Clerk of this Court is hereby ordered to send a mandate to the court below informing the judge presiding therein to resume jurisdiction over the case and recommence the disposition of the law issues consistent with the order arising out of the pre-trial conference of 1994 under the gavel of Judge Metzger. Costs are to abide the final determination of this case. And it is hereby so ordered.

MR. JUSTICE WRIGHT dissents.

I am unable to agree with my very distinguished colleagues of the majority and have therefore withheld my signature and prepared this dissent.

The facts which led to the institution of the suit are not in dispute between the parties and have been dealt with exhaustively in the majority opinion. Therefore, I shall go to the points with which I disagree with my colleagues. The majority identified two issues on which their decision is based:

1. Whether or not the trial judge committed reversible error when he set aside the agreement of the parties at the pretrial conference simplifying the factual issues to be submitted to jury trial and dismissed defendant's answer.

2. Whether or not certiorari will lie on a ruling on law issues where the petitioner was not duly served with a notice of assignment for the disposition of the law issues.

The majority obviously answered the first question in the affirmative, but it is my contention that the issue is misstated, in that it is founded on the wrong premise that one judge set aside what his colleague had done.

It is my view that Judge Cooper's action was in furtherance or fulfillment of what Judge Metzger had already begun but did not complete. Let us take recourse to the records.

When Judge Cooper came into jurisdiction, he issued a notice of assignment for "continuation of pre-trial conference and disposition of law issues." On May 21, 1994, Judge Metzger began the pretrial conference. Following the announcement and notation of representations, the court made the following records:

"Both counsel for plaintiff and defendant agree that issues numbers 5, 2, 3, 4 and 6 of plaintiffs legal memorandum are law issues for the court to pass upon. While issues numbers 7, 2, 8 & 10 raised the same point and are therefore consolidated as one issue. Further, both counsel agree that issue number 9 is a legal issue for the court to pass upon, of plaintiffs memorandum.

In respect of defendant's legal memorandum, counsel for both parties also agree that issue number one of defendant's legal memorandum corresponds with issue number 3 of plaintiffs legal memorandum. It was also mutually agreed by counsel for both parties that issue number 2 of defendant's legal memorandum corresponds with issue number 6 of plaintiffs legal memorandum and that issue number 3 of defendant's memorandum also corresponds with issues 2, 7, 8, & 10 of plaintiffs memorandum. Issue no. 4 of defendant's memorandum is one of mixed issue of law and fact for the jury as confirmed by both plaintiff and defendant's counsel. Issues 5, & 7 are also factual issues of defendant's memorandum while issue number 6 is one of law for the court to pass upon." See sheet 1, pre-trial conference, minutes of Saturday, May 21,1994, paragraphs one and two.

The mentioned above conference was continued on May 25, 1994 and when the legal counsel of the National Bank ended his testimony and examination, he was discharged and the conference ended for that day with both counsels signing and the judge approving the minutes of that day's proceedings.

From my understanding of the above quoted paragraphs and the minutes of the pre-trial conference, it does not appear that the conference came to an end because there is no indication as to the outcome of the conference. Secondly, and more importantly, the stipulation signed does not indicate what action was taken or what ruling was made by Judge Metzger on the various issues identified as law issues. What is even more striking is that the counsels agreed that all of these law issues are "for the court to pass upon" (Emphasis Mine). This shows that the issues were merely identified but not actually ruled upon or passed upon by the court on May 21' and 25t h respectively. The ending of the proceedings on May 25, 1994 was so abrupt and inconclusive that it does not leave a reader with the impression that Judge Metzger did all that should have been done by way of bringing those issues to a resolution.

It is against this background that I take the view the Judge Cooper's action was in furtherance and not in derogation of Judge Metzger's earlier action. As stated above, Judge Cooper assigned the case for the continuation of pretrial conference and disposition of law issues. Both parties appeared without objection or contention. Had

the law issues been already ruled on by Judge Metzger, a decision as to what that ruling was on the merits of those issues would have been stated by Judge Metzger and the counsels. In fact, it would have been brought to Judge Cooper's attention; in which case, if Judge Cooper had ignored such information, then it could be said that he was reviewing the act of his colleague. But petitioner appeared and cooperated. It was only after its circumstance changed that it elected to take advantage or repudiate its own act.

But let us go further. Judge Metzger only identified the issues to be law issues and said that they were to be passed upon by the court, meaning, in a subsequent setting or proceeding. Thus, all Judge Cooper did was to actually rule on the issues already identified by Judge Metzger. As such, it is my view that Judge Cooper did not commit any reversible error for which certiorari would lie.

Coming to the issue of whether certiorari will lie to review a ruling on law issues, I say no. The majority has said yes. I beg to differ. Again, the majority has founded the second issue on the wrong premise, in that it presupposes that the first judge had already finally ruled on or terminated the issues in a ruling. This is not the case here. As stated hereinabove, what Judge Metzger signed was a stipulation wherein the counsels agreed that certain issues were law issues, but stopped short or making an actual determination of the issues themselves. Selecting the issues and ruling on them• are two different things.

I believe the issue to have dealt with is whether or not the trial judge, His Honour Varnie D. Cooper, issued a notice of assignment for the disposition of the law issues, and if not was that a reversible error. Petitioner argued that Judge Cooper did not, while respondents said he did. Let us review the records.

On September 28, 1994 a notice of assignment was issued far "Continuation of pre-trial conference and disposition of law issues" to be had on October 3,1994. Both counsels agreed that they both acknowledged said assignment and appeared, but that the judge was in a jury trial and did not proceed with the case that day. There is a divergence between the two counsels as to the trend of events thereafter leading to the hearing of argument on the law issues.

Petitioner says that there was no further information on this matter until he was notified to appear for ruling on the law issues. Respondents say that when counsels appeared on October 3, 1994, there was no hearing but that the judge reassigned the matter for October 6, 1994, and that on the assigned date the judge told them orally

to wait for him to complete his charge to the jury and then he would hear them, but petitioner's counsel became impatient and left the bailiwick of the court. Thus, when the judge got ready and finally called the case, petitioner's counsel was not around and so the court permitted the co-respondent to argue her side of the law issues.

On the respondents' theory above, we herein concede that under the law, notice is fundamental to all proceedings. Where, however, one conducts himself in a manner as would suggest he was notified, then he would be presumed to have been notified. This is procedural, but let us look at substantive matters. Assuming that Judge Cooper heard argument on the law issues without issuing any assignment, what is the effect on defendant/ petitioner for which certiorari would lie? Is certiorari the proper remedy to review a ruling on law issues?

A ruling on law issues is not reviewable on certiorari but rather on a regular appeal. Raymond Concrete Pile Company v. Perry and Hamilton, 13 LLR 522 (1960); Markwei v. Amine et al., 4 LLR 150 (1934); Morris v. Cooper, 13 LLR 135 (1958). Therefore, certiorari is not and should not be used as a substitute for appeal.

Coming back to petitioner's contention that there was no further action from October 3, 1994 until he received the notice of assignment for ruling to be given on December 2,1994, I believe this was carelessness and negligence on the part of counsel for defendant/petitioner. Note that the law issues were argued on October 6th; the notice of assignment was issued in November for ruling to be given on December 2nd. What was defendant doing during the interim?

Upon receiving the assignment in November (I am not too certain of the date) what prevented defendant from filing a bill of information to the court on or before December 2" that law issues had not yet been assigned and argued and therefore there could be no ruling? But that's not bad enough; there is no showing in the records that when the case was called for ruling on December 2" that defendant made it known or even attempted to call the court's attention to the fact that the law issues had not been assigned and argued and therefore the ruling should be withheld pending arguments.

Petitioner took a chance hoping that the ruling would have been favorable, but when it turned out that the ruling was adverse, then defendant elected to come by certiorari, which was erroneous. This Court has held over and again that it will not review cases in piecemeal.

That is not all. It is noted that the ruling on the law issues was given on December 2' but the petition for certiorari was not filed until December 19th. The question is, why didn't defendant within the intervening 17 days, file a motion before the trial judge to rescind his ruling and let the judge pass on it or refuse to entertain it, which would have then set the stage for further appellate review. I believe Mr. Justice Smith was correct in his April 25,1995 ruling when he denied certiorari and ordered the case to be returned so the trial could be proceeded with, without any further delay.

In the judge's ruling of December 2' 1994, he mentioned that the case was indeed assigned for October 6, 1994 at 10 00 a.m. and that both counsels were present, but that as the case was not called at the assigned hour, the lawyers were told to remain in court until after the court's charge to the jury. The judge said that when he finally called the case petitioner's counsel was no where to be found. The petitioner has denied this. But do we expect him to admit it? Who is to be believed even more, the judge or the party against whom ruling has been made?

I believe that by setting aside Judge Cooper's ruling on account of notice not having been given, we are condoning the attitude of lawyers disrespecting the orders of our lower courts. If an assignment is made and the parties appear and the judge tells them to wait and one refuses to wait, that is contemptuous and the lawyer should not be rewarded, but punished.

As I close this dissent, I wish to observe that the majority has remanded the case to the trial court and commanded the presiding judge to recommence the disposition of the law issues. Judge Cooper heard arguments on those law issues set aside and identified by Judge Metzger. Judge Cooper's ruling has been reversed for going into the essence or merits of the issues. My concern is, if Judge Cooper could not pass on the issues, how can another judge come and pass on them without being likewise accused of reviewing the act of Judge Metzger? Counsel for petitioner cleverly sought to confuse us by saying that pre-trial conference is synonymous or interchangeable with disposition of law issues and that one is the substitute for the other. Nothing is farther from the truth.

A pretrial conference would identify and simplify the issues but the disposition of law issues will actually pass on the merits of those issues.

Having thus expressed my points of divergence from those of my brethren of the majority, I respectfully beg to disagree; hence, this DISSENT.