SARAH C. KENNEDY and **CATHERINE JOHNSON-WHISNANT (alias THOMAS), Contractor, J. SAINTE LUCE,** Petitioners, *v.* **ISHMAEL B. GOODRIDGE** and **HIS HONOUR EUGENE L. HILTON,** Assigned Circuit Judge, Civil Law Court, Sixth Judicial Circuit, Montserrado County, Respondents.

APPEAL FROM THE RULING OF THE JUSTICE IN CHAMBERS GRANTING THE PETITION FOR A WRIT OF PROHIBITION.

Heard October 21, 1985. Decided December 18, 1985.

1. The Supreme Court has no authority to extrapolate the intent of the Legislature beyond the specific wording of the statute. This limitation is even more mandatory where the statute in question specifies the only manner in which an act may be done.
2. The judicial construction of statutes is constitutionally restricted to a determination of the legislative intent, as stated in the statutes themselves.
3. Where the Legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and the Court will not introduce an exception by construction except where the necessity is imperious and where absurd or manifest unjust consequences would otherwise result.
4. Where during the pendency of a trial, an attorney dies, becomes physically or mentally incapacitated, or is disbarred, suspended, or otherwise disabled, at any time before final judgment, no further proceedings shall be taken without leave of court in the action against the party whom he represented until notice to appoint another counsel has been given that party either personally or in such manner as the court directs. Even then, no further action can be taken until thirty days have expired after the service of said notice.
5. A mere notice of assignment is not sufficient to constitute notice to a party to appoint another counsel where his or her counsel has died, or has become physically or mentally incapacitated, been disbarred, suspended or otherwise disabled. Such notice of assignment should properly only come thirty days after the affected party litigant has been duly notified by the court to appoint another attorney to represent his or her interest at the trial. Any procedure short of this requirement amounts to a violation of the statute.

6. Questions of property, especially real property, and human life are to be handled with every available care by the courts. Accordingly, judges are required to afford all parties who stand to lose life and/or property every chance and patience to appear and to defend their cause according to the means afforded them by law.
7. Since the Constitution of Liberia guarantees to each citizen the right to acquire, protect and defend property, the legal procedure to contest this right should be meticulously and jealously prescribed and guarded, and for that reason, where a defendant in an action of ejectment is returned summoned but fails or refuses to appear, the plaintiff is not thereby, as in other cases, immediately entitled to a judgment by default.
8. A verdict or judgment in a party's favor is not conclusive evidence of title even as against the party whose interest is adversely affected by said verdict and judgment.
9. Although generally prohibition is not demandable as a matter of right when another complete and adequate remedy is available, under certain circumstances the grant or refusal rests within the sound discretion of the court to which the application is made.
10. While the writ of prohibition cannot be used as a substitute for an appeal, it will issue to prevent a trial tribunal from enforcing its judgment, or to undo that judgment where there has been notice of appeal therefrom, merely to restrain it from usurpation.
11. The writ of prohibition is the proper remedial process to restrain an inferior court from taking action in a case beyond its jurisdiction; or having jurisdiction, the court has attempted to proceed by rule different from those which ought to be observed at all times.

Petitioners sought a writ of prohibition to restrain the judge of the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, from enforcement of a default judgment entered against petitioners in an action of ejectment filed by co-respondent Ishmael B. Goodridge against the petitioners in 1963. Petitioners, whose attorneys had died several years prior to the entry of the default judgment, had failed to appear for the hearing in person or by counsel although it was alleged that one of the petitioners had received the notice of assignment. At the time of the rendition of the judgment also, the trial court judge had appointed an attorney to take the judgment for the petitioners. The appointed attorney excepted to the judgment and announced an appeal to the Supreme Court on behalf of the petitioners. The records did not indicate whether the judgment was served on the petitioners. What the records did indicate is that the petitioners opted to pursue prohibition,

charging that (a) they had been denied their day in court as they had not been served with a notice of assignment for the hearing of the case, (b) the court had failed to give them notice to appoint new counsel in the face of the death of their counsel, which by law it was required to do, and (c) they had not been accorded an opportunity to be present in court to except to the judgment and announce an appeal to the Supreme Court as would have allowed the Supreme Court to review the matter. They prayed that the judgment be nullified and the case remanded for a trial *de novo*.

The Justice in Chambers held the proceedings in the trial court to be irregular, contrary to known and accepted practice, and a violation of proper ethical procedure. He therefore granted the petition and nullified the judgment. From this ruling, respondents appealed to the full Bench for a final review.

The Supreme Court affirmed the ruling of the Justice in Chambers, holding that the trial judge was in error in not notifying the petitioners to appoint new counsel following the death of their original counsel and giving them thirty days within which to do so. The Court noted that this was a mandatory duty imposed on the trial judge by the Civil Procedure law and that a failure to give the required notice not only violated the statute but also deprived the petitioners of the opportunity to defend their property rights guaranteed by the Liberian Constitution and statute. A mere notice of assignment, the Court observed, was insufficient to constitute the notice to the petitioners to appoint new counsel. Any procedure short of the fulfilment of the requirement of the statute amounted to a violation for which prohibition would lie, the Court said. Adherence to this requirement (i.e. according the parties the right to appear and defend) was particularly applicable to matters involving the right to life and property, the Court opined. Indeed, the Court noted that where property is involved, the failure or refusal by a defendant to appear does not immediately entitled the plaintiff to a judgment by default, and that even a judgment in favor of such plaintiff is not conclusive evidence of title to the property in dispute.

The Court further noted, with regard to the contention that the petitioners were served with a notice of assignment for the hearing of the case, that it had reservations as the truthfulness of the allegation, observing that while the petitioners lived in Brewerville, the sheriff's returns showed that service of the assignment was made in Monrovia. Moreover, the Court said, the returns further showed that service was made on Sarah C. Kennedy who was eighty-five years old, rather than on the other co-petitioner who was much younger and who lived in the same house as co-petitioner Sarah C. Kennedy.

Regarding the failure of the petitioners to perfect their appeal, the Court opined that

while prohibition was not damandable as a matter of right when another complete and adequate remedy is available, and that while it cannot be used as a substitute for an appeal, it was discretionary with the Court, under the circum-stances, whether to grant or refuse issuance of the writ. It is no abuse of the use of that discretion to grant the writ to prevent a trial court from enforcing its judgment or to undo such judgment, even where an appeal has been taken from such judgment, if the trial court had proceeded or is attempting to proceed by rules which ought to be observed at all times, the Court stated. The trial court, it said, was guilty of acting contrary to the statute which mandated it to give notice to the petitioners to appoint new counsel to represent their interest.

On the basis of the foregoing, the Court *affirmed* the ruling of the Chambers Justice, *ordered* the issuance of the peremptory writ of prohibition, *vacated* the judgment of the trial court, and instructed the Clerk to send a mandate to the trial court to resume jurisdiction of the case and dispose of same, beginning with the law issues.

Joseph Findley appeared for petitioners/appellees. *Stephen Dunbar* appeared for respondents/appellants.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This prohibition proceeding is derived from an action of ejectment filed on September 25, 1963 in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, by respondent herein, Ishmael B. Goodridge, against petitioners. Pleadings in the action of ejectment progressed to sur-rejoinder and rested. In 1980, while the matter was pending before the trial court, and prior to the disposition of the law issues, both counsels for petitioners herein, in person of Counsellors J. Henrique Willis and Wheaton S. Thompson, died. Thereafter, Judge J. Henrique Pearson disposed of the law issues on February 1, 1983, subsequently ruled the case to trial, stating that "... since indeed ejectment is an action of mixed law and facts and both parties are claiming title to the parcel of land, this case is therefore ruled to jury trial under the direction of the court. And it is go ordered."

We gather from the records that since the demise of the counsels for petitioners in 1980, no other counsel was appointed to carry their legal interest. We noticed also that several assignments were made and served on the petitioners for the disposition of both the law issues and the trial, and that without any representation by the petitioners, final judgment was rendered by Judge Eugene L. Hilton on February 4, 1985. One Counsellor Margaret

Warner, being present in court, was deputized to take the judgment for the defendants, petitioners in this case. The said counsel excepted to the judgment and announced an appeal. It should be noted here that we possess no evidence showing that copy of said judgment was ever served on the petitioners.

It is against the said judgment that petitioners applied to the Justice in Chambers for a writ of prohibition to nullify the judgment below and to remand the case to the lower court for a trial *de novo* in order to afford all of the parties the opportunity to appear and defend their cause. The Chambers Justice held for petitioners, ordered the writ issued, set aside the judgment of the lower court, and instructed the Clerk of this Court to send a mandate to the court below ordering the judge presiding therein to resume jurisdiction and to dispose of the case, commencing with the law issues. The Justice in Chambers found the proceed-ings in the lower court to have been very irregular, contrary to known and accepted practice, and in violation of proper ethical procedure. He held therefore that these irregularities warranted issuance of the writ of prohibition in accordance with the ruling in *Montgomery v. Findley and Haddard,* 14 LLR 463 (1961).

The foregoing judgment of the Justice in Chambers is the subject of the present appeal by the respondents/appellants.

Respondents contend basically that they are at a loss to under-stand how the writ of prohibition could have been issued in this case when the property in question had already been possessed by co-respondent Goodridge under the judgment of the lower court. They argued that petitioners were duly summoned and notified at all stages of the trial, but that they had consistently ignored the citations of the lower court. Further, they said, al-though the petitioners were not present at the final determination below, the court appointed counsel who received judgment on petitioners' behalf and announced an appeal for them. That appeal, the respondents argued, cannot be substituted by prohibition.

Petitioners, on the other hand, contended that the judgment rendered against them by His Honour Eugene L. Hilton was "a snap-shot judgment"; and that upon the death of their counsels in 1980, the court had failed to notify them regarding the appointment of new counsel as is required by section 1.8 (3) of the Civil Procedure Law which reads thus:

> "Death, removal, or inability of attorney. If an attorney dies, becomes physically or mentally incapacitated, or is disbarred, suspended, or otherwise becomes disabled at any time before final judgment, no further proceeding shall be taken without leave of court in the action against the party whom he represented until thirty days after notice to appoint another attorney has been given to that party either personally or in such

manner as the court directs."

The petitioners also contended that the returns to the various assignments indicating that they were served were false and misleading since both Catherine Johnson-Whisnant (alias Thomas) and her mother Sarah C. Kennedy had both taken up residence in Brewerville in 1982. They produced an affidavit and a lease agreement to support the contention. The records, they said, show that Sarah C. Kennedy, who allegedly received said notices of assignment, was eighty-five years old and could not have been trusted with such things. They further contended that as Sarah C. Kennedy and the daughter lived under the same roof, the notices should have been better served on the latter, who was also a party to the suit. To further support their claims, they pointed out that on January 11, 1983, a notice was allegedly served on petitioners for the disposition of the law issues, while another was served for jury trial on January 21, 1985. They asserted that the co-respondent judge conducted a jury trial the next day at 2 p.m., and thereafter rendered final judgment against petitioners without according them ample opportunity to be heard. Petitioners therefore prayed that we uphold the Chambers Justice ruling nullifying the judgment of the court below and ordering a new trial in which all the parties are placed on an equal footing.

From the foregoing analysis, the main issues presented by this appeal are as follows:

1. Whether or not petitioners were duly notified to appoint another counsel and were duly cited to appear to defend their cause.
2. Whether or not prohibition will lie to return the party litigants to the *status quo* for a new trial in an action of ejectment where an appeal was announced from a judgment for the plaintiff.

Starting with the first issue on appeal, it is the opinion of this Court, judging from the records in the case, that notice to appoint another attorney, as envisaged by the provisions of Civil Procedure Law, Rev. Code 1:1.8 (3), was not given to petitioners below, and that they had not been duly notified to appear and to defend their cause.

This Court has held in several of its opinions that it has no authority to extrapolate the intent of the Legislature beyond the specific wording of the statute; that the limitation is even more mandatory where the statute in question specifies the only manner in which an act may be done. *George v. Republic of Liberia,* 1 LLR 239 (1892). This Court has also held that a judicial construction of our statutes is constitutionally restricted to a determination of the legislative intent, as stated in the statutes themselves. *Koffah v. Republic of Liberia*, 13 LLR 232 (1958); *Massaquoi v. Reginald Sherman*, 6 LLR 320 (1938); *Brownell v. Brownell,* 5 LLR 76 (1936). Again in the case of *Buchanan v. Arrivets,* 9 LLR 15 (1945), this Court held that as a

general rule where the Legislature has made no exception to the positive terms of a statute, the presumption is that it intended to make none, and the court will not introduce an exception by construction except where the necessity is imperious and where absurd or manifestly unjust consequences would otherwise result.

From the foregoing, we hold that it was the intention of the Legislature that in the event that during the pendency of a trial, an attorney dies, becomes physically or mentally incapacitated, or is disbarred, suspended, or otherwise disabled, at any time before final judgment, no further proceeding shall be taken without leave of court in the action against the party whom he represented until notice to appoint another counsel has been given that party either personally or in such manner as the court directs. Even then, no further action in taken until thirty days have expired after the service of said notice. Civil Procedure Law, Rev. Code 1: 1.8 (3). There is nothing in the records to tell us that such a step of notification was adopted by the court at any stage of the trial after the death of petitioners' counsel in 1980. Rather, we see notices of assignment purportedly received by Sarah C. Kennedy whom, counsels on both sides agreed, is eighty-five years old. Additionally, while the petitioners showed evidence of their continued residence in the city of Brewerville since 1982, assignments issued after they moved to Brewerville were apparently served on them in Monrovia, as evidenced by the returns. Albeit, the law quoted above requires that upon the death of a litigant's attorney, he should be notified to have him re-placed. Certainly, a mere notice of assignment of the case for trial is not sufficient, but the notice of assignment should properly only come thirty days after said party litigant has been duly notified by the court to appoint another attorney to represent his interest at the trial. Any procedure short of the above in such case amounts to a violation of the statute.

Questions of property, especially real property, and human life are to be handled with every available care by our courts. If you deprive a man of his life, you deprive him of further existence on earth; if you deprive him of his real property unjustifiably, you deprive him of a basic means of existence that is seriously difficult for one to obtain in our time, and which stands to be more difficult to obtain in the years ahead. Our warning requires that our judges afford all parties who stand to lose life and/or property every chance and patience to appear and to defend their cause according to the means accorded them by law, and under no circumstances should it be maintained otherwise.

As far back as 1949, about thirty-six years ago, this Court held in the case of *Karnga v. Williams et. al.*, 10 LLR 114 (1949), that since the Constitution of the Republic guarantees to each citizen the right to the acquisition, protection, and defense of property, the legal

procedure to contest this right should be meticulously and jealously prescribed and guarded, and for that reason where a defendant in an action of ejectment is returned summoned but fails or refuses to appear, the plaintiff is not thereby, as in other cases, immediately entitled to a judgment by default. The Court further held that the statutes also provide that there shall be placed upon the property, the subject of the action, copies of the summons and resummons as further assurance that the defendants will have due notice of the pending action. That a verdict or judgment in a party's favor is not conclusive evidence of title even as against the party whose interest is adversely affected by said verdict and judgment.

The constitution referred to in *Karnga v. Williams et. al.* is now moribund, but the statutes remain, and none can be said to have overruled that opinion rendered since 1949. This stresses the importance of property to our individual liberty, and in fact to our very existence; it goes to show that questions involving ownership to property, like questions of life, must be treated with due care which ensures that unequivocal opportunity is afforded party litigants to appear and to freely defend before justifiable decisions can be taken against either or both parties.

Be that as it may, this piece of knot could not have been fully untied without a justification for the issuance of the writ of prohibition in the present circumstances, even in spite of the ap-peal announced by the court appointed counsel who received the judgment of the lower court. Our learned colleague had issued the writ on conviction derived from a perusal of the records and the hearing of arguments on both sides in these prohibition proceedings. He was convinced that the trial in the ejectment proceedings was manifestly contrary to known procedure in this jurisdiction. We agree with those convictions and also hold that prohibition lies in these proceedings since the proceedings below fell far short of what was required for a fair trial in the circumstances of this case.

Although generally prohibition is not demandable as a matter of right when another complete and adequate remedy is avail-able, under certain circumstances the grant or refusal rests within the sound discretion of the court to which the application is made. *Kilpatrick v. Oost Afrikaansche Compagnie*, 10 LLR 84 (1949). We hold also that the discretion to issue the writ was in no way abused by the Chambers Justice, but that his act was justified by the circumstances hitherto demonstrated in this opinion. While the writ cannot be used to substitute for an appeal, it will issue to prevent a trial tribunal from enforcing its judgment, or to undo that judgment where there has been notice of appeal therefrom, merely in order to restrain it from usurpation. *Fazzah v. Phillips,* 8 LLR 85 (1943). In fact, it has been held by this Court that prohibition will lie to prevent the execution of a judgment in ejectment by

a writ of possession directed to property held by a person who was not a party to the ejectment action where, although the parties to the action have taken appeals from the judgment, no proceeding has been instituted to correct the errors of the trial court. *Davies-Johnson v. Alpha*, 13 LLR 573 (1960).

As early as 1925, this Court held in the case of *Parker v. Worrell,* 2 LLR 525 (1925), that a writ of prohibition is the proper remedial process to restrain an inferior court from taking action in a case beyond its jurisdiction, or having jurisdiction, the court has attempted to proceed by rule different from those which ought to be observed at all times. The lower court was guilty of the latter when it refused to proceed according to the statute, following the demise of counsels for petitioners and for refusing to treat the question of property rights with justifiable fairness as it was required to do by law.

The foregoing reasons are the rationale for affirming the ruling of our colleague in *toto*. Consequently, the peremptory writ is ordered issued with costs against respondents. The judgment below is hereby vacated with immediate effect, and the Clerk of this Court in instructed to dispatch a mandate to the court below, ordering the judge to resume jurisdiction and to dispose of the case beginning with the disposition of the law issues. It is hereby so ordered.

Petition granted.

MR. JUSTICE NYEPLU *dissents.*

These proceedings in prohibition grow out of an action of ejectment filed in the Civil Law Court, Sixth Judicial Circuit, Montserrado County, by Ishmael B. Goodridge, co-respondent herein, in the year of our Lord, A. D. 1963, quite twenty-two years ago, against the petitioners. The complaint alleged that the petitioners had illegally withheld from the co-respondent prior to the suit, and had uncompromisingly continued to withhold from him lot No. l of Block G3, of original lot No.112A, which the co-respondent had purchased from one C. C. Burke, and for which a warranty deed had been duly executed to him on the 4th of July, A. D. 1950.

The case in which the respondent was seeking to recover his property illegally withheld was filed with a view to obtaining transparent justice, as with all cases brought to court. But that transparent justice could not be obtained from 1963 up to and including the delivery of this dissenting opinion. It is quite amazing, and indeed beyond perplexity, for one to understand why the hearing and determination of this case, from l963-1985, became so

permute when the parties to the suit are all alive and physically fit. Whatever may be the reason for such a denial which culminated into the co-respondent's recovery of his property being perverted, we cannot imagine why such a situa-tion should be allowed to find a place in our judicial system. However, as mentioned earlier, we will only proceed to dwell on the prohibition.

The case was heard in the court below by Judge Eugene L. Hilton, who rendered judgment placing the co-respondent in pos-session of his property, the subject of the suit. From respondent/ appellant's brief filed and argued, we gathered that several notices of assignment were issued and served on Sarah C. Kennedy, whom it is said is the principal defendant in this case. Notwithstanding these assignments were ordered issued from a court of competent jurisdiction, defendant Kennedy, in avoidance of the hearing of the case, refused to receive and sign the notices of assignment, or even inform the bailiff of the death of their counsels. What a wanton disregard for the authority and dignity of the court by someone of Sarah Kennedy's background, having been born in and having lived within the perimeters and under the breath of the law in our urban City of Monrovia, to receive a notice of assignment and thereafter to deliberately refuse to sign same as one of the parties.

One can only legally deduce that defendant Kennedy's refusal to sign the several assignments have clearly demonstrated petitioners unwarranted disregard for the rule of law, and for which this case was permitted to linger on the docket of the Civil Law Court for twenty-two years. The judge having issued several notices of assignment requiring the defendant to appear, and one of the defendants/petitioners having refused to receive and sign the assignments, the plaintiff/respondent properly moved the court to proceed with the trial. The motion was granted and the case proceeded with which resulted into a final judgment, and from whence an appeal was announced by Counsellor Margaret Massaquoi who was deputized by the trial judge. Before we begin to address ourselves to the legal issues advanced and argued before this Court by both counsels, let us address the question of notice.

Notice is knowledge of facts which would naturally lead an honest and prudent person to make inquiry and does not neces-sarily mean knowledge of all the facts. *Wayne Bldg. & Loan Co. of Wooster v. Yar borough*, 11 Ohio St.2d 195, 228 N.E. 2d. 84, 841, 847, 40 0.02d 182. "Notice" means information, an advice, or written warning, in more or less formal shape, intended to appraise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate. A person has notice of a fact if he knows the fact, knew it, or has been

given notification of it. RESTATEMENT 2d, *Agency,* § 9; BLACK'S LAW DICTIONARY 957 (5th ed.)

Ballentine's Law Dictionary has this to say on the subject:

> "A written notice may be a sufficient 'notice in writing', although it is not signed, provided it purports to come from the person whose duty it is to give the notice. *Cohn v. Smith*, 37 Cal App 764, 174, p. 682.

Defendants having appeared and filed an answer since 1963, and being aware of the pendency of the suit for which they were served with several notices of assignment for the hearing thereof since 1963, it cannot otherwise be interpreted but to say that defendants had sufficient notice to appear and defend their interests. Instead, they chose to disguise themselves under the cloak of Civil Procedure Law, Rev. Code 1.8 (3)3, when in fact, following the death of their counsels, they should have been the ones to notify the court of their counsels' death.

The appellants excepted to and announced an appeal from the ruling of our colleague in Chambers who granted the writ. and therefore filed a brief which contained eight counts. Counts 3, 4, 5 & 7 we hereunder quote:

Count three of respondent's brief states:

> "That respondent/appellant say that prohibition does not lie for it will be issued upon the showing of unlawful exercise of judicial function, or where the trial court exceeded its jurisdiction or proceeded in a novel or unheard of manner; it will not be granted merely to correct a party's neglect to an act in his own interest, and where this cannot be shown the application will be denied".

Count four of respondent/appellant's brief avers:

> "That respondent/appellant contends that the alleged errors of an inferior court in the exercise of its admitted jurisdic-tion are properly reviewable on appeal and do not justify a resort to a writ of prohibition. Respondent/appellant contends that there has been no abuse of power and that there exists other adequate remedies. Whatever power is conferred on the court may be exercised injudiciously or irregularly, but it amounts only to an error or excess of jurisdiction. Respondent/appellant maintain strongly that the trial court having jurisdiction, has not proceeded by any rule different from those which are to be observed at all times".

Count five of respondent/appellant's brief avers:

> "That respondent/appellant says prohibition is a process which does not concern itself with irregularities and errors allegedly committed in the trial of causes. This is the

function of appeal, writ of error and certiorari. Prohibition extends only to restraining the trial court from usurpation and cannot be used to substitute for an appeal".

Court seven of respondent/appellant's brief avers:

"Respondent/appellant says that the ruling of the Justice in Chambers is not supported by the facts outlined in the returns made to the petition for a writ of prohibition. The several returns prove above that the several assignments were made and served on petitioners/appellees, but they elected to abandon their cause, which could not be attributed to any violation of the law or irregularity on part of the trial judge. The only fair and correct interpretation to be given under the circumstances is that the appellees are guilty of waiver and laches due to their dilatory and diversionary action".

Appellant contended that appellees had sufficient notice to appear and defend their interests in the court below, but instead, they elected to take perfunctory refuge in what appears to be the construction of Civil Procedure Law, Rev. Code 1.8(3), 26 - 27. Granted as one may wish, that section 1.8(3) of the statute, relied on by appellees, made it mandatory for the court to give defendant thirty days notice to retain a counsel in consideration of the reasons stated therein, I am of the opinion that it is prudentially incumbent upon the defendant to promptly notify the court following the death of his or her counsel. However, in the instant case, petitioners/appellees human frailty is so glaring that one needs no further explanation except to interpret their behavior as vowing to deprive the co-respondent of and continuing to withhold from him the property which is the subject of these proceedings. Further, it seems inconceivable that the intent of the statute relied upon has been misconstrued to the point that the defendant who has a case pending in court, much more a real estate, expects the court to miraculously assume that defendant's counsel is dead. How be it, the petitioners, having been served with several assignments, which they flagrantly disobeyed, and following which a trial was conducted, judgment entered against them and an appeal announced by Counsellor Massaquoi who was deputized by the court, and who gave a copy of court's final judgment to defendants, there was nothing left to be done except for the defendants to pursue the only remedy available to them, which was the perfection of their appeal.

Before proceeding further, let us address ourselves to the question of prohibition and say whether it lies in this case. We note that "it is well established that a writ of prohibition may not ordinarily be used as a process for the review and correction of errors committed by inferior tribunals". Mere errors, irregulari-ties or mistakes in the proceedings of a court having jurisdiction does not justify a resort to the extraordinary remedy by prohibi-tion, both

because there has been no usurpation or abuse of power, and because there exist other adequate remedies.

Whatever power is conferred may be exercised, and if it be injudiciously or irregularly exercised, it amounts to an error merely and not a usurpation or excess of jurisdiction. If a court is entitled to exercise a discretion in the matter before it, a writ of prohibition cannot control such exercise or prevent its being made in any manner within the jurisdiction of the court. And it does not affect the jurisdiction that the errors or irregularities are palpable or gross. They are nevertheless merely errors and not usurpation of power. It may sometimes seem like usurpation when a court permits or authorizes some acts in the course of a proceeding which are clearly and manifestly erroneous, but all such acts amount only to an erroneous exercise of jurisdiction, and not to an excess of it, as the term "excess" is understood and applied by lawyers. Even the erroneous decision of a jurisdictional question is not ground for issuing a writ of prohibition, if the court has jurisdiction of the general class of cases to which the particular case belongs, since there is an adequate remedy by appeal. Of course, when the erroneous decision is one which operates as an unlawful assumption of jurisdiction, prohibition may be granted. Thus, where the jurisdiction of the trial court depends on the sufficiency of the complaint to charge a crime known to the law, the writ may be used to prevent the assumption of jurisdiction if the complaint is insufficient. 22 R. C. L., *Prohibition,* § 822, at 23 -24 (1918).

In Cyclopedia of Law and Procedure, the following is stated:

> "If the inferior court or tribunal has jurisdiction of both the subject matter and of the person, prohibition will not lie to correct errors of law or fact, for which there is an adequate remedy by appeal or otherwise, whether such errors are merely apprehended or have been actually committed." 2 CYC, *Prohibition*, 617 (1909);

Further:

> "Prohibition has been likened to the equitable remedy by injunction against proceedings at law. The object in each case is restraining of legal proceedings, and as the right to the remedy by injunction implies a wrong threatened by the parties litigant against whom the relief is sought, so the right to the writ of prohibition implies that a wrong is about to be committed, not by the parties litigant, but by the person of court assuming the exercise of judicial power and against whom the writ is used. There is this vital difference, however, between them; an injunction against proceedings at law is directed only to the parties litigant, without in any manner interfering with the court, while prohibition is directed to the court itself, commanding it to cease from the exercise of a

> jurisdiction to which it has no legal claim. It is not an inferior affirmative remedy like mandamus, but purely negative, for it does not command that anything be done, but that something should be left undone. Moreover, prohibition is essentially jurisdictional and therefore judi-cial, while mandamus is purely ministerial. These two writs are the counterpart of each other, to the extent that one is prohibitory and the other mandatory; one acts on the person, the other acts on the tribunal; but beyond that, they have nothing in common. The writ of prohibition agrees with both injunction and mandamus in this: that, where there is an adequate remedy at law, it is not available". 22 R. C. L., *Prohibition,* § 82, at 3-4 (1918).

We have maintained and still maintain that the principal defendant, having been served with several notices of assign-ment, which they definitely ignored, having failed to appear as directed by the assignment, having failed to appear in court to give notice in regard to the death of their counsel, and having failed to perfect the appeal prayed for, their acts can only be construed to support a conclusion that the court below did not exercise any excessive power to warrant the granting of the writ, especially when there were adequate remedies available to the defendants.

In this regard, we find support in Ruling Case Law, wherein it is stated:

> "It should not be governed by narrow technical rules, but should be resorted to as a convenient mode of exercising a wholesome control over inferior tribunals. The scope of remedy ought to prevent the exercise of an unauthorized power than to be driven to the necessity of correcting the error after it is committed". *Id.*, § 4, at 5.

The defendants/appellees in these proceedings had a case pending against them for twenty-two years to appear and defend their property. But rather than appearing and defending the case, they chose to the contrary to grossly defiled the court by not accepting the assignments. What more, if any, could the court have done to protect the poor aggrieved plaintiff. The court proceeded with the case, especially as it was not a funeral home to know how many lawyers had died since 1980. Courts of law are instituted among men to curb the perpetration of unnecessary evils that continuously plague society and increasingly confront mankind everywhere in the world. In this regard, both those who institute suits against others and those who are sued, must regard those charged with the administration of justice as men of high rectitude without a stain of any evil. Thus, judges, being the pillars that constitute the courts, must inculcate in themselves that their actions must always be transparent, and they must refrain from embracing evils, if evil should in any case creep in our courts.

We would like to postulate here that while we are conscious of the tenderness of the feelings of a number of friends, relatives, and acquaintances, bent on groaning under grievous affliction of having carelessly lost a real estate by means of judicial determination; and while, still further, laymen are affected by the acts of the courts, they having to do with dispossessing one family and lodging possession in another, yet we are and must concede first and foremost the obligation to lay correct legal principles and standards as we conceive the law from a judicial point of view.

Going to the second chapter in this unbearable and regrettable tragedy which may continue to confront appellant Goodridge for another thirty years to come, we observe that petitioners/ appellees filed a three-count brief which is basically contingent upon Civil Procedure Law, Rev. Code I: l.8(3). However, as we have already addressed the issue raised therein, we shall proceed to discuss the prohibition and why the ruling of the Chambers Justice is so obfuscating that same should be reversed. On the construction of a statute, legal commentaries have said the following: "Statutes are to be construed not according to their mere letter, but according to the intent and object with which they were made. It occasionally happens therefore that the judges who expound them are obliged, in favor of the intention, to depart in some measure from the words. And this may be either by holding that a case apparently within the words, is not within the meaning; or that a case apparently not within the words, is within the meaning. . . ." 1 Stephen, *Commentaries*, 71.

Further, it is said that "ordinarily, legislation speaks only in general terms, and for that reason, it often becomes the duty of the court to construe and interpret a statute if a particular act done or omitted falls within the intended inhibition or commandment of the statute. . . . There is always a tendency, it has been said, to construe statutes in the light in which they appear when the construction is given. . . . The true rule is that statutes are to be construed as they were intended to be understood when they were passed. Statutes are to be read in the light of attendant conditions and the state of the law existing at the time of their enactment". 25 R. C. L., *Statutes*, §§ 211 and 215.

Among the general principles laid down for construing statutes and the necessity at times for departing from the literal meaning of the words thereof, we find this: "It often happens that the true intention of the law making body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. Hence, the courts are not always confined to the literal meaning of a statute; the real purpose and intent of the legislature will prevail over the literal import of the words. When the intention of the statute is plainly discernible from its provisions, that intention is as obligatory as the letter of the statute and will even prevail over the strict letter. The reason of the law, as indicated by its general terms, should prevail over its letter when the plain purpose of the act will be defeated by strict adherence to its verbiage. It is frequently the case that in order to harmonize conflicting provisions and to effectuate the intention and purpose of the lawmaking power, courts must either restrict or enlarge the ordinary meaning of words. The legislative intention, as collected from an examination of the whole as well as the separate parts of a statute, will prevail over the literal import of particular terms, and will control the strict letter of the statute, where an adherence to such strict letter would lead to injustice, to absurdity, or contradictory provisions . . . . It is an old and well established rule of the common law, applicable to all written instruments that *'verba intentioni, non e contra, debent inservire*; that is to say, words ought to be more subservient to the intent, and not the intent to the words. Every statute, it has been said, should be expounded, not according to the letter, but according to the meaning; for he who considers merely the letter of an instrument goes but skin deep into it's meaning. Whenever the legislative intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction may seem contrary to the letter of the statute. It is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. The principle that if a thing, although within the letter of the law, is not within the intention of the Legislature, it cannot be within the statute, has been applied in cases where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against, or cases which could not have been legislated upon because of constitutional limitations on the legislative power. . . ." 25 R. C. L., *Statutes*, § 222.

My distinguished colleagues hold that according to Civil Procedure Law, Rev. Code I :1.8(3), following the death of defendant's counsel, the court must give the defendant thirty days notice to find and retain another counsel to carry their legal interest in the case. While it

is true that the statute so relied upon as grounds for the remand of this case imposes that obligation on the court, the intent of the law makers is readily discovered as it also imposes greater obligation on the defendant to promptly notify the court, as a matter of must, if not expediency. This obligation, the defendants abused and remained silent. This silence of the defendants, the law regards as acquiescence. This Court held in the case *Clark and Clark v. Lewis*:

> "Ejectment supports the idea of adverse possession in the defendant.
>
> When a man stands by and allows another to act with-out objecting when, from the usage of trade or otherwise, there is a duty to speak, his silence would preclude him as much as if he proposed the act himself.
>
> Acquiescence or standing by where there is a duty on the part of the person acquiescing to speak or assert a right amounts to a representation by him.
>
> Negligence may, under certain circumstances, amount to a representation". 3 LLR 95, (1929).

After maturely considering this case and the statute relied upon by the majority, we regret we cannot agree with the majority of the Bench and close our eyes, and with a single blow, overturn those well settled principles of law which have been handed down by our learned brethren on this Bench from almost the very commencement of the Republic. These principles have since become hoary with age. Also, why should we make this case an exception of the rule. There is no alternative but to adhere to those sacred principles. To abandon them and pursue a different course would not only cause the practice to be uncertain, but would also subject this high Court of resort to a just criticism of instability and fickleness in its opinions and judgments.

We feel bound to support the opinions of this Court which are also in accordance with the common law. It is therefore my opinion that while it is the duty of the court to give a defendant thirty days to retain another counsel upon the death of his or her counsel, to continue to prosecute the case, the intent of the statute is mandatorily clear that the defendant must take the initiative to inform the court of the death of his or her counsel, and not to unruly refuse notices of assignments.

It follows therefore that petitioners/appellees, having received sufficient notices, through Sarah C. Kennedy, to appear, and which they neglectfully failed to do, their neglect amounted to representation at the trial for which they cannot now secure to themselves the benefits which they should have obtained had they diligently appeared in the court below.

For the reasons assigned, and the laws supporting same, I do not agree with my colleagues in confirming and affirming the ruling of the Chambers Justice. Hence my dissenting opinion.