WILLIAM P. MERRIAM, President, INTERNATIONAL TRUST COMPANY OF LIBERIA, Petitioner, *v.* HIS **HONOUR J. HENRIC PEARSON**, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, and ENID BUCHANAN-HORTON, Respondents.

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

Heard: December 17 & 18, 1984. Decided: January 11, 1985.

1. The Supreme Court may review any proceeding of the trial court, either by regular appeal or by remedial process.
2. Where a party against whom a ruling is entered fails to except thereto and to appeal therefrom, he is considered to have consented to abide by the ruling or judgment.
3. Every person against whom a final judgment is rendered has the right to appeal from said judgment, except in the case of a judgment of the Supreme Court.
4. The decision of the Supreme Court is absolute and final.
5. Prohibition may be granted on only two principle grounds: (a) That the action is beyond the jurisdiction of the court, and (b) that the court, having jurisdiction, is attempting to proceed by rules different from those which ought to be observed at all times.
6. Prohibition will lie only where the writ seeks to prevent courts or tribunals from assuming jurisdiction not legally vested in them.
7. Litigants are required to protect their own interest and not rely on the courts to do for them the things which they should do for themselves.
8. A petition for prohibition will not be granted where the respondents did not proceed by wrong rules.
9. The provisions of a law repealing a prior law which are substantial re-enactment of provisions of such prior law shall be construed as a continuation of such provisions of the prior law, modified or amended, according to the language employed, and not as new enactments.
10. The right of a corporation to sue, given by statute, may be altered by subsequent statutes, even though dissolution of a corporation occurs before their passage.
11. After a corporation has been actually dissolved and the rights of creditors and

shareholders have become extinct, a statute then enacted which authorizes con-tinuance of the existence of the dissolved corporation for certain purposes, will
not revive the corporation or authorize it to collect claims due to it. However, where the statute provides for actions by directors in the name of the corporation after dissolution and the statute is amended to provide for continuance of the corporate existence for the purpose of law suits, such amendment is deemed to effect a change of procedure and is retroactive.

12. The purpose for the establishment of a corporate business agent is for service of process on such agent, in suits instituted against the principal, in the same manner as if the agent was the principal or defendant.
13. Service of process on a dissolved corporation is effective where made upon corporate officers, directors or agents who have been qualified to accept service of process on behalf of the corporation while it was a going concern, especially where there is statutory provision for the continuation of activities by the corporation in so far as is necessary to wind up its affairs.
14. Statutes prolonging the existence of a dissolved corporation for the purpose of winding up its affairs and permitting suits by and against it, apply to corporations created after the passage of such statutes as well as those then existing.
15. The agency relationship between an agent and a corporation/principal does not end by the dissolution of the corporation when an action against the corporation is still pending in court undetermined, even though the law provides three years within which to conclude such suit.
16. Where the normal trial procedure is strictly followed and proof of dissolution of a corporation is established by a preponderance of the evidence, but the trial court still rules against the defendant, exceptions should be noted and the points saved for review on appeal.
17. Where the trial court has deprived a corporate party of the right to establish the fact of its dissolution, the remedy available to the aggrieved corporate party is remedial process.
18. The question of whether a corporation is dissolved or that a judgment against such corporation is null and void cannot be decided by prohibition, but rather by appeal.
19. A bill of costs should be served on the attorneys for the parties for taxing and not on the parties themselves or their business agents, except where such parties represented themselves in court and not by counsel. And prohibition will lie to restrain the trial court

in any attempt to proceed to the contrary or in an irregular manner.

Co-respondent Enid Buchanan-Horton instituted an action of damages against the Raymond Concrete Pile Company, growing out of an accident in which co-respondent Buchanan-Horton was severely injured. In the complaint, co-respondent Buchanan-Horton alleged that the accident was caused by the negligence of the defendant in not posting proper signs and lights along the road it was constructing to alert motorists of the dangers of the road. The suit was recommenced after several dismissals and withdrawals. Following the last filing of the suit, and while the same was still pending, the defendant company was dissolved. Accordingly, service of the notice of assignment was made upon the Minister of Foreign Affairs as prescribed by the Liberian Business Corporation Act. The Minister had the precept for-warded to Raymond International Builders, Inc., the parent company of the dissolved defendant company.

On receipt of the notice of assignment, Raymond Interna-tional Builders, Inc. appointed an attorney-in-fact in Liberia, who, acting on behalf of Raymond International Builders, Inc., filed a bill of information and a motion to dismiss the action, contending therein that Raymond International Builders, Inc. was not a party to the action of damages, that the defendant company in the action of damages had been dissolved and its activities wound up within the three year period prescribed by law, and that the action should be dismissed since any judgment would be null and void and unenforceable against the dead defendant company.

The trial judge denied the information and the motion to dismiss, holding that by filing the information and the motion to dismiss Raymond International Builders, Inc. had entangled itself in the case and could therefore not extricate itself there-from. The court ordered that Raymond International Builders, Inc. should appear and defend the case. The court then proceeded to assign the case for hearing the following day, noting that as the parties were present in court no further assignment would be issued. When Raymond International Builders, Inc. failed to appear for hearing of the case at the assigned date and time, and upon application of counsel for co-respondent Buchanan-Horton, the court entered default judgment against the defendant. Evidence was thereupon presented, a verdict returned in favor of the plaintiff in the amount of $2.1 million, and final judgment entered thereon confirming the verdict.

A bill of costs was thereafter issued and served upon the Vice President of the petitioner herein, the International Trust Com-pany of Liberia, agent for the dissolved defendant

company, Raymond Concrete Pile Company, prior to its dissolution, for taxing. When the petitioner refused to tax the bill of costs, it was threatened with contempt of court. It was from this action that the petitioner filed a petition seeking a writ of prohibition by the Supreme Court against the respondents.

In the petition, the petitioner asserted that by mutual agreement, the agency relationship between it and the dissolved defendant company had been terminated prior to the latter's dissolution, and that in any event, if the agency relationship had not been previously terminated, it was terminated by the dissolution of the defendant company.

The Chambers Justice rejected petitioner's contentions, dis-missed the petition and denied issuance of the writ of prohi-bition. On appeal to the full Bench, the ruling of the Chambers Justice was reversed. However, the Supreme Court, while grant-ing the petition, did not sustain the contentions of the petitioner relative to the termination of the agency relationship. Instead, the Court granted the petition on a different ground. The Court held that the dissolution of a corporation does not automatically terminate the relationship between a dissolved corporation and its resident business agent, and that any agreement for such termination concluded between the resident business agent and a corporation for the termination of the agency relationship was not valid and effective if such agreement failed to meet the statutory requirements. The Court noted that in the instant case, there was no evidence of the filing with the Minister of Foreign Affairs of a certificate relative to the termination of the agency relationship as required by the Business Corporation Act. In the absence of such certificate, the Court said, the petitioner conti-nued to be the resident business agent of the dissolved corporation, upon whom precepts could be served.

The Court further noted that the fact that a corporation is dissolved does not of itself terminate its agency relationship with its resident business agent. The Court observed that the Business Corporation Act, which it characterized as a continuation of the 1956 Corporation Law, provided for the continuation of the existence of a corporation for a period of three years after its dissolution. It added that in the case where a suit is pending against the corporation, for any period beyond three years, the existence of the corporation continue until the suit is resolved or otherwise decided. As long as such suit remained pending and undetermined, the Court said, the agency relationship between the corporation and its resident business agent continued. The contentions of the petitioner, it said, was therefore without legal merits.

Notwithstanding the rejection of the petitioner's contentions, however, the Court opined that a bill of costs could not, by law, be served on a party himself, and that by the same

parity, such bill of costs could not be served on the resident business agent of the party. Rather, the Court said, the bill of costs should be served on the lawyer for the party, since it is the lawyer that has knowledge of the various costs and expenses involved in the suit. It was error, the Court said, for the trail court to serve or attempt to serve the bill of costs on petitioner, The International Trust Company of Liberia. The Court therefore *granted* the petition, holding that the trial court be *prohibited* from serving the bill of costs on the petitioner.

Henry Reed Cooper of the Cooper & Togbah Law Office, in association with *Winfred Smallwood* and *Winston Tubman,* appeared for the petitioner/appellant. *Philip J. L. Brumskine,* in association with *Joseph Findley* and *Daniel Draper,* appeared for the respondents/appellees.

MR. JUSTICE SMITH delivered the opinion of the Court.

This prohibition proceeding grew out of an action of damages for personal injury instituted in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, in 1972, by Enid Buchanan-Horton, by and through her husband, Steven Horton against Raymond Concrete Pile Company, Ltd., represented by its Manager, Pat O'Brien. The records available to us show that at the institution of the action, the defendant company was operating in Liberia and had its business office in Monrovia, Montserrado County. Counsellor J. Dossen Richards and the Henries Law Firm were the original counsel of record for the plaintiff and the defendant, respectively.

The records further reveal that the damages suit was first filed on February 18, 1975, in the March Term of the Civil Law Court; that the action was dismissed upon motion of the defend-ant for failure by the plaintiff to join her husband as a party plaintiff; that an appeal was announced and perfected for this Court to review the ruling of the trial court; that the defendant/ appellee's counsel, who had not at the time obtained a lawyer's license, filed a motion to this Court to dismiss plaintiff/appel-lant's appeal; and that during the October 1970 Term of Court, said motion was denied with costs against the defendant/ appellee. *See Buchanan v. Raymond Concrete Pile Company, Ltd.,* 20 LLR 330 (1971).

After the motion to dismiss the appeal was denied, and with the appeal still pending for review by this Court on its merits, the defendant/appellee filed a second motion to dismiss the appeal. This Court, in an opinion delivered by Mr. Chief Justice Pierre during the October Term, 1971, dismissed the appeal without prejudice to the plaintiff/appellant to re-

institute the action. *See Buchanan-Horton v. Raymond Concrete Pile Company, Ltd.,* 20 LLR 622 (1972).

During the 1972 Term of the trial court, plaintiff re-instituted the damages action against the defendant company. Pleadings were again exchanged and rested, and on April 4, 1973, during the March Term of the court, the issues of law were disposed of and the case ruled to a jury trial.

It would seem that in the process of conducting a jury trial during the 1973 March Term of the court below, presided over by His Honour Judge Tilman Dunbar, the defendant company petitioned the Chambers of this Court, with Mr. Justice Azango presiding in Chambers, praying for the issuance of a writ of certiorari. The judgment in the certiorari proceedings, as ren-dered by the full Bench on June 22, 1973, shows that the petition was granted by the Chambers Justice, but that the respondents appealed to the full Bench, and that the Court reversed the ruling of the Chambers Justice. The judgment, in its relevant part, reads as follows

> "When this case was called, Counsellors Joseph E. Den-nis and Moses K. Yangbe appeared for the petitioners, and Counsellor J. Dossen Richards appeared for the respondents. After studying the records and hearing arguments on both sides, it is
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> A D J U D G E D:
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> That the ruling of the Chambers Justice be and the same is hereby reversed. The Clerk of this Court is ordered to send a mandate to the judge now presiding in the Sixth Judicial Circuit Court, commanding him to resume juris-diction over the case of damages and proceed to empanel a jury to try the issues ruled to trial by the judge who passed on the law issues. Costs to abide final determina-tion of the case of damages. AND IT IS SO ORDERED".

During the March 1974 Term of the Sixth Judicial Circuit Court, presided over by His Honour Alfred B. Flomo, the case was assigned for trial on April 29, 1974. Writs of subpoena for witnesses for the defendant were issued and placed in the hands of the sheriff for service, but the sheriff's returns showed that the witnesses were without the bailiwick of the jurisdiction of the court. Whereupon, on April 26, 1974, defendant filed what it termed "interrogatories of defendant", along with a motion to the court to take deposition and obtain the testimonies of witnesses Charles D. Conway and Thaudous Roberts, both of the United States of America who, as alleged in the motion, were employees of the defendant company. In the motion, the movant alleged further that the testimonies of the persons were material to the defendant's defense and that without their testimonies the defendant would

be unable to defend itself. In support of the assertion, the movant stated that the "said two witnesses were formerly employed by the defendant company and worked by assignment in the area where the accident, which is the basis of this case, occurred and that they would be in the position to give testimony on behalf of the defendant during the trial".

The motion for taking deposition of the witnesses was not opposed, but the records are replete as to whether the said motion was denied or granted and whether or not the deposition was taken. From this point, the records do not show that a trial of the case was ever conducted. However, the records do disclose that during the September 1978 Term of the trial court, presided over by Her Honour Judge Emma Shannon-Walser, two notices of assignment were issued, served and returned served for trial of the case--first on October 16, 1978, and subsequently on October 18, 1978--but we have found no records to show why the case was not tried. The case therefore remained on the docket of the court below until the June 1983 Term of the People's Civil Law Court, presided over by His Honour Hall W. Badio, when a notice of assignment was issued for the trial thereof. The records reveal however that the defendant company had closed down by then and was no longer operating in Liberia. Hence, it could not be found to be served. Likewise, the Henries Law Firm, counsel of record for the defendant company, was no longer in existence as a result of the military takeover of April 12, 1980. We observe that by this time the plaintiff had also changed counsel from Counsellor J. Dossen Richards to the Brumskine Law Chambers and the Findley & Associates Law Firm, although the notice of change of counsel dehors the records. Thus, another notice of assignment was thereupon issued and was served on Raymond International Builders, Inc., of Houston, Texas, United States of America, through the Minister of Foreign Affairs, the company having been alleged to be the parent company of Raymond Concrete Pile Company, Ltd., defendant in the damages case.

Service of the notice of assignment was made on Raymond International Builders, Inc. on August 16, 1983. The said compa-ny, by virtue of a power of attorney it executed, designated, constituted and appointed Henry Reed Cooper, Esq. of the Cooper & Togbah Law Office, as its true and lawful attorney-in-fact, authorizing him to appear before the Sixth Judicial Circuit Court, Montserrado County, Monrovia, Liberia, in relation to the case *Buchanan-Horton v. Raymond Concrete Pile Company, Ltd.,* action of damages for personal injury. The attorney-in-fact was also authorized to present documents and evidence in order to establish to the court that the said defendant was no longer in existence as it had been dissolved on December 29, 1972; that the affairs of the said company were wound up within three years thereafter in accordance with the Liberian Corporations Law; and that Raymond

International Builders, Inc. was an improper party to the suit.

By virtue of the power of attorney, Henry Reed Cooper, as attorney-in-fact, with full power and authority to do any and all acts and things which may be deemed necessary and proper in and about the premises as fully to all intents and purposes as the company might or could do by or through its duly authorized officers, appeared before the trial court, represented by the Cooper & Togbah Law Office, and filed a motion to dismiss, stating therein that Raymond International Builders, Inc. was making a special appearance for the sole purpose of filing a bill of information without submitting to the jurisdiction of the court in the action, and that Raymond International Builders, Inc., on which the notice of assignment was served, was a separate and distinct corporation from Raymond Concrete Pile Company, Ltd., the defendant in the damages suit. Raymond International Builders, Inc. therefore prayed the court to be exonerated from answering the notice of assignment.

The bill of information, filed along with the motion, con-tained six counts and it prayed dismissal of the damages action filed against Raymond Concrete Pile Company, with costs against the plaintiff/respondent for reasons substantially stated as follows:

1. That the informant, Raymond International Builders, Inc. has never been a party to the action of damages filed against Raymond Concrete Pile Company, Ltd.
2. That Raymond Concrete Pile Company of Liberia was on the 15th day of November, 1972, voted by its share-holders to be dissolved and was dissolved and com-pleted winding up its affairs three years thereafter, in accordance with law, and thus became legally dead.
3. That Raymond Concrete Pile Company, Ltd., the defendant, being legally dead, all matters against it were abated upon its dissolution and therefore any judgment against the dead company would be void and unenforceable.

These were the main issues of contention raised in the bill of information before the trial court. Proferted to the bill of infor-mation were the power of attorney appointing Henry Reed Cooper Attorney-in-fact and copy of the certificate of dissolution of Raymond Concrete Pile Company, Ltd., together with the certificate of consent of the sole stockholders of Raymond Concrete Pile Company, Ltd. of Liberia to dissolve the company.

The motion and the bill of information were resisted by the plaintiff. His Honour Frederick K. Tulay, then presiding over the December 1983 Term of the Civil Law Court, heard the same, and on the 20th day of February, 1984, entered the following ruling thereon:

> "In view of the facts given above, it is the ruling of this court that the motion as well as the information filed by the defendant are hereby dismissed. Both the motion and

the information filed before this court being sufficient in themselves to place the movant and informant under the jurisdiction of this court, the said defendant company cannot extricate itself from the entanglement in which it now finds itself. This case must therefore be proceeded with. AND IT IS HEREBY SO ORDERED."

To this ruling, counsel for the movant and informant noted exceptions and prayed for an appeal to the Honourable Supreme Court, sitting in its October 1984 Term. However, counsel for the respondent interposed objection on the ground that the ruling was interlocutory and therefore not appealable. The court sus-tained the objection and denied the appeal. Whereupon counsel for the informant again noted exceptions but did nothing further by which this Court of last resort could have reviewed the ruling. The trial court then noted in the minutes that the trial of the case would commence the following day, February 21, 1984, with the empaneling of a jury at the hour of nine o'clock in the morning, and that the parties being present in court, there was no need for a written notice of assignment.

Before proceeding any further, it is well to note here that under our law the Supreme Court may review any proceeding of the trial court, either by a regular appeal or by a remedial process. This is a matter of right vouchsafe to all litigants before our courts of law which can not be denied. Thus, the informant and movant noted exceptions to the ruling of the court below and announced an appeal to the Supreme Court as aforesaid. Additionally, when the appeal was denied by the court on the objection of respondent's counsel on the ground that the ruling was interlocutory and therefore not appealable, informant and movant again noted exceptions, thereby saving the point for appellate review, since the right to seek remedial process was waived by the informant. Unfortunately, the informant and its counsel neglected to attend the trial and defend, although having been duly notified in open court of the time the trial would commence, so as to take advantage of its right of appeal and enable this Court to review the ruling, and decide whether or not the said ruling was erroneous and hence reversible as contended. The ruling on the bill of information and the motion to dismiss not having been appealed from, we have no further comment to make thereon. We are however at a loss to understand why Raymond International Builders, Inc., although having claimed to be a separate and distinct corporation from the defendant company, did not hold to this contention but instead proceeded in the bill of information to contest the right of the plaintiff/ respondent to recover from the defendant company and to pray for the dismissal of the action, with costs against the plaintiff/ respondent. It also failed to attend upon the trial which would have afforded it the opportunity to except to the ruling and final judgment of the court and appeal therefrom for our review. As a matter of fact, we

make this mention only to express concern in passing because no appeal was taken from the ruling of the trial court for our review as aforesaid. Under our practice and procedure, the failure of a party against whom a ruling or judg-ment is entered to except and appeal therefrom is considered as consent by the party to abide by the ruling or judgment.

In keeping with the notice for the trial of the case as given by the court on the minutes of February 20, 1984, the case was called for trial on February 21, 1984. Plaintiff and her counsel were present in court, but neither the defendant company nor the attorney-in-fact, Henry Reed Cooper, or the Cooper & Togbah Law Office, counsel for the informant, was present in court. Counsel for the plaintiff thereupon invoked Rule 7 of the Circuit Court Rules. The application was granted by the court for plain-tiff to present her side of the case. Rule 7 of the Circuit Court Rules provides as follows:

> "The issues of law having been disposed of in civil cases, the clerk of court shall call the trial docket of these cases in order. Either of the parties not being ready for trial shall file a motion for continuance, setting forth therein the legal reasons why the case might not be heard at the particular term of court; the granting or denying of which shall be done by the court in keeping with law, and in its discretion. A failure to file a motion for continuance or to appear for trial after return by the sheriff of a written assignment, shall be sufficient indication of the party's abandonment of a defense in the said case, in which instance the court may proceed to hear the plain-tiff's side of the case and decide thereon, or dismiss the case against the defendant and rule the plaintiff to cost, according to the party failing to appear. In no instance might a case be continued beyond the term for which it is filed and set down for trial, except upon a proper motion for continuance; provided, however, that should the business of the court be such that a particular case is not reached during the session, such case or cases shall be continued as a matter of course. Clearing the trial docket by the disposition of cases shall be the foremost concern of the judge assigned to preside over the term."

In the case at bar, the defendant company had knowledge of the pendency of the action of damages against it; and that said action had been ruled to trial by a jury following the disposition of the legal issues raised in the pleadings prior to its alleged dissolution and the winding up of its affairs. Yet, no effort whatsoever was made by the defendant company to see to it that the litigation was adjudicated or closed. Further, when the case was ready for trial and the whereabouts of the defendant company and its directors and officers could not be traced, the Raymond International Builders, Inc. of Houston, Texas, United States of

America, assumed to be the parent company of Raymond Concrete Pile Company, Ltd., was duly notified through the Liberian Minister of Foreign Affairs, as agent, to appear for trial. The company acknowledged the assignment and appeared by and through its attorney-in-fact, Henry Reed Cooper, represented by the Cooper & Togbah Law Office, and filed a bill of information and a motion praying the court to dismiss the damages suit because, according to it, Raymond Concrete Pile Company, Ltd. was legally dead and no longer in existence by reason of its dissolution in 1972 and the winding up of its affairs three years thereafter; and that any judgment rendered against such a dead company would be void and unenforceable. Further-more, Raymond International Builders, Inc. did not specifically deny that it was the parent company of Raymond Concrete Pile Company, Ltd. as assumed, and although it argued in the court below that it was separate and distinct from the defendant company, yet it was in possession of the certificate of dissolution of the defendant company, together with other evidentiary documents relating to the dissolution of Raymond Concrete Pile Company, Ltd., which Raymond International Builders, Inc. proferted to its bill of information. In addition, Raymond International Builders, Inc. asked the court to dismiss the action of damages with costs against the plaintiff/respondent. This makes the averment of the information inconsistent with informant's plea of being a separate and distinct corporation from the defendant company. Raymond International Builders, Inc, was in court, by and thru its attorney-in-fact, represented by the Cooper & Togbah Law Office, and was told by the court in its ruling that it could not extricate itself from the case. Yet, said company failed to attend the trial to prove that it was indeed separate and distinct from the defendant company, especially after acquiescing to the court's ruling denying the appeal.

Under the circumstances, therefore, we must note in passing that the trial court was legally correct when it invoked Rule 7 of the Circuit Court Rules and considered the defendant company as having abandoned its defense, thereby allowing the plaintiff to establish her side of the case. Thus, the damages suit was tried *ex parte* and terminated with a verdict of the empanelled jury finding for the plaintiff, and awarding her 2.1 Million Dollars as general damages. The verdict was confirmed by judgment of the trial court. Thereafter, a bill of costs was accordingly issued and served on the International Trust Company of Liberia for taxing. The International Trust Company of Liberia refused to accept and tax the bill of costs on the ground that it was no longer agent for Raymond Concrete Pile Company, Ltd., which had been legally dissolved in 1972, and hence, by reason of the dissolution of the defendant company, its agency had terminated. The court insisted that the bill of costs be taxed by The International Trust Company of Liberia, and, because of the continued refusal

of William P. Merriam, president of The International Trust Com-pany, to tax the bill, he was cited in contempt. Thereupon, The International Trust Company, by and thru its said president, fled to the Chambers of this Court with a petition for a writ of prohibition. The petition alleged in substance that normally a bill of costs, when issued, is transmitted to counsel for the parties for taxing and that the petitioner, not having been counsel for any of the parties in the suit, and its agency for Raymond Concrete Pile Company, Ltd. of Liberia having terminated with the dissolution of the company, the trial court should be enjoined, restrained and prohibited from compelling the petitioner to tax the bill of costs against the defendant company.

Counsel for plaintiff/respondent filed returns and argued in substance that the fact that the action of damages was pending undetermined when the defendant company was allegedly dis-solved and wound up its affairs, did not, under the law, excuse the stockholders from complying with the judgment of court. The returns stated further that the petitioner, being the appointed business agent in Liberia for the defendant company, and which in that capacity instituted the dissolution proceedings while the damages action was still pending in court, could not be excused from receiving court process for and on behalf of its principal. The Chambers Justice heard the proceeding, denied the petition and ordered the trial court to resume jurisdiction and enforce its judgment. It is from the ruling of the Chambers Justice that the proceeding is before us for review.

Before we proceed to discuss the issues presented by the petitioner and the respondent in their respective briefs, we would like to reiterate here that the judgment in the damages suit against the defendant company still stands, especially so when no appeal is before us from that judgment for our review; that there is neither an appeal before us to review the ruling of the trial judge on the motion and the bill of information of Raymond International Builders, Inc., nor do we understand the petition as having been filed to restrain and prohibit the enforcement of the judgment of the court below. Instead, the petitioner's contention is that usually a bill of costs is served on the attorneys of the parties for taxing and not otherwise; and that petitioner's agency with Raymond Concrete Pile Company, Ltd. of Liberia having ended by reason of the dissolution of the defendant company, no process of court for Raymond Concrete Pile Company, Ltd. should be served on the petitioner company. Under our statute, every person against whom a final judgment is rendered shall have the right to appeal from the judgment of the court except that of the Supreme Court. The decision of the Supreme Court shall be absolute and final. Civil Procedure Law, Rev. Code 1:51.2.

There are several issues presented by the parties in their respective briefs, but we have

summarized them into three which we hold are pertinent and decisive of the prohibition proceeding before us and to which we must confine ourselves. The three issues are as follows:

1. Can a corporation which was organized and operating under the Liberian Corporation Law of 1948 and dissolved while a suit was pending in court against it undetermined be held liable to settle such claim under the subsequent Liberian Business Corporation Law extant (1976/1977 Business Corporation Act)?
2. Does the service of a registered business agent of a corporation continue beyond dissolution of the corpo-ration?
3. Can one who is neither a party litigant nor counsel for either of the parties be required to tax a bill of costs in a case?

In discussing these issues, we shall rely on our own statute law and where our statute is silent on a point, we shall then look to the common law. We are also mindful that the principal issue here is whether or not prohibition will lie to enjoin and restrain the trial court from requiring the International Trust Company of Liberia to receive and tax the bill of costs in the damages case against Raymond Concrete Pile Company, Ltd., the defendant, and does not extend to a review of any issue which should have been brought before the Court by regular appeal.

The first issue above involves a prior statute and not a provision of a statute repealing the prior statute, by which the parties, in their presentation, have attempted to have the Court review issues which would have been proper on appeal. The petitioner/appellant argued that the dissolution certificate of Raymond Concrete Pile Company, Ltd. was filed on December 29, 1972, and the dissolution completed at the end of 1975, long before the 1976 Corporation Act on which the Chambers Justice relied was enacted. At the time of passage of the new Act, petitioner/appellant argued, Raymond Concrete Pile Company, Ltd. had already ceased operation, and that even if its contractual relationship with the defendant company had not been terminated earlier by mutual consent, the dissolution of the defendant com-pany automatically terminated the agency on or before December 29, 1972, while the 1976 Business Corporation Act did not take effect until January 2, 1977. Continuing its argument, petitioner/ appellant contended that dissolution of a corporation at common law abates all litigations in which the corporation is appearing, either as plaintiff or defendant, and that to allow actions to continue would be to continue the existence of the corporation *pro hac vice*. In support of this contention, petitioner cited several opinions of the United States Supreme Court.

This argument is beautiful, but, in our opinion, the question whether or not the dissolution of a corporation abates all actions against such corporation may be properly decided on a regular appeal, after the point had been raised, passed upon by the trial court and exceptions noted to form a part of the bill of exceptions, and not by prohibition or otherwise. The Liberian Corporation Law of 1948, as repealed by the Business Corporation Act of 1976, provided for three years within which a corporation which has been dissolved should wind up its affairs and prosecute and defend suits. The action of damages was instituted in 1972 and was pending undetermined, a fact well known to the defendant company at the time of its dissolution. The 1948 Corporation Law provides for a prolongation period of three years within which to defend any action which was pending before the alleged dissolution; yet, it is not shown why the pending action was not concluded during the prolongation period. The statute on the point reads as follows:

> *"Continuation of corporation after dissolution for purpose of suit:* All corporations, whether they expire by their own limitations, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them and of enabling them gradually to settle and close their business, to dispose of and convey their pro-perty, and to divide their assets, but not for the purpose of continuing the business for which said corporation shall have been established". (*See* the repealed Liberian Corporation Act of 1948; 1956 Code 4:38, pp. 143-144

The failure and neglect of the stockholders to take advantage of the provision of the statute and settle the action of damages within the three year period allowed cannot properly be cured by prohibition. There are two principal grounds under our law on which prohibition may be granted: One is that the action in a case is beyond the court's jurisdiction, and the other is that the court, having jurisdiction, is attempting to proceed by rules different from those which ought to be observed at all times. *Parker v. Worrel,* 2 LLR 525 (1925). Prohibition will lie only where the writ seeks to prevent courts or tribunals from assuming jurisdiction not legally vested in them. Litigants are required to protect their own interest and may not rely on the courts to do for them the things they should do for themselves. *Garguae v. Jallah,* 20 LLR 163 (1971). A petition for a writ of prohibition will not be granted where respondents did not proceed by a wrong rule. *Carter v. Massaquoi,* 24 LLR 511 (1976).

We have already pointed out, simply in passing, that Ray-mond Concrete Pile Company, Ltd., the defendant, was in operation when the action of damages for personal injury was

instituted against it in 1972. Pleadings were exchanged, issues of law heard and disposed of, and the case ruled to a jury trial. The Liberian Corporation Law of 1948, as embodied in the 1956 Code of Laws, Vol. 1, and the Business Corporation Act of 1976 extant, provided for a prolongation period for the defendant company to wind up its affairs and prosecute and defend suits. However, for some unknown and unexplained reasons, the case remained in the trial court undetermined until 1984. There is no showing, either by the plaintiff or the defendant, why the case was not determined during the prolongation period allowed by the law to prosecute and defend suits.

The provision of the 1948 Corporation Law, with respect to the continued existence of a dissolved corporation for three years after dissolution, for the purpose of winding up its affairs and to prosecute and defend suits, as quoted earlier, was in 1976 re-enacted. The re-enacted statute reads as follows:

> "All corporations whether they expire by their own limitations or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution as bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities, and to distribute to the share-holders any remaining assets, but not for the purpose of continuing the business for which the corporation was organized. With respect to any action, suit or proceeding begun by or against the corporation either prior to or within three years after the date of its expiration or dissolution, and not concluded within such period, the corporation shall be continued as a body corporate beyond that period for the purpose of concluding such action, suit or proceeding and until any judgment, order, or decree therein shall be fully executed.
>
> ". . . . Upon the dissolution of any corporation, or upon the expiration of the period of its corporate existence, the directors shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell and convey the property, real and personal, as may be required by the laws of the country where situated, prosecute and defend all such suits as may be necessary or proper for the purpose aforesaid, distribute the money and other property among the shareholders after paying or adequately providing for payment of its liabilities and obligations, and to do all other acts which might be done by the corporation before dissolution, that may be necessary for the final settlement of the unfinished business of the corporation." (See Associations Law, Rev. Code, 5: 11.4(1) and (2).

The question then is, which of the two statutes governs, that is, is it the 1948 Corporation Law or the 1976 Business Corporation Act extant, cited as the New Associations Law? It should be noted here that the provision of the 1976 statute, quoted *supra,* is a substantial re-enactment of the provision of the 1956 Associations Law, cited as the Liberian Corporation Law of 1948, relating to the prolongation period allowed for a dissolved corporation to wind up its affairs and prosecute and defend suits. The provision of the 1976 Act is therefore a continuation of the prior provision of the 1948 Act. According to our General Construction Law, the provisions of law repealing a prior law which are substantial re-enactment of provisions of such prior law shall be construed as a continuation of such provisions of the prior law, modified or amended, according to the language employed and not as new enactments. 1956 Code 16:149, *Effect of the Repeal of a Statute by Another Statute Substantially Re-enacting the Former*. Furthermore, the right to sue or be sued, given by statute, may be altered by subsequent statutes even though dissolution occurs before their passage. And, with respect to statutes enacted after dissolution, we have this authority:

> "After a corporation has been actually dissolved and the rights of creditors and shareholders have become extinct, a statute then enacted which authorizes the continuance of the existence of dissolved corporations for certain purposes, will not revive the corporation and authorize it to collect claims due to it, although where a statute providing for actions by directors in the name of the corporation after dissolution is amended to provide for continuance of the corporate existence for the purpose of suit, such amendment is regarded as affecting a change of procedure and is retroactive . . . ." 19 C. J. S., *Corporations*, § 1774, p. 1565.

The second issue for our discussion is whether or not the relationship between a corporation and its designated registered business agent for the purpose of service of process terminates with the dissolution of the corporation. In our opinion, the purpose for the establishment of an agency is for service of court process on such agent in suits instituted against the principal in the same manner as if the agent was the principal or defendant.

Under the 1956 Associations Law, which was known as the Liberian Corporation Law of 1948, but which was subsequently repealed and replaced by the New Associations Law of Liberia, it is provided that:

> "Every corporation shall have a place of business in this Republic and shall have a qualified resident business agent. When a corporation does not have an operating office in the Republic, the qualified resident business agent shall be any incorporated

domestic bank or trust company with a paid in capital of not less than fifty thousand dollars which is authorized by the Legislature of the Republic of Liberia to act as resident agent for corporations. Such resident agent shall, within ten days after acceptance of an appointment as such, file a certificate showing the location of such office, in the office of the Department of State, and a certified copy of such certificate shall be sufficient evidence that the corporation filing the same is the agent for the service of process upon the corporation until another certificate has been filed." 1956 Code 4:44.

The International Trust Company of Liberia is generally known to be the agent for many foreign corporations, and from the Certificate of Dissolution of Raymond Concrete Pile Com-pany, Ltd. of Liberia, as proferted with the bill of information filed by Raymond International Builders, Inc., represented by its Attorney-in-Fact Henry Reed Cooper, it is therein stated that Raymond Concrete Pile Company Ltd. of Liberia was represented by The International Trust Company of Liberia, 80 Broad Street, Monrovia, Liberia, as its resident business agent. And in the certificate of consent to dissolve the corporation, which listed the directors of the corporation and its officers, it is shown that the principal office of Raymond Concrete Pile Company, Ltd. of Liberia was 80 Broad Street, Monrovia, Liberia. The names of the directors and the officers were listed as follows:

"DIRECTORS:

NAME	ADDRESS.
H. F. Lemieux	11303 Williamsburg Houston, Texas 77024
P. Corradi	11119 Wickdale Houston, Texas 77024
H.A. Federa	11502 Habersham Lane Houston, Texas 77024

"OFFICERS

OFFICER	NAME	RESIDENCE
President	H. F. Lemieux	11303 Williamsburg Houston, Texas, 77024
Vice President	P. Corradi	11119 Wickdale Houston, Texas 77024
Vice President	A. K. Gustafson	31 Willowron Houston, Texas 77024

Vice President	E. C. O'Brien	P.O. Box 278 Monrovia, Liberia
Secretary	H. A. Federa	11502 Habersham Lane Houston, Texas 77024
Treasurer	J. F. Fiorenza	10502 Jaycreek Houston, Texas 77040
Asst. Secretary	M. Mortensen	2518 Walnut Bend Lane Houston, Texas 77042
Asst Treasurer	J. Meehan	5515 Kingswick Houston, Texas 77040

Counsel for the petitioner/appellant argued that the contrac-tual agency relationship between The International Trust Com-pany of Liberia and the Raymond Concrete Pile Company, Ltd. ended by mutual consent before December 29, 1972, when the defendant company was dissolved, at a time when the 1976 Business Corporation Act was not in existence. Regrettably, however, there is no evidence of the filing of any certificate by either Raymond Concrete Pile Company, Ltd., the principal, or The International Trust Company of Liberia, the agent, evi-dencing the termination of the agency as provided by section 44 of the 1956 Associations Law relied upon and quoted *supra.*

Moreover, "in a number of cases it has been held that service of process upon a dissolved corporation was effective where made upon corporate officers, directors or agents who had been qualified to accept service of process on behalf of the corporation while it was a going concern, and this has been held especially true where there was statutory provision for the continuation of activities by the corporation in so far as necessary to wind up its affairs". 19 AM. JUR. 2d, *Corporations,* § 1664.

It is also held that: "Statutes prolonging the existence of a dissolved corporation for the purpose of winding up its affairs and permitting suits by and against it, apply to corporations created after their passage as well as those then existing". *Id.*, § 1669, at 1016. Our New Associations Law extant, on which court decisions must be based and not those laws that have been repealed, states that:

> "Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Minister of Foreign Affairs, who shall cause a copy thereof to be sent by registered mail to the corporation at the address of the office of the corporation within or without Liberia, or if none, at the last known address of a person at whose request the corporation was formed . . . A designation

of a registered agent under this section may be made, revoked, or changed by filing an appropriate notification with the Minister of Foreign Affairs . . . ." *See* Associations Law of Liberia, Rev. Code 3.1(3), app. May 19, 1976.

Petitioner/appellant did not show any evidence of notification filed with the Minister of Foreign Affairs of Liberia, and, in our considered opinion, the agency of petitioner could not have ended by the dissolution of the defendant company, especially when the action of damages was still pending in court undeter-mined, even though the law provides three years within which to do so. Moreover, the trial records dehor any testimony confirming that Raymond Concrete Pile Company, Ltd. had been dissolved. The certificate of consent of the shareholders to dissolve and all other documents thereto attached together with the certificate of dissolution, proferted to the bill of information of Raymond International Builders, Inc., by and thru its attorney-in-fact aforesaid, were never testified to by anyone, marked and confirmed by court and thereafter offered and admitted into evidence, since indeed the question of dissolution of the defendant company, as advanced by informant and later by the petitioner in its defense, is a factual issue which required proof at the hearing of the information. In our opinion, if this normal trial procedure had been strictly followed and the required proof of dissolution established by a preponderance of the evidence, and the trial court in its ruling had still ruled against the informant, exceptions should have been noted and the point saved for review on appeal to this Court; or where the trial court had by any means deprived informant of the right to establish the fact of the dissolution, according to the documents proferted with its information, the remedy that would then have been available to informant was remedial process by which this Court would have reviewed the question and given the needed remedy according to law and the facts and circumstances admitted by the case.

The question, therefore, as to whether or not Raymond Concrete Pile Company, Ltd., defendant in the damages suit, was dissolved and that the judgment against the dead corporation is void and unenforceable, cannot be decided by prohibition since the question could have been decided on appeal which was available to the informant. And so, in the absence of any notice of revocation or termination of the agency, duly filed with the Minister of Foreign Affairs, along with the proof of dissolution, it is our considered opinion that the contractual agency relation-ship between Raymond Concrete Pile Company, Ltd. and the petitioner/appellant company has not been terminated.

The last issue for our determination is that of service of the bill of costs on the petitioner who was neither a party to the damages suit, nor counsel for either of the parties in said suit.

It should be recalled here that when the notice of assignment was issued for the trial of the damages suit, and the same served on the Minister of Foreign Affairs under section 3.2 of the New Associations Law of Liberia, as argued by the plaintiff, the Minister of Foreign Affairs also, under paragraph two of said section, notified the parent company, Raymond International Builders, Inc, which in turn appointed Henry Reed Cooper as its attorney-in-fact. Counsellor Cooper, by and thru the Cooper & Togbah Law Office, then filed a motion and a bill of informa-tion. The motion and the information were heard and denied by the trial court, and exceptions noted thereto. A jury trial was had and the case terminated with a verdict in favor of the plaintiff. It would therefore seem proper to us and legal for the trial court to have served the bill of costs on the attorneys for the parties for taxing, for it is only they who ought to know what amount, if any, the law requires to be paid as costs and what amount they have pre-paid for filing and service of precepts, etc., and not for the bill of costs to be served on the parties themselves or their business agents, except where they represent themselves in court and not by counsel. Cooper & Togbah Law Office having represented the informant which the court ruled could not extricate itself from the entanglement in which it found itself, by reason of its appearance by motion and information which were both denied and exceptions noted for appellate review, the bill of costs should have been served on said Cooper & Togbah Law Office. Its refusal to have taxed same could have resulted in the issuance of a citation for contempt and not a citation against The Internationa1 Trust Company of Liberia. The law respecting the taxing of bill of costs reads as follows:

> "After final judgment, the clerk of court shall prepare a bill of costs which he shall transmit to the attorneys for all parties. The judge shall approve the bill of costs agreed upon by the attorneys or, if they cannot agree, he shall settle the disputed items and approve the bill as settled." Civil Procedure Law, Rev. Code 1 :45.5.

This is the law made and provided for our guide, and any attempt to proceed contrary, prohibition will lie to restrain the trial court from proceeding irregularly.

In view of all that we have narrated herein above and the legal authorities cited in support of our position, it is our considered opinion that the ruling of the Justice in Chambers should be, and the same is hereby reversed. The petition is hereby granted and the peremptory writ of prohibition ordered issued, restraining the trial court from serving the bill of costs on the petitioner/appellant and from holding petitioner in contempt of court. The bill of costs ought to be served on the Cooper & Togbah Law Office and/or on Counsellor Henry Reed Cooper, attorney-in-fact for the defendant, and not on The International Trust Company of Liberia. And it is hereby so ordered.

Petition granted.