**LIBERIA AGRICULTURAL COMPANY (LAC**), by and through its General Manager, C. J. COOTE, its Controller, GEORGE MENSAH, and any other Authorized Officer, Appellant, *v.* **NIZAR RASAMIN**, by and through his Attorney-In-Fact, CHAZI KAMAND, Appellee.

CONSOLIDATED APPEAL FROM THE JUSTICE IN CHAMBERS DENIAL OF THE ISSUANCE OF THE WRIT OF PROHIBITION, JUDGMENT OF THE DEBT COURT FOR MONTSERRADO COUNTY, AND DENIAL OF MOTION TO DISMISS APPEAL BY THE DEBT COURT FOR MONTSERRADO COUNTY.

Heard: March 25, 2004. Decided: August 13, 2004.

1. In any case founded upon a contract, payment by the debtor of the principal or interest or a new promise to perform signed by the obligor shall start the running of the statute of limitations.
2. A precondition for the revival of the statute of limitations is an unconditional promise to pay the debt made in some writing signed by the party to be charged thereby.
3. When the secretary, a clerical personnel to an officer of the obligor, signs a receipt prepared by opposing counsel, acknowledging that she has received a dishonored postdated check upon which payment is demanded, she does not thereby make a new written promise signed by the obligor to pay the debt, and her action does not thereby revive the running of the statute of limitations.
4. A corporation cannot be bound by the act of a secretary who is not an officer of the corporation having authority to bind the corporation.
5. An action of debt must, under the statutory laws of Liberia, be commenced within seven years from the time the right to relief accrued.
6. Constitutional issues need not be considered if the case can be determined on other issues.
7. It is error for a judge to grant a subsequent motion for summary judgment in the face of an earlier ruling that there were mixed issues of law and facts which were ruled to trial.
8. In order to grant a motion for summary judgment, the judge must find that there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law.
9. The plea of the statute of limitations is a question of law to be determined by the court only.
10. When there is a plea of the statute of limitations, the court may take testimony respecting facts if such is necessary in order to determine the law issues.

11. The incorrect designation for the kind of motion applied for should not be a ground for its denial; and in that light the law should be construed to promote the just, speedy and inexpensive determination of every action.

This case involved three consolidated actions: An appeal from the judgment of the Debt Court for Montserrado County; an appeal from the ruling of the Chambers Justice denying the petition for the issuance of the writ of prohibition; and a motion for dismissal of the appeal taken from the judgment of the debt Court. The facts of the case revealed that the appellant, Liberia Agricultural Company (LAC) had, as it normally did in regard to the business arrangement which it had with the appellee, issued to the appellee, Nizar Rasamini, a post dated check, dated October 20, 1992, in the amount of US$8,058.00, drawn on the Bank of Boston, Connecticut, USA, in return for which the appellee gave the appellant Liberian dollars. Thereafter, due to the intensity of the civil war, the appellant closed its business and its officers, as well as the appellee, fled the country.

The appellee subsequently, in 2002, presented the check to the bank of Boston for encashment but the check was dishonoured by the Bank. Following the cessation of hostilities the check was then sent to Monrovia for collection and was received by the secretary of the officer of the appellant, for which she signed a written receipt prepared by counsel for the appellee. When the appellant failed to make payment of the amount, the appellee, in January 2002, ten years after the issuance of the check, filed an action of debt to recover the amount.

In disposing of the law issues, the trial judge denied the motion filed by the appellant for the dismissal of the suit on the ground of the statute of limitations, noting that when the secretary issued the receipt and the appellant decided to keep the check, the statute began to toll anew. He then ruled the case to trial on what was termed "mixed issues of law and facts". Notwithstanding this ruling, the judge subsequently sustained a motion for summary judgment filed by the appellee, and ordered the appellant to make payment of the amount in question. From this ruling the appellant announced an appeal to the Supreme Court and at the same time filed a petition for issuance of a writ of prohibition against the trial judge to prevent execution of the final judgment, while the appellee filed a motion to dismiss the appeal. The Chambers Justice denied the appellant's petition for a writ of prohibition and an appeal was further taken therefrom.

In disposing of the consolidated actions before it, the Supreme Court reversed the judgment of the trial court, holding not only that the action was time barred but also that the trial judge erred in entertaining and granting summary judgment since he had, when ruling on the law issues ruled the case to trial on mixed issues of law and facts, a trial which he had not held. The Court noted that the period for commencement of the action was seven years and that since the action had been filed beyond ten years of the date the right accrued to the appellee, the action was barred by the statute of limitations. The Court further noted that the

statute of limitations did not toll anew or commence anew by the signing of a receipt by the secretary of an officer of the appellant in the year 2000 since the secretary, being only a clerical person and not a corporate officer, was without the authority to bind the corporation by the signing of the receipt and the keeping of the returned check.

On the question of the prohibition, the Court opined that it was proper and timely for the appellant to have filed the same to prevent enforcement of the judgment under the circumstances. The Court stated however that as the appellant had already made payment of the amount, the matter had become moot and hence the prohibition is abated and dismissed. The Court further ruled that as it continued to retain jurisdiction of the appeal, and given what it had said about the action being time barred and its reversal of the debt court's judgment, it was ordering the appellee to repay to the appellant the amount of the check which the appellee had received from the appellant.

*G. Moses Paegar* and *J. Johnny Momoh* of Sherman and Sherman Law Firm appeared for the appellant. *William A. N. Gbaintor* of Gbaintor and Associates Law Firm appeared for the appellee.

MR. CHIEF JUSTICE COOPER delivered the opinion of the Court

Three separate matters were ordered consolidated by the former Supreme Court Bench as follows: An appeal of the judgment of the Debt Court for Montserrado County; an appeal from a ruling of the Chambers Justice in which he denied the petition of appellant for a writ of prohibition; and appellee/ plaintiff's motion to dismiss the appeal from the judgment of the Debt Court. These matters were ordered consolidated on motion filed by appellant/defendant and in keeping with law. In its amended brief, appellee/plaintiff requested this Court to ignore the motion to dismiss which he stated had been inadvertently filed.

According to the records, in 1992 appellant/defendant, Liberian Agricultural Company (LAC), was operating its rubber plantation located outside Buchanan City in Grand Bassa County and appellee Nizar Rasamini was a foreign retail trader operating in Buchanan City, Grand Bassa County. Both parties were situated in that part of the country then referred to as "Greater Liberia". Liberia was then divided into two administrative areas. The commonly called J. J. Roberts Currency was being used in "Greater Liberia", which was under the control of insurgents, and the commonly called Liberty Currency was being used in the Monrovia area, then under the control of the Interim Government of National Unity. Communication and commercial transactions between the two areas were scanty and risky. LAC's business generated mostly income in foreign currency through the sale of rubber abroad and Rasamini's trading business generated income in Liberian dollars. LAC, needing local currency in order to operate its plantation, engaged in the business of exchanging its

post dated checks drawn on foreign banks with local retail traders like appellee/plaintiff Rasamini for Liberian dollars currency. The two parties had been engaging in the currency exchange business over a period of time.

It was in this light and under these circumstances, according to the records, that in October 1992 appellant/ defendant LAC issued its post dated check to appellee/ plaintiff Rasamini and received the equivalent sum in Liberian currency. Not too long after this last transaction, the Economic Community of West Africa Monitoring Group (ECOMOG) spread its peacekeeping activities from Monrovia to Grand Bassa County, whereupon there ensued hostilities and lootings which severely affected the businesses of both LAC and Rasamini. The rubber plantation was closed down and its foreign managers and owners fled Liberia. Rasamini also had to close down and flee Liberia due to hostilities in Buchanan.

Appellant/defendant's check, number 2519, issued in October to appellee/plaintiff, dated October 20, 1992, drawn on the Bank of Boston, Connecticut, United States of America, and payable to appellee/plaintiff Nazar Rasamini for Eight Thousand Fifty-Eight United States Dollars (US$8,058.00), forms the gravamen of these consolidated proceedings. In January 2002, appellee/plaintiff, through an attorney-in-fact, brought suit against appellant/defendant in the Debt Court for Montserrado County to collect the sum of US$8,058.00. Appellee/plaintiff alleged that he had fled from Buchanan City before the due date of the check. When the check was later presented to the Bank of Boston for payment it was twice dishonored by the Bank. The check was sent to Monrovia for collection in 2000, allegedly upon cessation of hostilities. It was received by the secretary to the comptroller of appellee/plaintiff LAC, who issued a written receipt for the same. LAC refused to pay the check in question or to return to appellee/plaintiff the original check.

In its answer, appellant/defendant LAC admitted to the business relationship that had existed between the parties and that both parties had to abandon Grand Bassa County before October 20, 1992 when the check was due for payment. Appellant/defendant contended, however, that the appellee/ plaintiff's right to relief accrued in 1992 when he had presented the check to the Bank of Boston and the said check had been dishonored, some ten years before the initiation of the action of debt in January 2002.

Appellant/defendant pleaded the Liberian statute of limitations in its answer and filed concurrently a motion to dismiss the action in which he alleged that the action was time barred, it having been filed more than seven years after the right to relief had accrued. Appellant/defendant pleaded that as a result of hostilities in 1992, its records and documents for transactions which occurred before January—February 1993 were all lost. LAC at the time of the suit had different shareholders and new managers who did not know about the prior business transactions.

The court first heard the motion to dismiss and the judge denied it on the ground that the statute of limitations is not one of the grounds for dismissal provided for under section 11.2 of the Civil Procedure Law, 1 LCLR, but one of the affirmative defenses provided by

law. The court then noted that the issue of the statute of limitations presented a question of law and reserved further ruling for hearing of arguments on law issues.

In his ruling on the law issues, the court noted the argument by the parties that the matter before it presented only one issue of law: Whether appellee/plaintiff's debt action was time barred. In this connection, the judge agreed with the argument of appellee/plaintiff that the receipt dated October 23, 2000, signed by the secretary to the comptroller of appellant/plaintiff "started the time of the statute of limitation running anew as of the date of receipt of the post dated check, which is October 23rd, A. D. 2000" as against information and argument by appellant/defendant that the original post dated check was lost. The debt court judge further ruled that appellant/defendant's acceptance and retaining of the dishonored post dated check and its refusal to pay same was not justifiable. He further ruled, relying on the case *Henrichsen v. Logan*, 6 LLR 18 (1937), that the slightest acknowledgment of a debt, otherwise time barred, would take the case out of the statute of limitations. The receipt of the secretary to the comptroller of LAC, dated October 23, 2000, was such an act by the appellant/defendant; and therefore the debt court judge considered the act of appellant/defendant LAC, coupled with the retaining of the dishonored check, as being tantamount to an acknowledgment of the debt by the appellant/defendant so as to remove the appellee/plaintiff's case from the statute of limitations. Finally, the court overruled the defense of the appellant/defendant and ruled that the statute of limitations began to run anew as of October 23rd, A. D. 2000. The court then stated all of the other issues raised in the pleadings were "mixed issues of law and facts which are ruled to trial."

Appellee/plaintiff next filed a motion for summary judgment, which was granted by the court. Appellant/defendant excepted to the ruling granting the motion for summary judgment and filed its bill of exceptions in the trial court as well as a petition for the issuance of a writ of prohibition before Mr. Justice Elwood Jangaba, in Chambers. From the Chambers Justice's ruling denying the petition for a writ of prohibition, appellant/defendant appealed to the Full Bench of the Supreme Court. Appellee/plaintiff immediately filed a motion to dismiss the appeal, which he subsequently asked the court to ignore.

This matter presents two main issues for consideration: (1) whether the claim for payment of the post dated check was time barred, in view of the fact that the check had first been dishonored when presented to the bank in America for encashment in 1992 and no complaint had been filed until January 30, 2002; and (2) whether the statute of limitations began to run anew in 2002 when the secretary to the comptroller of appellant/defendant LAC signed the receipt for check number 2519, which receipt had been prepared by counsel for appellee/plaintiff.

We will first look at the second issue. By letter dated October 23, 2000, counsel for appellee/plaintiff sent the original dishonored post dated check of October 20, 1992, in the amount of US$8,058.00, to the comptroller of appellant/ defendant LAC along with a receipt which he had prepared "for the signature of a LAC's representative acknowledging

receipt of the said "dishonored" check. The receipt was written to be signed for receiving "one post dated check number 2519 in the amount of US$8,058.00, dated October 20, 1992 drawn on the Bank of Boston, Connecticut, for the account of Nizar Rasamini". A secretary received the letter with the original check and signed the prepared receipt acknowledging receipt of the dishonored post-dated check. It was this act of the secretary which the court ruled constituted an acknowledgment of the debt by appellant/defendant, relying on the *Henrichsen* case, *supra.* It was this act of a secretary which the court concluded constituted an acknowledgment which restarted the statute of limitations running anew, i.e. as of the date of the receipt of the post dated check which is October 23rd, A. D. 2000. The court referred to syllabus two of the case, which is quoted, as follows: "The statute of limitations is not designed merely to raise a presumption of payment of a just debt from lapse of time, but to afford security against false demands after the true state of the transaction may have been forgotten, or be incapable of explanation because of the death or removal of witnesses." As can be seen, syllabus two does not support the principle of law upon which the court may have relied. On the contrary, it is in the text of the case (6 LLR, at page 22) that we find the sentence "And then the decisions going further held that the slightest acknowledgment, whether by word or in writing, would take a case out of the statute." It is useful to include here the full quotation which appears in the case upon which the court relied, as follows: "The earlier decisions with regard to the English statute of limitations held that a mere acknowledgment of the debt, without a promise to pay, would not affect its operation. It was next determined that an acknowledgment of a debt was evidence from which a jury might infer a promise to pay, but would not, if specially found, warrant the court to give judgment for plaintiff. And then the decision going further held that the slightest acknowledgment, whether by word or in writing, would take a case out of the statute. Under the modern doctrine, however, that statutes of limitations are statutes of repose, the general rule in the United States and England is that a particular case may be removed from the bar of the statute, and for such purpose there must be either: *(1) an unconditional promise to pay the debt; (2) an acknowledgment of the debt from which a promise to pay is to be implied; or (3) a conditional promise to pay the debt, which is accompanied by a sufficient showing that the condition upon which the promise is made to depend has been performed.* In some jurisdictions by statute, however, it is provided that a mere acknowledgment of the debt is sufficient to remove the bar, and under such statutes it is unnecessary that the acknowledgment be such as to raise an implied promise to pay. A cause of action may be revived by a new promise or acknowledgment, although the statute contains no provision therefor; and a statute providing for the revival of causes of action founded upon contract by an admission that the debt is unpaid, as well as by a new promise to pay the same, amounts simply to a declaration of the common-law rule." 25 Cyc. 1325-1327. (Emphasis added.)

The holding of the Supreme Court in *Henrichsen*, *supra,* with regards to the principle of law under consideration is that a cause of action barred by limitations may be revived by either:

(1) an unconditional promise to pay; (2) an acknowledgment of the debt from which a promise to pay is to be inferred; or (3) a conditional promise to pay a debt accompanied by a sufficient showing that the condition upon which the promise was made to depend has been performed.

The following quotation is taken from page 3 of plaintiff/ appellee's amended brief: "319. Generally. The rule in most jurisdictions is that the running of a statute of limitations on a debt does not extinguish the debt but merely bars the remedy for the recovery of the debt. It is therefore the general rule that a new promise to pay a debt, or an unqualified acknowledgment of a debt from which a promise to pay may be implied, will take a case out of the statute of limitations. This rule applies whether the acknowledgment or new promise is made before or after the debt is barred. However, the general rule is confined in its application to contracts, express or implied, for the payment of money, and is ordinarily deemed inapplicable to actions founded on a tort. Also, the acknowledgment of a new promise is subject to the requisites hereinafter set forth, and the statutes of most of the states require in substance that no acknowledgment or promise shall be evidence of a new or continuing contract, whereby to take any case out of the operation of the statute, unless such acknowledgment or promise is made or contained by or in some writing signed by the party to be charged thereby.

"It is not the mere acknowledgment of a subsisting indebtedness which removes the bar. Where a debt is admitted to be due, the law raises a promise to pay it. It is this new promise, either made in express terms or deduced from an acknowledgment, as a legal implication, which is to be regarded as reanimating the old promise, or as imparting vitality to the remedy (which, by lapse of time, has become extinct), and thus enabling the creditor to recover upon his original contract." 51 AM JUR. 2d, *Limitation of Actions*, § 319.

In this regard, our statute provides: "In any case founded upon a contract, payment by the debtor of any part of the principal or interest or a new written promise to perform signed by the obligor shall start the running of the statute of limitations anew." Civil Procedure Law, Rev. Code 1:2.3.

Interestingly, appellee/plaintiff also quoted this same section 2.3 of the Civil Procedure Law in his brief in support of his argument that appellant/defendant of obligor issued a written promise to perform signed by the obligor when the secretary to the comptroller of appellant/defendant signed the receipt dated October 23, 2003, which had been prepared by counsel for appellee/plaintiff, thereby acknowledging receipt of the dishonored post dated check in question.

Firstly, as can be seen above, the court wrongly interpreted the holding in the case upon which it relied. Secondly, it appears clear that the principle of law upon which the court had wanted to rely would, according to the sources quoted in *Henrichsen*, as well as according to the sources mentioned in the appellee's amended brief, require as a precondition for a revival for the statute of limitations an unconditional promise to pay the debt made in some writing

signed by the party to be charged thereby. In this connection, whilst we recognize the importance of clerical personnel in any office, we are unable to agree that when a mere secretary to an officer of an obligor corporation signs a receipt (prepared by opposing counsel) acknowledging that she has received a dishonored post dated check upon which payment is demanded, she thereby made a new written promise signed by (and therefore binding on) the obligor to pay the debt, which act thereby revived the running of the statute of limitations. Clearly, a corporation cannot be bound by the act of such a secretary, who is not an officer of said corporation having authority to bind the said corporation. In this whole matter there is no showing that the secretary who signed the receipt which had been prepared by the counsel of appellee was an officer of the corporation who had authority to bind the corporation, neither do we find that the receipt in question contained any promise of Appellee/Defendant LAC to pay the debt in question. We therefore overrule the ruling of the trial court and hold that appellant/defendant never acknowledged the debt in question, so as to have revived the running anew of the statute of limitations.

We now look at the first issue, i.e. whether the claim of appellee/plaintiff was time barred? Our law on this point pro-vides that an action such as this matter must be commenced within seven (7) years as from the time the right to relief accrued. Civil Procedure Law, Rev. Code 1: 2.13(1). In this matter, the records show that the check in question was dishonored by the bank in 1992 and that no action on the check was commenced until January 30, 2002, long after the expiration of the seven years limitations. The records show no reason why appellee/ plaintiff did not begin this action within the statutory period of seven years. The courts in Liberia were open for business and LAC operated an office in Monrovia. Appellee/plaintiff could have commenced his action against LAC in the same manner that he used in 2002, i.e., through an attorney-in-fact, but did not do so. The other important point to be noted is that the debt court must have considered these facts when it concluded that the statute of limitations began to run anew from October 23, 2000, the date on which the secretary to LAC's Comptroller signed the receipt. The judge must have had in mind that the seven years period of limitations had run out with respect to the debt, for one cannot revive a claim except the claim has been extinguished, in this case time barred. We therefore hold that the claim of the appellee/plaintiff against appellant/defendant was time barred.

In view of the above, this Court does not find it necessary to consider the question of the constitutionality of INA decree number 12, raised by Appellant LAC, with regards to provisions of the said decree that sanctions enforcement of a debt court judgment, notwithstanding the announcement of an appeal. Constitutional issues need not be considered if a case may be decided on other issues. *The Liberian Bank for Development and Investment v. Holder*, 29 LLR 310 (1981).

This Court does however think it necessary to consider the lower court's ruling on the motion for summary judgment which was filed by the appellee/plaintiff. The court ruled on

appellant's motion to dismiss denying the same for reasons that the statute of limitation is not listed as one of the grounds for dismissal of the complaint. He relied on section 11.2, motion to dismiss, of the Civil Procedure Law, wherein it is clearly stated that the statute of limitation is not a ground for dismissal of a complaint. This court observes, however, that the very next section of the Civil Procedure Law, section 11.3 motion for summary judgment, could have been applied by the debt court judge to this case. When the debt court judge denied the motion to dismiss filed by appellant/defendant and ruled that there had been a revival of the cause of action as from October 23rd, A. D. 2000, appellee/ plaintiff immediately filed a motion for summary judgment which was heard and granted by the court. In that motion, appellee/ plaintiff alleged and argued that there remains no other issue left for trial despite the court's prior ruling on law issues that the matter be ruled to trial "on mixed issues of law and facts." In resistance to the motion for summary judgment, appellant/ defendant had argued for denial of the same on the ground that a motion for summary judgment was a pre-trial motion whereas the court had already ruled the case to trial. It is our opinion that the judge erred.

It is our opinion that it was error for the judge to grant the subsequent motion for summary judgment in the face of his earlier ruling that there were mixed issues of law and facts which were ruled to trial, for in order to grant a motion for summary judgment, the judge must find that "there is no genuine issue as to any material fact and that the party in whose favor judgment is granted is entitled to it as a matter of law." Civil Procedure Law, Rev. Code 1:11.3. These two rulings are clearly contradictory. It appears that from the offset this matter presented only one important issue for consideration by this Court, i.e. whether the action of debt was time barred. This issue was squarely raised by appellant/ defendant in its motion to dismiss, which the judge had denied, and wrongly so as stated above. This Court has ruled that the plea of the statute of limitations is a question of law to be determined by the court only. *Everest Textile Co. v. Denco Shipping Lines,* 36 LLR 24 (1989). This Court has also ruled that in such instance the court must take testimony respecting facts if such is necessary in order to determine the law issues. *Koryan v. Korvayan*, 30 LLR 246 (1982); *Page v. Cooper*, 31 LLR 77 (1983). Moreover, under Section 10.5 of the Civil Procedure Law, 1 LCLR, it is provided that the incorrect designation for the kind of motion applied for should not be a ground for its denial. Under Section 1.4 of the same statute mentioned supra, it is provided that the Civil Procedure Law "should be construed to promote the just, speedy, and inexpensive determination of every action." In this premises, therefore, the debt court judge should not have denied appellant/defendant's motion to dismiss which in substance was a motion of summary judgment and we so hold.

It is noted that counsel for appellee/plaintiff had filed before the Supreme Court a motion to dismiss the appeal even before the appeal process was completed. It is further noted that counsel for appellee/plaintiff has stated to the Court that his motion was inadvertently filed. Section 11.4 of the Civil Procedure Law concerns motions or supporting

motions filed in bad faith or solely for the purpose of delay, and we warn that this provision will be applied in the future.

In summary, we have determined that although appellant/ defendant owed appellee/plaintiff the sum of Eight Thousand Eighty-Five United States Dollars (US$8,085.00), the action of debt filed in January 2002 is time barred, same having been instituted outside the limitation of seven years provided for in the Liberian statute of limitations. The cause of action was not revived when a secretary of appellant/defendant signed a receipt acknowledging receipt of a dishonored post dated check because the said secretary was not any corporate officer who had authority to bind the corporation and did not in fact do so. Furthermore, that the statute of limitations having been pleaded in the answer to the complaint coupled with the filing of a motion to dismiss the complaint based on the statute of limitations, the debt court judge should have considered the matter, in a substantive manner, taking into consideration the affirmative plea of the statute of limitations, which raises only an issue of law for determination solely by the court, coupled with provisions of the Civil Procedure Law requiring the courts not to deny a motion because of incorrect designation of said motion and to construe the statute so as to promote the just, speedy and inexpensive determination of every action.

The petition for issuance of the writ of prohibition having been immediately filed to prohibit execution of the final judgment of the debt court, in view of the above holdings, we conclude that the said petition was timely filed and could have been granted under the facts and circumstances. Since petitioner subsequently paid the value of the check and since we have decided not to deal with the constitutional issue raised in the pleadings, this aspect of the matter has become moot. There is therefore no need to say anything more on the issue of prohibition. The petition for prohibition is therefore dismissed. 73 C. J. S., *Prohibition*, §13; 1 AM JUR 2d, *Actions*, §56; and 24 AM JUR 2d, *Dismissal*, §41. Notwithstanding the foregoing, this Court continues to have jurisdiction as to the check in question on the regular appeal and it is in that connection that this Court will order appellee to repay to appellant the sum wrongly received by him in satisfaction of the check.

Wherefore, and in view of the foregoing, the ruling of the Chambers Justice denying the petition for issuance of the writ of prohibition is declared abated and the alternative writ ordered quashed. The final judgment of the debt court is reversed and appellee/plaintiff is ordered to repay the appellant/defendant the sum received in satisfaction of the check. The Clerk of this Court is hereby ordered to send a mandate to the court below, commanding the judge therein to give effect to this ruling. Costs are ruled against the appellee/plaintiff. And it is hereby so ordered.

*Petition abated; writ quashed.*