

HIS HONOUR NAPOLEON B. THORPE, Assigned Circuit Judge, Sixth Judicial Circuit, Montserrado County, September Term, 1986, and **SHAMMOUT BROTHERS**, by and thru its General Manager, AI MED SHAMMOUT, Appellants/Respondents, v. **LIBERIA ELECTRICITY CORPORATION (LEC)**, by and thru its Managing Director, SAMUEL N. BURNETTE, Appellee/Petitioner.

APPEAL FROM THE CHAMBERS JUSTICE GRANTING OF A PETITION FOR A WRIT OF CERTIORARI.

Heard: November 27, 1986. Decided: January 22, 1987.

1. Certiorari cannot be used as a substitute for appeal.
2. When the various rulings of the trial judge and the verdict of the jury are excepted to, the exceptions interposed closes all avenues for a writ of certiorari, the proper remedy to cure the errors complained of being an appeal.
3. Under common law, the Supreme Court cannot mandate a lower court to dismiss an action in which the case has been ruled to trial by a jury and the trial is still being conducted.
4. A trial judge cannot dismiss an action in which another judge of concurrent jurisdiction had previously ruled to a jury trial, since to do so would be reviewing the act of his colleague and would be tantamount to depriving the jury of its function.
5. It is error and prejudicial for a trial judge to continue a juror on a penal where the said juror is reported to have enjoyed favors from a person or persons having interest in the case under trial, if an investigation proved to be correct.
6. The office of certiorari is not a restraining order or designed to prohibit an act, but to annul; nor is it the appropriate remedy to prevent anticipated wrong or injury.
7. A reviewing court has no power, except under expressed statutory provision, to enter judgment on the merits of the controversy; nor does it have the authority to direct the respondent judge to enter any particular order or judgment.
8. While generally a reviewing court has no power to render a new judgment such as the inferior court should have rendered but can only remand a case for further proceedings or a new trial, in some jurisdictions, by statute or otherwise, final judgment may, in a proper case, be rendered by

10. In the absence of statutory enlargement, only the external validity of the proceedings had in the lower court may be examined by the Supreme Court in a case on certiorari. Thus, the supervisory jurisdiction of the appellate court cannot be exercised in order to review the judgment as to its intrinsic correctness, either on the law or the facts of the case.

11. Where a challenge is made in the answer to the sufficiency of a count in the complaint regarding the plaintiff's claim for special damages, and the deficiency is not cured in the reply, the plaintiff's claim may be rendered insufficient to warrant recovery of such special damages by the plaintiff.

12. A plaintiff asserting a claim for damages should make profert of all supporting documents with his complaint.

13. A Justice in Chambers, acting upon the statute which authorizes him to make such orders as may be necessary to carry out substantial justice, can only give such orders after thoroughly delving into the merits of and evidence in the case; and finding such evidence to be insufficient, may order the dismissal of the **Case**.

14. In special damages, every item of the amount claimed must be proved in such a manner as to leave no doubt that the plaintiff is indeed entitled to recover it.

15. Special damages must be pleaded with particularity and affirmatively proved.

16. When special damages are pleaded with reference to documents not accessible to the opposing party, the documents should be annexed to the pleadings.

17. Ordinarily, where a petition for certiorari is denied, the alternative writ is thereby quashed and the case is remanded to the lower court with instructions that the judge presiding therein resume jurisdiction over the case and continue the hearing thereof. However, where the petition is granted, the order to be given to the trial court must be for that court to abate or dismiss the action, provided three conditions are met, viz: (a) that the complaint is so incurably defective that recovery cannot be had on it; (b) that the answer is forceful and sufficient enough to warrant dismissal of the complaint; and (c) that the verdict of the empaneled jury is manifestly against the weight of the evidence and the law controlling.

Co-respondents, Shammout Brothers, instituted an action of damages against the petitioner, Liberia Electricity Corporation (LEC), claiming special damages of \$267,000.00 and general damages as may be determined by the jury. The basis for the claim was the allegation that the

corporation, whom the defendant said had been cooking but had left the stove unattended, causing the fire.

A first jury trial was had which resulted in a hung jury. In a second jury trial, the jury returned a verdict in favor of the plaintiffs for special damages of \$267,000.00 and general damages of \$200,000.00. A motion for a new trial was filed, but while the same was pending a ruling by the judge, the petitioner filed a petition with the Justice in Chambers for the issuance of a writ of certiorari. The Justice in Chambers granted the writ. The Justice found that the plaintiffs had failed to meet the burden of proof in the case to warrant the special and general damages awarded by the jury. He therefore ordered the case remanded to the trial court, with instructions that the judge presiding therein abate the entire case. From this ruling, an appeal was taken to the full bench, the appellant contending that the Chambers justice had transcended his authority in reviewing the evidence in the case and in ordering that the case be abated.

The Supreme Court disagreed with the appellants' contentions. The Court acknowledged that at common law the Chambers Justice could not properly mandate the lower court to dismiss an action where the law issues had been ruled upon, the case submitted to a jury trial, a trial had, a verdict returned and a ruling on a motion for a new trial still pending, and that ordinarily a trial judge could not dismiss a case in which another judge of concurrent jurisdiction had previously ruled to trial by a jury, for to do so would be tantamount to reviewing the act of his colleague, unless done on the orders of the appellate court. The Court noted however that because the Justice in Chambers had relied upon a statute in arriving at his decision, a resolution of the matter could best be made by a recourse to that statute.

The Court, after reviewing the statute relied upon by the Justice, concluded that under the provisions of that law, the Justice had the power to issue such orders as were necessary and in the interest of substantial justice, and that in issuing those orders, the Justice could direct the lower court to abate the case, if the case was shown to be without legal and factual merits.

The Court noted that in its answer, the defendant had challenged the sufficiency of the plaintiffs' claim to special damages and that the plaintiffs had failed to cure the defect in their reply. Under the circumstances, it said, the plaintiff was not entitled to recover special damages. Moreover, the Court opined, special damages, where claimed, must be specifically pleaded and backed by supporting documents, and must be affirmatively proved at the trial. The plaintiffs, it said, had failed in both respects.

recovery could not be had on it; (b) that the answer was forceful and sufficient enough to warrant dismissal of the complaint; and (c) that the verdict of the empanelled jury was manifestly against the weight of the evidence. Those conditions were met in the instant case, and hence, under such circumstances, the Justice in Chambers did not transcend his power in ordering the lower court to abate the action, the Court concluded.

As to whether certiorari would lie, given the stage at which the case had progressed, the Court said that under the circumstances, certiorari could be resorted to. The ruling of the Chambers Justice was therefore *affirmed*.

Toye C. Barnard and *E. Winfred Smallwood* appeared for the respondents. *Alfred B. Flomo* and *Emmanuel B. James* associating with the *Steele & Steele Law Firm* appeared for the petitioner.

MR. JUSTICE TULAY delivered the opinion of the Court.

The Liberia Electricity Corporation (LEC), defendant below and petitioner before us, was sued in an action of damages for injury to personal property, by co-respondents herein, plaintiff in the court below. In his complaint, the plaintiff alleged that the petitioner carelessly ran its high tension electric wire above and over his store and dwelling house, located at Fifteen Gate, Firestone Plantations Company Gate; that the high tension wire caught fire, broke and fell on the roof of co-respondent's store and house; that as a result, the co-respondent store and house were reduced to ashes, along with the goods in the store and the storeroom, and the fixtures, furniture, *et cetera*.

Pleadings were exchanged and rested. Following the ruling of the case to trial by the court, with the aid of a jury, trial was held but ended in a hung verdict.

During the course of last September Term of the Circuit Court for the Sixth Judicial Circuit, Montserrado County, presided over by His Honour Napoleon B. Thorpe, trial of the case for the second time began and culminated in a verdict for co-respondent. Defendant/petitioner thereafter filed a motion for a new trial which was resisted and argued. However, before the judge could rule on the motion, this remedial writ for, certiorari was served on him and the co-respondent.

Returns to the petition were filed, arguments entertained and a ruling entered by the issuing Justice granting the petition, ordering the peremptory writ issued and directing the abatement of the case.

The appeal announced from this ruling brought the case to us for review by the full bench. Because

It has power to examine upon the merits of every decision of the court or officer upon questions of law and look into the evidence and affirm, reverse or quash the proceedings as justice shall require The writ of certiorari is for the purpose of correcting errors committed by a subordinate court or other body while a matter is pending, when such errors materially prejudice or injure the rights of a party. . . ." *Attia v. Rigby*, [1908] LRSC 6; 2 LLR 9 (1908), and *Williams v. Clarke*, [1913] LRSC 13; 2 LLR 130 (1913), quoted *supra*. See also *Dennis v. Hamidi and Tecquah*, 13 LLR 34, 36 (1957).

Another irregularity committed by the co-respondent judge is that, when the conduct of regular juror Zinnah Kemah was brought to the attention of the trial court, especially to the effect that said regular juror had, prior to receiving evidence in the case, expressed his opinion against the defendant/petitioner and indicated his support for the plaintiff/co-respondent, it was incumbent upon the trial judge to conduct an immediate investigation into such serious allegation, and if found true, to have removed such a juror from the regular panel and replaced him with an alternative juror as the law provides. On the other hand, the co-respondent's insistence that juror Zinnah Kemah remain on the panel and the trial judge's acquiescence thereto, leads one's mind to conclude that said juror was maintained on the panel to bring about the desired result. This was highly erroneous and irregular on the part of the trial judge and is a patent miscarriage of justice which this Court is in duty bound to correct. And in the determination of petitions in certiorari, we are bound by the statute which provides:

'Determination of issue. If the issue is determined in favor of the petitioner, the justice who issued the writ shall direct such order to the court, judge, administrator, or administrative board or agency below as may be necessary to carry out the ends of substantial justice . . .' Civil Procedure Law, Rev. Code. I: 16.23(6). Wherefore, and in view of the foregoing, the amended petition of petitioner is hereby granted, the peremptory writ ordered issued and the returns of respondents dismissed.

The Clerk of this Court is hereby ordered to send a mandate to the court below, with instructions to the trial judge or any other judge presiding there in to resume jurisdiction over the action of damages, vacate the proceedings thereon, set aside the erroneous verdict of the empanelled jury and dismiss the complaint. Costs ruled against the respondents. AND IT IS HEREBY SO ORDERED."

Counsel for respondents ardently and vehemently argued before us that the writ of certiorari does not delve into the merit of the case; that its intent is to correct errors and adverse interlocutory rulings complained of; and that the writ obtains only in a case which is still pending before the

Smallwood, [1974] LRSC 16; 23 LLR 3 (1974) and *Bassa Brotherhood Industrial and Benefit Society v. Dennis et. al.*[1971] LRSC 60; , 20 LLR 443 (1971).

A motion for new trial was filed, resisted and argued. Then the writ of certiorari set in, halting the entire proceedings. What has taken us aback is petitioner's attempt to halt the court making a ruling on petitioner's own motion. Thus petitioner, by its motion, invoked the aid of the court and simultaneously placed a stone wall in its way by his petition for a writ of certiorari.

The sundry rulings considered by petitioner to be adverse were all executed to as well as the verdict which was brought in by the empanelled jury. The executions interposed to those rulings closed all avenues for a writ of certiorari which does not obtain where appeal is the proper remedy. *Raymond Concrete Pile Company v. Perry and Hamilton*, 13 LLR 522 (1960).

We would have gone along with the respondent that the Chambers Justice's ruling transcended its scope since the Supreme Court, under common law, cannot properly mandate a lower court to dismiss an action in which the case had been ruled to trial, with the aid of a jury, and while said case is yet under trial. We also challenge the authority of a trial judge to dismiss an action in which another judge of concurrent jurisdiction had previously ruled the case to trial, with the aid of the jury, for in doing so, he would not only be reviewing the act of his colleague, but also depriving the jury of its function.

Counsel for petitioner/appellee brought to the attention of this Court the impropriety shown by the respondent judge in retaining a juror on the panel who was seen in company with and at a lunch table in a cafeteria with one of the counsels for the defendant, petitioner/appellee herein. We believe that it was an erroneous or prejudicial act on the part of a trial judge to continue a juror on the panel who was reported to have enjoyed favors from a person or persons having interest in the case under trial, if an investigation proved the allegation to be correct. This view is supported by a long line of opinions of this Court, including *Bailey v. Kandakai et al.*[1972] LRSC 62; , 21 LLR 556 (Chambers)(1972); *Vandevoorde v. Morris and Mirza*, [1956] LRSC 16; 12 LLR 323 (1956); *Emidon Limited and Hall v. Liberia Cold Stores, Inc.*, [1971] LRSC 65; 20 LLR 487 (1971). Also in the case *Union National Bank Inc. v. Hodge et. al.*[1971] LRSC 78; , 20 LLR 635 (Chambers)(1971); *Liberian Insurance Agency, Inc. v. Monsour N. Ghosen and Bros.*, [1976] LRSC 1; 24 LLR 411 (1976), where the function of the writ of certiorari was specifically defined.

Taking recourse to common law, we find the following definitions of certiorari: "The office of certiorari is in no sense that of restraining order. It is not the purpose of the writ of certiorari to

inferior tribunal should have rendered but can only emand for further proceedings or new trial, in some jurisdictions, by statute or otherwise, final judgment may be rendered by the reviewing court, without remanding the cause in a proper case. However, it has been held that the power to enter upon a new judgment is limited to the judgment that could and should have been entered by the lower court." 14 C.J.S., *Certiorari*, § 179.

Additionally, in 14 AM. JUR. 2d, *Certiorari*, § 2, we find the following: "The judgment of the court in certiorari affects only the validity of the record. That is, its judgment determines whether the record is valid or invalid. Moreover, on a certiorari, in the absence of statutory enlargement, only the external validity of the proceeding had in the lower court may be examined by the Supreme Court under its supervision. The supervisory jurisdiction of the court cannot be exercised in order to review the judgment as to its intrinsic correctness, either on the law or the facts of the case."

All of the citations of law from the opinions of this Court, given hereinabove, define the function and scope of the writ of certiorari. The common law citations also agree with the opinions of this Court, except that they include the serving clauses underlined above.

We must therefore take recourse to our own statute, found at section 16.23, subchapter B, of the Civil Procedure Law, Rev. Code 1, certiorari, under "*Determination of Issues*", relied upon by the Chambers Justice in his ruling appealed from. Thereafter, we shall turn to the complaint and answer which lay the basis of the merits of the case and then to the evidence.

The COMPLAINT (caption and prayer left out) states:

"Plaintiffs in the above-entitled cause complain of the defendant in manner following, to wit:

1. That the plaintiffs are the lessees of a building, the front part of which the plaintiffs were using as a store and the rear was being used as a resident quarters. Said property is leased from Mr. Thomas S. Mulubah, who is the owner of the said building. Plaintiffs hereby give notice that they will subpoena their lessor to produce the copy of the lease agreement during the trial, plaintiffs' copy having been destroyed by the fire and therefore cannot attach same to form a part of plaintiffs' exhibit in this case.

2. That the said building leased by the plaintiffs was located at 15 Gate, Kakata Highway, Montserrado County, contained a store with sundry goods and merchandise valued at \$250,000.00, which store the plaintiffs were operating until April 12, 1983, when the store together with the

4. Plaintiffs further complain and say that the damage done to the plaintiffs' property and goods is the direct result of the fall of the 12.5kv three phase primary distribution line that was cut between a two-hole span which fell on plaintiffs' building directly under the line. This live line which maintained a voltage of 7,200 volts fell on the zinc roof of plaintiffs' building and created a serious fire to the extent that all of plaintiffs' property and merchandise were totally destroyed. Plaintiffs hereby give notice that at the trial they will produce their audit report to show their inventory and financial statements in support of their claim.

5. Plaintiffs further complain that on May 9, 1983, the plaintiffs' counsel wrote the defendant corporation and demanded compensation for the loss which plaintiffs had sustained as a result of the electrical fault on defendant's system, but up to the present the defendant corporation has not responded positively to plaintiffs' request despite a conference held between the plaintiff and the defendant, and plaintiffs' subsequent letter of reminder to the defendant corporation. Copies of plaintiffs counsel's letter of May 9, 1983, and that of May 31, 1983, addressed to the managing director of the defendant corporation, as well as defendant's letter of May 23, 1983, are hereto attached in bulk and marked exhibit "A" to form a cogent part of this complaint.

6. Plaintiffs say further that as a result of the destruction of plaintiffs' goods in the store, plaintiffs have sustained a loss of \$250,000.00, which is the value of their goods, and \$17,000.00, which constitutes the value of plaintiffs' personal effects that were in the dwelling area of their home, which personal effects include jewelry and other personal effects of the wife of the plaintiffs' company, Mrs. Ahmed Shammout, and his children.

7. That as a result of the fire, the plaintiffs were without a home to live in, so plaintiffs' manager and his wife and children had to go to seek refuge with friends, they having been deprived of their residence as well as clothes to wear and other necessities of life."

The DEFENDANT'S ANSWER (caption and prayer left out) states: "The Liberia Electricity Corporation (LEC) defendant in the above entitled cause of action denies the legal sufficiency of the complaint so as to constitute the cause of action that would entitle the plaintiffs to recover against it, and therefore, prays for the dismissal of the complaint and the entire action for the following reasons to wit:

1. That on April 12, 1983, at about 11:05 a.m. the defendant received a fire call that there was a fire at its Gate 15 Intersection along the Monrovia-Kakata highway; that immediately at the call, defendant dispatched one of its engineers to the scene of the fire to the area mentioned above and

reasons for the claim the allegation that defendant maintained a faulty power line that caught fire, and fell on plaintiffs store building, resulting in the alleged destruction of plaintiffs' goods. This allegation as contained in plaintiffs' complaint is false and misleading in that at no time has the defendant maintained a faulty wire in this area and for that matter any adjacent area. Therefore, defendant maintains her position taken in count (1) of this answer.

3. That upon receipt by defendant of plaintiffs' claim, defendant addressed a letter bearing reference LEC/LSD/103-'83, dated May 9, 1983, acknowledging receipt of their claim and inviting them to a conference for a discussion of the matter as suggested by the plaintiffs, following further investigation by the defendant of the fire disaster, as can be seen from the attached copy of the defendant's letter to the plaintiffs, marked as exhibit 'A', to form a cogent part of defendant's answer. Defendant submits that at a conference held between the plaintiffs and defendant, the defendant informed plaintiffs that based on its investigation, the cause of the fire was not traceable to any act or conduct of the defendant, and therefore out rightly rejected plaintiffs' claim.

4. Defendant admits that a fire did occur, involving plaintiffs' lease store building and a destruction of his property, including his personal effects, but denies any responsibility for the cause of the fire. Defendant's further investigation revealed that physical evidence pointed to the fact that the fire started inside the building and outside the primary line, causing it to fall on the ground, and melting the soil. Defendant hereby gives notice that at the trial it will produce reports of its engineers on the investigation of the cause of the fire.

5. Because defendant says that plaintiffs' owner wife, Mrs. Shammout, put a frying pan on the gas stove, left to bath her baby, and in the process of doing that, and being negligent to attend to the cooking she was doing, the stove caught fire and the flames penetrated the roof, rose to the height of the wire, burned the wire, and this resulted into it being cut out into two (2) pieces; one piece falling on the Monrovia side of the road and the other on the Kakata side of said road, in the presence of several bystanders. Defendant hereby gives notice that it will produce evidence to substantiate this averment.

6. Defendant, denying plaintiffs' claim, says that the claim for damages is uncertain, speculative, prospective and conjectural, and cannot be countenanced by this Honourable court, for reasons that the plaintiffs have miserably failed to show the means by which they arrived at the said purported claim of \$267,000.00 for goods and personal effects allegedly damaged by the fire, which would have otherwise given the defendant notice as to what the plaintiff intended to prove at the trial with respect to the basis of the claim. Plaintiffs' failure to give such notice to defendant

sufficiency of count five of the complaint. This count, if not cured by the reply - which was not done - made the plaintiffs' claim insufficient for the recovery of special damages.

We hold that the plaintiff/respondent should have made profert of all its supporting documents with its complaint. Here is what the petitioner/defendant said in his petition about the complaint:

"In the complaint of co-respondents Shammout Brothers, no description or enumeration of properties of any kind, class, quantity or quality of any type was alleged; nor was the complaint supported by any bill of particulars whatsoever, for which petitioner challenged and denied the sufficiency of said complaint as being speculative, uncertain and contingent. But the trial judge ignored this salient issue raised by petitioner and ruled the case to trial on the merits"

Any argument advanced that those documents were destroyed in the fire is untenable because the safe, the contents of which were found intact, was the proper place for those documents. Additionally, if the profit and lose accounts were available, then why were the other documents not available?

The testimony given by Mrs. Shammout in no way supports plaintiff's claim: "The fire was caused by the wire"; "She first saw the fire in the store." The testimony of plaintiff's witness, one Kamara, who did not see what caused the fire, was completely out of the point. The two expert witnesses, the former LEC Managing Director Cooper and Colonel Emerson Hayes of the Fire Bureau at Careysburg, who reached the scene of the fire disaster after thirty and two days respectively, stated that the high tension electric wire broke into two, one end of which fell on the roof of plaintiff/respondent's house and caused the fire. But they also agreed that the heat from the fire from the house could have melted the wire and broken it into two.

Extraneous but worth mentioning is the question whether the store house was constructed beneath and under the high tension electric wire or whether the high tension electric wire was stretched above and over plaintiffs store house? However, because this question does not form a part of the record in the case, we cannot say much about it, except to state that even if the question was exhaustively explored, it alone could not have cured the patent defects which the complaint was tainted with.

These form the merits and evidence on which the trial jurors awarded special damages of \$267,000.00 and general damages in the sum of \$200,000.00.

The attacks lodged against the judgment, as we have been able to gather from the records, are:

her house and on the other hand that she first saw the fire in the house; that the trial judge erred in refusing to remove juror Kemah from the panel even though the said juror had openly given his opinion prior to their deliberation; that plaintiff had a good case against the defendant, but it was rendered bad by the retention of juror Alvaria Cole who was reportedly seen at a dinner table at a cafeteria with one of the counsels for the defendant.

We now turn to the five questions put to us by counsel of plaintiff/respondent in his brief for resolving the case:

1. Whether a writ of certiorari will lie in a case where the jury has brought in a unanimous verdict against the defendant and the defendant has filed a motion for a new trial, and the motion for new trial has not yet been passed upon by the trial judge?
2. Whether it is the function of the writ of certiorari to review the complaint in an action of damages when the law issues have already been disposed of by another trial judge, a trial had, a verdict rendered by the jury, and a motion for a new trial still pending?
3. Can a Justice in Chambers, in a certiorari proceeding, legally go into the merits of the case and review the evidence in said case, based upon allegations made in a petitioner's petition for a writ of certiorari?
4. Can a Chambers Justice legally order a trial judge or any other judge presiding in the trial court to set aside the verdict of the empanelled jury while a motion for a new trial is still pending before the trial judge who has jurisdiction over the case?
5. Does the provision of the statute which states that certiorari is a special proceeding "to review an intermediate order or interlocutory judgment of the court", extend to questions of law passed upon by a judge during the course of a trial, such as the denial of defendant's application for a directed verdict and to which exceptions have been taken by a party?

Under ordinary circumstances and in the absence of statutory enlargement our answer to all these questions would have been "no".

As stated above, however, our citations from the opinions of this Court define the function and scope of the writ of certiorari. American Law, as enunciated in 14 C. J. S. and 14 AM. JUR., quoted above, agree with the definitions stated in the opinions of this Court, except that they include the saving clauses mentioned above.

petition is granted the order to be given the court below cannot be other than to abate or dismiss the action.

Having seen from the records that the Justice in Chambers had not transcended his bound, and having reviewed the merits as well as the evidence in the case, we hold that the Justice acted in conformity with pronouncements of this Court made in previous opinions. Thus, for example, this Court, speaking through Mr. Justice Wardsworth, in the case *Kashouh v. ManlyCole*, [1964] LRSC 11; 15 LLR 554 (1964), said at page 560: "In special damages, every item of the amount claimed must be proved, and proved in such a manner as to leave no doubt that the plaintiff is indeed entitled to recover it". Again, in *Joseph Hanson & Soehne (Liberia) Ltd. v. Tuning*, we said: "Special damages must be pleaded with particularity and affirmatively proved." [1966] LRSC 76; 17 LLR 617 (1966). Also, in *Haid v. Ebric*, [1966] LRSC 85; 17 LLR 662 (1966), this Court stated: "When special damages are pleaded with reference to documents not accessible to the opposing party, the documents should be annexed to the pleading." We therefore accept the conclusion arrived at by the Chambers Justice.

In agreeing with the Chambers Justice in his application of the statute, we wish to emphasize that before such conclusion can obtain, three conditions should be apparent: (a) the complaint must be so incurably defective that recovery cannot be had on it; (b) the answer must be forceful and sufficient enough to warrant dismissal of the complaint; and (c) the verdict of the empanelled jury must be manifestly against the weight of the evidence and the law controlling.

Considering all that has been said and in the light of our statutory law, we hold that this Court lacks the discretionary power to act contrary to the Chambers Justice's ruling, and therefore do hereby add our endorsement to the ruling appealed from, and affirm and confirm it. And it is so ordered.

Ruling affirmed

MR. JUSTICE JANGABA *dissents*.

Our statute defines certiorari as "a special proceeding to review and correct decisions of officials, boards, or agencies acting in a judicial capacity, or to review an intermediate order or interlocutory judgment of a court".

In the matter under review, I do agree that the statute on certiorari gives the Justice in Chambers sound discretion to "direct such order to the court, judge, administrator, or administrative board or

To dispense with the jury verdict in such cases by a shortcut recourse to certiorari, as in this case, is to first and foremost dispense with a jury system so important to our adversary system of litigation; and secondly, such action will be setting a dangerous precedent and lead to the opening a floodgate for parties seeking to avoid the appeal procedure or by their counsel who would rather take the short cut by certiorari just before a final judgment is rendered in a case.

I do not think that the Liberian Judicial System is ready to dispense with jury and the formalities of an appeal after a judgment. Hence, I have thought it proper to interpose this dissent and to disagree with the majority opinion.