AARON COOPER, Petitioner, *v.* TILMAN DUNBAR, Assigned Circuit Judge, Second Judicial Circuit, and EDMUND REEVES, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, GRAND BASSA COUNTY.

Argued November 13, 1972. Decided November 24, 1972.

1. By the unconditional withdrawal of an appeal the appellant is thereafter estopped from raising those contentions he could have embraced in his appeal.
2. Certiorari will not lie in a matter which has been conclusively adjudicated.
3. Interference by anyone with a mandate of the Supreme Court will not be tolerated and will be dealt with severely by the Court.

A judgment was rendered in 1963 against petitioner resulting from an action instituted for breach of contract when a used car sold to co-respondent Reeves by petitioner allegedly proved defective. The present proceedings revolve around the language and meaning of the judgment rendered. The circuit court, after reversing the Magistrate Court in which judgment for defendant was first entered and appealed from by plaintiff, ordered that the vehicle be produced for repairs by defendant and in the event of failure to make adequate repairs that he pay back the purchase price. An appeal was taken by the defendant which was withdrawn without reservation in 1965, and a mandate of the Supreme Court sent to the lower court ordering enforcement of the judgment. It seems that Reeves next appeared in 1970 in the circuit court when he sought enforcement of the judgments as ordered. The circuit court judge then acceded to the request of Reeves for time to consult counsel concerning production of the car for necessary repairs. At the same time the judge received the assent of Cooper to do the work, with the understanding that in the event the repairs were not made the judgment would have to be paid. The

record next discloses that in 1972 the parties were back in the circuit court. The judge then presiding ordered the judgment paid, though the petitioner protested that the judgment being enforced required Reeves to produce the car for repairs. Cooper was required to pay part of the judgment and authorize his employer to pay the balance, claiming later that he was compelled to do so under threat of imprisonment. Cooper thereafter applied for a writ of certiorari to the Justice presiding in chambers who ordered the alternative writ issued and then referred the matter to the full Court. The majority and minority opinions took different views of the present proceedings. The majority felt the proceedings were designed to frustrate the mandate of the Supreme Court ordering enforcement of the judgment by the lower court; the dissenting view that the proceedings were intended to facilitate enforcement, in that the lower court in 1972 acted at variance to the lower court's efforts to execute the mandate. It stressed that no effort was being made to offend the dignity of the Supreme Court, just proper enforcement of the judgment as ordered by the Court's mandate. The majority *quashed* the alternative writ, *denied* the petition, and ordered the lower court to confirm enforcement of the judgment without further delay.

Dessaline T. Harris for petitioner. No appearance for respondents.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

A judgment of the Supreme Court is intended to, and does, terminate litigation whether that litigation originates in the Supreme Court itself, or in chambers by remedial process, or in an inferior court. So long as the Supreme Court renders a valid judgment, that judgment

brings the litigation to a final determination. From that judgment there is no appeal and with that judgment there can be no interference without adversely affecting the dignity and authority of the Court itself. It makes no difference whether that interference was invoked by petition filed in the chambers of the Supreme Court, or by petition filed before a judge in an inferior court; any attempt from any source whatsoever to interfere with the Court's judgment is contemptuous behavior.

In the instant case, Aaron Cooper sold a used vehicle to Edmund Reeves in 1963. According to the complaint, the vehicle is alleged to have failed to give service after a short time following its purchase. Being dissatisfied, Mr. Reeves demanded return of $430.00 which he had paid for it. There was a misunderstanding which resulted in a lawsuit in the Second Judicial Circuit, Reeves suing for damages for breach of contract. Judgment was rendered for him, and Cooper appealed from this judgment to the Supreme Court.

This appeal was scheduled to be heard in the October 1963 Term, but before it could be reached, for reasons unknown, Cooper withdrew his appeal unconditionally. Accordingly, the Supreme Court ordered the lower court to resume jurisdiction and enforce its judgment. This was correct and normal procedure. A mandate to this effect was sent to the judge presiding in the trial circuit, and Judge Tilman Dunbar proceeded to attempt enforcement of the Supreme Court's mandate. It was at this stage that Cooper applied in chambers of the Supreme Court for certiorari to stay the enforcement of the Supreme Court's mandate. It is this matter that the justice presiding in chambers has sent on to the bench *en banco* for hearing and determination.

The salient points of the petition are that the car Cooper was to have repaired was sold by Reeves and that, for his inability to repair the car, as he was ordered to

do or pay the equivalent value, he was assessed a bill of costs. Thus, it is his contention that the judgment was unenforceable.

According to the petition, the petitioner claims that the judgment rendered against him in the trial court is now impossible of enforcement, because of the manner in which it is worded. We would like to observe that according to the Supreme Court's record there has been no change in the wording of Judge Hunter's judgment which was rendered in the trial court on April 18, 1963, so that this wording was well known to Cooper when he took his appeal from this judgment, a portion of which is set forth.

> "In view of the foregoing, the court does hereby reverse the ruling made in the Magistrate's Court of Buchanan in this matter and does hereby adjudge that the vehicle in question be turned over to defendant, Aaron Cooper, for him to put said vehicle in a very decent . . . condition within the next ten days from date and also comply with the complaint in rewarding plaintiff in the sum of $19.00 as laid down in the complaint made before the Magistrate's Court of Buchanan, or to refund to Mr. Edmund Reeves his $430.00 plus the alleged expenses as laid down in this complaint. Costs to be paid by the defendant."

The petitioner could have raised objections to the phraseology of the judgment in his appeal but never did so. In fact, his voluntary withdrawal of the appeal foreclosed appellate review of the judgment and the relief sought. This being so, he would seem to be estopped from raising such objections now.

The petitioner also claims that the vehicle, the subject of the judgment, had been sold by the plaintiff and, therefore, could not be "turned over to the defendant" as the judgment commanded and for this reason the judgment cannot be enforced. We are of the opinion that he is also estopped from raising this contention, because he knew at the time that the vehicle was still in the posses-

sion of the plaintiff, and had not been turned over ten days after rendition of judgment as the trial court ordered. He knew that this was contrary to the judgment, yet, instead of raising the impossibility of executing this part of the judgment in his appeal before the Supreme Court, where something could have been done about it, he elected to "without reservation" withdraw the appeal.

Had he not withdrawn his appeal, he could have then brought to the attention of the Supreme Court the fact he now alleges: that since the vehicle was still in possession of the plaintiff that part of the judgment had not been complied with, which rendered impossible execution of the judgment as worded. But instead, he elected to withdraw his appeal without reservation and unconditionally, and now applies to the Supreme Court for remedial process to stay execution of the judgment which the Supreme Court could not review as a result of his having withdrawn his appeal. All that granting his request would accomplish would be to make the Supreme Court look ridiculous, because we would then have to order the trial court not to enforce a judgment this Court had ordered enforced as a result of withdrawal of the appeal.

The circumstances in this case call to mind similar circumstances which obtained in another case determined by this Court, in which injunction was prayed for to enjoin execution of a Supreme Court mandate in a case of ejectment. *In re Coleman,* 11 LLR 350 (1953). Not only did the Court find the petitioners guilty of contempt, but it also punished the judge and the lawyers.

As in the *Coleman* case, where Mr. Justice Barclay in chambers charged contempt and sent the petition on to the full bench, Mr. Justice Horace should also have charged contempt in chambers before referring the matter to the Court. As we have said earlier, it is contemptuous for a party to seek by any process to stay, or delay, or in any manner negatively affect, the enforcement

of a Supreme Court mandate. Only the judge could properly assert impossibility of enforcement of the judgment. No returns to these certiorari proceedings have been made by the judge, and none have been filed by the co-respondent. But we shall say more about this later.

We have said earlier that interference with a mandate of the Supreme Court should not be tolerated from any source. Least of all should we ourselves entertain proceedings which would interfere with, or stop enforcement by inferior courts of our judgments and mandates. *Wolo* v. *Wolo,* 8 LLR 453, 457–458 (1944), states the position in this Court.

> "After a hearing duly had on November 8, 10, and 14, Mr. Justice Tubman thereafter on December 11, 1939, handed down an exhaustive opinion denying the said application and laying emphasis upon the point that the decision of the Supreme Court annulling the legislative divorce remained unrecalled by this Court *en banc,* and that as a single Justice presiding in chambers he could not issue a restraining writ to adversely affect said decision."

This would seem to be a very elementary principle. Of the five votes on the Supreme Court, no one of them is superior in any way to the others. Therefore, one of these votes cannot have an overriding effect upon any one of these others, and least of all upon the majority. It appears to me, therefore, that a decision taken by the majority, or by the bench *en banco,* cannot be interfered with, without upsetting the spirit and intent of Article IV, Section 3rd, of the Constitution.

I think it would be setting a very dangerous precedent to grant remedial writs to parties who find themselves dissatisfied with Supreme Court judgments, thereby encouraging them. The consequences of allowing parties to challenge enforcement of the judgments and mandates of the Supreme Court could have a calamitous reaction on the constitutional functions of the Judiciary as a part

of the coordinated system of government. For, what effect could the Supreme Court have in the proper operation of government if enforcement of its judgments and mandates could be challenged, obstructed, and stopped by the parties in causes appealed to and determined by the Supreme Court? There must be a losing party in every litigation coming before the Court, and if we begin encouraging and permitting such losing parties to question, challenge, or disturb the judgments rendered or affirmed against them, we thereby with our own hands begin to tear down the very foundation of the judicial system of this country, which would thereby completely destroy the Supreme Court of this Nation. We are sworn and committed not to do this.

Perhaps the manner of enforcement of the mandate in this case might not have satisfied the losing party, Mr. Aaron Cooper. But the question is: Who is to blame for the situation in which Mr. Cooper finds himself? In *New York* v. *Seabreeze,* 2 LLR 26, 27–28 (1909), the appellant had instituted habeas corpus proceedings and after withdrawing his appeal to the Supreme Court filed a motion to set aside the judgment from which he had appealed. The Court addressed itself to the issue.

> "Seabreeze had a perfect legal right to except to the decree of the judge below, and appeal from said decree according to the law of Liberia made and provided; but this Court further says that the said Seabreeze committed a waiver when he withdrew his appeal, thereby debarring himself from receiving the justice he was seeking."

We hold that a withdrawal of appeal deprives the withdrawing party from raising any issues in respect to the judgment from which he had appealed. By his voluntary withdrawal he has waived all rights which he might have gained by the appeal, and he thereby accepts the judgment which by announcement of his appeal he had rejected.

Our colleague, Mr. Justice Horace, has not agreed with our position taken in the determination of this case, and so has prepared and will read a dissenting opinion. The main point of disagreement seems to be that in his view Judge Dunbar proceeded wrongly and arbitrarily, in the manner in which he attempted the enforcement of Judge Hunter's judgment, because Judge Dunbar did not require Mr. Reeves to produce the vehicle in question and turn it over to Mr. Aaron Cooper, as Judge Hunter's judgment had literally ordered. Perhaps it is true that Judge Dunbar might not have required the vehicle to be produced, but production of the vehicle didn't seem possible in view of Mr. Cooper's allegation contained in his petition filed in the Supreme Court to the effect that he knew the vehicle had been sold by Mr. Reeves during pendency of the case, sometime between 1963 and 1965, when he withdrew his appeal.

If it is true that the vehicle was sold by Mr. Reeves during the pendency of the case as Mr. Cooper has alleged, then it was impossible for Judge Dunbar to have had Mr. Reeves turn over the same vehicle in the August 1972 Term of court. Yet Judge Dunbar was under orders from the Supreme Court to enforce a mandate of this Court, and his failure to carry out those orders would have made him the fit subject of contempt proceedings. The opportunity to verify whether it was true or not that the vehicle had been sold before termination of the case in the trial court, as Mr. Cooper stated in his petition, was lost by the petitioner's withdrawal of his appeal from the Supreme Court.

If Mr. Reeves sold the vehicle before the appeal was announced and taken from Judge Hunter's judgment, then it was Mr. Aaron Cooper's right, if not his duty, to have allowed his appeal be heard so that this important issue might have been reviewed by the appellate court. On the other hand, if the vehicle was sold after the appeal was announced, then Cooper also had the right and

the duty to have informed the Supreme Court of this contemptuous act of Edmund Reeves. But whatever the fact, Cooper waived his right by not insisting upon his appeal, and/or not bringing information for contempt. We have already passed upon the consequences of withdrawal of appeal, as it affects the rights of the appealing party.

Let us now see whether or not this petition can be granted, or the peremptory writ issued according to our practice in certiorari. As we have said earlier in this opinion, this was sent to the bench *en banco* without any returns having been filed. Since Judge Dunbar is only a nominal respondent, we have no knowledge of what the returns to the petition might have been. However, we do have the judge's returns to our mandate sending down Judge Hunter's judgment for enforcement, a portion of which is set forth.

> "The mandate in the above entitled cause of action handed down by the Supreme Court on the 18th day of June 1965, was transmitted to us for enforcement. Defendant/appellant was cited to appear before us on the 13th day of September 1972, when the said mandate was read to him and we proceeded to enforce the same. Defendant/appellant assured the court that at the moment he was without any money to satisfy the judgment of court and he offered to prepare an authority to the Chief of Finance of the Ministry of Defense authorizing the said Chief of Finance to pay over to the Sheriff of Montserrado County for the Sheriff of Grand Bassa County the sum of $100.00 from defendant appellant's salary, the said appellant/defendant being an officer of LNG, employed by the Ministry of Defense. The said authorization to the Chief of Finance was prepared and properly authenticated by the signature of the said appellant/defendant and approved by the Chief of Finance, AFL, Ministry of Defense, for the payment of the

full amount of $525.09 in satisfaction of the judgment, principal and costs of court. Copy of said instrument is herewith made profert and marked exhibit "A" to form a part of these returns. The court then gave its ruling accepting the said authorization intended to make full satisfaction of the judgment in the said case, copies of said authorization have been ordered transmitted to the Chief of Finance, Sheriff for Montserrado County, to the Sheriff of Grand Bassa County, to the Office of the Clerk of Court, 2nd Judicial Circuit and a copy to form a part of these returns. These proceedings were concluded by ruling from us dated the 18th day of September, 1972, based upon the authorization to the Chief of Finance.

"Dated this 12th day of October, 1972.
"TILMAN DUNBAR,
Assigned Judge, 2nd Judicial Circuit, Grand Bassa County."

According to the letter written to the Ministry of Defense by Cooper, marked exhibit "D" and made profert with his petition, and incorporated as exhibit "A" in the judge's returns, compliance with the judgment was effected on September 13, 1972. Of course the judge's returns show that the ruling to this effect was not entered in court until September 18, five days later. But using September 18 as the effective date of the enforcement, according to what the returns have stated, it would be more than fourteen days after enforcement of judgment was effected that certiorari was applied for in the chambers of the Supreme Court. Unfortunately, no minutes of the court for either September 13 or 18 were annexed to the petition to show what the judge's ruling referred to in the petition was, complained against as being irregular and arbitrary, as is required under Rule IV, Part 9, of the Revised Rules of the Supreme Court. Incidentally, the date of the petition is October 2, 1972, and the alternative writ is dated October 6, 1972.

However, since the petitioner's own exhibit "D" attached to his petition shows that he authorized by letter the Ministry of Defense to settle the amount of damages sued for, together with costs of court, we will give effect to the date thereon as the date on which enforcement of the Supreme Court's mandate was effected. Therefore, certiorari was applied for nineteen days after the mandate had been enforced.

The Supreme Court has held that where a judgment has been complied with and costs have been paid, the matter is thereby terminated. And in *Liberia Trading Corp.* v. *Abi-Jaoudi,* 14 LLR 43 (1960), the Court ruled that withdrawal of an appeal and payment of costs is positive indication of the appellant's submission to and compliance with the judgment appealed from, and confirms it as a conclusive adjudication of the issues between the parties. Certiorari will not be granted when it interferes with an enforced judgment, for the writ will only be issued to correct errors of a trial court while the matter is pending trial. *Williams* v. *Clarke,* 2 LLR 130 (1913); *Markwei* v. *Amine,* 4 LLR 155 (1934); *Gage* v. *Pratt,* 6 LLR 246 (1938); *Vandervoorde* v. *Morris,* 12 LLR 323 (1956). And Rule IV, Part 9, of the Revised Rules of the Supreme Court requires that the Justice in chambers may grant a writ of certiorari "where an action or proceeding is pending in any court or before a judge thereof." If the case is already terminated, then it seems clear from the authority cited that the writ should not issue.

Coming back to the question of returns to remedial writs, we would like to observe that the petition has referred to a ruling of respondent Judge Dunbar, and it alleges that he detained Cooper until the petitioner signed a bill of costs. Although we have only the bare allegation of the petitioner, if true, Was it unusual to imprison a party for failure to comply with provisions of a judgment in the enforcement of a Supreme Court mandate?

However, this is in passing. It is usual, and better, when such allegations are made in a petition that the minutes reflecting the ruling referred to be proferted.

Because of the peculiarity of the circumstances, though the matter is very important, we will not punish for contempt as we should, since the Justice in chambers has not charged contempt. But we will sound a warning that in all future cases of this kind, counsel and party seeking in any manner to stay, or delay, or in any manner intefere with enforcement of a Supreme Court judgment or mandate will be required to answer before the bench *en banco* for defiance of the Court's authority, and that the severest punishment will in every such case be inflicted.

The petition for certiorari is, therefore, denied and the alternative writ is dismissed. The Clerk of this Court is ordered to send another mandate to the judge now presiding in the Second Judicial Circuit, commanding him to resume jurisdiction and confirm enforcement of the mandate without further delay; and that he is to make immediate returns to the chambers of the Chief Justice certifying whether or not enforcement of the said mandate is being implemented by the sheriff, in keeping with the authorization signed by petitioner. Costs of these proceedings are ruled against the petitioner. It is so ordered.

Petition denied.

MR. JUSTICE HORACE dissenting.

I agree with my colleagues that a judgment of the Supreme Court is intended to and does, and I add should, terminate litigation. I also agree that a mandate of the Supreme Court must be enforced, otherwise a situation could be created to make ineffectual the decisions of the Court and thus bring it into ridicule and disrepute. My disagreement with my colleagues does not go to the question of whether or not a mandate of the Supreme Court should be enforced, but rather to the reasoning and con-

clusions in their majority opinion as to the method of enforcement in the instant case. My understanding of what is meant by a judgment of the Supreme Court terminating litigation is by its either affirming, modifying, or reversing the judgment on appeal. I do not think we can go farther than that.

From the scanty record before us it appears that in April, 1963, co-respondent Edmund Reeves brought an action of damages for breach of contract against petitioner Aaron Cooper in the Magistrate Court of Buchanan, Grand Bassa County, for $430.00, which he had paid petitioner for a secondhand vehicle that he claimed was mechanically defective. It further appears that Reeves lost the case in the Magistrate Court and took an appeal to the Circuit Court for the Second Judicial Circuit, Grand Bassa County. When the case was heard by Judge Hunter in the Circuit Court the judgment of the Magistrate Court was reversed, and Judge Hunter entered the judgment quoted in the majority opinion.

Petitioner took exception and announced an appeal from the judgment. When a motion was made by appellee's counsel to dismiss the appeal, appellant's counsel withdrew the appeal without reservation, whereupon a mandate was sent from this Court to the trial court to enforce the judgment of Judge Hunter. For some unknown reason the mandate was not executed and so, during the August 1970 Term, another mandate was sent from this Court to the Second Judicial Circuit Court, over which Judge Robert G. W. Azango was presiding by assignment, to be executed. When the matter was called, the minutes taken reflect that Reeves requested time to consult counsel about producing his car for the repairs required by the judgment, and Cooper indicated his willingness to make the necessary repairs.

Apparently Judge Azango was unable to effectuate the mandate before the term ended because during the August 1972 Term of the Second Judicial Circuit Court, when

Judge Tilman Dunbar presided, another mandate was sent down for enforcement. It is the manner in which Judge Dunbar undertook to execute the mandate that occasioned these proceedings.

Though the majority opinion has referred to the petition, I would like to emphasize count four in which it is alleged that the judgment has not been enforced, since petitioner has paid only $25.00 thereof and sent only a letter of authorization for payment of the balance, and both were done under duress.

When the petition was presented to the Justice in chambers he ordered the Clerk to issue an alternative writ of certiorari, which was done on October 6, 1972, and returned by the Marshal of this Court on October 9, 1972. The writ commanded respondents to file their returns on or before October 11, 1972.

As I understand it, the petition for a writ of certiorari merely related the facts of the controversy between the parties in the action in the court below as well as the action of the judge in his attempt to execute the mandate of the Supreme Court with respect to the judgment of the trial court. The petitioner felt that the judge was proceeding wrongly and in a way prejudicial to his interest, and as stated in the prayer of his petition, he was asking the Justice in chambers to have the court below send up the records in the enforcement proceedings, in order to examine them and determine whether the judge was proceeding properly or not. He did not ask that the mandate not be enforced.

My colleagues have viewed this act of petitioner as a deadly sin and an unpardonable offense of obstructing and interfering with a mandate of the Supreme Court. They have condemned both the petitioner for his audacity to assert what he considered a right and the Justice in chambers for, as it were, aiding and abetting an effort to obstruct enforcement of a mandate of the Supreme Court,

thus attempting to degrade and ridicule this Court. Fortunately, the facts of the matter speak for themselves.

In the first place, the judgment of the trial court which the mandate ordered enforced is clear and unambiguous. The mandate from the Supreme Court to enforce that judgment means nothing more or less than the enforcement of that identical judgment. Any attempt to do otherwise than enforce that judgment as it stands is an act of defiance to the Supreme Court. As I see it, the payment to Mr. Reeves of whatever amount is stated in the judgment, aside from costs, is contingent upon his first performing a certain act: turning over the vehicle to Mr. Cooper for repairs and then Mr. Cooper's failure to make the repairs as in the judgment. How can one part of the judgment be enforced without taking into consideration the other relevant portion of it?

In the majority opinion great stress has been laid on Mr. Cooper's withdrawal of his appeal. Because of that he is said to have waived any right to relief either in the trial court or the Supreme Court. In support of this contention *New York* v. *Seabreeze,* 2 LLR 27 (1909) is cited. In that case Seabreeze took an appeal in a case decided against him and afterwards withdrew the appeal. When he reactivated the same action by applying to the trial court that had rendered judgment against him for annulment of the judgment, he was acting irregularly and illegally, and the Supreme Court was right to say he had waived any rights he might have had by pursuing his appeal. He was bound by the judgment of the court from which he had appealed. In this case petitioner is not obstructing the enforcement of the judgment, he is merely asking that the judgment rendered against him be enforced in keeping with said judgment. I categorically disagree with the line of argument in this respect as stated in the majority opinion. When Mr. Cooper withdrew his appeal, the matter stood just where it was before

the appeal was taken, that is to say, the judgment was to be enforced by the lower court. Try as hard as I can, I have been unable to find any justification for Judge Dunbar insisting on Mr. Cooper's complying with a judgment when his compliance was contingent upon the performance of an act on the part of the adverse party, without calling on that party to perform the act required of him. In other words, I think the judgment should be enforced as a whole.

My colleagues have also contended that Mr. Cooper must have known that the judgment could not be enforced before he withdrew his appeal and that he should have followed up the appeal and brought to the attention of the Supreme Court the fact that the judgment could not be enforced. Instead, they point out, he elected to withdraw his appeal unconditionally, and now he applies to the Supreme Court for remedial process to stay execution of the judgment. We should remark right here that petitioner has not asked that execution of the judgment be stayed. To my mind all this is beside the point. The question of the time element is not in my opinion important. The most important thing to me is that whether within a day, or month, or year, whenever the judgment is enforced it must be done as the judgment stands. No mandate from the Supreme Court should alter that fact.

One wonders how in view of the ruling of Judge Azango referred to earlier in this dissenting opinion and now set forth, Judge Dunbar proceeded as he did in enforcement.

> "In view of the request of Mr. Edmund Reeves, this matter is suspended until at such time when he shall have contacted his lawyers and have the vehicle turned over to Captain Aaron Cooper to be put in decent condition as Capt. Cooper has expressed. This is the judgment of this court which is to be enforced. As soon as this is done and Mr. Edmund Reeves brings

it to the attention of this court, that is to say, have the vehicle in readiness to be turned over to Captain Aaron Cooper, then in that case the clerk of this court would be ordered to notify Captain Aaron Cooper to appear before this court in order to receive the said vehicle and thereafter a report would be made to the Supreme Court of Liberia as to how the mandate has been executed."

It is our considered opinion that all Judge Dunbar could do thereafter was to implement that ruling. To proceed as he did was nothing less than reviewing and contravening the ruling of a colleague having concurrent jurisdiction with him, which the Supreme Court has said cannot be done.

In *Republic* v. *Aggrey,* 13 LLR 469, 478–479 (1960), where Judge Weeks gave a ruling contrary to his predecessor presiding in the same circuit, this Court stated the principle.

"Now, summarizing both of these counts, this Court says that however sound the ruling of His Honor, Judge Weeks, might seem to be in substance, it cannot be upheld by any authority of legal jurisprudence; and, however erroneous or sound might be the ruling of His Honor, Judge Samuel B. Cole, given at the February 1959 Term of the court, the only judicial tribunal that would have been clothed with legal authority to review the same was an appellate court; and Judge Weeks, presiding over the May Term of the aforesaid court, exercising concurrent jurisdiction with Judge Cole, was without legal authority to review his acts as such."

See also *Jartu* v. *Estate of Konneh,* 10 LLR 318 (1950).

With respect to the view held by my colleagues that the certiorari proceedings were forwarded to the full bench before respondents could make their returns, thereby implying that they did not have an opportunity to make returns and thus traverse the issues raised in the petition, the

record speaks for itself. As stated before, the writ was issued on October 6, 1972, and served, according to the Marshal's returns, on October 9, 1972. The writ commanded respondents to file their returns on or before October 11, 1972. On November 1, a notice of assignment for hearing the matter on November 7, 1972, was issued by the Clerk of this Court and served on the parties according to the Marshal's returns, although up to this time, twenty days after the time given for returns to be filed, none had been. In keeping with the assignment the case was called on November 7. Counsellor Dessaline T. Harris appeared for petitioner and respondents did not appear either in person or by counsel and had filed no returns. The minutes taken best reflect what transpired.

"When this was called for hearing, Counsellor Harris appeared for the petitioner and no one appeared for the respondents. . . .

"The Court: This case was assigned on Monday, November 6, 1972, for hearing at 11:00 o'clock, but due to unforeseen circumstances hearing was postponed to 11:00 o'clock today, November 7, 1972.

"When the case was called no one appeared for respondents; Counsellor Harris appeared for the petitioner.

"In going over the petition it is discovered that the subject matter of these proceedings had already been determined by the Supreme Court *en banco* and therefore we feel incapable of reviewing any aspect of same in our chambers, though we inadvertantly ordered the alternative writ of certiorari issued.

"In view of these circumstances the Clerk of this Court is hereby ordered to transmit the records of these proceedings to the bench *en banco,* to notify the parties thereto of our position so that they may prepare for representation of their cause before the Supreme Court *en banco.*"

It may not be amiss to mention in passing that by statute the Justice who issues a writ of certiorari has the power to compel the respondents to make returns. Perhaps the Justice in chambers was wrong for not using this power, for had he done so there might have been no need for his colleagues to stress this point in the majority opinion. From the circumstances related above, it can be easily seen that respondents had both time and opportunity to file returns before the matter was sent to the full bench.

Another point of interest is the contention of my colleagues that the petitioner neglected to make profert of the minutes of court to support the allegation made in the petition that Judge Dunbar had held petitioner under duress until he executed the order to the Chief of Finance of the Ministry of Defense. Admittedly, this is usually done by a party applying for remedial process in this jurisdiction, but there is no statutory requirement to do so nor does failure to do so constitute what my colleagues have termed "gross irregularity." In fact, the very rule cited, as well as our Civil Procedure Law, contradicts this position.

> "Where an action or proceeding is pending in any court or before a judge thereof, the Justice presiding in chambers may grant a writ of certiorari to any party who by verified petition may complain that the decision or act of any trial judge is illegal or is materially prejudicial to his rights. *Said petition shall set forth the nature of the decision or the act complained against* and shall bear the certificate of two members of the bar to the effect that in their opinion the contention of the petitioner is sound in law. *Such writ shall command the judge to send up to this Court a full and complete copy of the record of the proceedings in the matter on trial* with a certificate under seal of the clerk of the court to the effect that the same is a true copy as far as the matter has progressed."

(Emphasis supplied.) Rule IV, Part 9, Revised Rules of the Supreme Court.

"Contents of Petition. A petition for a writ of certiorari shall contain the following: (a) A statement that petitioner is a party to an action or proceeding pending before a court or judge or an administrative board or agency; (b) A statement of the decision of the official, board, or agency that is alleged to be illegal or of the intermediate order or interlocutory judgment of which review is sought; (c) Certification by two members of the bar that in their opinion the contention of the petitioner is sound in law." L. 1963–64, ch. III, Civil Procedure Law, § 1623(1).

"Procedure after issuance of writ. The writ, accompanied by the petition, shall be served on the respondent and on the court, judge, administrator, or administrative board or agency whose decision or action is complained of. Issuance of the writ shall commence the proceeding. *The writ shall direct such court, judge, administrator, administrative board or agency to send up within five days to the justice who issued the writ a full and complete copy of the proceedings in the cause at issue,* with a certificate under the seal of the court, judge, administrator, or administrative board or agency that the same is a true copy; and *the justice who issued the writ shall have the power to compel such return and to require it to be amended and perfected when necessary.*" (Emphasis supplied.) *Id.*, § 1623(5).

So it can be seen that the responsibility for getting the record before this Court is not the petitioner's but the respondent judge's. It seems to me that many of the points raised in the majority opinion are points that were never brought into issue, because respondents, although they had ample opportunity to make returns, neglected to so do and, therefore, I do not think this Court should take the part of one side of a controversy before it.

It has been contended by my colleagues that the Justice in chambers should have refused issuance of the writ and charged the counsel who applied for it, and his client, with contempt. In support of this contention they have cited two cases: *In re Coleman,* 11 LLR 350 (1953), and *Weeks-Wolo* v. *Wolo,* 8 LLR 453 (1944). In *Coleman* two counsellors filed injunction proceedings against the same parties for whom judgment had been rendered and a mandate ordered to execute said judgment. In that case enforcement of the judgment was not contingent upon an enabling act, for the mandate from the Supreme Court had gone down to the trial court and it was during its enforcement that injunction proceedings were instituted, which were intended to nullify the Supreme Court mandate. In the subject case the petitioner in the certiorari proceedings did not ask for or do anything to nullify the mandate of the Supreme Court, but rather asked that the mandate be properly executed in keeping with the judgment to which it related.

In *Weeks-Wolo* v. *Wolo,* the petitioner in prohibition proceedings sought to have the court prohibit the spouse from using the name of her husband who had obtained a legislative divorce. In that case the Supreme Court sitting *en banco* had nullified the legislative divorce and it was beyond the competence of a Justice in chambers to undo what the full bench had done. But where is the analogy to this case, in which all petitioner is seeking is to have the judgment of the court which the mandate of the Supreme Court relates to properly enforced?

It is claimed in the majority opinion that returns by the lower court were made to the Chief Justice on October 12, 1972, and that the mandate of the Supreme Court was executed on September 18, 1972, by Judge Dunbar's ruling on that date based upon the authorization of the Chief of Finance. This being so, my colleagues assert, certiorari will not lie because the judgment has been complied with. My main point of difference with my

distinguished colleagues on this score is: How is a mandate of this Court to be executed—by the whims and caprices of the judge executing the mandate or by strict conformity to the judgment to which the mandate relates? The majority opinion holds the view that it would be setting a dangerous precedent to encourage by remedial writs parties who find themselves dissatisfied with Supreme Court judgments. I agree, but contend that it would be setting as dangerous a precedent were we to permit a judge to arbitrarily trample the rights of others under the pretext of executing a mandate of the Supreme Court. Are the rights of such persons to be ignored simply because a mandate of the Supreme Court is involved, regardless of any other circumstance including the mandate being enforced wrongly?

Much stress has been placed on upholding the dignity of the Supreme Court and not having it appear ridiculous or brought to disrepute. I am in complete agreement with this proposition, but I do not think that it should be done at the sacrifice of the rights of any person appearing before the courts, be it the Supreme Court or any other court of this Country. I think we should avoid protecting our dignity to the extent of making a mandate of the Supreme Court like unto a massive golden image set up on the plain of Dura before which all logic, reason, rights, and privileges must bow in slavish obeisance. To do so would be pursuing a course which if carried far enough would soon have us denominated as dictators of the law rather than what we are or should be, dispensers of even-handed justice.

In *Richards* v. *Republic*, 10 LLR 13, 15 (1948), the Supreme Court addressed itself to this point.

> " 'The liberty of a citizen is above the majesty of the law,' should be a maxim which not even the judges should overlook, and, following in this trend, I quote from an opinion of this Court given by the Justice

presiding in chambers on March 31, 1948, in a mandamus proceeding against Judge Phelps at the instance of the same Abibu Kebeh:

> " 'The conservation of the constitutional and other legal rights of parties litigant should be a cardinal principle in the administration of justice and it is consistent with this principle that we seek to protect, secure and defend these rights rather than appear to be making efforts to deprive or dispossess parties of them. An effort toward the latter course should never be encouraged and defended.'
>
> "There is a certain respect due to a judge of a court which must always be demanded and expected, and the dignity and prestige of a judge of a court also must be protected and conserved. In order to demand this respect or protect this dignity and prestige the court must show mutual respect to parties litigant, and more so to practicing lawyers who are also officers and arms of the court."

As the Court had spoken on the point before in *Howard* v. *Republic,* 8 LLR 135, 140 (1943):

> "Whilst courts are vested with inherent rights to maintain the dignity of their authority, administration, power and prestige, yet they are to be guided in the exercise of these rights by the principles of law so as not to cause an abuse of the rights of others."

My colleagues have concluded that the alternative writ of certiorari should be dismissed and a mandate (incidentally this would be the fourth mandate emanating from the Supreme Court in this one case) be sent to the judge now presiding in the Second Judicial Circuit to resume jurisdiction and confirm enforcement of the mandate now being sent down without further delay. I am wondering whether it is meant to enforce the judgment of the court below and if so in what manner, since two circuit judges have ruled directly thereon. I wonder

whether by not clarifying this anomaly we are not setting a dangerous precedent.

Because of the reasons hereinabove stated I have refrained from attaching my signature to the judgment in the proceedings.