KHALID KONTAR, Appellant, *v.* AMEEN MOUWAFFAK and HON. JOHN A. DENNIS, Assigned Circuit Court Judge, Sixth Judicial Circuit, Montserrado County, Appellees.

APPEAL FROM RULING OF JUSTICE PRESIDING IN CHAMBERS ORDERING A WRIT OF ERROR ISSUED TO THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 16, 1967. Decided January 18, 1968.

1. Although a lawyer's clerk legally binds the lawyer by acknowledging receipt of a notice of assignment of a case for trial, service of such notice upon a person in a law office who bears no relationship to the lawyer in the case does not constitute valid service and his acknowledgment of receipt of notice is not binding upon the lawyer in the case.
2. When service of notice of assignment of a case for trial is defective, and a trial is thereafter held, pursuant to such defective notice, without the presence of the lawyer so served, or his client, the party is deemed to have been deprived of his day in court, and a writ of error will be issued for review on appeal of the record in the case.

On appeal from a ruling of the Justice in Chambers granting application by plaintiff in error for a writ of error to the court below for review of the case in which judgment was obtained against defendant by default, when notice of assignment was served on a stranger to the case, the *ruling* was *affirmed* and the writ of error ordered issued.

P. Amos George for appellant. The *Garber* law firm for appellees.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

During the June 1964 Term of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, one Ameen Mouwaffak instituted an action of replevin against Khalid

Kontar, another Lebanese national residing in the City of Monrovia. The purpose of this suit was to replevy sundry articles allegedly being illegally withheld from Mouwaffak by Kontar.

These proceedings are a result of an allegedly illegal disposition of the suit in the trial court. The petitioner alleged that during a period of time when his counsel, in the persons of Counsellors O. Natty B. Davis and P. Amos George, were out of the country, the trial court proceeded to issue notice of assignment for trial of the case, and when this notice was returned proceeded to go into and conclude the case although none of the counsel for defendant in the court below either signed the notice of assignment or were in court at the time of the trial, thereby depriving him of his day in court.

The petition further stated that the judgment had not been fully executed, nor do any of the statutory provisions that preclude the issuance of a writ of error apply.

To this petition a return was filed by defendant in error, wherein it was contended that the notice of assignment was not signed by Counsellor P. Amos George, but, instead, by Counsellor MacDonald Acolatse, one of the lawyers in the cancellation suit out of which the present replevin case had grown. Additionally, defendants in error contended that by virtue of the fact that Counsellor Acolatse had subscribed the notice of assignment and subsequently failed to appear in court at the time of the hearing and determination of the injunction proceedings, plaintiff in error was forever barred from the contention that they had not had their day in court.

In view of the above-related facts, it is evident that the main issue for determination here is not the merits or demerits of the claim in the replevin action but, instead, whether or not plaintiff in error was afforded his day in court by the judge presiding.

This Court has held time and again that actual presence in court by a party litigant is not essential to a deter-

mination of whether or not the party has had his day in court. It is sufficient if the machinery established by law for affording one an opportunity to be heard has been satisfactorily complied with, and where this opportunity is not seized and taken advantage of, one cannot thereafter deny that he has been given his day in court in accordance with the mandate of the Constitution and the laws promulgated in consonance therewith.

The writ of error is a remedial writ that issues from this Court to a lower tribunal, ordering that court to forward to the Supreme Court the complete record of the proceedings thereat for our review in the ascertainment of whether or not the trial judge in the proceedings before him committed reversible error which, for some good reason, could not be reviewed by this Court on direct appeal, compelling the invocation of the remedial processes made available to parties litigant through provisions of our statutes.

In our review of the record, this Court discovered that the return of the defendants in error was not entirely correct, for although Counsellor Acolatse may have been of counsel for defendant in the court below, he did not personally sign the notice of assignment, nor was it established that anyone in the Bloom law firm signed it in his behalf. It is true that the Revised Rules of the Circuit Court hold that a clerk may acknowledge receipt of a notice and that such acknowledgment shall be binding upon the lawyer. However, the present facts clearly show that the notice was signed by one Josiah Sancho, who bears no relationship whatsoever to the Bloom law firm, and, in the circumstances, his act cannot bind that firm.

A further recourse to the record in this case evidenced that although final judgment had been entered upon the verdict of the jury, there had been no execution of that judgment so as to preclude the issuance of a peremptory writ of error.

In view of the above-recited facts, this Court must affirm that the defendant in the court below and plaintiff in error in these proceedings was not afforded an opportunity of being present in court at the time of the hearing of this case to render him to except to the judgment, and otherwise conduct his case, so as to enable the judgment of the lower court subject to review by the Supreme Court through a direct appeal. In the circumstances, we must hold that the ruling of the Justice in Chambers was sound and in harmony with the law and, therefore, the same is hereby affirmed. Costs in these proceedings disallowed. And it is hereby so ordered.

Affirmed.