THOMAS T. TOOMEY, Appellant, *v.* RAYMOND S. BROWN et al., Heirs of AARON S. BROWN, Deceased, and His Honor, JAMES W. HUNTER, Assigned Judge of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, Appellees.

APPEAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF ERROR.

Argued November 9, 1965. Decided January 20, 1966.

A writ of error will not lie after the judgment or decree of the court below has been substantially executed.

On appeal to the full Court, a *ruling* of the Justice presiding in Chambers, quashing an alternative writ of error and denying issuance of the peremptory writ in a suit in equity for cancellation of a lease, was *affirmed.*

Samuel B. Cole for appellants. *P. Amos George* for appellees.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

On April 6, 1964, Thomas T. Toomey, plaintiff in error herein filed an application before Mr. Justice William E. Wardsworth, presiding in Chambers, for the issuance of an alternative writ of error against Judge James W. Hunter, then presiding over the September 1963 term of the Circuit Court of the Sixth Judical Circuit, Montserrado County. Subsequently however, upon hearing of the petition, the said alternative writ was ordered quashed and the preemptory writ of error as sought was denied; whereupon an appeal from the ruling of the Justice presiding in Chambers was prayed for and by him granted. Hence this appeal.

From the records certified to us, it is revealed that a bill in equity for the cancellation of an agreement of lease was filed in the aforementioned circuit court by defendants in error, heirs of the late Aaron S. Brown, a resident of the City of Monrovia, against Thomas T. Toomey of Monrovia.

After a protracted period of time, Judge Hunter commenced hearing of the case on its merits. For some reason not evident from an inspection of the records, the proceeding was stopped prior to the resting of evidence and remained in abeyance for a substantial period of time. Subsequently, on the 3rd day of December, 1963, the same being the 40th day's session of that term of court, the judge proceeded to rule on the case and granted the cancellation as had been requested by defendants in error in their bill in equity. Thereafter a final decree was rendered in favor of defendants in error though they were not present in court at the time of the rendition of the final decree.

Upon obtaining knowledge of what had transpired in the court below, and verily believing that the actions of the trial judge were prejudicially erroneous, plaintiff in error applied for the issuance of a writ of error, contending most strenuously that the said plaintiff in error had been denied his day in court by failure on the part of the judge to duly apprise plaintiff in error of the assignment of said case for a continuation of the hearing thereof. It was also contended in the petition that, in addition to the lack of notice, the trial judge had shown prejudice by entertaining conversation with one of the petitioners in the cancellation proceedings at his home.

As a retort to these allegations, defendants in error filed returns comprising eight counts and, in Count 1 thereof, contended that the judgment had been completely executed and that therefore the writ could not issue. We feel it necessary in the first instance to deal with this issue of whether error will lie in the premises. Defendants in error relied on the following statutory provision.

"A person (hereinafter sometimes called the 'plaintiff in error') who has failed for good reason to take an appeal from the judgment, decree or decision of a trial court may within six months of the date thereof file an application for a writ of error with the Clerk of the Supreme Court. Such application shall contain the following:

* * *

"(c) An allegation that execution of the judgment has not been completed. . . ." 1956 CODE 6:2131.

The use of the writ of error for bringing matters before appellate courts was, prior to 1894, sustained by implication in view of the existence of a constitutional right of appeal coupled with the lack of any express statutory provision. Through several legislative pronouncements including the OLD BLUE BOOK (1843 Compilation), ch. XX, p. 41, § 3; REV. STAT. § 425; L. 1874–75, 12 § 5, we find, inferentially, provisions for issuance of a writ of error.

However, after the above-referred to Act of 1894 had been passed, this Court in 1915 revised its rules by the inclusion of certain jurisdictional steps which became preconditions to the granting of a writ of error (R. SUP. CT. IV (3,4), 2 L.L.R. 661, 663). Among these jurisdictional steps was the one mentioned by defendants in error in Count 1 of their returns, requiring that an averment be made to the effect that the judgment or decree has not been fully executed (R. SUP. CT. IV (7,8), 13 L.L.R. 698).

A further recourse to the record in the court below shows that to all legal intents and purposes the judgment had been executed. Since the nonexecution of the judgment or decree constitutes a condition precedent to the exercise of jurisdiction, it follows that this Court cannot entertain an application for a peremptory writ of error when the judgment upon which the proceedings sought to be reviewed has in contemplation of law been fully complied with.

At this juncture, this Court would like to affirm its position to the effect that its jurisdiction is predicated upon the Constitution and statutes promulgated in pursuance therewith and not upon mere sentiment. We must at all times proceed pursuant to rules of law; and even in chancery though realizing that a court of equity is one of conscience, we must remain mindful of the fact that equity follows the law.

In view of the above, it is the determination of this Court that the ruling of the Chambers Justice should be affirmed. Costs in these proceedings are ruled against plaintiff in error. And it is hereby so ordered.

Ruling affirmed.