W. H. BRYANT, Petitioner, *v.* THE AFRICAN PRODUCE COMPANY, U.S.A., through its Attorney, THOMAS J. R. FAULKNER, Respondent.

PETITION FOR WRIT OF MANDAMUS.

[Undated.]

1. Our statute on appeals prescribes the steps to be taken in effecting an appeal, and each such step is jurisdictional.
2. Hence, should a party desire to come to this Court by any of the remedial writs, the burden of proof is upon such party to show that his failure to take a regular appeal was not due to his own laches.

Petitioner moved the trial court not to enforce a judgment rendered in that court against petitioner and affirmed by the Supreme Court. The trial court denied petitioner's motion. On petition to the Supreme Court for a writ of mandamus, *petition denied.*

H. Lafayette Harmon for petitioner. *W. E. Dennis* for respondent.

MR. JUSTICE TUBMAN delivered the opinion of the Court.

Again petitioner Bryant has brought this cause before us, this time by petition for mandamus filed in the chambers of our colleague, Mr. Justice Grigsby, who, although he said he felt the writ of mandamus prayed for by petitioner should have been granted, yet failed to order the writ issued and, instead, directed the clerk of this Court to issue an order to the judge of the trial court to send forward the records here. In obedience to that order the same was done and the case thus found itself on the docket of the present term of Court.

Respondent Faulkner, through his legal counsel, at the

assignment of the cause for trial filed a motion praying for the dismissal of the petition and assigned as legal reasons therefor the following:

1. "Because appellees say that appellant having announced an appeal on the day His Honour the trial Judge ruled on his appellant's 'Motion for Stay of Final Judgment and Execution' he should have followed the procedure provided by the law governing appeals to the Honourable Supreme Court of Liberia, and not after the time had elapsed for said appeal make application to this Honourable Court for a Writ of Mandamus. His failure to take advantage of a review of the proceedings he now prays this Honourable Court to review. AND THIS THE APPELLEES ARE READY TO PROVE.
2. "And also because appellees say that this Honourable Court has already settled the point that a Remedial Writ will only lie where the failure on part of the party applying is not in any way due to a regular appeal being taken."

Under the statute of appeal as printed in the *Old Blue Book,* an appeal shall lie from any opinion or decision of any court, except such court of appeals. Stat. of Liberia (Old Blue Book) ch. XX, § 1, 2 Hub. 1578. And in the statute of 1894 it is required further that any person who intends to appeal shall make and present to the trial judge within ten days after final judgment a bill of exceptions. L. 1893–94, 10 (2d).

This is the only means provided by our statutes for an appeal as a matter of right, and the rule of this Court with reference to writs of errors, which are another means for having causes reviewed by the Supreme Court, succinctly states that a writ of error may be granted only where a party can show good reasons why he has failed to take out a regular appeal.

"Where a party has for good reasons failed to take

an appeal as provided by law, there may be granted to such party by any justice a writ of error from any judgment, decree, or decision of any judge, or court, at any time within six months from the date thereof, provided that execution thereon is not fully satisfied. . . ." Rev. Rules, S. Ct., Rule IV, § 4.

Besides the above, this Court has upheld this principle of law repeatedly. In the case of *Wodawodey* v. *Kartiehn,* 4 L.L.R. 102, 1 New Ann. Ser. 105 (1934), we said substantially that:

> The right to appeal from a court of record to the Supreme Court of this Republic is given in general terms by the Constitution of this Republic; and several statutes subsequently passed, the most recent of which is that of 1893–94, set out the method of procedure to be followed. The passage of said statute providing the steps to be taken in removing a cause to the Supreme Court is jurisdictional and must be strictly complied with; hence, it abolished, even though by implication, the common law mode of procedure with respect to writs of error. At the determination of any case the failure to take a regular appeal should not be due to the laches of the party applying for the writ.

And in the case of *Markwei* v. *Amine,* 4 L.L.R. 199 (1934), we held that:

> Our statute on appeals prescribes the steps to be taken in effecting an appeal, and each such step is jurisdictional. Hence, should a party desire to come to this Court by any of the remedial writs, the burden of proof is upon such party to show that his failure to take a regular appeal was not due to his own laches.

It seems, therefore, very clear that respondent's contention in his motion now under consideration is well founded in law in this respect.

But there are a few peculiarities attending this cause which we consider worthy of special mention. An opin-

ion and final judgment were entered against petitioner at the last November term of this Court in which it was adjudged that Mr. Bryant, appellant in that case, pay appellee the debt and costs. See *Bryant* v. *African Produce Co.*, 7 L.L.R. 93 (1940). When the opinion and judgment were sent down to the trial court for enforcement, petitioner's counsel tendered a motion praying the trial court not to enforce the said judgment on the grounds that he had discovered new evidence. This motion the trial judge denied. The petitioner excepted but failed to take an appeal and filed a petition in the chambers of Mr. Justice Grigsby, who had dissented from us in our majority opinion denying a motion raising the identical question of newly discovered evidence, for a writ of mandamus to issue to the judge below to compel him to sustain the motion on the very grounds that we had overruled when the case was being tried here last November.

Our colleague in his order to the clerk wrote that he felt the petition should be granted, but did not order the writ of mandamus issued. Instead of ordering the record sent by writ of error, by regular appeal, or by certiorari, he merely ordered the record sent to this Court. In view of the issues raised by the motion and other attending circumstances pointed out herein, we are of the opinion that the case should be stricken from the docket and a mandate should be sent to the court of original jurisdiction ordering the immediate enforcement of the judgment entered at the last November term of Court against appellant, with costs against appellant; and it is hereby so ordered.

Petition denied.