JOSEPH F. DENNIS, Petitioner, *v.* HELEN REFFELL by her Husband J. A. REFFELL, His Honor EMMANUEL W. WILLIAMS, Resident Circuit Judge of the Sixth Judicial Circuit, Montserrado County, and URIAS N. DIXON, Sheriff of Montserrado County, Respondents.

CERTIORARI TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued April 8–10, 1947. Decided May 9, 1947.

1. Where land that is to be offered for sale on the foreclosure of a mortgage consists of several distinct lots or tracts, the land should usually be offered for sale in parcels and not *en masse*. If the land consists of a single tract or body, and is susceptible of division without injury, and the sale of the whole is not necessary to satisfy the debt, it should be divided, and only so much of it offered at one time as may be necessary to satisfy the judgment, interest, and costs.
2. The law does not favor compound interest or interest on interest; and the general rule is that in the absence of contract therefor, express or implied, or of statute authorizing it, compound interest is not allowed to be computed on a debt.
3. Where there was an occasion to make an additional bill of costs, said bill should not be approved by the trial judge until it had been taxed.

Helen Reffell, co-respondent herein, brought a bill in equity against Joseph F. Dennis, petitioner herein, for foreclosure of a mortgage. A decree was entered against the then defendant, but on appeal to this Court the case was dismissed with permission to the then plaintiff to refile her suit. *Dennis* v. *Reffell,* 7 L.L.R. 332 (1942). A suit for foreclosure of a mortgage was again commenced by Helen Reffell against Joseph F. Dennis. A decree was obtained against Joseph F. Dennis, and on appeal to this Court the judgment was affirmed. *Dennis* v. *Reffell,* 9 L.L.R. 26 (1945). During the process of enforcing the 1945 decree in the circuit court, petitioner herein excepted to rulings and actions of the judge and peti-

tioned for a writ of certiorari, which was granted by the Justice in Chambers without prejudice to the sale of a house and one lot. On certiorari in this Court, *issuance of writ sustained and rulings reversed.*

Joseph F. Dennis for himself. *Helen Reffell* for herself.

MR. JUSTICE RUSSELL delivered the opinion of the Court.*

Growing out of proceedings in a suit for foreclosure of a mortgage against Joseph F. Dennis, mortgagor and petitioner in these proceedings, which suit was decided against him on an appeal to this Court (*Dennis* v. *Reffell,* 9 L.L.R. 26 (1945)), a mandate was sent down to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, for the enforcement of the decree in connection therewith. During the process of this enforcement by His Honor Judge Williams petitioner took exceptions to certain actions and rulings of the judge and prayed for a writ of certiorari, which was granted by our Justice then presiding in Chambers. The records having been sent up, we entered upon a hearing of the matter, and we are so much in accord with the opinion of the Justice presiding in Chambers who heard the matter that we have decided to incorporate said opinion in this opinion.

> "Petitioner in these proceedings filed a petition for the granting and issuance of a writ of certiorari because of sundry causes laid down in said petition. His Honour Judge Williams of the sixth judicial circuit (Civil Law Court), Sheriff Urias Dixon for Montserrado County, and Helen Reffell were made respondents, and upon order of this Court for said

* ED. NOTE: Since Mr. Chief Justice Grimes was ill and Mr. Justice Reeves, having signed petitioner's certificate of counsel before his elevation to the Bench, recused himself, they took no part in this case.

respondents to show cause why said writ as applied for should not be granted and issued, the first and third named respondents did not file any Returns; but the second named—Sheriff Dixon—did so. In his Returns he seemed not to have strenuously questioned the right of the petitioner in the issues submitted but rather pleaded that all of his acts in the matter were ministerial and were all based upon orders of His Honour Judge Williams under whom he served.

"He, however, questioned the propriety of Samuel D. George, a mere Attorney-at-law, signing the required certificate which was attached to the petition when, in truth and in fact, there were sundry counsellors-at-law available at the place of the making of said petition. Petitioner, obviously conceding the tenability of this contention, amended his petition to correct this defect (see amended petition).

"Upon call of the matter before us for disposition, arguments were disallowed but the parties were required to file briefs of their respective contentions, said briefs to touch on the following points:

"1) whether from the petition filed it is clear that the legality of the sale by public auction of the lot and house on Broad Street was not questioned by petitioner;

"2) whether or not the assessment of compound interest on the mortgage sum is legally justified; and

"3) whether or not the assessment of additional items of cost by the lower court against the petitioner about which he complains is also justified.

"Only the petitioner filed a brief as required by Court. Out of fairness, it should be here observed that Helen Reffell appeared before this Court and gave information that she was unable to defend her interest and rights in that she was without funds to do

so, being still obligated to her lawyers in the original suit.

"As to the first point, we here desire to confirm our opinion given to the Clerk of this Court . . . for the issuance of an order to the respondents to show cause why said petition should not be granted, which order was dated on the 8th of August, 1945, and which we quote:–

"'As a matter of conclusion from his [meaning petitioner's] petition or application for a writ of certiorari presently before us, there is no alternative inference but that he accepts the legality of the sale of the house and lot on which it is situated, leaving only the question of the legal propriety of the sale by auction of the two lots since, as the said petition avers, *the proceedings from the sale of said house were sufficient to cover the mortgage sum together with interest accrued, court's cost and the expense of the sale.*' (Emphasis added.)

"There is no hesitancy, therefore, in saying that the sale of the house and lot, not having been questioned. is legal and ought not to be disturbed. However, if, as the petition of petitioner avers, the sum realized from the sale of said house was sufficient to cover all of the legal demands against the petitioner arising out of the suit in foreclosure of mortgage, then there is doubt that the subsequent sale of the other two lots was legally proper and in order. (Vide: 19 R.C.L. under Mortgages, p. 575, sec. 388; 41 C.J. under Mortgage p. 973, sec. 1421.)

"From *Ruling Case Law* just cited, we have the following:–

"'Where land that is to be offered for sale on the foreclosure of a mortgage consists of several distinct lots or tracts, the land should usually be offered for sale in parcels and not en masse, and it has been said that if the land consists of a single tract or body, and

is susceptible of division without injury, and the sale of the whole is not necessary to satisfy the debt, it should be divided, and only so much of it offered at one time as may be necessary to satisfy the judgment, interest, and costs. . . .'

"From the above it can be safely said that since the mortgage deed covered three separate and distinct tracts of land, the principle of law in connection therewith should have been applied, and the claim that the lower court considered itself inextricably bound to the literal enforcement of the Supreme Court's Decree is flimsy.

"Because of the sole Returns of the Sheriff which did not forcefully and legally answer the other submissions of the petitioner to the effect that the assessment and collection of compound interest on the mortgage sum by the lower court was improper and that there were other irregular, inconsistent and improper assessments of additional costs, this Court instructed the Clerk to require His Honour Judge Williams to file Returns principally answering the charge of the illegal assessing and collecting of compound interest and costs as was submitted in the petition; and the said Judge made the following Returns on said point:–

" 'The Judge says on referring to his allowing compound interest in the case that he thought it but just and legal under the law of computation in computing interest, especially where neither the interest nor the principal has been paid; and the principal and interest be combined, and is combined and was continued to a longer time, the interest to be paid at the consummation of the time is not only on the principal, but it is on the principal plus the interest, which we call interest upon interest, or compound interest. Viewing the case before me in the above stated light, I thought my action legal.'

"On this legal proposition we are partially, but not wholly, in accord with the learned Judge. Generally, the courts 'have been opposed to the allowance of compound interest, subject to certain limitations and exceptions, and the enforcement of its payment has often been refused on the grounds of public policy . . .' (15 R.C.L.—Interest p. 36, sec. 33; 47 C.J.S. 191, § 3(b), at 15—Compound Interest—in general), so that there is nothing to justify the lower court in this respect according to our opinion.

"Quoting from *Corpus Juris,* just cited, we have:

> " 'The law does not favor compound interest or interest on interest; and the general rule is that in the absence of contract therefor, express or implied, or of statute authorizing it, compound interest is not allowed to be computed on a debt. . . .'

"It does not appear, from the mortgage deed and other instruments relating thereto, that there ever was an agreement for the assessment of compound interest on the mortgage sum, barring the instrument issued by petitioner, as mortgagor, to Helen Reffell, one of the respondents, as mortgagee, subsequent to the execution of the mortgage contract wherein because of his desire at the time to obtain an extension of time for the discharge of the mortgage, he then added the then accrued interest to the principal sum of the mortgage and made another obligation for interest on the aggregate sum. This, of course, cannot be construed as an implied contract or agreement that compound interest be later computed.

"We are of the concrete opinion that where there was an occasion to make an additional bill of cost against the petitioner in the mortgage matter, said bill should never have been approved by the Judge of the lower court until it had been taxed by the petitioner or his refusal to do so indicated and reported. This privilege is always extended to parties litigant simply

to avoid the assessment against them of little illegal and unwarranted items of costs, and it does not appear from any of the Returns before us that this privilege was accorded the petitioner.

"Whilst it is true that we personally deprecate the amount of inconvenience and undue labour this one mortgage transaction has entailed and caused, we are of the opinion that the writ applied for should be granted, without prejudice to the sale of the house and lot on Broad Street which has not been contested, and the Clerk of this Court is hereby ordered to send a mandate to the court below to effect this Ruling and Judgment requiring it to send a full and complete transcript of the records of the proceedings in connection with this matter from the point where the said court had resumed jurisdiction upon mandate of the Supreme Court for the enforcement of this court's judgment in foreclosure of the mortgage, under the certificate of the Clerk of said Court and the Seal of said Court, within sixty days from the receipt of the mandate, in order that same might be reviewed by this *Court in banco* for the correction of all errors and irregularities if there be any found to exist in said proceedings; AND IT IS HEREBY SO ORDERED."

To our minds this opinion is sound, logical, and legal and should be sustained and affirmed since it is in harmony with the records before us as well as with the controlling law.

Our colleague who dissents from us is not doing so on the grounds that our conclusions that the judge erred in several of the actions taken and rulings entered against the petitioner are incorrect. The Honorable Justice Barclay is simply insisting that under the circumstances presented an ordinary appeal should have been taken and petitioner should not have proceeded by writ of certiorari, and that because of this the proceeding should be dismissed with costs against the petitioner, leaving the

flagrant violations of law and the undue impositions upon the petitioner, which our dissenting colleague concedes, unattended and unreviewed. We cannot agree with this contention, especially in face of the fact that such an issue never was raised by any of the respondents in these proceedings.

The cases apparently strongly relied upon by our colleague when he claims that this Court took a position similar to his in passing upon the legality of the procedure in certiorari and thus denied the writs, even though no issue had been raised by any of the respondents in said cases, are *Markwei* v. *Amine,* 4 L.L.R. 155, *rearg. denied,* 4 L.L.R. 199 (1934), and *Wodawodey* v. *Kartiehn,* 4 L.L.R. 102, 1 New Ann. Ser. 105 (1934). We do not agree with our learned colleague when he contends that these cases were decided independent of any issue raised by the respondents, for in the case *Markwei* v. *Amine, supra,* when petitioner applied for the writ of certiorari, His Honor Mr. Chief Justice Grimes who was in Chambers gave an order for the appearance of the respondents on a given day to show cause why the writ should not issue, and Counsellor Dukuly, appearing for Amine, made said respondent's returns wherein he contended that the writ could not legally issue, relying upon section 1388(1) of volume 2 of the Revised Statutes of Liberia and upon rule IV, subsection 4 of the Revised Rules of the Supreme Court of 1915, 2 L.L.R. 663. It is upon the consideration of the returns of respondent Amine that His Honor the Chief Justice denied the writ, despite the contention of our learned colleague who dissents and who was then a counsellor-at-law representing petitioner Markwei in *Markwei* v. *Amine,* 4 L.L.R. 155 (1934). Of course, upon application on the part of the petitioner in that case for a reargument of the order of Mr. Chief Justice Grimes in Chambers denying the writ of certiorari, this Court *en banc* sustained and confirmed said order. The fact, however, is that the decision or order was based

upon an issue duly presented. In the case *Wodawodey* v. *Kartiehn, supra,* it was upon a motion filed by Counsellor Wolo for defendant-in-error containing eight counts that the writ of error applied for and granted by Mr. Justice Beysolow was quashed, *not denied,* after it had been granted by the Justice in Chambers.

In this case, as has already been observed, the question of the legal propriety of the procedure by certiorari was not raised and so it would be improper to allow it to enter into the decision of the proceedings at this stage since to do so would be deciding the case on issues not submitted.

In view of the above, it is our opinion that the judge of the lower court erred:

(1) In the assessment of compound interest when there is no agreement or court decree to that effect;

(2) In the confirmation of the sale of the other two parcels of land when the house and lot yielded over and above the principal sum of the mortgage together with the accrued interest, court expenses, and expenses of sale;

(3) In the assessment against petitioner of illegal items of costs without giving him an opportunity to tax same; and

(4) In ordering payment of taxes claimed against said property without first having said claims established.

It is therefore ordered:

(1) That the assessment of compound interest on the mortgage sum be canceled and instead simple interest be computed and assessed and the difference refunded the petitioner;

(2) That the illegal sale of the two parcels of land situated on Benson Street be hereby canceled, same to revert to petitioner and the purchase money to be refunded to the purchaser;

(3) That since the amounts given the sheriff in two instances for collection are illegal, he is ordered to

receive only one collection fee on the sum of four thousand dollars, the price at which the house and lot on Broad Street was sold, the other to be paid petitioner; and

(4) That the assessment of fees for an auctioneer is unwarranted and the amount is ordered refunded petitioner since it does not appear that an auctioneer was used but rather the sheriff himself did the auctioneering; and

(5) That unless it is satisfactorily shown to the judge of the civil law court that the item entitled "petitioner's costs" relates to costs other than those in the former suit of Helen Reffell against Joseph F. Dennis dismissed by this Court, same should also be canceled and the amount paid to the petitioner in these proceedings.

With respect to the amount paid on account of taxes due the Government, though the manner of payment is deprecated and declared illegal, nevertheless since the petitioner does not seem to contest the genuineness of the claim, we refrain from giving an order for its refund but direct that the receipt given in this connection be handed him.

To ensure the correct enforcement of the judgment in this matter, it is ordered that the court below revise its bill of costs in the matter in conformity with the rulings herein given and refer it to the parties concerned for their taxation, a copy of which bill is to be filed before this Court when the returns to the execution of the judgment in the matter are made; and it is hereby so ordered.

Rulings reversed.

MR. JUSTICE BARCLAY, dissenting.

I differ from my learned colleagues on two points, and since I consider them of great importance I decided to prepare and file this dissenting opinion.

In the original petition and the amended petition of

petitioner-in-certiorari appears the following count:

> "That the actions of the Judge are grossly *ultra vires,* illegal and an overt travesty of justice and equity, and that the ordinary method of appeal to the Honourable Supreme Court of Liberia would not prove adequate and as expeditious as the nature and exigency of the case required since indeed the sale of lots 89 and 90 deprived him of valuable money . . . without any justifiable cause because sufficient money had already been realized to meet all demands with a surplus to the mortgagor."

This count in petitioner's petition gives me a strong impression that petitioner was fully conversant with the procedure heretofore laid down by this Court, which he should have followed by coming by regular appeal; but he endeavored to justify his petition for a writ of certiorari by stating therein "that the ordinary method of appeal to the Honourable Supreme Court of Liberia would not prove adequate and as expeditious as the nature and exigency of the case required." But neither in his brief nor in any part of his argument did he show, or endeavor to show, as the law requires, why or in what way following the regular procedure of appeal would not prove adequate or expeditious, although he had given notice of appeal from the rulings of the court with respect to the sale of the three lots and the computation of compound interest. (See records and minutes of the court below.) Coming up here by certiorari surely did not stop the sale of the two lots, for they had already been sold before petitioner in the court below filed any motion protesting the sale of the two lots or asking for the cancelation of the sale of lots Number 89 and 90. The purpose of proceeding by certiorari was not to compel the trial judge to immediately revoke his order for the computation of compound interest, since that is being done today in the opinion and judgment just read. Where then lies the absolute necessity for petitioner to proceed by writ of

certiorari instead of by regular appeal? It appears to me therefore that the regular appeal would have been as adequate and expeditious as the nature and exigency of the case required, and petitioner should have come by that method and no other.

In the case *Daniel* v. *Compania Trasmediterranea,* 4 L.L.R. 97, 1 New Ann. Ser. 99 (1934), on an application for the reargument of an order ordering the issuance of a writ of prohibition, Mr. Justice Grigsby speaking for the Court said:

> "A remedial writ is an extraordinary remedy, usually applied for in order to prevent an injury to a party that may be irreparable, or at all events may not give an adequae remedy if the ordinary methods of bringing up a case for review are pursued. It follows, then, that an application for such a writ should be heard and disposed of as expeditiously as possible, without awaiting the time for the convening of a regular term." *Id.* at 99.

In the case at bar nothing was prevented by the application for a writ of certiorari, for the injury complained of had already been done and completed by the court, according to the allegations in the petition. Moreover, the petition was granted on October 24, 1945 by the Justice presiding in Chambers and the case was forwarded to the full Bench *for its action.* Hence to my mind it appears that the reason given by petitioner for not proceeding by regular appeal is weak and untenable and should not be accepted as sufficient.

"The trend of the recent decisions of this Court has been to construe very strictly all applications for extraordinary writs, as they are in derogation of our statute of appeals," declared Chief Justice Grimes in the case *Markwei* v. *Amine,* 4 L.L.R. 155, 160, *rearg. denied,* 4 L.L.R. 199 (1934).

I have taken this position in opposition to the opinion of my distinguished colleagues and my position is based

on the case *Jantzen* v. *Williams,* 4 L.L.R. 231, *rev'd. and remanded on the merits,* 4 L.L.R. 280, *judgment corrected,* 4 L.L.R. 396 (1935), and other cases in which this Court unreservedly held that matters of procedure should be settled by it.

In the case *Markwei* v. *Amine,* 4 L.L.R. 199, 2 New Ann. Ser. 28, decided by this Court on December 21, 1934, Mr. Justice Russell speaking for the Court reiterated the rule already enunciated when he said:

> "Although it does appear that there are many irregularities committed by both the justice of the peace and the Judge of the Circuit Court during the trial of this case, which are in direct violation of the statute laws of this country, as well as the Code compiled and legalised for the guidance of all justices of the peace throughout this jurisdiction, yet we have to observe that the course adopted by the petitioner in seeking redress is contrary to the statute laws of this country, in that he assigns no good reason for not having taken a regular appeal after the rendition of the final judgment against him, which alone would have entitled him to the benefits of one of the remedial writs; and for that reason this Court is without any legal authority to assume jurisdiction in reviewing and correcting even what appear to us to be glaring errors committed by both the Judge of the Circuit Court and George W. Stubblefield, justice of the peace for Montserrado County.
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> "But the questions that now claim our serious attention in these certiorari proceedings are: 1) Is the procedure taken by the petitioner in certiorari in keeping with the statute law providing for same? 2) Is the failure of the petitioner to take a regular appeal due to his own laches?
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> "Mr. Chief Justice Grimes, in delivering the opinion of this Court in the case *Wodawodey* v. *Kartiehn*

and George, 4 L.L.R. 102, 1 Lib. New Ann. Ser. 105 (1934), enunciated this principle which all litigants seeking the great benefits secured to them by the Constitution and the subsequent statutes of the Legislature should strictly follow, saying 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 the Republic; and several statutes subsequently passed, the most recent of which is that of 1893–94, have 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; and 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 any of the remedial writs." *Id.* at 201.

As can be seen from the opinion of the Court today read, the majority of my learned colleagues before whom this case was heard are of the opinion that since the method of procedure was not attacked by the respondents, although jurisdictional, we should ignore it, especially, they say, since the Court itself should not raise issues. My opinion is that whether raised or not by respondents this Court has the right to do so, and has the right to insist on a uniform method of procedure, since the question is jurisdictional as held in the case just cited. "The fundamental question of jurisdiction, first of the appellate court, and then of the court from which the record comes, presents itself on every writ of error and appeal and must be answered by the court whether propounded by counsel or not." 2 Bouvier, Law Dictionary 1761 (Rawle's 3d rev. 1914). The right of this Court to raise the issue is based also on the case *Jantzen* v. *Williams, supra,* in which this Court said on page 233: "[O]urs is

the privilege of settling the procedure of all subordinate courts. . . ." *Yancy* v. *Republic,* 4 L.L.R. 3, 1 New Ann. Ser. 3 (1933), takes the same position.

According to the records sent up from the court below, there is no doubt that after the judge gave his ruling petitioner-in-certiorari did give notice of appeal to the Supreme Court of Liberia, for the record reads, "To which the appellant excepts and gives notice of appeal from said ruling of His Honour the Judge to the Honourable the Supreme Court. Matter suspended."

Petitioner, having prayed an appeal from the rulings of the court below and having failed to complete said appeal, should have stated clearly and certainly the cause of said failure, showing that it was due to no negligence on his part, but that same was due to circumstances beyond his control. This he did not do. Hence in my opinion the writ should now be quashed for this reason, and even more particularly for the reason hereunder stated.

There is another issue with reference to which I feel it my duty to strongly express my disagreement and dissent as a matter of record, and that grows out of count 5 of the amended petition, which reads as follows:

> 5. "That a Bill of Costs compiled by the Clerk of Court of the Civil Law Court aforesaid and paid by the said Sheriff contains several illegal items of charges and should not have been paid without having first been taxed by the legal representatives of the parties to the cause. Your Petitioner never knew of the said Bill of Costs or payment thereof until payment had been made and a balance of $729.45 seven hundred and twenty-nine dollars and forty-five cents offered him as a surplus in his favour. The items particularly referred to are those entered under the headings of Sheriff's collection $271.82; Sheriff's collection $329.50; Petitioner's costs $158.83 (amount paid by Petitioner

1942); Supreme Court costs June 29, 1945 $16.94; $19.06; extension total of sundry charges totalling $36.00; making of statement in four copies at 50 cts., $2.00; amount of taxes $153.90 when there was no checking as to its correctness by the owner of the premises; making of Sheriff's Certificate of Sale $2.00. These charges making a total of $934.99 of which Petitioner has been illegally deprived aside from the irregular computation of interest complained of."

The original petition for the writ of certiorari was filed on July 11, 1945. The returns of the sheriff were filed on July 23, 1945 and those of the judge on September 20, 1945. Subsequently, on September 21, 1945, petitioner filed an amended petition in which he elaborated on the counts already set out in the original petition, inserting the additional count numbered 5, *supra.*

It does not appear anywhere in the records that respondent Helen Reffell filed any returns or that a copy of the amended petition was served on any of the respondents; hence there are no amended returns as to that particularly important issue. Since at the hearing the judge and sheriff who were only nominal parties were not required to be present, and Helen Reffell who appeared in person gave as her reason for not being represented by counsel that she had no funds and was still in debt to her counsel who represented her in the main case, the legal requisite of furnishing the opposite party with copies of all pleadings unfortunately and presumably passed unnoticed and unquestioned. In my opinion, count 5 contained grave charges against the judge and officers of the court. What is worse, however, and where I differ with my learned colleagues, is the fact that the attention of the judge in the court below was never called to the allegedly erroneous charges in the said bill of costs in accordance with the principles of law, except to that of the computation of compound interest and the sale of the two lots num-

bered 89 and 90. Nevertheless, they have proceeded to review and correct the errors complained of. Petitioner in the aforementioned count 5 stated that he never knew of the said bill of costs or the payment thereof until payments had been made and a balance of $729.45 was offered him as surplus. But even if that were true, in my opinion petitioner still had the right to demand an inspection of the said bill of costs, to tax same, and to call the judge's attention to any illegal items therein appearing, requesting that same be eliminated and the bill of costs be corrected accordingly. However, petitioner neglected to do so and nowhere in the record sent up does it appear that he made any request or demand for an inspection or taxation of the bill of costs and had been refused by the clerk, the sheriff, or the judge. It does not appear in his said amended petition or anywhere in the records certified to us from the court below that the attention of the judge was in any way called to the several items charged by petitioner as irregular and illegal. How, then, can or should this Court review and correct alleged irregularities and illegal charges set out in said count 5 to which the attention of the court below had not been called, a ruling made thereon, and exceptions recorded; and which apparently slipped before the appellate court presumably without a copy of said amended petition being served on the respondents in accordance with the law? The judge and sheriff would hardly have neglected to file returns to such grave charges if copies had been served on them. Then, and only then, if brought to the notice of the court in the proper way and a ruling made thereon, should it be reviewed and an expression made thereon by the appellate court, sustaining or overruling the position taken by the judge in the court below. To do otherwise is unfair to the judge and contrary to the statutes and the principles of law generally.

I have based this part of my dissent upon the following citations of law:

"The court to which the appeal may be taken shall examine the matter in dispute, upon the record only, they shall receive no additional evidence, and they shall reverse no judgment for any default of form, or *for any matter to which the attention of the court below shall not appear to have been called,* either by some bill of exceptions, or other part of the record." Stat. of Liberia (Old Blue Book), ch. XX, § 10, at 78, 2 Hub. 1579. (Emphasis added.)

In *Ansbro* v. *U.S.,* 159 U.S. 695, 40 L. Ed. 310 (1895) the Court held:

"An assignment of errors cannot be availed of to import questions into a cause which the record does not show were raised in the court below and rulings asked thereon, so as to give jurisdiction to this court under the fifth section of the act of March 3, 1891." *Id.* at 698.

The Court dismissed the writ of error.

"The general rule is that an appellate court will consider only such questions as were raised in the lower court. This rule is so well settled as to be almost unquestionable, and the only practical difficulty which may arise in a particular case is with reference to its application, for there are some limitations on, and exceptions to, the rule which will presently be discussed. An all-sufficient reason for the existence of this rule is that if the question had been raised in the lower court this objection might have been remedied, and otherwise if an objection not raised below could be raised in the appellate court there would be no assurance of any end to the litigation, as new objections could continuously be raised on successive appeals. . . ." 2 R.C.L. *Appeal and Error,* § 52, at 69 (1914).

"The rule applicable to appellate procedure generally, that objections not raised in the lower court cannot be relied on in the appellate court; as an-

nounced in the title Appeal and Error § 228 et seq, governs the review on certiorari; and, as a general rule, questions not raised or ruled on below, or alleged erroneous action as to which no objection was made, cannot be presented to, or considered by, the reviewing court. . . ." 14 C.J.S. *Certiorari,* § 149, at 286 (1939).

It is my opinion that questions of the nature of the subject matter of these proceedings not raised in the court below should not be permitted to be raised in this appellate court, and if raised should be ignored, and the writ quashed.

In view of the above, I have withheld my signature from the judgment in this case.