ABAYOMI W. KARNGA, Plaintiff-in-Error, *v.* S. DAVID COLEMAN, Defendant-in-Error.

WRIT OF ERROR TO THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Decided February 12, 1937.

1. A writ of mandamus should issue whenever petitioner can make it plain: (1) that he has a legal right to have the act done for which he is petitioning; (2) that it is the legal duty of defendant to perform said act; (3) that if granted petitioner will obtain relief for which no other plain, speedy and adequate remedy exists.
2. The granting or refusing of an appeal is not, in this jurisdiction, left to the discretion of the trial judge.
3. Hence, a bill of exceptions having been tendered to a trial judge within the legal time, should he refuse to sign if his approval to same is requested, petitioner's remedy is to apply for a writ of mandamus and not a writ of error.

Defendant-in-error brought an action of debt against the plaintiff-in-error in the Municipal Court of Monrovia and received judgment therein. When the writ of execution, issued in pursuance of the judgment, was returned before the Judge of the First Judicial Circuit, plaintiff-in-error challenged the legality thereof and asked a review of the entire case; upon refusal, a writ of error was sought from the Supreme Court. Defendant-in-error moved to quash the writ. *Motion granted.*

Abayomi Karnga for plaintiff-in-error. *S. David Coleman* for defendant-in-error.

MR. JUSTICE RUSSELL delivered the opinion of the Court.

This case is before this Court for review upon a writ of error issued out of the Chambers of His Honor Samuel J. Grigsby, the Justice presiding in chambers at the time of the filing of a petition therefor by Abayomi Karnga, plaintiff-in-error.

The history of the case is as follows: On the tenth day of June, 1936, the defendant-in-error, S. David Coleman, filed an action of debt against the plaintiff-in-error in the municipal court of the Commonwealth District of Monrovia for the sum of one hundred forty-four dollars. The defendant, now plaintiff-in-error, was accordingly summoned and returned summoned on the aforesaid tenth day of June, 1936. The trial was held on the 17th day of June, 1936, before Police Magistrate J. A. Gittens, and the plaintiff-in-error who was then defendant raised several issues of law in his answer which the defendant-in-error, then plaintiff in the court below, in his reply, denied to be sufficient to prevent his recovery. The trial was thereupon commenced and after both sides had rested evidence the magistrate reserved rendition of final judgment until some subsequent time. The records in the case reveal the fact that at the time of the rendition of final judgment in the case, the plaintiff-in-error was not present, but requested Attorney W. M. Ross to receive the ruling of the court on some written evidence offered in the case by him, and Attorney W. M. Ross also received the judgment for the defendant, now plaintiff-in-error. The records show further that there was no exception taken to said final judgment, although plaintiff-in-error contends that he prayed for an appeal on the following day, and that same was granted and that he filed an appeal bond which forms no part of the records in this case.

On the third day of July, after rendition of final judgment, an execution was issued against the defendant, now plaintiff-in-error, which was served and returned before the resident Circuit Judge for the First Judicial Circuit, when and where the plaintiff-in-error raised objections to the legality of the execution, and contended that the Judge should review the whole case upon an appeal and not upon the execution which was issued, served and returned before him. This request of the plaintiff-in-error

was denied and the execution was ordered enforced. To this ruling of the resident Judge of the Circuit Court aforesaid, the plaintiff-in-error excepted, and has brought this case before this Court upon a writ of error.

Whilst we must admit that there appear to be some errors or irregularities committed by the trial magistrate during the trial of the case which, in our opinion, ought to claim the serious consideration of this Court, and should be corrected for the future guidance of our trial courts, yet the questions that present themselves for our consideration are: (1) Is this case legally before this Court for review? (2) If not, has this Court any legal jurisdiction over said case to review it?

In the case *Wodawodey* v. *Kartiehn,* 4 L.L.R. 102, 1 Lib. New Ann. Ser. 105 (1934), as well as in the case of *Markwei* v. *Mohammed Amine,* 4 L.L.R. 199, 2 Lib. New Ann. Ser. 28, this question was definitely and clearly decided, and in our opinion said rulings ought to serve as a guide to all litigants before this Court.

The Court fails to see in what way a mandate to a lower court can be substituted for a review of a case to correct errors complained of as it is in the petition of the plaintiff-in-error for a writ of error in this case. There seems to be a confusion in the minds of our practitioners before this Court as to the difference of the benefits obtainable respectively from a writ of error and a writ of mandamus. Consequently we will make the following observations as a chart for their future benefit and guidance. The object of a writ of error, subject to any local rule, such, for example, as exists in this jurisdiction, is for the superior court to review the entire case that has been adjudicated by the lower court for the purpose either of affirming or reversing the judgment of said court; wherefore *Spelling* says of a mandamus:

> "Formerly the remedy by writ of mandamus was considered the exercise of royal prerogative. It had an extensive remedial nature, and was employed by

the King through the medium of the court of King's Bench, in superintendence of the police, in maintaining public peace and order. Though of ancient origin, and of frequent use in the early stages of English jurisprudence, its objects and uses were never fully considered and thoroughly understood until Lord Mansfield's time. It has been recognized and incorporated into state constitutions generally, along with other established common law remedies, with no material change from its earliest object and employment, though it has ceased to be looked upon as flowing from a sovereign source, except in the sense that process generally runs in the name of the state, and the people of the state are theoretically considered to be always present and directing judicial proceedings.

"The right to the writ and the jurisdiction to issue it have ceased to depend upon the exercise of sovereign will, and it has come to be regarded as an ordinary civil process issued as of ordinary right in cases where it is applicable." 2 Spelling, Injunctions and Other Extraordinary Remedies, § 1362.

"The following definition of the writ, with a reference to its origin, and a brief statement of its nature and function, is by Lord Mansfield: 'A prerogative writ, to the aid of which the subject is entitled, upon a proper case, previously shown to the satisfaction of the court. The original nature of the writ, and the end for which it was framed, direct upon what occasions it should be used. It was introduced to prevent disorder from a failure of justice and defect of police. Therefore it ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one. Within the last century it has been liberally interposed for the benefit of the subject and advancement of justice. The value of the matter or the degree of its importance to the public police is not scrupulously

weighed. If there is a right and no other specific remedy, this should not be denied.'

"It is thus defined by an American author: 'A command issuing from a common law court of competent jurisdiction, in the name of the state or sovereign, directed to some corporation, officer, or inferior court, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law.'

"There is a slight difference between the definition here given, and that applicable to the corresponding English process; as it there can issue only from the courts of King's Bench, the act required to be done by it need not necessarily be an existing legal duty. It is only necessary that it appertain to some office or duty which the court of King's Bench has previously determined, or at least supposes to be consonant to right and justice.

"Mandamus is strictly a legal remedy with which equity has nothing to do." *Id.* at § 1363.

"It is used at the present day, as at first, to give relief where ordinary legal procedure, by reason of its defects, gives none, and the same methods characterize its employment, and the same means are resorted to, to make it effective; but there are important differences found to exist in the primary source whence it issues and the extent to which it reaches. It was at first in England (and is to-day in literal sense) a word of command, expressive of despotic will. Instead of commanding obedience to the law as it existed, it contained the law from which there was no appeal. Therefore when originally employed by Kings Edward II. and III., it was not merely declaratory of duty under existing law, but of the law itself; it was the creation of both law and duty. It did not issue from the court of chancery, as matter of com-

mon right, like other common writs, but was the exclusive prerogative of the crown.

"In this country, and under our form of government, the sovereign will is not exercised upon occasion to meet emergencies. The people crystallize their will into laws for the equal government of all, in advance of cases which arise for their application, and the writ of mandamus does not issue directly from the sovereign, either in fact or theory, except in the sense that by pre-existing law all process runs in the name of the state. The same may be said of England at present. A private individual can apply for the writ only where he has some private or particular interest to be subserved, or some particular right to be protected by the aid of this process, independent of that which he holds with the public at large." *Id.* at § 1365.

"The chief requisites of a petition to warrant the issuance of a writ of mandamus are: (1) The petitioner must show a legal right to have the act done which is sought by the writ; (2) it must appear that the act which is to be enforced by the mandate is that which it is the plain legal duty of the respondent to perform, without discretion on his part either to do or refuse; (3) that the writ will be availing as a remedy, and that the petitioner has no other plain, speedy, and adequate remedy. Under these circumstances the aid of this extraordinary writ may be regarded, to the extent of the relief required, as *ex debito justitiae.*" *Id.* at § 1369.

Count three of the petition for a writ of error as filed by the plaintiff-in-error reads: "That the judge in denying defendant the right of appeal, erred." In this connection we are of the opinion that, if the allegation as to the refusal of the court below to grant defendant, now plaintiff-in-error, the right to appeal is true, a writ of mandamus requiring the judge below to approve of his

bill of exceptions, and grant said right would have been the proper remedy; not a writ of error. The plaintiff-in-error having failed to resort to this, the only appropriate remedy, this Court feels that the motion of defendant-in-error praying that the writ of error should be quashed should be granted, with cost against plaintiff-in-error, and the court below ordered to resume jurisdiction, and execute its judgment; and it is hereby so ordered.

Writ quashed.