WODAWODEY, Plaintiff-in-Error, *v.* KARTIEHN and His Honor AARON J. GEORGE, Judge of the Circuit Court, Resident in the First Judicial Circuit, Montserrado County, Defendants-in-Error.

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

Argued April 9, 1934. Decided April 20, 1934.

1. The privilege of removing cases to this Court by writs of error arose by implication from section seven on page twenty-seven of the Judiciary Act found in the compilation of 1857–61, and from section five of the Acts of 1875.
2. The passage of the statute of 1894 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.
3. In 1915, the Supreme Court made a rule permitting writs of error to be issued "where a party has for good reasons failed to take an appeal as provided by law."
4. Where the appellant has lost his right of statutory appeal without laches, or where he is incompetent to act, or not notified of the rendition of the decision until the statutory time for the taking of an appeal has elapsed, he may resort to a writ of error.
5. An allegation that a party was unable to take an appeal because he could not pay the costs until he secured expected employment is insufficient to permit him to alter his method of procedure from appeal to writ of error.

The plaintiff-in-error was defendant in a suit brought by the defendant-in-error Kartiehn in the court of the Governor of Krutown to recover for alienation of his wife's affections. Judgment was rendered against the defendant in that action, and was affirmed in the Circuit Court of the First Judicial Circuit. The defendant then prayed an appeal to this Court and tendered a bill of exceptions and filed an appeal bond, but did not pay the costs necessary to perfect the appeal. The defendant has applied for and secured a writ of error to this Court, to the granting of which the plaintiff, defendant-in-error herein, has objected by motion. *Writ of error quashed.*

C. H. Taylor for plaintiff-in-error. *P. Gbe Wolo* for defendant-in-error.

MR. CHIEF JUSTICE GRIMES delivered the opinion of the Court.

This is a case which was originally tried in the court of the Governor of Krutown, in Monrovia, and determined against Nimene Wlawleh alias Wodawodey, defendant, on the 12th day of July, 1933. By said judgment the Governor of Krutown awarded Ginger Kantwi alias Kartiehn, plaintiff, one hundred dollars as damages for estranging the affections of, and committing adultery with, Nwasonoh, the head wife of the plaintiff in the action.

A writ of execution to enforce said judgment was issued, returnable before His Honor Aaron J. George, Judge of the Circuit Court, resident in the First Judicial Circuit, whereupon several pleadings were filed, among which were a denial that the said Nwasonoh was the head wife of plaintiff and demurrers making sundry attacks on the administrative regulations upon which the judgment is based, as well as raising several questions of Kru customary law.

After the hearing of both the law and the facts, His Honor the late Aaron J. George, on the 1st day of August, 1933, gave a judgment affirming the judgment of the Governor of Krutown; to which defendant excepted, and on the 11th day of August, 1933, tendered a bill of exceptions, praying an appeal to this Court, which bill of exceptions was duly approved on the said 11th day of August, 1933. The appeal bond having also been filed, there was then lacking but one legal prerequisite to the completion of the appeal to this Court; namely, the payment of all costs.

Nevertheless, on the 5th day of October, 1933, the defendant, Wodawodey, through his counsel Nete-Sie Brownell, made an application to Mr. Justice Beysolow,

praying that a writ of error might issue in order that the cause might be brought by writ of error up to this Supreme Court for review, which writ of error was issued out of this Court on the 6th day of October, 1933.

At the call of this case in this Court it was discovered that Counsellor P. Gbe Wolo had filed a motion containing eight counts, submitting that this Court had no jurisdiction to try this case. The salient points in the motion are as follow:

(1) That the plaintiff-in-error had commenced his appeal by bill of exceptions, and that, without completing same, he had changed his mode of procedure and brought the case up on a writ of error; (2) That an appeal commenced by bill of exceptions cannot legally be completed by writ of error; and (3) That the appeal by bill of exceptions and writ of error cannot be simultaneously pursued; hence the choice of one precludes the resort to the other method of procedure.

Although there were many interesting questions raised during the progress of the case which this Court would have liked to have considered and passed upon for the benefit of the practice, and to assist in construing our native customary law, yet, after careful consideration, this Court finds that it has no option but to consider the points in the motion objecting to the jurisdiction filed by defendants-in-error, the gist of which is set out in the three points *supra.*

According to the statute laws of Liberia, compilation of 1856 commonly known as the Old Blue Book, chapter XX, page 78, section 3:

> "It shall be the duty of the party, who intends to appeal from any opinion or decision of a court, which does not appear upon the face of the ordinary proceedings in the case, to cause such opinions or decisions, with the evidence and prayer or motion upon which it is founded, to be reduced into writing and signed by the judge or judges on the day, on which

such opinion or decision is pronounced." Statutes of Liberia, ch. XX, p. 78, § 3; see also 1 Rev. Stat. 495, § 425.

On page 27 of the compilation of 1857–61, an amended Judiciary Act duly passed is recorded, section 7 of which provides:

". . . that the Supreme Court, or Chief Justice, in the interim of said Court, shall have power to issue writs of prohibition to the County Courts, when proceeding as Courts of Admiralty and in the exercise of maritime jurisdiction; and writs of *mandamus,* in all cases when a new trial, a writ of error, or an appeal has been denied; or when it is proved that the Judge otherwise failed to do his duty, agreeably to the principles and usages of law, to any Courts created, or persons appointed and holding office under the authority of the Republic of Liberia." L. 1858, 7, § 7. § 7).

In 1875 the Legislature of Liberia passed an act reorganizing the Supreme Court of this Republic, section 5 of which act, approved February 20, 1875, provides:

"Upon satisfactory application to the Chief Justice or either of the Associate Justices during the recess of the Supreme Court, it shall be lawful for either of them to issue such writs or processes as are usual in the common law and the practice of the Supreme Court of the United States of America, or order the same issued from the Clerk's office." L. 1874–75, 12, § 5.

We have not been able to find any law specifically providing for the issuance of writs of error save those by inference hereinbefore quoted.

In 1894 the Legislature passed a new law, approved January 13, 1894, more specifically prescribing the steps to be taken in prosecuting an appeal from the county courts of record to the Supreme Court of Liberia. In said act, section 1, provision is made that anyone

"wishing to appeal from any County Court of record, shall be allowed ten days from the rendition of final judgment to prepare and tender his bill of exceptions to the Judge of said court for his signature, which he shall attach in open court or in chambers provided the said bill of exceptions is submitted within the aforesaid ten days. The appellant shall in all cases sign the bill of exceptions before submitting the same to the said Judge for his signature. Appeal bonds are to be approved by the Court from which the appeal is taken, within sixty days after final judgment, as well as payment of all costs; this being done, the Clerk of the said court shall forthwith issue a notice to the Appellee, informing him that the appeal is taken, and to what term of the Court; and that said appellee appear to defend the same which shall complete the said appeal." L. 1893–94, 10, § 1; *cf.* Rev. Stat. 494–5, §§ 424–6.

Having thus made this historical survey of how cases should be brought up to this Court on appeal, we shall now consider the points raised in the motion of Counsellor Wolo's, objecting to this Court's taking jurisdiction of the cause. And first,

"Where the right of appeal is expressly given by the Constitution in specific cases or classes of cases it cannot be abolished or impaired by statute; and where no mode of appeal is provided by the legislature, in such cases the appellate court may frame proper rules of procedure to bring the case before it. . . .

"At common law a writ of error lay as a matter of right in all civil cases following the common law, while a technical appeal existed only where expressly given by statute. Under modern practice the right of appeal is deemed wholly statutory, except where expressly secured by the constitution.

". . . Under its general authority to organize the judicial department, the legislature may regulate the

entire system of appellate procedure. The method required by the legislature is exclusive, and courts cannot disregard it or substitute therefor their own rules of procedure.

". . . It follows, therefore, that all the requirements of the statute for taking and perfecting an appeal are deemed jurisdictional, and must be strictly complied with whatever be the method named. Where no legislative mode is provided for bringing up a case appealable by the constitution, resort may be had to a writ of error." 2 Ency. of Pleading and Practice 13–16; *cf.* 2 Cyc. 1082–3.

"Where a statutory appeal is given in a class of cases previously removable by writ of error, the right to sue out the writ is abolished by implication, except in criminal cases, or where the statute supports the inference that the remedy of appeal is intended to be cumulative." 2 Ency. of Pleading and Practice 18.

It would appear from the foregoing that the right to appeal having been established by constitutional provision without prescribing any specific mode, the adoption of the procedure by writs of error arose by implication and by implication only, from the compilation of the acts of the Legislature of Liberia of 1857–60 and of 1875, the relevant portions of each of which have been hereinbefore quoted. But, with the passage of the specific statute of 1894, it would seem that an adequate method of appeal was provided, which abolished, also by implication, the right to sue out a writ of error.

In this connection it is to be observed that in the beginning of the present century the privilege of suing out writs of error and other common law writs was greatly abused in certain parts of this Republic, one object of which appeared to have been to avoid the payment of costs which, as has been seen, was, by the statute of 1894, made one of the prerequisites to the completion of an appeal. This Court in order to check said abuses made

rules from time to time, the most recent of which, made in 1915, reads as follows:

> *"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, degree, 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." Revised Rules of the Supreme Court, number IV, (1915), p. 66, sub-sec. 4.

This provision appears to be fully in harmony with an exception to the principles of procedure hereinbefore laid down by the same authority from which several of the above quotations were taken, which provision reads as follows:

> "Where the appellant has lost his right of statutory appeal without laches, or where he is incompetent to act, or not notified of the rendition of the decision until the statutory time for taking an appeal has elapsed, he may resort to a writ of error. Under code practice where an appeal has been dismissed for failure to prosecute, the proper remedy is a motion to reinstate upon a showing of excusable inadvertence or mistake, a writ of error is not appropriate." 2 Ency. of Pleading and Practice 31.

In the course of the argument Mr. Taylor who, since the appointment of Mr. Brownell as Solicitor General of this Republic, has become the counsel for plaintiff-in-error, urged that the inability of his client to secure the money in time to pay the costs within the statutory period, due to the delay of a ship on which he expected to be engaged, and upon the arrival of which he expected to secure a payment in advance, was responsible for his changing his procedure from the regular appeal prescribed by statute to the writ of error upon which the cause found its way to this Court. After careful con-

* Italics added by the Chief Justice.

sideration, this Court, while regretting the circumstances, finds that his reason is not within the exception found in the rule of court, nor in the common law principles also quoted, nor the case *Logan* v. *Meyer,* reported in 2 L.L.R. 200, 5 Lib. Semi-Ann. Ser. 40 (1915).

For the reasons given it is our opinion that the writ of error was improperly issued and should be quashed, and the court below notified to resume jurisdiction; and it is so ordered.

Writ of error quashed.