His Honor, M. M. PERRY, Judge of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, Appellant, *v.* NATHANIEL B. RICHARDSON, Appellee.

APPEAL FROM ORDER IN CHAMBERS ON APPLICATION FOR WRIT OF MANDAMUS TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 16, 17, 1960. Decided May 6, 1960.

1. The authority which vests in a Justice of the Supreme Court the right to issue a remedial writ, was not intended to and does not enslave him to the menial duties of an amanuensis or deprive him of his right to issue orders for these and other duties to be performed in the administration of justice.
2. The members of the Supreme Court may order either the clerk or marshal, in addition to their statutory duties, to perform any acts or duties in the proper administration of justice not specifically confined to duties of the bench.
3. Although the subject matter pending before a circuit judge might not be within the jurisdiction of the Supreme Court, his handling of such matter, and the procedure which he adopts in the determination thereof, is never without the general jurisdiction of the Supreme Court, and is always within the immediate jurisdiction of the Justice presiding in Chambers upon a petition for a remedial writ.
4. A preliminary or interlocutory writ in a remedial proceeding in the Supreme Court is not a writ of summons and hence does not come within the category of documents which fall under the Stamp Act.
5. The Legislature has no more right or authority to enact rules of procedure to govern the courts of Liberia than the judiciary has to draft rules to govern the Senate or the House of Representatives.
6. Each of the coordinate branches of government is responsible for its own rules and master of its own procedure. The Legislature may legislate an inferior court into being, but it is the Supreme Court, within the scope of its constitutional authority, which must dictate procedure for all courts to follow.
7. Mandamus will lie to compel performance of a duty neglected, regardless of whether request for its performance was made or refused.
8. There are two classes of duties a judge is called upon to perform; one is discretionary, the other is mandatory.
9. Mandamus will lie to compel its performance of a mandatory duty by a judge of an inferior court.

On appeal from an order of the Justice presiding in Chambers granting a writ of mandamus, *order affirmed.*

Robert Azango for appellant. *Momolu S. Cooper* and *A. Gargar Richardson* for appellee.

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

Nathaniel R. Richardson, by and through his counsel, applied to the Chambers of the Supreme Court for a writ of mandamus to be ordered, issued and served on the present appellant, then presiding by assignment over the Circuit Court of the Sixth Judicial Circuit, Montserrado County, ordering him to give a ruling after having heard argument on the issues of law in a cancellation proceeding. The petition was filed on February 18, 1960, and orders for the issuance of the interlocutory writ were given, assigning the hearing for February 23, at 11 o'clock in the morning.

When this order was issued out of the Chambers of Mr. Justice Wardsworth, both the clerk and the assistant clerk of the Supreme Court were out of the office, the former at home ill, and the latter out of town at the bedside of his sick family. Thereupon, and in the exercise of his legal authority, the Justice ordered the marshal to issue the precept ordering the respondent to show cause why a peremptory writ of mandamus should not issue against him in keeping with the prayer of the petition. The marshal prepared the precept, signing it: "John C. A. Gibson, 2nd. For the clerk of the Supreme Court"; and it was served and returned. A hearing of the matter was held, and an order was handed down ordering the judge of the inferior court to resume jurisdiction and to rule on the issues already argued before him. The judge, being dissatisfied with this order of the Justice presiding in Chambers, appealed therefrom to the bench *en banc;* hence these proceedings.

Counsellor Robert Azango of the Henries Law Firm, in his representation of the appellant herein, argued strenuously that the Justice presiding in Chambers was without statutory authority when he ordered an officer other

* Mr. Justice Harris was absent because of illness and took no part in this case.

than the clerk to issue the writ for the respondents to show cause why the peremptory writ should not issue. He contended that, since the statute makes it the clerk's duty to issue writs in the Supreme Court, and also authorizes the Court, or a Justice presiding in Chambers, to issue writs of mandamus, the instant writ could only have been legally issued if signed by the presiding Justice in person, in the absence of the clerk.

Counsellor Azango also contended that the writ issued upon order of the Justice in Chambers and signed: "John C. A. Gibson, 2nd. For the clerk of the Supreme Court," was a void and invalid document, and therefore did not have any legal or compelling force to bring respondents within the Court's jurisdiction because the said John C. A. Gibson is marshal of the Supreme Court, and it is not his legal duty to issue writs. I think it necessary, for the benefit of this opinion to quote the relevant portion of Count "3" of Counsellor Azango's brief:

> "Respondents contend that Your Honors should refuse jurisdiction over the person of the respondent for the want of necessary precept in this case; because it is unconstitutional for any other than the proper officer of this Honorable Court to function in a capacity not appointed by the Chief Executive, authorized by law and supported by the Constitution of this Republic. The respondent submits that, to warrant any other than the regularly appointed clerk of the Honorable Supreme Court of Liberia, there should have been an appointment by the Chief Executive by and with the advice and consent of the Senate. This not having been done, that is to say, the said John C. A. Gibson, 2nd., Marshal of the Supreme Court of Liberia, not having been appointed as provided by the Constitution and statutory laws of this country to function as Clerk of the Supreme Court of Liberia, an act done by him in that capacity is void *ab initio* and should therefore be vacated."

Since Counsellor Azango relied upon Article III, Sec-

tion 1st of the Constitution of Liberia, it might be wise that we quote it in an effort to satisfy ourselves as to its relevancy to the subject matter in issue. The relevant portion reads:

> "He [The President] shall nominate, and with the advice and consent of the Senate appoint and commission, all Ambassadors, and other public Ministers and Consuls, Secretaries of State, of National Defense, of the Treasury, Attorney General, all Judges of Courts, Sheriffs, Coroners, Marshals, Justices of the Peace, Clerks of Courts, Registers, Notaries Public, and all other officers of State civil and military, whose appointment may not be otherwise provided for by the Constitution, or by standing laws."

Admitting limitations in the field of constitutional law, or of proper interpretations at all times in this important branch of the law, or perhaps because of those limitations, we have been unable to find how this portion of the Constitution applies to the question of a Justice presiding in the Chambers of the Supreme Court having acted unconstitutionally by ordering someone other than the clerk to issue a precept to bring an inferior court judge before him to show cause.

> "A writ of mandamus shall be issued by the Supreme Court or a Justice thereof sitting in chambers to any inferior court or public officer. 1956 Code, tit. 6, § 1210.
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> ". . . If the Court or Justice is satisfied with the sufficiency of the application, it or he shall issue an interlocutory writ of mandamus. . . . Service of the interlocutory writ shall be by the marshal." 1956 Code, tit. 6, § 1211.

Rule XII (2), of the Revised Rules of the Supreme Court, 13 L.L.R. 693, 704 (1959) provides:

> "Upon the application of a party by petition, duly verified according to law and the rules of this Court, for a remedial or common law writ, the Justice presiding in chambers shall issue an alternative writ. . . ."

The question of whether the Justice presiding in Chambers had legal authority to issue the writ of mandamus would seem to have been settled by the statute and the rule quoted, *supra,* which would also seem to rebut the contention that any writ issued out of the Chambers of the Supreme Court is invalid unless signed by the clerk.

We come now to consider whether the issuance of a writ upon orders of a Justice who is clothed with authority to do so, or the performance of any other act not strictly confined to the duties of the bench, is invalid because a Justice does not physically perform the act in person. We hold that the authority which vests in a Justice of the Supreme Court, the right to issue a precept out of his Chambers, to give and have obeyed orders which further the ends of justice, and accomplish the remedy sought by the petitioning party, does not enslave him to the menial duties of an amanuensis, or deprive him of administrative rights in Chambers. Otherwise, the decision of a Justice delivered from the bench in determination of a cause could be declared void and invalid where it could be shown that he had employed the services of a clerk to type his manuscript. It is clear that, in that case, although the document was mechanically prepared by a typist, and in some instances might have been drafted by some young lawyer serving as assistant to the Justice, the fact still remains that, so long as everything in connection with production of that document was done upon orders of the Justice, who had legal authority to give the orders, the document was not only legal and valid, but was produced in keeping with the same law which gave the Justice authority to produce it. The question is so elementary that it need never have been raised.

The statute upon which learned counsel relies states the duties of the clerk of the Supreme Court, and reads as follows:

> "The President by and with the advice and consent of the Senate shall appoint a clerk for the Supreme

Court. Such clerk shall perform the following duties:

(a) To keep a docket of pending cases;
(b) To take charge of all records and papers and give copies of them when required by law;
(c) To issue and record all writs and other processes allowed by law, signed with his name as clerk, and record returns thereto;
(d) To take minutes and record fairly and intelligently all orders made by the Court and all matters transacted there;
(e) To perform all other duties required of him." 1956 Code, tit. 18, § 12.

It is to be observed another statute, quoted *supra,* authorizes Justices of the Supreme Court to issue writs of mandamus; and it is perhaps necessary to mention that this statute has made no provision for what should happen in the absence of the clerk and his assistant, as was the case when Mr. Justice Wardsworth ordered Mr. Gibson to issue the writ. But let us see what are his duties according to the Rules of the Supreme Court.

". . . He shall furnish the members of the Court with copies of the docket at least ten days before each term, and shall perform such other judicial duties as are required by law and by the rules of this Court, or as may be required by the members thereof in the administration of justice." R. Sup. Ct. XVII (3), 13 L.L.R. 693, 708–709 (1959).

It is clear from the above that, in addition to the duties defined by statute for the clerk, are those which require him to furnish members of the Court with copies of the docket ten days before the term, and those which, though not mentioned by statute or rule, he might be called upon by members of the bench to perform in the administration of justice. It is hardly conceivable that any legal mind will dispute the fact that these additional duties of the clerk, referred to in the rule and omitted in the statute, are

duties as binding upon him as are those which the statute specifically requires him to perform. Especially might we call attention to that portion stated both in the statute and in the rule, that he should perform all duties required of him in the administration of justice.

With this in mind, let us see what are the duties of the marshal of the Supreme Court. Rule XVII requires that:

> ". . . He shall perform such duties as are required by law and by the rules of this Court, or as may be required by the members thereof in the administration of justice." R. Sup. Ct. XVII (4), 13 L.L.R. 693, 709 (1959).

So, like the clerk, not only is the marshal expected to perform duties required by the statute and by the Rules of Court, but other acts, though not specifically mentioned. If, in the administration of justice, a member of the Court should order him to perform them, it would seem to be his legal and binding duty to obey. Consequently we fail to perceive any illegality or irregularity in the writ issued upon orders to Mr. Justice Wardsworth in Chambers, and signed: "John C. A. Gibson, 2nd. For the Clerk of the Supreme Court." We have wondered, and we did indeed inquire of learned counsel, whether it was his view that work in the Chambers of the Supreme Court should come to a halt until the Chief Executive could appoint someone to act instead of a clerk who was ill; we were not surprised that he could offer no sensible answer to the question.

Counsel, in Count "4" of his brief, attacked the writ for not having been stamped with a twenty-cent revenue stamp. We had better quote the count; it reads word for word as follows:

> "4. And also because respondent further submits that the interlocutory writ of mandamus served on respondent is invalid because there is no twenty-cent revenue stamp affixed thereto, nor is there any indication that same is attached to the original."

He relied upon the Stamp Act. We have looked up the

Stamp Act, and the only writ required to be stamped under this statute is the writ of summons.

In remedial processes there are generally two precepts. The first is a form of notice for the respondents to show cause, and is alternative or preliminary; the second which issues after hearing, and only if there is a merit in the petition, is absolute or peremptory. These precepts differ from writs of summons in that, whilst a summons is addressed to the sheriff or other ministerial officer of an inferior court, commanding him to inform the defendant in a civil suit to appear and answer the complaint of the plaintiff, a preliminary writ or precept in any remedial proceeding is addressed to an inferior tribunal or court, and emanates from the superior court, ordering the inferior judge to appear and show cause why his handling of a matter pending or concluded before him should not be reviewed upon petition of one of the parties. The difference between a writ of summons and a remedial precept—call it a writ or a notice—is elementarily apparent; but not only has the question of stamping these precepts issuing out of the Chambers of the Supreme Court never been raised in such a manner before, but it would seem that any counsellor practicing here would know the reason why these precepts do not fall within the category of documents coming under the Stamp Act. For instance, the Stamp Act requires that all writs of summons—and we must assume that only writs of summons were intended, since no others were mentioned—shall carry a twenty-cent stamp. The question then arises, is a writ issued by a Justice in Chambers in a remedial proceeding a writ of summons? In its mandatory direction for the inferior judge, who, together with the adverse party, are named as respondents, to appear and show cause why a peremptory writ should not issue to review his procedure, does that remedial writ perform the same functions as a writ of summons, which brings a defendant into an inferior court at the commencement of a civil suit to answer the complaint of the plaintiff?

Under our system, the judicial branch of the government, and only the judicial branch, is saddled with the responsibility of having justice meted out to all parties in litigation, in keeping with the laws of the land. Justice shall be done without fear, sale, denial or delay. According to the Constitution, the judicial branch is made up of the Supreme Court and inferior courts. Hence the respondent judge in every remedial proceeding heard by the Supreme Court, or the Justices thereof, is as much a part of that branch of government as is the Justice before whom he might appear to answer in Chambers. In other words, the respondent judge is never without the jurisdiction of the Supreme Court in the performance of his duty. Whilst the subject matter pending before him in Circuit Court might not be within the Supreme Court's jurisdiction unless appealed, or where some remedy is applied for, his handling of such a matter and the procedure which he adopts in the handling and determination thereof, is never without the general jurisdiction of the Supreme Court, and is indeed always within the immediate jurisdiction of the Justice presiding in Chambers upon a petition for a remedial writ.

The object of a writ of summons, and for that matter its function, is to bring the defendant within the jurisdiction of the court. Not so with the remedial processes; the right to regulate the procedure of inferior courts is an inherent right of the Supreme Court; and that right can never be taken from her under our system, nor can it be delegated. That right includes the making of rules to govern the courts of Liberia and the officers thereof, and to formulate procedure to be used in the courts, in the hearing and determination of causes. The Legislature has no more right or authority to enact rules or procedure for governing the courts of Liberia than the judiciary has to draft rules to govern procedure in the Senate or in the House of Representatives. Each of the coordinate branches of Government is responsible for its own rules, and master of its own procedure. The Legislature may

legislate an inferior court into being, but it is the Supreme Court, within the scope of her Constitutional authority, which must dictate the procedure for that court to follow. It was therefore a fallacious constitutional interpretation when the learned counsel tried to impress upon us that no procedure adopted by the Supreme Court which is not the subject of legislation is legal or valid.

We do not think that any more need be said to show the difference between a writ of summons, which the law requires to be stamped, and a precept issued by the Supreme Court to one of its inferior courts for review of the procedure used in the hearing of a cause. There is no law which requires remedial writs in the Supreme Court to be stamped; and it is error to confuse a writ of summons with a remedial precept issued out of the Chambers of the Supreme Court.

We come now to consider the main issue in this case, the issue upon which appeal was taken from the ruling of Mr. Justice Wardsworth who presided in our Chambers. The records reveal that Edwin J. Gabbidon, represented by the Henries Law Firm, filed a bill in equity to cancel several administrator's deeds belonging to Nathaniel R. Richardson. It would seem that the aforesaid deeds are claimed to have been fraudulently obtained. Richardson, represented by Counsellors Momolu S. Cooper and A. Gargar Richardson, appeared and filed an answer, thereby joining issue; and the pleadings rested with the amended rejoinder of the respondent.

On January 11, 1960, according to the records, His Honor, MacDonald M. Perry, presiding over the December, 1959, term of the Circuit Court of the Sixth Judicial Circuit, issued a written notice of assignment setting the matter down for law issues to be heard on the morning of the next day. It was not, however, until January 25, or thirteen days after the day assigned for hearing the case, that Judge Perry got down to listening to arguments on the issues of law. The minutes for January 25, which was the twenty-first day's sitting of that term of court, show

that counsel on both sides argued, and further hearing was suspended by order of the court. Six days later, that is to say on February 1, the judge who had heard argument and suspended hearing, obviously for ruling in keeping with the practice known in this jurisdiction, suddenly realized his inability to give an intelligent ruling on the issues contained in the pleadings and contested in the arguments he had heard. He thereupon proceeded to adopt the heretofore unknown procedure of requiring briefs to be filed after argument, and made the following record:

> "The pleadings in this case being so voluminous, the court is hereby requesting the parties for a condensation of the points raised in the pleadings by means of briefs, so as to place the court in an intelligent position. The clerk of this court is hereby instructed to send the record herein made to each party through the sheriff of this court, and his returns as to the service made and recorded."

Of course, as can be seen, this record was taken in the absence of the parties; and nowhere is it shown that previous assignment of the matter had been made for that day. But as strange as this procedure seems, the respondent's counsel obeyed, and filed on February 9, that is to say eight days later, a brief containing seven counts, drawn up on six pages of legal size paper. In this brief, which appears in the records, several issues related to the law of inheritance and descent are raised, with citation of many common law and statutory authorities and several opinions of this Supreme Court. Notwithstanding the foregoing, the petition alleges that up to February 18, the day on which mandamus was applied for, and twenty-two days after argument of the law issues, the judge had failed and refused to give a ruling. Count "2" of the petition reads as follows:

> "That thereafter on February 1, 1960, His Honor, the respondent judge, ordered the parties to prepare their arguments in the form of written briefs, which order

the petitioners unhesitatingly complied with on February 9, 1960; and yet, for reasons best known to the respondent judge, he has failed and refused to give his ruling on the issues of law tendered in the respective pleadings of both petitioner and respondent in the case in point, regardless of your humble petitioner's request to the respondent judge to dispose of the issues of law, and regardless of the law of the case relied upon in respondent's brief, copy of which is hereto attached together with the orders of the court requiring said brief, marked Exhibits 'C' and 'D' to form a part of this petition."

The learned judge filed returns separately from those filed by his correspondent Edwin J. Gabbidon; and it is to be noted that he did not deny refusing to give a ruling as it is alleged he was requested to do. Counsellor Azango, representing the respondents, has denied in Count "5" of his brief that the judge ever refused to give a ruling; but it is contended in the said brief that Richardson should have requested a ruling, and that only if the judge had refused, would it have been justifiable to apply for mandamus. We have wondered how much weight Counsellor Azango's denial can have in view of the judge's position taken in the special returns he filed on the petition. We have to bear in mind that, according to the said petition, the judge is the only named respondent in these mandamus proceedings. Since he undertook to file special returns, and did not therein deny that request had been made of him and refused, we are left with no alternative but to believe this allegation of the petition. It is reasonable for us to assume, then, that if no request for a ruling had been made of the judge and refused, he would have denied the allegation in his special returns.

We come now to consider the contention of Counsellor Azango that mandamus should lie to compel a judge to give a ruling more than three weeks after he has heard argument, with or without the request of the parties in

interest. As in another case decided this term, the question of delay would seem to be one of the issues raised by the records in mandamus before us. Up to the time that the remedial process was applied for, the judge had failed to reprimand or otherwise discipline this flagrant defiance of his orders by the party on the other side. But in addition to this, and to state another instance which seems to lend more color to the allegation of fear on the part of the judge, the Justice presiding in Chambers passed upon the petition and returns in mandamus and ordered the respondent judge to resume jurisdiction and rule upon the issues of law pleaded and argued before him. This should not have been difficult in view of the pleadings and the brief filed by the respondent. But Judge Perry deliberately disobeyed this order of the Justice in presiding Chambers, and instead of giving a ruling on the issues raised and argued before him, he dismissed the respondent's pleadings. It might be of interest to quote the memorandum which he made in doing so. It reads as follows:

"Court's Ruling on the Issues of Law.

"At the call of this case, the parties were represented as of record. The court recalls that, because of the unscientific method in which the pleadings in the case were conducted, for the best interest of the parties it ordered them to make their pleadings more intelligible. The court has hoped this would solve the problem by rendering said pleadings intelligible. To its surprise, the briefs filed have only multiplied the confusion in the pleadings. The court therefore rejects the said briefs, and orders the parties to replead so as to make necessary amendments which would intelligently present the issues for this court's consideration. The amendments required herein shall not include the bill of complaint."

Would it not have been easier for the judge to have ruled against one side, and allow that side to appeal if not

satisfied? It is peculiar that, although the judge had characterized the pleadings on both sides as unintelligible, and had thereupon ordered briefs filed, petitioner's pleadings alone seem to have now become intelligible enough for the judge to order that side of the case to remain in court. Thus he preferred to defy the Justice presiding in Chambers, rather than perform his plain duty in the case before him. There must be some reason why a judge would go to that length in avoiding his duty; if it is not fear, then it must be something as bad or worse. Because this defiant attitude of the judge is the subject of another proceeding, we will make no further comment on it herein. Nevertheless, it might be well that we sound a warning note here and now. When the judges of our courts begin to show fear of the influence of parties appearing before them, as is alleged in this case, or indicate some other strange attitude which does not lend to impartiality, it is time that such judges be removed to protect the integrity of our courts and safeguard the rights and interests of litigants and citizens. Judges who exemplify fear in the performance of their duties are not only unfit to decide upon the interests of parties litigant; they could also be threats to the welfare of the State. Our judges should be men able to live above fear and other influences; morally strong enough to perform their duties in an atmosphere of impartiality and complete absence of interest in the issue or the parties. To state it simply, the qualifications of a good judge might be summed up as follows: one-third knowledge of the law and two-thirds integrity.

Respondents have raised the contention that a court cannot be compelled by mandamus to do that which it has not refused to do. They have relied upon the decision of this Court in *Rottger* v. *Williams,* 5 L.L.R. 348 (1937), and upon a dictionary definition of mandamus. In the *Rottger* case, *supra,* this Court held that, if the trial judge should neglect or refuse to endorse upon a bill of exceptions the date when it was tendered to him for approval,

the appellant may apply to the Justice presiding in Chambers for mandamus to compel the judge to supply the omission. Judge Bouvier defines mandamus as follows:

> "This is a high prerogative writ, usually issuing out of the highest court of general jurisdiction in a state, in the name of the sovereignty, directed to any natural person, corporation, or inferior court of judicature within its jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. . . .
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> "It is an extraordinary remedy in cases where the usual and ordinary modes of proceeding are powerless to afford remedies to the parties aggrieved, and when, without its aid, there would be a failure of justice. . . ." BOUVIER, LAW DICTIONARY *Mandamus* (Rawle's 3rd Rev. 1914).

Whilst we are prepared to agree that mandamus will lie to compel performance of an act requested and refused, we also hold that the performance of a plain duty necessary to the just determination of a cause, in other words, a certain class of duty, should never have to be requested of a judge. And, whether or not a request for its performance is made and refused, mandamus will still lie to compel the neglected performance of it. There are two classes of duties a judge is called upon to perform; one is discretionary, the other is mandatory. For example, it is a judge's duty to hear the cases on the docket for the term over which he presides; that duty is discretionary in respect to any particular case he might care to assign. It is also his duty to give a ruling on any issue argued before him; that duty is not discretionary but mandatory. Because his failure to rule after having heard argument could be a bar to any of his colleagues passing upon or reviewing his work, and could therefore deprive litigants of their plain legal rights, Rule 7 of the Circuit Court Rules, as revised in 1959, provides in its latter part, that,

"Clearing the trial docket by the disposition of cases,

shall be the foremost concern of the judge assigned to preside over the term."

Judge Perry, according to law, had 62 days within which to hear and dispose of matters pending in the circuit to which he was assigned. Any matters commenced by him within those 62 days, and left undetermined, could pose a legal argument which could only end in unfair disadvantage to the interest of one or either of the parties in litigation. We cannot bring ourselves to believe that Judge Perry was not aware of this elementary procedure in our practice. We know now, by recourse to the record, that on January 25, when he heard arguments, he had already been in term for 31 of the 62 days he should have spent in term—10 in Chambers and 21 in regular jury term. Allowing 22 of the remaining 31 days of his legal term to lapse, without giving a ruling on a matter he had heard, certainly must have disturbed the parties. Under such circumstances, we cannot see what other remedy they could have had beside mandamus.

There is a strong feeling, which has persisted throughout the pendency of this case, that the judge might not have intended to give a ruling, but to allow his term to lapse, and thereby evade the responsibility of his duty. From what the record shows, there is an equal chance that this might have been so. For, although the petitioner in mandamus charged the judge with refusing to give a ruling after having been requested to do so, in the returns filed by respondent's counsel, as well as the special returns filed by the judge himself, no denial of this allegation is entered. Then again, the Justice presiding in Chambers, after having heard the case for both sides, ordered the judge to resume jurisdiction and enter a ruling. Here is the concluding portion of Justice Wardsworth's ruling:

"The respondent judge fixed no date in his order quoted, *supra,* commanding the parties to file said briefs; nor did he indicate his intention in his returns to so circumscribe the parties; all of which leaves us

with the firm conviction that it was his plan not to render ruling on the law issues in these proceedings.

"In view of the foregoing, it is my order that the respondent judge resume jurisdiction in this case and enter his ruling on the issues of law which upon his orders have been rendered intelligible, within twenty-four hours from the date of this ruling."

If the judge had originally had any intention of giving a ruling in the court below, this order of the Justice presiding in Chambers would certainly have been in harmony with such an intention; and in that event, his reaction to the order would have been different. But to the contrary, he excepted to the order, and took appeal from it; which should leave no further doubt in any unbiased mind that the judge resented having to give a ruling, even when so ordered by the Justice presiding in Chambers.

In view of the foregoing, and of the review we have made of the entire record in this matter, and also of the law we have cited and quoted herein, we are of the considered opinion that there was merit in the petition for mandamus. We therefore affirm the ruling of the Justice presiding in Chambers granting the peremptory writ. It is our order that the clerk of this Court send a mandate to any judge sitting in the Circuit Court of the Sixth Judicial Circuit, other than Judge Perry, and command such judge to hear arguments on the issues raised in the pleadings in the cancellation proceedings, and to dispose of the same according to law. Costs of these proceedings are ruled against the respondent. And it is so ordered.

Affirmed.