ALFRED E. VERDIER and LAHAI COOPER, Associate Magistrate of the Magisterial Court, Commonwealth District of Monrovia, Appellees, *v.* CLARA THOMPSON, Appellant.

APPEAL FROM RULING IN CHAMBERS ON APPLICATION FOR WRIT OF MANDAMUS.

Argued October 13, 1966. Decided December 16, 1966.

Since a writ of mandamus will not be issued to review an exercise of judicial discretion, mandamus will not lie to compel an associate magistrate to exercise jurisdiction over a summary ejectment action after the associate magistrate refused to exercise such jurisdiction on the ground of the pendency of an action in a circuit court involving the same parties and subject matter.

On appeal, a *ruling* in Chambers denying an application for a writ of mandamus was *affirmed.*

T. Gyibli Collins for appellant. *Morgan, Grimes* and *Harmon Law Firm* for appellee.

MR. JUSTICE SIMPSON delivered the opinion of the Court.

During the March 1966 term of this Honorable Court, an application was filed before Mr. Justice Wardsworth then presiding in Chambers, praying for the issuance of an alternative writ of mandamus against one Lahai Cooper, Associate Magistrate of the Magisterial Court, Commonwealth District of Monrovia, and one Alfred D. Verdier of the same city. This application was made by Clara Thompson, also a resident of the City of Monrovia, Montserrado County.

The petition as filed alleged substantially that petitioner had instituted an action of summary ejectment in the magisterial court before His Honor Peter Bonner Jallah against respondent Verdier, predicated upon the latter's nonpayment of rent for a number of years, and that Mag-

istrate Jallah had assigned the matter to Associate Magistrate Cooper. The petition further alleged that although the associate magistrate was authorized by law to hear and determine the summary ejectment suit, the said associate magistrate did unauthorizedly and without color of legal right recoil and refrain from entertaining said suit due to the fact that an action of specific performance had been filed in the equity division of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, involving the same parties and same subject matter.

The respondents, in their returns to the writ, strenuously contended that the same had been injudiciously applied for, since this ancient writ may not be invoked to compel a judge or judicial officer to perform a duty already performed, meaning thereby that the associate magistrate had acted procedurally by granting the application of respondent Verdier in the court below when he decided not to try and determine the case in the magisterial court in view of the pending of the action for specific performance in the Circuit Court of the Sixth Judicial Circuit, Montserrado County. It was also contended by respondent that the appropriate remedy would have been certiorari to review the interlocutory ruling of the magistrate. This was strenuously contended by respondent, especially since the application for the writ had omitted to specifically mention the duty imposed by law which the respondent magistrate had refused to perform so as to legally necessitate action by this Court in the granting of the writ applied for.

It was predicated upon the above-mentioned petition and returns thereto that Mr. Justice Roberts heard and determined this case whilst presiding in Chambers; and it was from his ruling denying the issuance of the peremptory writ that this appeal was prayed for and by him granted for a review by this Court sitting *en banc*.

In our view, there is but one material issue for our determination and this has to do with the purpose and scope

of the writ of mandamus. The word "mandamus" has been literally taken out of Latin, and reverting to the Latin, we find its English translation to mean "we command." The command spoken of is one from a superior court to an inferior court ordering the latter to perform a particular act imposed upon it by law.

Since Chief Justice Marshall of the United States Supreme Court spoke of this problem in the landmark case of *Marbury* v. *Madison,* 1 Cranch (U.S.) 137 (1803), it has been traditionally held that the writ will not lie to command an inferior court to perform a discretionary act and that mandamus will only lie to compel an inferior court or judicial officer to perform a ministerial act. It may be argued that since Chief Justice Marshall held that the United States Supreme Court had no jurisdiction in *Marbury* v. *Madison,* the decision in many respects constituted *obiter dictum.* Irrespective of this view, this rule of law traveled to our country with our forefathers and has become an integral part of our system of jurisprudence. Our volumes are replete with assertions by this Court to the effect that mandamus will not generally lie to review an exercise of judicial discretion. See, e.g., *King* v. *Randall,* 10 L.L.R. 225 (1949).

In the case at bar, the associate magistrate, then presiding by assignment, had determined in his sound discretion that the action of specific performance in the Circuit Court of the Sixth Judicial Circuit, Montserrado County, precluded him from at that time entertaining the action of summary ejectment venued before his court. Although he may have been wrong in the conclusion arrived at, the magistrate could not be held answerable by a writ of mandamus.

In view of the above, it is the determination of this Court that the ruling of the Chambers Justice be, and the same is, hereby affirmed with costs against petitioner. And it is hereby so ordered.

Ruling affirmed.