REUBEN ZORMELO, Appellant, *v.* HON. JOHN A. DENNIS, Presiding Judge, Sixth Judicial Circuit, Montserrado County, and ELISEUS B. COOPER, Appellees.

APPEAL FROM DETERMINATION OF JUSTICE IN CHAMBERS OF ERROR PROCEEDINGS FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Date of argument not indicated. Decided June 11, 1970.

1. Under provisions of the new Civil Procedure Law, a single Justice cannot hear and determine error proceedings, although under the superseded Civil Procedure Law he could, from which determination an appeal could be taken to the Court *en banco*.

In the course of an appeal from a determination of a Justice in error proceedings, a motion was made to dismiss the appeal on the ground that under the new Civil Procedure Law a single Justice could not hear and determine in error proceedings, and since the Justice in chambers could not determine, no appeal was possible, for no case could have arisen. The Court agreed with the contention, but held that since the matter before the Justice had arisen when the superseded Civil Procedure Law was applicable, the argument was irrelevant for the purpose of the *motion* brought, which was *denied*.

McDonald Acolatse for appellant. *O. Natty B. Davis* for appellees.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

This is a case of error proceedings. It originated in the chambers of Mr. Justice Wardsworth, growing out of an action of ejectment instituted in the Circuit Court of the Sixth Judicial Circuit.

This case comes before us on an appeal taken from the ruling of the Justice. On April 28, 1970, the case was called, at which time the Clerk of this Court informed the Court that appellee's counsel has filed a motion to dismiss the appeal.

The movent based his motion on the ground that the new Civil Procedure Law does not provide for appeals from the rulings of a justice in error proceedings.

Counsellor O. Natty B. Davies, as movent, said that he filed his motion purposely, so that the Supreme Court would render an opinion on this particular provision of the Civil Procedure Law, because in his opinion it is harsh, iniquitous, unworkable and imposes on the constitutional rights of citizens by denying them their basic right of appeal in error proceedings and thereby violates such fundamental rights provided for under the basic law of the land. Further arguing, he contended that he sympathized with his opponent because of the harshness of this particular provision of the Civil Procedure Law, and his aim was only to test the legality of the provision.

Counsel for appellant contended the error proceedings herein arose before passage of the new statute.

We have patiently considered the merits of both the motion and the opposition to it, and we also listened keenly to the arguments. Counsel for appellee with all his experience at the bar, appears to have argued a strange proposition.

We call it a strange proposition because the statutes relied upon by him have no bearing at all to the arguments advanced, aside from the merits of the argument.

> "A writ of error is a writ by which the Supreme Court calls up for review a judgment of an inferior court from which an appeal was not announced on rendition of judgment." Civil Procedure Law, L. 1963–64, ch. III, § 1621(4).
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> "A party against whom judgment has been taken, who has for good reason failed to make a timely an-

nouncement of the taking of an appeal from such judgment, may within six months after its rendition file with the clerk of the Supreme Court an application for leave for a review by the Supreme Court by writ of error. Such an application shall contain the following: . . ." *Id.*, § 1624(1).

"The Supreme Court or an assigned justice shall grant or deny the application. As soon as an application for a writ of error is granted, the clerk of the Supreme Court shall issue the writ, a copy of which, together with a copy of the assignment of error, shall be served by the marshal on the party in whose favor the judgment is granted and on the judge who rendered the judgment in the lower court. . . ." *Id.*, § 1624(2).

"Proceedings to enforce the judgment complained of shall be stayed on issuance of the writ of error." *Id.*, § 1624(3).

"The assignment of error shall be dealt with in the same manner as a bill of exceptions, and the hearing on the writ shall be upon certified copies of the record transmitted by the trial court. The Supreme Court hearing a matter on writ of error may grant such judgment as it may grant on appeal. If the judgment is affirmed, the court may, in addition to cost, award the defendants in error their reasonable disbursements. . . ." *Id.*, § 1624(4).

It can be seen that a Justice of this Court presiding in chambers cannot hear and determine matters in error proceedings. This authority falls within the province of the Court *en banc*. Therefore, since he cannot hear and determine, an appeal cannot lie, for no case can arise.

However, when this matter arose before the chamber justice, it was permissible at that time for a justice to hear and determine, hence, the motion is denied with costs against appellees. And it is hereby so ordered.

Motion denied.