H. LAFAYETTE HARMON, Counsellor-at-Law, Petitioner, *v.* S. RAYMOND HORACE, Commissioner of the Monthly and Probate Court, Montserrado County, Respondent.

APPEAL FROM THE CHAMBERS OF MR. JUSTICE SHANNON.

Argued March 22, 1948. Decided April 30, 1948.

1. It is not the function of a writ of mandamus to review an exercise of judicial discretion, and mandamus cannot be resorted to when there is an adequate and complete remedy available at law.
2. Persons having a common or joint interest in the issuance of a writ of mandamus generally are required to join in an application therefor.

Respondent refused to probate certain leases offered by petitioner. Petitioner petitioned for a writ of mandamus from Mr. Justice Shannon. After a hearing on the show cause order, the petition was denied. On appeal to this Court *en banc, petition denied.*

H. Lafayette Harmon for himself. *S. Raymond Horace,* Commissioner, for himself.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

> "H. Lafayette Harmon, solicitor and counsellor-at-law, petitioner and appellant in these proceedings, filed a petition for writ of mandamus against S. Raymond Horace, Commissioner of Probate of the Monthly and Probate Court, Montserrado County, respondent. The causes set out in said petition are as follows:
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> "At the March term, 1947 of said court said petitioner offered for admission to probate a certain indenture of lease between Mrs. Juah Weeks, lessor, and Messrs. Paterson, Zochonis & Company, Ltd.,

(lessees) both of Monrovia. Further, on October 10, 1947, he again offered for probate another lease indenture between Augusta McKeever Sheldon, lessor, and Simon Simonovitch, a Russian trader, lessee. And further on October 14, 1947, said petitioner offered a third indenture of lease between himself as lessor and Messrs. Resamny Brothers as lessees.

"According to the submission made in the petition, these three indentures of lease were respectively returned to petitioner by the clerk of the probate court, upon instructions of the respondent, with covering letters showing the reasons for their return, which said letters were produced by the petitioner and not controverted by the respondent in his returns. The primary reason assigned for the return of these lease agreements is that the several lessees, being foreigners doing business mercantile in Liberia, cannot under our law hold leases which would give the said lessees the right or privilege of enjoying same for a period over and above twenty years. Since the several indentures had terms and conditions which gave said lessees the right of the enjoyment of optional periods of twenty years respectively over and above the enjoyment of a first period of twenty years with fixed terms and conditions, the respondent, as Commissioner of Probate, ruled and declared as his opinion of the law that the said lease agreements were not in harmony with our law, and consequently he refused their admission to probate.

"This position of the respondent the petitioner considered legally unsound, unwarranted, and prejudicial to his interests, and he consequently filed this petition in the Chambers of Mr. Justice Barclay for the issuance of a writ of mandamus to require said respondent:

" 'to show cause, if any, why a peremptory writ of mandamus should not be issued commanding him to forthwith order the probation and registration of

said leases; and upon his failure to show legal cause why said peremptory writ of mandamus should not issue, that he the respondent be required to reimburse your petitioner his cost, since he the Comissioner has elected to constitute himself the only respondent in these proceedings in his capacity as a Judge of an issue which he himself raised contrary to the principle laid down by this Honourable Supreme Court in the case: Clark vs. Barbour, Annual Series No. 1 [2 L.L.R. 15].'

"Upon the issuance of the order for the respondent commissioner to appear on a day named to show cause why the writ applied for should not be granted and issued, respondent filed returns embodying six counts in which, in addition to justifying his position taken with respect to the lease agreements in question, he attacked the propriety of the method of procedure adopted by the petitioner. According to his argument repeated before this Court *en banc:*

" '1. Because respondent-appellee says that the petition should be dismissed and he so prays, because the wrong form of action has been chosen by petitioner-appellant. Respondent-appellee submits that petitioner-appellant should have received his exceptions to respondent-appellee's several ruling in refusing to admit to probate and order registered the several lease agreements and moved the cause to the Supreme Court of Liberia by regular appeal; and where petitioner-appellant was not himself in court to have his exceptions recorded, he should have come to the Supreme Court on a writ of Error. Petitioner-appellant not having surrounded himself with these safeguards is barred from making a petition for a Writ of Mandamus, for mandamus will not issue where the remedy sought can be obtained by regular appeal or on a writ of error.

" '2. And also because respondent-appellee says that

the petition of petitioner-appellant is fatally defective for non-joinder of parties petitioners-appellants. Two of the lease agreements quoted in said petition are for parties other than the petitioner-appellant, and either the lessors or lessees should have been made parties to the petition. Moreover, petitioner-appellant's mere averment that the parties to the lease agreements in question are his clients does not justify his bringing of the petition in his own name alone without joining the other parties, since the practice of counsel bringing an action in his own name for his clients is an unknown thing in legal practice and procedure.'

"To us the principles enunciated in these counts of the respondent's returns are so elementary that they hardly need elaboration, for it does not seem to us that, after the entering of a ruling by a court of record which the dissatisfied party seeks to have reviewed, a proceeding by mandamus can serve the purpose of the review, since the office of a writ of mandamus ordinarily is not to review and mandamus cannot be resorted to when there is an adequate and complete remedy available at law.

" 'Mandamus will not as a general rule issue to review an exercise of judicial discretion; and this is, of course, so although the court may have erred in its conclusions. It is not like a writ of error or appeal, a remedy for erroneous decisions, and must not be permitted to usurp the functions of writ of error or appeal or take their place where they offer an adequate remedy to the aggrieved party. While mandamus may be employed to compel an inferior tribunal to act or to exercise its discretion, the particular method of acting or manner in which the discretion shall be exercised will not be controlled. This general principle applies to every case where the duty, performance of which is sought to be com-

pelled, is in its nature judicial, or involves the exercise of judicial power or discretion, irrespective of the general character of the officer or body to which the writ is addressed.' 38 C.J. *Mandamus* § 84 (1925).

" 'Invented, as it was, for the purpose of supplying defects in justice, mandamus does not supersede legal remedies. To warrant the court in issuing the writ, it must appear that the complaining party has a clear legal right to the performance of the particular duty sought to be enforced and that he has no other plain, adequate, and complete method of redressing the wrong or of obtaining the relief to which he is entitled, so that without the aid of the writ, there would be a failure of justice. According to the practice in most jurisdictions, the writ of mandamus does not issue if any other remedy exists which is fully adequate. This limitation in effect is frequently carried into the statutes relating to the issuance of the writ, but such a provision is regarded as merely declaratory of the common-law practice. So, it is fundamental that in the absence of statutory provision to the contrary, mandamus may not be granted if the petitioner therefore [*sic*] has a legal remedy equally convenient, beneficial, and effectual, of which he has failed to avail himself or which he is pursuing. In order to bar the issuing of the writ, it is not necessary that the other remedy be available at the time of applying for the mandamus; if the petitioner had a clear legal remedy, adequate to enforce his rights, of which he failed to avail himself and which he lost through his own neglect, the writ will not lie.' 34 Am. Jur. *Mandamus* § 42 (1941).

"In his argument, petitioner sought to impress us with the contention that, because of the situation created by the respondent in raising an issue *sua sponte*

and deciding it, which left petitioner no feasible legal opportunity to have taken an appeal, it would have been, and was, difficult to find an opposing party to name an appellee, not having an opponent in the probate court. However, said petitioner was able to come with a petition for a writ of mandamus wherein he has named said Commissioner of Probate as respondent-appellee. If he was able to come against the Commissioner of Probate in mandamus proceedings and name him as respondent-appellee, we do not see why petitioner could not have named him defendant-in-error in applying for a writ of error, since it might be argued that, as petitioner was not in court when the several rulings in question were made and thus did not have an opportunity to enter and save exceptions for review by the Court on a regular appeal on a bill of exceptions, petitioner could not have appealed in the regular way.

"We sustain the contention of respondent with respect to the issue of non-joinder of parties petitioners-appellants, since the parties in interest affected by the ruling of the Commissioner of Probate should have been brought into the petition as parties in interest, because the termination of a proceeding by this method would preclude all of them from attempting additional proceedings in the same matter, an effect which would not obtain if they were not brought in as parties litigant. Further, we are not willing to concede the point that an attorney at law and not of fact has the legal right to bring actions, suits, or other legal proceedings in court in his own name for his clients. The method, therefore, adopted by the petitioner in this regard does not find favor with us, especially so when it is not shown directly or by implication for which of the parties to the several indentures of lease, barring the one in which he is the lessor, he is solicitor and counsellor.

"On the issue of non-joinder of parties petitioners-appellants we quote the following:

" 'Persons having a joint or common interest in the issuance of a writ of mandamus may join in an application therefor, and are generally required to do so, unless a separate proceeding by one alone may be maintained without prejudice to the others. Persons having several and distinct interests, on the other hand, cannot join in the application, even though their interests are analogous, and accordingly anyone may bring a separate proceeding for relief without joining the others. . . .' 38 C.J. *Mandamus* § 552 (1925).

"This legal proposition presents a disturbing phase in the entire proceedings, for, if petitioner considers the several interests shown by the three indentures of lease as being joint and common, and that is rightly so, then he would be within the pale of legal propriety in joining them in the same application for a writ of mandamus; but in such a case he should have joined all such parties whose interests he considered joint and common. On the other hand, if their interests are not joint and common, then it is error to have joined their said interests in one and the same application or petition for a writ of mandamus. This principle finds support in 26 Cyc. 408; 18 R.C.L. 329, sec. 277; and 35 Am. Jur. *Mandamus,* section 333, from the last of which we quote the following:

" 'Persons having a common and joint interest in the subject matter in controversy may be joined as relators in mandamus, and in a number of cases it has been held, apart from any express statutory authority, that several relators may properly join in an application for the writ, even though they have no strictly joint interest in the right sought to be enforced, where the right of each relator is the same as that of all the others. Generally, however,

> persons having similar but wholly separate and distinct interests in the subject matter of the controversy are not entitled to join as relators in mandamus. Statutory provisions relating to the joinder of plaintiffs in actions are in general applicable to mandamus proceedings.'

In the face of the several citations of law herein, it is apparent that the interests of the parties to the several indentures are similar but wholly separate and distinct and hence they could not be properly joined in the same application or petition for a writ of mandamus. No other reason appears to us but that the party petitioner-appellant obviously elected the course herein to save the expense of separate proceedings, a fact which, if true, ought not to be encouraged.

"Because of the law raised in the returns and favourably passed upon in this ruling, we find ourselves debarred from entering upon the merits of or lack of merit of the other issues which go to the questioning of the right of the Commissioner of Probate to raise and decide issues as done by him in this matter, as well as the legal correctness of the several rulings made in refusing to admit the leases, since mandamus cannot be employed to review any judicial acts of a lower court when there is an available adequate and complete remedy at law and also since there was such remedy available in a procedure by error; and consequently we are regretfully compelled to dismiss the petition with costs against petitioner; AND IT IS HEREBY SO ORDERED.

"Given under our hands and official signature, this 20th day of January A.D. 1948, and in Open Court.

[Sgd.] E. HIMIE SHANNON
Associate Justice, Supreme Court of Liberia, presiding in Chambers."

The above is the ruling of our distinguished colleague, Mr. Justice Shannon, from which ruling petitioner-appellant, being dissatisfied, prayed an appeal to the full Bench because, as he states in his brief, Mr. Justice Shannon, upon the hearing of said petition, sustained the two points submitted as an attack upon said petition and, without passing upon the principal issue presented for consideration, dismissed the petition with costs against petitioner.

Justice Shannon was correct in his belief that he was unable to determine whether or not the commissioner was correct in his ruling refusing probate of the instruments in question, since the favorable decision by said Justice upon the two issues raised in the first two counts by respondent in his returns precluded him from doing so.

After studying the opinion of our able and distinguished colleague and after having heard the arguments for and against said ruling, we find ourselves so fully and unanimously in accord with the position and the opinion of our colleague that we see no reason why it should be disturbed. Consequently we affirm same with costs against petitioner; and it is hereby so ordered.

Petition denied.