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Mandamus in Florida

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NATURE OF WRIT

A characteristic of a democratic society is the protection afforded citizens against the abuse of public office. The extraordinary writ of mandamus is available against a particularly exasperating type of official contumely—the refusal to act. In its simplest terms, the writ of mandamus is a remedy for official inaction.[1] This writ, now a protector of democratic rights, was conceived in absolutism, having its inception in English law in the mandate of the sovereign, issuing directly to his subordinates and compelling the performance of the royal will.[2] Gradually this royal order gave way to a judicial writ issuing out of the Court of the King's Bench, requiring the performance of an official duty.[3] Among its early uses was that of prodding into activity dilatory judicial officers. Blackstone says of the writ: ". . . it issues to the judges of any inferior court, commanding them to do justice according to the powers of their office, whenever the same is delayed."[4] The application of the writ became broadened, generally, to cover all official and nondiscretionary acts, and today is defined by the Supreme Court of Florida as ". . . a common-law writ used to coerce the performance of any and all official duties where the official charged by law with the performance of such duty refused or failed to perform the same . . . ."[5]

Aside from its importance as a curb on official usurpation by inaction, mandamus is interesting as a study in contradictions. It is a civil remedy as opposed to a criminal prosecution,[6] and in one

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[1]*See* Atlanta v. Wright, 119 Ga. 207, 211, 45 S.E. 994, 995 (1903).

[2]See Jenks, *The Prerogative Writs*, 32 YALE L.J. 523, 529 (1923); see historical sketch of mandamus in the introductory article in this issue.

[3]See *id.* at 530-531; 19 AM. & ENG. ENCYC. LAW 716, 717 (1901).

[4]3 BL. COMM. *110.

[5]State *ex rel.* Buckwalter v. Lakeland, 112 Fla. 200, 206, 150 So. 508, 511 (1932).

[6]*See* Board of Educ. v. State *ex rel.* Kuchins, 222 Ala. 70, 74, 131 So. 239, 243 (1930).

instance has been styled partially criminal in nature.[7] It is, of course, available when needed in criminal cases, as, for example, to compel an officer to assume jurisdiction of a criminal case when such is his clear duty.[8] Furthermore, failure to obey a peremptory writ of mandamus can result in a contempt order that, to the guilty party who is confined, will appear uncomfortably similar to a criminal judgment.[9]

Mandamus in the State of Florida is a proceeding at law, not in chancery; orders relating thereto have no place in the chancery order book but should be included among the minutes of the circuit court as in law cases.[10] Yet mandamus proceedings are governed largely by equitable principles,[11] and our Court has actually stated that "Mandamus is an equitable remedy . . . ."[12] Thus the doctrine of laches applies,[13] and the courts grant or refuse the remedy on equitable considerations.[14] The existence of another adequate remedy results in the denial of the writ,[15] and the Florida Court has even said that the doctrine of "unclean hands" is sufficient to bar the granting of the writ to a petitioner otherwise entitled to its issuance.[16]

An important feature of mandamus is that by its very nature the writ is coercive rather than prospective in its effect; that is, it compels performance of a present duty that is in default instead of seeking

[7]*See* State *ex rel.* Byers v. Bailey, 7 Iowa 390, 394 (1858). No authority is cited for this statement, which is not in accord with the history of this writ.

[8]Benners v. State *ex rel.* Heflin, 124 Ala. 97, 26 So. 942 (1899).

[9]United States *ex rel.* Jones v. West Palm Beach, 94 F.2d 320 (5th Cir. 1938).

[10]State *ex rel.* Clifton v. Daytona Beach, 114 Fla. 384, 154 So. 165 (1934).

[11]State *ex rel.* Garland v. Sarasota, 141 Fla. 256, 193 So. 299 (1940); State *ex rel.* Garland v. West Palm Beach, 141 Fla. 244, 193 So. 297 (1940); State *ex rel.* Lyman v. Daytona Beach, 129 Fla. 896, 176 So. 847 (1937).

[12]State *ex rel.* Garland v. West Palm Beach, 141 Fla. 244, 247, 193 So. 297, 298 (1940).

[13]Tampa Waterworks Co. v. State *ex rel.* Tampa, 77 Fla. 705, 82 So. 230 (1919).

[14]Petition of Henneman, 137 F.2d 627 (1st Cir. 1943); State *ex rel.* Dresskell v. Miami, 153 Fla. 90, 13 So.2d 707 (1943); State *ex rel.* Aldrich v. Mitchell, 108 Fla. 233, 146 So. 207 (1933); Bacon v. A. M. Klemm & Son, Inc., 103 Fla. 588, 137 So. 686 (1931); Welch v. State *ex rel.* Johnson, 85 Fla. 264, 95 So. 751 (1923); Myers v. State *ex rel.* Thompson, 81 Fla. 32, 87 So. 80 (1921); Tampa Water Works Co. v. State *ex rel.* Tampa, 77 Fla. 705, 82 So. 230 (1919).

[15]Welsh v. State *ex rel.* Johnson, 85 Fla. 264, 95 So. 751 (1923).

[16]*See* State *ex rel.* Dresskell v. Miami, 153 Fla. 90, 94, 13 So.2d 707, 709

to prevent a threatened wrong.[17] Thus it will not lie until there has been an actual default in performance of an official duty.[18] Mere allegation that the officer does not intend to perform the duty is insufficient.[19]

Finally, the writ of mandamus is a personal action, being directed not to the office but to a particular person or persons in their official capacity, requiring such person or persons to perform the official duty that is in default.[20] Yet the Court has on several occasions said that proceedings do not abate upon the expiration of the term of an officer defendant.[21] The proper procedure in this instance is to make the successor in office a party defendant.[22] These cases have been distinguished on the ground that, because of the position the officer occupies, the duty is not one devolving upon him personally but rather a continuing one, which exists irrespective of the incumbent. In many cases this appears to be a distinction without a difference. This theory has, however, been carried so far as to permit suit against a municipal corporation as the "person" derelict in its duty.[23] It has been said that a change of personnel of the city council during the course of such a suit would not affect the action.[24] Suits are also brought against private corporations as such.[25]

Jurisdiction and Source of Authority

The power to employ the writ of mandamus in a proper case is an attribute of sovereignty, a fundamental and inherent power of

(1943).

[17]Atlanta Title & Trust Co. v. Tidwell, 173 Ga. 499, 160 S.E. 620 (1931).

[18]County Comm'rs v. State, 24 Fla. 263, 4 So. 795 (1888).

[19]*Ex parte* Ivey, 26 Fla. 537, 8 So. 427 (1890).

[20]*See* State *ex rel.* Cowan v. State H'wy Comm'n, 195 Miss. 657, 674, 13 So.2d 614, 616 (1943).

[21]Thompson v. United States, 103 U.S. 480 (1880); State *ex rel.* Williams v. Bloxham, 42 Fla. 501, 28 So. 762 (1900); State *ex rel.* Andreu v. Canfield, 40 Fla. 36, 23 So. 591 (1898); State *ex rel.* Bisbee v. Board of County Canvassers, 17 Fla. 9 (1878).

[22]State *ex rel.* Williams v. Bloxham, 42 Fla. 501, 28 So. 762 (1900).

[23]State *ex rel.* Andreu v. Canfield, 40 Fla. 36, 23 So. 591 (1898).

[24]*Id.* at 57, 23 So. at 597.

[25]*E.g.*, Southern Bell Tel. & Tel. Co. v. State *ex rel.* Transradio Press Serv., Inc., 53 So.2d 863 (Fla. 1951); State *ex rel.* Railroad Comm'rs v. Florida E.C. Ry., 57 Fla. 522, 49 So. 43 (1909); State *ex rel.* Lamar v. The Jacksonville Terminal Co., 41 Fla. 377, 27 So. 225 (1899).

the judiciary, not dependent for its existence upon constitution or statute.[26] Nevertheless, the Florida Constitution specifically vests in the circuit courts and the Supreme Court the power to issue writs of mandamus; [27] and the Legislature has apparently become enamored of the writ, the result being no less than twenty-one statutory offspring to the Florida law on the subject.[28] Our Court has said that the Legislature may not enlarge powers conferred by the Constitution;[29] and, although this has been somewhat qualified, at least in regard to certiorari,[30] it is still doubtful whether this statutory potpourri on mandamus adds much, if anything, to the inherent law on the subject, since it largely authorizes the use of the writ under circumstances in which it is already available.

Wrongs Redressed

Mandamus is not a substitute for regular civil actions for the enforcement of individual obligations or duties. It never lies for the enforcement of private contracts.[31] The essential ingredient is the existence of an official duty imposed by law.[32] Not all official duties, however, are subject to coercive performance by mandamus. A number of exceptions are engrafted on the general rule, most important of which is that only ministerial or nondiscretionary acts may be compelled by the writ.[33] The necessity for this limitation is apparent, and it has been strictly applied; mandamus is designed to

[26]State *ex rel.* Knott v. Haskell, 72 Fla. 176, 209, 72 So. 651, 660 (1916).

[27]Fla. Const. Art. V, §§5, 11; also, by §39, in the Court of Record in and for Escambia County.

[28]Fla. Stat. §§47.10, 55.49, 95.09, 138.06, 181.15, 192.34, 196.16, 200.39, 243.06, 298.56, 350.62, 350.64, 390.21, 421.18, 473.05, 475.39, 501.09, 511.31, 585.36, 585.37, 703.18 (1949).

[29]State *ex rel.* Buckwalter v. Lakeland, 112 Fla. 200, 150 So. 508 (1933); Brinson v. Tharin, 99 Fla. 696, 127 So. 313 (1930); American Ry. Exp. Co. v. Weatherford, 86 Fla. 626, 98 So. 820 (1924).

[30]South Atl. S.S. Co. v. Tutson, 139 Fla. 405, 190 So. 675 (1939); Harry E. Prettyman, Inc. v. Florida Real Est. Comm'n, 92 Fla. 515, 109 So. 442 (1926).

[31]Florida C. & P. Ry. v. State *ex rel.* Mayor of Tavares, 31 Fla. 482, 13 So. 103 (1893). See, however, the discussion with respect to suits against private corporations under the heading Rights Enforceable, *infra*.

[32]*See* State *ex rel.* Sunday v. Richards, 50 Fla. 284, 288, 39 So. 152, 153 (1905).

[33]State *ex rel.* Trustees Realty Co. v. Atkinson, 97 Fla. 1032, 122 So. 794 (1929); State *ex rel.* Sunday v. Richards, *supra* note 32.

activate the recalcitrant official who refuses to perform his clear duty, not to impose the will of the relator upon an official invested with discretion in the conduct of his office. Even officials having judicial power, deliberative capacity, or the right of decision, however, may be compelled to exercise that power if they have a clear legal duty to make a decision, although in such cases the character of the decision is not subject to dictation by the writ.[34]

Other protections for officials against capricious suits are delineated in the decisions. For example, if no vested right is involved, a state official will not be compelled to comply with a statute which is no longer in force[35] or with one that is unconstitutional[36] or uncertain as to its intent.[37] Furthermore, an official cannot be required by a writ of mandamus to perform that which is not within his power to do, even though he may have deliberately put it out of his power to perform, and may accordingly be liable in damages therefor.[38] And the Florida Court has inferred that a writ of mandamus would be refused, even when substantial and undoubted rights were involved, if its issuance would "work injustice and introduce confusion and disorder."[39] The Court, however, has refused to allow public officials to avail themselves of their self-created "confusion and disorder" to avoid the issuance of a writ of mandamus.[40] Finally, the writ will not issue to compel the performance of a duty when the result will be fruitless or nugatory, or when it will assert a mere abstract right unattended by substantial benefit.[41]

Rights Enforceable

Mandamus may be employed not only to enforce a public right but even to protect a private right, provided it accrues as a result of

[34]State *ex rel.* North St. Lucie River Drain. Dist. v. Kanner, 152 Fla. 400, 11 So.2d 889 (1943); State *ex rel.* Long v. Carey, 121 Fla. 515, 164 So. 199 (1935); Towle v. State *ex rel.* Fisher, 3 Fla. 202 (1850).

[35]State *ex rel.* Durrance v. Homestead, 125 Fla. 105, 169 So. 593 (1936).

[36]State *ex rel.* Board of Comm'rs v. Helseth, 104 Fla. 208, 140 So. 655 (1932).

[37]State *ex rel.* State Live Stock Sanitary Bd. v. Graddick, 82 Fla. 15, 89 So. 361 (1921).

[38]County Comm'rs v. Jacksonville, 36 Fla. 196, 18 So. 339 (1895).

[39]Bacon v. A. M. Klemm & Son, Inc., 103 Fla. 588, 137 So. 686 (1931).

[40]State *ex rel.* Aldrich v. Mitchell, 108 Fla. 233, 146 So. 207 (1933).

[41]Davis *ex rel.* Taylor v. Crawford, 95 Fla. 438, 116 So. 41 (1928); Howell v. State *ex rel.* Edwards, 54 Fla. 199, 45 So. 453 (1907).

an official duty. Traditionally, the most important and frequent use of mandamus has been to enforce rights of public concern;[42] but the increasing use of the writ to enforce private rights, especially rights of bondholders and civil servants, threatens to overshadow quantitatively the original primary purpose. Public rights, as used in this sense, are those of concern to the general public or a substantial segment thereof. In some states only the public official affected by the nonperformance of another official may bring suit to compel the latter to act if the duty neglected is a public one.[43] The more liberal rule, followed by Florida, is to allow any citizen or taxpayer, as the case may be, to bring the action to enforce the public right, on the theory that as a member of the public he is qualified to require its performance.[44] In the enforcement of public rights in Florida the writ retains the essentially prerogative character that was once one of its primary features but which modern practice has discarded as to strictly private rights. In the enforcement of private rights by writ of mandamus the Court's only prerogative now, as in most equitable matters, is to act within the bounds of judicial discretion.[45] The Florida Supreme Court, when called upon to exercise the original mandamus jurisdiction conferred upon it by the Constitution,[46] will refuse to enforce purely private rights, leaving such actions to be brought in the circuit courts, although it will issue original writs of mandamus to enforce public rights.[47] Furthermore, when the writ is issued by the Supreme Court in its original jurisdiction, it is invariably limited to the narrowest scope that will serve the purpose. Accordingly its issuance is in practice confined to the necessary decision of legal propositions, which will thereafter stand as precedents.[48]

[42]*See, e.g.*, Moore v. Town of Browning, 373 Ill. 583, 588, 27 N.E.2d 533, 536 (1940); Grantham v. Nunn, 188 N.C. 239, 242, 124 S.E. 309, 310 (1924); Fraternal Mystic Circle v. State *ex rel.* Fritter, 61 Ohio St. 628, 631, 48 N.E. 940, 941 (1897).

[43]*E.g.*, O'Brien v. Pawtucket, 18 R.I. 117, 25 Atl. 914 (1892).

[44]Bradenton v. State *ex rel.* Perry, 118 Fla. 838, 160 So. 506 (1935).

[45]*Ibid.*

[46]FLA. CONST. Art. V, §§5, 11.

[47]Newberry v. Harris, 114 Fla. 379, 153 So. 901 (1934); State *ex rel.* Carter v. St. Petersburg, 112 Fla. 395, 150 So. 584 (1933).

[48]Humphreys v. State *ex rel.* Palm Beach Co., 108 Fla. 92, 111, 145 So. 858, 865 (1933). Note also the limitation in R. PRAC. SUP. CT. FLA. 30(d): "Original petitions in mandamus will not be entertained by this court unless a state officer,

Private corporations are creatures of the state, and hence the state retains an interest in the performance of their statutory duties.[49] Mandamus is available in appropriate circumstances to compel the discharge of a duty resulting from a corporate office, trust, or station.[50] The remedy, however, extends to duties beyond those owed to the general public. Members or stockholders may compel performance by the corporation of duties owing to them. Among these duties are the transfer of shares upon the records of the company[51] and the inspection of corporate books or records.[52] As is the case in a suit against public officials, the writ does not issue in such instances as a matter of right but is subject to certain safeguards, such as the reasonableness of the demand, and may be denied in the exercise of the sound discretion of the court.[53]

PROCEDURE

The usual procedure in securing writs of mandamus is to apply to the court by way of petition or information for an alternative writ of mandamus.[54] This petition is a mere memorandum in the nature of an affidavit supplying the information necessary to determine whether an alternative writ of mandamus should issue and setting forth the recitals of fact that will appear in the alternative writ if it is issued.[55] If the allegations of the petition justify the issuance of the writ, an alternative writ of mandamus will be issued. This requires the official to whom it is directed to perform the duties and

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state board, state functionary, or some other agency authorized to represent the public generally is named as respondent."

[49]This same theory justifies use of the writ of quo warranto in some situations; see article on quo warranto in this issue.

[50]Southern Bell Tel. & Tel. Co. v. State *ex rel.* Transradio Press Serv., Inc., 53 So.2d 863 (Fla. 1951); State *ex rel.* Ellis v. The Tampa Water Works Co., 57 Fla. 533, 48 So. 639 (1908); *see* Soreno Hotel Co. v. State *ex rel.* Otis Elevator Co., 107 Fla. 195, 198, 144 So. 339, 340 (1932).

[51]Merchants Broom Co. v. Butler, 70 Fla. 397, 70 So. 383 (1915).

[52]Soreno Hotel Co. v. State *ex rel.* Otis Elevator Co., 107 Fla. 195, 144 So. 339 (1932).

[53]State *ex rel.* Powell v. State Bank of Moore, 90 Mont. 539, 4 P.2d 717 (1931); State *ex rel.* Ellis v. Atlantic C.L.R.R., 53 Fla. 650, 44 So. 213 (1907).

[54]State *ex rel.* Atlantic Peninsular Holding Co. v. Butler, 121 Fla. 417, 164 So. 128 (1935).

[55]Bradenton v. State *ex rel.* Perry, 118 Fla. 838, 160 So. 506 (1935).

acts specified or to show cause for not doing so. Upon issuance the alternative writ becomes the plaintiff's declaration and is generally subject to the same rules of pleading as declarations.[56] This alternative writ must allege all of the essential facts showing the legal obligation on the part of the respondent to perform the acts demanded, as well as the facts entitling the relator to the relief sought.[57] The alternative writ should be definite and certain and leave nothing to speculation,[58] but is sufficient if the demand is stated with enough precision that the ordinary mind can comprehend it.[59] Even though a circuit court is in a position to supervise the performance of its commands and may within its authority direct the writ to any and all officials necessary to obtain the relief sought,[60] the writ, consistent with its personal nature, should not run simply to successors in office but rather to persons definite.[61]

Since the alternative writ is analogous to the plaintiff's declaration, it may be amended to show material facts omitted or otherwise properly to lay the foundation for a peremptory writ.[62] Before a peremptory writ will ordinarily issue, the alternative writ must be served upon the individuals required to perform the duty ordered in the writ,[63] and the service should be made on the particular persons required to perform the duty,[64] even though there is a statute that would appear to provide otherwise.[65]

A faulty alternative writ of mandamus is properly attacked by a motion to quash[66] rather than by a motion to dismiss.[67] For the purpose of testing an alternative writ, a motion to quash admits

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[56]*Ibid.*

[57]Scott v. State *ex rel.* Grothe, 43 Fla. 396, 31 So. 244 (1901).

[58]State *ex rel.* Overman v. St. Petersburg, 119 Fla. 236, 161 So. 280 (1935).

[59]State *ex rel.* Ellis v. Atlantic C.L.R.R., 48 Fla. 114, 37 So. 652 (1904).

[60]State *ex rel.* Supreme Forest Woodmen Circle v. Snow, 113 Fla. 241, 151 So. 393 (1933).

[61]State *ex rel.* Ben Hur Life Ass'n v. Dunaway, 116 Fla. 733, 156 So. 698 (1934); State *ex rel.* Crane v. Lakeland, 116 Fla. 713, 156 So. 699 (1934). See, however, the discussion under the heading Nature of the Writ *supra.*

[62]State *ex rel.* Lanier v. Padgett, 19 Fla. 518 (1882).

[63]State *ex rel.* Pensacola & A.R.R. v. Walker, 32 Fla. 431, 13 So. 928 (1893).

[64]Seminole County v. State *ex rel.* Upper St. Johns Riv. Nav. Dist., 93 Fla. 929, 112 So. 616 (1927).

[65]*Ibid.*

[66]Baskin v. State *ex rel.* Wall, 110 Fla. 110, 149 So. 333 (1933).

[67]State *ex rel.* Redavats v. Brown, 100 Fla. 409, 129 So. 782 (1930).

all matters of fact sufficiently set forth in the alternative writ[68] and, according to the later cases, also admits well-pleaded facts in the petition.[69]

The responsive pleading to an alternative writ of mandamus is a return, which must set up as a defense either a positive denial of the fact alleged in the alternative writ or affirmative facts sufficient to defeat the relator's right to a peremptory writ.[70]

If on a hearing on the return the relator is found entitled to the issuance of a peremptory writ, it issues. In such form the writ commands the respondent to perform his specified duties. There is no defense to a refusal to obey a peremptory writ; normally the only proper return thereto is a certificate of full compliance with its requirements without excuse or delay.[71]

Review

Mandamus proceedings are reviewable on appeal.[72] The appellate court will indulge a presumption in favor of the correctness of the trial court's ruling[73] similar to that in favor of the valid exercise of discretion by the chancellor in a chancery case. Since, as in other actions at law, there must be a final judgment before appeal may be had,[74] an order denying an alternative writ of mandamus should, in order to constitute such a final judgment, not only refuse the writ but should also render judgment on the merits and dismiss the petition.[75]

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[68]State *ex rel.* Burr v. Jacksonville Terminal Co., 71 Fla. 295, 71 So. 474 (1916).

[69]State *ex rel.* Select Tenures, Inc. v. Raulerson, 129 Fla. 346, 176 So. 270 (1937); State *ex rel.* Clower v. Sweat, 120 Fla. 312, 162 So. 689 (1935).

[70]Mixson v. First Nat. Bank of Miami, 102 Fla. 468, 136 So. 258 (1931).

[71]State *ex rel.* Drew v. McLin, 16 Fla. 17 (1876). A special return is discussed under the heading Enforcement *infra.*

[72]Fla. Stat. §59.01(3) (1951); Hoffman v. Land, 55 So.2d 806 (Fla. 1951); Southern Bell Tel & Tel. Co. v. State *ex rel.* Transradio Press Serv., Inc., 53 So.2d 863 (Fla. 1951). Prior to 1945 the proper procedure was by writ of error and not by appeal; see, *e.g.*, Damguard v. Tunnicliffe, 96 Fla. 347, 117 So. 898 (1928); Hogan v. State *ex rel.* Williams, 85 Fla. 27, 95 So. 617 (1923).

[73]State *ex rel.* Globe & Rutgers Fire Ins. Co. v. Cornelius, 100 Fla. 292, 129 So. 752 (1930).

[74]Fla. Stat. §59.02(1) (1951).

[75]State *ex rel.* Rhodes v. Goodson, 65 Fla. 475, 62 So. 481 (1913).

ENFORCEMENT

Refusal to obey a peremptory writ of mandamus is punishable by contempt proceedings;[76] and those officials of a corporation responsible for its failure to comply with the mandate may be personally punished for the default.[77] The court may in its discretion, however, separate the sheep from the goats, punishing those deliberately guilty of disobedience to the court's order and excusing those who have done all within their power to comply with the mandate.[78]

The issuance of the peremptory writ is by implication a finding that compliance with it is possible. If a supervening event renders compliance impossible or unlawful, a special return in the nature of a petition for stay of execution may be presented for consideration of the court.[79] Normally, however, refusal to comply results in the issuance by the court, upon application by the original relator, of an alias writ repeating the mandate of the peremptory writ. Simultaneously a rule is issued, returnable at the same time, requiring respondents to show cause why they should not be attached for contempt by reason of their default in failing to obey the peremptory writ.[80]

SUMMARY OF COMPARATIVE DELINEATION

Mandamus is said to be the converse of prohibition, and the two are related remedies. Prohibition is used by a higher court to prevent a lower court or judge from performing an act, while mandamus may be used to require the lower court to perform a requisite act. Of course, as has been seen, mandamus is not limited to the performance of judicial or quasi-judicial duties. While quo warranto is the remedy to try the right to an office or franchise, mandamus is never

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[76]*E.g.*, United States *ex rel.* Jones v. West Palm Beach, 94 F.2d 320 (5th Cir. 1938); State *ex rel.* Havana State Bank v. Rodes, 124 Fla. 288, 168 So. 249 (1936); Bryant v. Mitchell, 195 Ga. 135, 23 S.E.2d 410 (1942); Gaston v. Shunk Plow Co., 161 Ga. 287, 130 S.E. 580 (1925).

[77]State *ex rel.* Gulf Life Ins. Co. v. Live Oak, 126 Fla. 132, 170 So. 608 (1936).

[78]*Ibid.*

[79]State *ex rel.* Durrance v. Homestead, 125 Fla. 105, 169 So. 593 (1936); State *ex rel.* Davis v. Atlantic C.L.R.R., 103 Fla. 1204, 140 So. 817 (1932).

[80]United States *ex rel.* Jones v. West Palm Beach, 94 F.2d 320 (5th Cir.

used to try disputed titles but merely to enforce clear legal duties of officers. Whereas certiorari may in a proper case be used to review the discretionary act of an officer, mandamus compels performance of a ministerial act that has been omitted. Injunction, including the species known as mandatory injunction, is in many respects quite similar to the writ of mandamus; the subject is fully covered in the companion article in this issue.

CONCLUSION

From its genesis in the act of an absolute monarch in coercing recalcitrant subordinates into performing the royal will, the extraordinary writ of mandamus has evolved to take its place as an important legal remedy for the protection of the public and of individuals against exploitation and abuse by official inaction. Its presence is particularly comforting at a time when the ranks of public officeholders seem to expand by geometric progression. To those who, with Hamlet, would fume at the law's delay,[81] mandamus is at least a partial answer.

1938); State *ex rel.* Durrance v. Homestead, *supra* note 79.

[81]SHAKESPEARE, HAMLET, Act. III, Scene 1.