affidavit of Leonard Thomas Burnard sworn and filed herein. Mr. Florance is District Land Registrar at Gisborne, and is also a Magistrate within the meaning of that term as defined in section 4 of the Licensing Act, and he resides in Gisborne. Mr. W. A. Barton is the senior Magistrate at Gisborne exercising jurisdiction in the district, and he is also Chairman, under the provisions of section 42 of the Act, of the Licensing Committee for the district. Mr. Barton is sometimes absent from Gisborne holding sittings of the Magistrate's Court in other parts of the East Coast. During these absences Mr. Florance exercises in Gisborne the duties of a Stipendiary Magistrate. In November, 1912, the plaintiff applied to Mr. Barton for a certificate of fitness, he then desiring to become licensee of the Royal Hotel, Matawhero. After due inquiry the certificate was refused. On the 2nd of May, 1913, the plaintiff again applied to Mr. Barton for a certificate of fitness, he then desiring to become licensee of the Record Reign Hotel, Gisborne, but after due inquiry Mr. Barton also refused this certificate.

On the 6th of August, 1913, during Mr. Barton's temporary absence from Gisborne, the plaintiff, desiring to become licensee of the Gisborne Hotel, Gisborne, applied in writing through his solicitor to Mr. Florance for a similar certificate.

Mr. L. T. Burnard, a member of the firm acting as the plaintiff's solicitors, has sworn an affidavit in which he states that in this application there was a request that an early date should be appointed for the hearing, as one of the principal witnesses was shortly leaving on an extended holiday; that the defendant called for a police report, which was supplied to him on the 13th of August; that on one or two occasions between the 6th of August and the 13th of August Mr. Burnard applied to Mr. Florance to expedite the hearing, and that subsequently certain correspondence passed between his firm and Mr. Florance; that the Gisborne Hotel is an hotel totally different in character from the Royal Hotel, Matawhero, or from the Record Reign Hotel, Gisborne; that the Gisborne Hotel is a first-class house and is situated in a central position, but that the other two hotels are not first-class houses, and the nearest of them is a mile from the Gisborne Post-office.

On the 14th and 21st of August, 1913, certain correspondence passed between the plaintiff's solicitor and Mr. Florance. This correspondence discloses fully the position taken up by Mr. Florance, which may be shortly stated thus: 1, Mr. Florance, although a properly appointed Stipendiary Magistrate, only acts in Gisborne as such during the occasional absences of Mr. Barton; 2, although the application for a certificate was addressed to him (Mr. Florance), he claims that he did not undertake or intend to undertake the duty of hearing it; but, 3, merely undertook to obtain police reports and particulars of office records for the purpose of placing the information so obtained before Mr. Barton upon Mr. Barton's return to Gisborne; 4, that he ascertained that two prior applications for a certificate had been made by the plaintiff to Mr. Barton, and both had been refused, the last being as recently as the 2nd of May, 1913; 5, that some application had been made by the plaintiff to the Minister of Justice in reference to such refusals, but that the Minister had declined to interfere; 6, that Mr. Florance had therefore decided to refer the matter to Mr. Barton; and, 7, that he (Mr. Florance) considered that under these circumstances he was justified in declining to consider the application.

Now, as was pointed out in the judgments delivered by the Court of Appeal in Rex. *v.* Aitken (32 N.Z. L.R. 1185), the sole reference in the Licensing Act, 1908, to a certificate of fitness applied for by a person who desires to obtain a license is subsection 2 of section 85,—

"Such application" [that is, the application for a license] "shall also be accompanied by a certificate, signed by a Magistrate in the form in the Eighth Schedule hereto, in respect of the fitness of the applicant."

The form in the schedule is:—

"I, the undersigned, A.B., Stipendiary Magistrate, do hereby certify that [*Name of applicant*] is a person of good fame and reputation, and fit and proper to have granted to him a publican's [*or* New Zealand wine, *or* accommodation] license.

"Witness my hand this day of 19 .

"A.B., Stipendiary Magistrate."

Subsection 2 of section 85 is a substantial re-enactment of subsection 2 of section 12 of statute No. 34 of 1893, which was in effect an amendment of the last paragraph of section 56 of the Licensing Act, 1881, a certificate of a Magistrate being substituted in the Act of 1893 in place of the certificate of ten householders required under section 56 of the Act of 1881.

Mr. Skerrett has submitted that no duty is cast upon any Magistrate to hear an application for such a certificate, but I think the Legislature did intend to impose such a duty. It is true there are no express words creating a duty, but the effect of the provision is to clothe the Magistrate with authority to grant or refuse such a certificate, and impliedly to impose upon him in proper cases a duty to consider the application: Douglas *v.* Dyer (27 N.Z. L.R. 690). His duty to do so is, however, administrative only, and its performance is not a "judicial" proceeding. He has no power to summon witnesses or to examine any person on oath. The administrative duty is merely judicial in the sense that it has to be performed fairly and impartially and consonant to the principles of reason and natural justice. The Act does not limit the authority to give the certificate to a particular Magistrate in any particular district. An applicant can apply to any Magistrate in any part of the Dominion for the required certificate. In practice, however, the application is usually made to a Magistrate who is, under departmental regulations, stationed in the particular licensing district in which the applicant resides or in which he desires to obtain a license. The Magistrate acts as one of a class holding an official position, designated as the class to give a certificate of character and fitness to the applicant. These principles are those affirmed by the Court of Appeal in Rex *v.* Aitken (32 N.Z. L.R. 1185).

I have already stated that in my opinion the Act impliedly imposes upon a Magistrate in proper cases a duty to consider an application for a certificate. If a Magistrate, out of mere caprice and without any reasonable cause, refuses to consider such an application, then this Court has jurisdiction to grant a *mandamus* to the Magistrate directing him to consider the application. A *mandamus* will go to compel a statutory officer to perform a statutory duty: Brooks *v.* Jeffery (15 N.Z. L.R. 727); Reg. *v.* The Registrar of Joint-stock Companies (21 Q.B.D. 131, at p. 135); Parker v. Brooks (16 N.Z. L.R. 276).

But the *mandamus* which can be applied for under Rule 461 is in reality the same as the prerogative writ of *mandamus*, and the issue of this writ is in the discretion of the Court. Upon a prerogative writ there may arise many matters of discretion which may induce the Court to withhold its grant. At common law the prerogative writs of *mandamus*, prohibition, and *certiorari* were not writs of course. The Court, when called on to use them, always exercised a discretion—The Queen *v.* The Churchwardens of All Saints, Wigan (1 A.C. 611); Julius *v.* The Bishop of Oxford (5 A.C. 214, per Lord Blackburn, p. 246); Reg. *v.* Leicester Guardians ([1899] 2 Q.B. 632, at pp. 637–638); Croydon Corporation *v.* Croydon Rural District Council ([1908] 2 Ch. 321)—and this discretion has been carefully preserved in the wording of Rule 461.

The Court will examine the reasons upon which the statutory officer has refused to determine an application made to him which he is authorized by the statute to consider, and if those reasons show a reasonable ground for such refusal it will, in its discretion, refuse the writ; if they do not it will, if the applicant has no other remedy, grant it.

For instance, if an applicant for a certificate under section 85 of the Licensing Act resides in Auckland, and, desiring to obtain a license for a house in Auckland, applies to a Magistrate in Dunedin for the necessary certificate of reputation and fitness, the Magistrate could, in my opinion, quite properly say, "You are unknown in Dunedin, but you are known in Auckland; make your application to a Magistrate of the district where you are known; I will not consider it." In such a case the Court would not grant a *mandamus* to the Dunedin Magistrate to consider the application. So also, in my opinion, if a man who had recently arrived in Auckland, but who had resided in Dunedin for many years, desired to obtain a license in Auckland, and applied to an Auckland Magistrate for a certificate of fitness, the Auckland Magistrate might well say, "You are well known in Dunedin, but are unknown in Auckland; apply for the certificate to the Magistrate of the district where you are known." In such a case this Court could, in my opinion, in the exercise of its discretion, properly refuse to grant a *mandamus*.

In a district such, for instance, as the Auckland District, where there are three Magistrates, take the following hypothetical case: An applicant desiring to obtain a license for a particular hotel applies to Magistrate A for a certificate of fitness. This Magistrate makes all necessary inquiries, and refuses the certificate. He then applies to Magistrate B or C. This Magistrate enters upon the inquiry, and is informed that Magistrate A has, after due inquiry, refused the certificate. In my opinion Magistrate B or Magistrate C, as the case may be, could quite properly say, "Magistrate A has heard your application. He has refused the certificate. If you have any additional matter relating to your fitness, &c., go back to Magistrate A and put this additional matter before him, and ask him to reconsider the application." In such a case the Court could quite properly, in the exercise of its discretion, refuse to order the issue of a *mandamus* to Magistrate B or C.

This is substantially the present case. The plaintiff, in November, 1912, applied to Mr Barton for a certificate of character and fitness. He desired to obtain a license for an hotel at Matawhero, a few miles out of Gisborne. Mr.