

HARRY T. WILLIAMS, President, et al., Members of the Board of Trustees, **BASSA BROTHERHOOD INDUSTRIAL AND BENEFIT SOCIETY**, Relators, and **THE MINISTER OF JUSTICE**, Petitioners, v. **FRED V. B. SMITH**, Purported President, et al., purported trustees of the **BASSA BROTHERHOOD INDUSTRIAL AND BENEFIT SOCIETY**, Respondents.

QUO WARRANTO PROCEEDINGS

Heard: November 25-December 2, 1982. Decided: February 4, 1983.

1. Relators who institute a suit in quo warranto in the Supreme Court and respondents who file an answer therein, are chargeable in law with notice of knowledge of the fact that no jury trial can be afforded them there.
2. Only the Supreme Court can exercise jurisdiction over quo warranto proceedings.
3. The statute granting exclusive jurisdiction over quo warranto proceedings to the Supreme Court, notwithstanding the resultant denial of the right to a jury trial, is not unconstitutional.
4. Although the right to jury trial is a constitutional right vouchsafed to every party litigant, the right is not absolute; it may be demanded under statutory provision, and it may be expressly waived, or waived by conduct.
5. Filing of a petition for quo warranto in the Supreme Court does not preclude the respondent or any of the parties from filing a demand for jury trial, or requesting it in their pleadings.
6. Officers of a corporate entity, elected in violation of the constitution and bylaws of the corporate entity, cannot legally act on behalf of the corporation, and quo warranto can lie to restrain and prohibit them from usurping and intruding into the franchise, privileges, and rights of the corporate entity.

7. Courts cannot exercise jurisdiction not conferred on them by law.

8. No other court under our statute law has jurisdiction to hear quo warranto proceeding except the Supreme Court.

9. If the grounds for issuance of writ of quo warranto exist, as provided in Civil Procedure Law, Rev. Code, 1: 16.31, the procedure in keeping with that section is, by the Attorney General (Minister of Justice) filing with a Justice of the Supreme Court a petition requesting issuance of a writ of quo warranto. A final decision of the Supreme Court Justice in a proceeding in quo warranto may be appealable to the Supreme Court en banc.

10. In quo warranto proceedings, any party may demand a trial by jury of any issue triable of right by jury, by serving upon the other parties a demand therefor, in writing at any time after the commencement of the action, and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be indorsed upon a pleading of a party. The failure of a party to serve a demand for trial by jury of an issue and to file it as required by Civil Procedure Law, Rev. Code, 1:8.2, constitutes a waiver by him of trial by jury of such issues.

Relators in these quo warranto proceedings are members of the Board of Trustees of the Bassa Brotherhood Industrial and Benefit Society, a corporate entity created by an act of the Legislature of the Republic of Liberia in 1923. In 1960, con-fusion broke out in the society, which led to the excommunication from the church and the expulsion from the society of the respondents. Notwithstanding, their excommunication and expulsion, respondents organized an election, had themselves elected as officers of the society, and began to usurp the functions of the trustees of the society. These quo warranto proceedings were instituted against respondents by the relators contending, among other things, that the respondents are not the legitimate officers or trustees of the society and are impostors, usurpers and intruders into the franchise, privileges, and rights of the society.

The respondents contended that their excommunication and expulsion was illegal and hence were not in fact put out of the society; that a legitimate election was held at which they were elected; that the Supreme Court does not have jurisdiction to hear and decide quo warranto

proceedings because such proceedings are triable as of right by a jury, which the Supreme Court does not have. Respondents also contended that the relators are guilty of waiver and laches and are therefore estopped for bringing these proceedings belatedly. The Justice in Chambers forwarded the petition to the Full Bench, since an aspect of this matter had earlier been decided by the Full Bench.

The Supreme Court held that the respondents had the opportunity to demand a jury trial, which they did not do, and that such failure constitutes waiver. The Court, holding that it had jurisdiction to hear and determine quo warranto proceedings, granted the petition, declared the election of the respondents illegal, and adjudged them guilty of usurpation and intrusion into the franchise privileges and rights of the society, and ordered them perpetually restrained and prohibited from unlawfully exercising the corporate powers, rights, and privileges of the society.

S. Raymond Horace and Lawrence A. Morgan appeared for petitioners/relators. J. Emmanuel R. Berry and M. Fahnbulleh Jones appeared for respondents.

MR. JUSTICE SMITH delivered the opinion of the Court.

On September 29, 1982, the following named persons, designated as Harry T. Williams, President, Rev. E.T. Lewis, Chairman, and Cantor Brown, Joseph Cooper, Tete Glapoh, James Vambram, Jacob Benjamin, Kar Nanwhere, Nyonglea Zeon and Needle Gblayon, Members of the Board of Trustees of the Bassa Brotherhood Industrial and Benefit Society, relators in this proceeding, by and thru the Minister of Justice of the Republic of Liberia, petitioner, fled to the Chambers of this Court with a petition for a writ of quo warranto against the following persons so designated as Fred V. B. Smith, purported president, and Wilmot R. Diggs, Wilmot G. Gross, Joseph S. Logan, purported trustees of the Bassa Brotherhood Industrial and Benefit Society, respondents herein.

The petition alleges in substance, that the relators are the legitimate successors in office to the incorporators and/or founding members and officers of the society, and that the respondents are imposters and have no right to the property of the society nor do they have any authority to administer the said property or affairs of the society as they had sought to do; that the respondents' actions, all along, have been fraudulent and therefore ought to be

nullified by this Honourable Court; and that said respondents be declared as usurpers of the offices of the society they purport to hold, and be ousted and unconditionally removed from functioning in said offices. It is also alleged in the petition that the Smith group, respondents herein, had been expelled from the society. The petitioners proferted to their petition several exhibits, including the joint resolution of the Legislature, the constitution and by-laws of the society, the lower court's record and other documents, some of which we shall quote herein for the benefit of this opinion.

The respondents on their part, filed returns admitting the correctness of the averments of counts 1-5 of the petition, but maintained that they are the legitimate officers and successors to the incorporators, founding members and officers of the society, by virtue of a regular election held under the constitution and by-laws of the society, and, therefore, they are entitled to hold and administer the offices and property of the society. They raised the issue that the relators are guilty of waiver and laches and are therefore estopped from bringing this proceeding at this time. Respondents further maintained that quo warranto is a proceeding triable by jury as of right, and the Supreme Court not having a jury, has no jurisdiction to hear the proceeding; and that the proceeding should have originated from the circuit court and only come on appeal for review by this Court. This, in substance, is the returns of the respondents. They denied the truthfulness of the other averments in the petition and prayed that the petition be denied.

The Justice in Chambers before whom the petition was filed was of the opinion that the pertinent issue sought to be resolved by the Court in order to bring to a definite finality to this long outstanding controversy was, which of the two contending factions are the legitimate officers in succession to the founding members and officers of the society in accordance with the provision of the constitution and by-laws of the society? The Chambers Justice was also of the opinion that although the opinion of this Court, as delivered during the October, A. D. 1981 Term, confirmed the position taken by the court below that the society was entitled to possession of the subject property, he nevertheless opined that the fact that the Court, in said opinion, ousted one faction and ordered the other faction put in possession of the subject property, while at the same time holding that neither the information proceeding nor the ejection action out of which the information grew could decide the question as to who were the legitimate officers, suggested that quo warranto proceedings were the proper remedy. Any ruling by the Chambers Justice, adverse to this

Court's opinion, would definitely be tantamount to overruling the majority opinion, which a Chambers Justice is without authority to do. Therefore, in order to resolve the controversy once and for all, the Justice in Chambers ordered the proceeding forwarded to the Full Bench for final determination.

As we have gathered from the records before us in this proceeding, on the south beach in the City of Monrovia, Montserrado County, there was a small Bassa town known and called Payzeo, of which one Payzeo was town Chief. Dr. D. R. Horton of sainted memory, who was a missionary of the Baptist denomination, discovered this town and by permission of the Town Chief and his people, Dr. Horton began to conduct religious services among the people of the town. It was from this point that the St. Simon Baptist Church was founded in Payzeo Town by Dr. Horton in 1923. Observing at the time the very low spiritual, moral, social and economic status of the Bassa people, and with a view to arresting the condition for betterment, on the 10th day of September, 1923, Dr. Horton established a Christian society known and called the Bassa Brotherhood Industrial and Benefit Society.

Following its organization in 1923 as aforesaid, the society in December 1924 adopted a constitution and by-laws for the governance of its operations and activities which, as a prerequisite to the passage of the joint resolution, was presented to the Legislature and the same has also been made a part of the records in this proceeding. The following is the preamble of the constitution and bylaws and the object that led to the establishment of the society as stated therein:

"Seeing the very low status of our people, particularly known as the Bassa Tribe, socially, morally, economically and spiritually; therefore for the betterment of these conditions and as a missionary working with them also as pastor of their church, with the consent, support and help of the officers of the church, we have organized this 10th day of September, 1923, this Christian society to be known as the Bassa Brotherhood Industrial and Benefit Society.

The object of this society shall be for the unification and the development of the whole tribe and for the betterment of all its members economically, socially, morally and spiritually."

In order to legalize the society, the Legislature of the Republic of Liberia, upon application, passed a joint resolution incorporating the Bassa Brotherhood Industrial and Benefit Society

on December 9, 1925. The joint resolution reads as follows:

"JOINT RESOLUTION INCORPORATING THE BASSA BROTHERHOOD INDUSTRIAL AND BENEFIT SOCIETY OF MONROVIA, MONTSERRADO COUNTY.

"It is resolved by the Senate and House of Representatives of the Republic of Liberia in Legislature assembled:

"Section 1. That from and after the passage of this joint resolution, D. R. Horton, C.V. Johnson, Jacob Mason, James George, James Vambram, Emma A. Tyler, Jacob Gibson, J. E. Manderson, and Joseph Banks be incorporated as the Bassa Brotherhood Industrial and Benefit Society, their successors in office and all those who are now or may hereafter be members, are hereby incorporated under same name and style and are declared from the date of the passage of this joint resolution a body politic capable in law to receive, hold and enjoy real and personal estate to the value of one hundred thousand (\$100,000.00) dollars for the use and benefit of said society by grant, bequest, purchase or otherwise. Said society may sue and be sued, plead and be implead before any court of law or equity having competent jurisdiction and do all things usually done by such bodies corporate politic.

"Any law to the contrary notwithstanding.

Approved December 9, 1925."

By virtue of the above quoted joint resolution, the Bassa Brotherhood Industrial and Benefit Society was legally established in Monrovia, Liberia, as a body politic with such powers, rights and privileges granted under the joint resolution.

According to Section I of Article II of the 1924 constitution and by-laws which remained in full force and effect until revised in 1967, the following officers were provided for: (1) President, (2) Vice President, (3) Recording Secretary, (4) Secretary, (5) Assistant Secretary, (6) Treasurer, (7) Chaplain, (8) Auditor, and (9) the Board of Trustees. How these officers were to be elected is provided in Section I of Article VI of the organic document, which reads as follows:

"Section I. All elective officers of the society except the President and Trustees who are the founders shall be elected every two years, that is, the society shall have election of officers every two years, the first Friday of December. Each officer after being nominated shall be elected by ballot. The officers that are serving on July 1927 are founding members; they will keep their offices so long as they prove faithful."

The officers listed in the aforesaid constitution as founding members are as follows:

1. D. R. Horton
2. Willie K. Vambram
3. Jacob Mason
4. C.B. Johnson
5. James George
6. Jacob Gibson
7. James Vambram
8. J. E. Manderson
9. Joseph Banks
10. F. N. Williams
11. Mary Powell

We interpret Article VI as quoted supra to mean that all those persons named in the joint resolution of the Legislature, including all those listed in the 1924 constitution and by-laws as officers of the society, are founding members of the society and were to serve as officers for life; that any other officer subsequently elected would serve for two years period. By this provision of Article VI, it is evident that the tenure of office of elected officers who were not founding members of the society was two years, and that no legal election could be held during the life of the constitution and by-laws of 1924 for a President and the Members of the Board of Trustees of the society as long as the founding members were alive and they proved faithful and remained members of the society.

Article IX, Section III of this organic document also provides that:

"No member is allowed to take another member to court without first bringing the matter to

the society for an adjustment, this being a Christian society. Then if the society cannot settle the matter, such member can take legal steps. Anyone who violates this will be dealt with and failing to give satisfaction, shall be dealt with according as the society sees fit."

The 1924 constitution and by-laws of the society remained in full force and effect, as aforesaid, until it was revised and a new one adopted on the 20th day of November, 1967.

In 1926, the society purchased from B. J. K. Anderson and his wife ten acres of land for the purpose of providing housing in Monrovia for its members and accommodation for visiting relatives and also for the society's members from distant places; the area is known today and called "Bassa Community". Other real property such as the 1,000 acres of land in Totota, Bong County, Liberia, was also purchased by the society. The Bassa Brotherhood Industrial and Benefit Society went on and operated very smoothly with immense progress under the leadership of Dr. D. R. Horton, founder and president of the society and pastor of the St. Simon Baptist Church.

The records in these proceedings disclose that it was in early 1960 that confusion broke out in the society, that is, charges and countercharges were levied against members of the society, particularly against Dr. Horton, for mismanaging and the unauthorized leasing out of the society's land to Lebanese and other businessmen, as well as the selling of alcoholic beverage on the premises, contrary to the regulations of the society and against the objectives and purposes for which it acquired the land. The officers of the society, it is said, took measures to stop the illegal disposition of the society's land and to repossess those portions of the land that had been leased out, but their efforts seemed to have intensified to the extent that Fred V. B. Smith, Tom Bestman, James Ward, Wilmot Diggs and Wilmot Gross revolted against the leadership of the church and the society, accusing Dr. Horton, founder of the Bassa Brotherhood Industrial and Benefit Society, of the charges herein above referred to. The ministers of the Baptist denomination made efforts to resolve the controversy, but to no avail.

On the 13th day of March, 1961, the said Tom Bestman, Fred V. B. Smith, James Ward, Wilmot Diggs and Wilmot Gross addressed a letter to the Conference of the St. Simon Baptist Church and the Bassa Brotherhood Industrial and Benefit Society, accusing Dr. Horton of having bought for and on behalf of the society ten acres of land in Congo Town, Monrovia, but that he had in turn converted said piece of property to the use and benefit of his children. The said letter contained other expressions against Dr. Horton which created displeasure among the members of the church and the society. This letter also suggested a joint meeting of the church and the society in order to resolve the differences at the Liberian Native Missionary Conference, at which Rev. Lewis and Rev. Kennedy served as speaker and chairman, respectively, upon motion made, passed upon, and carried. Three of the men who wrote the letter and suggested the meeting were not present, but the other two, Fred V. B. Smith and Tom Bestman, were present and announced that they were representing themselves and the other three complainants who were absent. The subject letter, dated March 13, 1961, was then ordered read and was read for discussion. And after discussions pro et con, it was unanimously decided that the five men (complainants) should write a letter of apology to the society, the church and the Conference.

Displeasure was also expressed at the conference over the disrespectful attitude the said men assumed toward Dr. Horton and the false accusation they made against him was decried. Fred V. B. Smith held that they will not write any letter of apology because they felt they had done no wrong. After discussing the issue lengthily, it was moved by Stephen Harmon and seconded by Soma Page that Fred V. B. Smith and his party be excommunicated and put out of the society if they insisted and failed to write the letter of apology as required of them (see minutes of the joint meeting, dated March 20, 1961, recorded and signed by the Secretary of the Conference, H. Jeremiah James, which formed part of the records before us in this proceeding).

For the benefit of this opinion, we quote hereunder, the letter which the said Fred V. B. Smith and his party addressed to the officers and members of the St. Simon Baptist Church, requesting for a council to resolve the differences that had arisen among members of the St. Simon Baptist Church, as follows:

"Bassa Community
Monrovia, Liberia
May 27, 1961

"Officers & Members
The St. Simon Baptist Church

Bassa Community
Monrovia, Liberia

"Dear Brethren:

We your members whom you claimed have been put out of the church are asking that a mutual council be called to consider the case in point. We feel that the procedure taken by the brethren and sisters was not in keeping with Baptist principles and practice.

We all are Christians trying to serve Jesus Christ who gave Himself for us. Everything done must be done in the spirit of the Christ. We feel that we have not been treated right in expelling us from the church without preferring a charge against us to bring us before our conference of the church to answer said charge. So as Baptists we are asking you for a mutual council to advise us in the premises.

Wishing you to consider this matter in the spirit of Christ that everything may be settled according to the New Testament. Hoping that you will see with us for the calling of this mutual council.

We remain,
Yours in Christ,
/s/ Fred V. B. Smith
Tom Bestman
James Ward
Wilmot Diggs"

On May 29, 1961, the Secretary of the St. Simon Baptist Church addressed the below quoted letter in reply to the letter of Fred V. B. Smith et al. hereinabove quoted, to wit:

"Bassa Community
Monrovia, Liberia
May 29, 1961
Governor Tom Bestman et al.
Bassa Community
Monrovia, Liberia

Gentlemen:

Your letter of the 27th instant of this current month was received and read, and its contents well understood. I am directed by the St. Simon Church to call your attention to the decision of the joint conference held March 20, 1961.

During the Congo Town Conference, it was decided by the joint conference that unless you recant all false accusations such as, that the land opposite Hay-Wood Mission was deeded in Rev. D. R. Horton's name and not the Liberian Native Missionary Conference, by broadcasting and publishing other things that are diabolically incorrect.

Unless you all shall have fulfilled the following things mentioned above, the church and the society will not consider you as members.

Very truly yours,

/s/ Pearlie E. Mason

SECRETARY

ST. SIMON BAPTIST CHURCH."

The records in this case is silent as to whether Fred V. B. Smith and his group ever complied with the decision and the demand of the church and the society by writing the letter of apology; but on September 19, 1961, that is to say, four months after the exchange of the above quoted letters, the following letter was addressed to Dr. D. R. Horton; it reads as follows:

"Rev. Dr. D. R. Horton

Monrovia

Dear Sir:

I am directed by the officers and members elect to inform you that the election for officers and members for the Bassa Brotherhood and Benefit Society held Monday, September 18, 1961, at the hour of 7:45 p.m., has resulted in the following:

1. Brother Fred V. B. Smith, President
2. " James C. Ward, . Vice President
3. " Joseph E. Logan, Secretary
4. Sister Wheama Teetee, Treasurer
5. Brother Tom N. Bestman, Chairman, Board of Trustees
6. " Wilmot Gross, . Chaplain

Thanking you for the cooperation.

Faithfully yours,

/s/ Joseph E. Logan

ACTING SECRETARY"

We would like to reiterate here that despite the provision of the 1924 constitution and by-laws of the society that, the founding members were elected for life, and despite the fact that

the controversy had not been resolved, the respondents herein, had an election and elected the so-called officers listed in the letter just quoted supra while Dr. Horton, founder and president of the society, together with four other original officers, namely: James Vambram, Willie Vambram, Mary Powell and Jacob Mason were still alive. Growing out of the attempted usurpation of the leadership of the church and society by the respondents, as well as the naming of themselves as elected officers thereof, the officers of the society who were in office in 1961 issued the following declaration which forms part of the records in this proceeding; it reads as follows:

"We the undersigned, trustees of the Bassa Brotherhood Industrial and Benefit Society, do hereby declare that we were duly elected as trustees of the society, as provided for in the bylaws and constitution of the said society, which said society has been incorporated by an Act of the National Legislature during the year 1925, thus making the said society a body politic with the right to sue and be sued, and to own real and personal property. This right can only be exercised by the undersigned who are the constituted authority of the society and cannot be infringed upon by any person or group of persons. We also declare that the persons who have set themselves up as members of the society and have attempted to institute an action against Dr. Horton are unauthorized by law because:

1)They are not members of the Trustee Board of the society, and

2)They are expelled members from the society as per minutes of the society adopted in regular meeting on the 20th day of March, 1961.

We further declare that the allegations laid and contained in an action brought against Dr. Horton by these unauthorized persons are false, malicious and perfidious, designed to disrupt the society and to defame the good name and integrity of Dr. Horton in whom we have implicit confidence and our unreserved support.

Given under our hands this 1st day of No-vember, Montserrado County, Republic of Liberia
/s/James Vambram

" Jacob Mason

" Willie Vambram

" Nayon Dennis

" Mary Powell

" Somah Pagon

" Robert Porte"

The records before us in this proceeding, further discloses that despite the many efforts of

the church leaders aforesaid, to resolve this unpleasant situation in the organization, the members of the expelled group, namely: Fred V. B. Smith, Tom N. Bestman, Wilmot R. Diggs, James C. Ward, Thomas Pritchard and others resorted to court proceeding when on the 1st day of October, 1962, they, in the name of the society, instituted a "bill in equity for discovery of deeds in aid of contemplated action of ejectment" against Dr. D. R. Horton, founder and president of the society, in the Civil Law Court for the Sixth Judicial Circuit, Montserrado County. During the March, A.D. 1964, Term of the Civil Law Court, presided over by His Honor John A. Dennis, the equity proceeding was called, heard and dismissed on the 6th day of April, 1964. The question of the legitimate officers of the society, as well as the expulsion from the society of the respondents in this proceeding, was brought out in the pleadings and argued. The learned judge, in dismissing the bill in equity, ruled as follows:

"Where there arises a dispute between any person who has been a member of a society, as the averments herein disclose that the petitioners are supposed suspended members, the said dispute should be referred to arbitration. Civil Procedure Law, Rev. Code 1: 17.0. Arbitration may be had with or without any order of court. Ibid, 1: 1280 - 1300, pp. 329-3311. In view of the foregoing, petitioners' bill is hereby dismissed, and the legal course herein might be followed as provided by statute, with costs against the petitioners. AND IT IS HEREBY SO ORDERED."

The petitioners in the court below, respondents herein, did not appeal from the above-quoted ruling, but following the dismissal of the bill in equity, they, during the same year (1964), and this time styling themselves as trustees of the Bassa Brotherhood Industrial and Benefit Society, instituted an action of ejectment in the Civil Law Court against the self-same Dr. Horton for the recovery of the society's ten acres of land in Bassa Community, Monrovia, and the 1,000 acres of land in Totota, Bong County, acquired by the society under the leadership of the said Dr. Horton.

Dr. Horton, the defendant in the court below, pleaded and contended that the respondents were imposters and usurpers and not the legitimate officers or trustees of the society, they having been expelled from the society in 1961. The ejectment suit ended with a verdict finding for the society, and the court's judgment affirming the verdict ordered that the founders of the society, including Dr. Horton, the defendant, be put in possession of the subject property. The respondents again did not appeal; the defendant, Dr. Horton, appealed but later deemed it unnecessary and withdrew his appeal, realizing that the subject property was being put in possession of the society of which he was president.

Although the judgment in the ejectment suit was rendered on the 11th day of March, 1966, during the December 1965 term of the Civil Law Court and no appeal was announced

therefrom by the plaintiffs, later in 1967, the same group (plaintiffs in the ejectment suit) petitioned the Supreme Court for a writ of error, contending that the judgment in the ejectment action was contrary to the verdict of the jury. The Supreme Court denied the petition, holding that plaintiffs in the ejectment suit should have excepted to the judgment and appealed therefrom; and not having done so, they had waived their right and, therefore, barred from raising the contention. The judgment was, therefore, confirmed with the following modification: "That subsequent to the death of Reverend Horton, the deed in litigation is to be turned over to the trustees of the Bassa Brotherhood Industrial and Benefit Society, and is to include all those whose names now appear on the deed" *Bestman v. Dunbar*, 19 LLR 207, 213 (1969) .

During the 1968 December Term of the Civil Law Court, presided over by His Honour John A. Dennis, for some reason not clear from the records, a mandate was sent to Judge Dennis from the Supreme Court to investigate as to who were members of the trustees of the society.

The investigation was conducted by Judge Dennis, and the two factions of the society were represented; each side established its right over the trusteeship of the society. The minutes of the said investigation form part of this proceeding. The presiding judge entered the following ruling:

"The clerk of this court is hereby ordered to communicate with the Bureau of Archives of the State Department quoting from the deeds annexed to the pleading of the ejectment case for certified copies of the original.

Upon receipt thereof, the court will then cite Rev. Africanus L. Mapleh, Oldman James Vambram, Robert Paul, Willie K. Vambram, Kindred S. Williams, Sister Mary Powell et al. to appear in keeping with the ruling of the Supreme Court."

To this ruling, the plaintiffs in the ejectment action excepted and announced an appeal. Subsequently, a petition for a writ of certiorari was filed, heard and denied by the Justice in Chambers, from which an appeal was announced to the Full Bench. The Supreme Court also denied the petition and held that certiorari will not substitute for an appeal and that certiorari could not decide the dispute over membership and the legitimate officers and trustees of the society.

It would seem that following the death of Dr. Horton and almost all of the incorporators and/or founding members of the society, the relators herein, on the one hand, were claiming to be the legitimate successors to the incorporators who, by the judgment of court, were to

be put in possession of the subject property, and the respondents, on the other hand, were also claiming to be the legitimate successors to the incorporators of the society; hence, the enforcement of the court's final judgment, as confirmed and ordered by the Supreme Court, was frustrated.

Another controversial issue in this case was, whether Mr. A. Romeo Horton, elder son of the late Dr. Horton who by the consent of all the contending parties substituted for his father, defendant in the ejectment suit, was entitled to inherit the improvements made by his late father on the land. This situation led to the filing of a bill of information before the Supreme Court en banc by the respondents, plaintiffs in the ejectment suit, against the relators herein.

In the bill of information, the Court was sought to decide the issue as to which of the two factions was the legitimate successors to the incorporators and/or founding officers of the society to be put in possession of the subject property. This Court again confirmed its previous position taken in the error and certiorari proceedings as reported in 19 and 20 LLR, respectively, and suggested that quo warranto proceeding was the only remedy available to either party in order to decide the controversy over the legitimacy of the officers and/or successors in office of the society (See *The Bassa Brotherhood and Industrial Benefit Society v. Horton*, 29 LLR 554 (1982), Supreme Court opinion, October Term, 1981, delivered February 5, 1982).

During argument before us, counsel for respondents strongly argued that although respondents were said to have been put out of the church until they wrote a letter of apology, which they never did, they were illegally excommunicated, and not in fact put out of the society. Counsel for respondents also contended that a legitimate election of the officers of the society, presided over by the late Dr. Wm. R. Tolbert, President of the Liberia Baptist Missionary and Educational Convention, was held at which Fred V. B. Smith was elected president of the society, along with other officers by defeating his opponent, Dr. D. R. Horton, by 48 to 18 votes. Respondents supported their argument with the minutes taken during the election and a copy of the constitution and by-laws purported to be that of the society; that the said constitution and by-laws was "ratified and confirmed by the unanimous consent of the members of the Bassa Brotherhood Industrial and Benefit Society of Monrovia, Liberia, this fourth day of July, 1963." These documents, according to the records, were objected to by the petitioners/relators, for not having been proferted to respondents' returns, and the Court sustained the objection under the principle of notice.

From the contention and arguments of the parties, we deem it necessary to consider the following issues for the final determination of the controversy, and we shall list and discuss

them one after the other, as follows: Whether the Supreme Court has no jurisdiction to hear and decide quo warranto proceeding, it being a special proceeding triable by jury as of right, as contended in count one of respondents' returns and strongly argued by counsel for respondents, relying on Civil Procedure Law, Rev. Code 1: 16.35, which states that: "A proceeding brought as prescribed by this sub-chapter (meaning sub-chapter (c)--quo warranto) is triable of right by a jury?" On this issue, quo warranto being a common law writ, we shall quote some legal authority from common law writers on the point before coming to our own statute.

It has been held that "courts of last resort, in addition to the appellate jurisdiction that they exercise, are generally given original jurisdiction to issue certain remedial writs, and these usually include quo warranto. Such a grant in the state constitution has been held to confer original jurisdiction of the information in the nature of quo warranto and of the statutory civil action that is substituted for it."

"Original jurisdiction of supreme courts in quo warranto has been sustained notwithstanding the resultant denial of the right to a jury trial, and statutes conferring such jurisdiction have been upheld as constitutional. Relators who institute an original suit in quo warranto in the supreme court of the state, and respondents who file an answer therein, are chargeable in law with notice or knowledge of the fact that no jury trial can be afforded them there" 65 AM. JUR. 2d, Quo Warranto, § 127.

From the records of the Civil Law Court as made profert to the pleadings in this proceeding, and from the error and certiorari proceedings, as well as the controversy between the two contending factions of the society as reported in the *Bestman v. Findley*, 19 LLR 57 (1968) and *Bassa Brotherhood and Benefit Society v. Dennis*, 20 LLR 443,458(1971), respectively, cited by counsel for the parties, and especially judging from the testimonies of the witnesses as recorded in the latter case, 20 LLR 443, in the certiorari proceeding referred to herein above, we have not found the necessity for the adjudication of any other factual issues by jury in order for this Court to refuse jurisdiction.

Our own statute law confers original jurisdiction over quo warranto proceeding in the Supreme Court and to no other court. Courts cannot exercise jurisdiction not conferred upon them by law. No other court under our statute law has jurisdiction to hear quo warranto proceeding except the Supreme Court. If the grounds for issuance of writ of quo warranto exist, as provided in Civil Procedure Law, Rev. Code 1: 16.31, the procedure in keeping with that section is, by the Attorney General (Minister of Justice) filing with a Justice of the Supreme Court a petition requesting issuance of a writ of quo warranto. A final decision of the Supreme Court Justice in a proceeding in quo warranto may be appealable to

the Supreme Court en banc. Ibid. 1:16.37. In view of this statutory provision, it is clear that in our jurisdiction the statute confers original jurisdiction on the Supreme Court to entertain quo warranto proceeding and to no other court; this statute as cited herein above is held as being constitutional.

With respect to quo warranto proceeding being friable by jury, the respondents did not avail themselves the opportunity of a jury trial, which is a matter of right. Whilst the right to jury trial is a constitutional right vouchsafed to every party-litigant, this right is not absolute; it may be demanded under statutory provision, and it may be expressly waived, or waived by conduct. Our statute law extant provides that the right to trial by jury shall be preserved inviolate. Constitution of Liberia (1847), Article I, Section VI. It provides further that any party may demand a trial by jury of any issue friable of right by jury (as in the case of quo warranto proceeding) by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than ten days after the service of a pleading or an amendment of a pleading directed to such issue. Such demand may be indorsed upon a pleading of a party. The failure of a party to serve a demand for trial by jury of an issue and to file it as required by Civil Procedure Law, Rev. Code 1:8.2, constitutes a waiver by him of trial by jury of such issues. Ibid.,1: 22.1(1)(2).

In this case, the respondents did not file a demand for jury trial, nor did they request for it in their pleading; instead, they have contested the jurisdiction of the Supreme Court to exercise original jurisdiction over the proceeding and, therefore, prayed the dismissal of the petition. Therefore and in view of the legal authority cited supra, it is our holding that this Court has original jurisdiction to hear and decide the proceeding, and, therefore, the jurisdictional issue as raised by the respondents is not sustained.

The next issue is the question of waiver and laches as raised in count five of the respondents' returns, that is, whether or not petitioners are guilty of waiver and laches and barred from instituting this proceeding?

Waiver is the intentional or voluntary relinquishment of a known right or such conduct as warrants an inference of the relinquishment, while estoppel arises when one is to speak against his own act or deed. Laches require an element of estoppel or neglect which has operated to prejudice defendant. In this case, the question as to which of the contending factions of the society is entitled to possession of the society's property, and which of the factions are the legitimate officers in succession to the incorporators and/or founding members of the society, has been the subject of the series of litigations between the parties since 1961. In deciding the long outstanding bill of information which grew out of the ejection action instituted in 1964, the Court, on February 5, 1982, suggested the best

remedy to decide the question raised therein to be quo warranto. In view of this, it is our considered opinion that the doctrine of waiver or estoppel will not apply to either of the two contending factions, the question having long been raised in court. Count five of the returns and all the other counts in connection with waiver, estoppel and laches are not sustained.

The third question may be put as follows: Whether the Fred V. B. Smith group, respondents herein, were in fact expelled from the church and the society illegally and, therefore, are not imposters and usurpers entitled to be ousted from the offices of the society they are claiming to hold?

In the 1967 Revised Constitution and By-laws of the society, as adopted on November 20, 1967, the membership of the society is limited only to members of the St. Simon Baptist Church, or its allied churches organized under the franchise of the society (see Article IV of the said bylaws and constitution under "Membership", page 3). But the 1924 Constitution and Bylaws which was in force and effect until 1967 and under which the respondents were said to have been illegally expelled provides that:

"Any person of the Bassa Tribe who is well in body and good in moral or anyone of the members of the society through their membership committee or in general meeting, upon a majority vote and paying an entrance fee of two dollars, and as improvement fund of one shilling and six pence, shall become a lawful member of the society." And so, at the time of the alleged expulsion of the respondents, the relationship of the church and the society, as it relates to membership, was not expressly identified in the document which gives the impression that any person of the Bassa Tribe who had complied with the moral and financial requirements as provided was a member of the society notwithstanding his membership in other denomination. But what holds true is the fact that Dr. R. Horton, a missionary of the Baptist denomination, discovered Payzeo Town on the South Beach, Monrovia, and thereat established the St. Simon Baptist Church in 1923. Following the establishment of the church, Dr. Horton also organized and established a Christian society on September 10, 1923, known as the Bassa Brotherhood Industrial and Benefit Society, with the help of the members of said church of which he was pastor; the objective of said society was to unify, uplift and develop the whole tribe and for the betterment of the members in general, spiritually, morally, socially and economically. Under the circumstances, it can be said with some degree of certainty that the church and the society were inseparable at the time even though the constitution and by-laws did not expressly state so.

And so on the 20th day of March, 1961, a joint church meeting of the St. Simon Baptist Church and the Bassa Brotherhood Industrial and Benefit Society and the Liberia Native Missionary Conference was convened in Monrovia to resolve the unpleasant situation

created in the organization by the respondents. At that convention, the Fred V. B. Smith group, respondents herein, after lengthy discussion and upon their failure to meet the demand of the conference, were expelled not only from the St. Simon Baptist Church but also from the Bassa Brotherhood Industrial and Benefit Society. For the benefit of this opinion, we quote hereunder a relevant portion of the minutes of the Conference, dated March 20, 1961, as follows

"It was moved by Stephen Harmon that Mr. Fred Smith and his party be put out of the church and society for time indefinite if whether they fail to write a letter of apology to the Conference, the church and the society. It was second-ed by Mr. Soma Page that said Smith party be put out of the church and society. Motion was carried."

Fred V. B. Smith and his group, respondents in this proceeding, not having written the letter of apology as demanded by the conference since March 20, 1961, up to the present, and this question not having been resolved by the church through a board of arbitration as suggested by Judge John A. Dennis in his ruling of April 6, 1961, quoted hereinabove, this Court is convinced that the respondents were not only legally expelled from the St. Simon Baptist Church, but also from the Bassa Brotherhood Industrial and Benefit Society both in law and in equity, and therefore, they have no right to the possession of any of the property of the church and of the society as well as the offices thereof.

The fourth question of equal importance may be put as follows: Whether the election of Fred V. B. Smith as president of the Bassa Brotherhood Industrial and Benefit Society along with other officers was a legal election to be recognized as such?

Article VII, Section II of the 1924 constitution and by-laws of the society was in full force and effect when Fred V. B. Smith and his officers were said to have been elected as president and trustees of the society respectively; the provision of this section states that the tenure of office of the president and trustees of the society shall be for life. Dr. D. R. Horton, the president, and some other founding members of the society, who were to serve during their lifetime, were still alive when Fred V. B. Smith and his group were allegedly elected without any amendment made to the 1924 by-laws and constitution of the society. How then could Fred V. B. Smith and his officers have been elected without violating the provision of the 1924 by-laws and constitution of the society. The election of Fred V. B. Smith and his officers on December 12, 1961, was, therefore, illegal and contrary to the aforesaid constitution and by-laws.

During argument, counsel for the respondents presented copy of a by-laws and constitution purported to be that of the society, together with minutes of an election said to have been

presided over by the late Dr. W. R. Tolbert, President of the Liberia Baptist Missionary and Educational Convention. The said documents were objected to on the ground of notice, and the Court sustained the objections. Taking, however, for granted, that the aforesaid documents were part of the records legally before us, the minutes do not show who nominated Fred V. B. Smith for the presidency of the society nor does it show whether the votes were taken by ballot as provided by Article VI of the purported constitution and by-laws, which respondents have requested us to take cognizance of. Furthermore, we would like to observe that the minutes presented to us by the respondents and objected to by the relators state and we quote: "Rev. Horton had eighteen (18) persons while Brother Fred Smith had forty-eight (48) persons." No other person is shown by the minutes to have been elected as officer or trustee of the society. It is, therefore, clear that the election allegedly presided over by Dr. W. R. Tolbert was illegal and contrary to the constitution and by-laws of the society which was in full force and effect from 1924 to 1967, as well as the constitution and by-laws relied upon and submitted to us by the respondents. The by-laws and constitution purported to be that of the society and allegedly ratified and confirmed by the unanimous consent of the members of the Bassa Brotherhood Industrial and Benefit Society, and signed by the expelled members, namely: Wilmot G. Gross, Thomas Pritchard, Tom N. Bestman, James C. Ward and Joseph E. Logan, is a nullity and can form no part of the legitimate records of the Bassa Brotherhood Industrial and Benefit Society, it having been signed by the expelled members.

In view of all that we have narrated hereinabove, and the legal authority in support of our position, it is our considered opinion that the respondents are guilty of usurpation and intrusion into the franchise, privileges and rights of the Bassa Brotherhood Industrial and Benefit Society and that of the St. Simon Baptist Church of the City of Monrovia, Liberia, and are therefore hereby ordered ousted and excluded therefrom. They are perpetually restrained and prohibited from unlawfully exercising the corporate powers, rights and privileges of the society and the church and from occupying any of the improved property on any of the lands belonging to the society and the church in Monrovia and/or elsewhere.

It is also our further opinion and holding that portion, and only that portion, of the opinion of this Court delivered during the October, A. D. 1981, Term in the bill of information proceeding which grew out of the action of ejectment, with respect to evicting A. Romeo Horton, Harris F. Williams and Abraham Mayson from the ten and 1,000 acres of land, respectively, belonging to the Bassa Brotherhood Industrial and Benefit Society, be and the same is hereby overruled and the said property upon survey according to the metes and bounds of the Anderson deed is to revert to and be put in the possession of the relators for the society; the relators are hereby declared to be the legitimate officers and trustees of the Bassa Brotherhood Industrial and Benefit Society of the City of Monrovia, Liberia, in

succession to the incorporators and founders of the society in keeping with the 1925 joint resolution of the National Legislature of Liberia.

The Clerk of this Court is hereby directed to send a mandate to the Civil Law Court for the Sixth Judicial Circuit, Montserrado County, commanding the judge therein presiding, to resume jurisdiction over the long outstanding ejectment case and enforce its judgment as confirmed by this Court in several of its opinions and mandates by evicting, ousting and ejecting the respondents in the quo warranto proceeding from the ten acres of land, if they are occupying the same, and such other lands belonging to the Bassa Brotherhood Industrial and Benefit Society located in Bassa Community, Monrovia, Liberia, and elsewhere, and to put the said society in possession of same by and through its Board of Trustees, the relators in this proceeding. The Clerk of this Court is further directed to insert a clause in the mandate, commanding the presiding circuit judge of the Civil Law Court to require the aid of the Ministry of Lands, Mines & Energy to place at the disposal of the sheriff of the court, a team of surveyors to locate the ten acres of the society's land in Bassa Community, Monrovia, in keeping with the exact metes and bounds of the deed in the possession of the relators as executed to the society by its grantor, B. J. K. Anderson and his wife in 1926, and to make out a map to form part of the records in this case. It is also the order of this Court, and the Clerk of Court will insert in the mandate to the court below, that the rental which accrued from the property of the Bassa Brotherhood Industrial and Benefit Society and ordered kept in escrow by the sheriff of Montserrado County until the land was located upon a survey and the metes and bounds finally determined, be immediately turned over to the relators by the sheriff without the least possible delay. The mandate shall also command the judge to have this mandate and judgment completely executed and enforced and make his returns on or before the opening day of the March, A. D. 1983 Term of this Court. Costs against the respondents. And it is hereby so ordered.

Petition granted.