

THE BASSA BROTHERHOOD INDUSTRIAL  
AND BENEFIT SOCIETY, by and through  
TOM N. BESTMAN, WILMOT R. DIGGS,  
YITO BESTMAN, WHIEHMAH, TEETEE,  
JOSEPH S. LOGAN, THOMAS PRITCHARD,  
JAMES C. WARD, MARY URFREY, and  
WILMOT G. GROSS, Petitioner, v. HON. JOHN A.  
DENNIS, Circuit Judge presiding over the December  
1968 Term of the Sixth Judicial Circuit, Montserrado  
County, et al., Respondents.

APPLICATION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT,  
SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued November 8, 1971. Decided November 26, 1971.

1. The President of Liberia when appointing a lawyer to public office, may grant those privileges he deems necessary attendant to such appointment, under the same executive power by which he appoints, without violating public policy thereby.
2. Invocation of the violation of public policy is not called for, unless the acts of the public official contemplate injury to the public good or are against the public interest, as determined by the judgment of legislative enactments or, in their absence, by judicial decision.
3. A judgment of the Supreme Court signed by less than a constitutional quorum for the transaction of its business, is invalid and cannot be legally enforced.
4. Upon the death of a party litigant, a motion should be made for substitution by a proper party.
5. Certiorari cannot be used to perform the functions of an ordinary appeal.
6. An internal dispute over the membership of a corporate body is a question to be resolved by the corporation and not by the courts in an ejectment action, when the right of possession is clearly in the corporate body and the legal issue before the court thereby determined.

As a result of dissension in the membership of the petitioning incorporated Society, a tangled skein of litigation resulted. These certiorari proceedings arose as a consequence of an action in ejectment brought by one faction, decided in favor of the petitioner herein by a

final decree in the lower court, but a portion of which was objectionable to it. However, no appeal was taken therefrom by the plaintiff in the action. The defendant did appeal, but the appeal was subsequently withdrawn. Thereafter, the plaintiff, in unexplainable moves, sought certiorari by way of relief from the judgment and while the matter was pending before the Supreme Court, moved to enforce the same judgment in the lower court. A writ of possession was in the circuit court, to place the petitioner in possession, which appears to have been largely frustrated because of the controversy which raged over who were the proper members of the Society incorporated by legislative act in 1925. Many matters were thusly presented to the Supreme Court for determination, and the Court expressed its regret that the form of relief sought precluded any full treatment of such issues, as could have been done if an appeal from the judgment had been taken. Therefore, the full bench, by the opinion of the Chief Justice, denied a peremptory writ and ordered the lower court to enforce its judgment, on which the writ of possession was based, with the modification that the lower court was, in effect, to place the corporation in possession of the land in dispute without regard to the internal bickering over membership. The Supreme Court concluded by ruling that the extraordinary remedy of certiorari is not available where ordinary appellate procedure could have been used, nor will certiorari be dealt with by the Court in such manner that it usurps the functions of an appeal. *Petition denied.*

*Nete-Sie Brownell and T. Gybli Collins* for petitioner.  
*Lawrence A. Morgan* for respondents.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

For some unknown reason which is not apparent, there has been no motion filed for substitution of party defendant, although defendant Horton has died since the commencement of the suit in 1964. So, when the case was called at this bar, we inquired of counsel on both sides as to whom judgment would be rendered against should the Court decide in plaintiff-petitioners' favor. The parties, thereafter, agreed that A. Romeo Horton, eldest son of the deceased defendant, was to be substituted for his father. For authority, see *Gladydor v. Freeman et al.*, 9 LLR 43 (1945). The significance of this requirement is dealt with later in this opinion.

When argument was commenced in this case, counsellor Nete-Sie Brownell, one of the counsel for the plaintiffs in ejectment and petitioners in certiorari, contended that it was against public policy for counsellor Lawrence Morgan to represent the respondents in certiorari, because he had only a short time before been appointed by the President as Superintendent for Grand Bassa County. Counsellor Morgan replied, explaining that before his appointment and after he had had notice of the appointment, he had informed the Chief Executive that there were a few important cases which were still in his office and which he desired to complete. He sought from the President, and was granted, permission to complete these unfinished cases. He also had informed the Supreme Court that the permission which had been granted him in respect of these cases extended to the instant case, and the Court had allowed him to represent his client in this matter, beginning in chambers, earlier this year.

In the ruling which we entered denying the argument of disqualification, we took the position that the counsellor, as Superintendent, was representative of the President in that county; as such, it was within the province of the Chief Executive to grant, or to refuse to grant such permission. In such a circumstance, the principle of

violation of public policy did not seem to us to be applicable. We, therefore, allowed counsellor Morgan to continue to represent his clients' interest, in view of the President's permission.

In addition, we would like to observe in passing, that lawyers who engage in the practice for a living, are under ethical obligations to their clients. A moral responsibility ensues which cannot be lightly brushed aside, without doing great harm and irreparable injury to many a client in distress. The question of whether or not the public good is best served, or its interests better preserved, by the appointment to executive office of a practicing lawyer, is a question for the Chief Executive, under our system. Since we repose our trust and confidence in him, the President may, under his *supreme executive power* appoint to the office of Superintendent, or any other executive office, any citizen, including a lawyer. He may also, under the same power, allow the lawyer time to clear his desk before entering upon the duties of the office; or he may condition the appointment on certain restrictions or allowances, in his discretion. This is not, in our opinion, contrary to public policy, because allowing such time, or fixing such conditions, do not necessarily hurt the public interest.

Law writers are agreed that public policy simply means the doing of any act by the citizen which is against the public good or injures public interest. Judge Bouvier has said that "public policy is manifested by public acts, legislative and judicial, and not by private opinion, however eminent. . . . It is said to be determined from legislative declarations, or in their absence, from judicial decisions."

In the Public Employment Law, 1956 Code, 30:120, the Legislature has forbidden officials of Government, who are lawyers, from representing mercantile businesses.

"Any Government officer acting as counsel, legal adviser, or agent to any mercantile business within

or without the Republic shall be removed from office unless he shall resign his position with such business." Since permission was granted counsel to complete a case already begun, which case does not fall within the prohibitive provisions of this statute, the Court feels strongly justified in having allowed counsel to continue to represent his client. The application of prohibition for the sake of public policy in any such given circumstance should be backed by statutory provision.

The history of this case goes back many years, and involves much acrimony, animosity and unpleasantness, and is the subject of much unresolved litigation. When we assumed duties in chambers in June this year, a submission was filed by counsellor Nete-Sie Brownell, of counsel for petitioners, in which he complained that a judgment of the Supreme Court, sent to the Sixth Judicial Circuit to be enforced, was still pending enforcement due to obstruction from one of the parties. We conducted an investigation in chambers and found that, growing out of an action of ejectment brought by Tom N. Bestman et al., for the Bassa Brotherhood Industrial and Benefit Society against D. R. Horton, determined by judgment in 1966, there are now still pending before the Supreme Court several matters: the certiorari proceedings now under review by petition filed in chambers on March 1, 1969; a bill of information filed on April 29, 1970, by A. Romeo Horton, eldest son of the defendant in ejectment; another certiorari proceeding, undertaken by the petitioners through petition filed in our chambers on October 7, 1971; and, on the same day, October 7, 1971, as aforesaid, another petition, also filed in our chambers by petitioners for another writ of error.

It should be noted that it was the first writ of error applied for by petitioners in 1969, in which the Supreme Court sent a mandate to the Sixth Judicial Circuit Court, for the judge therein to enforce the judgment in ejectment, which was obstructed by A. Romeo Horton. But

we shall come to that later. Of these several matters, only in the writ of error proceeding filed in 1969 is there any showing that a determination was ever reached by the Supreme Court, but even in that case the judgment still remains unenforced, as will be shown later.

Perhaps a complete review of the facts and circumstances, from the very beginning of the controversy between the parties, might help unravel the much-entangled details of this land dispute, and all of the attending issues growing out of it. According to what we have found in the record of the ejectment trial in the Sixth Judicial Circuit Court, the records of the several remedial matters in the Supreme Court, and argument before this bar during the present Term, the succinct history of this case can be set forth.

In 1925, Reverend D. R. Horton, a Baptist missionary, having settled in Monrovia, founded the Bassa Brotherhood Industrial and Benefit Society, a Christian missionary organization, whose membership was mainly composed of the Bassa tribe. The Society established the Saint Simon Baptist Church, around which its activities centered. Over the years, the Society grew and its activities expanded. It was incorporated as a body politic by a joint resolution of the Legislature passed December 1925, section 1 of which states:

“That from and after the passage of this Joint Resolution, D. R. Horton, C. V. Johnson, Jacob Mason, James George, James Vambrum, Emma Taylor, Jacob Gibson, J. E. Manderson and Joseph Banks, be incorporated as the ‘Bassa Brotherhood Industrial and Beneficial Society,’ their successors in office and all those who are now or may hereafter be members are hereby incorporated under the 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 Dollars (\$100,-

000.00) for the use and benefit of said Society by grant, bequest, purchase or otherwise. Said Society may sue and be sued, plead and be impleaded before any court of law or equity having complete jurisdiction, and do all things usually done by such bodies corporate and politic.”

Upon this authority, the Society purchased from the B. J. K. Anderson estate ten acres of land, in Monrovia, and in the area known at the time as Half-way Farm, and now called Bassa Community. The Society also purchased from the Government one thousand acres of farmland, in Totota, then known as the Central Province, and now part of Bong County. The status of this land is, according to the record, subject of another transaction between the Government and the Society.

In 1964, Tom Bestman *et al.*, claiming to be trustees of the Bassa Brotherhood Industrial and Benefit Society, sued D. R. Horton in an action of ejectment, alleging that D. R. Horton, the founder of the said Society, was withholding from the plaintiffs the Society's ten acres of land in Bassa Community, and the one thousand acres in Totota, Bong County. This case was handled by several judges, but came up for hearing before Judge James Hunter in the December Term, 1965, and resulted in judgment for the Society. Before quoting the judgment, and the writ of possession issued consequent thereon, I think it is necessary to explain here that the opposing parties in this ejectment suit are supposed to be members of different factions of the Bassa Brotherhood Industrial and Benefit Society.

The judgment which was rendered in favor of the Society, seems to have displeased both sides. The defendant took an appeal from it, which he later withdrew. The plaintiffs applied in chambers of the Supreme Court for a writ of certiorari to review it. They recite in count one of the petition:

“The case was duly heard and determined by a verdict

of the trial jury in favor of the petitioners; but in the final judgment the judge injected extraneous matters, to the effect that defendant Horton and others whose names appear in the title deeds, must also be put in possession of the property in question, which final judgment has been interpreted to mean that the property descends to the heirs and other persons not members of the late D. R. Horton (family), thus making it difficult for your petitioners to acquire possession of the two pieces of property sued for. They subsequently prayed for a writ of error, which was finally granted by the Supreme Court of Liberia.”

In count four of the petition for certiorari, light is thrown upon the extent and nature of a dispute between the members, and it might be relevant to the clarification of some of the issues, that we quote a portion of this count for the benefit of this opinion.

“The dispute which arose over the illegal expulsion of several members of the society by the late D. R. Horton, was, in keeping with the provisions of the Associations Law, referred to arbitration, under the chairmanship of Vice-President William R. Tolbert, who, at the time, handed down a decision as follows:

“That the members whom the Pastor said had been put out of the church were not put out in the regular form according to the discipline of the Baptist denomination and, therefore, the Pastor should not continue to consider these members as being put out of the church, but to consider them as still members of the church. The counsel explained the procedure by which members are put out of the Baptist Church. They pointed out that this had not been done in the case of the members in question.’

“To the above decision, no exception was taken by the Pastor. Now to raise the irrelevant issue that as a result of the illegal expulsion of these members from the church, they cannot now function as members of



the Bassa Brotherhood Industrial and Benefit Society, has no support in law.”

According to this count, the expulsion referred to was of members from the Society; but the quoted decision which was reached as a result of the arbitration mentioned in this count, seems to refer to members put out of the Baptist Church. There is no showing that this expulsion from the church was in any way related to the expulsion of members from the Bassa Brotherhood Industrial and Benefit Society. If there were such a relationship, it has not been so clarified in the record; in other words, if expelling a member from the church amounted to expulsion from the Society as well, it has not been made clear at all.

Since plaintiffs in ejectment have shown such substantial disagreement with the judgment, it is unfortunate that an appeal was not taken by them, because a review on appeal could have covered a much wider field than can be covered by certiorari. For instance, in the minutes taken at the hearing held on February 28, 1969, and made profert with the petition for certiorari, several witnesses testified to the effect that the plaintiffs who brought the action of ejectment on behalf of the Society, were no longer members and were not clothed with authority therefore to represent the Bassa Brotherhood Industrial and Benefit Society. On the other hand, plaintiffs' witnesses testified that they were still members, and that one of their number was then President of the Society. Had appeal not been withdrawn by the defendant, or had an appeal been taken by the plaintiffs, we could have examined the issues in the bill of exceptions to see what defenses were made against these allegations, for although witnesses on both sides were not shaken in their testimony on cross-examination, it is not shown that any proper decision was made on this important issue, according to the minutes made profert.

Without the certiorari applied for in 1969 by the plain-

tiffs in ejectment having been decided, A. Romeo Horton, eldest son of the defendant in ejectment, together with other members of the Society belonging to the group of which Reverend Mapleh is alleged to be President, filed a bill of information in the March Term, 1970, of the Supreme Court, alleging that although the plaintiffs in ejectment had applied for certiorari to stop the enforcement of the judgment rendered in the ejectment suit, the certiorari proceeding was still pending before the Supreme Court undetermined when the said plaintiffs in ejectment and petitioners in certiorari filed a petition before Judge Krukue in the Sixth Judicial Circuit, praying that he enforce the judgment of Judge Hunter in the ejectment suit. The bill of information prayed that the plaintiffs in ejectment and petitioners in certiorari be made to answer in contempt of court.

The more we look into this case, the more complicated and entangled the issues become. It is strange that the plaintiffs in ejectment, in whose favor judgment was rendered by Judge Hunter, should have rejected the judgment and applied for certiorari to review it, and, while the certiorari proceeding was still pending, should have applied to the Circuit Court for enforcement of the very judgment from which they had sought relief by certiorari to the Supreme Court. This is mystifying behavior, but this case is too long outstanding for us to go into this phase of it. Had the certiorari been heard and determined, there would have been no cause for the bill of information. Therefore, since the certiorari matter is still pending before us, we shall proceed to decide it. But before doing so, I would like to repeat that we would have much preferred had an appeal been taken from the lower court's judgment.

The principle issue before us for determination in certiorari is dissatisfaction with that portion of the judgment in ejectment which ordered all members of the Society whose names appeared on the title document, to be

put in possession of the Society's land in Bassa Community and in Totota, Bong County. Plaintiffs in ejectment claim that their interpretation of the judgment, and the writ of possession growing out of it, is that it sought to have persons not members of the Society put in possession of the Society's property. It must be remembered that the action of ejectment was brought against D. R. Horton in his capacity as an individual member of the Society, according to the complaint, and not as the representative of the Society. But let us see what the judgment states, in the portion relevant herein.

"In view of the foregoing, the verdict of the petty jury is hereby confirmed and affirmed, and this court hereby adjudges the Bassa Brotherhood Society to possess the 10 acres of land in Monrovia City, according to the metes and bounds on their deed assigned them by the grantor, B. J. K. Anderson. This possession is to include all members of the Bassa Society whose names appear on this deed and, as for the 1,000 acres of land in Totota, since said portion of land has been disposed of by the Government of Liberia for reasons best known to the Government of Liberia, Rev. Horton, as head of the Bassa Society as well as the Church, is to associate with the group and again apply to the President for the 1,000 acres of land which he has already promised, or, the value thereof, and it is to be done within 30 days as from the date of this judgment and the clerk of this court is hereby ordered to prepare a writ of possession to put the Bassa Society in possession of their 10 acres of land in Bassa Community and their deeds thereof turned over to them as a group to be kept wherever they feel. And if the 1,000 acres of land is acquired, the Bassa Society is also to be put in possession of the value thereof, and it is hereby so ordered. To which defendant excepts, and announces an appeal to the Supreme Court in its ensuing October Term, 1966. Appeal granted."

The writ of possession was also objected to by the plaintiffs in ejectment, and is the basis of their petition for certiorari.

“To James W. Brown, Esquire, Sheriff for Montserado County. . . .

“You are hereby commanded to put Dr. D. R. Horton, J. E. Manderson, James Vambrum, Jacob Mason, James George, Jacob Gibson, et al., trustees of the Bassa Brotherhood Industrial and Benefit Society of the City of Monrovia and their successors in office in possession of the premises situated in Bassa Community formerly known as Half-way Farm—lots number thirty-one and thirty-one A (31 & 31A) and bounded and described as follows:

“1. Commencing at the Southeast angle of Farm Lot No. 26 same belonging to the heirs of the said Elijah Johnson thence allowing 49-½ feet the width of a cross road leading to the Southeast Beach of Monrovia and running 70 degrees East ten (10) chains thence running South 38 degrees West parallel with said road ten (10) chains thence running 70 degrees West ten chains thence running North 38 degrees East ten (10) chains to the place of commencement forming an oblique parallelogram and containing ten (10) acres of land and no more.

“Note: Consequent of the death of Dr. D. R. Horton, founder of said Society, the deeds will be turned over to the Trustees of the Bassa Brotherhood Industrial and Benefit Society in keeping with the mandate of the Supreme Court of Liberia.”

It should be noted that the judgment and writ of possession sought to give possession of the property to the members of the Society whose names appear on the deed, which also appear in the joint resolution passed by the Legislature in 1927, when the organization was incorporated, and to those who thereafter became members. According to what we have found in the record of the

action of ejectment, and in the records of the several other matters relating thereto filed in the Supreme Court, suit was brought to recover the Society's ten acres of land in Bassa Community alleged to have been withheld by D. R. Horton.

It is our opinion that the judgment and the writ of possession quoted from herein, seek to accomplish their purpose without regard for the split in the membership of the organization. It is not our opinion that property belonging to the Bassa Brotherhood Industrial and Benefit Society could be inherited by or descend to, the heirs of the late Dr. D. R. Horton, as petitioners in certiorari have interpreted the judgment. We do not feel that the text of the judgment justifies any such interpretation. The ten acres of land purchased by the Society from B. J. K. Anderson, and the thousand acres purchased from the Government is property of the Society as a corporate body, holding to it and its successors in perpetuity.

Because of a misunderstanding which had arisen in the membership, the organization had been split into two factions, growing out of alleged expulsion of certain members by Dr. Horton, referred to earlier in this opinion. Later on in this opinion we have quoted relevant portions of the minutes of the hearing conducted by Judge John A. Dennis at which this misunderstanding is testified to. However, there is another phase of this case which we think is necessary to look into.

In June of this year, counsellor Brownell, of counsel for the plaintiffs in ejectment, and for the petitioners in certiorari, as well as for the petitioners for enforcement of the ejectment judgment, brought to our attention the fact that the judgment, and mandate of the Supreme Court growing out of it, had not been enforced and the plaintiffs had not been put in possession of the lands sued for in ejectment. It was revealed by investigation conducted in chambers, that A. Romeo Horton and others had ob-

structed the survey of the ten acres in Bassa Community, when Judge Lewis sought to put the plaintiffs in possession. It was reported that he physically attacked the surveyor, and when a report was made to Judge Lewis who had issued the orders, an attempt was made to hold Horton, and those who with him had defied the court, in contempt. Orders from the chambers of the Supreme Court stopped any further action on Judge Lewis's part, and there the matter still remains.

We do not hesitate to condemn the defiance which A. Romeo Horton showed for the court's order. Whether or not he had legal reason for objecting to the survey of what he might have regarded as his personal property descended to him from his late father, it is still an exemplification of lawlessness for him to have used force to defy constituted authority. There was adequate legal redress available to him for any wrong which he felt was being done to him by the survey, and there can be no excuse for this show of disregard for the law. Conduct of this kind should have been punished in contempt, but because of what was revealed later in respect to the judgment itself, we find ourselves unable to insist upon the enforcement of the contempt proceedings, in which Judge Lewis had ordered him to show cause.

During the investigation in chambers, it was revealed that the Supreme Court's judgment, which the mandate sought to implement, had been signed by only two of the three justices who heard argument in the case. The Chief Justice, who was one of the three who heard argument was ill and absent from the country when the case was decided, and could not sign the judgment. The Constitution of Liberia states in Article IV, and Section 3rd, that "The number of justices of the Supreme Court of the Republic of Liberia shall be limited to one Chief Justice and Four Associate Justices, a majority of whom shall be deemed competent to transact the business of the Su-

preme Court and from whose judgment there shall be no appeal." The implementing statute also states that "the Supreme Court shall consist of a Chief Justice and four Associate Justices, any three of whom shall constitute a quorum for the transaction of business at any regular term." Judiciary Law, 1956 Code, 18:1. Thus, it would seem clear that although three of the Justices, which is a majority and a quorum, had heard the case, it also needed a quorum to sign the judgment to make it valid. A judgment signed by less than a quorum is legally and constitutionally invalid and a nullity, and cannot be legally enforced.

It is reported that Chief Justice Roberts became ill during a certain Term of Court, which made it impossible for him to attend rendition of decisions. He directed his colleagues, Mr. Justice Richardson and Mr. Justice Dossen, to affix his signature in his behalf, and give decisions in his absence. *David et al. v. Compania Transmediterranea*, 4 LLR 97, 99-100 (1934). However, in this case the absence of any indication of a third signature on the face of the judgment, compelled a redocketing of the case for the present Term of Court, so that the case might be heard by a quorum, and by Justices who were not members of the Court when the judgment referred to was written.

It was also necessary to redocket this case and hear it again, because defendant Horton died before the case was terminated, and enforcement of the judgment against him was impossible. For, how could the Court enforce a judgment against a dead man?

"Except as provided in the third and fourth paragraphs of this section, if a party dies, the action may be continued by or against his executors, administrators, or other legal representatives in accordance with the second paragraph of this section.

"Within a year after the death of a party the court

may order substitution of the proper party; if the substitution is not so made, the action shall be dismissed as to the deceased plaintiff or judgment by default may be entered against the deceased defendant. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and, together with the notice of hearing, it shall be served on all the parties. Any person may inform the court of the death of a party." Civil Procedure Law, 1956 Code, 6:100. See also Revised Rules of the Supreme Court, Rule VI.

It was brought out in evidence at the trial that in addition to the ten acres defendant Horton had bought for the Society from B. J. K. Anderson, he had also purchased several acres of land for himself from various grantors, represented by four deeds, which were put in evidence and marked by the court. It was argued that the plaintiffs in ejectment had sought to confuse the ten acres belonging to the Bassa Brotherhood Industrial and Benefit Society, with the property owned personally by D. R. Horton. It is of interest to note that not only were defendant Horton's four deeds put in evidence at the trial, but the deed for the Society's ten acres was also put in evidence, and was also marked by the court.

According to the minutes of the trial held by Judge Hunter, Horton testified on March 2, 1966:

"Q. Say whether or not you are in possession of title deed for the property which you are occupying at Bassa Community, and if so, please say from whom you derived title to said property?"

"A. I occupy where my house is on, I have the deed for same from the late B. J. K. Anderson the number is letter "O"; property from Mensah, the lot number is 25; I have deed from the late Mr. Furgerson, lot no. 25; I have deed from the late H. R. Johnson, lot No. 26. I have no land with any lot nos. 31 and 31A. It should be re-



called that 31 and 31A are the numbers of the Bassa Brotherhood land.

“Q. I hand you these documents; inspect them and say what you recognize them to be?

“A. This is the lot letter “O” from Anderson; No. 2 is lot 26 from the family of F. E. R. Johnson; deeds 3 and 4 for lot no. 25 from Mensah and Furgerson, respectively. [Defendant asks for marks of identification to be placed on the documents.]

“Q. You have identified several deeds of property you claim you have bought from the late B. J. K. Anderson and others. Please tell the court and jury if these [pieces of] property were obtained by you after you bought the Bassa Society land, and if said properties are contiguous or adjoining the Bassa Society property?

“A. The properties are not adjoining one another; there is a street between the Bassa Brotherhood land and my land, and the Johnson parcel of land that I have bought. The land I bought from Anderson is not adjoining the Bassa Brotherhood land.”

Nowhere in the examination of this witness, which continued at some length, was it disproved that a street divides the Horton property from the Bassa Brotherhood ten acres of land; nor was any witness brought to testify that the two pieces of property—Horton’s and the Society’s—are in any way adjoining property. Nor has any witness testified at the trial that the lot numbers on the deed to the Bassa Brotherhood Industrial and Benefit Society, are not 31 and 31A, or the numbers of the deeds for the four pieces which make up the Horton property are not numbers O, 25 and 26.

Since it seems very clear that there are two separate pieces of property, owned by two separate grantees, D. R. Horton on the one hand, with four deeds for several

acres, and the Bassa Brotherhood Industrial and Benefit Society on the other hand, with a deed for ten acres, and since it is also clear from an inspection of the record of the trial, that the metes and bounds of these two pieces of property and the number of the lots are not the same, and since the minutes of the trial show that a street divides the two pieces of property, it should be clear to any reasonable mind that there should be no mistaking one piece of the property for the other. Horton testified that he had never had possession of the Society's property, but that the deed for this ten-acre plot of land had always been in the custody of the trustees. We have not been able to undersand why the plaintiffs in ejectment did not seek to have the several pieces of property on both sides identified in keeping with the several deeds—their's and Horton's.

The fact that some members were put out of the Society was testified to by several witnesses at the hearing held by Judge John A. Dennis in 1969, and for the benefit of this opinion, I will quote relevant portions from the minutes for February 28.

Jacob Mason was one witness:

“Q. Tell us whether or not the following named persons are members of the Bassa Brotherhood Industrial and Benefit Society at the present time or trustees thereof, if you can: Fred V. Smith, James T. Ward, Joseph E. Logan, Tom N. Bestman, Wilmot R. Diggs, Wilmot G. Gross, Weamah Tetee, Jarto Bestman and Thomas Pritchard?

“A. Not now. They were members of the Society and the Church, but we put them out. They have never been trustees as far as I know.

“Q. Who is the President of the Bassa Brotherhood Industrial and Benefit Society?

“A. Reverend Mapleh is the present President of this Society.

"Q. The Mapleh that you are speaking about as being the President of the Society, please tell the court upon your oath whether Mapleh is a member of the Society or has ever been a member?"

"A. Reverend Mapleh has been a member of the Society three or four years before the death of Reverend Horton."

Pesie Vambrum was another witness.

"Q. I assume that you are one of the original members of the Bassa Brotherhood Industrial and Benefit Society, by that I mean one of the original members, and that you are acquainted with the names of the President, Trustees and members of this Society. If this is correct, please tell us who are the present trustees of the Society?"

"A. The old and founding trustees are myself, Jacob Mason, James George, Jacob Gibson, Joseph Barnes, Charlie Johnson, the late Doctor Horton, these are the trustees. I know of no other trustees; I only heard about these new trustees the other day when I came to this court.

"Q. What is the name of the President of the Society today?"

"A. Reverend Mapleh is the present President.

"Q. You said in your direct testimony that Mapleh is the present President of the Bassa Brotherhood Society; please tell the court who elected him President and at what time?"

"A. After the death of Doctor Horton, Mapleh was made President. Mapleh was elected in a Society meeting as President.

"Q. You said Smith, James, Ward and others are members. Do you remember they being present at a meeting when Mapleh was elected?"

"A. They had formed their own Society and were not members of our Society. There is a Bassa

Brotherhood Society and the persons who are named have gone and formed their own Society.

“Q. Were you present at the meeting held in September, 1961, or thereabout, when Horton was in the chair, and Smith was elected to take his place?

“A. I was at a meeting when the persons who are named expressed their desire to have Smith as their President, at which time the late Doctor Horton said that they should make themselves financial, which they did not do and they left the meeting.”

Reverend Africanus Mapleh also testified.

“Q. Are you connected with the Bassa Brotherhood Industrial and Benefit Society, and if so in what capacity?

“A. Yes, I am, and I am the President of the Society.

“Q. Tell us, if you can, who are the present trustees of this Society?

“A. Mr. James Vambrum, Mr. Jacob Mason, Rev. Willie K. Vambrum, Deacon Robert Paul, Sister Mary Powell, Brother A. Romeo Horton, Leah Dennis and Africanus Mapleh as the President, with Tete Grahoph.

“Q. As President of the Society, please tell us whether or not you are acquainted with Fred F. Smith, James C. Ward, Joseph Logan, Tom N. Bestman, Thomas Pritchard, and if so, say whether or not they are members of the Bassa Brotherhood Industrial and Benefit Society, and what positions they hold therein, if any at all?

“A. I know them, but they are not members of the Bassa Brotherhood Industrial and Benefit Society.

“Q. Sir, are you a member of the Bassa Brotherhood Industrial and Benefit Society which sued D. R.

Horton, also a member, or are you a member of a different branch of the Bassa Brotherhood Industrial and Benefit Society?

- "A. I am not a member of the alleged Bassa Brotherhood Industrial and Benefit Society which sued Doctor Horton; I am a member of the original Society, and not the illegal one set up by Fred Smith's group."

This is the testimony of three members of the group under the Presidency of Reverend Mapleh, which claims to be representing the parent body. We will now record testimony of three of the members of the group led by Fred Smith and Tom Bestman, which is supposed to have been expelled from the Society, or which pulled out of the parent body.

James Ward was one witness:

- "Q. Are you a member of the Bassa Brotherhood Industrial and Benefit Society, and if so, do you hold any position in the Society?"
- "A. Yes, I am a member, and I am now Vice-President, and former Secretary under Doctor Horton.
- "Q. As such Secretary and member, will you please tell this court who are the trustees at this time?"
- "A. Mr. Fred V. S. Smith, Joseph Logan, Tom N. Bestman, Chairman of the Board of Trustees, Wilmot G. Diggs, Thomas Pritchard, Jeto Bestman and Weamah Teetee.
- "Q. So, there are two groups, one including Dr. D. R. Horton, Jacob Mason, James Vambrum, and the other members whose names appear on the deed, and the other group which includes yourself, Fred Smith, Tom Bestman and others?"
- "A. Yes.
- "Q. So, according to the three persons who testi-

fied here, your group and their group never did get together, and until now remain divided; that is to say, you do not attend their church nor do they attend your meetings and church?

“A. We belong to the same church, but we do not belong to the same society.”

Fred Smith also testified.

“Q. Are you a member of the Bassa Brotherhood Industrial and Benefit Society, and if so, as what and how did you obtain it.

“A. I am a member of the Bassa Brotherhood Industrial and Benefit Society, and President of the Society. I was elected in 1961, September 18. In the year 1960, the body got together and found out that Doctor Horton was using the land in his own name, for his own benefit and not the interest of the Society, and we asked him that we should have reelection. He said, I will think about it. Again we asked him the second time and we waited until the whole year passed. Now, in 1961, we went to a meeting and we put it before him, reminding him about the election, and he said, next meeting, then I will decide. We went back for the next meeting, and he put it off again. When we went for the election, opening the meeting and collecting dues, he said, what further, and we said, this is the night for election. Dr. Horton said, hence, you all charge me with stealing your land, we said, yes, but this has nothing to do with the election. Dr. Horton left the chair and sat on the bench and requested us to bring the man who we wanted for presidency. Then the body nominated W. R. Diggs to preside over the election, and the election was held that night in his presence. After the election there was no dispute.”

Tom Bestman was another witness.

“Q. Are you a member of the Bassa Brotherhood Industrial and Benefit Society?”

“A. I am a member and a member of the Board of Trustees.

“Q. You have filed a list of persons, namely Fred Smith, James Ward, Joseph E. Logan, Tom N. Bestman, Thomas Pritchard, Wilmot R. Diggs, Wilmot Gross, Weamah Tete, Jeto Bestman. Are these the trustees you know?”

“A. These are the trustees I know.

“Q. According to the document marked D/2, which is entitled “Constitution and By-Laws of the Bassa Brotherhood Industrial and Benefit Society,” on the last page, this document is supposed to have been subscribed by Wilmot G. Gross, Thomas Pritchard, Tom N. Bestman, James C. Ward and Joseph E. Logan. Tell us, since you are allegedly one of the subscribers, whether Jacob Mason, Mr. James Vambrum, Ernest Lewis, were present and also subscribed to these by-laws?”

“A. They were not there; since the new administration started, these people have not attended these meetings for over ten years.

“Q. Now, tell us whether or not your group claiming to be members of the Bassa Brotherhood Industrial and Benefit Society, attend upon meetings of this Society, as held by the original incorporators who are today still living, and the other officers who have been elected by them, and who associate with them both in the Society and in the Church?”

“A. I consider these meetings Church meetings; we have our own Church.”

It would seem to have been conclusively proven from the testimony of these six witnesses, that there are two

distinct groups, each operating as the Bassa Brotherhood Industrial and Benefit Society; each with a President and a board of trustees, and each operating around a church of its own. The parent body, led by Reverend Mapleh as its President, still operates out of the Saint Simon Baptist Church; and the other group which seems to have pulled out of the parent body, led by Fred V. Smith as its President and Tom Bestman as Chairman of its Board of Trustees, has a church of its own, the name of which does not appear in the record. In any case, the members of both of these groups had belonged to the one original organization, before dissension split it into two factions. The question which arises is, was the Tom Bestman group, which had pulled out of the parent body, as the testimony of these six witnesses proves to be the case and operating outside the parent body, clothed with legal authority to own realty or to bring suit against D. R. Horton, a member of the parent body, in keeping with the spirit and intent of the joint resolution of 1925 cited above?

Another question seems to present itself: If the Tom Bestman group is clothed with legal authority to sue and be sued, and to hold, own and possess real property, as the joint resolution of 1925 empowered the Society to do, wasn't the judgment rendered, placing members of the entire Society in possession of the ten acres of land they had purchased from Anderson, lawful and in accordance with the text of the joint resolution? And since it has been established that D. R. Horton, the founder of the Society, was still a member thereof, not having been expelled, was he not also entitled as such member to have been named in the judgment as one of those who were to be given possession of the land described? As we said earlier, these questions, and many more, might have been more effectively reviewed had the appeal of the defendant not been withdrawn, and had an appeal been taken by plaintiffs. We only refer to these issues because contention has arisen over them during the hearings.



There is another salient point in this case. Since Tom Bestman and his group regard themselves as members of the Bassa Brotherhood Industrial and Benefit Society, why quarrel with the judgment which ordered them to be put in possession of the Society's ten acres, since this is what they asked in their complaint? We have not been able to find anywhere in the record any denial on the part of plaintiffs-petitioners that they were indeed expelled from the parent body, because they refused to apologize for having accused Doctor Horton of unlawfully taking the Society's land. Nor is there any showing that the legality or illegality of the manner of the expulsion was ever properly questioned by them. We must, therefore, have to assume that they have accepted their expulsion as final, which must have given rise to the formation of the organization they call their own Society, retaining the name of the parent body. In such a circumstance, could they legally enjoy the right to sue and be sued, or hold and enjoy real property in fee, granted to the parent body in the joint resolution? But as we have said, these several questions are not before us, either in ejectment or in certiorari.

We would like to emphasize in passing, that ejectment will not, and cannot, resolve disputes between the members of the Bassa Brotherhood Industrial and Benefit Society. In the case of ejectment, out of which certiorari has grown, all that was needed to be decided was whether or not Horton did, indeed, withhold from the plaintiffs ten acres of land described by the metes and bounds of a deed which they made profert with their complaint. The question of whether or not there are two factions in the Society, arises only in respect to determining who the responsible officials are, to be placed in possession of the property on behalf of the Society which was incorporated in 1925, and in whose name the deed for the ten acres was executed.

We would also like to make it clear, that whether or

not Fred Smith or Africanus Mapleh is President of the Society, and whether or not there are two or more factions in the Society, the fact cannot be erased that there is only one Bassa Brotherhood Industrial and Benefit Society incorporated under the joint resolution passed by the Legislature in December 1925. The foregoing applies to ownership of the ten acres of land purchased by Reverend Horton from the late B. J. K. Anderson for the Society in 1925.

In our opinion, the judgment of Judge Hunter properly accomplished the purpose for which the suit was brought: to give possession of the Society's ten acres of land to the members, and only the members, of the Society. The question as to who are the legitimate members and officers cannot be determined by ejectment, as we have said, and the judge did not err in naming in the judgment some of the persons whose names appear on the title deed.

In view of what we have found, and the law we have cited and quoted herein, we are of the firm opinion that the judgment of Judge Hunter handed down in the December 1965, Term, should be enforced. We are also of the opinion that the judgment should embrace all members of the Society, the incorporating members as well as those who joined later. We are of the opinion that dissension in the membership does not dissolve the Bassa Brotherhood Industrial and Benefit Society; nor does any split in the organization clothe two separate bodies with the legal authority granted under the act of incorporation. In contemplation of law, there is only one corporate body created under the joint resolution of 1925. The question as to who are now members of that incorporated body is to be resolved by the organization itself, but not by means of ejectment; nor can certiorari determine this issue.

The judge next assigned in the Sixth Judicial Circuit Court will, therefore, resume jurisdiction over the action of ejectment, and proceed to enforce the judgment of

Judge Hunter, in accordance with the amendment thereto contained in this opinion: which is to put the charter members, and their successors, in possession of the ten acres sued for in ejectment.

The extraordinary remedy of certiorari will not issue nor can it be used to perform the functions of an appeal. 10 AM. JUR., *Certiorari*, § 7.

In *Harris v. Harris et ano*, 9 LLR 344, 349-350 (1947), a case involving certiorari, petitioner having appealed from a judgment rendered against him in favor of his wife in a suit for maintenance, failed to prosecute his appeal within the time prescribed by law and thereafter petitioned for certiorari to grant him relief. In denying the petition the Supreme Court said:

"If the party aggrieved has elected another remedy under which he can obtain full redress he cannot resort to certiorari also; although it would seem that the rule is otherwise where the remedy is inadequate to afford the relief sought. Similarly, since the writ will, as a rule, lie only to a final determination . . . where the case is still pending in the court below where the error complained of, if any, may be corrected on the final hearing, the writ will not lie."

And in *Daniel et ano v. Compania Transmediterranea*, *supra*, the Court ruled that a remedial writ is an extraordinary remedy, usually applied for in order to prevent an injury to a party that may be irreparable or without which the ordinary method of appeal may not give an adequate remedy.

And in *Raymond Concrete Pile Company v. Hamilton et ano*, 13 LLR 522 (1960), the Court held that certiorari is an extraordinary remedy which will not be granted where adequate relief can be obtained through regular processes of appeal.

There is no reason given for the petitioners not to have appealed from the judgment in the ejectment suit, nor have they shown in argument here that a regular appeal