G. N. EMMONS, J. J. MASSAQUOI, J. W. JACKSON, SAMUEL J. LEWIS, G. H. VAN DIMMERSON, N. H. SIE BROWNELL, W. H. BRYANT, JACOB MILLER, FREDERICK WALKER, JAMES W. ROBERTS, J. W. CLARKS, D. H. HANSFORTH, DICK MOORE, J. F. WELLS, JOHN HARRIS, BENJAMIN ELLIOTT, HENRY MERRIAM, Petitioners and Relators, *v.* W. A. WILLIAMS, R. G. PERRY, P. M. COOKE, J. C. A. GIBSON, SR., J. W. S. BOWENS, JAMES E. SIMS, D. TWE, M. N. SMITH, S. A. LIBERTY, THOMAS GRAVES, J. CLARKE, JACOB KING, J. N. LEWIS, C. A. SMITH, A. C. MONGER, J. K. P. BASSIL, D. B. COOPER, Respondents.

APPLICATION FOR A WRIT OF QUO WARRANTO.

Decided February 3, 1928.

1. Where a party is called upon to show cause why a remedial writ for which he applied should be granted, the same strictness is not required as in ordinary pleadings.
2. In quo warranto proceedings any person may as *amicus curiae* apply to the court to dismiss the case for want of jurisdiction.
3. Where the cause of action is without the jurisdiction granted by law to the tribunal, it will dismiss the cause at any time when the fact is brought to its notice.
4. In the case of contested elections, each house is sole judge of the election returns and qualification of its own members; the courts have no jurisdiction over such cases.

Application for a writ of quo warranto by petitioners, unsuccessful candidates for the office of Representatives in the various counties, *denied.*

A. B. Ricks and *G. H. V. Dimmerson* for petitioners. *The Attorney General* appeared as *amicus curiae.*

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

On the 7th day of October, 1927, counsel for petitioners filed in the office of the Clerk of the Supreme Court an application for a writ of quo warranto, alleging *inter alia* that said respondents had been cited as having been apparently elected to the position of Representatives for the various counties of the Republic and that they are presently enjoying the emoluments of said office by receiving the monthly salary of one hundred dollars each to the exclusion and against the interest of the said petitioners and relators, contrary to justice and law, because of certain frauds and illegalities which petitioners and relators allege were committed by said Representatives, through their friends and the election officials acting fraudulently in behalf of said respondents, at the general quadrennial election for President, Vice President, and Representatives for this Republic.

Petitioners and relators were cited to appear before the Justice sitting in chambers to show cause why the said application for a writ of quo warranto should be granted; copy of same was served upon the Attorney General in accordance with a rule of the Supreme Court.

Pending the sitting of the Court in chambers, the Attorney General filed a motion praying that the case be dismissed, to wit:

"1. Because the Constitution of Liberia declares that each branch of the Legislature should be judge of the election returns and qualification of its own members and the application now before the court prays, in essence, that Your Honours would pass upon and determine the legality of the election returns;

"2. And also because the Legislature acting upon the provisions of the Constitution of Liberia as set forth in section (1) thereof at its session of

1868–69, provided the mode of procedure for competitors desiring to contest seats of persons apparently elected members of either branch of the Legislature, and every section of the application now before this Court would seem to be a good ground for inclusion in a bill of exceptions for a contest, hence Your Honours have no jurisdiction of the subject matter thereof as the sole and exclusive jurisdiction for the trial of matters of this character is in the branch of the Legislature of Liberia, in which such persons as are apparently elected, if so declared would be entitled to take their seats."

The petitioners and relators filed an answer praying the Court not to sustain the motion for the following reasons:

"1. Because the said L. A. Grimes, Attorney General of Liberia, has no legal right to appear and defend the above entitled cause for and on behalf of the said respondents aforesaid because he the said L. A. Grimes is not licensed to practice as a lawyer.

"2. Because said motion as filed refers to a cause in which the Republic of Liberia is a party; that in fact the Republic of Liberia is not a party to the cause *ad litem*.

"3. Because the said motion is repugnant in that the Attorney General admits and at the same time denies the jurisdiction of this Honourable Court over the subject matter in the preamble of said motion; the said motion should therefore be ruled out under the rules of pleadings. . . .

"6. Because the Constitution of Liberia in providing that each house of the Legislature shall be judge of the election returns and qualification of its own members, has provided a remedy that is merely cumulative and concurrent with that of the common law remedy of Quo Warranto. . . .

"8. Because the Act of 1868–69 providing for the contesting of seats, although not precluding proceedings in Quo Warranto, nevertheless is unconstitutional, in that it bestows power upon the Legislature not granted by the Constitution."

On the 22nd day of November, 1927, the matter was duly heard, the first thing claiming the attention of the Court being the objection to the motion to dismiss the application which was not sustained for the following reasons:

It must be here remarked that where a party is called upon to show cause why a remedial writ for which he has applied, should be granted, the same strictness is not observed as in ordinary pleadings.

Where there is want of jurisdiction, the Court of its own volition may without a motion deny the application. In a quo warranto procedure, any person may as *amicus curiae* apply to the Court to dismiss the cause for want of jurisdiction. The rules of court provide that if the matter should involve in any way the rights of the Republic, the Attorney General or County Attorney shall have notice of the application, if the court of justice shall deem it necessary: in such case the Attorney General is regarded as representing the public. In the case at bar, the Clerk was instructed by the Court to notify the Attorney General of the application for the writ of quo warranto whether the Attorney General applied to the Court verbally or in writing.

Where the cause of action is not within the jurisdiction granted by law to the tribunal, it will dismiss the suit at any time when the fact is brought to its notice. The rules therefore with respect to licenses, stamps, etc., do not apply in these preliminary proceedings. Before proceeding to discuss the motion to dismiss, the nature of the writ of quo warranto must be ascertained and in what case it may be used.

Blackstone defines it as a writ of right for the King against him who claims or usurps any office, franchise or

liberty, to inquire by what authority he supports his claim in order to determine the right. It lies also in case of non-user or long neglect of a franchise or mis-user or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise having never had any grant of it or having forfeited it by neglect or abuse. 3 Blackstone *262.

In modern practice it is applied (1) To cases in which the Government commences an action to recover an office or franchise from the person or corporation in possession of it; (2) To cases in which there is a dispute between party and party about a right to a corporate office or franchise; and (3) To decide upon the title to an office; this brings us to the consideration of the question whether a writ of quo warranto is the proper remedy in an election contest.

In *Ruling Case Law* it is said that a state constitution ordinarily makes each branch of the Legislature the judge of the qualification, election and returns of its own members, and said jurisdiction has universally been held exclusive. 22 R.C.L. 664, § 6.

The Constitution of Liberia provides that each branch of the Legislature shall be judge of the election returns and qualifications of its own members. Constitution of Liberia, art. II, sec. 8. And the Legislature of Liberia, acting upon said provision of the Constitution, has provided a mode of procedure for the trial of contested elections. Acts of Legislature 1868–69, 24.

The contention of counsel for petitioners, that the Legislature transcended constitutional bounds by inserting the word "sole" in the Act, is absurd. The spirit and intent of article II, section 8 of the Constitution of Liberia is to make each branch of the Legislature sole and exclusive judge of the election returns and qualifications of its own members, and the Legislature had a constitutional right to so declare. In so making, the power of the Legislature is transcendent.

Blackstone in his *Commentaries* says (*91), "There is no court that has power to defeat the intent of the legislature, when couched in such evident and express words, as leave no doubt whether it was the intent of the legislature or no," unless, we may add, it infringes some provision of the Constitution.

The action brought by the petitioners is a frivolous and vexatious suit and one brought maliciously and without probable cause.

On the application for a mandamus in *Anderson* v. *Williams,* — L.L.R. — ( ), a bill in equity for relief against a fraud, the Chief Justice in denying the writ alleged *inter alia* that the Legislature having prescribed the manner in which contested elections may be tried and determined, no other mode of procedure could be resorted to.

Notwithstanding this ruling, the counsel for petitioners have brought this action and have falsely and publicly asserted that this mode of procedure was suggested by the Chief Justice and that permission was given by him for the filing of the case. This action on the part of counsel for petitioners is highly reprehensible.

It appears, too, that the Clerk of this Court acted in collusion with said counsel, by falsely alleging that the Chief Justice had given permission to said counsel to institute this action.

The question raised in the petition of relators is solely within the province of the Legislature to try and determine. It follows therefore that this Court has no jurisdiction over the subject matter.

The application is therefore denied, and relators ruled to pay the fees of the officers of this Court, counsel for the said relators being held personally responsible for the payment of said fees forthwith. And it is so ordered.

Application denied.