

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. Y009/89

BETWEEN RUPERT ASHLEY YOUNG PLAINTIFF
A N D PRESIDENT OF THE FIRST DEFENDANT
METHODIST CHURCH IN THE
CARIBBEAN AND AMERICAS
A N D THE JAMAICA METHODIST SECOND DEFENDANT
DISTRICT
A N D THE M.C.C.A TRUST THIRD DEFENDANT
CORPORATION

Miss M. Brown for Plaintiff

Mr. D. Goffe instructed by Myers Fletchers and Gordon for Defendant.

heard: 21st February, 1990

Master:

Plaintiff's summons for direction herein returnable on 7th February, 1990 was adjourned to 21st February and Defendant's Attorneys in the meanwhile filed a notice under Section 272 of the Civil Procedure Code invoking the provisions of Section 323 which reads:

"... if it appear that there is, in any cause or matter a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried ... the Court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case, or in such manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may render thereupon be stayed."

Endorsed on plaintiff's writ of summons was a claim for damages for breach of contract and/or wrongful dismissal and an epitome of the items thereof, this statement of claim filed on 29th August, 1989 began with a narrative of an agreement between the Methodist Church in England administered locally through its overseas Department called the Missionary Society (the Methodist Church) and himself.

The Church at its is "Conference" had agreed to employ him, he agreeing to serve them as a Minister of Religion in the Jamaica District from 1st September, 1960, the effective date of this appointment.

Up until 1st September, 1988 when he was dismissed he had served the Jamaica District, an integral arm of the First Defendant, the latter itself not a corporation sole with capacity to hold property, to sue or be sued. The second and third Defendants, respectively are each ancillary to the first Defendant.

Plaintiff contends that the agreement for his employment was partly in writing and partly by custom established; the written portion being contained in a documentation called "Polity and Practice of the Methodist Church." Furthermore, when the administration of the Methodist Church was transferred to the First Defendant, the terms of Plaintiff's employment were embodied in a book entitled: "The Constitution and Discipline of the Methodist Church in the Caribbean and the Americas."

The Defendants in their defence filed on 3rd November, 1989 deny the existence inter se of the hierarchical structure as averred in paragraph 4 of the Statement of Claim.

Although they admit that the Plaintiff had always served in the Jamaica District, they maintain that the Plaintiff had been "received into full connection" vis-a-vis the Methodist Church and its Ministry but that those events did not constitute at all the creation of a Contract of service.

In reply, the Plaintiff insists that his "offer" to the Ministry followed by specialized training at the expense of the Methodist Missionary Society and at his own expense; his "acceptance" on probation followed by his full-time appointment as a Minister, all together constituted a contract of employment. He sought support from the fact of Defendants compliance with the statutory obligations of employees by way of deductions from his stipend for Education tax, and contributions to the National Housing Trust and National Insurance Act funds.

The pleadings reveal, submits Mr. Coffe, that fundamental to the issue is the existence or not of a legally enforceable contract. Since many of the facts were not in controversy, the proposed proceedings by way of special case were all the more appropriate.

Resisting this application, Miss Brown submitted that such a course would effectively pre-empt interrogatories which Plaintiff would be seeking. She conceded however, that the special case could effectively resolve the issue were Defendant's contention successful.

A similar issue although in another form arose in the case of President of the Methodist Conference vs. Parfitt - (1983) 3 AER of p. 747. The Court of Appeal entertained the appeal by the Methodist Church against the dismissal (by a majority) of an appeal to the Employment Appeal Tribunal. This body had dismissed the Church's appeal against a ruling of an industrial dispute tribunal which had upheld Mr. Parfitt's contention that his was a contract of service with the church on the basis of which the tribunal was competent to exercise jurisdiction and consider his complaint.

Dillon L.J. not denying the function of the tribunal to find facts said at page 750 -

"... an appeal lies to the Employment Appeal Tribunal, and a fortiori to this court, on questions of law."

Asking rhetorically whether or not there was scope for an appeal to the Court, he replied affirmatively:

"It seems to me that there is. The conclusion of the majority in each court has been based not on any special circumstances applicable to the respondent, but on their interpretation of the CPD, which applies to all ministers alike, and of the general law. It would be open to a differently constituted industrial tribunal to reach an opposite conclusion, based on the same texts of the CPD, in the case of some other minister. That would be most unsatisfactory, if no appeal lay."

What is demonstrated in the Parfitt's case as well as the present is the fundamental importance of determining the contract-status in law of the Plaintiff's services.

No disadvantage by way of procedure would enure to Plaintiff as contended and this, accordingly, makes a reference by way of Special Case under Section 323 of the Code as was ordered, more eminently suitable.

The above notwithstanding, leave was granted to the Plaintiff to pursue an appeal.