

**FOREIGN MISSION BOARD OF THE NATIONAL BAPTIST
CONVENTION, U.S.A., Inc.,** by JOHN B. FALCONER, Supervisor of Missions
in Liberia, Appellant, v. **J. W. GRANT**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Argued November 16, 1950. Decided May 11, 1951.

1. A servant is entitled to damages for wrongful dismissal before the end of the term for which he is employed.

2. To justify dismissal of a servant for disobedience before the termination of an employment contract, the master must show that the disobedience caused injury to him.

Reverend Grant, appellee herein, sued the Foreign Mission Board, appellant herein, for breach of a contract of employment. The suit was dismissed in the lower court upon the pleadings. On appeal to this Court, the judgment was reversed and the case remanded for trial. *Grant v. The Foreign Mission Board*, to L.L.R. 209 (1949). Appellee was thereafter awarded damages by the Circuit Court of the Sixth Judicial Circuit. On appeal, *judgment affirmed*.

Momolu S. Cooper for appellant. *T. Gyibli Collins* for appellee.

MR. JUSTICE BARCLAY delivered the opinion of the Court.

The Foreign Mission Board of the National Baptist Convention secured the services of Reverend J. W. Grant by written contract for a period of three calendar years certain at a salary of two thousand four hundred dollars a year, commencing January 1, 1947, to serve in Liberia.

Accordingly Reverend Grant proceeded to Liberia and was taken by Reverend John B. Falconer, Supervisor of Missions in Liberia, to the Suehn Industrial Centre, a field of work of the said Foreign Mission Board.

A few days after Reverend Grant commenced work, he became seriously ill, and had to be brought down to Monrovia and placed in the Carrie V. Dyer Memorial Hospital, where his case was diagnosed as diabetes. Because of the difficulty of procuring a

sufficient quantity of insulin, it was recommended that Reverend Grant be sent home to the United States for treatment. Fortunately, however, the little insulin that the hospital procured from the Firestone organization brought such a speedy recovery that the patient was discharged thirty-three days from the time of his admission.

When advised he would be sent home for treatment, Reverend Grant refused to go. Reverend Falconer, however, insisted that Reverend Grant leave Liberia, and so informed the Board. Subsequently, Reverend Falconer received instructions to inform Reverend Grant that he should leave by the first available transportation. Reverend Grant then communicated with Dr. C. C. Adams, corresponding secretary of the Board, and requested to be told the reason for his recall, as he was willing and able to work. In reply, Reverend Grant received the following radiogram : "Will pay wife as requested. Will be there in May. Foreign Mission Board, C. C. Adams." Reverend Grant then definitely decided to await the arrival of Dr. Adams.

Upon the arrival of Dr. Adams in Monrovia he called a conference with Reverend Falconer, Reverend Grant, and himself. There is in the record a divergence as to what was decided at this conference. Falconer contends that Reverend Grant promised to return home; while Grant states that he never made any such promise since he was not ill and was able to work. There is no testimony by Dr. Adams regarding the conference.

As nothing definite was settled, Reverend Grant, under Paragraph "6" of his contract of employment, communicated directly with the Executive Board of the Baptist Convention, and, on June 14, 1947, wrote as follows to Reverend Falconer :

"I beg to inform you that, in accordance with my agreement with the Foreign Mission Board of the National Baptist Convention, U.S.A., Paragraph `6,' any question or questions that cannot be settled to the satisfaction of both parties shall be referred to the Executive Board of the National Baptist Convention.

"I have referred this matter to the Board and I will not leave Liberia until this matter is settled.

"I would have gone to Suehn to cut expenses but since you have objected to my going to Suehn I will remain where I am living. I am sorry that this had to be done and I hate to refer this matter to the Board. I had rather forget it to be settled without doing so. A square deal is what I want, and you know that I am not getting a square deal."

Paragraph "6" of the agreement referred to reads as follows :

"The party of the first part and the party of the second part mutually agree that, in case any question should arise in the fulfilment of the articles of this contract that cannot be settled to the satisfaction of both parties, such question or questions shall be referred to the Executive Board of the National Baptist Convention, U.S.A., Incorporated, and hereby agree to accept the findings of the said Board as final and binding."

The only reply that Reverend Grant received to his submission to the Executive Board, made in accordance with Paragraph "6" of the agreement, was an insulting letter, not from the Executive Board but from Dr. Adams, Corresponding Secretary of the Foreign Mission Board, who had by that time returned to the United States, and who wrote as follows :

"To my surprise I have just received your communication to the Executive Board of the National Baptist Convention refusing to comply with your promise made faithfully to me while I was there. Definitely, Grant, you are a nuisance and I shall assume no further obligation except to bring you home as I promised. You have made yourself a laughing stock in all Liberia; and now after you have proved your unfitness in every way, you attempt to appeal to the Board. It will do you no good ; and if you want to meet the Board you will have to come home and do it in person. You can't do it there ; and in that case you will force me to tell all the unworthy and untrustworthy things about you which I would hate to do. You definitely lied about receiving the money from your wife. I have seen the letter you wrote her in somebody else's hand, acknowledging that you received the money, and she has a receipt for sending it. You told me that you hadn't received it and was accepting other money from Major Falconer; and at the same time running up a big board bill and dental bill, which I agreed to have Rev. Falconer pay and furnish you with a ticket and sufficient money to get home without embarrassing yourself. That is the last thing that will be done.

"You have questioned my integrity and fairness in dealing with Major Falconer. The whole National Baptist Convention as well as the Executive Board have utmost confidence in me. Now if you care to put your unknown quantity and lack of influence, ignorance and inability up against mine, I welcome you to come home and do it; but it cannot be done as long as you are in Liberia.

"Please do not write me anymore. I do not care to hear from you unless you conform with your promise. You are absolutely so lazy that you couldn't get up and look after your own interest on the day I left there, and how could you look after somebody else's interest?"

"True, you may be still sick, and that makes me have what sympathy I have for you. You should come home and get well and get your mind balanced."

Reverend Grant also received the following communication from Reverend Falconer under date of June 19, 1947:

"This is to acknowledge receipt of yours of June 14, 1947, and to inform you that I have noted the contents of same, and am preparing to forward such information to Philadelphia office.

"As to your returning to Suehn, I feel that since you do not recognize the authority of the Board, its Secretary nor its appointees, we have no further responsibility for your lodging. It is my opinion that as of June 1, your services in the West African Work of the Foreign Mission Board came to an end and I was so ordered to arrange lodging for you until you left on the first available transportation. Since you have informed me that you are not leaving Liberia, I want you to know that this office feels that its responsibility in this matter is ended. From now on you will address your communications to the Executive Board of the National Baptist Convention who in turn will communicate with the Foreign Mission Board in Philadelphia. The Foreign Mission Board will give the instructions in the future. It will not be necessary for you to contact this office on any matter concerning this case."

With reference to Paragraph "6" referred to above, we have, already, in an opinion delivered by Mr. Justice Davis at our October, 1949, term, declared invalid the provision therein that the decision of the Executive Board would be final, since, to all intents and purposes, it seeks to oust the jurisdiction of the courts. *Grant v. Foreign Mission Board*, 10 L.L.R. 209 (1949).

In the meantime, it has to be understood that the contract refers to two distinct boards—the Foreign Mission Board and the Executive Board of the National Baptist Convention : the former a party to the contract, and the latter a board of reference to decide disputes which might arise under the contract.

We have searched the records before us and have not succeeded in discovering any

communication from either of the boards addressed to Reverend Grant recalling him home. Moreover the contract contains no provision granting the Foreign Mission Board the right to recall Reverend Grant for the purpose of utilizing his services elsewhere than in Liberia. There is a letter addressed to Reverend Grant from Reverend Falconer stating that he had received written instructions from the Foreign Mission Board to send Reverend Grant home, and to arrange for his transportation. Since, from the evidence, the dispute was between Reverend Falconer and Reverend Grant, it is certainly strange that, throughout the whole case, no letter from the Foreign Mission Board addressed to Reverend Falconer, as supervisor of its mission in Liberia, instructing him to notify Reverend Grant of his recall home, and to arrange for his transportation, was produced. Even after Dr. Adams arrived in Liberia, no mention was made of any letter of recall; nor did Dr. Adams refer to any in his insulting letter to Reverend Grant, but merely mentioned something about Reverend Grant's promise, during the conference, to return home. Therefore there was no such understanding between the parties as would have given to the Board the right to compel Reverend Grant's recall as long as he was willing and able to work, except at the expiration of the three-year contract.

Coming now to the bill of exceptions upon which the review of this case is founded, there are only four counts.

Count "1" refers to the defendant's objections to the following question put to Reverend Falconer on cross-examination : "Can you say whether Reverend Grant has been paid in full for the period of years that he has been engaged for?"

Our statutes provide that a witness may be cross-examined on any matter touching the cause or likely to discredit him, but he shall not be asked irrelevant or hypothetical questions for the mere purpose of entrapping him. Rev. Stat., sec. 371. In our opinion the question was quite within the scope of the cross-examination, since it referred definitely to one of the questions involved and tended to throw light on the case.

The other three counts refer respectively to the verdict, denial of motion for new trial, and judgment, as contrary to the evidence, law, and instructions of the court.

A careful study of the evidence indicates some underlying motive to have Reverend Grant recalled other than his illness. Notwithstanding Reverend Grant's repeated assertions that he was willing and able to perform his part of the contract, Reverend Falconer continued to insist that Reverend Grant return to the United States. More-

over, in support of the doubt that any instructions were written by the Foreign Mission Board relating to Reverend Falconer's request that he go home for treatment, there is the radiogram to Reverend Grant from Dr. Adams dated March 31, 1947.

There was no confirmation of the purported cable instructions and letter dated March 10, 1947, from Dr. Adams for Reverend Grant to proceed home immediately so as to reach America not later than April 1, as the secretary was about to depart on an extensive tour on April 2, 1947.

In order to clarify the situation, we insert the letter of March 20, 1947, from Reverend Falconer to Reverend Grant:

"In accordance with cabled instruction dated March 10, 1947, and letter dated of the same date signed by C. C. Adams, Corresponding Secretary of the Foreign Mission Board of the National Baptist Convention, U.S.A., Inc., I wish to inform you that you are ordered to return to the States by the first of April, 1947. The Secretary in his letter spoke urgently of the necessity of your being home before that date in order that he might see you before he departs for an extensive tour on the and of the same month.

"I wish that you would reply definitely in writing just what you plan to do. I anticipate making your reservation on tomorrow for the trip home. Please make your reply in writing so that I can know just exactly what procedure to take.

"I wish to inform you further that the Secretary stated in his letter that there would be no further salary included in the budget of the West African work for you. He also states that he will not be responsible for your being here after April first.

"Since the Board reserves the right to send out its missionaries and to recall them as it sees best, it is my advice to you that you proceed at once to follow the above instructions. Any other action will place your position with the Board in jeopardy.

"It is requested that you return to Suehn immediately and make preparation for your final departure from there. Transportation will be furnished to facilitate your departure. After you have returned to Monrovia from Suehn, the Supervisor will pay your room rent until departure providing you leave on the first available transportation before the first of April. This will not be done otherwise.

"Please let me hear from you in writing immediately."

It is most unlikely that a simple letter requesting an employee to come home for medical treatment would mention all the matters set out in the above-quoted letter.

In addition to what has been said, there is the unrebutted testimony of Mrs. Grant. We quote the relevant part thereof :

"I returned to the office of the Foreign Mission Board in August, 1947, and told Dr. Adams what Reverend Grant had written me. Reverend Adams said : 'Don't you know the friction between those two? He stated workers wouldn't work with him.' I said : 'What am I going to do about that?—Reverend Grant is my support you know. . . . So what is the contention?' So he said: 'Well, Sister Grant, all that I can say to you, your husband's employment with the Foreign Mission Board is finished. All I want you to do is to help bring him home.' At that time he gave me \$50.00, in August, 1947. I asked him: 'What am I to do?' He replied: 'The only thing I can tell you, trust God ; he is finished.' I said : 'You know, Reverend Adams, my husband was my support. He signed the contract willingly. He had a good job in Philadelphia and was also pastoring a church and you mean to tell me that he is finished?' He replied: 'He is finished because we have no more interest in him.' "

The record shows that Reverend Grant made a final appeal to the Executive Board in accordance with his contract, but said appeal was apparently ignored, since there was no reply except from Reverend C. C. Adams, by letter, as Corresponding Secretary of the Foreign Mission Board, and not from the Executive Board itself, informing Reverend Grant in no uncertain language that his appeal to the Executive Board would be futile even if he came to America in person.

There was nothing further for Reverend Grant to do. It is also clear that, from the period of Reverend Grant's discharge from the hospital until the filing of this case, there has been no evidence of recurrence of his illness; for Reverend Falconer, himself, testified that Reverend Grant continued to live in Monrovia and preached extensively in local churches. Clearly Reverend Grant was correct when he insisted that he was able and willing to work.

Another significant and uncontradicted fact is shown by the testimony of Dr. Townsend that, when he asked Dr. Adams why Reverend Grant was dismissed, and whether the cause was physical or psychological, Dr. Adams replied that it was psychological.

Hence we are of the opinion that there was a wrongful dismissal.

"The servant is entitled to damages for the wrongful dismissal without cause before the expiration of the term for which he was employed. The same rule applies when no services are performed on account of the employer's wrongful conduct; if he puts it out of the employee's power to perform, the latter need not make an offer." 3 Sutherland on Damages 2545 (4th ed., 1916) ; *Hildebrand v. American Fine Art Co.*, 109 Wis. 171, 85 N.W. 268, 53 L.R.A. 826 (1901).

With reference to the alleged disobedience, the general rule is that such an act to justify dismissal must involve injury to the master. This was not shown.

The judgment is affirmed with costs against appellants.

Affirmed.

MR. JUSTICE SHANNON, with whom MR. JUSTICE DAVIS concurs, dissenting.

Since we have found ourselves in disagreement with our colleagues, I am reading and filing this dissenting opinion.

On January 1, 1947, an agreement was entered into between the Foreign Mission Board of the National Baptist Convention, U.S.A., Inc., appellant, and Reverend J. W. Grant, appellee, in Philadelphia, Pennsylvania, U.S.A., whereby appellant agreed to engage appellee as missionary to be sent to Liberia to work in doing "such missionary work, mechanical and construction, as may be required for the welfare of our work in Liberia." Upon the strength of this agreement, appellee came to Liberia in company with appellant's representative, Reverend John B. Falconer, and received an assignment at its Suehn Mission Station. It is to be observed that there is an express stipulation in Clause "2" of said agreement, on the part of the appellee, that he "agrees to work faithfully and in harmony with the framework of the institution and the spirit of the Foreign Mission Board of the National Baptist Convention, U.S.A., Incorporated." This would imply compliance on the part of appellee with instructions which might be given him from time to time by appellant within the framework of the institution and the spirit of the Foreign Mission Board.

Not long after appellee's arrival in Monrovia with the Reverend Falconer, and his taking over his assignment at Suehn, he became seriously ill, and had to be brought down to Monrovia and hospitalized at the C. V. Dyer Memorial Hospital, commonly known as the Baptist Hospital. He was suffering from an acute case of diabetes

which sometimes practically reduced him to a state of coma. Because of this, the doctor who examined and was treating him advised Reverend Falconer to arrange appellee's return to the United States of America immediately, since drugs and medicines were lacking for treatment of diabetes. To give a clear picture of the situation created at the time, from which it has to be judicially decided whether appellant violated the contract in a manner which would render it liable in damages to appellee, we elect to give first the testimony of appellant's witnesses and then contrast that testimony with that of the appellee and his witnesses.

Reverend Falconer testified as follows :

"Reverend Grant and I went to Suehn and I returned to Monrovia about the second of January; and, a day later, Reverend Grant came down with the workers who were to appear at the Department of Education. At the conclusion of that day's investigation, Reverend Grant drove the pickup back to White Plains. I was surprised to receive a letter from Mrs. M. M. Davis, Principal of Suehn Mission, informing me as Supervisor that Reverend Grant, in the settlement of Millsburg, had taken the keys from the pick-up, and refused to turn them over to the regular driver. In fact, without considering anyone else, he took the pick-up and went to Firestone, where he had never been before and had been stressed by me not to go. The letter from Mrs. Davis stated that Reverend Grant acted peculiarly when he returned, as if he was not in his right mind. In the letter she concluded by saying, 'He finally gave up the keys with the words, "I want to show you that I have more sense." ' This was done in the presence of students and members of the faculty.

"On the seventh of January, I went to Millsburg and there I met the Suehn pick-up bringing Reverend Grant to the waterside. He told me that he was dying and asked me to help all I could. Reverend J. S. Cyrus and I took Reverend Grant from the pick-up, put him into the ferry canoe, and carried him across the St. Paul River to White Plains. He was so sick that I hesitated about trying to bring him to Monrovia and carried him upstairs in the home of one Mr. Saad, a Syrian merchant in White Plains. Reverend Grant kept calling for something cold, and the only thing Mr. Saad had was beer, of which Reverend Grant drank a bottle. I then chartered Mr. Saad's pick-up and paid him fifteen dollars to bring Reverend Grant to Monrovia. On the way down, we had to stop frequently in a feeble attempt to make him comfortable. We arrived at the Baptist Hospital at ten o'clock that night, and I placed Reverend Grant in the hospital, and Saad and I went out to look for a doctor.

"After going to the residences of several physicians and finding no one, we were told

that several important persons were attending a party at Crown Hill. We went there and I rushed into the house and asked for a doctor. Dr. Manly responded. I told him that it was a case of emergency and asked him, as an old friend, to come out to the hospital and see Reverend Grant. He agreed to do so and left the party and went with me to the hospital. When we arrived there, Reverend Grant was still giving evidence of a strange pain. Dr. Manly questioned him in my presence and was told, by Reverend Grant, whenever he was able to answer, that he hurt all over. Dr. Manly instructed the hospital personnel what to do and Reverend Grant was made comfortable.

"The next day, Dr. Manly and Dr. Schnitzer completed their diagnosis on the basis of the specimens sent to the U.S.P.H. Laboratory. They informed me that Reverend Grant had an acute case of diabetes, and further instructed me that the only chance to save him was for me to get some insulin within the next day. My first thought was to try the Navy, or Public Health and Sanitation, which had none. In fact, I could not find any insulin in Monrovia. I chartered a car and went to Firestone; I called on Dr. Kindermann, a former friend, and placed my problem before him. Before leaving Monrovia for Firestone, the doctors had informed me that it would be wise for me to make immediate plans to get Reverend Grant back home; so I told Dr. Kindermann that I needed this insulin to help get the patient strong to travel, and that if he could assist me in finding some, I would assure him that I would not have to call on him again. He told me that Firestone had no insulin to sell, but that a child of one of the plantation officials suffered from diabetes and that it might be possible, in view of this emergency, to carry enough of this to assist Reverend Grant. He called Dr. Franz and Dr. Franz agreed that it would [be] possible to let us have a small amount of insulin. They let me have 3,200 units, for which I paid. Whilst at Firestone, I went to Robertsfield and talked with the Pan American agent there. I told him that we had a worker who was seriously ill and asked him whether Pan American would guarantee a reservation to New York. The agent said he would give me the priority on any plane at any time if I brought the patient up. We further discussed the giving of insulin en route home. They stated that Pan American would assist in this matter, and that either a registered nurse hostess on the plane would give the insulin, or contact would be made with the American Embassy in Lisbon, Portugal, for a doctor to be brought to the field. With these arrangements completed, I returned to Monrovia. I gave the insulin to the authorities of the hospital and called on Reverend Grant. His illness had reached such a state that he did not recognize me. . . .

"For the next four or five days I expected to hear that Reverend Grant had passed. After doing all that I could, I cabled the whole story to my Board, and received the

reply to proceed according to the orders of the doctors, or as we thought best. I could do no more, so I went to Suehn to attend to my affairs there. It was quite some time before I returned to Monrovia, and I was pleased to find Reverend Grant much improved.

"I was admitted to the hospital myself, and, during the two weeks I was there, I saw Reverend Grant daily. I was most optimistic but the doctor [Schnitzer] was worried because he told me that he was giving as much insulin as he started with, and again, from time to time. He again recommended that the patient be returned home. After many weeks, Reverend Grant was allowed to walk around the outside of the hospital, and, later, he was allowed to step away from the hospital and come to the hospital only for his injections. One day I called Dr. Schnitzer in, and he brought Dr. Conte with him. At this time, I informed Reverend Grant that the doctors had recommended that we should take him home for further treatment. Dr. Schnitzer confirmed what I had said and Reverend Grant flew into a rage. He first stated that Dr. Schnitzer did not know what he was talking about, and that he, Reverend Grant, knew more about himself than any doctor and no one was going to tell him what to do."

In order to corroborate this very cogent and pertinent testimony of Reverend Falconer, representative of the appellant in Liberia, Dr. Schnitzer, one of the attending physicians, testified as follows :

"I remember having been called in medical consultation by and with Dr. Manly, a medical doctor attached to the U.S.P.H.M. in Liberia, to consult and eventually treat Reverend Grant, who had been admitted seriously ill to the Baptist Hospital, and to whose bedside he had been called by Reverend Falconer. Observation, examination, and especially proof of laboratory findings, made very often at the hospital, and simultaneously at the Public Health Laboratory, revealed severe attacks of Reverend Grant's symptoms. Low fever, great agitation, inability to recognize individuals, involuntary passing of urine in the bed, and many other symptoms suggested a comatose stage due to a large amount of sugar found in the urine of the patient. Subsequently, large doses of insulin injections were urgently advised, and, because of our inability to get them here locally, Reverend Falconer had been asked to go up to Firestone Hospital and ask for the necessary amount to handle and save a typical situation. Having been successful in obtaining from Firestone Hospital fresh insulin which had to be kept on ice, we instituted at the hospital intensive insulin treatment, and were successful in reducing the sugar in the urine almost to no traces of sugar, and recuperating the patient so far as to eliminate an acute danger of life, which

danger incontestibly, upon our laboratory findings and the patient's symptoms, existed at the time of his admission to the hospital. Having had difficulties in obtaining our insulin, not knowing if a steady supply would be available in the future, and having at the time no laboratory facilities, for complicated laboratory examination, especially for the determination of sugar content in the blood, which would give us a fairly right idea about the prognosis of Reverend Grant's case, we could not take responsibility of handling the case without advising Reverend Falconer who had been responsible for the patient. And, to the patient, for further prognoses and further eventual management of the case, it would be strong medical advice that Reverend Grant be sent to the States, leaving it up to the above mentioned examination and treatment as to his return to Liberia. After advising the patient about our joint decision between the two doctors, I do remember that Reverend Grant had been reluctant to accept our advice, expressed himself accordingly, and ceased any further treatment."

The testimony of Magdelene Dennis, Superintendent of Nurses, corroborated substantially the testimony of Reverend Falconer and Dr. Schnitzer, particularly as to the health of the appellee at the time he was taken to the hospital. She testified :

"Reverend Grant was admitted as a patient brought in by Reverend Falconer at about 8 P.M., January 7, 1947. . . . I gave personal care and aid to Reverend Grant; I was on the shift when he was admitted. . . . Upon Reverend Grant's admission, having already given you the complaint, there were symptoms observed which were noted, and the doctor informed. When the doctor completed his examination, and these objective symptoms were seen, orders were given for an immediate laboratory examination test which was carried out by the laboratory at Public Health. The symptoms were restlessness, extreme thirst and hunger. The report was submitted and they found four-plus sugar and three-plus albumin. The case was diagnosed as diabetes. He was then placed on strict diabetic diet and insulin starting with one c.c. a day with bromine for restlessness. The urine was tested regularly before meals and before the insulin was given. The fifth day after admission, Reverend Grant went into diabetic coma. Also a 24-hour specimen was kept of all intake, and output measured ; and, after said 24 hours, the specimen would be tested. Report from urine test showed positive sugar from the time of admission, gradually decreasing to the fifth of February when the report came. From that time, the patient began gradual improvements ; except, when he went for his diet, the test of his urine was found with sugar in it, but not in large quantity. His temperature ranged from 100 degrees, the highest; and his pulse 100 or 102, the highest; respiration 30, the highest. . . . The doctor gave the advice to Reverend Grant himself, in the presence of the nurse in

charge as well as myself, that he recommended that Reverend Grant should go home. He also gave this advice to Reverend Falconer in my presence; and also Reverend Falconer informed Reverend Grant in my presence. I told Reverend Grant also that he should order some insulin for his further treatment, and he said that he would do so and had cabled his wife for it. On the tenth of February he was discharged from the hospital."

In answer to a question: "Will you please make it clear for the records the testimony you gave concerning Reverend Grant's returning home?" Superintendent Dennis testified to the effect that Reverend Grant had told her, as well as the other nurses in the hospital, that he was not going home ; and the Board need not send for him, because he was not going; he loved Liberia and he would stay.

The testimony of appellant's witnesses is not at all intended to deny the execution and existence of the contract, the alleged breach of which is the basis of this action, but rather to deny having breached the contract by showing that appellee, whilst in its service, became seriously ill with diabetes, and had to be hospitalized at its own cost and instance. Furthermore, whilst in this sick condition, appellee was strongly advised by qualified medical consultants and practitioners that he be sent home for better medical attention ; his return to the field was to be contingent upon the result of further examination and treatment given him whilst in the United States of America. It was this advice that appellant's representative sought to follow meticulously.

In his testimony, Reverend Grant does not deny substantially any phase of the evidence given by the appellant's witnesses ; but, rather, in a subtle manner, he seeks to question the weight, sufficiency and propriety of the medical advice which necessitated a recommendation for him to be sent home for further and better treatment. He further seeks to insinuate complicity between the doctors and the local representative of the appellant to create a ruse of his serious illness and health condition, with the resulting advice that he be sent home. But there is nothing to warrant the acceptance of such a suggestion, which apparently was swallowed by our colleagues.

To my colleague, who joins me in this dissent, and myself, the kernel of the case is whether appellant breached the contract by refusing to accept and follow the advice given by competent medical practitioners. In the light of the record, it would appear that Reverend Falconer exercised good judgment in trying to follow the recommendation and advice of the doctors, and commencing arrangements necessary to its effectuation. In our opinion, it would bring into disrepute the prestige of qualified

physicians, as well as challenge their integrity, to pronounce against the wisdom of following their advice in matters properly within their professional field. If nothing serious has since happened to the appellee to evidence the correctness of their advice, that fact, if true, should nevertheless have no weight in the decision of the case.

"A contract is an agreement entered into by the assent of two or more minds, by which one party undertakes to give some valuable thing, or to do, or omit, some act, in consideration that the other party shall give, or has given, some valuable thing, or shall do, or omit, or has done, or omitted, some act." 1841 Digest, pt. II, tit. 1, sec. 11 ; 2 Hub. 1516.

It is a principle of common law which finds support in our statutes that, to charge another in an action for a breach of contract, the plaintiff must allege and prove that he has performed his part of the contract or was ready to do so but was prevented by facts and circumstances attributable to the other contracting party. 12 Am. Jur. 960, *Contracts*, § 385; 13 C.J. 693, *Contracts*, § 787.

In this case, since the existence and force of the contract has not been controverted, it was necessary for the plaintiff, now appellee, to have shown either that he complied with his part of the contract, or was ready to do so but was prevented by acts not his own or beyond his control. But it has been shown that the basic cause of the inability of appellee to perform his part of the contract was a grave attack of illness, acute diabetes. It should be noted that appellee was able to be at his job only for a period of not over seven days after his employment commenced, as from the first day of January, 1947. He became ill and was taken to the hospital on January 7, 1947, six days thereafter.

The good will of the appellant is shown by the fact that, notwithstanding the above, it was willing to advance appellee sums of money aggregating one thousand five hundred and fifty dollars, at the same time insisting that he should yield to the recommendation and advice of the doctors, appellant being responsible for his transportation, expenses, etc. The subtle and unfairly bent mind of appellee was shown when, in accepting each amount, he would give consent to be returned home in consonance with the advice of the doctors, only to recant subsequently.

Further, the appellant was willing to go to all lengths for appellee when it proposed that, if he further refused to go home upon the advice of the doctors, and insisted upon the continuation of his employment, despite the condition of his health, he should write an undertaking absolving or relieving appellant from any responsibility

should anything happen to him as a result of his continued refusal to return home and of his insistence upon being kept in his employment. This the appellee consented to; but subsequently refused to put into effect; and this is the peculiar bent of mind characterizing the appellee, a mind evincing a desire to make smart money which, in our opinion, should not be encouraged by courts of justice.

It is beside the point to argue and stress that it was not a stipulated obligation on the part of appellant to return appellee home in case of illness, having employed him in the United States and sent him out to Liberia. It would have been against its interest and reputation to have allowed him to linger here.

Under these circumstances, it is our opinion that appellants did not breach the contract in a manner which would entitle appellee to the damages prayed for and awarded him. Instead, the position taken by appellant to follow the recommendation and advice of qualified medical doctors ought to be commended and approved, especially since it is in complete harmony with the basic principles and tenets of the Christian religion, for the propagation and expansion of which both it and appellee are accepted here in Africa.

The judgment of the lower court should therefore have been reversed with costs against appellee. Because this is our position, Mr. Justice Davis and I are withholding our signatures from the judgment of this Court