REVEREND J. W. GRANT, Appellant, v. **THE FOREIGN MISSION BOARD OF THE NATIONAL BAPTIST CONVENTION, U.S.A.**, Incorporated, by Reverend John B. Falcorner, Supervisor of West Africa Mission in Liberia, Appellee.

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

Argued October 31, November 1, 14, 1949. Decided December 16, 1949.

1. An averment in a complaint that defendant made a false publication for the purpose of justifying dismissal of the plaintiff does not constitute an allegation of libel, thereby rendering a complaint for breach of contract duplicitous.

2. Since the jurisdiction of the courts cannot be ousted by private agreements of individuals made in advance, a clause in a contract is invalid which provides that if a question relating to the contract cannot *be* settled satisfactorily by the parties, it shall be referred to a board whose findings the parties agree to accept as final and binding.

On appeal to this Court from a decision dismissing an action for breach of contract on the pleadings, *judgment reversed and remanded.*

T. G. Collins for appellant. *M. S. Cooper* for appellee.

MR. JUSTICE DAVIS delivered the opinion of the Court.

On January 1, 1947, the Reverend J. W. Grant, appellant in these proceedings, made a contract with the Foreign Mission Board of the National Baptist Convention in the city of Philadelphia in the state of Pennsylvania, U.S.A., appellee herein, by means of which contract the services of appellant were engaged as a missionary and mechanic in the Liberian field of appellee's missionary work at a yearly salary of two thousand four hundred dollars for a term of three years certain.

Pursuant to the execution of said written contract, appellant came to Liberia and was assigned duty at the Suehn Industrial Centre of said appellee's missionary work in Liberia. The records certified to us also show that shortly after assuming his assigned duty, appellant became ill and was promptly hospitalized by appellee, and that after recovering his health and indicating his preparedness and willingness to resume duty, he was recalled home by appellee. In doing so appellee asserted that appellant was suffering from diabetes. The facts gleaned from the records also show that appellant

refused to return to the United States at the time and under the conditions then existing on the ground that his health had been fully checked at home prior to his coming to Liberia and that he had been declared and pronounced physically fit. In view of this refusal of appellant, a controversy arose between appellant and appellee's agent or supervisor of the mission in Liberia. This dispute, the records show, was referred by letter to the executive board of appellee. Appellant did not receive any redress from said executive board except what is referred to by him in the records as an insulting letter from the Reverend C. C. Adams , corresponding secretary of said board, dated June 19, 1947 and prior tote receipt of said letter his services had been terminated' by appellee's supervisor and representative here. Consequently, appellant did on November 9, 1948 institute before the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, an action for breach of contract.

Countering the complaint filed by appellant, appellee filed an answer embracing fourteen counts, and the pleadings progressed as far as the rebutter of the appellee. The records further disclose that April 22, 1949 His Honor Monroe Phelps, Circuit Judge presiding by assignment over the Civil Law Court of the Sixth Judicial Circuit, Montserrado County, heard and disposed of the issues of law presented in the pleadings filed by appellant and appellees and, having sustained counts 3 and 4 of appellee's answer, dismissed the action with cost against appellant. It is from this ruling that appellant has fled hither for review.

Recourse to the records shows also that count 3 of appellee's answer which the Court sustained is as follows, to wit:

"And also because defendants say Plaintiff's complaint is further incurably defective and bad for duplicity, and should be dismissed with cost against Plaintiff, and defendants so pray, in this ; that count nine (9) of said complaint embodies two distinct causes of action, namely 'Damages for violation of a Contract' and Libel; which two separate and distinct causes of action are unsuited to the one and the same form of action under our code pleading. Wherefore defendants pray the dismissal of said action with cost against the plaintiff. And this the defendants are ready to prove."

Let us therefore refer to plaintiff's complaint and count nine and see whether a reading and study of the said count as well as the application of the law relied upon by appellee will bring us to the same conclusion and decision arrived at and rendered by the trial judge, to which appellant has excepted and now prays a review by this Court. We quote hereunder count nine of appellant's complaint, to wit:

"And the said Plaintiff further complains of the said defendants, that in furtherance of defendants' intent to injure, harass and embarrass Plaintiff in the wanton, illegal and malicious violation of the terms and conditions of the Contract aforesaid, published of and concerning Plaintiff in their official organ entitled 'the Missionary Herald' of which Reverend C. C. Adams, A.B., D.C., is Corresponding Secretary, 701 Nineteenth Street, Philadelphia, 46, Pennsylvania, United States of America, Volume 4o, No. s March and April 1947, on page 8, under the article entitled : 'we also regret' that Reverend J. W. Grant's health broke down soon after 'landing and we must return him,' a statement wholly untrue and since indeed he has en-joyed good and perfect health in Liberia through the period of his arrival and stay in Liberia and quite contrary to the causes alleged in the letter abruptly terminating Plaintiff's services proferted supra, and marked exhibit 'IT forming a part of Plaintiff's complaint. All which Plaintiff is ready to prove."

It is obvious that appellee's attack upon appellant's complaint is based upon what it considers duplicity in the said complaint. Duplicity as defined by legal writers is double pleading; in other words, blending two distinct causes of action, not suited to the same form of action, in one and the same complaint, which is forbidden by the rules of pleading and practice, as the law does not allow the doubling of a possibility. But let us see and examine appellant's defense against this attack of appellee as contained in his 'reply.' Count two of appellant's reply, which is intended to rebut or contravert the legal soundness of count three of appellee's answer, is as follows:

"Plaintiff further replying, denies the legal soundness of count 3 of Defendants' purported answer charging duplicity in that, there is gross misconception of the construction of count 9 of Plaintiff's complaint, which avers the act of publication in furtherance of Defendants' design at violation of said Contract, by falsely accusing Plaintiff of being guilty of an act warranting his dismissal. Plaintiff maintains and submits that his said averment in the regard does not specifically charge Libel. Said count 3 of Defend-ants' purported answer ought therefore to be stricken from the records, and he so moves. And this the Plaintiff is ready to prove."

It is apparent from the reading and a careful study of this particular count as well as count 9 of appellant's complaint that the averment contained in said count 9 of appellant's complaint, with reference to the publication made by appellees respecting appellant's health condition was not included or stated in said count to constitute a cause of action, nor is it so viewed by us. It is our opinion that appellant having predicated his action upon the breach of a contract between appellee and himself, which grew out of his dismissal by appellee, only made such a statement to show that

appellee in order to justify their dismissing him from office had made this false publication respecting the condition of his health. Therefore it is our opinion that such an averment pleaded in such manner and under such circumstances does not render the complaint one in which there is duplicity. The trial judge therefore erred in sustaining the plea raised in count 3 of appellee's answer.

Passing on to the next exception submitted in appellant's bill of exceptions for our consideration is the judge's ruling on count 4 of appellee's answer, which count we find it necessary to quote word for word :

"And also because defendants say that the Plaintiff has no cause of action against the defendants, in that clause six of Plaintiff's own exhibit 'A' which forms a part of his complaint provides inter alia, that:

`. . . in case any question should arise in the fullfilment of the articles of this contract that cannot be settled to the satisfaction of both parties that such question 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.'

Defendants submit, therefore, that Plaintiff's exhibit `B' being a letter of instruction from his employer, the said Board, to return to the United States, in order to adjust a dispute regarding the state of Plaintiff's health and his fitness to perform his side of the said Contract, it was incumbent upon Plaintiff to comply therewith, but having adamantly refused so to do, he cannot seek to have this Honourable Court vary the terms of his said Contract by means of a speculative action of Damages for the alleged violation of a Contract. Wherefore defendants pray that said action be dismissed with cost against Plaintiff. And this the Defendants are ready to prove."

We shall refer to and quote the trial judge's ruling on that particular point; but before doing this it is necessary that we refer to and review the relevant clause of the contract upon which appellee has based its attack and upon which the trial judge has predicated his ruling against appellant.

Clause six of said contract 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, that 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."

Coming now to the ruling made by his honor the judge, we feel it necessary to quote said ruling word for word :

"The language here quoted is simple and plain. It creates an inhibition against the contractors; it demarcates a boundary line and builds a wall at which a tribunal designated by the contractors would meet, adjudicate and give final decision on all dissatisfaction between the parties on the execution and fulfilment of the terms of the Contract. It binds them to the acceptance of the decision of that body, without recourse to judicial proceedings.

"In legal and logical conclusion, the language means that the contracting parties closed their doors against the Courts of Justice, that they discountenance judicial litigation as to disputes on the Contract and are in agreement that the religious Head Office shall settle disputes growing out of the Agreement.

"We have examined Plaintiff's proferts 'B, ' 'C,' 'D' and 'E' to the complaint and we cannot find in either of these letters, any language that can be interpreted as dismissing the Plaintiff from the service of the Foreign Mission Board of the National Baptist Convention of America. What we discover is that Plaintiff was instructed to prepare to travel to the United States at the expense of his Head Office ; the purpose of which he was ordered to the United States of America to meet the Secretary of said Board is not stated in the proferts and has not been pleaded by the Plaintiff; Plaintiff was instructed to prepare to travel to the United States at the expense of the defendants; he was given a definite period within which he should sail; he was told that his boarding and lodging at Monrovia would be paid up to the date of sailing provided that he complied with the strict instruction of his employer; it is nowhere shown that the Plaintiff was dismissed and that his salary was discontinued.

"The call of plaintiff to the Head Office of his Mission Board and his refusal to go raises a legal question of the authority of the employer over employee: It seems to the Court that if a person is employed his employer has the legal right to order his presence at his Head Office for discussion about the service in which he is engaged ; the employer is bound to compensate the employee when he obediently renders that service and complies with the orders given him.

"It is apparent that some dispute had taken place in Liberia between the agent of the employer and plaintiff and that this information had reached the Philadelphia Office of the Board and hence Plaintiff was requested to go over for consultation. Although he was told that no further salary would be included in the budget of the West African Work of the Board for him, he was not told that he was dismissed, nor was he told that his service was discontinued.

"The first letter on this question is dated March 30, 1947, in which Plaintiff was notified that he was called to America for consultation with his Board and requested to be there by the First day of April, 1947.

"The employer's Agent in Liberia notified Plaintiff that he wanted to hear from him in writing immediately, as to whether Plaintiff would comply with the instructions given him. The Plaintiff refused to comply with these instructions in point of time, and neglected to answer said letter. Quite three months after the date of March 20, 1947 when Plaintiff was ordered to travel to America, he addressed his profert `C' to the Liberian Agent of the employer notifying him that he had referred the dispute between himself and the Agency to the Board in America and that he would not leave Liberia until this matter was settled.

"What perplexes the Court is, why did the Plaintiff adamantly refuse to comply with his instructions? How did he expect his dispute to be settled in his absence from the investigation? Why did he neglect to give the local Agent any information as to his intention until June 14, 1947, quite 3 months after he had received instructions to travel?

"The legal issues raised by the defendant in his answer, counts 4 & 7, are legally sound ; the refusal of Plaintiff to follow up the investigation of the dispute which would have cost him no expense or inconvenience, and his failure to show that his salary was discontinued, go to support the issue of law raised by defendant in Count 4 of his answer wherein he pleaded that Plaintiff has NO LEGAL CAUSE OF ACTION. To this Court, no legal cause for instituting this action exists; the proferts submitted by the Plaintiff with his complaint do not prove from their face that he was dismissed, that his salary was discontinued, and that he was placed at any loss or inconvenience.

"Plaintiff's refusal to comply with instructions of his employer, his neglect to go to the United States of America and there prosecute or defend the dispute before his Board and take its decision in accordance with the provision of his Contract, places

him in an unfavorable position with the Court in bringing this action.

"There are no legal grounds for instituting this action against the defendants.

"In consequence the Court adjudges that the Action be and is hereby dismissed with costs against Plaintiff; AND IT IS SO ORDERED."

From the foregoing ruling it can be seen that the trial judge entertained the view that because of clause six of the contract between appellant and appellee the courts were without power or jurisdiction to adjudicate the controversy between appellant and appellee. We will use his own language : "In the legal and logical conclusion, the language means that the contracting parties closed their doors against the Courts of Justice. . . ."

We fail to see upon what reasoning and what principle or rule of law the trial judge could have predicated such a ruling, for never are the doors of the courts closed against any person or persons, be they citizens or foreigners. The Constitution of our country in article section 6, mandatorily declares that every person injured shall have remedy therefor by due process of law, and that justice shall be done without sale, denial or delay. This provision of our Constitution finds sanction in *American Jurisprudence,* the relevant portion of which we quote hereunder:

"Both in England and the United States it has been decided in a great number of cases, and conceded in an equally large number of other cases, to be settled law that the jurisdiction of the courts cannot be ousted by the private agreements of individuals made in advance, that private persons are incompetent to make any such binding contracts, and that all such contracts are illegal and void as against public policy. Likewise, every contract discriminating between the different courts of the country is generally esteemed to be contrary to public policy and void. Courts are created by virtue of the Constitution and inhere in our body politic as a necessary part of our system of government, and it is not competent for anyone, by contract or otherwise, to deprive himself of their protection. The right to appeal to the courts for the redress of wrongs is one of those rights which are in their nature under our Constitution inalienable and cannot be thrown off or bartered away.

"It is well settled in most jurisdictions that an agreement between parties to a contract to arbitrate all disputes thereafter to arise under the contract is invalid and unenforceable as an attempt to oust the legally constituted courts of their jurisdiction. . . ." 14 Am. Jur. *Courts* § 196 (1938) ; 7 R.C.L. 1646 (1915).

"The courts are agreed that agreements which have a tendency to obstruct or interfere with the administration of justice are contrary to public policy. . . . "It is a general rule that agreements ousting courts of their jurisdictions are invalid. . . ." 12 Am. Jur. *Contracts* § 186 (1938).

It is clear therefore that clause six of the contract, which provides that the decision of the executive board would be binding and final, sought to oust the jurisdiction of the Court. That being so, said provision is to all intents and purposes invalid, illegal, and void, and the trial judge's ruling sustaining appellee's contention on this point and dismissing appellant's action is, in our opinion, reversible error. No contract which seeks to oust the jurisdiction of the courts is valid. The contention, therefore, of appellee in this respect, which they stressed before this bar with forensic eloquence, is in our opinion void of legal merit.

In view, therefore, of the foregoing premises and of the law cited *supra,* we are of the opinion that the judgment of the court below should be reversed and that the case should be remanded to the court of origin in order to be tried upon its merits. Costs of appeal against appellee and it is hereby so ordered.
Reversed.