

THE FOREIGN MISSION BOARD OF THE
NATIONAL BAPTIST CONVENTION, INC., of
Philadelphia, Pennsylvania, United States of America,
represented in Liberia by E. H. BOUEY, their Agent,
Appellant, v. D. R. HORTON and ORA HORTON
his wife, Appellees.

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

[Undated.]

1. Estoppel in pais arises from the acts and declarations of a person by which he designedly induces another to alter his position injuriously to himself. It precludes a person from asserting a fact inconsistent with his previous conduct.
2. Contracts in respect to their modes of solemnization are subject to the rule *locus regit actus*; in respect to their interpretations, to the *lex loci contractus*; in respect to their performances, to the law of the place of their performance.

Appellees, plaintiffs in the court below, brought an action for damages for breach of a written contract. Defendant appeals from a judgment for plaintiff for \$2,040 for damages and costs. *Judgment amended* to allow recovery of \$850.

A. B. Ricks and *G. H. V. Dimmerson* for appellants.
Barclay & Barclay assisted by *Counsellors Brownell* and
R. E. Dixon for appellees.

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

This was an action of damages for the breach of a written contract, brought in the Circuit Court of the First Judicial Circuit, Montserrado County, Judge Nugent H. Gibson presiding by assignment, D. R. Horton and Ora Horton his wife, plaintiffs in the court below and appellees, against the Foreign Mission Board of the National

Baptist Convention, Inc. in Philadelphia, Pennsylvania represented in Liberia by E. H. Bouey their agent.

This case was heard and determined in said Circuit Court at its February term, 1929, Judge Aaron J. George presiding by assignment, verdict and judgment being returned and entered for appellees, in the sum of \$2,040.00 for their damages and all legal costs in this action. From that judgment defendant has appealed and brought the case up to this Court for review by bill of exceptions.

The history of the case may be briefly stated as follows:

On the ninth day of May, 1922, the Foreign Mission Board of the National Baptist Convention, Inc. in Philadelphia, Pennsylvania, United States of America, entered into an agreement with D. R. Horton and Ora Horton his wife in which they contracted to employ the said D. R. Horton and Ora Horton his wife to do Christian mission work in Liberia, West Africa at the Suehn Mission or any other mission to which they might be assigned by the said Foreign Board or its authorized representative in Liberia, which agreement read as follows:

"THESE ARTICLES OF AGREEMENT made and entered into this ninth day of May A.D. 1922, by and between the Foreign Mission Board of the National Baptist Convention, Incorporated in Philadelphia Pennsylvania, hereinafter called the party of the first part, and the Rev. D. R. Horton and wife Ora Horton, Hereinafter called party of the second part.

"Witnesseth as follows:

"1. The party of the first part hereby agrees to employ Rev. D. R. Horton and Ora Horton his wife to do Christian Mission work in Liberia, West Africa, at the Suehn Mission or any other Mission to which they may be assigned by the Foreign Mission Board or its authorized representative.

"2. The party of the second part agrees to proceed to the field of labor and faithfully do all in his power, in the way of preaching God's word and teaching

industry, agricultural and domestic science to the best of their ability, to up-lift the native people in the place where they are assigned by the Foreign Mission Board or its authorized representative in Liberia, West Africa.

"3. For and in consideration of the above mentioned services, the party of the First Part agrees to pay to the Party of the Second Part the sum of Twelve Hundred Dollars (\$1200.00) per annum payable monthly or quarterly. It is expressly understood and agreed, however, that the party of the first part shall pay the travelling expenses of the party of the second part both to and from the field.

"4. The party of the second part agrees to make detailed monthly reports of their Missionary activities and of all finances received, local or abroad, from all sources, and that all monies sent direct from churches here shall be faithfully reported and applied on the salary of the party of the second part or to the general work of the Mission, as may be directed by the party of the first part.

"5. It is further agreed that the party of the second part is to have supervision of the station where he is to labor, under the direction of the party of the first part, its Superintendent, Dr. W. T. Amiger, or his successor.

"6. The party of the first part also agrees to supply means for the equipment and support of the industrial and normal School where the party of the second part is assigned, so far as the funds of the party of the first part will permit, taking the support of the other stations into consideration.

"7. The party of the second part agrees to use every effort to work harmoniously with the Superintendent of Mission, Dr. W. T. Amiger, or his successor, and with all the workers under the Foreign Mission Board and all Christian Workers in West Africa.

"8. It is further agreed that the party of the second

part shall not involve the party of the first part into expenses exceeding one hundred dollars per annum without the written consent of the party of the first Part.

"9. These articles of agreement shall remain in full force and effect for a period of five years (5) from date of sailing of the party of the second part, May 20th 1922.

"IN WITNESS WHEREOF THE PARTIES AFORESAID have hereunto set their hands this 9th day of May 1922.

"WITNESSES Foreign Mission Board, N.B.C. . . , Inc
 Louise Mickins as to A. R. Robinson Chairman
 Bessie V. Blanton as to J. E. East Cor. Secretary.
 Bessie V. Blanton as to D. R. Horton
 Eloise Cosfoa as to Ora M. Horton."

After signing the agreement the following commission was handed Rev. Horton:

"I cannot dare go up to Judgment till I have done the utmost God enables me to do to diffuse his glory.

"Ashael Grant, 1922.

"1880, Commission.

"Office of the Foreign Mission Board of the National Baptist Convention, U.S.A., Evan Building, 701 S. 19th St. Philadelphia, Pa.

"CHRISTIAN GREETING:

"This is to certify that Rev. D. R. Horton of Atlanta, Ga., a member of Reed Street Baptist Church, Rev. E. P. Johnson D.D. pastor, has been duly appointed a Missionary of the Foreign Mission Board for work in Africa and other parts.

"His duties shall be to preach the gospel organize churches and to do all the things incumbent upon an elder or Bishop. Baptist believers, collect funds, to send the gospel light to all people in non-christian lands, especially Africa, British and Dutch Guinea, Russia and British West Indies where our Mis-

sioneries are located. He will be at the service of Pastors or Missionary societies to hold Missionary Mass Meetings, to aid in the return of the Bible Spirit of Mission in our churches.

"Praying God's blessing upon all who hear and obey the divine Master, We are in the love of the Gospel,

"The Foreign Mission Board, National Baptist Convention U.S.A.

"GIVEN AT PHILADELPHIA, PA., THIS 19TH DAY OF MAY A.D. 1922 WITNESS OUR HAND AND SEAL OF THE F.M. BOARD

[Sgd.] A. R. ROBINSON, *Chairman,*

" J. E. EAST, *Cor. Secretary.*"

SEAL.

In pursuance of said agreements, appellees proceeded to the mission field in Liberia, and for some time things moved smoothly, apparently to the satisfaction of all parties.

In the year 1924 Dr. East, Corresponding Secretary of the Foreign Mission Board, visited Liberia (Monrovia) and wrote an article in the *Mission Herald*, the official organ of said Church, which reads as follows:

"July 1924

"Let us not neglect to tell you of the great Bassa Church in Monrovia, started by the Rev. Mr. Horton last year. Our duty on the first Sunday we spent in Monrovia was to help conduct a large Baptismal service from this New Church. Rev. Horton who had carried on Mission work at this place has had several Baptisms.

"A church has been formed and a building erected by permission on a piece of ground in the midst of these Bassa people. The tribe feels much encouraged over the outlook. In truth there is a great opportunity for a strong church among the Bassa tribe at that point. So Rev. Horton and his wife were left to

carry on that work which they had started; but the School which Dr. Amiger conducted was moved out to Suehn Station, where our central School is to be conducted."

In the month of June, 1926, appellees received from the Board the sum of £71.4.3, equal to \$350.00, with instructions to establish themselves on the Blyden's Farm, a tract of land recently bought by the Board, near Louisiana or Fendall. Subsequently, however, Rev. Horton wrote to Dr. East as follows:

"I want to assure you that I am perfectly ready to start work there but it is the census of opinion that it is useless and will be a waste of money from the fact that we are in a very excessive rainy season. To employ men to work will be actually paying them for nothing as there will be days when they cannot work because of the rain, then to cut the bush will be difficult and what they do succeed in cutting it will be impossible to clear up."

On August 3rd Dr. East wrote to Rev. Bouey *inter alia* as follows:

"I need not go into a long discussion respecting Dr. Horton. . . . I am sorry that you did not at least find out before you gave him the Three Hundred and Fifty Dollars whether he was willing to go to Blyden's Farm or not. Of course I did not want him to go there just now. We want to succeed on these two buildings before starting to do anything else." Exhibit "12."

Subsequently, to wit, on the 11th of August, 1926, Dr. East wrote *inter alia*, as follows:

"REV. D. R. HORTON, BOX 7, MONROVIA, LIBERIA
WEST AFRICA.

"MY DEAR SIR,

"I cabled you some days ago ordering the return of the seventy pounds or more given you by Rev. Bouey

for the purpose of starting work on the Blyden Farm. Rev. Bouey made a mistake in giving you these funds. I did speak of sending another Four Hundred Dollars (\$400.00) when I understood Rev. Caston was not giving you the Four Hundred Dollars (\$400.00) sent out for the purpose of going out to the Blyden's Farm but our plans were changed altogether after the return of the Missionaries. It was not our purpose to start the Mission station at the Blyden's Farm until after we had succeeded with our building program in Monrovia and Suehn." Exhibit "B."

In the early part of the year 1927, Dr. Horton, having complained to the Board about the non-payment of his salary and allowance, was ordered to proceed to Cape Palmas, and \$200.00 was cabled Rev. Bouey for his expenses on condition that he sign the following:

"THIS IS TO CERTIFY that I Rev. D. R. Horton agree to proceed to Cape Palmas as ordered by the Board and take up the Pastorate and teaching work there if my salary is paid and transportation furnished: A house to live in and money in advance to begin the work there. [The words underscored were added by Rev. Horton.]

"[Sgd.]"

It seems that the money was not delivered to Rev. Horton. Accordingly on March 28, 1927, the latter wrote to Rev. Bouey as follows:

"REV. BOUEY (E.H.)

SUPT. N.B. MISSION, MONROVIA

"SIR,

"I have received information from Dr. East that he has cabled you money for me according to agreement signed sometime ago. He is under the impression that I have received same from you.

"Respectfully yours,

[Sgd.] D. R. HORTON."

Answer:

"REV. D. R. HORTON,

"SIR,

"Yours of today was received and in reply I suggested that you inform Dr. East to the contrary.

"Yours [Sgd.] E. H. BOUEY"

In his letter of May 4th, 1927, Dr. East wrote *inter alia* as follows:

"My understanding is that you have the \$200.00 banked waiting either for Rev. Horton to go to Cape Palmas or for instructions from me what to do with the \$200.00. Of course you were to purchase his ticket to Cape Palmas when he goes and give him the balance on his salary only when you had the assurance that he was going."

On January 26, 1927, Rev. Horton had written as follows:

"THE REV. E. H. BOUEY,
ACTING SUPT. N.B. MISSION
LIBERIA W.C.A.

"DEAR SIR,

"In response to your letter of the 25th inst. I respectfully beg to say, as I have already told you when you mentioned Dr. East's desire of my going to Cape Palmas, but said your information was not official, I told you that I had no other alternative, but to go to Cape Palmas or any other place that the Board should desire me to go. Therefore you will now understand that I am perfectly willing to go to Cape Palmas.

"[Sgd.] D. R. HORTON" Exhibit "H."

It would seem from an inspection of these and similar letters which were put in evidence that the Board wished to dispense with the services of the Hortons without complying with the terms of the agreement, and at the same time to secure themselves from an action of damages for breach of contract as will be seen further from the following clause in the letter of Dr. East, above referred to, dated May 4, 1927:

"Be it understood that we have stopped Rev. Horton's salary from the time you gave him the \$350.00 and told him to go to the Blyden's Farm and he refused to go. When he goes to Cape Palmas, his salary will start again. It was a breach of his contract not to go to the Blyden's Farm when he was directed there by you, a representative of our Board. I think with these facts you are safe with any Court of justice in the world. Of course if Rev. Horton had moved the Church building on the site we bought for it as he agreed to do there would be a different story to tell about this whole matter."

Now we find that Horton's agreement terminated on the 19th day of May, 1927, but that the Board only gave notice on the 4th of May, 1927, that his salary was stopped on account of his alleged refusal to go to Blyden's Farm.

And here we must support the position taken by counsel for appellees that appellant is estopped from setting up that appellees committed a breach of the contract by refusing to go to the Blyden's Farm when ordered to do so by subsequently rescinding the order. (See Estoppel.)

Estoppel in pais arises from the acts and declarations of a person by which he designedly induces another to alter his position injuriously to himself. It precludes a person from asserting a fact by previous conduct inconsistent therewith.

Now the evidence clearly shows that after Dr. East had written appellees to go to Blyden's Farm, he wrote that he did not mean for them to go until certain buildings had been completed.

He cannot now claim that appellees committed a breach of their contract by not going to said farm.

Nor is there any evidence to show that appellees refused to go to Cape Palmas when ordered by the said Board to proceed thither. The condition attached to the

document marked exhibit "E" by Rev. Horton, was in our opinion a reasonable one and yet the amount of \$200.00 sent by Dr. East for the Hortons was not delivered to the latter, nor were arrangements made for settling the Hortons in Cape Palmas.

Coming to the question of jurisdiction which was raised, during the trial of the case, this Court ruled in the case *Cavalla River Company v. Fredericks*, 2 L.L.R. 375 (1920), that contracts in respect to their mode of solemnization are subject to the rule *locus requit actus*; in respect to their interpretation, to the *lex loci contractus*; in respect to their performance, to the law of the place of their performance.

The court below, therefore, had jurisdiction over the case.

With regard to appellees' claim for passage money to America: We will observe that it seems that appellees when they entered into agreement with the Board, were at that time British subjects, living in America. The Board agreed to pay their passage to Liberia and back to their home in America. Having become naturalized citizens of Liberia, this condition is no longer binding upon the Board.

It results from the above reasoning that the judgment of the court below should be so amended as to read that appellees shall recover from appellants the sum of \$850.00; that is to say, one year's salary with the amount of \$350.00 deducted therefrom.

Judgment amended.