

FOTU AND ORS. v. SIONE FONUA.

This is an appeal by the Plaintiffs (Fotu and Ors.) from a decision of the Supreme Court (Hunter J.). In their claim in the Supreme Court the plaintiffs had asked the Court to make an order that an audit be carried out of the books of Free Church, of which the Defendant, Sione Fonua, is the President. The order as asked was made, but the Plaintiffs were not satisfied with the order and appealed to the Privy Council.

On the 8th December, 1961 the Privy Council (Hammett C.J.) after reviewing the history of the case dismissed the appeal in the following judgment :

The Plaintiff-Appellants' claim in the Supreme Court, in their capacity as Chief Trustees of the Free Church of Tonga was —

"For an Order of the Honourable Court on the Defendant for an audit and check of all monies received and spent under the name of the Tonga Free Church by him in his capacity as President or in his personal capacity on the following grounds".

The statement of Claim then set out the five grounds on which this order for an account was claimed.

After a long hearing, the following matters became apparent to the Court below :—

- (1) That the Defendant was the elected President of the Free Church of Tonga under the terms of its Constitution.
- (2) That considerable sums of money had been received by him in that capacity, many hundreds and even thousands of pounds of which had never been accounted for.
- (3) That the Constitution of the Free Church of Tonga does not contain provisions whereby regular accounts must be furnished to its governing body, "the Conference" or audited by any responsible and independent person.
- (4) That there were grounds for believing that the Defendant had not spent all the money he had received on Church affairs or matters authorised by the Conference.

After hearing all the evidence, the learned trial Judge considered that the whole of this internal dispute in the Free Church of Tonga should be ventilated at and resolved by the Free Church Conference due to be held in the near future. On the 18th February, 1960, he delivered an interim judgment reviewing the evidence and expressing his concern for the well-being of the Church and its members. He deferred a final decision on the matter until after the Conference of the Church due to be held in March, 1960 in the hope that the whole dispute could be settled.

Unfortunately the results of the Conference held in March, 1960 settled none of the disputes which had led to this litigation and the matter then came before the Court again.

After hearing both sides again the learned trial Judge delivered a final judgment on 1st July, 1960, granting the Plaintiff-Appellants the relief sought by them, namely an Order directing that an audited account be taken as asked in the Statement of Claim.

By then it had become apparent to the Plaintiffs and their lawyer the relief they really wanted was very much more than a mere order for an account. They now find they require such additional remedies as:

- (1) An order that the Defendant be suspended from his position as Elected President of the Church.
- (2) An order that he refund all monies found to have been received by him and not properly expended on Church affairs.
- (3) An order that the Court convene an extraordinary meeting of the Conference of the Church for the purpose of electing a new President.
- (4) A declaration that any property bought by the Defendant in his own name is held by him as trustee on behalf of the Free Church of Tonga.
- (5) A declaration that certain appointments made by the Defendant of persons to be Ministers were not made properly under the laws and Constitution of the Church.

It is by no means clear that the Plaintiffs are entitled to all of these remedies.

The Plaintiffs have, after asking the learned trial Judge unsuccessfully for further relief in addition to that claimed by their statement of Claim, appealed to the Privy Council seeking some of these additional remedies.

It would appear that this litigation was begun without adequate consideration being given by the Plaintiffs and their lawyers of the terms of the Constitution of the Free Church of Tonga, (of which two of the Plaintiffs were original signatories) nor sufficient thought being given to what relief was in fact required. An order for an account will only bring to light, the facts and the figures in the case. It is of little practical use on its own. On the other hand, the Defendant was only required to plead to and defend that one claim. If other remedies had been sought, the defence might well have taken a different line.

Whilst the evidence in this case certainly reveals an unsatisfactory state of affairs, the Court below would have exceeded its powers had it granted reliefs not sought by the Statement of Claim.

The Plaintiffs asked the Court below for an order for an account and the Court made such an order. It had no power, on the claim before it, to do more.

The Plaintiffs in their appeal to the Privy Council are asking that greater reliefs should be granted than was sought in the Court below. For this reason we feel that this appeal is misconceived.

In our view the Civil Courts should be reluctant to interfere in the internal affairs of a Church unless it is first clearly shown that its members or officers are acting contrary to the terms of its Constitution. In this case we observe that nowhere in the whole of the long statement of Claim filed in this case is there a single allegation that the Defendant has done anything contrary to the terms of the Constitution of the Free Church of Tonga.

For these reasons we do not consider that any grounds have been advanced to us by the Appellant why we should interfere with the decision of the learned trial Judge in this case and the appeal must be dismissed.

We have noted that both sides were awarded high costs in the Court below, amounting to some £900 in all, which were ordered to be borne by Church funds.

We do not propose to make any order for the costs of this appeal.