

CONGREGATIONAL CHRISTIAN CHURCH IN SAMOA v
TAUGA (IOSEFA)

Supreme Court Apia
St John CJ
1 April, 13 May 1981

PRACTICE AND PROCEDURE - Unincorporated Association -
Congregational Christian Church in Samoa - lease void for
uncertainty as to maximum duration - unincorporated association
cannot hold as lessee since there is no proper description of
lessee.

HELD: Nonsuit entered against the Plaintiff

CASES CITED:

- Lace v Chantler [1944] 1KB. 368

Cur adv vult

The Plaintiffs are trustees of the property of the Congregational Christian Church in Samoa (hereinafter called the "Church"), an unincorporated association, and they sue to eject the defendant from a Church and pastors house erected on certain land at Fugalei and more fully described in a document purporting to be a lease dated 21st May 1972. That document recited three named persons as the owners of the subject land and as "lessors" and then names the Church as lessee. Clause 1 thereof is in the following terms:-

"1. THE Lessors agree to lease and the Lessee agrees to take as tenant ALL that the said land and premises rent free for so long as the Lessee shall use the said premises for the purposes of its Church thereon and its Congregation."

Since 1972 the Church has used the premises for the stated purpose. The Defendant was a pastor appointed by the members of the Congregation attending that church. In 1978 the Committee of Elders of the Church resolved that the Defendant preach his last sermon, be disqualified as a pastor and vacate the pastors house and the church. [The Defendant pastor.] Before making their decision a member of the Committee of Elders was approached by some 40 members of the relevant Congregation (which totalled approximately 290) who complained that sections of the congregation were being treated unfairly or selfishly by the pastor. The pastor was given no opportunity to refute the allegations made against him or be heard on them.

On 28 July 1978 the solicitors for the owners of the subject land wrote to the secretary of the Church giving notice of "forthwith" termination of the lease referred to above.

A copy of the constitution of the Church and the standing orders for the committee of Elders, both documents evidencing the contract between the members of the church have been tendered. The possibly relevant passages so far as the appointment and dismissal of pastors are as follows:-

"The subjects that are appropriately discussed in the village church meeting include the reception and the excommunication of Church members and the calling of the pastor. These deliberations and decisions are made in accordance with the instructions and rules for the Congregational Christian Church in Samoa as those are defined by the Minutes of its General Assembly."

In a document entitled "The Revision of Minutes of the Congregational Christian Church in Samoa" the following appears:-

"Calling of Pastors to Villages:

14. When a village Congregation is vacant;

- 1) The village Church member shall meet in the Church. If they are in favour of someone, then the sub-district Elder be called for confirmation. But if they are unable to make a decision, then the sub-district Elder shall conduct a ballot for electing of a pastor.
- 2) If the pastor elected by the village or the sub-district has no ministerial job, nor a job in the Church, then a call be extended to him, and an opportunity be given to him to decide. Likewise, if a call be extended to a theological student.
- 3) In the event of a Pastor or student accepting the Call;
 - a) The District should express an opinion where the pastors village is, whether the District is in agreement
 - b) If the pastor belongs to a different District, this District shall be asked to express an opinion
 - c) If it is someone working for the Church, the Committee concerned shall be contacted for its opinion.

- 4) If the pastor rejected the call being extended to him, or the District, or his own District, or the Church Committee responsible for his work, then the matter shall be referred again to the village or sub-district for election of another pastor.
- 5) If all parties as mentioned above are in agreement, then the pastor is eligible for the call.

Conditions of his call:

- a) The pastor and his family shall not take food or money with them to the village
 - e) The calling shall be of one day and the Induction services be on the same day of arrival in the village, all involved should be in the service and especially the village (congregation)
 - i) A refreshment prepared by the village or the congregation is sufficient for those assembled on this day
 - o) A presentation of traditional respects in any way is not allowed during the day of installation
 - u) The party to call the pastor shall consist of one deacon and two other Church members
- 6) He shall not be a pastor in another village congregation."

No other parts of the two documents appear to be relevant.

At the close of the Plaintiffs case the Defendant moved for a non-suit on the ground that there was no evidence upon which the order of ejectment sought could be made.

The following questions arise for consideration:-

- 1) Is the document dated 31.5.72 a valid lease?
- 2) Is the purported lease void for uncertainty, the purported lessee not being a legal person?
- 3) Are the Plaintiffs the lessees?
- 4) Does the Committee of Elders have power to dismiss a pastor from office without taking into account the view of the relevant congregation?

- 5) If that Committee does have that power is it bound by the rules of natural justice in coming to its decision?

The maximum duration of the term of a lease must be either certain or be capable of being rendered certain before the lease takes effect. For example, a lease for the "duration of the war" was held void for uncertainty in Lace v Chantler [1944] 1KB.368. The expression "for so long as the lessee shall use etc" in the purported lease is in the same category and is therefore void for uncertainty. Additionally, as the church is an unincorporated association there is no proper description of the lessees and this factor also renders the purported lease void. There is therefore no lessee and it follows that only the owners can eject.

This conclusion is decisive of the whole case but as basic problems still remain I will add some obiter dicta on the other issues which may provide some guidance for resolution of them.

The provisions of the constitution and standing orders are vague and uncertain as to the dismissal of pastors from a particular church or his disqualification as a pastor. They lack any semblance of precision. The constitution is a mixture of history, theological dogma and contractual terms making it difficult to separate dogma from contractual terms. There appears to be no provision for amendment of the constitution and therefore unanimity of all contracting parties is necessary to do so.

The power of appointment of a pastor is in the congregation; the implication is that it follows that the power of dismissal resides there in the congregation also unless there is some clear expression to the contrary.

Further, even if the power to dismiss was in the Elders the rules of natural justice have to be complied with in coming to any decision. The pastor should be made aware of the charges against him, be given an opportunity to deny them and have them adjudicated upon by a fair and impartial tribunal.

The purported notice to quit by the owners has no bearing on the issues raised between the parties in this case and therefore I make no comment upon it.

The order of the court is that there will be a nonsuit entered and the Plaintiffs are ordered to pay the Defendants costs.