

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C.040 OF 1983

BETWEEN MARTIN CLARKE PLAINTIFF

A N D CHURCH OF GOD IN CHRIST
JESUS (APOSTOLIC) OF JAMAICA FIRST DEFENDANT

A N D REV. B. S. E. DYER SECOND DEFENDANT

A N D BISHOP S. A. BAILEY THIRD DEFENDANT

W. B. Frankson Q.C., and R. Codlin for the Plaintiff.

Andrew Rattray for the Defendants.

September 23, 24 & 25, 1985; June 17, 18, 19, 20, 1986;
March 9, 10, 11, 12, 1987; and June 16, 1988.

ORR, J:

This case concerns the fortunes of the Institution of learning known as St. John's College hereafter referred to as "the school".

The plaintiff and the Second and Third defendants are Ministers of the gospel affiliated to the Church in various degrees.

The Second defendant the Reverened Dyer is the General Secretary of the Church, the Third defendant, Bishop Bailey the presiding Bishop in Jamaica and the plaintiff a mere minister.

In 1981, the plaintiff as owner and principal of the College purported to sell the same to the Church for which the Second and Third defendants acted as agents.

An Agreement was duly prepared and signed by the three gentlemen, a deposit was paid and the Church took possession of the Institution. Differences arose and the Church decided to call off the deal.

The plaintiff however would have none of this. He filed suit to recover the balance of the purchase price.

The defendants in turn took up the cudgel. Not only was the Agreement so vague and uncertain as to be unenforceable, but their brother pastor had made fraudulent and/or negligent

misrepresentations which had induced them to enter into the Agreement for which they sought rescission.

It is reasonable to assume that the task of eliciting the truth from these purveyors of the gospel would be less onerous than extracting it from lesser mortals prone to prevarication. This was not to be. The Reverend Gentlemen could not even agree on the date on which they first became acquainted.

It is against this background that I shall attempt to do justice in the premises.

THE PLEADINGS

The relevant portion of the plaintiff's claim is as follows:-

- " 4. By an Agreement which is evidenced in writing in two (2) written instruments dated the 15th May, 1981, the plaintiff agreed to sell and the First defendant to buy the Institution of learning known as St. John's College situated at 1 Caledonia Avenue in the parish of Saint Andrew, together with office furniture and equipment. The said Agreement contains inter alia the following terms:-
- (a) That the consideration for the said college and equipment was \$200,000.00;
 - (b) The first \$100,000.00 should be paid in quarterly instalments;
 - (c) The Second and Third defendants personally undertook to ensure the payment of the purchase money aforesaid to the plaintiff.
5. That the First defendant made a payment of \$24,000.00 in or about the month of May, 1981 and thereafter despite several requests by the plaintiff oral and written the defendant has failed to make any other payments.
6. The plaintiff will say that the Second and Third defendants undertook in writing to pay the sum which represents the sale price of the said school on behalf of the First defendant. The said undertaking constitutes a guarantee and the Second and Third defendants are therefore to pay the sums to the plaintiff, the First defendant having failed so to do.

WHEREFORE THE PLAINTIFF CLAIMS

The sum of \$176,000.00
Interest thereon at such rate and for such period as the Honourable Court deems fit.
Such further or other relief as the Court deems fit ".

In the Amended Defence and Counter-claim inter alia:

- (a) The defendants say that by an Agreement evidenced in writing by two written instruments dated 15th May, 1981, the plaintiff agreed to sell and the First defendant agreed to purchase premises known as ST. JOHN'S COLLEGE, situate at 1 Caledonia Avenue in the parish of Saint Andrew;
 - (b) In accordance with the said Agreement, the First defendant paid the sum of TWENTY FOUR THOUSAND DOLLARS to the plaintiff on account of the first deposit on or about the 15th May, 1981;
 - (c) In breach of the said Agreement, the plaintiff has at all material times been unable to pass title to the premises due to the fact that he was not the registered proprietor of the said premises;
3. Alternatively, the defendants say that the Agreement to purchase the premises known as St. John's College situated at 1 Caledonia Avenue is so vague and indefinite that it cannot be ascertained with reasonable certainty therefrom what was the intention of the parties and there is no contract enforceable at law.

In furtherance of the above, the defendants say that:-

- (a) It is vague and uncertain therefrom as to what is the purchase price, namely whether the provision of TWENTY-FIVE THOUSAND DOLLARS as representing the plaintiff's share in the venture should be deducted from whatever was due to the plaintiff as purchase money or not;
- (b) It is vague and uncertain therefrom as to what assets were intended to pass with the sale of the Institution known as St. John's College;

- (c) It is vague and uncertain therefrom as to what would be the payment dates of the purchase money even if the purchase money itself was capable of being ascertained;
- (d) It is uncertain therefrom whether or not the land, 1 Caledonia Avenue passed with the sale;
- (e) It is uncertain what financial interest the plaintiff would take in the undertaking and how losses would be shared.

The defendants therefore claim that the agreement or instruments should be rescinded with all proper consequential directions in particular repayment of the sum of \$24,000.00 to the Second and Third defendants with interest.

4. Alternatively, if, which is not admitted, the agreement or instruments are enforceable, the defendants say that the plaintiff made certain fraudulent and/or negligent representations and/or warranties which were untrue knowing that the defendants were relying upon same in making a decision whether or not to enter into contractual relations with the plaintiff.

Further that there was a special relationship between the plaintiff and the defendants which imposed a duty of care on the plaintiff to exercise due care in making the representation in that it was intended that the plaintiff would be taking a **financial** interest in the undertaking which would be sold to the defendants.

The untrue, fraudulents misrepresentations or negligent misrepresentations or warranties made by the plaintiff to the defendants are as follows:

- (a) That the property 1 Caledonia Avenue would pass the sale as one of the assets which the defendants would require as part of the consideration for the payment of the purchase money when in fact the

plaintiff knew that he did not own the said property;

- (b) Representing that there were 300 students of the college paying fees totalling \$26,625.00 when in fact (which he well knew) there were only 136 students payment \$12,765.00).

The defendants alternatively claim that the Agreement should be rescinded for fraudulent misrepresentation and/or for negligent representation or warranties or for breach of a duty of care.

- 5. The Second and Third defendants say that they did not guarantee the obligations, if there be any, of the First defendant and agreed only to pay the first deposit of \$25,000.00 (of which they paid \$24,000.00 to the plaintiff).
- 6. If, which is not admitted, the Second and Third defendants did guarantee the First defendant's obligations to the plaintiff, if there were any, they are not liable to the plaintiff for any sum whatsoever as the Instrument of 15th May, 1981, so guaranteed is unenforceable in law and liable to be rescinded for the reasons set out respectively in paragraphs 3 and 4 of this Defence.

COUNTERCLAIM

- 7. The defendants counterclaim against the plaintiff for the following relief:-
 - (a1) Damages for breach of contract;
 - (a2) A declaration that the Instrument dated 15th May, 1981, are so vague and indefinite that they are unenforceable at law;
 - (b) Alternatively, rescission of the Instruments on the ground of fraud with all proper consequential directions including the repayment to the defendants of the sum of \$24,000.00 with interest thereon in such sum and for such period as the Court deems fit and damages;

- (c) Alternatively, rescission and/or damages for fraud or for negligent misrepresentation and/or breach of a duty of care and/or breach of warranty;
- (d) Further or other relief;
- (e) Costs.

The plaintiff filed a reply -

THE CASE FOR THE PLAINTIFF

The school was started by the plaintiff's father who closed it in 1968, two weeks before his demise.

In 1974, the plaintiff returned to Jamaica from a job with the United Nations and reopened the school in Annotto Bay, St. Mary. Eventually the school was removed to its present address, No. 1 Caledonia Avenue, St. Andrew, in December 1979 which premises were rented from Mr. Azar.

On the 26th April, 1981, the plaintiff decided to sell the school because of his ill health. At this time both the Second and Third defendants were members of the school board, the Second defendant being Chairman and the Third defendant Vice-Chairman respectively.

The plaintiff himself had been ordained as a minister in the Church to which the school was affiliated.

The plaintiff offered the school for sale to the Church and the other defendants in turn contacted the governing body of that organization.

As a result a meeting was held at Carisbrook, St. Elizabeth on the 6th May, 1981, at which the plaintiff, the Second and Third defendants and other officials of the Church were present. After discussion it was agreed that the Church would purchase the school for \$200,000.00 on the following terms:-

There would be a down payment of \$75,000.00 payable in three instalments of \$25,000.00 each. The first instalment to be paid almost immediately. The first payment would represent the plaintiff's share in the school. \$50,000.00 was to be paid in

two instalments in September, 1981, and January 1982, and the balance of \$100,000.00 over a period of 10 years.

As the Church did not have the money available some of the persons present pledged amounts so that the first instalment could be paid.

It was also agreed that an Inventory would be taken and a formal Agreement prepared by an attorney-at-law.

The plaintiff had an Agreement prepared on one document. On the 8th May 1981, the defendant Bailey said he preferred it in two documents so the plaintiff had his attorney prepare the Agreement in two documents, Exhibit 3.

On Friday the 15th May, 1981, the Second and Third defendants attended at the school and all three gentlemen signed the documents Exhibit 3 as evidence of the Agreement for sale of the school. The Agreement reads thus:-

"This is to certify that St. John's College (formerly affiliated to the Church of God in Christ Jesus (Apostolic) of Jamaica incorporated is now bought by Agreement, and becomes the property of the said Church of God in Christ Jesus (Apostolic) of Jamaica incorporated as of May 15, 1981.

The total sale price is agreed on as \$200,000 of which \$100,000 will be paid to Mr. M. L. Clarke or his beneficiary over a period of ten (10) years at the rate of \$10,000 per year beginning on school year (Sept.) 1982, and payable every September.

Dated and Witnessed This 15th May of May 1981, Given under our hands and witnessed to by

(Sgd).....	(MR.) S.A. BAILEY (CHAIRMAN)	) Church of
		) God in
		) Christ
(Sgd).....	(REV.) B.S.E. DYER (GENERAL SECRETARY)	) Jesus
		) (Apos. of
		) Ja. Inc.
(Sgd).....	(MR.) M.L. CLARKE (PRINCIPAL ST. JOHN'S COLLEGE)"	

"We do severally agree to pay to Mr. M.L. Clarke, and he agree to accept, the sum of \$25,000 as first deposit from a total amount of \$75,000 which represent the initial down payment from the sale of St. John's College to the Church of God in Christ Jesus (Apostolic) of Jamaica incorporated for a sum of \$200,000. This first deposit to be made by May 12, 1981. The second initial deposit instalment of \$25,000 to be made by September 1981. The third initial instalment of \$25,000 to be made by January 1982. The full sale value of the college is agreed on as \$200,000, of which Mr. M.L. Clarke has agreed that \$25,000 must form his portion in shares to St. John's College. This \$25,000 represent one-eighth of the total sale cost, and as such Mr. M.L. Clarke will receive one-eighth of the net profit derived from the college each term (the school year has three terms).

The above mentioned Agreement will be passed on to Mr. M.L. Clarke's beneficiary (Mrs. E.M. Clarke) in the event of death of the said Mr. M.L. Clarke or to any person/persons name by Mr. M.L. Clarke or Mrs. E.M. Clarke whichever supersedes the other..

DATED this 15th day of May 1981 in the presence of:

(Sgd) (MR.) S.A. BAILEY (CHAIRMAN)

(Sgd) (REV.) B.S.E.DYER (GENERAL SECRETARY)

(Sgd) (MR.) M.L. CLARKE (PRINCIPAL ST. JOHN'S COLLEGE)"

The plaintiff received \$24,000.00 of the first instalment of \$25,000.00 shortly after.

An Inventory was taken shortly after the meeting. The plaintiff, the defendant Dyer and a member of the staff were present.. This Inventory was not produced in evidence.

The Church took possession of the school. In accordance with the decision of the meeting at Carisbrook. The plaintiff remained on as principal until the end of the current term in July 1981.

The plaintiff was not satisfied with conditions at the school and on the 20th July 1981, addressed a letter, Exhibit 7 to the

Second defendant as follows:

" Rev. B. S. E. Dyer
Chairman/Co-ordinator
St. John's College

Rev. Sir:

Greeting. There are a few urgent and vital matters I must bring to your attention and ask that you make every effort to remedy them speedily.

(a) On the eve of your departure, you took a young man to stay on the premises as watchman/caretaker. All complete arrangements were made. I invited the man to be at the school on the Friday afternoon as I would be going on my holidays that same day. He came and I gave him the keys to his quarters and gate. He told me he had no bed, although he told us he had one. I showed him the single bed he could get, and he bluntly refused it. From all appearances he wanted to stay on my bed up my quarters. I told him that nothing upstairs is belonging to the school but they are my personal effects and no one is allowed upstairs whilst I occupy it. He gave the key back to me, and said he won't take the job. It was two hours left for me to leave, when suddenly an elderly man appeared with the news that Mr. Palmer had arranged with him to come for the job of watchman. I was jittery, but I made arrangements with him. He said he was going for a bed, and until I left he never returned. I checked with the Police and asked them to check at the school if the man was there. Up to Saturday night, he was not seen by them. On Sunday, after attending Lakes Pen, Mrs. Clarke and I went up to the school to have a check. We could not enter the premises as the gate was locked and no one was there. I went across to Caledonia Motors and spoke with the day watchman who promised to have constant checks at the school during the days, and to work at nights doing the watch. I arranged to pay him \$30 per week or \$120 per month. I returned on Monday to make a final check on Mr. Palmer's man, but he never turned up. On Tuesday Miss Howe turned up with the 5th Formers, but could not enter as the gate was locked. On Wednesday I changed the locks on the gate and on his quarters. He has not been seen then.

(b) I am not prying in your private business, but from a business-like point of view, I don't think you should have left here so long at this delicate period in the school. The school is in its infancy where the Organization is concerned, and with the financial changes made by you, I think you should be here to explain fully to both old and new students and parents. From reports received I doubt whether ¼ of the old students will be returning. Parents have been here to me on Wednesdays and said that they are not against paying \$100 for fees, but they are not paying \$20 for sports, and at that to pay \$120 every August. The same conditions are imminent amongst the new students; as a matter of fact the new students are opposed to them paying \$140 as against \$120 for the old ones. I quite remember I brought it to your attention that it will backfire on you, for many of the new students have friends amongst the old ones. Then again the suggested boarding arrangements were not made by you before you left. The St. Thomas parents have decided not to send the students here without proper

arrangements made for boarding as they will not allow them to travel daily through bull Bay. Anyhow there are two or three parents who desire boarding and they are from Maggotty and Frankfield. Informations must reach them by August 7.

(c) The very day I was leaving on holidays, Mr. Azar sent a bearer with a nasty letter for his rent. The bearer went on so badly that I had to pay him June's rent from the teachers salary. There is no money left for teachers, and their salary is due on Friday 24th July. See attached the salary of each. The keys to the building are left also the gate. On the Principal's desk you will see students reports and other important forms you will need. My family is very peeved and disappointed over the arrangements for the College, as they do not want any deterioration. There are many of your plans that need to be re-adjusted.

(d) As I mentioned sometime ago, you must get a Principal for the College for September as I definitely will not be able to continue as Principal. My doctor has warned me against continuing to be worried over teaching, or organization. I need rest. Please act now to stop a sudden disaster to the school, as I reppened it with little or nothing, but because of forthright decisions and tact, I have brought it to where it is today, amongst the best in this country. Kindly get on to the Bishop and Committee and do something about it. You can contact me at home. Tel: 974 2759.

Yours in His Service,

(Sgd).....
M. L. Clarke "

Nothing further was heard from the defendants until sometime in October 1981 when the plaintiff received a letter Exhibit 19 as follows:

" October 14, 1981

" Evangelist M. L. Clake
Ocho Rios P.O.,
St. Ann.

Dear Evangelist Clarke,

Holy greeting.

In reviewing the situations relating to the arrangement made re-purchasing of the said school.

The members of the National Executive Board of the Church of God in Christ Jesus (Apostolic), have decided not to go through with the business of purchase; and are asking you to meet with them on the 4th of November 1981, at 26 Chapleton Road May Pen, at a special Meeting at 12 noon.

God Bless you until.

Yours in the Master's Service.

(Sgd.)
Rev. B. S. E. Dyer
(General Secretary of the Church
of God in Christ Jesus (Apos.)
of Jamaica Inc.). "

These letters will be examined later. Suffice it to say that the reply Exhibit 19 makes no reference to any misrepresentation or indeed gives any reason for cancellation of the Agreement.

The plaintiff refused to cancel the Agreement and brought suit to recover the balance of the purchase money.

He denied the allegations of misrepresentations which were two fold:

(a) As to ownership of the property:

He denied having told the meeting at Carisbrook and the Second and Third defendants personally that he had bought the property for \$150,000.00 and had spent \$50,000.00 on renovation.

With respect to the meeting he, said he had stated that the building was rented but that he had access to the yard.

In addition to his denials it was sought to prove, actual and presumed knowledge by the Second and Third defendants that he was not the owner of the premises.

To this end he deponed that he had met both these defendants on the 4th Sunday in August 1980, that both had been associated with the school from September, 1980, the defendant Dyer was appointed Vice-Chairman of the Board on the 9th September 1980, and subsequently Chairman after the General Elections in 1980 when defendant Bailey automatically became Vice-Chairman. In these capacities they had access to all the relevant records.

At a meeting of the school board in 1980 he had advised both defendants that Mr. Azar was the proprietor of the premises.

The plaintiff produced cheques for \$839.00 for rental of the premises payable to Mr. Azar. These cheques were co-signed by the defendant Dyer as Chairman and, by the plaintiff as Principal. There was no allegation that Bailey had signed similar cheques.

Plaintiff related an incident in April 1981 when Dyer was Chairman. He, Dyer said he considered the rental exorbitant and plaintiff promised to speak to Mr. Azar to see if a reduction could be effected. Plaintiff spoke with Azar without success. He reported back to Dyer who called a Parent Teacher's Meeting which authorised them to seek alternative accommodation. As a result the plaintiff and Dyer visited premises at 7 Oxford Road and negotiated for a rental of these premises at \$500.00 monthly. This they reported to the Parent Teacher's Association who agreed to rent these premises. The deal however was called off by the other party, the Church of Christ.

It was elicited from Dyer in cross-examination that two of his daughters attended the school. He thought they started in October 1980.

(b) Re Number of Students

Plaintiff denied that he had told the Second and Third defendants at the meeting that there were 300 paying students which brought an income of \$30,000.00. He said that Dyer knew the number of students as he was absent from the school only one day in six months. In a conversation with Bailey in May 1981 he had told him 151 which number was concurred in by Dyer, with a projection of 300 by September, 1981, if they allowed him, plaintiff to advertise for new students. He had advised the meeting to the same effect.

There was one witness for the plaintiff Mr. Arthur Williams a retired Senior Superintendent of Police.

He was very vague as regard dates and details. He stated that he was appointed Chairman of the School Board in 1980 and during his tenure as Chairman both Dyer and Bailey were members of the Board.

Dyer was made Vice-Chairman on a date he could not recall. There were about four meetings between January 1980 and September 1980 and both Dyer and Bailey attended the meeting in September.

He had signed cheques in his capacity as Chairman and the Principal or Vice-Principal would advise the purpose for which the cheques were issued.

From information received he was aware that the premises was owned by Mr. Azar but was unable to say with any degree of certainty whether the other Board members were so aware.

The Defence

Rev. Dyer the Second defendant stated that he first met the plaintiff on Sunday the 4th May 1980 at his Church at Independence City. At his invitation the plaintiff participated in the service and announced that he was appointing Dyer a member of the School Board.

Plaintiff visited him at his home that day and during a discussion about the school advised Dyer that he had acquired the property at 1 Caledonia Avenue for \$150,000.00 and had spent a further \$50,000.00 for refurbishing and fixtures. He said the school had 300 paying students from whom he received \$25 - \$30,000.00 per term.

About one week later he Dyer, visited the school and was introduced by the plaintiff as a member of the School Board and Chaplain of the school. He subsequently visited the school on other occasions during 1980 as Chaplain and member of the Board but had never met the other members of the Board nor attended any Board Meetings. The first such meeting he attended was held on the 28th March 1981 at which meeting he was appointed Chairman.

In April 1981 the school was affiliated with the Church at plaintiff's request and two days later the plaintiff informed him of his desire to sell the school.

Plaintiff told him of offers of \$400,000.00 by the Anglicans and \$250,000.00 by the Methodists. The plaintiff however insisted that he wanted the Church, the Third defendant to acquire the school.

He, Dyer spoke with defendant Bailey and as a result the meeting was held at Carisbrook on the 6th May 1981. He, Dyer told the meeting of the offers made to the plaintiff.

Plaintiff addressed the meeting stating that he had purchased the premises No. 1 Caledonia Avenue for \$150,000.00 and had spent \$50,000.00 for refurbishing and fixtures.

He said that the student population was approximately 300 and the income over \$26,000.00 per term. He would be satisfied with \$200,000.00.

Defendant Bailey spoke and after discussion a decision was taken to purchase the school and premises for \$200,000.00 with a down-payment of \$25,000.00 by the 15th May 1981. The organisation did not have the amount of \$25,000.00 so pledges were made in respect of this amount. He Dyer pledged \$6,000.00. It was also agreed that an Inventory should be taken and thereafter an Agreement prepared by the parties and attorneys.

He Dyer had only \$5,000.00 of his pledge of \$6,000.00 and was due to leave the Island on the 12th May 1981. On the 11th May 1981 himself and Bailey visited the plaintiff at the school to explain the position. Plaintiff asked him to sign some cheques in blank which he did. As they were about to leave, plaintiff presented the documents Exhibit 3 for their signatures. He Dyer read and signed them and passed them to Bailey who also signed. The documents were already signed by the plaintiff.

He enquired about the date 15th May 1981, on the documents and the plaintiff explained that this was the date on which payment was due. This explanation satisfied him. He left the Island the following day and did not return until the 12th June 1981. He produced his Passport which verified the dates of his departure and return. He was not in the Island on the fourth Sunday in August 1980, the date the plaintiff alleges they met nor on the 9th September 1980, on which date plaintiff said he attended a Board Meeting. His Passport indicated departure on 12th August 1980 and return on 26th September 1980.

He had never met Mr. Arthur Williams nor attended any meeting at which he was present.

He first signed cheques in April 1981. He never enquired nor was he advised of the purpose for which these cheques were issued. He had signed blank cheques in April and May 1981 at plaintiff's request.

No Inventory was taken in May 1981 but sometime in April 1982 by Mr. Barnett. Plaintiff had nothing to do with this Inventory.

He admitted having accompanied the plaintiff to 7 Oxford Road but denied that this was as a result of his Dyer's complaint about the exorbitant rent. The plaintiff had asked him to go with him to show him something. At 7 Oxford Road the plaintiff had told the Principal that he heard that the place was for rent. This the Principal denied and they left. On the way back he Dyer asked about the visit and plaintiff said more space would be required to put the Prep School in the coming September. He was absent from the Island from the 3rd to 27th July 1981. On his return he saw the letter from the plaintiff Exhibit 7. This was the first intimation he received that plaintiff was not the owner of the premises.

He spoke to Bailey and ^{they} tried to contact the plaintiff by telephone and paid visits to his home in Ocho Rios but were unseccessful in their efforts.

In September 1981 Bailey and himself called a meeting of the Church Board and School Board at which he was instructed to write the plaintiff. This he did by letter Exhibit 19.

Rev. Bailey the Third defendant gave evidence much to the same effect as Dyer. He first met the plaintiff on the 20th March 1981 at Dyer's Church at Independence City at which there was a meeting of the School Board. He was invited to become a member and accepted.

He next met the plaintiff on the 8th April 1981 when the school was affiliated to the Church. On either the 13th or 14th April he went to negotiate the sale of the school. This was his first visit to the school. The plaintiff showed him around and told him he had purchsed the place for \$150,000.00 and had spent \$50,000.00 to

fix it up. Plaintiff said there were approximately 300 students on roll of which 275 paid \$90.00 each per term and 25 paid \$75.00.

After discussion he told the plaintiff the Executive Board would have to meet and take a decision. He, Bailey arranged the meeting for the 6th May 1981 at Carisbrook. His account of the events at the meeting substantially agreed with Dyer's.

He related the visit to the plaintiff on the 11th May 1981 because Dyer was \$1,000.00 short of his pledge. He admitted having signed the documents, Exhibit 3. He did not read them because in his own words -

" I confident in him and I signed it".

He denied having requested that the Agreement should be prepared in two documents. He gave the plaintiff a cheque for \$24,000.00 on the 15th May 1981, as the first instalment.

He was not a member of the School Board in 1980 nor did he inspect any records of the school. He first became aware that rental was payable for the premises when he saw the letter from plaintiff dated 20th July 1981, Exhibit 7. He spoke of their unsuccessful efforts to contact the plaintiff.

Mrs. Majorie Reneau said she took notes at the meeting at Carisbrook on the 6th May 1981. Dyer asked the speakers to speak slowly as she was taking notes in long-hand. She gave the notes to Dyer to be typed. She compared the handwritten and typed notes and they were the same. She returned the handwritten notes to Dyer and kept the typed notes. The handwritten notes were not produced. She said that the plaintiff told the meeting he had purchased the property 1 Caledonia Avenue for \$150,000.00 and had spent \$50,000.00 to do reconstruction on it.

Mr. Hernel Barnett a Realtor and Appraiser gave evidence of an Inventory he had taken at the schhol in March 1982, at the request of defendant Dyer. The market value of the items was \$8,478.00.

From the foregoing it is necessary to decide whether or not there was an Agreement for the sale of the school or school and premises.

The defendant Dyer admits that he was a member of the School Board from 1980. I find on Dyer's admission that he was a member of the School Board from 1980. He admits having signed cheques payable to Azar but insists that they were signed in blank.

I accept that there was the practice of signing cheques in blank and that the cheque for rental dated 14th May 1981, Exhibit 2, was signed in blank as Dyer was then off the Island. I do not accept that the cheque dated 14th April 1981, Exhibit 1, was so signed because he was ill.

I accept the plaintiff's account of the visit with Dyer to No. 7 Oxford Road to enquire about the rental of those premises. I reject the defendant Dyer's evidence on this point.

I find that before the Agreement was executed Dyer was aware that the plaintiff was not the owner of the premises.

As regards the defendant Bailey I find that he was a member of the School Board from 1980. I find that he too was aware that the plaintiff was not the owner of the premises.

I reject the evidence by the defence that the plaintiff stated he had bought the school for \$150,000.00 and had spent a further sum of \$50,000.00 for repairs.

I find that the Agreement was signed on the 11th May 1981 and not on the 15th May 1981.

I find that this Agreement was for the sale of the school as stated therein and did not include the land No. 1 Caledonia Avenue.

I find that the plaintiff did not make a representation that there was 300 students paying.

I find that there was a discussion on this subject but the effect was that the figure was a projection not an existing one. It is of importance to note that on his own evidence this question of the number of students did not induce defendant Bailey to request the Church to enter into the Agreement.

I do not accept that the first intimation the defendants received that the plaintiff was not the owner of the premises was contained in the letter Exhibit 7. Their response is extraordinary.

I do not accept that Dyer and Bailey visited Ocho Rios in an attempt to locate the plaintiff and that the plaintiff was hiding from them.

The response to this letter Exhibit 19 - "Holy Greeting" - does not contain even a mild rebuke at the perfidy of a fellow Minister of the Gospel.

Mr. Rattray submitted that the Agreement was too vague to be enforced. It was vague because:

- (i) It does not indicate what is the shareholding comprised in the college;
- (ii) It does not indicate for what time the shareholding should continue;
- (iii) It does not indicate whether or not the plaintiff participates in the lease and if so, in what percentage.

In May and Butcher Limited v. Regem [1929] All E.R. 679

Viscount Dunedin said at P. 683:

" The law of contract is that to be a good contract you must have a concluded contract, and a concluded contract is one which settles everything that is necessary to be settled, and leaves nothing still to be settled by agreement between the parties. Of course, it may leave something which still has to be determined, but then that determination must be a determination which does not depend on the agreement between the parties. "

The Agreement sets out what interest the plaintiff will take in the college. It is trite law that the Courts cannot make a contract for the parties. It is for the parties to decide the extent of the participation of the plaintiff. This they have done. It is to be noted that the benefit to the plaintiff will pass to his beneficiary in the event of his death.

Re Agreement to Pay

Mr. Rattray further submitted that at its highest this could only be construed as an Agreement to pay the plaintiff \$25,000.00 and that there was no consideration to support this Agreement.

It is admitted that the Agreement is contained in the two documents. One states the sale and purchase price of the school. The second contains the promise by the Second and Third defendants to pay an amount in pursuance of the Agreement.

In my opinion this is a guarantee by the Second and Third defendants to pay to the plaintiff the sum of \$25,000.00 the first instalment on the purchase price. The language of the document limits their liability to this amount. The rest of the document stipulates the manner of payment of the other instalment but imposes no obligation on the Second and Third defendants.

The consideration is the forbearance by the plaintiff to sue for the full amount. Although not expressed in the contract, this can be supplied by extrinsic evidence - see Pott v. Todhunter 63 E.R. 644 at 646.

The evidence is that the Church was unable to pay the full amount and the Second and Third defendant among others pledged this amount which the plaintiff was willing to accept.

The evidence discloses that the plaintiff received \$24,000.00. The amount of \$1,000.00 is therefore due to him by the Second and Third defendants.

In the result the plaintiff succeeds. There will be judgment for the plaintiff against the First defendant only for \$176,000.00 and against Second and Third defendants for \$1,000.00.

There will be judgment for the plaintiff on the counter-claim with costs on the claim and counter-claim to be agreed or taxed.