JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEALS NOS. 14 & 15 OF 1981

BEFORE: The Hon. President
The Hon. Mr. Justice Kerr, J.A.
The Hon. Mr. Justice Rowe, J.A.

BETWEEN THE JAMAICA BROADCASTING CORPORATION - DEFENDANT/APPELLANT

AND THE NATIONAL WORKERS UNION

AND COLLINGTON CAMPBELL - PLAINTIFFS/RESPONDENTS

AND

BETWEEN

THE JAMAICA BROADCASTING CORPORATION - DEFENDANT/APPELLANT

AND THE UNION OF CLERICAL, ADMINISTRATIVE AND SUPERVISORY EMPLOYEES

AND BEVERLEY NEWELL - PLAINTIFFS/RESPONDENTS

Mr. E. George, Q.C., Mr. Goffe and Mr. Sheldon for Appellant

Mr. R.C. Rattray, Q.C., and Mr. P.J. Patterson for Respondents

July 15, 16, 17, 20, 21, 22, 23, 24;
and December 18, 1981

ZACCA, P.:

On July 31, 1981 we dismissed these appeals and promised to put our reasons into writing. This we now do.

The appellant, the Jamaica Broadcasting Corporation appealed against an order of the Chief Justice granting an interlocutory injunction against them. The respondents who were employees of the appellant, were dismissed along with other workers on February 11, 1981. Their letter of dismissal purported to dismiss them on the grounds of redundancy. These employees were employed in the news room of the J.B.C. which included radio and television.

The respondents commenced proceedings by filing an originating summons claiming a declaration that the plaintiffs were entitled to have the issue of the dismissal of the employees of the news room department of the Jamaica Broadcasting Corporation referred to arbitration "by virtue of a true interpretation of the terms of a collective labour agreement" entered into between the respondents' unions and the Jamaica Broadcasting Corporation which agreement is dated 20th August, 1980 and which was in full force and effect. The respondents also claimed an injunction restraining the appellant from appointing persons to fill the vacancies in the news room department of the Corporation before the issue of the dismissal of the employees in that department had been determined on arbitration as provided for in the said collective labour agreement. The learned Chief Justice on an exparte summons granted an interim injunction which was extended from time to time and which was in existence on the date of the hearing from which this appeal lies. An application was successfully made to amend the originating summons claiming an additional relief. This relief was as follows:

> " Further and/or in the alternative, the plaintiffs claim a declaration that the employment of the employees of the news room department (i) is still subsisting and (ii) has not been effectively terminated since the redundancy claimed by the JBC does not in fact exist and is

> "a mere colourable device by the defendant to deprive the workers of their rights under the Collective Labour Agreement, Industrial Relations practices, the Laws and the Constitution of Jamaica."

This application to amend was granted and hearing before the Chief Justice proceeded on the amended summons. At the end of the hearing the learned Chief Justice granted the injunction which was sought. In view of the findings of the Chief Justice, this appeal is only concerned with the alternative relief claimed in the amended summons.

The Court has also been asked to say whether collective labour agreements are legally binding and this we will endeavour to do in due course. However, any consideration on this aspect of the appeal will in no way affect our conclusions on the main issue before us as we are of the view that the question of redundancy forms no part of the collective labour agreement.

The learned Chief Justice found that there was a serious triable issue on the question of the redundancy and granted an injunction as prayed.

It is against this order that the appellant appeals. As stated earlier this Court is only concerned with the findings of the Chief Justice as it relates to the alternative claim in the amended summons.

For the appellant it was submitted that even if it was found that the respondents were wrongfully dismissed, the only remedy open to them was one of damages. It was contended that damages would be an adequate remedy and that the Court could not order specific performance of a contract of personal service and therefore could not grant an injunction in this matter. It was argued that there were no special circumstances in this case which would bring it within the Hill v. Parsons case.

The relief being sought by the respondents is for a declaration from the Court that the contract of employment of each employee has not been effectively terminated and is still subsisting.

All the employees the subject of these proceedings were dismissed without notice on the ground of redundancy. S. 3(1) of the Employment (Termination and Redundancy Payments) Act provides for notice to be given to employees who are to be dismissed on the grounds of redundancy. On the face of it the employees were therefore dismissed in breach of s.3(1) of the Act.

S.5(1) of the Act provides for a redundancy payment for employees who have had continuous employment for one hundred and four weeks. However s.5(5)(a) of the Act provides:

> "For the purposes of this section an employee shall be taken to be dismissed by his employer -
>
> (a) if the contract under which he is employed by the employer is terminated by the employer, either by notice or without notice ..... "

Mr. George submitted that the contract is terminated whether or not notice is given if it is terminated for redundancy. The learned Chief Justice did not wholly agree with this submission and in his judgment stated:

> "If emphasis is placed on the words "for the purposes of redundancy", I agree with the submission: though it must be borne in mind that the plaintiffs contend that the dismissals of which they complain were not genuine redundancy dismissals. If Mr. George's contention is that the provisions of s. 5(5)(a) justify dismissals without notice in breach of s. 3, I do not agree. As Lord Denning, M.R. said in respect of similar provisions in a United Kingdom statute: "It is all because of some 'deeming' provisions in the Act where a thing is 'deemed' to be what it is not. "

> "(See Lloyd v. Brassey (1969) 2 Y.L.R, 310 at 313). A redundancy payment is made on the basis of dismissal by an employer (s. 5(1)) and all s. 5(5) is doing is stating that the several ways of ending a contract of employment set out in paragraphs (a), (b) and (c) of the sub-section must be deemed to be dismissals, making employees entitled to redundancy payments. The reference by Mr. George to s. 11(1)(a) of the Act did not assist his argument.
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> "It seems clear that the manner in which the defendant sought to terminate the contracts of employment of the employees was not in law effective to terminate the contracts, thus laying the foundation for consideration of their cases within the principle in the Hill v. Parsons case."

As we understand the Chief Justice he is making a positive finding that the contracts have not been effectively terminated because of the failure to give the required notice. In our view he could only do this if he had made the further positive finding that the dismissals were not on the ground of redundancy. We do not think that on the affidavits and the arguments it was open to the learned Chief Justice to make such positive findings of fact. The issues raised were manifestly triable ones but their resolution are for the tribunal of fact.

The general rule is that a court will not grant specific performance of a contract for personal service or appear to enforce such a contract by the grant of an injunction. However, since the case of Hill v. Parsons [1971], 3 A.E.R. 1345 there are cases which establish that in special circumstances, sometimes referred to in the later decided cases as exceptional circumstances, a court will enforce a contract of employment by declaring that it still subsists although there has been termination by the employer.

In considering whether or not to grant an injunction the court in the exercise of its discretion must be satisfied that the claim is not frivolous or vexatious and that there is a serious question to be tried. American Cyanamid Co. v. Ethicon Ltd. [1975] 1 A.E.R.

In the instant case, the learned Chief Justice held that based on the claim and the affidavits there was a serious triable issue on the question of whether or not the employees were dismissed on the ground of redundancy. At the hearing of this appeal this issue has not been seriously contested. We see no reason for disagreeing with the finding of the Chief Justice that there is a serious triable issue. It cannot be doubted that the affidavit evidence shows that there are serious questions to be tried.

It is argued for the respondents that the effect of not granting an interlocutory injunction, would be to allow the appellant to fill the vacancies created by the dismissal of the employees. If this is done and after the issues are tried, it is found that there was a wrongful dismissal, then the employees would have no jobs to go back to. However, the appellant contends that even if there was a wrongful dismissal then the remedy was one of damages and that in the instant case damages would be an adequate remedy and further that in any event, the court cannot order reinstatement of the wrongfully dismissed workers.

The respondents argue that if an interlocutory injunction was granted and at the hearing there was a finding of a wrongful dismissal then one would expect the appellant, which is a Statutory Body, to respect the finding of the court and to reinstate the dismissed employees in their jobs. Failing this the respondents backed by the order of the court, could then request the appropriate minister to refer the matter to the Industrial Disputes Tribunal under the provisions of the Labour Relations and Industrial Disputes Act. If the minister obliges then the Tribunal would have no alternative but to order the reinstatement of the workers as there would be in existence the finding of a competent court that there was a wrongful dismissal of the workers. See s. 12(5)(c) of the Labour Relations and

Industrial Disputes Act.

A question much debated before us was as to whether a repudiation of a contract of employment or wrongful dismissal of an employee puts an end to the contract of employment. In Vine v. National Dock Labour Board, [1956], 1 W.L.R. 1, Jenkins L.J. at p. 8 said:

> "In the ordinary case of master and servant, however, the repudiation or the wrongful dismissal puts an end to the contract, and a claim for damages arises. It is necessarily a claim for damages and nothing more. The nature of the bargain is such that it can be nothing more."

In Vine's case the court was concerned with rights under a statutory scheme. It made a distinction between employment in which the rights and obligations of the parties are imposed by statute and that in which there is agreement by contract. In the same case in the House of Lords, Viscount Kilmuir, L.C. at p. 944 said:

> "I should, on this point, be content to leave the matter as stated by Jenkins, L.J. with whose judgment I am in entire agreement, but, as I am differing from the majority of the Court of Appeal, I think it right to summarise my reasons. First, it follows from the fact that the Plaintiff's dismissal was invalid that his name was never validly removed from the register, and he continued in the employ of the National Board. This is an entirely different situation from the ordinary master and servant case. There, if the master wrongfully dismisses the servant, either summarily or by giving insufficient notice, the employment is effectively terminated, albeit in breach of contract. "

In Francis v. Municipal Councillors of Kuala Lumpur [1962] 3 All E.R. 633, the plaintiff was employed by the defendant Municipal Councils as a Clerk. The Council dismissed him. This dismissal was held to be ultra vires because by the terms of the ordinance establishing the Council the only power to dismiss the

plaintiff was vested not in the Council but in the President. The plaintiff claimed a declaration that he was still employed, his dismissal being a nullity. Lord Morris of Borth-Y-Gest at p. 637 said:

> "Their Lordships consider that it is beyond doubt that on October 1, 1957, there was de facto a dismissal of the appellant by his employees, the respondents. On this date he was excluded from the council's premises. Since then he has not done any work for the council. In all these circumstances it seems to their Lordships that the appellant must be treated as having been wrongfully dismissed on October 1, 1957, and that his remedy lies in a claim for damages. It would be wholly unreal to accede to the contention that since October 1, 1957, he had continued to be, and that he still continues to be, in the employment of the respondents. "

His Lordship went on to say at p. 637:

> "In their Lordships' view, when there has been a purported termination of a contract of service a declaration to the effect that the contract of service still subsists will rarely be made. This is a consequence of the general principle of law that the courts will not grant specific performance of contracts of service. Special circumstances will be required before such a declaration is made and its making will normally be in the discretion of the court. In their Lordships' view there are no circumstances in the present case which would make it either just or proper to make such a declaration. "

Lord Morris of Borth-Y-Gest is here saying that there may be circumstances in which a purported termination of a contract of service may not in law determine the contract but that such a declaration should rarely be made and only in special circumstances.

In Denmark Productions Ltd. v. Boscobel Productions Ltd. [1968] All E.R. 513 both Harman and Salmon, L.JJ. made reference to the consequences of wrongful dismissal of a worker in an ordinary contract of personal service. Both L.JJ. seem to agree with the views expressed by Jenkins, L.J.

However, in Decro-Wall International S.A. v. Practitioners in Marketing Ltd. [1971] 2 All E.R. 216 at p. 223 Salmon, L.J. said:

> "I doubt whether a wrongful dismissal brings a contract of service to an end in law, although in practice it does. ..... As I hope I made plain in Denmark Productions case, the only result is that the servant, albeit he has been prevented from rendering services by the master's breach, cannot recover remuneration under the contract because he has not earned it. He has not rendered the services for which remuneration is payable. His only money claim is for damages for being wrongfully prevented from earning his remuneration. "

A similar view was expressed by Sachs, L. J. in the same case but both Salmon and Sachs L.JJ. were of the opinion that in any event the remedy open to the wrongfully dismissed servant lies only in damages.

In Hill v. Parsons [1971] 3 All E.R. 1395 it was held that exceptional cases can arise in which a wrongful dismissal can leave the contract of employment in existence. This was a case in which short notice was given to determine the appellant's employment and it was held that there were special circumstances in the case justifying the grant of an injunction in the exercise of the court's discreti Significantly personal confidence between the employer and employee continued to exist.

Lord Denning, M.R. at p. 1349 said:

> "Suppose, however, that the master insists on the employment terminating on the named day? What is the consequence in law? In the ordinary course of things, the relationship of master and servant thereupon comes to an end; for it is inconsistent with the confidential nature of the relationship that it should continue contrary to the will of one of the parties thereto ..... Accordingly, the servant cannot claim specific performance of the contract of employment. Nor can he claim wages as such after the relationship has determined."

And at p. 1350 Lord Denning, M.R. continues:

> "I would emphasise, however, that that is the consequence in the ordinary course of things. The rule is not inflexible. It permits of exceptions. The Court can in a proper case grant a declaration that the relationship still subsists and an injunction to stop the master treating it as at an end. " .....

Sachs, L.J. in his judgment at p. 1355 said:

> "Finally it was urged that any order made would run contrary to the policy or trend of previous practice. At the risk of reiterating views expressed in my judgments on other subject matters, it seems appropriate to repeat that in matters of practice and discretion it is essential for the Courts to take account of any important change in the climate of general opinion which is so hard to define but yet so plainly manifests itself from generation to generation. In that behalf account must, inter alia, be taken of the trend of the views of the legislature expressed on behalf of the community in its enactments and also of the trend of judicial decisions. Over the last two decades there has been a marked trend towards shielding the employee, where practicable from unjust hardships he may suffer at the hands of those who may have power over his livelihood - employers and trade unions. So far has this now progressed and such is the security granted to an employee under the Industrial Relations Act 1971 that some have suggested that he may now be said to acquire something akin to a property in his employment. It surely is then for the courts to review and where appropriate to modify, if that becomes necessary, their rules of practice in relation to the exercise of a discretion such as we have today to consider - so that its practice conforms to the realities of the day. "

In Sanders and others v. Ernest A. Neale Ltd. [1974] 3 A.E.R. 327 the court adopted the view expressed in Hill v. Parsons that exceptional cases can arise in which a wrongful dismissal can leave the contract of employment in existence but said that such cases must be rare and they can only arise if the dismissal takes place in circumstances which leave intact the relationship of mutual confidence between employer and employee. The Court also held that a wrongful dismissal terminates a contract of personal service without the necessity for acceptance by the injured party.

However, in Thomas Marshall (Exports) Ltd. v. Guinle [1978] 3 All E.R. 193 Sir Robert Megary, V.C. held that a contract of personal service is no exception to the general rule that repudiation did not automatically discharge the contract.

Again in Gunton v. London Borough of Richmond upon Thames [1980] 3 All E.R. 577 the majority of the Court of Appeal held that the wrongful dismissal of an employee did not put an immediate end to the contract of service. In his judgment Buckley, L.J. at 589 said:

> "So, as was recognised in the Decro-Wall case and in Ivory v. Palmer, a wrongfully dismissed servant really has, in the absence of special circumstances, no option but to accept the master's repudiation of the contract."

In Chappell v. The Times Newspaper Ltd. [1975] 2 All E.R. 223 Stephenson, L.J. said at p. 241:

> "Relations between employer and employed have indeed developed and are still developing and their development invites continuous reconsideration by the court of rules worked out in different conditions. The workman now has statutory rights including a right of compensation for dismissal which although lawful is unfair .....
>
> " In this developing situation there may arise cases in which it is proper for the court to exercise its discretion in favour of a workman and grant an injunction which will hold an employer against his will to the continued performance of his contract of employment. Such a case was Hill v. C.A. Parsons and Co. Ltd., but it was 'highly exceptional' as Sachs, L.J. said, and was in my judgment rightly described by Sir John Donaldson P. when presiding in the National Industrial Relations Court in Sanders v. Ernest A. Neale Ltd. as 'unusual, if not unique'. Like Stamp L.J. dissenting in Hill v. Parsons: 'I would be far from holding that in a changed and changing world there can be no new exception from the general rule' that a court will not grant an injunction in aid of specific performance of a contract of personal service, so that if the servant has been wrongfully dismissed, it will consider his contract unilaterally terminated by the master and leave the servant to his remedy in damages. I would not, however, look for new categories in which to pigeon-hole new exceptions to this rule as it works either for the employer or the employee, but I would make exceptions in accordance with the general principle on which discretionary remedies are granted, namely, where, and only where, an injunction is required by justice and equity in a particular case, and, at the interim stage, by the balance of convenience."

Having regard to the general rule that the Court will not order specific performance of contracts of employment if there is a wrongful termination by one party, in conformity with this general rule the remedy of the other is in damages only. Consequently, the Court would not grant an injunction in these circumstances. We are prepared to accept and to be guided by the exception created in Hill v. C.A. Parsons& Co. Ltd., whereby in a particular case exceptional circumstances can arise, in which a wrongful dismissal (which is not accepted or acquiesced in by the other side) and thus leaves the contract of employment in existence, and in those exceptional circumstances the Court can in its discretion grant an injunction to preserve the status quo.

Although Hill v. Parsons was a case where mutual confidence existed we do not hold that this is the only special circumstance which can arise. In our view the categories ought not to be closed and each case should be looked at to see whether there are matters which can be held to amount to special circumstances.

This Court should also take into account the development of industrial relations between employer and employee as it exists in Jamaica today. Through Trade Union activity, the intervention of Parliament and more enlightened behaviour on the part of management, workers have made great strides in their search for justice at the workplace and security of tenure in their jobs.

The Labour Relations and Industrial Disputes Act provides for the hearing of disputes between employer and employee, by an Industrial Disputes Tribunal. A dispute may be referred to the Tribunal by the Minister at the request of the parties or the Minister may on his own initiative refer a dispute to the Tribunal for settlement.

The Act also provides for mandatory reinstatement of a worker whose dismissal was found to be unjustifiable if the worker wishes to be reinstated.

S. 12(5)(c) of the Labour Relations and Industrial Disputes Act provides:

> "If the dispute relates to the dismissal of a worker the Tribunal, in making its decision or award -
>
> (i) shall if it finds that the dismissal was unjustifiable and that the worker wishes to be reinstated, order the employer to reinstate him, with payment of so much wages, if any, as the Tribunal determine. "

Our Legislature has gone much further than most other jurisdictions where Tribunals may in their discretion order reinstatement of a wrongfully dismissed worker. It was much stressed in argument by the appellant that the provision at s. 12 (5)(c) above, in the language of some of the decided cases "is a recipe for disaster". As to this we express no opinion although we can envisage cases in which it might not be in the best interest of the parties or the country for such reinstatement to be made.

In the present case the learned Chief Justice in his judgment said:

> "I have no hesitation in holding that in the circumstances of these cases damages would not adequately compensate the employees, that there are here special circumstances which bring them squarely within the principle of the Hill v. Parsons case and that the balance of convenience is heavily in favour of the grant of the injunctions asked for in order to preserve the status quo until the issues raised have been determined by the court. "

Are there special circumstances in the present case which would warrant the grant of an injunction? The affidavits of the respondents show that they were employed by the Jamaica Broadcasting Corporation in their news room. They received special training under the auspices of the Jamaica Broadcasting Corporation. They intended to make radio and television broadcasting a life time career and their performances were commended on numerous occasions by senior officers of the Jamaica

Broadcasting Corporation. There are only two electronic media in Jamaica one of them being the Jamaica Broadcasting Corporation which also operates the only television station in the Island.

The respondents also allege that their dismissals on the ground of redundancy are colourable devices and argue that if the Court of Trial so found they would be entitled to a declaration that they are still the lawful holders of their posts with the Jamaica Broadcasting Corporation. They further say that if the vacancies created by the alleged colourable device are filled before the determination of the substantive issues in the case; any judgment of the Court would be rendered nugatory. It is their contention that even if in the ordinary circumstances a court could quantify in money the value of the loss to each of the respondents of his chosen career, that would not give any effect to the very powerful remedy given to a wrongfully dismissed worker by s. 12 (5)(c) of the Labour Relations and Industrial Disputes Act. They are willing, they say, to return to their jobs; they have confidence in the Jamaica Broadcasting Corporation and if the Tribunal under the Labour Relations and Industrial Disputes Act found that they were wrongfully dismissed they would elect to be re-instated in the positions which they held at the time of their dismissal.

Having regard to the restricted field in which the respondents were employed and also having regard to the Jamaica legislation as it affects labour relations and industrial disputes it was not demonstrated to us by the appellant that the learned Chief Justice made any error in law or in fact in the manner in which he exercised his discretion to grant the interlocutory injunction and we consequently dismissed the appeals.

Are collective labour agreements legally binding in Jamaica? The position would seem to be that they are legally enforceable if it can be determined from the terms of the agreement and the surrounding circumstances that it was the intention of the

parties for the agreement to be legally binding.

In Ford Motor Company v. Amalgamated Union of Engineering and Foundry Workers and Others [1969] 2 A.E.R. 481 the Court considered whether a collective labour agreement was legally enforceable and whether an injunction ought to be granted. Geoffrey Lane, J. at p. 490 said:

> " In the present case, there is no express provision by the parties to provide any assistance as to their intentions. Consequently, it is necessary to look at all the surrounding circumstances to ascertain what the intention of the parties was. This, in my view, is not a case where, without further ado, the situation falls into one or other of the categories which I have mentioned previously. Consequently, one must look at all the surrounding facts in order to discover what the intentions of the parties were. "

Later at p. 496 Geoffrey Lane, J. said: -

> "The conclusion which I have reached is this; it is necessarily a preliminary view as this, of course, is not the hearing of the action proper. If one applies the subjective test and asks what the intentions of the various parties were, the answer is that, so far as they had any express intentions, they were certainly not to make the agreement enforceable at law. If one applies an objective test and asks what intention must be imputed from all the circumstances of the case, the answer is the same. The fact that the agreements prima facie deal with commercial relationships is outweighed by the other considerations, by the wording of the agreements, by the nature of the agreements, and by the climate of opinion voiced and evidenced by the extra-judicial authorities. Agreements such as these, composed largely of optimistic aspirations, presenting grave practical problems of enforcement and reached against a background of opinion adverse to enforceability, are in my judgment, not contracts in the legal sense and are not enforceable at law. Without clear and express provisions making them amenable to legal action, they remain in the realm of undertakings binding in honour. "

In Shipping Association of Georgetown and Others v. Ivan Bentinck [1962] 14 W.I.R. 243 Crane, J.A. appeared to be expressing the view that collective bargaining agreements are not legally binding when at pp. 250-251 he said:

> "..... therefore, in the absence of proof that a collective bargaining agreement was legitimately negotiated by that union with the intention and the object of legally binding and of benefiting the collective interests of all classes of stevedores, can it be said that it acted on behalf of unregistered workers? But whatever may be said in the absence of those agreements pleaded by the appellants, the very recent case of Ford Motor Co. Ltd. v. A.E.F. shows that the courts have now declared in favour of the view long held by eminent legal contributors and text-writers, and expressed in the report of the Royal Commission on Trade Unions and Employers' Association (1965-1968 Cmd. 3623) - chaired by Lord Donovan - that in the British climate of industrial relations collective bargaining agreements are not legally binding; that they are not directly enforceable by action for damages, but only indirectly in court by declaration to determine their meaning and import, or by the extra-judicial method of strike action. This is so, it is said, because the parties to them never do really intend to make them binding. "

It may be of interest to note what the Royal Commission chaired by Lord Donovan had to say in para. 471 of the Commission's report. It states as follows:

> "This lack of intention to make legally binding collective bargaining agreements, or, bether perhaps, this intention and policy that collective bargaining and collective agreements should remain outside the law, is one of the characteristic features of our system of industrial relations which distinguishes it from other comparable systems. It is legally rooted in its structure. As we pointed out in Chapter III, collective bargaining is not in this country a series of easily distinguished transactions comparable to the making of contracts by two commercial firms. It is in fact a continuous process in which differences concerning the interpretation of an agreement merge imperceptibly into difference concerning claims to change its effect. Moreover, even at community level, a great deal of collective bargaining takes place through standing bodies, such as joint industrial councils and national or regional negotiating boards, and the agreement appears as a 'resolution' or 'decision' of that body, variable at its will and variable in particular in the light of such difficulties of interpretation as may arise. Such 'bargaining' does not fit into the categories of the law of contract. "

In Regina v. Industrial Disputes Tribunal and The Shipping Association of Jamaica, M15/1979, February 19, 1979, the Full Court considered the question of whether collective agreements are legally binding. Carey, J. at p. 39 said:

> " The position at Common Law must now be regarded as settled. Strictly speaking a collective agreement may be enforced if the intention can be discovered from the terms if precisely stated and from the surrounding circumstances. Certainly, in this country, the surrounding circumstances are against such an inference being drawn. "

We see no reason for departing from the view which has long been held that a collective labour agreement may be legally binding if there are express provisions to that effect in the agreement or it can be ascertained from the surrounding circumstances that the intention of the parties was that it was to be legally binding. In the instant case it is unnecessary for us to decide the moot question as to whether the Jamaica Broadcasting Corporation and the two respondents' unions by the agreements into which they entered intended to be legally bound by the terms of such agreements. What we are clear about, however, is that once the employer and the employees accept and incorporate the terms of the collective agreement into the individual contract of service, to that extent, the employer and the individual employee are legally bound by the terms of such contract of service.