YASKEY v. FREETOWN CITY COUNCIL (No. 3)

West African Court of Appeal (Deane, C.J. (G.C.), Kingdon, C.J. (Nig.) and Webber, C.J. (Sierra Leone): October 10th, 1933

[1] **Contract — damages — measure of damages — damages reasonably within contemplation of parties at time of contract, or arising naturally and probably from breach:** The damages which may be awarded for a breach of contract are those in respect of such damage as arises naturally, that is, according to the usual course of things, from the breach itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it (page 357, lines 15—23).

[2] **Contract — licences — revocation — licensee entitled to reasonable notice of revocation — failure to give reasonable notice constitutes breach of contract:** The holder of a revocable licence is entitled to reasonable notice of revocation and, if he pays his rent monthly, one month will be a reasonable period of notice and any less would constitute a breach of contract (page 355, lines 19—25; page 356, lines 13—31).

[3] **Land Law — licences — revocation — licensee entitled to reasonable notice of revocation — one month's notice reasonable where rental paid monthly:** See [2] above.

The appellant brought an action against the respondents in the Supreme Court to recover damages for breach of contract and for conversion and detinue.

The respondents, the Freetown City Council, gave the appellant permission to erect a refreshment stall in the city park for which privilege he was to pay a small monthly rent in advance, and the terms of the licence were to be embodied in a formal written agreement. When this was presented to the appellant he refused to sign it because he objected to a clause giving the council power to terminate his licence by 48 hours' notice in writing in case of default in payment of the monthly rent or breach on his part of any of the other conditions.

The appellant paid the rent for two consecutive months, though not in advance as stipulated, and during the following month the respondents wrote that unless he paid the rent owing forthwith, as well as a fee for the preparation of the agreement, he would have to remove his stall. The appellant complied with this request, but again omitted to pay the rent in advance, whereupon, in a further series of letters, he was asked to remove his stall and given 48 hours' notice to do so, failing which the respondents would remove it themselves. The appellant did not remove his stall

within 48 hours and it was dismantled and put in storage by the respondents who claimed to make a charge for doing so and informed him that this would have to be paid before his goods could be returned to him.

The appellant instituted the present proceedings in the Supreme Court claiming damages for breach of contract and for pulling down and depriving him of the use of his stall, as well as the return of the fee paid by him for the preparation of an agreement that had not been signed. The Supreme Court gave judgment for the respondents.

On appeal, the West African Court of Appeal considered whether the facts established that the appellant had a valid contractual licence; if so, what would amount to reasonable notice for the termination of that licence; and what measure of damages was recoverable for breach of the contract and for the conversion and detinue of his goods.

The appeal was allowed.

Cases referred to:

(1) *Canadian Pacific Ry. Co. v. R.*, [1931] A.C. 414; [1931] All E.R. Rep. 113, applied.

(2) *Cobbett v. Clutton* (1826), 2 C. & P. 471; 172 E.R. 213.

(3) *Hadley v. Baxendale* (1854), 9 Exch. 341; 156 E.R. 145, applied.

(4) *Wilson v. Tavener*, [1901] 1 Ch. 578; (1901), 84 L.T. 48, applied.

Beoku-Betts for the appellant;
Boston for the respondents.

DEANE, C.J. (G.C.)

In this action against the Freetown Municipality the appellant claimed the sum of £56, whereof the sum of £55 was by way of damages for breach of contract and for pulling down and depriving him of the use of a building erected by him in the Victoria Park, Freetown, and £1.1s.0d. was money paid by the appellant to the respondents for the preparation of an agreement which has not been signed.

The circumstances which gave rise to this action, only the relevant parts of letters which passed between the parties being quoted, are as follows:

By letter dated October 13th, 1930 the appellant wrote to the President of the Municipality: "I beg leave respectfully to apply

for permission to run a Tea Shop at the Victoria Park as I have hitherto done." This letter he at once followed up by interviewing the President on the subject, and on October 16th — three days later — we find him writing again, renewing his proposal in a more detailed form:

"*Application for a Tea Shop or Cafe at the Victoria Park.*

Sir, with reference to the interview I had with you yesterday afternoon, on the subject of the above I beg leave to confirm the following, being the conditions under which it is proposed to run it.

1. It shall consist of buns, cakes and other edible refreshments, which will include tea, cocoa, coffee and cream, fruits, minerals exclusive of alcoholic drinks of any nature, cigars, cigarettes and tobacco.

2. I propose to run it ordinarily every day from 6 a.m. to 6 p.m., and to give way to the promoters of any function therein when it is arranged by them to provide and arrange their own refreshments and catering without being in their way or obstructing the harmony of their arrangements.

3. Prices: Cup of tea with a slice of bread and butter: 2d."

There follows a list of other things to be sold, with their prices, which need not be enumerated.

"4. With a view that it might not be considered that such a contingency has been allowed me in a gratuitous manner I respectively offer to pay a monthly rent of 5s.."

On October 24th, 1930 the Town Clerk, replying to this letter, wrote:

"Sir,

I am directed to acknowledge the receipt of your letter of the 16th instant and to inform you that the question of letting a portion of the Victoria Park to you for a tea shop or cafe will be fully decided in Council on November 10th 1930. Should Council approve, an ordinary agreement will be drawn up showing the terms under which the park will be let out."

On November 17th, 1930 the Town Clerk again wrote to the applicant:

"Sir, Further to my letter No. 8/3/1347 of October 24th I beg to inform you that Council on the 10th instant approved of your proposal to run a tea shop at the Victoria Park at 5s. per month payable in advance. An agreement is

being drawn up which will be submitted for your signature as soon as ready. I shall be glad if you will now pay the rent of 5s. for November into the City Treasury."

On November 28th the plaintiff paid the sum of 5s. as requested into the City Treasury and obtained a receipt from the Treasurer, Mr. A. M. Stuart.

In the meantime, as soon as the Council had approved of his proposal which, as we learn from the President's evidence was on November 8th and before the letter of November 17th formally intimating that approval had been received by him, the appellant had begun to erect his tea shop in the Victoria Park — an erection which he finally completed at a cost of about £20.

After the letter of November 17th formally intimating approval by the Council of the appellant's proposal, an agreement was prepared by the Council's solicitor and was submitted to the appellant by the President, but the appellant objected to cl. 7 in it which contained a provision for determining the agreement by 48 hours' notice in writing on the appellant making default in payment of the rent reserved or committing a breach of any of the conditions contained in the agreement, and he asked to be allowed to consult his solicitor before signing.

On January 5th, 1931 the Town Clerk wrote to the plaintiff:

"Sir, I am directed by the President to inform you that you have not been keeping to the arrangements made in connection with the tea shop at the Victoria Park.

Up to this moment the monthly rent in advance has not been paid, and you have not paid the fee for the agreement, nor have you taken action to sign the agreement.

I am to inform you that unless payment is made forthwith, you are to quit the Victoria Park."

On the same day the appellant wrote in reply asking for a copy of the agreement to be submitted to his solicitor before signing, and on January 6th, 1931 he paid to the City Treasurer and obtained a receipt for the sum of 5s. being "rent of Victoria Park for the use of tea shop for the month of December 1930."

On January 13th 1931 the Town Clerk wrote to the plaintiff:

"Sir, with reference to your letter of the 5th instant I have the honour to inform you that your letter has been laid before the City Council and I am to inform you that unless all monies due to the Council including the fee of £1.1s.0d. for preparation of the agreement is paid on or before January

31st of this year, you will have to remove your stall from the park."

On February 2nd, 1931 the appellant paid to the City Treasurer and obtained a receipt for the sum of 5s. "being the amount collected for the use of a tea shop at the Victoria Park for the month of January 1931," and also on the same day paid to the Treasurer the sum of £1.1s.0d. "being fee for the preparation of agreement re Victoria Park."

On February 4th, 1931 the Town Clerk wrote to the plaintiff the following letter:

"Sir, With reference to my letter No. 8/6/787 of January 13th I have the honour to inform you that as the conditions laid down in that communication were not complied with, I have in accordance with a resolution of the Council held on Monday, January 12th no alternative but to request that you remove your tea shop from Victoria Park forthwith."

On February 19th, 1931 Mr. Boston, the solicitor for the respondents, wrote to the appellant:

"Dear Sir, I am instructed by the City Council of Freetown to give you notice and I do hereby give you 48 hours' notice from date hereof to remove your shop from the Victoria Park. And take notice that if you fail to remove the said tea shop from the said Park, the City Council may take steps to have the same removed at your expense,"

and on February 24th, 1931, in reply to a letter from the appellant who had written to him asking him for the reasons which had moved the Council to treat him as they had done, a further long letter in which he detailed the events that had taken place and concluded:

"I am therefore directed to inform you that as you have made default in the paying of the monthly rent, the Council adhere to their resolution in revoking their license to you, and if you have not yet quitted the park and removed the stall, Council would take steps to effect its removal at your risk and expense."

On March 3rd, 1931 Mr. Boston wrote to the appellant:

"Dear Sir,

I am instructed by the President of the City Council to inform you that your tea stall at the Victoria Park has been dismantled by the Council as you failed to remove it after notice to do so. The materials are stored in the municipal

store and delivery will be made to you on application. The cost of removal is 10s. which together with 5s. due for rent will be deducted from your deposit of £1.1s.0d. with the President. A charge of 5s. per month will be made for storage while the materials are in the municipal store."

The appellant did not apply for delivery of his materials or make any attempt to remove them, and on April 16th, 1931 Mr. Boston wrote the following further letter to him:

"Dear Sir,

I am instructed by the President of the City Council to request you to remove the materials of your tea shop now at the City Council store not later than the 30th instant on payment of the amount due for storage, etc., thereon."

On April 24th 1931 this action was instituted.

Now on consideration of these facts it appears clearly that the appellant, with the full consent of the City Council, was in possession of a site in Victoria Park on which he had been allowed to erect a building costing him £20. Whether the letters that have been put in evidence constitute an express contract between the appellant and the respondents whereby the respondents accepted the proposal contained in the appellant's letter of October 16th or whether, taking the view of the learned trial judge, we agree that the terms on which the appellant was to be allowed to remain on the site were to be embodied in a written document to be agreed on later between the parties, the fact remains that the appellant was no trespasser but a licensee in possession of land on which he had been allowed, with the full knowledge and consent of the Council, to erect a building. That this is so is proved by the evidence of the President of the Council who stated:

"When I gave instructions for that letter to be written" (he is referring to the Town Clerk's letter of November 17th) "I found that Mr. Yaskey was erecting the tea shop. I first had information and then I verified the information. I went up a day or two after November 8th and saw the tea shop in building — the Council had not then given official information to Mr. Yaskey — when I saw it, it was only a skeleton shed. I told Mr. Yaskey to paint it"

— and we know that several meetings of the Council took place subsequently at which the matter was discussed and that the erection of the building by the appellant without their consent was never at any time made a cause of complaint by the Council,

who based their revocation of the licence upon the appellant's default in paying the monthly rent — *vide* Mr. Boston's letter of February 24th, 1931. When in addition we remember that they received rent from him for the months of November and December 1930 and for January 1931 and, further, claimed the right to deduct from the £1.1s.0d. deposited by him to pay for the preparation of an agreement between the parties a further 5s. by way of rent for February, we can come to no other conclusion than that the Council themselves were of opinion that at least up to the end of February the appellant was entitled under licence from them to the use of the site in the Victoria Park for a tea shop. This licence it is agreed was revocable, but it had to be revoked lawfully. How a revocable licence may be revoked was discussed by the Privy Council in the case of *Canadian Pacific Ry. Co. v. R.* (1) where it was stated ([1931] A.C. at 432; [1931] All E.R. Rep. at 123):

> "Whether any and what restrictions exist on the power of a licensor to determine a revocable licence must, their Lordships think, depend upon the circumstances of each case. The general proposition would appear to be that a licensee whose licence is revocable is entitled to reasonable notice of revocation. For this proposition reference may be made to *Cornish v. Stubbs* and *Mellor v. Watkins*, in the latter of which cases Blackburn J. states that a person giving a revocable licence 'is bound to give the licensee reasonable notice.'
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> When the exercise of the rights conferred by the licence involves nothing beyond, there can be no reason to urge against the existence of a power to determine the licence brevi manu at the will of the licensor.
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> But the exercise of the rights may have involved the licensee in obligations in other directions, which the determination of the licence would disable him from fulfilling, unless the licence were determined after a notice sufficient, in point of time, for the making of substituted arrangements."

I have therefore to determine what, in view of the circumstances of this case, would amount to reasonable notice. Now the first thing to be noted is that the appellant had been allowed, relying on the continuance of the arrangement for a reasonable time, to expend what was for him a considerable sum and might reasonably therefore look to the Council to give him some

reasonable time to reimburse himself for the outlay, or at least to allow him, if called upon to remove, to make arrangements for obtaining another site on which he could re-erect his building or, failing to obtain a suitable site, could negotiate its sale to a purchaser, none of which things it is obvious could be done in a day or two. Moreover, the draft agreement submitted to the appellant provides for the determination of the agreement by a month's notice, a term which presumably therefore appeared to the parties to be reasonable. In the case of *Wilson v. Tavener* (4), where the rent for permission to erect a hoarding was payable quarterly, it was held that a three months' notice to quit expiring at the end of the year of the term was a reasonable notice. Accordingly in this case I hold that the respondents could reasonably have terminated the appellant's licence by giving him a month's notice to quit expiring at the end of the month following on the current month of the tenancy. Now it is clear from the correspondence that the respondents never gave the appellant any such notice determining his licence. The first letter which can by any possibility be held to have the effect of determining the quasitenancy, since the former letters merely called upon him to pay up, failing which the agreement would be cancelled, is the letter from the President of February 4th, 1931 requiring him to remove his tea shop from the park forthwith. This was followed by Mr. Boston's letter of February 19th, 1931, in which he was given 48 hours' notice to remove. But neither of these letters amounts to a legal determination of the arrangement by a month's notice, and I am clearly therefore of opinion that there was a breach of the implied contract entered into by the respondents with the appellant to allow him to use the site for the purposes of a tea shop, and that the pulling down of his building was an unjustifiable act.

I am further of opinion that the action of the Council in locking up the appellant's materials in their store and requesting him in the letter of April 16th, 1931 to remove them *on payment* of the amount due for storage, etc., constituted in law a conversion of the appellant's goods (*Cobbett v. Clutton* (2)). Had the Council contented themselves with their letter of March 3rd in which they informed the appellant that the goods were in store and could be delivered to him on application, they might it seems to me on the terms of that letter reasonably have been heard to say that they placed the appellant's goods in their store merely for safe keeping,

and had no intention to refuse delivery and that the satisfaction of the further demand for 10s. costs of removal, and 5s. due for rent, was not a condition precedent to delivery, but this plea, it seems to me, cannot be supported in view of their subsequent letter of April 16th, in which they in terms required the appellant to remove the goods on payment of the amount due for storage, etc., whereby they intimated that he would have to satisfy their illegal demand before he could obtain the goods.

The respondents are therefore in my opinion liable to the appellant for breach of contract and for conversion of his goods. The measure of damages recoverable for breach of contract was discussed in the case of *Hadley v. Baxendale* (3), when the court said (9 Exch. at 354; 156 E.R. at 151):

> "Now we think the proper rule in such a case as the present is this: Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, *i.e.*, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."

Now in this case the respondents knew for what purpose the appellant was erecting this tea shop. They must have realised that he was going to considerable expense to put up a building and that in the ordinary course of things, in view of the volume of business he was likely to obtain, it would take some time for him to recoup himself for that expense, and that he expected to be allowed to enjoy his licence for a reasonable time, yet on February 4th, 1931, after they had received the rent from him up to January 31st, and when he had already entered on another month of quasi-tenancy, so that his licence could not have been reasonably determined before March 31st, they wrote calling upon him to remove his tea shop from the park forthwith, and followed up this letter by another one of February 19th peremptorily requiring him to remove his shop within 48 hours, failing which it would be removed at his expense — a threat which was afterwards carried out. On receipt of the letter of February 4th, the appellant says he withdrew from the park; he was thereby deprived of the opportunity of carrying on his business for a considerable time. As to

what he lost thereby there is a conflict, the appellant maintaining that the business was a profitable one, the respondents contending that it was not; but I think we may fairly come to the conclusion that the appellant who had been carrying on the business apparently before he got his licence from the Council — witness his first letter to the President wherein he applied for permission to run a tea shop "as I have hitherto done" — would not have embarked on the expenditure he did and been willing to pay 5s. a month for the privilege granted to him had not experience shown him that there was a fair profit to be made out of the venture. He has further been entirely deprived of the materials of his shed for about $2\frac{1}{2}$ years, materials which represent to him a considerable capital which he might have used in his business.

In the case of *Wilson v. Tavener* (4), where there was an agreement to let A erect a hoarding for a bill posting and advertising station and use a wall of a house for the same purpose at a rental of £10 per annum, Joyce, J., after stating that the matter resolved itself into a question whether a three months' notice which had been given by the defendant to the plaintiff to determine the user of the premises was a sufficient notice or whether the plaintiff was entitled to a six months' notice, stated ([1901] 1 Ch. at 580; 84 L.T. at 49): "If a six months' notice was required, then. . . the plaintiff is entitled to substantial damages." So I consider the appellant in this case is entitled to substantial damages speaking relatively, and remembering always the small scale on which he was carrying on business.

In my opinion the damages which he has suffered may fairly be assessed at £35 to cover the loss of his goods and business.

There remains the further question of the £1.1s.0d. paid to the respondents by the appellant. The respondents now contend that it was paid by the appellant for preparation of the agreement irrespective of whether it was signed or not and is not recoverable. This position, however, differs entirely from that adopted by them in their letter of March 3rd, 1931, in which they referred to it as "deposit," and claimed to have the right of deducting from it 10s. cost of removal of the appellant's goods, and 5s. by way of rent on the appellant's account, thus supporting the appellant's contention that it was to be used to pay for the preparation of an executed agreement between himself and the respondents. Such an agreement was in fact never come to and the appellant is in my opinion entitled to the refund of the £1.1s.0d. payable on its completion.

The judgment of the court below for the respondents will be set aside, and judgment will be entered for the appellant for the sum of £36.1s.0d. with costs in this court and in the court below.

KINGDON, C.J. (Nig.) and WEBBER, C.J. (Sierra Leone) concurred.

Appeal allowed.

IN THE MATTER OF THOMPSON

Supreme Court (Macquarrie, J.): January 6th, 1934

[1] **Civil Procedure — costs — succession cases — normally payable out of deceased's estate — application for taxation may not be made by residuary legatee because not "party interested" within Solicitors' Act, 1843, s. 39:** The title to a testator's estate passes to his executor subject to his obligation to deal with it in accordance with the terms of the will; a residuary legatee has no property in the estate, having a right only to the payment of a debt due to him, and since he is not therefore a "party interested" in the estate within the meaning of the Solicitors' Act, 1843, s. 39, he may not apply for the taxation of a bill of costs which has been or may be paid by the executor out of the estate (page 360, lines 30—36; page 361, lines 20—23).

[2] **Succession — costs — application for taxation of costs payable out of deceased's estate — may not be made by residuary legatee because not "party interested" within Solicitors' Act, 1843, s. 39:** See [1] above.

[3] **Succession — executors and administrators — title to estate of deceased — executor succeeds to title subject to obligation to deal with it in accordance with will:** See [1] above.

[4] **Succession — wills — legacies — legatee has no property in deceased's estate — only right to enforce payment of debt due to him:** See [1] above.

The applicant, a legatee and residuary legatee under a will, applied to the Supreme Court for the taxation of a bill of costs incurred by the executors in administering the estate.

The executors opposed the application contending that although the costs were to be met from the deceased's estate, the applicant was not a "party interested" in that fund within the meaning of the Solicitors' Act, 1843, s. 39, since he had the right only to enforce the payment of a debt due to him and had no property in the estate.

The application was dismissed.