As regards general damages the guiding principle is that set out in Halsbury's Laws of England, 3rd ed., Vol. 11, p. 255, para. 427—*Personal injury*—

> "In a claim for damages for personal injury whether caused by trespass, or by negligence, or by breach of statutory duty, the damages are, apart from special damages, at large, and will be given for physical injury itself and, in case of loss of limb, disfigurement, or disablement, for its effect upon the physical capacity of the injured person to enjoy life, as well for his bodily pain and suffering, and for shock or injury to health. Such damages cannot be a perfect compensation but must be arrived at by a reasonable consideration of all the heads of damage in respect of which the plaintiff is entitled to compensation and of his circumstances, making allowances for the ordinary accidents and chances of life."

Applying this principle to the facts of this case, which I have already found in favour of plaintiff, particularly the medical evidence, the general damages must of necessity be substantial. Learned counsel for the plaintiff has in the course of his address urged me to award for this item a figure in the neighbourhood of £15,000 and he cited authorities in support as a guide to the court. Taking all the circumstances of this case into consideration I do feel justice would be done if I allow plaintiff the sum of £4,000 for the physical injury itself, bodily pain and suffering and the shock and injury to health. For disfigurement and disablement which include permanent deformity of right chest and the left hip with 2½ inch shortening I award plaintiff £7,000.

In the result there will be judgment for the plaintiff for £13,108 4s. 2d. made up as follows:

Medical expenses	...	...	...	£485 12s. 6d.
Loss of earning	...	...	...	£1,622 11s. 8d.
General damages	...	...	...	£11,000 0s. 0d.

Plaintiff to have the costs of the action, such costs to be taxed.

[SUPREME COURT]

Freetown
May 28,
1962
Bankole Jones
Ag.C.J.

IN THE MATTER OF THE GOLD COAST PROPERTIES COMPANY LIMITED

[C.C. 420/61]

Companies—Landlord and tenant—Lease to company which went into voluntary liquidation—Application by lessor for order rescinding lease—Whether proper to make application by motion—Title of lessor denied by lessee—Breach of covenants by lessee—Companies Act (Cap. 249, Laws of Sierra Leone, 1960), ss. 215, 252, 262.

In 1955 and 1956, Mr. B. L. Macfoy leased two adjacent pieces of land to the Gold Coast Properties Company Limited, which changed its name in 1957 to the Central Property Company (Ghana) Ltd. (the Company). In August 1957, the Company went into voluntary liquidation. In November 1961, Macfoy applied to the Supreme Court by motion on notice under section 252 (5) of the Companies Act for an order that the two leases be rescinded. Section

252 (5) provides: "The court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract. . . ."

The grounds for the motion were that the Company had broken covenants in the leases under which it was obligated to pay rents and rates and not to part with the possession of the demised premises. Macfoy also pointed to an affidavit by a representative of the Company in which it was said, " . . . the United Africa Company Limited (U.A.C.) are the owners of the said premises. . . ." Macfoy argued that by denying lessor's title the company forfeited the leases.

At the trial counsel for the company argued that U.A.C. was in lawful possession of the properties as agent for the Company. It was also argued that a motion was not the proper procedure by which to challenge the leases.

Held, granting the motion, (1) that, as a general rule, an application authorised to be made to the court under section 252 (5) of the Companies Act may be made by motion;

(2) That the Company breached the leases by allowing U.A.C. to take possession of the premises;

(3) That, where a lessee, by clear and unequivocal words, denies the lessor's title, such a denial operates as a forfeiture of the lease; and

(4) That the Company breached the leases by failing to pay rents and rates.

Cases referred to: *In re Union Bank of Kingston-upon-Hull* (1880) 13 Ch.D. 808; *In re Wreck Recovery and Salvage Company* (1880) 15 Ch.D. 353; *Wisbech St. Mary Parish Council* v. *Lilley* [1956] 1 All E.R. 301; *Doe* d. *Ellerbrock* v. *Flynn* (1834) 3 L.J.Ex. 221; 149 E.R. 1026; *Warner* v. *Sampson* [1959] 1 Q.B. 297; *Salomon* v. *Salomon & Co.* [1897] A.C. 22.

Cyrus Rogers-Wright for B. L. Macfoy.

Rowland E. A. Harding for the Central Property Company (Ghana) Limited.

Note: The decision in this case was partially reversed by the Sierra Leone Court of Appeal on December 10, 1963 (Civil Appeal 5/63).

BANKOLE JONES AG.C.J. This is a motion by a lessor, the applicant in this matter, for an order that two leases entered into between himself and the Gold Coast Properties Company Limited and bearing different dates, be rescinded and that the liquidator or other officer of the said Company pay to the applicant such sums as shall be found due as rent in arrears and for such other order as in the circumstances may be considered just.

The application is said to be founded on subsection (5) of section 252 of our Companies Act, Cap. 249 (hereinafter called the "Act"). Counsel for the respondent submitted that the subsection is inapplicable, first, because the Company is not in liquidation and, secondly, because section 252 (1) relates to "Disclaimer of onerous property," that is, property burdened with onerous contracts, and that the procedure envisaged by the Act is that the liquidator must first apply to the court to disclaim such contracts within a reasonable time, and that it is only when he fails to do this that subsection (5) becomes operative.

I find incontrovertible evidence that the Gold Coast Properties Company Limited is in voluntary liquidation. One only has to look at the letter written by the Acting Registrar of Companies, Accra, Ghana, dated February 13, 1962, copy exhibited as CRW1 in the affidavit of Cyrus Rogers-Wright, dated February 22, 1962, to come to that conclusion. Also counsel for the respondent himself in his affidavit, dated May 18, 1962, exhibited a power of attorney

to Mr. Joseph Richard Morris, general manager of United Africa Company Sierra Leone Limited, which reads, inter alia:

> "By this power of attorney Central Property Company (Ghana) Limited (formerly known as Gold Coast Properties Company Limited) in voluntary liquidation (hereinafter called 'the Company') acting by Frederick William Wilson . . . the liquidator of the Company (hereinafter called 'the Liquidator') hereby appoint Joseph Richard Morris as general manager of United Africa Company of Sierra Leone Limited of Freetown, Sierra Leone, the Company's attorney and attorney for me and in the name of the Company and in my name and on the Company's behalf to do and execute all or any of the acts and things following: . . ."

Whereas it is conceded that section 252 (1) deals with disclaimer of onerous property by the liquidator of a company which is being wound up, the law, however, provides that the liquidator "may, with the leave of the court and subject to the provision of this section, by writing signed by him, at any time within 12 months after the commencement of the winding up or such extended period as may be allowed by the court, disclaim the property."

Here, we have the case in which the Gold Coast Properties Company Limited went into voluntary liquidation on August 31, 1957 (see Exh. "G," a letter written from the Registrar General's Department, Accra, Ghana, dated November 1, 1961, referred to in the affidavit of the applicant, dated November 14, 1961), and this fact was not brought to the notice of the applicant as required by law (see s. 264) until a little more than four years after. Is it then to be said that section 252 (5) does not apply? This section reads as follows:

> "The court may, on the application of *any person* who is, as against the liquidator, entitled to the benefit, or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just. . . ." (emphasis supplied).

In my opinion, this subsection eminently applies to this matter. But it was further argued by counsel for the respondent that a motion is not the proper procedure to found such proceedings because the substance of the contention is grounded on a breach of contract and consequently an action is the appropriate procedure. With respect, I do not fully agree with this proposition. I think that, as a rule, where any application is authorised to be made to the court as section 252 (5) contemplates, then such application may be made by motion. See *In re Union Bank of Kingston-upon-Hull* (1880) 13 Ch.D. 808 at pp. 809–810, where Jessel M.R. in his judgment expresses the following opinion: "In a voluntary winding up a liquidator may apply to the court to decide any question fairly arising in the winding up, and it is much cheaper to bring it before me by way of motion than by an action."

It seems to me to be of no moment whether the application is made by a liquidator or by any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the Company.

The facts are that the first lease was executed on April 27, 1955, for a term of 15 years at a yearly rental of £72, payable in advance on the first day of March every year without any deduction. Five years' rent was paid in

advance to cover the period March 1, 1955, to February 29, 1960. It is conceded that rents due as from March 1, 1960, have not been paid to the applicant. The second lease was executed on August 1, 1956, for a term of 21 years at the yearly rental of £120, payable by equal quarterly instalments in advance on August 1, November 1, February 1 and May 1 in every year. It is conceded that rents were paid up to and including the quarter ending January 31, 1959, and the applicant says that the lessees are in arreasr as from February 1, 1959.

In both leases, the lessees in substance covenanted, among other things, as follows:

(1) To pay the rents as they fell due and in the manner agreed upon.
(2) To pay all rates, taxes and outgoings upon the demised premises.
(3) Not to assign, underlet or part with the possession of the demised premises or any part thereof without the consent of the applicant.

Then followed the general familiar proviso, namely, that if the lessees did not pay the rents or if any part thereof was in arrears for the space of 21 days after becoming payable whether the same shall have been legally demanded or not or if there shall be a breach or non-observance of the lessees' covenants then the applicant would be entitled to re-enter the said premises.

I think it is important to bear in mind that both leases were entered into on behalf of the Gold Coast Properties Company Limited by one John Priestly Birch by virtue of deeds polls or powers of attorney dated, as to the earlier lease, October 2, 1953, and, as to the latter lease, December 4, 1946. Neither deed poll nor power of attorney was exhibited. Though not so stated in any of the leases, counsel agreed that Mr. Birch was the then general manager of the United Africa Company Sierra Leone Limited and it appears to have been conceded that the applicant regarded that company as the agent of the lessees and rightly or wrongly dealt with it as such agent. It is also important to bear in mind that these proceedings are brought not against the United Africa Company Sierra Leone Limited but against the liquidator of the lessees, whom I have found went into voluntary liquidation on August 31, 1957. The United Africa Company Sierra Leone Limited are opposing this motion because they say that by a power of attorney referred to above, and dated December 27, 1961, one Joseph Richard Morris, general manager of the United Africa Company Sierra Leone Limited, was appointed by the liquidator of the lessees among other things to defend these proceedings.

Throughout the hearing of this matter, the argument of counsel for the respondent which overrode all else was that the United Africa Company Sierra Leone Limited was and still is the agent of the lessees and that the lessees have not gone into voluntary liquidation but only their successor, namely, the Central Properties Company Limited. I think I have disposed of the second part of this argument.

Now, as to the first part, so far as these proceedings are concerned, the question whether the United Africa Company Sierra Leone Limited can act as agent either for the Gold Coast Properties Company Limited, now demised, or its successor, Central Property Company (Ghana) Limited, which went into voluntary liquidation, is of importance. The answer to this question is, to my mind, no, because there is a statutory prohibition by implication that this cannot be. Section 262 of the Act reads: "A body corporate shall not be qualified for appointment as liquidator of a company . . . in a voluntary winding up, and any appointment made in contravention of this provision shall

be void." It seems to follow, a fortiori, that if a body corporate cannot be appointed as a liquidator, a liquidator cannot appoint a body corporate as his agent. If, therefore, it is argued that the power of attorney given to Mr. Morris is a power of attorney to the United Africa Company Sierra Leone Limited, then it is void because it is unlawful and illegal. But even if the power of attorney is one given to Mr. Morris in his personal capacity, counsel for the applicant submitted that in so far as the liquidator exceeded his powers under the Act, it is also void in that the powers given to Mr. Morris under paragraphs 1 and 3 of the power of attorney are powers envisaging continuation of the business of the Company and not in contemplation of winding-up proceedings. See section 215 of the Act, which reads: "In case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business except so far as may be required for the beneficial winding up thereof." Paragraphs 1 and 3 referred to above gave the attorney, among other things, the power to mortgage, charge, sell, lease, let and otherwise dispose of the applicant's properties, erect, repair, alter and pull down buildings, fences and other erections upon the said properties as well as to accept surrenders of leases and tenancies affecting the said properties and to enter into contracts, covenants and arrangements of all kinds in relation to the said properties. Clearly, these are powers which offend against section 215 of the Act, because they appear to facilitate the continuation or reconstruction of the Company. See *In re Wreck Recovery and Salvage Company* (1880) 15 Ch.D. 353. In my view, therefore, all that remains of the power of attorney so far as these proceedings are concerned is the power given to Mr. Morris to bring or defend any action or other proceedings in respect of or affecting the Company.

Now, it was forcefully argued by counsel for the respondent that the United Africa Company Sierra Leone Limited are in lawful possession of the applicant's properties as agents for the lessees. This state of affairs, to my mind, with respect, is untenable because it is contrary to the provisions of the Act. When the lessees went into voluntary liquidation in August 1957, no notification of this fact was given to the applicant contrary to section 264 of the Act. The first time the applicant knew of it was by letter from the office of the Registrar General, Accra, Ghana, dated November 1, 1961, referred to above. Also, when the lessee's name was changed to that of the Central Property Company (Ghana) Limited, and it went into voluntary liquidation in that name, the name of this new company was not registered here in Sierra Leone within six months, as required by law, in violation of sections 289 to 297 of the Act. Such registration was only effected in February 1962 after the commencement of these proceedings. The effect of all this is to disentitle the lessees or their successors from holding land in Sierra Leone and consequently any purported agent of theirs. All this means that the lessees or their successors are in breach by either having assigned or otherwise parted with the possession of the two properties leased to them. The position is even made clearer by the fact that the lessees knew, as indeed they should, that they had no right to assign or part with the possession of the properties without the consent of the applicant, because they instructed their solicitor, Miss Frances Wright, to apply to the applicant for his licence and authority to assign the leases of both properties to the United Africa Company Sierra Leone Limited in the first instance and for that Company in the second instance to assign these leases to Messrs. Mobil Oil Sierra Leone Limited, a company incorporated under the laws of Sierra Leone. See Exhs. "C," "C1" and "D" dated as to "C" September 25, 1961,

as to "C1" an enclosure to "C" and as to "D" dated October 11, 1961, exhibited in the affidavit of the applicant dated November 14, 1961. It is instructive not only to note that none of Miss Frances Wright's letters stated the fact that the lessees had gone into voluntary liquidation under a changed name but also that by a letter dated October 20, 1961, to the applicant's solicitor, Exh. "F" exhibited in the same affidavit, Miss Frances Wright withdrew her application to the applicant in the following words: "I am now instructed to ask you to disregard the application." Anyone can hazard a guess why there was this change of instructions from the lessees. It is, therefore, my considered opinion that the present possession or occupation of the United Africa Company Sierra Leone Limited is unlawful and in breach of the lessee's covenant not to assign, underlet or otherwise part with the possession of the applicant's premises. On the evidence, I do not find that the premises are occupied by Messrs. Mobil Oil Limited. This is contrary to the admission made by counsel for the respondent, namely, that the respondent Company is in occupation.

At paragraph 11 of the affidavit of Mr. Morris, dated February 13, 1962, is to be found the following:

> "The lessees and their attorney say that by a memorial of judgment, dated November 19, 1958, the United Africa Company Limited are *the owners* of the said premises and they deny that Benjamin Leonard Macfoy is the owner as alleged, the lands are to be sold by the sheriff to satisfy the said judgment."

Counsel for the applicant submitted that by the statement in this paragraph the lessees have denied the applicant's title as their landlord and have set up title in a stranger, to wit, Messrs. United Africa Company Sierra Leone Limited. He said that such a denial of title creates a forfeiture of the two leases and that the applicant has unequivocally elected to treat the leases at an end by issuing a writ of summons against the Company for the possession of the respective properties comprised in both leases founded upon the forfeiture above stated. A copy of the writ or summons is exhibited in the affidavit of the applicant dated March 5, 1962, and marked "BLM1." In *Wisbech St. Mary Parish Council* v. *Lilley* [1956] 1 All E.R. 301, 304 (C.A.), Romer C.J. stated as follows:

> "If a tenant deliberately asserts a title in himself adverse to his landlord or if he lets a stranger into possession with the intention of enabling him to set up a title adverse to the landlord, that amounts to a repudiation of the landlord's title. . . . It is a question of fact, however, what intention underlies the words or the actions of a tenant, whether in fact he is definitely asserting a title adverse to the landlord, or, as the case may be, intending to enable somebody else to set up such a title."

This case related to a tenancy from year to year and so indeed did the case of *Doe* d. *Ellerbrock* v. *Flynn* (1834) 3 L.J.Ex. 221 ; 149 E.R. 1026 therein cited. But it is my view that the principle applies to a tenancy for years. So that where a lessee by words or statements clear and unequivocal denies the lessor's title, such a denial operates as a forfeiture and this will be supported by the fact that the lessor has brought an action to recover possession. See also the case of *Warner* v. *Sampson* [1959] 1 Q.B. 297 (C.A.) and Lord Denning's judgment.

In the present case I find that the statement of Mr. Morris, coupled with the fact of the issue of a writ to recover possession from the lessees, amounts to a forfeiture of both leases.

Counsel for the respondent conceded that the lessees have not paid the rent due to the applicant as to the first lease from March 1, 1960, and as to the second lease as from February 1, 1959, but he submitted that these rents have been utilised to offset a judgment debt of £5,960 15s. 9d. due to the United Africa Company Sierra Leone Limited. It is borne out from the evidence that the lessees are a separate company from the United Africa Company Sierra Leone Limited even though the latter may have purported to act as agent for the former. These companies are two distinct entities in law and rents due the applicant from the former cannot be utilised to satisfy a judgment debt obtained by the latter. See the celebrated case of *Salomon* v. *Salomon & Co.* [1897] A.C. 22 (H.L.). I find, therefore, that the lessees have acted in breach of their covenant to pay rents to the applicant when they fell due.

It was also submitted that rates were to be paid to the applicant and when so tendered were refused. I find nothing in either lease which stipulates that the rates should be paid to the applicant. These, I find, should be paid by the lessees, and I construe this to mean, paid to the appropriate local authority. As a result, it is alleged that the applicant himself paid these rates to the appropriate local authority, and counsel for the applicant submitted that failure to pay these rates by the lessees to the appropriate local authority constituted a breach of the lessees covenant. I could not agree more with this submission.

It follows from this review of the facts and on the authorities that the applicant is entitled to a rescission of the two leases because of the several breaches of covenants committed by the lessees and named above. I, therefore, order their rescission for the remainder of their respective terms. On the question of rents, I order the lessees or their attorney to pay all rents due as from March 1, 1960, to May 28, 1962, at the rate of £72 per annum in respect of the first lease, dated April 27, 1955, and, as to the second lease, dated August 1, 1956, I order the lessees or their attorney to pay all rents due as from the quarter beginning February 1, 1959, to May 28, 1962, at £120 per annum. On the question of rates, I order the lessees or their attorney to pay to the applicant all rates found due and payable which have been paid or ought to have been paid by the applicant to the appropriate local authority. I order the Master and Registrar to hold an inquiry as to the amount of rents and rates due the applicant and report to this court his findings.

On question of damages section 252 (5) of the Act is authority that the applicant may be awarded such.

In my opinion, I think that this is a matter in which this court can hardly err in awarding damages. I, therefore, award as regard the lessees' breaches relating to the first lease half a year's rent, namely, the sum of £36 and as regards the breaches relating to the second lease, also half a year's rent, namely, £60.

The applicant is to have the taxed costs of these proceedings, including the costs to be incurred at the inquiry before the Master and Registrar. This matter is adjourned pending the Master's report to June 8 for mention.