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**Court :** House of Lords

**Decided On :** Feb-14-1916

**Judge :** Lord Buckmaster L.C., Lord Atkinson, Lord Earl Loreburn

**Appeal No. :** [1916] UKHL 1

**Appellant :** King

**Respondent :** David Allen and Sons, Billposting, Limited

**Judgement :**

LORD BUCKMASTER L.C.

My Lords, it is impossible to approach the consideration of this case without feeling and expressing great regret for the unfortunate position in which the appellant, Mr. King, has found himself. He seems to me to have acted throughout the whole of these transactions with perfect straightforwardness and with a sincere and anxious desire to discharge the obligation which he undertook towards David Allen and Sons, Limited; but by circumstances which have passed beyond his control there has, in my view, been a breach of his obligation to the respondents, and for that breach he must be made responsible.

The facts in this case are quite simple and free from controversy. It appears that Margaret King, the mother of the appellant, had in 1889 entered into an agreement with a man named Dillon for the use by him of a certain space for billposting. The terms of that agreement have been referred to, and counsel for the appellant

directed your Lordships' attention to the fact that those terms are of such a nature that they are in themselves applicable to the constitution of the relationship of landlord and tenant. It is not, however, necessary to determine what was the true legal effect of that contract, and for these reasons: While that contract was on foot Mr. King, the appellant, in whom the property had vested, was approached, apparently by a Mr. Farrell, who was anxious to establish a picture palace company in the district. For this purpose he desired to obtain possession of the site upon which David Allen and Sons had, in succession to Mr. Dillon, the billposting rights under the previous agreement. It was desirable, therefore, that this agreement should be ended and that a new agreement should be set on foot to give David Allen and Sons, Limited, the rights that they desired in respect of premises that were then about to be built. I think it is plain that Messrs. David Allen and Sons, Limited, were well acquainted with the circumstances that then existed with regard to the use of this site, and that they knew quite well that it was intended that the company should be formed for the purpose of building upon it, thus creating a new structure to which their bills might be affixed. With this knowledge they entered into an agreement with the appellant of July 1, 1913, upon which the whole of the present dispute depends. It is an agreement which was made between the appellant of the one part and the respondents of the other, and as part of the arrangement leading up to its execution the previous agreement which had been made between the predecessor in title of the appellant and the predecessor in title of the respondents was cancelled, and the new agreement took its place.

Now in the new agreement the appellant is referred to as licensor and the respondents as licensees. I only mention that fact for the purpose of making quite plain that I attach no importance whatever to these descriptions; they are nothing but a method of reference, and the names might just as well have been lessor and lessee as licensor and licensee. It is not upon the use of those phrases that my view of this contract in any way depends.

The agreement itself is quite short and begins with a clause which says that the appellant will grant to the respondents "permission to affix bills, posters, and advertisements to the flank wall" of the picture palace which is to be erected at the

Royal Canal Bank "for a term of four years from the 1st November, 1913, or the first day said picture house shall be opened for business," and after that period of four years the document is to be capable of termination by either party on six months' written notice. The next clause provides that the respondents will pay a rent at the rate of 12 l. per annum "so long as this license remains in force." I attach some considerable importance to this phrase; it is the description in the body of the document of what the parties intended that the document should be, and it is stated in plain language that the description of the document is that of a licence. It is not a letting or a tenancy or anything of the kind, but a licence. And the same phrase is used in a similar connection later on in the agreement, in clause 5.

My Lords, I have looked anxiously and carefully through this document to see whether it was possible to derive from its construction anything except the creation of a personal obligation between the appellant and the respondents with regard to the use of this wall, and I am unable to find it. There are two circumstances to which attention has been quite properly called by the appellant's counsel, which are no doubt important in considering what the agreement effected. The first is the fact of the rent reserved, and the next that there is a term of years granted and that arrangements are introduced into the agreement to prevent other people having competing rights with Messrs. David Allen and Sons upon this wall. Those considerations do not, in my opinion, necessarily conflict with the view that this is nothing but a licence - a licence for a fixed term of years, but a licence which creates no estate or interest in the land upon which the palace is going to be built, nor an easement to which the land would be thereafter subject.

Now the subsequent history of the matter is this: A company was duly incorporated on September 2, 1913, and shortly afterwards a meeting took place at which the appellant and other directors were present, and there was a discussion and consideration as to what should be done for the purpose of carrying out the arrangement upon which the whole future of the company depended, the main part of which was that a lease should be granted to the company of the site upon which the building was to stand. At that meeting a resolution was passed which adopted a prior agreement dated August 29, 1913,

made by the appellant with a trustee for the company, that agreement being one by which the company were to take a lease of the premises and to take an assignment of the billposting agreement of July 1. It appears that the lease was executed; it was in proper form, but it contained no reference whatever to the rights of Messrs. Allen under the billposting agreement, and no reservation indicating upon the face of the document that any rights whatever were reserved out of the demise. In the view that I take of the document of July 1, 1913, I do not think any such reservation was necessary, for the simple reason that no such estate or interest had been created in favour of David Allen and Sons; and indeed it is plain when the documents are considered that the whole arrangement was intended to be made complete, not by any reservation in the lease, but by an assignment to the company of the benefit of the billposting agreement together with its obligations, and, for reasons which are not material, that assignment has never been completed. Had that been done all the trouble caused by this litigation would have been at an end. It undoubtedly would have bound the company not to interfere with the respondents' rights to put up their bills, and would also have rendered the company directly responsible to the appellant for any breach of their obligation not to interfere. I desire to say no more about that matter for this reason: that it may well be that there are yet rights between the appellant and the company which will enable him to obtain against them either the execution of such further document or a declaration that they are liable to indemnify him for the wrongful act which has taken place. For what has occurred is this: The company, having entered into possession of the premises under the lease and having built the picture palace, forthwith refused to permit Messrs. David Allen and Sons to post their bills, although the company had known throughout that the lease which they had taken of the premises was a lease which had been granted by Mr. King, who had contracted with David Allen and Sons that they should possess the right of posting their bills against this wall.

My Lords, it is obviously a very undesirable thing to say any words by way of criticism of persons who are not represented before your Lordships' House, and I will therefore pass by the temptation to comment upon this action of the company, an action which appears to have been insufficiently and indeed inaccurately explained in some of their letters.

The matter then is left in this way. There is a contract between the appellant and the respondents which creates nothing but a personal obligation. It is a licence given for good and valuable consideration and to endure for a certain time. But I fail to see - although I have done my best to follow the many authorities which the learned Solicitor-General has thought it right to place before our consideration - that there is any authority for saying that any such document creates rights other than those I have described. A case of *Wilson v. Tavener*(1) was indeed referred to, but it really affords no assistance, for there the right conferred was to erect a hoarding upon the defendant's ground, while in the present case the sole right is to fix bills against a flank wall, and it is unreasonable to attempt to construct the relationship of landlord and tenant or grantor and grantee of an easement out of such a transaction, and I find it difficult to see how it can be reasonably urged that anything beyond personal rights was ever contemplated by the parties. Those rights have undoubtedly been taken away by the action on the part of the company, who have been enabled to prevent the respondents from exercising their rights owing to the lease granted by Mr. King, and he is accordingly liable in damages, although it

(1) [1901] 1 Ch. 578.

was certainly not with his will, and indeed against his own express desire, that the company has declined to honour his agreement.

My Lords, for these reasons I am of opinion that this appeal must be dismissed.

EARL LOREBURN .

My Lords, I agree in the opinion expressed by the Lord Chancellor, and with him I greatly regret the position in which Mr. King has been placed, which seems to me to be hard upon him. He has behaved perfectly honestly in the whole business, and one cannot help regretting the expense to which he has been put.

I have very little to add to what has been said, but I look at the case in this way. The plaintiffs say that Mr. King promised them for four years the use of a certain wall for advertising purposes by the agreement of July 1, 1913, and they say that

after that Mr. King demised that land, and that Mr. King's lessees refused to make good the promise in regard to advertisement. Well, if the agreement of July 1, which purports to be on the face of it a licence, was equivalent to creating an incorporeal hereditament or a sufficient interest in land, Mr. King did not break his contract in making the lease, and would not be responsible for any trespasses that were committed by his licensees. But we must look at the document itself, and it seems to me that it does not create any interest in land at all; it merely amounts to a promise on the part of Mr. King that he would allow the other party to the contract to use the wall for advertising purposes, and there was an implied undertaking that he would not disable himself from carrying out his contract. Now Mr. King has altered his legal position in respect of his control of this land. Those to whom he granted the lease have disregarded his wishes and refused to allow his bargain to be carried out, and they have been practically enabled to do so by reason of the demise that he executed. In these circumstances it seems to me that there has been a breach in law of the contract of July 1, and Mr. King has disabled himself from giving effect to it as intended by parting with his right to present possession. That is enough to establish a case for damages against Mr. King. There may be a remedy over against the lessees. I say nothing of that, because they are not here, and I do not wish either to encourage or to discourage any further proceedings; but this I think is clear: that the existence of such a remedy, if remedy there be, does not release Mr. King from his liability to answer for breaking the contract which he made.

LORD ATKINSON .

My Lords, I concur and I have nothing to add.

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