

Dixson Trust (Limited) - - - - *Appellants,*

v.

Beard Watson (Limited) - - - - *Respondents,*

FROM

THE SUPREME COURT OF THE STATE OF NEW SOUTH WALES.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 13TH FEBRUARY, 1917.

Present at the Hearing:

LORD ATKINSON.

LORD SHAW.

LORD PARMOOR.

SIR WALTER PHILLIMORE, BART.

[*Delivered by* LORD ATKINSON.]

This is an appeal from a decision of the Supreme Court of New South Wales refusing the application of the defendants in the action for a new trial on several grounds. The pleadings in the action were very voluminous, and they raised a great many questions with which, in the view of their Lordships, it is unnecessary to deal on this appeal.

It appears that the plaintiffs, the respondents, carried on the business of merchants and suppliers of furniture at a shop and premises in George Street, Sydney, of which the appellants were the landlords. The plaintiffs desired to have some alterations made in these premises, the main one being the removal of a wall that practically divided their shop on the ground floor into two, taking away the portion in the shop up to the ceiling, and substituting, as a support, five pillars. In order to carry out these works they entered into a contract with the defendants on the 29th May, 1913, providing for the alterations. In their Lordships' view the entire case turns on the proper construction of that contract. It is not very happily framed, but of course its meaning must be ascertained from it considered as a whole. The first clause provides that:—

“The aforesaid alterations shall be effected as soon as conveniently may be in accordance with plans and specifications to be prepared by

Mr. John Reid of Sydney architect should such plans and specifications be approved of in writing by the lessor provided that they shall be so executed as to admit of the premises being at any time restored to their present condition without injury and so that meanwhile the upper storey of the said building shall be adequately supported."

It may be that on the proper construction of that clause it is only a licence on the part of the landlords that these works should be done as therein specified, but the contract must be construed as a whole, and when the second clause is considered in conjunction it is, in their Lordships' view, perfectly clear that the lessors entered into an absolute contract to carry out these works according to the plans and specifications referred to. When these plans and specifications are looked at, it is quite clear that no part of the original wall was to remain as a pier. It is quite clear also that elaborate provision was made for the manner in which the piers were to be constructed, and the materials of which they were to be constructed. Now, what has in fact occurred is this; only four piers instead of five have been put up, and that part of the old wall has been left to do duty for the fifth pier, and this collapsed within forty-eight hours after the strain was put upon it. Therefore, if there was a contract to carry out those works—an absolute contract—on the part of the lessors, that contract has unquestionably not been performed, and the jury have, amongst other things, so found, and that the building collapsed by reason of the omission to carry out the works as specified.

In their Lordships' view it is unnecessary to deal with the other issues which have been raised in the case. One construction which Mr. Romer laboured to induce their Lordships to put upon the agreement was this: that when it is said: "in accordance with plans and specifications to be prepared by Mr. John Reid of Sydney architect should such plans and specifications be approved of in writing," the parties meant such plans and specifications as should from time to time during the progress of the work be furnished by Mr. Reid. In their Lordships' view the agreement is not open to that construction, but even if it were, Mr. Reid apparently during the progress of the work supplied no plans and no specifications in addition to those first supplied, and it is clear in their Lordships' view that for such a capital work as this, upon which the whole safety of the structure depended, the architect could have no implied power to release the landlord from his obligation. There is no evidence whatever that any express authority was given to him so to do.

Their Lordships are therefore of opinion that the decision appealed from was right, and should be upheld, and that this appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

DIXSON TRUST (LIMITED)

v.

BEARD WATSON (LIMITED).

DELIVERED BY LORD ATKINSON.

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