WAITE V SCOTT

LORD 2. NANT

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The Law with regard to the payment of interest on a debt which has remained unpaid is unsatisfactory, but unsatisfactory as it is, it has been too long settled to be departed from (London Chatham & Dover Ry. Co. v South-Eastern Railway Co. (1893) A.C. 429). Interest cannot be claimed in this case under any general rule of the Common Law. The general rule is that interest on a debt is not payable unless it has been expressly or impliedly agreed that it shall be paid. In other words, there must, as a rule, be a contract to pay interest.

This Court is unable to say that there was here any express contract. That would depend on the word of the appellant in his evidence reading "He said he would pay me interest until he paid the amount." There is no reason why his word, if accepted, should not be sufficient but as that depended on the evidence he gave and how he gave it, the Magistrate's opinion is decisive. It is clear that the Magistrate has not accepted his evidence on this point and it would be contrary to the principles on which every Appellate Court should act to disturb his conclusion.

There being no express contract was there an implied contract? It was submitted that Exh. "A" shows a course of dealing. It cannot be assumed that interest was paid on each transaction, the plaintiff has not said so, and, the £10 put down for interest in "A" is a sum apparently arbitrarily fixed for interest from July to September.

There were here no dealings which could constitute a course of business —this is only an isolated transaction.

Then it is said that the appellant is entitled to interest under Law 45 of 1908. The allowance of interest under that Law is a question left entirely to the discretion of the Jury. In this case the point does not appear to have been put to the Magistrate but it is clear from this judgment that he considered it and decided not to allow interest.

In view of the fact that the plaintiff came into Court with a story of an express agreement which story was disbelived; in view of the many inconsistencies in the claims for interest made by him or on his behalf at various times; and in view of the findings of fact, sufficiently, in our opinion, sustained by the evidence, that plaintiff has received certain gratuitous benefits in kind from his debtor, there is no reason for saying that the Resident Magistrate was wrong in so exercising his discretion in the matter.

The appeal will be dismissed with £12 costs.

In the Full Court. — *28th July*, 1928.

BEFORE H. I. C. BROWN,
A/C.J., ADRIAN CLARK, J.
AND LAW, A/J.

WAITE v. SCOTT.

The following judgment in which the Acting Chief Justice and Law, Ag.J. concurred, was delivered by Mr. Justice ADRIAN CLARK:

1. In this case the plaintiff claimed the sum of £50 as damages from the defendant for trespassing on his cultivated land at "Old England" and reaping therefrom a quantity of escallions and of thyme.

2. The Resident Magistrate gave judgment for the plaintiff for damages which he assessed at £11 and costs; and from this judgment the defendant now appeals.

1927, not by the defendant, but by Mrs. Francis. The plaintiff therefore can have no right of action for trespass to land against the defendant who took possession after the tenancy had been determined by Mrs. Francis. What other rights, if any he may possess and against whom and by what procedure they might be enforced it is not for this Court to declare upon the hearing of this appeal.

This appeal will be allowed with £10 costs and the judgment in the Court below will be set aside and entered for the defendant with costs.

In the Full Court. **28th July, 1928.**

BEFORE H. I. C. BROWN,
A/C.J., ADRIAN CLARK, J.
AND LAW, A/J.

STOKESEIELD LIMITED v. TAYLOR AND BENNETT.

The following is the judgment of the Court:—

There is ample evidence to support the following findings of the Resident Magistrate:—

"I accepted the plaintiffs' version that Noyes after a period of over 12 years was in sole quiet and undisturbed possession of the land in which the acts complained of by the plaintiffs were committed by the defendants; that such land formed part of Stokesfield which was sold by Noyes' executors to Lindo Bros., and by them to plaintiffs who rightly entered into possession; and that such land was part of land comprised in the plaintiff's certificate of title (in evidence A) and into the possession of which they had rightly entered; and I disbelieved the version of the defendants that they continued in possession along with Noyes and exercised acts of ownership until his death and subsequently; and I found that any entrance by defendants on the lands subsequent to Noyes' death or since the lands were purchased by plaintiffs as part of Stokesfield constituted a trespass."

The trespass complained of in the particulars of claim consisted of breaking and entering the plaintiffs' close, stopping a survey, trampling the soil and herbage and other wrongs committed. It is sufficient to support the judgment that the Resident Magistrate has found that the lands on which the defendants entered are part of Stokesfield and are comprised in the plan attached to the plaintiffs' certificate of title.

The defendants were not persons "interested in and to be affected by" the survey within the meaning of sec. 20 of Law 31 of 1894 and the Resident Magistrate's judgment must be affirmed and the appeal dismissed with £10 costs.

In the Full Court. *3rd December*, 1928.

BEFORE SIR FIENNES BARRETT-LENNARD,
C.J. AND BROWN, J.
AND LAW, A/J.

R. v. PEAT.

The following judgment in which Law, Ag. J. concurred, was delivered by the Chief Justice:—

This is an appeal from a conviction recorded against the appellant for a forcible entry contrary to the Statute 5 Rich. 2 St. 1 cap. 7.

3. The findings of fact and the legal grounds on which the Resident Magistrate based his judgment are not very definitely set out but the following facts emerge clearly from the evidence:—

(a) The property known as Old England had belonged to a Mrs. Barbara Francis who lives in Canada.

(b) The plaintiff was employed by Mrs. Francis as her rent collector and overseer. He received no wages but was allowed to cultivate a portion of the property.

(c) On 28th September, 1927, the defendant purchased the property in fee simple free from encumbrances and was entitled to possession from that date.

(d) On 5th October, 1927, the defendant in fact took possession and Mrs. Francis through her agent Mr. Olley on that same day discharged the plaintiff from her employment apparently without deeming it necessary to give him any notice. It appears from the terms of a letter, Exh. "B" from the plaintiff to Mrs. Francis, that he accepted this dismissal, and duly handed over the rents and the rent book.

(e) On 27th October, 1927, the defendant wrote a letter Exh. "A" to the plaintiff in the following terms:—

"Kindly take notice that your occupancy of land on the property known as Old England, was a service tenancy, and as your services have been dispensed with, you now have no right to enter the property."

(f) On 4th and 12th January, 1928, the defendant's servants entered some parts of "Old England" cultivated in escallions and thyme, picked them and sold them, the proceeds being received and kept by the defendant.

4. As to what were the exact terms of any agreement between Mrs. Francis and the plaintiff there is no finding of fact by the Resident Magistrate nor is there any finding as to the extent of land that the plaintiff was entitled to cultivate nor as to whether the land entered upon was land in fact occupied under the terms of any agreement between Mrs. Francis and the plaintiff. There was considerable conflict on these points, the plaintiff, in his evidence stating that he was entitled to 2 acres while a rent book which was produced by defendant but which had been entered and kept by the plaintiff shewed him to be entitled to 1 acre only. The evidence given for the defendant moreover was to the effect that plaintiff had cultivated a total of over 8 acres and that the escallions and thyme had been reaped from only $1\frac{3}{4}$ acres the remaining cultivation being left untouched. There was also some evidence that the plaintiff's wife had claimed the escallion cultivation as being hers and not the plaintiff's.

5. The account given by the plaintiff was as follows:—

"I had been in charge of the property for about 18 years..... For these services I would have charged £12 per year if it had not been arranged otherwise. This would have been a fair and reasonable amount for such services. While I was such headman I was in possession of and cultivated a portion of the said property about 2 acres in extent. If I had rented these two acres I would have had to pay £2 per annum for same, i.e., £1 per each acre. I paid no rent in cash. Instead of paying rent in cash I managed the property free of charge."

If this version be fully accepted the plaintiff has not made out that he had in the land any greater interest than that of a tenant at will whose tenancy was co-terminous with her services as rent-collector and that such services and tenancy were determined on 5th October.