Krell v. Henry

[1903] 2 KB 740, Court of Appeal

Krell owned a flat on the third floor at 56A Pall Mall. As it had been announced that the King’s coronation processions would pass along Pall Mall on 26 and 27 June 1902, Henry agreed to hire Krell’s flat on those days. On 20 June Krell and Henry entered into a written contract which made no reference to the coronation processions or to any other purpose for which the flat was taken. The agreement stated that Henry was to have ‘the entire use of these rooms during the days (but not the nights)’. Henry paid a deposit of £25 and agreed to pay the balance of £50 on 24 June. The King became seriously ill and the coronation processions did not take place. Henry refused to pay the balance and Krell brought an action to recover it. Henry counterclaimed for the return of the £25. The trial judge held that Henry was not liable to pay the £50 and that he was entitled to the return of the £25. Krell appealed to the Court of Appeal who dismissed the appeal and held that he was not entitled to demand the balance of £50 on the ground that the contract between the parties had been frustrated.

Vaughan Williams L.J.

The real question in this case is the extent of the application in English law of the principle of the Roman law which has been adopted and acted on in many English decisions, and notably in the case of Taylor v. Caldwell 3 B & S 826 ... English law applies the principle not only to cases where the performance of the contract becomes impossible by the cessation of existence of the thing which is the subject-matter of the contract, but also to cases where the event which renders the contract incapable of performance is the cessation or non-existence of an express condition or state of things, going to the root of the contract, and essential to its performance. It is said, on the one side, that the specified thing, state of things, or condition the continued existence of which is necessary for the fulfilment of the contract, so that the parties entering into the contract must have contemplated the continued existence of that thing, condition, or state of things as the foundation of what was to be done under the contract, is limited to things which are either the subject-matter of the contract or a condition or state of things, present or anticipated, which is expressly mentioned in the contract. But, on the other side, it is said that the condition or state of things need not be expressly specified, but that it is sufficient if that condition or state of things clearly appears by extrinsic evidence to have been assumed by the parties to be the foundation or basis of the contract, and the event which causes the impossibility is of such a character that it cannot reasonably be supposed to have been in the contemplation of the contracting parties when the contract was made. In such a case the contracting parties will not be held bound by the general words which, though large enough to include, were not used with reference to a possibility of a particular event rendering performance of the contract impossible. I do not think that the principle of the civil law as introduced into the English law is limited to cases in which the event causing the impossibility of performance is the destruction or non-existence of some thing which is the subject-matter of the contract or of some condition or state of things expressly specified as a condition of it. I think that you first have to ascertain, not necessarily from the terms of the contract, but, if required, from necessary inferences, drawn from surrounding circumstances recognised by both contracting parties, what is the substance of the contract, and then to ask the question whether that substantial contract needs for its further state of things. If it does, this was the case, if the contract becomes impossible of the state of things assumed by the contract, there will be no breach of the present case?

In my judgment the use of the room for the Royal procession. It was not a dem change the rooms. It is a licence to use the grooms, and the taking place of the procession, which passed 56A, the life of the country, and been in the contemplation of the parties, the coronation would not be held place on those days along the route. The defendant the obligation to act on the days, although general and uncon the particular contingency which, the argument that if the occurrence, the procession in this case was that the are thereby limited or qualified, so action and procession along the supposed further performance of the contract take some one to Epsom on Derby day 101., both parties to the contract at Epsom for some reason do not think that in the case of the contract. No doubt the purpose of the price would be proportionately purpose which led to the selection would have done as well. Moreover, the race went off, could have said, 'I have nothing to do with the purpose refused he would have been guilty of his promise to drive the hirer to the coronation, there is not merely the event but it is the coronation procession basis of the contract as much for the coronation day and after the coming the rooms on the days name seeing the Derby race was the foun case. Whereas in the present case, with their peculiar suitability from the procession, surely the view of the contract, which is a very different th
As it had been announced that the Mall on 26 and 27 June 1902, Henry paid a deposit of £25 and the King became seriously ill and the refusal to pay the balance and Krell took the return of the £25. The trial and that he was entitled to the return dismissed the appeal and held that on the ground that the contract substantial contract needs for its foundation the assumption of the existence of a particular state of things. If it does, this will limit the operation of the general words, and in such case, if the contract becomes impossible of performance by reason of the non-existence of the state of things assumed by both contracting parties as the foundation of the contract, there will be no breach of the contract thus limited. Now what are the facts of the present case?

In my judgment the use of the rooms was let and taken for the purpose of seeing the Royal procession. It was not a demise of the rooms, or even an agreement to let and take the rooms. It is a licence to use rooms for a particular purpose and none other. And in my judgment the taking place of those processions on the days proclaimed along the proclaimed route, which passed S6A, Pall Mall, was regarded by both contracting parties as the foundation of the contract; and I think that it cannot reasonably be supposed to have been in the contemplation of the contracting parties, when the contract was made, that the coron action would not be held on the proclaimed days, or the processions not take place on those days along the proclaimed route; and I think that the words imposing on the defendant the obligation to accept and pay for the use of the rooms for the named days, although general and unconditional, were not used with reference to the possibility of the particular contingency which afterwards occurred. It was suggested in the course of the argument that if the occurrence, on the proclaimed days, of the coronation and the procession in this case were the foundation of the contract, and if the general words are thereby limited or qualified, so that in the event of the non-occurrence of the coronation and procession along the proclaimed route they would discharge both parties from further performance of the contract, it would follow that if a cabman was engaged to take some one to Epsom on Derby Day at a suitable enhanced price for such a journey, say 10£, both parties to the contract would be discharged in the contingency of the race at Epsom for some reason becoming impossible; but I do not think this follows, for I do not think that in the cab case the happening of the race would be the foundation of the contract. No doubt the purpose of the engager was to go to see the Derby, and the price would be proportionately high; but the cab had no special qualifications for the purpose which led to the selection of the cab for this particular occasion. Any other cab would have done as well. Moreover, I think that, under the cab contract, the hirer, even if the race went off, could have said, 'Drive me to Epsom; I will pay you the agreed sum; you have nothing to do with the purpose for which I hired the cab', and that the cabman refused he would have been guilty of a breach of contract, there being nothing to qualify his promise to drive the hirer to Epsom on a particular day. Whereas in the case of the coronation, there is not merely the purpose of the hirer to see the coronation procession, but it is the coronation procession and the relative position of the rooms which is the basis of the contract as much for the lessor as the hirer; and I think that if the King, before the coronation day and after the contract, had died, the hirer could not have insisted on having the rooms on the days named. It could not in the cab case be reasonably said that seeing the Derby race was the foundation of the contract, as it was of the licence in this case. Whereas in the present case, where the rooms were offered and taken, by reason of their peculiar suitability from the position of the rooms for a view of the coronation procession, surely the view of the coronation procession was the foundation of the contract, which is a very different thing from the purpose of the man who engaged the
cab—namely, to see the race—being held to be the foundation of the contract. Each case must be judged by its own circumstances. In each case one must ask oneself, first, what having regard to all the circumstances, was the foundation of the contract? Secondly, was the performance of the contract prevented? Thirdly, was the event which prevented the performance of the contract of such a character that it cannot reasonably be said to have been in the contemplation of the parties at the date of the contract? If all these questions are answered in the affirmative (as I think they should be in this case), then both parties are discharged from further performance of the contract. I think that the coronation procession was the foundation of this contract, and that the non-occurrence of it prevented the performance of the contract; and, secondly, I think that the non-occurrence of the procession, to use the words of Sir James Hannen in Bally v. De Capigny LR 4 QB 185, was an event of such a character that it cannot reasonably be supposed to have been in the contemplation of the contracting parties when the contract was made, and that they are not to be held bound by general words which, though large enough to include, were not used with reference to the possibility of the particular contingency which afterwards happened . . .

[he considered the case-law and continued]

I myself am clearly of opinion that in this case, where we have to ask ourselves whether the object of the contract was frustrated by the non-occurrence of the coronation and procession on the days proclaimed, parol evidence is admissible to show that the subject of the contract was rooms to view the coronation procession, and so was to the knowledge of both parties. When once this is established, I see no difficulty whatever in the case. It is not essential to the application of the principle of Taylor v. Caldwell 3 B & S 582 that the direct subject of the contract should perish or fail to be in existence at the date of performance of the contract. It is sufficient if a state of things or condition expressed in the contract and essential to its performance perishes or fails to be in existence at that time. In the present case the condition which fails and prevents the achievement of that which was, in the contemplation of both parties, the foundation of the contract, is not expressly mentioned either as a condition of the contract or the purpose of it; but I think for the reasons which I have given that the principle of Taylor v. Caldwell ought to be applied.

This disposes of the plaintiff’s claim for £50. The unpaid balance of the price agreed to be paid for the use of the rooms. The defendant at one time set up a cross-claim for the return of the £25 he paid at the date of the contract. As that claim is now withdrawn it is unnecessary to say anything about it.

Romer LJ

With some doubt I have also come to the conclusion that this case is governed by the principle on which Taylor v. Caldwell was decided, and accordingly the appeal must be dismissed. The doubt I have felt was whether the parties to the contract now before us could be said, under the circumstances, not to have had at all in their contemplation the risk that for some reason or other the coronation processions might not take place on the days fixed, or, if the processions took place, might not pass so as to be capable of being viewed from the rooms mentioned in the contract; and whether, under this contract, the risk was not undertaken by the defendant. But on the question of fact as to what was in the contemplation of the parties at the time, I do not think it right to differ from the conclusion arrived at by Vaughan Williams LJ.

Stirling LJ said he had an opportunity to express his view on the question before the court, but it was not a matter of principle. The Herne Bay Steam Boat Company was not entitled to recover the £50 from Hutton.

Herne Bay Steam Boat Company

[1903] 2 KB 683, Court of Appeal

The Herne Bay Steam Boat Company was not entitled to recover the £50 from Hutton. The Herne Bay Steam Boat Company had entered into an agreement with Hutton to provide a boat for a cruise on 25 June. The boat was not provided, and Hutton was entitled to recover the £50.

Vaughan Williams LJ

Mr Hutton, in hiring this vessel, had a right to such a boat as would be fit for the purpose. The company had engaged a boat for the purpose of the cruise, and the company was entitled to recover the £50.

Romer LJ

This case is not one in which the defendant to a contract for the hire of a ship for a certain voyage, tho...
To be the foundation of the contract. Each case is, in each case one must ask oneself, first, what was the foundation of the contract? Secondly, was the event which prevented the character that it cannot reasonably be said to arise at the date of the contract? If all these (as I think they should be in this case), I think the performance of the contract. I think that the non-happening of the contract, and secondly, I think that the non-happening of the contract, that it cannot reasonably be on of the contracting parties when the contract bound by general words which, though a reference to the possibility of the particular

Sterling LJ said he had an opportunity of reading the judgment delivered by Vaughan Williams LJ, with which he entirely agreed. Though the case was one of very great difficulty, he thought it came within the principle of Taylor v. Caldwell.

**Herne Bay Steam Boat Company v. Hutton**

*(1903) 2 KB 683, Court of Appeal*

The Herne Bay Steam Boat Company owned a steamboat called Cynthia. Early in 1902 it was announced that there would be a Royal naval review at Spithead on 28 June 1902. Hutton, the defendant, wanted to charter Cynthia to carry passengers to see the review. Herne Bay and Hutton signed an agreement on 23 May 1902 which stated that Cynthia would be at the disposal of Hutton on 28 June 'for the purpose of viewing the naval review and for a day's cruise round the fleet' and on 29 June 'for similar purposes'. Hutton paid a deposit of £50 and agreed to pay the balance of £200 before Cynthia left Herne Bay. On 25 June the naval review was cancelled. On the same day Herne Bay wired Hutton for instructions, stating that Cynthia was ready to start, but received no reply. On 28 and 29 June Herne Bay used Cynthia for its own purposes and made a profit of £90. On 29 June, Hutton called Herne Bay and stated that, as the naval review had been cancelled, he no longer required Cynthia and would not pay the balance of £200. Herne Bay brought an action to recover £110. Hutton counter-claimed for the return of his £50 deposit. The judge held that Herne Bay was not entitled to the £110 but that Hutton was not entitled to the £50. The Court of Appeal allowed Herne Bay's appeal. It held that the contract between the parties had not been frustrated and that Herne Bay was accordingly entitled to recover £110 from Hutton by way of damages for his breach of contract.

**Vaughan Williams LJ**

Mr Hutton, in hiring this vessel, had two objects in view: first, of taking people to see the naval review, and, secondly, of taking them round the fleet. Those, no doubt, were the purposes of Mr Hutton, but it does not seem to me that because, as it is said, those purposes became impossible, it would be a very legitimate inference that the happening of the naval review was contemplated by both parties as the basis and foundation of this contract, so as to bring the case within the doctrine of Taylor v. Caldwell 3 B & S 826. On the contrary, when the contract is properly regarded, I think the purpose of Mr Hutton, whether of seeing the naval review or of going round the fleet with a party of paying guests, does not lay the foundation of the contract within the authorities...

I see nothing that makes this contract differ from a case where, for instance, a person has engaged a brake to take himself and a party to Epsom to see the races there, but for some reason or other, such as the spread of an infectious disease, the races are postponed. In such a case it could not be said that he could be relieved of his bargain. So in the present case it is sufficient to say that the happening of the naval review was not the foundation of the contract.

**Romer LJ**

This case is not one in which the subject-matter of the contract is a mere licence to the defendant to use a ship for the purpose of seeing the naval review and going round the fleet. In my opinion, as my Lord has said, it is a contract for the hiring of a ship by the defendant for a certain voyage, though having, no doubt, a special object, namely, to see