1915

Revocability of Licenses - The Rule of Wood v. Leadbitter

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MICHIGAN LAW REVIEW

PUBLISHED MONTHLY DURING THE ACADEMIC YEAR, EXCLUSIVE OF OCTOBER, BY THE
LAW FACULTY OF THE UNIVERSITY OF MICHIGAN

SUBSCRIPTION PRICE $2.50 PER YEAR. 35 CENTS PER NUMBER

NOTE AND COMMENT.

REVOCABILITY OF LICENSES—THE RULE OF WOOD V. LEADBITTER.—That a mere license purporting to create in the licensee a new right or privilege is revocable at law at the will of the licensor seems to have been definitely settled in England by *Wood* v. *Leadbitter*, 13 M. & W. 838 (1845). It was there held that the plaintiff who had entered the close of the defendant's master after the purchase of a proper ticket could be forcibly ousted, notice having been first given that he should leave. The only remedy open to the ousted ticket holder—in law at least—no excessive violence having been used, is to sue for breach of the contract. The rule of *Wood* v. *Leadbitter* has been almost uniformly followed by the American courts. *Horney* v. *Nixon*, 213 Pa. St. 20, 110 Am. St. Rep. 520, 1 L. R. A. (N. S.) 1184; *Meisner* v. *Ferry Co.*, 154 Mich. 545; *W. W. V. Co.* v. *Black*, 113 Va. 728, 75 S. E. 82; *Shubert* v. *Nixon Co.*, 83 N. J. L. 101, 83 Atl. 369; *Taylor* v. *Cohn*, 47 Ore. 538; *Collister* v. *Hayman*, 183 N. Y. 250; *People* v. *Flynn*, 189 N. Y. 180; *Buengle* v. *Amus. Assoc.*, 29 R. I. 23, 14 L. R. A. (N. S.) 1242; *Marrone* v. *Jockey Club*, 227 U. S. 633. The tickets in *Wood* v. *Leadbitter* and the cases referred to above were mere licenses uncoupled with any interest whatever and did not serve to create in the purchasers any interest in land because not

under seal, or because of the nature of the privilege conferred, or both. In equity the licensee's rights perhaps may be more secure, depending, it would seem, upon the nature of the privilege and the circumstances. Some licenses, for instance, could in equity be specifically enforced by requiring the execution of a proper deed, as in *Duke of Devonshire* v. *Eglin,* 14 Beav. 530, or what in general effect would be the same thing, their revocation could be enjoined. But would equity specifically enforce all licenses or enjoin their revocation?

In *Hurst* v. *Picture Theatres, Ltd.* [1915] 1 K. B. 1, the English Court of Appeal in effect does away with the rule of *Wood* v. *Leadbitter.* The cases arose out of facts essentially the same, and the actions were similar in nature, being for damages for assault and false imprisonment. In the *Hurst* case BUCKLEY, L. J., and KENNEDY, L. J., agreed in supporting a judgment for £150 for the plaintiff, on the ground that since law and equity are adminstered since the Judicature Act in the same court in the same proceeding, the legal rule of *Wood* v. *Leadbitter* must give way to the equity rule. Indeed BUCKLEY, L. J., goes further, and would arrive at the same conclusion on the theory that the license to go into a theatre and remain was coupled with a grant of a right to see the exhibition, and therefore irrevocable. PHILLIMORE, L. J., dissented on what seem reasonable grounds.

If the ticket holder had such a right that equity would interfere to prevent his being put out, then it would seem entirely sound that a court proceeding under the Judicature Act or under our Codes of Civil Procedure should refuse to consider such person a trespasser even after notice to get out. The fundamental question would seem to be: Is the contract entered into by the purchase of the ticket such a contract as equity will enforce directly by a decree for specific performance or indirectly by an injunction against its breach? The contract specifically enforced in *Duke of Devonshire* v. *Eglin,* supra, was clearly of that sort, for the privilege was in the nature of a recognized interest in land, an easement. So, too, in *Frogley* v. *Earl of Lovelace,* John. 333, relied upon in the *Hurst* case, where the privilege was in the nature of a profit. Now it seems clear that the privilege to enter into and remain in a theatre to witness an exhibition or performance is not in the nature of any of the recognized interests in land, neither an easement, profit, or lease, the only interests necessary to be mentioned. There is no dominant estate, no claim of right to take any part of the soil or produce thereof, and no portion to which the patron is entitled to exclusive possession unless it be in the case of a ticket for a reserved seat, as to which see *Ferguson* v. *Chase,* 28 Wash. L. Rep. 797; *Drew* v. *Peer,* 93 Pa. St. 234; *Horney* v. *Nixon,* supra. But more fundamentally even than that, as expressed by Mr. Justice HOLMES in *Marrone* v. *Jockey Club,* supra, "The ticket was not a conveyance of an interest in the race track, not only because it was not under seal but because by common understanding it did not purport to have that effect."

Of course it is true that equity will enforce specifically contracts other than those purporting or looking to the creation of interests in land. But do the contracts that arise upon the purchase of tickets have those attributes considered by equity as prerequisite to equitable protection? Equity certainly

will not order specific enforcement of all contracts, nor will equity interfere by injunction to stop the breach of all contracts, however valid they may be.

Unquestionably the decision in the *Hurst* case would meet with popular approval. It does strike one as unjust—even though perhaps perfectly legal—that after one has purchased a ticket to attend a theatre and has taken his seat he should be subject to expulsion at any time for a bad reason or no reason at all and then be limited to an action merely for the breach of the contract with the very limited damages recoverable under such circumstances, a remedy which under our cost system is really no remedy at all. Perhaps the remedy should be considered as entirely inadequate within the meaning of that expression as a prerequisite to equitable protection. R. W. A.