

ROYAL COURT
(Samedi Division) 128A.

4th October, 1993

Before: The Bailiff, and Jurats
Orchard and Herbert

<u>Between:</u>	James Barker	<u>Plaintiff</u>
<u>And:</u>	Ann Street Brewery Company, Ltd.	<u>Defendant</u>
<u>And:</u>	Jurats John Harold Vint, and Barbara Myles, Autorisés de Justice in the Remise de Biens of the said James Barker	<u>Parties Convened</u>

Decision of the Court on whether, at the hearing before the Court on 4th December, 1986, the Plaintiff, through his advocate, stated that he no longer wished to contest the validity of the assignment to the Defendant of certain secured debts due by him to Lazards, and is thereby now estopped from denying the validity of such assignment.

Advocate R.G.S. Fielding for the Plaintiff.
Advocate R.J. Michel for the Defendant.
Advocate S.C. Nicolle for the Parties Convened.

JUDGMENT

THE BAILIFF: The preliminary point we have been asked to decide is: what took place in this Court on 4th December, 1986, when there was a hearing in respect of certain matters relating to the powers of the Jurats in the Remise.

Following the decision of the Court, the plaintiff in this action became the appellant before the Court of Appeal. There were eleven respondents to his appeal, including the Jurats.

Advocate Benest prepared a pleading on behalf of the Jurats, paragraphs 2.7 and 2.8 of which read respectively as follows:

"The appellant at the hearing withdrew his objection to the secured debts which had been assigned to Ann Street Brewery in the total sum as at 4th February, 1987, of £311,408.02. As to the unsecured part of the claim the appellant at the hearing only challenged the unsecured debts which had been assigned to this creditor".

It is interesting to observe that in both those paragraphs the word "assigned" appears.

It is clear to the Court that Mr. Barker's principal objection to that claim of Ann Street Brewery is not so much the quantum in respect of which he was indebted to Lazards (and which can hardly be disputed as there was an Act of the Court to that effect), but the assignment, not only of the capital, but of such rights to interest as might be properly applied to the unpaid capital sum.

Mr. Fielding for the plaintiff today has put forward the argument that at the hearing in December, no admission or concession was made by Mr. Barker's then advocate, Mr. Begg.

Accordingly it was necessary for this Court to hear evidence on that narrow point. Namely, was any admission or concession made by Mr. Begg and if so did that admission or concession refer not only to the quantum of Lazard's debt, but, more importantly in the context of the present dispute, to the question of the legality of the assignment by Lazards to the defendant, Ann Street Brewery Co Limited.

Mr. Benest, who was called first, supported his pleadings and said they were based on what he had heard in the Court on 4th December. He had filed the pleadings with the Court of Appeal, and had advised Mr. Begg of those pleadings and Mr. Begg had not contacted him, nor was that matter raised in the appeal itself. He did not think that his recollection was anything but accurate. It was an important matter, as there was a distinction between the two kinds of debt.

Mr. Begg did not remember making any concession. He could not recall it specifically; he thought that he would have remembered if he had done so, but added that that was not to say that he had not done so. However he could not believe that he would have conceded anything without specific instructions, as Mr.

Barker had been sitting beside him all the time, and had been disputing the whole breadth of the Ann Street Brewery's claim.

Mr. Barker himself was present at the hearing on 4th December and he told us that Mr. Begg definitely did not make any concession as regards the assignment, or anything else for that matter. He was positive this was so because he had instructed him not to. He remembered the proceedings and could recollect what was said, but not completely and not what was actually said at that hearing, where no witnesses were heard. He was able to recollect a number of people who had been present at a meeting earlier that day before the hearing.

So far as the appeal itself was concerned, he was not present because he was ill and Mr. Begg had to argue the case for him. He was instructed to deal with the appeal.

Mr. Bisson was sitting in Court also. He was the solicitor for Ann Street Brewery, instructing Mr. Michel on 4th December, 1986, who appeared for them again this morning. He produced to us the originals of some instruction sheets and I look first of all at the one headed: "4/12/86. Time spent - 4 hours attendance on Graham Boxall then in Court". The second paragraph is as follows:

"We will do nothing (obviously the company) unless we are paid off in full. The only point we will agree is not to argue that Barker can come back on Lazards only".

Then there is a note of what happened in Court and some reference to a number of claims. Finally we come to the bottom of the last page but two in his notes where the following entry appears:

"Begg acknowledges Lazards debt is OK. 255800 approx". There is a figure crossed out of 398515, and it goes on to say: "At start of Remise".

The other instruction sheet - that of Mr. Bisson - is dated 5th December, 1986, and refers to a telephone call to Mr. Ian Steven, the managing director of the Defendant. This reads as follows:

"To report on the outcome of yesterday's proceedings, he had been at a Licensed Victuallers' Dinner and had got a feeling of what transpired from Vernon Tomes". (That does not matter because the Judgment had already been given). "I point out that we appeared to have the Lazard debt now agreed, Begg having acknowledged that it was due during the hearing. We can expect to be paid off by the Jurats if they proceed in the sale whether Barker appealed we shall have to see. I will keep him up to date on what transpires. He thinks Le Masurier is probably the highest bidder".

Mr. Fielding has suggested that, taken in conjunction with Mr. Bisson's note about his discussion with Advocate Boxall, that passage regarding the Lazards debt indicates only that Mr. Begg conceded the amount due and not the question of the assignment. But as Mr. Michel pointed out, that would not make sense for the simple reason that the amount due to Lazards is recorded in an Act of the Court which itself had never been challenged. Therefore any concession, if such it was, that was made by Mr. Begg, must inevitably have covered the aspect of the assignment. It is interesting to note that, looking at the papers covering the whole of this matter, Mr. Barker's attention is focused throughout on the question of the assignment and the legality of it, and indeed the Court of Appeal in its Judgment had something to say about that particular matter.

Mr. Fielding says that if Mr. Begg had conceded that point why, then, was it mentioned before the Court of Appeal.

On the other hand Mr. Barker was not at the appeal and if Mr. Begg, who conducted it for him, had forgotten that he had conceded it, that was unfortunate.

The Court is of the opinion - and this is the narrow point we have been asked to decide - that Mr. Begg conceded not only the quantum but conceded the principle of the assignment and the legality in the hearing before the Royal Court in December, 1986.

We were asked to find that if we did not find that, there was a fall-back position inasmuch, it is said, that he did not concede the interest, but we are not required (because of our finding) to limit ourselves to the capital sum and we do not.

No authorities.