

the act has been held valid as applied to one city, should be held invalid as applied to another, and eventually be held wholly invalid, can be remedied by a reversal on rehearing or modification or repeal by the legislature. A desirable result might be reached by passing, and allowing to become law, an amendment incorporating a sufficient tax increase authorization and making the act as amended subject to local option referendum. If, however, views on the undesirability of "home rule" have become so firmly entrenched that the realities of the problem are overlooked by the court and the legislature, the municipal composition of indebtedness chapter²⁵ of the National Bankruptcy Act may have become eminently useful.

Damages—Assault—Recovery for Wrongful Revocation of License—[Australia].—The plaintiff, having bought a ticket in the customary manner, was admitted as a spectator on the defendant's land where races were being run. Shortly thereafter employees of the defendant requested him to leave, and on his refusal to do so, put him out, using no more force than was necessary. In an action for substantial damages for the assault, judgment was given for the defendant. On appeal to the High Court of Australia judgment *held* affirmed. By purchasing the ticket the plaintiff acquired nothing but a license to go on the land which was revocable even though given for value. Upon revocation of the license the plaintiff became a trespasser and could be ejected with reasonable force. *Cowell v. The Rosehill Racecourse Ltd.*¹

There is no doubt that the defendant's wrongful conduct gives rise to a cause of action in favor of the plaintiff. The real problem is whether substantial damages may be recovered for the assault or whether recovery should be limited to the price of the ticket. The latter result, which is the one reached by the court in the instant case, gives the manager of a place of amusement unlimited freedom to eject spectators arbitrarily. While it is unlikely that this discretion normally would be abused—because of the common desire of proprietors to retain good will—still it is small comfort to an individual wrongfully ejected that such things rarely happen. His injuries in humiliation, loss of prestige, and even bodily harm if he resisted (and it would not be unreasonable for him to think he had the right to do so)² might be very real. On the other hand, perhaps absolute discretion as to whom to eject is desirable in that it enables the manager to maintain order in his place of amusement without fear of "strike" suits. Moreover, it would seem unreasonable to place the burden on the proprietor to convince a jury that the ejection had been for cause.

The case repudiates the doctrine of *Hurst v. Picture Theatres Ltd.*,³ a decision of the English Court of Appeals followed in England and parts of the British Commonwealth for over twenty years,⁴ which held that a purchaser of a theater ticket acquires a

²⁵ 50 Stat. 654 (1937); 11 U.S.C.A. §§ 401-404 (1937), held unconstitutional in *In re Lindsay-Strathmore Irrigation Dist.*, 5 U.S.L.W. 297 (D.C. Cal., Nov. 13, 1937).

¹ 56 C.L.R. 605 (1937).

² See Winfield, *The Law of Tort*, 51 L.Q.R. 257 (1935).

³ [1915] 1 K.B. 1.

⁴ *Cox v. Coulson*, [1916] 2 K.B. 177, 186, *Hubbs v. Black*, 46 D.L.R. 583, 588, 594 (1918); *Heller v. Racing Ass'n*, [1925] 2 D.L.R. 286, 287; Winfield, 51 L.Q.R. 257 (1935); *cf.* the American cases, 30 A.L.R. (1924).

right to stay for the whole performance, if he obeys the rules of the management, and that he may recover substantial damages for assault if he is ejected without cause. The theory of the *Hurst* decision was that the grant of the privilege of witnessing the entertainment, having been purchased for valuable consideration, was irrevocable to the extent that the proprietor by his revocation could not make the spectator a trespasser. *Hurst's* case has been criticized in several leading texts⁵ as well as in the instant case because of its apparent extension of the doctrine of the irrevocability of a license coupled with an interest in land to a license coupled with a contract right only. However, on analogy to the doctrine in the field of agency of the irrevocability of a power when given as security even for some interest less than an interest in the res itself,⁶ the license might be said to be irrevocable here, if it is felt to be a necessary security for the licensee's contract rights. It is indeed questionable whether the defendant should, by his own breach of contract, be able to make the plaintiff a trespasser and thus legalize a subsequent invasion of the licensee's person.⁷ If the fundamental reason for allowing a landowner to eject a trespasser is the wrongful act of that trespasser, how can we justify the ejection here when it was the owner and not the ticket holder who was the wrongdoer?⁸ A distinction might well be made between the instant situation, where the ticket holder is already on the land, and that where the ticket holder, having been refused admittance, is resisted in his attempt to enter the amusement place by force.

Substantial recovery might be given by way of consequential damages for breach of contract. However, the courts are likely to object because of the established rule that contract damages must be "such as may fairly and reasonably be considered as arising naturally from the breach of contract itself or such as may reasonably be supposed to have been in the contemplation of the parties at the time they made the contract as the probable result of a breach of it."⁹ In the instant case, Dixon, J., disapproving recovery on this ground says, "It was the plaintiff's legal duty to leave the premises after notice that his license to remain was withdrawn, and as the assault was the lawful consequence of his failure to do so, it could hardly be called a reasonable and probable consequence of the defendant's breach of contract in withdrawing the license."¹⁰

⁵ 7 Holdsworth, *Hist. of Eng. Law* 328 (1926); Salmond, *Torts* 263 (8th ed. 1934); Ashburner, *Principles of Equity* 19 (2d ed. 1923). Cf. Clark, *Covenants and Interests Running with the Land* 40 (1929). "The decision in the *Hurst* case is to be commended for its treatment of the contract as one entire matter not to be divided up into 'contract' and 'license.'"

⁶ 1 Mechem, *Agency* § 576 (2d ed. 1914); Rest., *Agency* §§ 138, 139 (1933).

⁷ See *Butler v. Manchester, Sheffield and Lincolnshire Ry. Co.*, 22 Q.B.D. 207 (1888), where a passenger was allowed recovery in assault and battery for being ejected from a railway train when, having lost his ticket, he refused to pay the conductor in accordance with a rule of the company which was printed on the tickets. The court said that since the passenger was lawfully on the premises, the railroad had no right to eject him even though he might have been guilty of a breach of contract. The *Butler* case might be distinguished from the case at hand on the ground that a railroad, being a public carrier, is subject to more stringent rules. See comment on *Hurst* case by Sir John Miles, 31 L.Q.R. 217, 222 (1915).

⁸ See Clark, *Covenants and Interests Running with the Land* 39 (1929).

⁹ 3 Williston, *Contracts* § 1344 (1920); 1 Sutherland, *Damages* § 50 (3d ed. 1903).

¹⁰ 56 C.L.R. 605, 632 (1937).