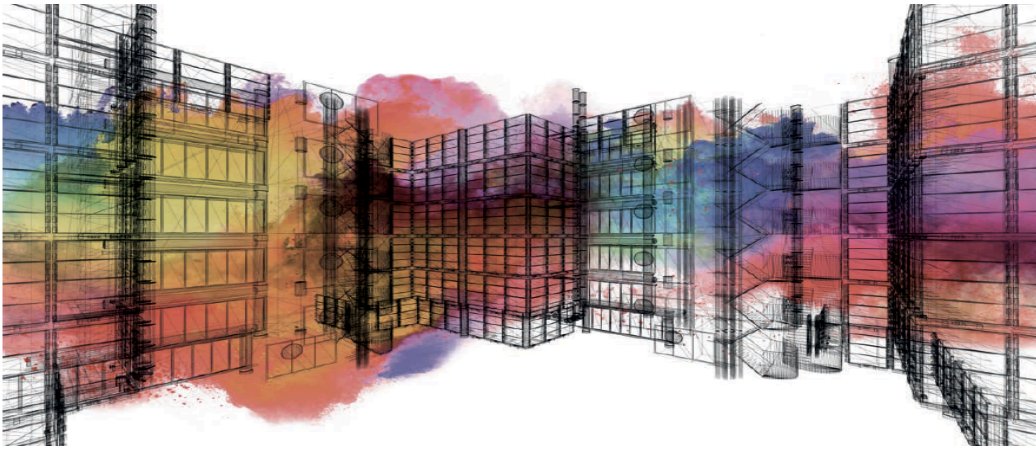


THE PRINCIPLES OF LAND LAW

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28 May 2020



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Manchester Ship Canal v Vauxhall Motors [2019] UKSC 46

FACTS

Vauxhall car company has a large factory at Ellesmere Port on the Manchester Ship Canal. The owners of the Canal and adjacent land are Manchester Ship Canal Co (MSCC). Vauxhall, in 1962, negotiated a licence in relation to an area of land called “The Spillway” with MSCC to discharge waste liquids into the Canal. This licence was expressed to last in perpetuity (forever), for £50 a year. More specifically, the licence allowed Vauxhall to do three things: (1) discharge trade effluent

and waste water into the canal; (2) control, construct and manage pipes to allow such discharge; and (3) access the Spillway to deal with this infrastructure.

The licence provided for termination of the licence if the annual rent was in arrears for more than 21 days, amongst other things.

Following a failure by Vauxhall to pay the annual rent, MSCC sought to terminate the licence. Vauxhall claimed that they were entitled, upon payment of the sum owed, to relief against the termination of the

licence based on the principles of relief from forfeiture.

QUESTION FOR THE COURT

The key question for the court was whether the court’s equitable jurisdiction to grant relief from forfeiture extended to licence agreements. This is a controversial question because forfeiture has traditionally been seen as the bringing to an end of the grant of exclusive possession through a lease. Since licences do not give the holder a right to possession, bringing them to an end does not affect possession of the land, and

This case relates to the discussion at chapter 2, section 2.2.3. For discussion of forfeiture as it relates to leases, see chapter 10, section 10.5.3.

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as such, is not a question of forfeiture. As a consequence, this case, like *Manchester Airport v Dutton* asks how the remedies available to a court are influenced by, and affect, the distinction between personal and property rights in land.

THE COURT'S DECISION

The Court held that relief from forfeiture was available to Vauxhall. It did so on this basis:

- (1) Relief from forfeiture is available in relation to possessory rights;
- (2) It is possible to have possessory rights in land which are not proprietary;
- (3) Vauxhall's licence gave them such a high degree of control over the land that it constituted a conferral of exclusive possession;
- (4) Therefore Vauxhall were entitled to relief from forfeiture under the same principles as would apply to leasehold situations.

In reaching this conclusion, the Supreme Court relied on the earlier decision of the House of Lords in *The Scaptrade* where it was held that relief from forfeiture applied to time charters of ships (a form of agreement which does not confer a property right onto the charterer). However, the Supreme Court emphasised that the ability of the Court to grant relief from forfeiture arose from the fact of the licence being *possessory*, even though it is not proprietary. This requires that some *possessory* rights are not

BLURRING THE BOUNDARY BETWEEN LEASE AND LICENCE?

proprietary. This is far from accepted proposition.

Lord Briggs stated:

"I would acknowledge that a recognition that equity may relieve against the forfeiture of possessory rights over real property, falling short of a proprietary interest, means that the simple assumption of the editors of *Gray and Gray* that relief may never be granted from the forfeiture of a licence calls for re-examination. There will be many licences which only grant rights falling short of possession, for which that simple proposition will still hold good. As will appear, the licence granted in the present case was a very unusual one, both because it granted an element of virtually exclusive possession, coupled with a high degree of control over the locus in quo, and because it was granted in perpetuity. It by no means follows from a conclusion that the rights conferred by this licence are within equity's jurisdiction to relieve from forfeiture, that licences in relation to land will fall generally within that same boundary". [46]

At the very least, this conclusion blurs the distinction between the

lease and the licence. As discussed in chapter 10, the lease is traditionally identified as the grant of exclusive possession. It is true that the rights conferred on *Vauxhall* would struggle to constitute a valid lease agreement thanks to the apparent perpetuity of the right, but that does not necessarily explain why the Court felt it possible to conclude that Vauxhall had exclusive possession of the land based on their licence.