

**WELLS v ARMY AND NAVY CO-OPERATIVE SOCIETY
[1902-1903] Hudsons Building Cases, 4th Edition, Volume 2, p. 346**

FACTS

Wells, the Builders, claimed payment of the final installments of the contract price. Army and Navy Co-operative Society ('the Society'), claimed to set-off against that payment an amount equal by way of penalties for liquidated damages.

The Society submitted that Wells agreed to complete the works within one year from the date of the contract "unless the said works should be delayed by reason of any alteration or addition in or to the works authorized as aforesaid, or in the case of combination of workmen or strikes, or by the default of the sub-contractors whom [Wells] was obliged to employ, or other causes beyond the contractor's control, satisfactory proof of all which was, at the time of the occurrence, to be afforded to the Board of Directors of [the Society], who were to adjudicate thereon and make due allowance therefore, if necessary and whose decision was to be final...".

Wells did not achieve completion the works within the year and the Board of Directors adjudicated on the delays, deciding that Wells was entitled to an extension of three months and that there should be liquidated damages for the further delay amounting to 2,900 pounds.

Wells submitted that it was "prevented from completing the works by the acts of [the Society] and their architect and delayed from various causes" including late possession of the premises and late provision of plans and drawings, thereby obstructing the works so as to relieve Wells from its liability to liquidated damages.

ISSUE

Whether the prevention principle applied.

FINDING

The Court found that the extension of time clause in the contract did not extend to defaults caused by the Society, holding that the clause "might have been framed in general terms so as to include all delays, however caused: but it was not so framed."

Further, on appeal the Court held that one could not interpret the very wide words "other causes beyond the contractor's control", as including certain causes for which the principal was liable.

Accordingly, the prevention principle applied.

QUOTE

His lordship, Wright J concluded at 353 that:

"On the whole, I think that the conclusion must be that the defaults of [the Society] were such that in their cumulative effect they were inconsistent with their claim to insist on completion within the stipulated time. The defaults were, in my opinion, sufficiently substantial to cast upon [the Society] the burden of showing that the defaults did not excuse the delay. It is true that, apart from their defaults, [Wells] had, by the default of sub-contractors, been delayed to an extent which might of itself have involved them in penalties, but in the absence of the further defaults by [the Society] it is impossible to say to what extent the liability to penalties might not have been reduced."

IMPACT

If the Contract does not clearly provide for an extension of time as a result of the defaulting act of the Principal, the prevention principle may be enlivened.

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