JOHN CARTER BING *v.* MORRIS HEDSTROM LIMITED

[Appellate Jurisdiction (Vaughan, C.J.) April 12th, 1950]

Breach of Contract of Service—damages.

The appellant, having entered into a contract of service with the respondent firm, within a few days and before taking up his duties, abruptly repudiated it.

On account of this breach, the Chief Magistrate, Suva, awarded the respondent £30 damages.

On appeal against this decision.

HELD.—The respondent was entitled to be compensated for the inconvenience and trouble caused by the appellant's breach of contract.

Cases referred to:—

Chaplin v. Hicks [1911] 2 K.B. 786.
Hobbs v. London and South-western Railway Co. (1875) L.R. 10 Q.B. 111.
Ruffy-Arnell v. Rex [1922] 1 K.B. 599.
Salvesen & Co. v. Rederi Aktiebolaget Nordstjernan & Others (1905) A.C. 302.

D. M. N. McFarlane for the appellant.

R. Crompton for the respondent.

VAUGHAN, C.J.—This is an appeal from the decision of the learned Chief Magistrate, Suva, awarding the respondent £30 damages for a breach of contract of service. It is common ground that the appellant, having entered into a contract of service with Mr. H. E. Snell acting on behalf of the respondent firm, within a few days of entering into that contract and before taking up his duties, abruptly repudiated the contract entirely to suit his own convenience.

For this infringement of his legal rights the respondent, plaintiff in the lower Court, was entitled at least to nominal damages even if he had suffered no actual damage whatsoever. The question in this appeal is whether he was in law, on the facts proved before the Magistrate, entitled to anything more. Mr. Snell satisfied the Magistrate that his firm had suffered considerable inconvenience, trouble and a certain amount of pecuniary loss. He was unable to bring any evidence to show the exact amount of the pecuniary loss. It appears from the nature of the damages suffered that it would have been extremely difficult, if not impossible, for him to have made any exact assessment of the pecuniary loss involved. There was, however, evidence upon which the learned Magistrate found that the respondent firm had in fact suffered some pecuniary loss as a result of the appellant's breach of contract, and in the circumstances it was his duty to assess it as best he could. "The fact that damages cannot be assessed with certainty does not relieve the wrongdoer of paying for his wrong. In such a case the jury must do the best they can although it may be that the amount of their verdict will really be a matter of guesswork." This is a quotation from *Mayne on Damages* (11th Edition at p. 6) commenting on the case of *Chaplin v. Hicks* [1911] 2 K.B. 786, in which the Court of Appeal upheld a judgment awarding £100 to the plaintiff for the loss of a chance of winning a prize.

The further question as to whether the plaintiff's contractual rights having been infringed he was entitled to any damages in respect of inconvenience and trouble caused thereby, is one as to which I was in some doubt. But a reference to the authorities, including those to which I was referred by learned Counsel, has resolved that doubt.

In *Ruffy-Arnell v. The King* [1922] 1 K.B. 599, which was a petition of right claiming damages from the Crown for breach of contract, Mr. Justice McCardie said: " The suppliants are entitled at least to nominal damages. But I think I am entitled to give them more than that for the extremely abrupt determination of the contract by the Crown without any adequate notice." And later he says: " I am entitled to award something for the general inconvenience, trouble and expense caused by the Crown's breach of contract in so abrupt a manner. These different heads call for no detailed mention. They will appear upon an analysis of the suppliants' accounts and a consideration of the general circumstances of the case." This case does not, therefore, in my opinion, support counsel's contention that the plaintiff, in an action for breach of contract, can only recover damages in respect of actual pecuniary loss, the precise amount of which has been proved in evidence. I am further supported in my view of the law by the judgment of Lord Davey in the case of *Salvesen & Company v. Rederi Aktiebolaget Nordstjernan and Others* (1905) A.C. 302 arising out of a breach of a contract of agency, in the course of which His Lordship said: "The only other head of damages claimed is a general charge for telegrams and trouble and inconvenience. I think the sum of £33/1/3 which has been awarded by the Court below will be ample compensation and solatium to the respondents on this head." Lastly, I refer to the case of *Hobbs v. London & South-western Railway Company* [1875] 10 Q.B. 111, in which the plaintiff recovered substantial damages against the railway company for putting him off the train at the wrong station thereby causing him great trouble and inconvenience but no pecuniary loss of any kind.

I find, therefore, that the respondent was entitled in law to be compensated for the inconvenience, trouble and expense to which he was put by the appellant's wrongful breach of his contract, with the Magistrate's assessment of that compensation.

The appeal is dismissed with costs.