HABID ABI RACHED, a Lebanese Merchant Trans-acting Business in the Republic of Liberia, Appellant, v. **K. A. A. KNOWLDEN**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued October 30, 1957. Decided December 20, 1957.

1. Ejectment will not lie to redress a breach of contract.

2. A complaint alleging the wrong form of action will be dismissed.

3. Ambiguous language of a written agreement will be construed against a party by whom the agreement was drawn.

On appeal from a judgment of the court below in an action of ejectment, judgment *reversed.*

Lawrence A. Morgan for appellant. *Albert D. Peabody* for appellee.

MR. JUSTICE MITCHELL delivered the opinion of the Court.

In the Law Division of the Circuit Court of the Sixth Judicial Circuit, Montserrado County, and in its November, 1954, term, one K. A. A. Knowlden sued out an action of ejectment against one Habid Abi Rached, a Lebanese merchant transacting business in the City of Monrovia. The said action was predicated upon the grounds that the defendant had violated terms contained in a leasehold agreement entered into between the aforesaid plaintiff and defendant, in which the former was the lessor, and the latter the lessee. The facts from which this suit arose were, in substance, as follows :

On December 2, 1953, a lease agreement was instituted between the above-named lessor and lessee for a certain parcel of land, that is, a portion of Lot Number "18" with a store thereon, situated on Water Street in the City of Monrovia, Montserrado County, for a term of four calendar years certain, and with an optional renewal period. For this lease, the lessee, defendant below, paid at the signing of the agreement the sum of five thousand dollars for two years in advance, which sum the plaintiff, lessor, received in the presence of witnesses.

A few months after this transaction was completed, plaintiff contended that defendant, as lessee, had violated the following terms of the said agreement :

"Provided, always, nevertheless, that if the rent above reserved, or any part thereof, shall be in arrears or unpaid after the expiration of ten days, whereas the same ought to be paid as aforesaid, or if any default shall be made in any of the covenants herein contained on the part or behalf of the lessee to be paid, kept or performed, then and thenceforth it shall and may be lawful for the said lessor to enter into and upon the said premises and every part thereof, wholly to reenter and the same to have again, repossess and enjoy as in his or their former estate, hereinbefore contained to the contrary thereof in any wise notwithstanding.

"It is mutually understood between the contracting parties hereto that the lessee does not have right to sublet the above demised premises without obtaining the prior approval of the lessor."

Thereafter plaintiff instituted an action of ejectment against the lessee defendant, alleging, *inter alia,* as follows :

"That the said lease agreement contained a covenant on part of the defendant in Clause *5* of said agreement of lease that defendant, who is the lessee, does not have the right to sublet the above demised premises without obtaining the prior approval of the lessor; but, on the contrary, defendant has sublet a portion of the said demised premises to one Edmond Ghosn, another Lebanese merchant of the City of Monrovia, without obtaining the prior approval of plaintiff.

"And the plaintiff further complains of defendant that, although Clause 2 of the said agreement provides that upon the breach of any of the covenants of the lease, plaintiff should re-enter and repossess his property as in his former estate, yet upon demand made for vacating of said premises by defendant, by virtue of the breach of the agreement of lease aforementioned, defendant has refused to surrender said premises to plaintiff, and still withholds the possession of said premises from plaintiff, the lawful owner thereof."

To this complaint, the defendant, now appellant, filed the following answer on November 29, 1954:

"1. Plaintiff's complaint is defective and bad in that plaintiff has failed to therein aver that plaintiff was possessor of the land sought to be recovered, or that any other

person was possessed of it, and that defendant detains said land ; or that title of possession in whom possession is vested hath come to plaintiff as required by our statutes.

"2. Plaintiff has fatally legally blundered in that his complaint fails to aver that defendant detains the land of plaintiff to which he is entitled under a grant from the Republic or other authority having power, according to law, to grant land in the first instance, or from the defendant himself to the plaintiff as required by law.

"3. Plaintiff's complaint has failed to state that a judgment was obtained against the defendant, and that, by sale of said land, title had come to the plaintiff, and that defendant detains said land as required by law in suits of ejectment.

"4. And also there exists a regular lease agreement between plaintiff and defendant, the tenure of which has not expired, and by which plaintiff has benefited, having drawn five thousand dollars in advance. Plaintiff is therefore estopped from instituting ejectment against defendant.

"5. And also plaintiff is estopped from ejecting defendant from the land duly leased him by plaintiff himself. On the contrary, it is plaintiff's duty to warrant and defend defendant against all persons whomsoever claiming through plaintiff. Plaintiff's action in attempting to eject defendant is fraudulent and should not be tolerated.

"6. And also defendant has not violated any of the terms of the agreement of lease made and entered between himself and plaintiff as alleged by plaintiff in his complaint, in that, although the contract provided that the lessee does not have right to sublet the leased premises without obtaining the prior approval of the lessor, and the lessee did sublet a portion of said leased premises, this sublease was made by and with the consent of the lessor. That is to say, after the lease agreement was drawn up between plaintiff and defendant, and before it was signed by defendant, the defendant duly informed plaintiff that he desired to sublease a portion of the premises to one Edmond Ghosn ; since the defendant did not have the money to pay the advance lease required by plaintiff, and Ghosn had only agreed to advance defendant the money if plaintiff agreed to allow defendant to sublet a portion of the premises to him. Defendant submits that plaintiff in the presence of both defendant and Ghosn gave his approval, whereupon Ghosn paid the plaintiff the sum of five thousand dollars. as advance lease and the sublease was executed." The records reveal that the pleadings continued as far as the rejoinder, and issues of law were disposed of. On March 20, 1956, this case came on trial before a jury at the March term of the

Circuit Court of the Sixth Judicial Circuit, Montserrado County.

The records further substantiate that Edmond Ghosn did accompany his friend, Habid Abi Rached, to the plaintiff for negotiation on the premises, and that every transaction was done in his presence, up to and including the signing of the said lease agreement; and that, besides this, it was Edmond Ghosn who advanced the five thousand dollars payment on the lease after the defendant had obtained the plaintiff's verbal approval for a portion of the store situated on the premises, to be subleased to him—plaintiff having previously assured them before the signing of the agreement in question that, his only object in inserting Count "5" in the agreement was to prevent a sublease to anybody whom he did not know; but that since he knew him personally, he registered his approval for the sublease to him. These pertinent facts have not been contradicted by any of the witnesses who testified in the case, the plaintiff, not excepted. On the contrary, plaintiff benefited under the agreement by the five thousand dollars which he received from the hands of Ghosn, based upon his approval for the said Ghosn to benefit under a sublease from the defendant. Shortly after this transaction, the lessee, now appellant, was called upon for the violation of the terms of the agreement by executing a sublease without his prior approval—an artifice that the law frowns upon, because he was seeking to have the five thousand dollars already received forfeited in so short a period of time.

A judgment was rendered in the court below against the defendant on a verdict of the petty jury. This necessitated the instant appeal before us on a bill of exceptions containing six counts. Counts "1" and "6" being the crux of the appeal to this Court, we quote them hereunder for the benefit of this opinion :

"1. Because His Honor, the Judge, overruled the several issues of law raised in defendant's answer and subsequent pleadings and ruled the case to trial on the following grounds :

" 'The court, in ruling on the law issues, says that, since the party defendant has placed on record that he does not contest the right nor hold adverse title to the plaintiff to the land, Counts "1," "2," and "3" of this answer as to the form of bringing an action of ejectment be and they are hereby overruled ; also the matters of law raised are overruled, as well as the matter of fact relied upon to traverse the complaint and the matters of fact contained in defendant's subsequent pleadings. And it is so ordered.'

"6. And also because Your Honor, on April 1, 1956, gave final judgment adjudging,

inter alia, that defendant release and surrender the premises subject to the ejectment suit to the plaintiff and pay all costs incidental to this action."

This is a case in which the plaintiff elected to sue out an action of ejectment on what purports to be the violation of the terms and conditions of a contract, because, as he says, the said contract provides on its face that, where there occurred a violation on the part of the lessee, the right would be vested in the lessor to reenter and repossess himself of the premises so demised. Although it is fundamental that an action for breach of contract grows out of the violation of the terms and conditions of any agreement regularly subscribed to by the parties concerned, yet, let us see how far and to what extent this view does carry legal sanction and support. In Syllabus "2" of *Tubman v. Westphal, Stavenow &* Co., 1 L.L.R. 367 (1900) this Court found that:

"In an action of ejectment brought by the landlord against his tenant for the violation of the covenants and agreements of the lease, in which he sought to eject the lessee, it was held that an action for the violation of contract was the proper action, and an injunction on the ejectment suit was sustained."

This Court has also held in Syllabus "1" of *Jantzen v. Coleman,* 2 L.L.R. 208 (1915) that:

"When the action set forth in the complaint of plaintiff is not suited to the form of action chosen, the action should be dismissed."

From the premises laid above, it follows that appellant in this case has chosen the wrong cause of action within the scope of his form of action. Besides that, it would be interesting for us to know how the appellant expected to benefit in law under a contract drawn by himself, and on which he gave parol approval to the lessee for, the privilege to sublet, even before its terms and conditions were subscribed to by the parties concerned. Plaintiff, when on the witness stand, said that, since the contract was written, all commitments thereon should have been written, and therefore he never gave approval to the lessee for the premises or any portion thereof to be subleased. To clarify this view, we quote the following:

"A written agreement should, in case of doubt, be interpreted most strongly against the party who has drawn it. Sometimes the rule is stated to be that where doubt exists as to the interpretation of an instrument prepared by one party thereto, upon the faith of which the other has incurred an obligation, that interpretation will be adopted which will be favorable to the latter." 12 AM. JUR. 795 *Contracts* ∫ 252.

The arguments made before this Court by counsel engaged in the case were interesting, but we are reminded of the 26th and 27th verses of the 7th chapter of St. Matthew's Gospel, when Jesus said :

"And everyone that heareth these sayings of mine, and doeth them not, shall be likened unto a foolish man, which built his house upon the sand :

"And the rain descended, and the floods came, and the winds blew, and beat upon that house; and it fell : and great was the fall of it."

It is therefore our opinion that the appellee, plaintiff below, was not entitled to recover against the defendant, since an action of ejectment will not lie for the breach of a contract. The judgment of the court below is reversed, and the appellee is hereby ruled to all costs in this suit. And it is so ordered.
Reversed.