



La solution du Canal de Craponne n'existe pas en droit anglais

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le canal de craponne

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Introduction

Voici la copie d'un arrêt intéressant, rendu par une cour d'appel britannique. Les faits sont similaires aux fameux arrêt du 6 mars 1876, dit du Canal de Craponne, qui a interdit au juge français de modifier un contrat dans le cas de changement de circonstances, créant la théorie dite "de l'imprévision".

Cet arrêt peut se retrouver avec les références suivantes : [1978] 3 All ER 769, *Staffordshire Area Health Authority v South Staffordshire Waterworks Co.*

Il est intéressant d'un point de vue de droit comparé, en ce que pour des mêmes faits, le raisonnement de la cour britannique est similaire au raisonnement français, empêchant la révision pour imprévision, mais cependant l'arrêt aboutit sur une solution différente, puisque le juge anglais alloue des dommages et intérêts (en appliquant le principe de *frustration*) là où le juge français oblige à la performance spécifique du contrat.

Reproduction de l'arrêt

Staffordshire Area Health Authority v South Staffordshire Waterworks Co

COURT OF APPEAL, CIVIL DIVISION

LORD DENNING MR, GOFF AND CUMMING-BRUCE LJ

21, 24, 25, 26, 27 APRIL, 2 MAY 1978

Contract - Time - Duration of contract - Determinable by reasonable notice - Contract by water company to supply water at set rate to hospital - Contract expressed to continue 'at all times hereafter' - Inflation increasing normal water charges twentyfold since contract made - Whether water company entitled to terminate contract by reasonable notice - Whether contract to be construed in context of circumstances in which made.

In 1908 a water company proposed to pump water from a well about a mile away from a hospital which had its own well. By the South Staffordshire Waterworks Act 1909a the water company was

given statutory authority to pump water from its well subject to providing the hospital with such water as it required, at the rate it would have cost the hospital to operate its own well, if the supply from the hospital's own well was diminished by reason of the water company's operations. Any disputes were to be settled by arbitration. In 1915 the water company began pumping water from its well and by 1918 this had an adverse effect on the supply from the hospital's well. The water company agreed to make up the deficiency from their mains. In 1927 the hospital authorities decided to abandon their well and commenced taking all the hospital's water from the company's mains. In 1929 the hospital authorities and the water company entered into an agreement under seal whereby 'at all times hereafter' the hospital was to receive 5,000 gallons of water per day free and all the additional water it required at the rate of 7d per 1,000 gallons. When decimal currency was introduced the rate was changed to 2•439p per 1,000 gallons. By 1975 the normal rate charged by the water company was 45p, and on 30 September 1975 the water company wrote to the hospital authorities giving notice that they intended to terminate the 1929 agreement in six month's time, and that thereafter they would supply 5,000 gallons per day free and any excess at normal rates. The hospital authorities refused to accept the notice as valid and took out an originating summons to establish that it was not. The judge upheld their claim on the ground that the 1929 agreement, being expressed to apply 'at all times hereafter', had been made forever or in perpetuity and therefore the water company could not resile from it. On appeal,

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Held - The appeal would be allowed for the following reasons--

(i) (Per Lord Denning MR) Having regard to the fall in the value of money since the agreement was made, circumstances had arisen since the agreement was made which the parties had not foreseen and in those circumstances it was no longer binding on the parties and could be terminated on reasonable notice (see p 774 f g, p 775 b to f, p 776 g h, p 777 f to h and p 778 a, post); dicta of Lord Wilberforce in *Reardon Smith Line Ltd v Hansen-Tangen* [1976] 3 All ER at 574-575 and of Cardozo J in *Utica City National Bank v Gunn* (1918) 222 NY at 208 applied; *Multiservice Bookbinding Ltd v Marden* [1978] 2 All ER 489 approved.

(ii) (Per Goff and Cumming-Bruce LJ) In the absence of an express power to terminate, the agreement was not to be construed narrowly but in the context of the circumstances in which it was made. These included the fact that the consideration for water formerly payable by the hospital authorities under the 1909 Act was not static, that it was improbable that the water company intended to bind themselves to supply whatever water the hospital authorities required on terms fixed once and for all, that there was no provision in the agreement for a variation of the charge for the water, and that, the agreement apart, increases in the water charges would have been a matter for repeated arbitrations. Having [1978] 3 All ER 769 at 770

regard to those circumstances, the court would infer a power to terminate the agreement on reasonable notice, so that the phrase 'at all times hereafter' was to be construed as meaning 'at all times hereafter during the subsistence of this agreement' (see p 778 e and j to p 779 a, p 780 a and c to h, p 781 b c, p 782 f g and p 783 a to c e and h to p 784 a d and h, post); *Crediton Gas Co v Crediton Urban District Council* [1928] Ch 447 and *Re Spenborough Urban District Council's Agreement* [1967] 1 All ER 959 applied; *Llanelly Railway and Dock Co v London and North Western Railway Co* (1875) LR 7 HL 550 and *Martin-Baker Aircraft Co Ltd v Canadian Flight Equipment Ltd* [1955] 2 All ER 722 distinguished.

(iii) On the facts, the water company were entitled to give, and had by their letter of 30 September

1975 gi-ven, reasonable notice terminating the agreement (see p 778 a b, p 782 g and p 784 h, post).

Rapide commentaire

Il semble que le juge anglais ait le même souci du respect du principe *Pacta Sunt Servanda*. Cependant la solution retenue ici sur un cas similaire à l'arrêt de principe français diffère de celui-ci.

Ainsi en droit des contrats français comme anglais, plutôt *Pacta Sunt Servanda* que *Rebus Sic Standibus*.

Ainsi en droit anglais, le juge ne peut pas non plus modifier un contrat dans le cas de l'imprévision, sauf que la performance spécifique du contrat n'est pas demandée. En droit anglais, le contrat s'arrête, et des dommages et intérêts sont alloués à la partie lésée. Le principe de *frustration*, s'applique aussi dans le cas du changement de circonstances

La solution française semble criticable en ce qu'elle prône une solution qui peut être injuste, mais elle s'assure du principe de sécurité contractuelle. Ainsi, elle manque de flexibilité, malgré que des arrêts (tel l'arrêt Huard en 1992) soient venus corriger les défauts du manque de flexibilité de cette solution.

La solution anglaise quant à elle est critiquable en ce qu'elle est contraire au principe de sécurité contractuelle tout comme à une volonté de flexibilité par l'adaptation judiciaire du contrat (comme cela existe dans beaucoup d'autres pays). Cependant elle semble plus équitable : elle finit un contrat inéquitable pour l'une des parties, et alloue des dommages et intérêts à la partie lésée.

Cependant, la justification du juge anglais ne se trouve pas du point de vue de la question de l'imprévision, mais se base sur le fait qu'on ne puisse pas accepter qu'un contrat soit perpétuel. Ainsi, "perpétuel" en droit anglais signifie "jusqu'à ce qu'un élément nouveau vienne mettre fin au contrat".

Conclusion

En réalité, ni l'arrêt du Canal de Craponne, ni cet arrêt ne viennent donner de solution concrète à la question du changement de circonstances. Bien que la question se pose fréquemment dans les faits, on trouve peu d'arrêts dans lesquels la question se pose en ces termes. Ainsi, le juge ni le législateur n'ont cherché à trouver une nouvelle solution. Ce qui est regrettable.

Heureusement, les nouveaux projets français et européens de réforme du droit des contrats devraient apporter des éléments nouveaux pour répondre à ce "quasi-vide juridique".