1984-122

IN THE ROYAL COURT OF JERSEY

Before: P.L. Crill, CBE., Deputy Bailiff
Jurat J.H. Vint
Jurat G.N. Simon, TD

Advocate G.R. Boxall for the Plaintiff
Advocate P. de C. Mourant for the Defendant

Between	R H EDWARDS DECORATORS AND PAINTERS LIMITED	Plaintiff
And	TRETOL PAINT SYSTEMS LIMITED	Defendant

The Plaintiff in this action is a Company incorporated in Jersey and beneficially owned by Mr. R. H. Edwards. Its business is painting and decorating. The Defendant is a Company incorporated in England and manufactures and supplies paints and their products and in particular certain items used to prevent the writing of graffiti on walls, or to obscure such graffiti once written. It is accepted by both sides that in 1976 they entered into a trial contract under which the Plaintiff was to be the sole distributor of the Defendants' products in the Channel Islands. It will be convenient to describe the Plaintiff Company hereafter as "R. H. Edwards" and the Defendant Company as "T. P. S." That agreement was confirmed and amplified in 1977 by the appointment of R. H. Edwards as the sole person who could apply T.P.S. products in the Channel Islands. Between November 1978 and March 1981, a Mr. K. McDonald was employed by R. H. Edwards as a technical adviser, having received some preliminary training by T.P.S. R. H. Edwards alleges that the contract was further amended in or around November 1978 by the introduction of a term of eighteen months' notice which was to be given by either side before terminating the contract. T.P.S. denies that any such amendment was made. R. H. Edwards says that the agreement was made both orally and in writing. T.P.S. says that there was no oral agreement and that the written documents do not support the introduction of an eighteen month period of notice on either side. Following difficulties with the Housing Committee of the States about some of the Plaintiff's work for that Committee, but not we stress in respect of the application of T.S.P. products, R. H. Edwards was banned from working for the Housing Committee on non-Tretol contracts for one year from the 26th February 1982. In that month also, Mr.

Maurice Boots the then Chief Architect of the Public Works Committee of the States and thus responsible for examining tenders from contractors and for vetting their work on States' properties, telephoned to Mr. B. Cox the General Manager of T.P.S. to tell him about the ban imposed on R. H. Edwards and to elicit from him what was the business connection between R. H. Edwards and T.P.S. Even accepting Mr. Boots' explanation that he had a duty, as indeed he did, to obtain the best possible price for the States in competitive tendering and that therefore, where there is a sole supplier, that position cannot arise, to seek to find out what the contract was between R. H. Edwards and T.P.S. was, in our opinion, a most improper course to take.

Since the ban, as we have said, did not effect Tretol products there was no need for Mr. Boots to seek to take any steps that might have the result, as eventually it did, in a breach of the contractual relations between T.P.S. and R. H. Edwards. But for that interference it may well have been that the contract would not have been broken. Certainly R. H. Edwards did not seek to hide the banning because Mr. Cox admitted that the letter from the Housing Committee imposing the ban was sent to T.P.S. voluntarily by R. H. Edwards, but he felt that the letter was not self-explanatory. We shall come back to the letter later in our judgment.

When Mr. Boots telephoned Mr. Cox, the latter was cautious but agreed to meet Mr. Boots in Jersey in April when he would be in the Island having a holiday with his wife. They met on the 13th April 1982. On the next day Mr. Cox saw Mr. Edwards and told him that T.P.S. could not continue the contract in its present form with his firm. He told him that R.H. Edwards had broken the contract for a number of reasons which we shall examine later. Mr. Edwards claimed that the contract could not be terminated except upon the giving of eighteen months notice. They parted with Mr. Edwards being somewhat heated.

Later in the month there was a meeting at Tretol House between Mr. Edwards, Mr. Cox and Mr. Wolff, another Director of T.P.S. The latter confirmed that the existing arrangements could not continue. There was a lengthy discussion and Mr. Cox handed to Mr. Wolff a note he had prepared of alternative arrangements to replace the existing contract between the parties. Mr. Edwards took the note away which was handed to him by Mr. Wolff and later rejected it. He then took legal advice and the present action then ensued in due course.

T.P.S. did not terminate the contract completely with R. H. Edwards but

only that part which has been described in the course of the hearing as the exclusiveness of it; that is to say, the exclusive right to distribute and apply T.P.S. products.

The Plaintiff now sues for the loss of profits it would have made during the eighteen months if the proper notice had been given, that is to say the period following the 22nd April 1982, not only on the contracts for T.P.S. products themselves, but also for the ancillary work which flowed from T.P.S. contracts, that is to say the decoration of such items as surrounding doors, ceilings and skirtings. R. H. Edwards also claims general damages.

There are four main issues which we have to decide. They are:

1. Was the contract between the parties amended by the addition of an 18 month period of notice before termination?
2. Was T.P.S. entitled to break the contract without notice and to remove the exclusivity part of the agreement from R. H. Edwards?
3. If it was not, then what damage has been sustained by R. H. Edwards?
4. Should such damages as might otherwise be awarded be disallowed or reduced because R. H. Edwards failed to mitigate its loss in rejecting the alternative proposals of T.P.S?

So far as any oral agreements were concerned, Mr. Edwards said that Mr. Cox agreed an eighteen month period, firstly in the Lido de France and secondly over a meal at No. 10 Bond Street, which is a restaurant. Mr. Cox denied that any such oral agreement had been reached and he said that indeed he would not have been authorised to deal with the matter because he would have had to consult the other Directors in the group about it. There being an assertion on the one hand and a complete denial on the other, we have had to look at such written evidence as there is before coming to a conclusion on the matter. We have done so bearing in mind that if the written evidence was unambiguous, we would not be entitled to have regard to the oral evidence. At page 1910 in Hyams v. Russell, Jersey Judgements 1970/ 1971, the Royal Court put it like this.

> " ... It is a fundamental principle of the Law of Contract that where there is a written agreement which has a plain natural meaning it is not permissible to alter its effect according to the intention of one of the two

contracting parties, or to adduce evidence in order to show such an intention."

It will be convenient to set out a number of letters which show, first, that R. H. Edwards was held in high esteem by T.P.S. at the beginning of their relationship. Second, what were the terms of the contract, excluding the question of the eighteen month period. And, thirdly, the eighteen month period with which is inter-related the employment of Mr. McDonald by R. H. Edwards. It is not necessary to deal with the appointment of R. H. Edwards on one year's trial as distributor and we can pass straightaway on to a letter of the 15th November, 1977, from T.P.S. to the Department of Public Buildings and Works. It is as follows:

"Dear Mr Seymour

Many thanks for kindly agreeing to see me at short notice last week.

I am pleased to confirm that following the many excellent examples in Jersey of work carried out by Messrs R H Edwards (Painters & Decorators) Ltd using Tretol Paint Systems' products, that in addition to being Sole Distributors Messrs Edwards have been appointed Sole Application Contractors of our products in the Channel Islands.

This appointment is made in an effort to ensure that the future use of our materials is to the same high standards that have been produced so far. One exception to the appointment has occurred on the Midvale Housing Contract already in progress where Messrs Edwards have kindly agreed to provide technical assistance and supervision to the Painting Sub-Contractor, acting on our behalf and at no additional cost to the contract. However, this is an exception that has been made only as a result of the contract being at such an advanced stage. All future applications of products will be the responsibility of Messrs Edwards.

I look forward to meeting you again on my next visit - with at least some prior notice of my arrival! In the meantime please let me know if there is any further assistance or information we can provide."

We infer from that letter that, at that time, T.P.S. thought highly of R. H. Edwards's work. That that regard continued at least until 1980 or even possibly 1981, is shown by a brochure which was produced to us for the promotion of

T.P.S. products and which depicted in addition to the Royal Entrance at the Albert Hall, a number of examples of T.P.S. products on walls, all of which were carried out by R. H. Edwards, although not formally attributed to it. In his evidence Mr. Cox agreed that that brochure was brought out, he said, before December 1981, but possibly in 1980.

On the same date T.P.S. wrote to R. H. Edwards confirming its appointment as "sole distributor and contractor for Tretol Paint Systems Products in the Channel Islands". The letter is as follows:

"Dear Mr Edwards

RE: TRETOL PAINT SYSTEMS - SOLE DISTRIBUTORSHIP AND CONTRACTOR - CHANNEL ISLANDS

Following our meeting and discussions last week this is to formally confirm your appointment as Sole Distributor and Contractor for Tretol Paint Systems' products in the Channel Islands.

Providing normal satisfactory trading arrangements are maintained we are prepared to hold the appointment as firm until 31 December 1978 with an option to renew either side thereafter. With regard to the application of Tretol Paint Systems' materials this appointment means that although your Company is solely responsible for applying our materials to the required standards, if necessary you retain the option to give permission for other parties or contractors to apply our materials. In such instances, it will remain our understanding that your Company will be responsible for all applications and any queries or matters arising will be referred to you for your attention.

We trust that this arrangement meets with your approval and would like to take this opportunity of wishing you every success. It is already quite apparent that your efforts so far are showing signs of good reward in the future."

Matters continued in the normal way, except for the introduction of Mr. McDonald upon the scene, in November 1978. He was introduced to Mr. Cox in Mr. Edwards's office and he remembered the two of them discussing the question of an eighteen month period. However, the matter was of no significance to him, nor was the reason for it which was that R. H. Edwards wanted an eighteen month period of notice of the contract because of the overheads it was

going to incur in employing Mr. McDonald to promote T.P.S. products. Originally it was envisaged that Mr. McDonald would be self-employed but that position changed shortly after November and within some two weeks of taking up his employment, he became a salaried employee of R. H. Edwards. From the trade cards produced by T.P.S. it was clear that they regarded Mr. McDonald and thus of course R. H. Edwards as the "sole C.I. agent" for their products. Mr. McDonald was also engaged in promoting T.P.S. products in Guernsey. To the extent therefore that a fixed period of eighteen months was required by R. H. Edwards before the contract between it and T.P.S. would be terminated because of R. H. Edwards's relationship with Mr. McDonald the written evidence submitted to us overlaps both questions. That is to say, was an eighteen month period agreed in writing and secondly, what were the terms of Mr. McDonald's appointment? So far as the latter is concerned, these are not material to the present proceedings except in so far as they throw light on the first question. On the 23rd November 1978, Mr. Cox wrote to Mr. Edwards in the following terms:

"Dear Robbie

Thank you for a most pleasant visit and discussion. As agreed I attach a resume of proposals for the future which I would like you to confirm in writing as being acceptable with any alterations or additions that you think should also be included.

I was pleased to meet Ken McDonald and hope that he will be successful in developing your efforts in the Channel Islands, particularly to the Hotel Industry where there must be a tremendous market for our range of products. Would you please let me have in writing for our records details of your arrangement with Mr. McDonald. For the reasons discussed it is essential that we have on record what his role is particularly as we will be assisting in his training, in addition to matters concerning health, safety, insurance, etc.

I confirm that we will be pleased to give him induction training during week commencing 4 December and a programme is being prepared. This will include one day at Head Office, two days with our Area Managers, and a day at Tretol Technical Services Ltd, hopefully he will be able to attend the Sales Meeting we are holding for our own Area and Regional

Managers on Friday December 8th at Tretol House before returning to Jersey. However, I believe it would be worth your while to allow him to come over again in the New Year for a few days further training after he has had a period of getting his feet wet in the Tretol selling world of the Channel Islands."

He attached a memorandum, which reads as follows:

"PROPOSALS FOR FUTURE CO-OPERATION WITH R H EDWARDS DECORATORS AND PAINTERS LTD FOR MARKETING TRETOL PAINT SYSTEMS PRODUCTS IN THE CHANNEL ISLANDS

The present arrangement is that R H Edwards Limited are our Sole Distributors in the Channel Islands on an open ended basis.

We are prepared to identify the arrangement further if you wish by saying that with effect from 1st January 1979 eighteen months notice will be required for the arrangement to be terminated by either R H Edwards Ltd or ourselves.

Products are currently supplied to R H Edwards Ltd at List Prices prevailing less 20% discount, excluding shipping, packaging, insurance costs, etc. We are prepared to give a further discount of 2 1/2% for turnover in any 12-month period that is in excess of £15,000 nett invoice value. The additional 2 1/2% discount to be paid retrospectively in any 12-month period. However, to keep the crediting of additional discount simple we would prefer that this be assessed at the 30th June and 31st December of each year."

It is clear from this that there had been a meeting in England between the parties and, again, it may be said that relationships between them at that time were good. In passing we may mention that in 1977 one of R. H. Edwards's cheques in favour of T.P.S. had been referred to drawer. That lapse in the trading arrangements between the parties was condoned.

On the 29th November, R. H. Edwards wrote to T.P.S. the following letter:

"Att: Mr. B. Cox

Dear Brian,

I would like to confirm my arrangements with Ken McDonald regarding his role here in the Channel Islands. Ken will be self-employed and work on a commission basis for all Tretol Products sold in the Channel Islands.

His role will be both promoter and mediator in as much as he will be responsible for overall promotion of Tretol Products and will also act on behalf of Tretol in the (unlikely) event that there be any problem between myself and the customer regarding the Tretol Products.

Ken will be responsible for his own personal insurance and has taken steps to this end as well as getting BUPA cover, etc. I hope that this letter confirms a satisfactory arrangement.

Yours sincerely,

R.H. EDWARDS"

It was urged upon us that the last sentence in that letter confirms the arrangements set out in the proposals sent to R. H. Edwards by T.P.S. with the letter from that firm of the 23rd November. If that is so, then the letter of 6th March, 1979, would hardly have been necessary. That letter is as follows:

"Dear Mr. Cox,

re: Contractual Agreements

I have today visited my advocate with reference to our intentions in France. It was a useful meeting and certain points arose through discussions regarding agreements and contracts. As you know we have just set up Home Decorators as our sub-agents for Guernsey and have had to put an agreement in writing to be signed by both parties. In effect, to-date, we have no written contract signed between us (i.e. Tretol Paint Systems Ltd and R.H. Edwards Decorators & Painters Ltd) for the C.I. Agency, merely a memo dated November, 1978.

Similarly our intentions for France are reaching completion and we are sending an opening letter to contractors this week and are hoping to visit Rennes as our starting point later this month. We intend to adopt the same policy and procedure as operated here in the Channel Islands i.e. to appoint French equivalents or ourselves which means giving each approved contractor his own region on a sole basis. The French are meticulous people and it would be futile for us to approach them without having a contract agreement drawn-up of those arrangements. In order to make them binding of course, we in turn need a similar contract between Tretol Paint Systems Ltd and ourselves. As outlined previously

we are about to form a new company for dealings with France and it would be to this company that the contract would apply. As we are keen to push on, if you could give this matter your urgent attention we would be grateful."

We think that the last sentence in the first paragraph of that letter supports T.P.S.' submission that it had received no confirmation of the proposals submitted by it on the 23rd November, 1978, and that, accordingly, it was not bound to give eighteen months' notice to terminate the contract. It may well have been the intention of Mr. Edwards to confirm the proposals of the 23rd November, but we consider his letter of the 29th November, 1978, to be unambiguous and it would require a great stretch of the imagination for us to hold that the last sentence in that letter confirmed the proposals by T.P.S. of the 23rd November, about their contract. Having regard to the extract in the judgment of Hyams v. Russell to which we have referred, even if this were so, that is Mr. Edward's belief, we cannot find such an ambiguity in the letter of the 29th November, which would entitle us to hold other than that there was no eighteen month period of notice of the termination of contract added to the existing arrangements in or around November, 1978.

The effect of our reaching this decision is that there has to be substituted for the eighteen months a period of reasonable notice. We will return to this later, but we will substitute in paragraph five of the answer for the period of 18 months' notice, that of a reasonable period. In that paragraph T.P.S. pleads that even if it had to give 18 months notice (and we have found that it did not have to do so, but rather a reasonable notice), it was entitled summarily to terminate the agreement because R. H. Edwards had failed fundamentally to fulfil its obligations under the contract. The particulars given (of such failure) are: "a) at all material times the Plaintiff refused to act as distributors of the Defendant's products in the Channel Islands. b) In or about February 1982, the Plaintiff's were informed by the Department of Public Building and Works of the States of Jersey that they would not be allowed to tender for any more decoration work for one year from the 26th February 1982. Prior to that date the Plaintiff had carried out a substantial amount of work for the States of Jersey aforesaid, using materials supplied by the

Defendants." The term fundamental breach used in the answer presumably is intended to refer to a fundamental breach of contract. That term is used where the English Courts have had to construe what are usually called "exclusion clauses" and the Defendant seeks to exclude or limit his liability for breach of contract which would otherwise be imposed upon him. No such clause exists here to concern us. But we have derived some help from the English cases. Thus it has been said that "the expression is no more than a convenient short-hand term for saying that a particular breach or breaches of contract by one party is or are such as to go to the root of the contract entitling the other party to rescind." (See footnote 1 to paragraph 372 of Halsbury Fourth Edition Volume 9). Again, fundamental breach is a breach "which makes the performance of the contract something totally different from that contemplated."

Leaving aside exclusion clauses, where one party to a contract has committed a serious breach by defective performance (or by repudiating his obligation under the contract) an innocent party will have the right to rescind the contract (Halsbury op. cit. para. 538). T.P.S. claims to have the right to rescind the contract because R. H. Edwards fell within both the above heads of failure. But T.P.S. goes further and claims to have had the right to terminate the contract summarily, that is to say without notice. The final letter from the Housing Committee, or rather from Mr. Boots on their behalf was that of the 22nd March 1982, to R. H. Edwards. It is as follows:

"Dear Sir

The Housing Committee at its meeting of 26 February, 1982, considered your appeal against its previous decision not to allow you to tender for any more decoration work and decided that the period during which you would not be allowed to tender would be one year from 26 February, 1982.

However, the Committee decided that you would continue to be allowed to tender for work involving the use of Tretol products."

The work complained about was not the application of T.P.S. products but ordinary decorating at a Housing Committee property. Four matters should be noted here:

1. Tretol products are excluded from the ban.

2. R.H. Edwards had rectified the defective work (which was acknowledged in an earlier letter from Mr. Boots to R.H. Edwards of 31st January, 1982).

3. On the 30th March, 1982, R.H. Edwards sent a copy of the letter of the 22nd March, 1982, to Mr. Wolff to pass on to Mr. Cox.

4. Mr. Cox acknowledged receiving the Housing Committee letter on 5th April, 1982, as follows:

"Dear Robbie,

Many thanks for allowing us a chance to see your photographs which I return together with the letter from the States of Jersey.

I hope the ban by the Housing Committee will cause you the least amount of difficulty during the coming months. With regard to their second paragraph I would be interested to know whether you have any definite indications that in fact work is being made available involving the use of our products for which you can tender and get contracts."

The reasons which prompted Mr. Cox, and thus T.P.S., to rescind the contract, which it was submitted by Mr. Mourant T.P.S. was entitled to do because of the fundamental breach by R. H. Edwards, were these:

1. There had been a falling off of business in the Channel Islands in 1980 and the arrangements made by R. H. Edwards in Guernsey were giving rise to concern. On the 10th July 1980, T.P.S. wrote to R. H. Edwards as follows:

"Robbie,

Thank you for our frank discussion about future Channel Isles business. I hope it clarified the situation and confirm below the points discussed with some other details.

Jersey

There is concern about the decline that has taken place in our share of the available business and I hope that the slight improvement in recent months grows and is a sign of better things to come. One way of increasing sales of our products might be if you altered your policy concerning the supply only of T.P.S. products in the Island as at pressent this prevents you and us from obtaining supply only orders from other sources such as direct labour. Although this may be acceptable in a

growth situation it is hard to justify when sales are in a decline.

I would like to reconsider our present arrangement next January with regard to the provision of selling effort, exclusivity and discount terms but of course, you would continue to negotiate whatever business that was produced by your Company and I hope that none of this ever becomes necessary and our joint co-operation and goodwill grows in strength.

Guernsey

Your agreement with a Guernsey Contractor is in danger of preventing T.P.S. from achieving sales in that Island and I do ask you to do whatever is necessary to resolve the matter so that we can be selling in the Autumn in order to hopefully get orders in the Winter but definitely by this time next year and onward. The present position is that having identified the marketing potential it would appear that your written agreement with the local contractor requires twelve months notice of termination which could prevent orders for our products arriving for up to two years - which is a situation to which we could not agree. There appears to be three alternatives.

(1) Terminate, wait twelve months before making a start and thereafter probably being in competition with a local, and established Guernsey contractor.

(2) Continue with your present arrangement but provide real selling effort through either Ken McDonald or yourself, the cost of which would be shared for probably twelve months assuming that Beautiful Homes still agree to pay half. My calculation is that with our paying a third then the cost to your Company would only be 17% of the whole.

(3) Relinquish your contract with Beautiful Homes completely by mutual agreement and concentrate your own efforts principally on Jersey, the Island you know best and where you already have a well established base. In this case T.P.S. might decide to provide the Guernsey marketing effort. This would mean that you would be in the same position with regard to meeting competition for Guernsey contracts as you will in any case be if you terminate, which I understand is your present intention.

Credit

As promised, I enclose the application forms should you wish to proceed with opening a Credit Account. However, you should be aware that

this will affect the present terms for T.P.S. products at List Price less 20% discount for cash with order as T.P.S. materials will be supplied on credit at List Price less 15% in line with our policy elsewhere.

Other Tretol Companies' Business

Although I can understand your interest in buying products from other Tretol Companies as additional business for the Group providing it did not have an adverse effect on T.P.S. Channel Island sales in view of each of our Companies being quite separate and autonomous.

France

I have told Tretol Export Limited that you are no longer interested in pursuing business in France.

I will be on holiday from the 24th July to the 10th August and will telephone you on my return."

R. H. Edwards replied as follows:

"Dear Mr Wolff,

I am sorry to have to draft this letter but I would like you to know of my extreme disappointment in recent relations with Brian Cox.

On Tuesday 8th July Brian Cox paid a 'discourtesy' trip to see me in my office regarding my turnover with Tretol. Please find enclosed a copy of the figures wafted under my nose. He was extremely officious and spent 1 1/2 hours in my office knocking my efforts. It was through my original efforts that Tretol paints got off the ground here - not Brian Cox's or anybody else. I resent his attitude and am amazed that Tretol would sanction the expenses of such a visit, when a phone call or letter would have sufficed!

Jersey is unique in it's working procedures and I have undoubtedly killed off the opposition of Portaflek over the last few years, initially by applying free sample areas at my own expense. I am now pushing for a break through in the Guernsey market and have had Ken McDonald (my sales agent) over there in the last fortnight on two separate occasions for the sole purpose of promoting Tretol Paint Systems. I spent £113.60 (not including his salary during this period) in the process. A copy of Ken's sales report is enclosed.

Anyway the crux of the matter is that we are doing a small Multicolour/ Lacquer job for the States of Jersey, which is an urgent one. Last Tuesday I did a bank draft as usual, for £51.90 at my bank and had them advise your bank to be informed accordingly. This was done. I have waited daily for the goods till today (Friday). I have phoned Brian Cox and he tells me he has not released them since he's had no advice from his bank.

I find it unbelievable that even when I stated categorically that this money was transferred - Mr. Cox refused to release a paltry £50 order for which my completion date was this weekend. This situation is not conducive for future relations with the States of Jersey. I have several large projects in the pipeline - three school conversions and a ten storey States office building - all Vynatex specified through my efforts.

I have filled in forms to open an account with Tretol so that these matters do not arise again, but my opinion of Mr. Cox's petty and short-sighted attitude leaves me speechless.

In future I would like to save your company money by not having the presence of Mr. Cox in Jersey. I shall continue my sales efforts without his 'support' and would be grateful if you would arrange any future company liaisons with him through Ken McDonald."

And, finally, Mr. Wolff poured oil on the troubled waters with a letter to R.H. Edwards on the 29th August, 1980. The rift was healed as appears from a letter by R.H. Edwards to T.P.S. of the 8th September 1980. No evidence was produced to suggest that, if there had been a falling off of promotional effort by R.H. Edwards, it was due not to any recession in general building trade but to its own failure to promote T.P.S. products. The only evidence we had about the state of the building trade was from Mr. Peter Seymour, one of the employees of the Housing Committee who told us that as regards 1982 to 1983, which was the time during which R.H.E. said he should have been working on an exclusive basis for T.P.S. had they not rescinded the contract, the Housing Committee's building and decoration programme did not call for a large amount of the application of Tretol products. It may be said, therefore, that if T.P.S. is liable to R.H. Edwards there cannot

be laid at its door a general falling off of business in the building and decorating trade.

2. The hope that T.P.S. products would be used on exterior walls as well as the interior walls did not materialise.

3. Part of the loss of business was attributable to the lack of advertising by R.H. Edwards of T.P.S. products. In this connection R.H.E. produced a note of expenses which included the sum of £827.56 for advertising.

4. An exclusive agreement meant that while "he could run the thing as he chose" (as Mr. Cox put it in his evidence) that power included the negative one of not, ordering if the company so chose, a single tin. Had R.H.E. done this we have no doubt it would have been committing a serious breach of its obligations towards T.P.S.

5. R.H.E. had failed to follow what was an important part of their trading relationships as set out in the letter of the 15th November 1977, from T.P.S. to R.H. Edwards, that is to say the "normal satisfactory trading arrangements". R.H.E. had failed to comply with these requirements in that (a) it did not meet its financial obligations to T.P.S. when two of its cheques were dishonoured. Mr. Cox admitted that the first one in 1977 had been condoned. As regards the second one in 1981, it seems to us that the internal financial matters between the parties were to some extent self-regulating inasmuch as when R.H. Edwards paid promptly he was allowed credit and when he failed to do so he had to send cash with each order. Two lapses of this sort, that is to say, dishonoured cheques over a period of some five years of trading are hardly serious matters in the context of the amount of orders placed by R.H. Edwards with T.P.S. (b) R.H. Edwards had financial difficulties in 1981. (c) R.H. Edward's actions in failing to supervise the La Carriere work (and at least one other of the properties of the Housing Committee upon which R.H. Edwards was working) undermined the relationship between T.P.S. and its customers, direct or indirect, for example, the States.

6. T.P.S. did not wish to be associated in an exclusive way with a company that had been banned from certain States' work. This last matter was, so Mr. Cox told us, the last straw. He pointed out that although R.H.

Edwards could tender for States' work in competition, that was not the same, in his opinion, as an effective promotion of T.P.S's products.

Taken as a whole, the allegations of T.P.S. amount to saying that R.H. Edwards did not promote T.P.S. products effectively or continually and by its actions had antagonised one of its best customers, that is to say the Housing Committee of the States and, by further inference, some of the opprobrium that attached itself inevitably therefore to R.H. Edwards would rub off on to T.P.S.

As against this we are satisfied that R.H. Edwards did promote T.P.S. to the best of ~~his~~ their ability in what was described by Mr. McDonald as a fluctuating trade. R.H. Edwards did, in fact, obtain the States as a valued customer and indeed the use of T.P.S. products were not in issue between R.H. Edwards and the States. The Housing Committee recognised the excellence of T.P.S's products and did not ban R.H. Edwards from applying it or tendering, although as we have already pointed out tendering is not the same as promotion. Moreover, other States Committees not dependent on the Housing Committee continued to use R.H. Edwards's services and thus T.P.S. products were promoted in that respect. It is true to say that competition between suppliers of T.P.S. products might well result in more of those products being sold, but that could not be a proper reason for terminating the contract. It appears moreover, that on the 5th April 1982, T.P.S. did not suggest that at that stage at any rate, it took a very serious view of the ban. The discussion between Mr. Cox and Mr. Boots clearly turned the scale.

We have come to the conclusion that the actions of the Plaintiff Company did not amount to such a serious breach of their undertakings with T.P.S as to entitle the latter to terminate the contract summarily. Accordingly, whilst it was entitled to terminate the contract it had to do so upon giving proper notice to R.H. Edwards. In all the circumstances of this case we think that such a proper notice, which has to be a reasonable one, would be twelve months. We therefore find for the Plaintiff Company on the issue of liability.

Now as to the question of damages, Mr. Boxall produced a carefully argued submission which was based on the profit trends of R.H. Edwards.

According to those trends the company could have looked forward in 18 months (now 12 months), to something like £15,000 profit out of the T.P.S. contracts and a 34 per cent ancillary profit out of the total value of projected incidental works for the 18 month period. This would have been an interesting exercise for the Court to undertake, had it not been for the fact that it should have been possible to have produced exact figures as a result of discovery, of what contracts had been lost to R.H. Edwards during the relevant period of 18 months (now of course 12 months). In fact the only figures, which do not appear to have been challenged, were provided by the Defendant Company and those figures show that for the 12 month period after the breach £4,399.40 worth of work was done by other contractors. In our opinion that is the only figure to which we can have regard as the others are mere supposition. The Court cannot read into a contract an undertaking to provide one of the parties with ever-increasing profits if in fact the contracts that were available for it to undertake but for the breach of contract, in no way correspond to the suggested projection of his profit for that work. The proportion of incidental work to T.P.S. work of 34 per cent was not challenged by the Defendant Company. The Guernsey loss of profit for 18 months was agreed by the parties at £1,004.86. When the contract was changed by T.P.S., R.H. Edwards lost heart and did not promote further T.P.S. products. Was R.H. Edwards entitled to do this and to reject T.P.S's offer in place of the exclusivity contract? The offer of T.P.S. to R.H. Edwards in the note of the 21st April 1982, was as follows:

"PROPOSALS FOR FUTURE CO-OPERATION WITH R.H. EDWARDS DECORATORS AND PAINTERS LTD FOR TRETOL PAINT SYSTEMS PRODUCTS IN JERSEY

R.H. Edwards to buy T.P.S. Products at list less 25% on Cash with order Basis.

Other Contractors (probably only two) - R.H. Edwards to receive 5% overriding commission on TPS products supplied to such contractors. The 5% commission will be on the net Invoice amount of goods supplied. The 2 year agreement with a 12 month notice or termination of either side.

The agreement to take effect from 1st May 1982 or as soon as possible thereafter subject to our meetings with the States of Jersey."

Can it be said that the loss of the exclusive distribution and application of T.P.S. products could be offset in a reasonable manner by these terms. It seems to us that the withdrawal of the exclusive rights of distribution and application of T.P.S. products could not but reflect on the business acumen and reputation of R.H. Edwards amongst architects, builders and developers, not to mention ordinary private customers. We find that R.H. Edwards was entitled to reject the offer and therefore did not fail to mitigate its loss. We therefore award R.H. Edwards the sum of £5,535 made up as to (rounding up) the figure of £4,400 for his loss of profit for 12 months on the T.P.S. contracts carried out by other firms (we were told that the invoice figure was multiplied by three to give the percentage of one-third profit, one-third labour and one-third materials) and £1,135 representing, (again rounded up) 34 per cent of the £4,400 which we have mentioned. As far as the loss of profits in Guernsey is concerned, we invite Counsel to settle the amount which those profits could have expected to have earned for 12 months and not 18 months. Upon the Jersey figures and the Guernsey figures, when the latter have been settled by Counsel, we award interest at the rate of 10 per cent from six months after the date of the breach, that is to say the 22nd October, 1982, to-date.