COCA-COLA BOTTLING COMPANY OF ARKANSAS *v.* COCA-COLA BOTTLING COMPANY.

Opinion delivered February 23, 1931.

1. CONTRACTS—CONSTRUCTION.—The intention and rights of parties under a contract must be determined as they existed at the time the contract was executed, as gathered from the whole context of the agreement.

2. CONTRACTS—CONSTRUCTION.—Courts may acquaint themselves with persons and circumstances that are the subjects of the statement in a written agreement, and are entitled to place themselves in the same situation as the parties who made the contract, so as to view the circumstances as they viewed them, and to judge of the meaning of the words and of the correct application of the language to the things described.

3. CONTRACTS—MEANING OF THE WORD "TO."—A contract for sale of an exclusive right to sell Coca-Cola in the territory along a certain railroad "from Fort Smith to Paris," the latter town having no other railroad connection, *held* to include both towns where the company claiming under the contract the right to sell in Paris and its predecessors had without objection served both towns under similar contracts for more than eighteen years.

4. CONTRACTS—CONSTRUCTION BY PARTIES.—The construction which parties have placed on a contract is entitled to great weight, and will generally be adopted by the courts in giving effect to its provisions.

5. CONTRACTS—CONSTRUCTION.—A written contract should be construed most strongly against the party who prepared it.

Appeal from Logan Chancery Court, Northern District; *John E. Chambers,* Chancellor; affirmed.

STATEMENT OF FACTS

Appellee brought this suit to enjoin appellant company from selling bottled Coca-Cola in the town of Paris, Arkansas, claiming the exclusive right to make sales of Coca-Cola in that territory, and, from the judgment in its favor, this appeal is prosecuted by appellant.

The Coca-Cola Company, a Georgia corporation, the owner of the formula for making and manufacturing the syrup known as Coca-Cola, sold to the Coca-Cola Bottling Company, a Tennessee corporation, the exclusive right to bottle and sell Coca-Cola in certain territory, including the State of Arkansas and part of Oklahoma. The Tennessee corporation sold the exclusive right to bottle and sell bottled Coca-Cola in the State of Arkansas and a portion of Oklahoma to M. W. Flemming. On the 15th day of June, 1903, M. W. Flemming leased to J. W. and Robert Meek the exclusive right to bottle and sell bottled Coca-Cola in the following territory: "The city of

Fort Smith and a radius of 50 miles therefrom for a period of one year." From 1903 to 1907 said lessees operated in that territory, and during this four-year period they sold bottled Coca-Cola in the town of Paris, which was within the 50-mile radius of Forth Smith.

On January 1, 1907, said M. W. Flemming sold to J. W. and Robert Meek, to whom he had made the lease aforesaid, the exclusive right to bottle and sell bottled Coca-Cola in the following territory, to-wit: "The city of Fort Smith, Arkansas, and certain territory along various railroads running out from Fort Smith, namely: All the territory lying along the St. Louis-San Francisco Railroad north from Fort Smith to the Missouri State line; also the territory on the branch of said St. Louis-San Francisco Railroad from Fayetteville easterly to Pettigrew in Madison County, Arkansas; also the territory running westwardly from Rogers to the Missouri State line; also the territory along branches westwardly from Fayetteville to Westville in the State of Oklahoma; also the territory along the St. Louis & North Arkansas Railroad from the Missouri State line to Harrison in Boone County; also the territory from Fort Smith along the St. Louis, Iron Mountain & Southern Railroad to Knoxville, in Johnson County; also the territory along the C. R. I. & P. R. R. to Waveland; also the territory along the Arkansas Central from Fort Smith to Paris; also the following described territory in what is now the State of Oklahoma; all places on the St. Louis, Iron Mountain & Southern Railway from Fort Smith, Arkansas, westwardly to Vian, including all places on the St. Louis & San Francisco Railway from Fort Smith westwardly to Tuskahoma, including all places on the Fort Smith & Western Railroad from Fort Smith westwardly to McCurtain, including all places on the Kansas City Southern Railway from Ballard on the north to Page on the south, inclusive, also along Kansas City Southern Railway from Ballard to Missouri State line."

On January 12, 1910, Flemming sold and conveyed, under a bill of sale, to the Bellingraths all the territory that he had not previously conveyed to other parties. No effort was made to set out the limits of the territory sold. The Bellingraths assigned the said bill of sale to the Coca-Cola Bottling Company of Arkansas, an Arkansas corporation, with its principal place of business in Little Rock, appellant herein.

J. W. and Robert Meek assigned their contract with Flemming to sell and bottle Coca-Cola to the Coca-Cola Bottling Company, an Arkansas corporation, with its principal place of business in Fort Smith.

It appears from the record that appellee company and its predecessors had served Paris with Coca-Cola for more than four years prior to the execution of the present contract, and one of the Meek brothers testified that they secured in the second transfer from Flemming the same territory that they had been serving and some additional.

At the date of the execution of this contract there was no rail connection between Little Rock and Paris. Its only rail connection was with Fort Smith by means of the Arkansas Central Railroad, which extended only from Paris to Fort Smith, and this was before the day of hard-surface roads and motor truck transportation in the State.

Appellee company continued to serve the people of Paris with Coca-Cola, as it and its predecessors had done from the time of the first lease executed. It claimed to have rendered such service, without objection upon the part of appellant company, until the time of the bringing of this suit.

Appellant company, on the other hand, claimed that it had complained since the execution of its last contract, of appellee's serving Coca-Cola in the town of Paris, and denied its right to do so, or that it had acquiesced in such conduct. One witness admitted that it had furnished a map of its territory in the vicinity of Paris, in which

it demanded that appellee quit selling Coca-Cola, which did not show that it claimed Paris as its territory. This was explained by saying the map was drawn by one of its clerks and was not intended to relate to Paris territory, which was not shown to be claimed by appellant company because it had already been notified by appellee that it would not surrender the Paris territory without a lawsuit.

The court found that appellee company had the exclusive right to sell bottled Coca-Cola in Paris, and that appellant company had violated its rights in selling Coca-Cola there, and enjoined appellant company from further sales of Coca-Cola in that town, and from that judgment the appeal is prosecuted.

Coleman & Riddick, for appellant.

Hays & Smallwood, for appellee.

KIRBY, J., (after stating the facts). The only issue involved in this appeal is whether the court erred in holding that appellee company owned the exclusive right to bottle and sell bottled Coca-Cola in Paris under its contract.

The intention and rights of parties under a contract must be determined as they existed at the time the contract was executed, the cardinal rule for construction and interpretation being that the intention of the parties shall be effectuated, as gathered from the whole context of the agreement. *Glover* v. *Bullard,* 170 Ark. 58, 278 S. W. 645; *Fort Smith Light & Traction Co.* v. *Kelley,* 94 Ark. 161, 127 S. W. 975; *Temple Cotton Oil Co.* v. *Southern Cotton Oil Co.,* 176 Ark. 608, 3 S. W. (2d) 673.

"Courts may acquaint themselves with persons and circumstances that are the subjects of the statements in the written agreement, and are entitled to place themselves in the same situation as the parties who made the contract, so as to view the circumstances as they viewed them, and so as to judge of the meaning of the words and of the correct application of the language to the things described." *Inter-Southern Life Ins. Co.* v. *Shutt,* 175

Ark. 1161, 1 S. W. (2d) 801. See also *Maloney* v. *Maryland Casualty Co.,* 113 Ark. 174, 167 S. W. 845.

The undisputed testimony shows that appellee had been serving Paris with Coca-Cola for more than 4 years prior to the execution of its present contract, and that on the date of its execution there was no rail connection whatever between Little Rock and Paris, the only connection by rail being the Arkansas Central Railroad, which extended only from Paris to Fort Smith, and which was used in serving the Paris territory in the beginning.

Meek, one of the lessors, testified that he had secured the same territory in the last contract that he had been serving under the first with some additional, the description being, "also the territory along the Arkansas Central Railroad from Fort Smith to Paris."

Appellant insists that the word "to" used in this description is a term of exclusion unless there was something in the connection which makes it manifest that it was used in a different sense, and cites in support thereof 9 C. J. 153 and *Breashear* v. *Norman,* 176 Ark. 26, 2 S. W. (2d) 53.

The court held, however, and correctly so under the circumstances of this case, the situation and relation of the parties considered, that the word "to" and the sense in which the word is commonly understood is inclusive rather than exclusive. *Bennett Lumber Co.* v. *Walnut Cypress Co.,* 105 Ark. 421, 151 S. W. 275; *Hastings Industrial Co.* v. *Copeland,* 114 Ark. 415, 169 S. W. 1185; *Bloch Queensware Co.* v. *Smith,* 107 Mo. 13, 80 S. W. 592. The Supreme Court of Missouri stated in the above mentioned case: "The word 'to' has no specific meaning in a legal sense, although it is a word of exclusion. Its meaning is ascertained from the reason and sense in which it is used."

In *Union Pacific Rd. Co.* v. *Hall,* 91 U. S. 343, 23 L. Ed. 428, the Supreme Court of the United States said the words "from," "to" and "at" are taken inclusively according to the subject-matter. See also *President, etc.,*

of Farmers' Turnpike Road v. *Coventry,* 2 Johns (N. Y.) 389; *Hazelhurst* v. *Freeman,* 52 Ga. 244; *People* v. *Klammer,* 137 Mich. 399, 100 N. W. 600; *Rio Grande R. Co.* v. *Brownsville,* 45 Tex. 88; *McCartney* v. *Chicago & Evanston R. R. Co.,* 112 Ill. 611; 8 Words & Phrases, first series, page 6986; 4 Words & Phrases, second series, page 930.

In *National Equity Life Ins. Co.* v. *Bourland,* 179 Ark. 398, 16 S. W. (2d) 6, this court said: "It is a well-established principle of law that, in the interpretation or construction of contracts, the construction the parties themselves have placed on the contract is entitled to great weight and will generally be adopted by the courts in giving effect to its provisions. This is especially true in case of ambiguity in the written contract." See also *Temple Cotton Oil Co.* v. *Southern Cotton Oil Co.,* 176 Ark. 601, 3 S. W. (2d) 673; and *Webster* v. *Telle,* 176 Ark. 1149, 6 S. W. (2d) 28.

From 1910 to 1928, a period of 18 years, the appellee company and its predecessors served the people of Paris without objection from the Bellingraths, lessors of appellant company. Meek testified that he had no knowledge that they made any claim to the territory of Paris until he received their letter of June 23, 1928. Meek had made two sub-bottlers' contracts with parties in the Paris territory, which had been approved by the present company, and had never been questioned by Bellingrath. Early in 1927, when the concrete highway was being completed from Dardanelle to Fort Smith and offering greater facilities for transportation of bottled Coca-Cola, the Bellingraths wrote a letter, the letter of May 30, 1927, questioning the right of appellee company to furnish Coca-Cola to several small towns west of Dardanelle, Paris not being mentioned therein. By letter of June 3, 1927, answering Meek's request for a definite statement of the territory claimed Bellingrath wrote, "the points in question are points lying east and southeast of Paris, namely, Corley, Subiaco, Ellsworth, Blaine, Delaware and other points in this vicinity."

Appellee's contract for its territory was prepared by attorneys for the Georgia Coca-Cola Company, and the rule is, "in construing a written contract it should be interpreted more strongly against the party who prepared it." *Morley* v. *Hackler,* 176 Ark. 238, 3 S. W. (2d) 20.

It follows from the application of the principles announced that the court correctly construed the contract, and did not err in affording the relief appellee prayed and was entitled to. We find no error in the record, and the judgment is affirmed.