1943 *Present :* **Moseley A.C.J. and Jayetileke J.**

URBAN COUNCIL, BERUWALA, Appellant, *and*
FERNANDO, Respondent.

376—D. C. Kalutara, 22,186

Electric Installation—Connection of series of small bulbs—Additional installation—Breach of contract—Right of Urban Council to disconnect installation.

The plaintiff entered into a contract with the defendant—the Urban Council of Beruwala—to supply electricity to plaintiff's shop. One of the conditions of the contract was as follows :

Should the consumer, at any time after the supply has been given, wish to use lamps, fans, or motors of greater size or install additional lamps or other consuming apparatus, either temporarily or permanently . . . . he must notify the Council in writing . . . . The plaintiff on one occasion connected a series set of small bulbs to one of the plugs in his installation without notice to the Council.

Held, that the act of the plaintiff constituted a breach of the condition and that the Council was entitled to disconnect the plaintiff's installation in terms of condition 5 (c).

APPEAL from a judgment of the District Judge of Kalutara.

H. V. Perera, K.C. (with him *Jayasuriya*), for defendant, appellant.

C. Thiagalingam. (with him *E. B. Wickremanayake*), for plaintiff, respondent.

[1] *21 N. L. R. 178.*
[2] *26 N. L. R. 381.*
[3] *24 Queens Bench Div. 13.*
[4] *32 N. L. R. 35.*
[5] *35 N. L. R. 239.*

March 5, 1943. JAYETILEKE J.—

The facts of this case are discussed in the judgment of the learned District Judge and it is only necessary shortly to state the circumstances which gave rise to this action.

The plaintiff is a small trader who carried on business at Beruwala in a shop called "The Excelsior Store". The defendant is the Urban Council of Beruwala.

On December 13, 1937, the plaintiff and the defendant entered into a contract, the terms of which are embodied in D 1 and D 2, whereby the defendant agreed to supply electricity to the plaintiff's shop. On this contract the plaintiff agreed to pay the defendant on the unit rate system, that is to say, at the rate of 50 cents per unit for all energy consumed.

On or about March 30, 1938, the petitioner was placed, at his request, on the domestic two part tariff system according to which he had to pay a fixed charge based on the lighting and fan connected load and, in addition, 6 cents per unit of energy consumed for all domestic purposes.

On the night of May 20, 1940, the plaintiff connected a series set of small bulbs to one of the plugs in his installation for temporary illuminations. On the next day the defendant requested the plaintiff to notify in writing if he wished to install temporary additional lamps on his premises. There was a charge for temporary illuminations at 50 cents per unit.

The plaintiff refused to accede to the request and the defendant thereupon disconnected the plaintiff's installation.

The plaintiff has brought this action for the recovery of Rs. 900 as damages alleging that the act of the defendant was wrongful. Several issues were framed at the trial the majority of which appear to me to be irrelevant.

The learned District Judge held in favour of the plaintiff and awarded him Rs. 250 as damages and costs in that class. He was of opinion, that the insertion of a plug of a series set into a socket was not an "extension of installation" within the meaning of the heading of condition 5 in D 2.

To my mind the result of the action depends on the meaning and effect of condition 5 and not of the heading which is not part of the condition.

For convenience of reference I have divided condition 5 into clauses referred to by letters of the alphabet, and it is in these words :

"*Extension of Installation.*"

(*a*) Should the consumer at any time after the supply has been given wish to use lamps, fans or motors of greater size, or install additional lamps or other consuming apparatus, either temporarily or permanently, or in any way extend the wiring on his premises he must notify the Council in writing giving such notice, at least, two days before the contractor commences work.

(*b*) The Council will arrange to inspect work on completion, and, if satisfactory, will connect to original installation.

(c) Failure on the consumer's part to give such notice, of connection of extension, or alteration by anyone other than the Council's representative renders the whole installation liable to disconnection from the Council's mains without further notice.

The conditions in D 2 have been drafted many years ago and have been embodied in the contracts entered into by the defendant up to date.

There is implicit in clause (a) that the work referred to therein must be done by a contractor. It may well be that the defendant considered it essential for the safety of consumers in a remote town like Beruwala that no one but an approved contractor should meddle with an installation.

It was suggested in argument that the provision regarding notice in clause (a) must be restricted to an extension of wiring, otherwise it would not be permissible for anyone but a contractor to replace a bulb and that would result in great inconvenience and hardship.

Although it is always right to give full weight to arguments based on considerations of this kind, it is not permissible for the mind to be so affected by the inconvenience and hardship that would follow as to lead to a forced construction of words which have a clear meaning in the ordinary use of language.

I am unable to construe clause (a) in such a way as to avoid that inconvenience and hardship without doing to the language of that clause a violence which is not justified. To hold that the provision regarding notice must be restricted to an extension of the wiring would be to water down the provisions of that clause which, in words as plain and as strong as the draftsman could use, place an absolute obligation on the consumer to give notice in all the cases referred to therein.

Of course, it would be open to the defendant to waive notice in such a case if it chooses to do so, but we are not concerned with that. All we can do is to construe that clause.

The plaintiff admits that he connected a series set of small bulbs to one of the plugs in his installation. That act would fall within the words "install additional lamps or other consuming apparatus."

According to the Oxford Dictionary the word "install" when used with reference to a heating or lighting apparatus means "to place in position for service or use". The plaintiff not only installed the series set but actually used it on May 20, 1943.

The consequence of installing additional lamps or other consuming apparatus without notice to the defendant would be to render the whole installation liable to disconnection under clause (c). As a pure matter of construction I can see no escape from that conclusion in examining condition 5.

It was also suggested that on a strict interpretation of clause (b) a consumer would have to make an application every time he wishes to use a plug. That clause has, no doubt, not been happily worded, but I do not think that the language used would lead to such an absurd result.

It seems to me that the object of inserting that clause was to give the defendant the opportunity of examining all appliances and work done before the connection is made. Once the connection is made there would be no necessity to make any further application in respect of such appliances or work.

It is obviously regrettable that the relations between the defendant and the consumer should be regulated by a condition drafted in language so unhappily chosen, and it is to be hoped that any amendments will give simpler expression to the intentions of the defendant.

For these reasons I would set aside the judgment appealed from and dismiss the plaintiff's action with costs in both Courts.

MOSELEY A.C.J.—I agree.

Appeal allowed.