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proper direction according to the rule but there was sufficient evidence on which an impartial jury, despite lack of assistance, could reasonably have arrived at a verdict of guilty? In such circumstances we are of the view that though the point raised in the appeal might be decided in favour of the appellant, no miscarriage of justice would occur in dismissing the appeal. We are also of the view that the rule in *Hodge*'s case (1) has, in Jamaica, become a settled rule of practice and it is incumbent upon a trial judge to assist the jury in their proper line of approach having regard to the facts and circumstances of the particular case. But a judge's failure to do so may not necessarily in every case result in the quashing of a conviction.

In the instant case, the trial judge failed to give the jury assistance in accordance with the rule in *Hodge*'s case (1). However, the facts in this case are not purely circumstantial; they consist partly of circumstantial evidence and partly of the statements the applicant made to the police. The first question to be considered, therefore, is whether or not the trial judge in his failure to observe the rule in *Hodge*'s case (1) in fact misdirected the jury. The evidence of Constable Gause matching one of the applicant's shoes with prints in the sandy, loamy soil was purely circumstantial. The facts were that several persons were in the area where the dead body was found. We are not aware of how many persons had on shoes of sizes similar or dissimilar to the applicant's. No plaster cast was made of the prints nor was the shoe with any casts tendered to the jury so that they, and not the constable, could be judges of fact as to whether the shoe matched the print. Further, the applicant was not taken to witness the investigation so that he might instruct his attorney as to the circumstances of the matching exercise. If the jury had been guided by the trial judge on their proper line of approach on that feature of the case, no doubt they would reasonably have had to discard from their consideration the evidence of the "matching shoe"—it being not consistent with guilt.

However, if that were the kind of evidence which placed the applicant on the scene of the crime, the verdict of guilty by the jury would certainly have been unreasonable. In our view, the statement which the applicant made to Constable Henry established that it was the applicant, and no one else, who was last in company with the deceased, if the jury believed (as they did) that the statement was made and that it was true. Thus:

1. The husband of the deceased left his home after 8 p.m. on March 7; Mary Grindley then being alive and well.
2. Constable Henry received his report at about 10.15 p.m. the said night; Mary Grindley was then dead—death being caused by violence.
3. The applicant stated that he was in the area of Passage Fort, where he said "he went to check a daughter . . . he asked the daughter to accompany him to a piece of bush to have sex and while there having sex he is calling the daughter and she did not answer. After the daughter did not answer he took up his bicycle and was coming out . . ."
4. The jury, having regard to the medical evidence, may well have believed that Mary Grindley's assailant did not succeed in having sex but it was not unreasonable for them to hold from the totality of the evidence and, in particular from his statement, that:
   (a) the applicant was in Passage Fort where in fact the dead body of Mary Grindley was found,
   (b) the applicant knew of the death of Mary Grindley and was the last person with her, and
   (c) having regard also to the condition in which the applicant was found, so near to and so soon after Mary Grindley was dead, no one but the applicant was responsible for her death.

In those circumstances, it was sufficient, having regard to the particular features of the case, for the trial judge to deal with the evidence and to make it clear to the jury that they must not convict the applicant unless they felt sure of his guilt. We see no misdirection by the trial judge in that respect and so we need not go on to consider the effect of a point raised in the appeal which might be decided in favour of the applicant. We see no other points worthy of consideration.

For the reasons given, the application for leave to appeal is refused.

Application refused.

ELISHA HENRY *v.* WINNIFRED BECKFORD

[COURT OF APPEAL (Edun and Hercules, JJ.A., and Zacca, J.A. (Ag.), December 18, 1974; February 14, 1975]

Landlord and Tenant—Agricultural small holding—Contract of tenancy not complying with statutory provisions—Whether tenant entitled to protection—Agricultural Small Holdings Law, Cap. 8 [*J.*], *ss.* 3, 4, 18.

The respondent claimed to recover damages against the appellant arising out of (i) his having been evicted from his possession of certain lands which he had rented from the appellant, and (ii) the wrongful reaping of his cultivations by the appellant. The relationship between the respondent and the appellant was evidenced by a receipt, signed by the appellant, showing the payment by the respondent of $4.00 "for one year rent for one acre of land . . . from 4th October, 1971 to 4th October, 1972". The resident magistrate held, as a matter of law, that the respondent's claim fell within the provisions of the Agricultural Small Holdings Law. Section 3 of that Law required a contract of tenancy to be in writing, and signed by the parties thereto and attested. Section 4 required the landlord (i) "forthwith upon execution" of the contract to deliver a signed copy to the tenant; (ii) to keep a file containing all contracts entered into by him; and (iii) to permit such files to be inspected by the Minister. The magistrate awarded judgment in favour of the respondent on the basis that the evidence established a contract of tenancy of an agricultural small holding.

On appeal,

Held: (i) compliance with the provisions of s. 3 of the Law was a condition precedent to a contract of tenancy falling within the provisions of the Agricultural Small Holdings Law; if, therefore, a contract was not in writing, that Law could not regulate the rights and obligations of the parties thereto;

(ii) the fact that the contract of tenancy was not in writing did not, however, operate to dispose of the appeal and the judgment of the resident magistrate would be upheld on the ground that the appellant was not, in the circumstances of the case, entitled to destroy, or otherwise convert to her benefit, the crop cultivation which were the exclusive property of the respondent.

Appeal dismissed. Judgment of resident magistrate upheld, for reasons other than those assigned by him.

Cases referred to:

(1) *Wright* v. *Horton*, [1887] 12 A.C. 371.
(2) *Kilbourne* v. *Caymanas Estates, Ltd.* (1962), 4 W.I.R. 461.
(3) Ramsay *v.* Walker (1962), 4 W.I.R. 539.
(4) *Corcho* v. *Campbell* (1969), Resident Magistrate's Civil Appeal No. 55 of 1969 (unreported).

Appeal against the decision of a resident magistrate awarding damages for breach of contract.

H. S. Dale for the appellant.

K. C. Burke for the respondent.

EDUN, J.A.: An important point in this appeal is whether or not the contract of tenancy between the appellant and respondent falls within the provisions of the Agricultural Small Holdings Law, Cap. 8 (hereinafter referred to as the "Act"). If it does, then the judgment entered by the learned resident magistrate in favour of the respondent in the sum of $500 and costs $51.70 must be upheld. If it does not, the question which arises is whether the judgment must be set aside or be upheld.

The respondent claimed damages against the appellant arising out of (i) his having been wrongfully evicted in December, 1973, from his possession of about one acre of land rented by the appellant to him and (ii) the wrongful reaping of his cultivations by the appellant. The appellant denied evicting the respondent and claimed that she was entitled to retake possession of her land because the respondent's tenancy had expired and he had been given notice and sufficient time within which to reap his crops.

The learned resident magistrate gave judgment for the respondent and in his reasons for judgment said:

"1. That the [respondent] rented one acre of land from the defendant at $4.00 per annum.

2. That the [appellant] entered the [respondent's] cultivation on the 3rd December, 1973 and thereby repossessed the land.

3. That there were crops thereon ready for reaping and valued at $485.00.

. . . I found as a matter of law that this action falls within the provisions of the Small Holdings Law . . ."

Section 3 of the Act provides as follows:

"3. (1) A contract of tenancy shall be in writing in duplicate and shall be signed by the parties thereto and attested.

(2) The form of contract of tenancy prescribed in the First Schedule of this Law may be used with such variations as circumstances may require."

The evidence in the case for the respondent discloses the following written documents:

Ex. 1: "October 4 1971

Received from N. Henry the sum of Four dollars ..... cents as payment for 1 year rent for one acre of land situated at Monkland due 1971 from 4th October 1971 to 4th October 1972

Sgd. W. Beckford"

Ex. 2: "NOTICE

Mr. Henry

I hereby give you notice to leave the one acre of land rented to you as from 4th October 1972 to 4th October 1973.

Sgd. W. Beckford

Please send rent."

There are no other written documents evidencing the relationship between the appellant and respondent.

Learned attorney for the appellant submitted to us that the contract of tenancy between the parties was not in writing and so the provisions of the Act were inapplicable and that the appellant was not under any obligation to give the respondent five years' notice in writing to terminate the tenancy in keeping with s. 18 of the Act. He urged that the respondent knew that the land was rented only

for a year and the appellant was within her rights to repossess her holdings. On the other hand, learned attorney for the respondent submitted that the evidence established a contract of tenancy of an agricultural smallholding and as the parties could not contract out of the Law (s. 45 of the Act) the contract in this case came within the provisions of the Law. The contract of tenancy was, therefore, never terminated and so the appellant had no right to repossess the land. He cited *Wright* v. *Horton* (1) and urged that the non-compliance with a provision in the Law, in this case of s. 3 of the Act, did not invalidate the tenancy agreement between the parties.

In my view, *Wright* v. *Horton* (1) has no relevance to the facts in this case. Here, s. 3 of the Act says that the contract of tenancy "shall be in writing in duplicate and shall be signed by the parties thereto and attested". Subsection 2 of that section prescribes a form of contract of tenancy. Section 4 of the Act provides that "forthwith upon the execution" of the contract of tenancy the landlord shall:

(i) deliver a signed copy of such contract to the tenant,

(ii) keep a file containing all contracts of tenancy entered into by him,

(iii) permit any such file kept by him to be inspected at all reasonable times by any person authorised in writing for that purpose by the Minister of Agriculture, and

(iv) be guilty of an offence if he fails to comply with any provisions of the section.

In *Wright* v. *Horton* (1) debentures were issued to a director of a company but were not registered in accordance with s. 43 of the Companies Act 1862. The company went into liquidation and the validity of the debentures was contested by the unsecured creditors. It was upon the true construction of s. 43 that the determination of the question depended. The House of Lords held that the mere omission to register the debentures, without concealment, did not invalidate the debentures. LORD HALSBURY, L.C., observed that from the language of the section, the validity of the debentures did not depend upon registration. The words of the section were:

"Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting the property of the company, and shall enter in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entered to such charge."

The section made it an offence where, if any property of the company was charged without such entry, a director knowingly or wilfully authorised or permitted the omission of such entry.

In the instant case, the validity of the contract of tenancy depended primarily upon compliance with s. 3 of the Act. How can a signed copy of contract of tenancy be delivered to the tenant; how can it be in duplicate and attested thereto; how can a file be kept containing a contract of tenancy, how can an authorised person inspect a file containing a contract of tenancy—unless the same was in writing? No doubt, the Act sought to give the agricultural tenant security of tenure at the expense of the landlord being enforced to restrict the user of his own lands. For that reason, one would reasonably expect positive evidence manifesting the intention of both parties to create the relationship of landlord and tenant. In our view, it is a condition precedent that s. 3 must be complied with before a contract of tenancy can fall within the provisions of the Act and if, as in this case, the contract of tenancy is not in writing, the provisions of the Act cannot regulate the duties and obligations of the parties.

It is to be noted that s. 3 does not say that there should be a note or memorandum in writing signed by the party to be charged. Nor does it provide that any contract of tenancy not in writing shall be illegal or void.

The fact that the contract of tenancy in this case is not in writing does not finally dispose of the appeal because the position of the respondent in relation to the appellant under the general law of the land must be considered. There is no doubt that from the evidence in the instant case, there is a contract of tenancy of an agricultural small holding of one acre of land, for the valuable consideration of $4, for a period of time. As a result, the respondent expended money, time and labour to cultivate the land. The learned resident magistrate found that the appellant evicted the respondent in December, 1973, when there were, to the appellant's knowledge, crop cultivations belonging to the respondent, ready for reaping, to the value of $485. There were no arguments addressed to us challenging that finding. The magistrate, however, went on to hold that as a matter of law, the contract of tenancy fell within the provisions of the Act, and that since the notice to quit did not comply with s. 20 of the Act it did not operate to terminate the tenancy. He did not go on to consider whether or not, assuming that he was wrong, the respondent was entitled to judgment. As it turns out, our conclusion is that the contract of tenancy does not fall to be considered under the provisions of the Act. Is it a case where we should remit the matter to be considered by the magistrate or are the facts such that this court can deal with the case?

The respondent gave evidence thus:

"Mrs. Beckford (appellant) gave me a notice to leave by 4th October 1973. She never told me to reap the things I had on the place and not to plant any more. It is true that Mrs. Beckford came on the land and reap things . . ."

The appellant gave evidence thus:

"I went back and wrote a notice and I give it to him [respondent] on 4th October 1972. He was supposed to leave on 4th October 1973. I told him I had development for planting forest trees. He decided to leave. He said he would leave at end of 1973. He didn't, I didn't go to his place on 3rd December 1973 with my husband and a fellow at about 7 a.m. . . . I didn't see Mr. Henry [respondent] on 3rd December 1973. I have not removed anything from his place.

I didn't give anyone permission to remove anything . . ."

The magistrate accepted the evidence of the respondent and his witness and rejected that of the appellant. He specifically stated in his reasons for judgment that the appellant entered the respondent's cultivation on December 3, 1973, and thereby repossessed the land; and that there were crops thereon ready for reaping and valued $485. In awarding judgment in favour of the respondent, he must have been satisfied that the appellant destroyed or otherwise converted to her benefit the respondent's cultivations. On the evidence found by the magistrate, even assuming that the appellant had terminated the contract of tenancy, the appellant was not entitled to destroy, or otherwise convert to her benefit, the crop cultivations which exclusively belonged to the respondent. See: *Kilbourne* v. *Caymanas Estates, Ltd.* (2); *Ramsay* v. *Walker* (3); *Corcho* v. *Campbell* (4).

From the state of the evidence and to the end thereof, the onus shifted to the appellant to establish by what right she destroyed or otherwise converted to her benefit the respondent's crop cultivations. This aspect of the case has nothing to do with the provisions of the Act. The appellant's defence was that she did not, by herself or by anyone else, remove anything belonging to the respondent. And that defence, as I have mentioned before, was rejected and properly so, by the learned resident magistrate. In those circumstances, to remit the case to the magistrate would be a worthless exercise. It is thus well within the jurisdiction of this court to adjudicate finally upon the matter. In our view the judgment of the learned resident magistrate cannot be disturbed.

For the reasons given, we dismiss the appeal with costs to the respondent in the sum of $40.

Appeal dismissed.

R. *v.* RUDOLPH HENRY

[COURT OF APPEAL, IN CHAMBERS (Graham-Perkins, J.A.), February 11, 18, 1975]

Criminal Law—Bail—Application for admission to bail pending appeal—No evidence to support conviction of applicant—Principles by which court guided in dealing with application.

The applicant was convicted of an offence under s. 20 of the Firearms Act 1967 of being in possession of a firearm without a licence. He was sentenced to detention during the Governor General's pleasure. The notes of the evidence taken by the magistrate disclosed that there was no evidence that "the thing" with which the applicant was alleged to have been seen was a firearm as defined by the Firearms Act.

Held: as there was, on the evidence, an appealable issue which was more than likely to be resolved in favour of the applicant he should be admitted to bail pending the determination of his appeal.

Bail granted in the sum of $50.00 *with one surety, pending the hearing of the applicant's appeal.*

Case referred to:

(1) *R.* v. *Pryce* (1967), Supreme Court Criminal Appeal No. 114 of 1967 (unreported).

Application to a judge in chambers for bail pending appeal from a conviction of being in possession of a firearm without a licence.

M. Reckord for the Crown.

A. J. Nicholson for the applicant.

GRAHAM-PERKINS, J.A.: The applicant was, on October 9, 1974, tried and convicted by Mr. U. D. Gordon, a resident magistrate, in the Gun Court on an information which had charged him with an offence contrary to s. 20(1)(b) of the Firearms Act 1967 (hereinafter called "the Act"). The particulars of that information were, so far as is here relevant, as follows:

"On Saturday the 21st day of September 1974 . . . Rudolph Henry . . . had in his possession one firearm not under and in accordance with the terms and conditions of a Firearm User's Licence . . ."

Upon his conviction he was sentenced to be detained during the Governor-General's pleasure.

On October 16, 1974, he gave notice of appeal against his conviction. He also filed grounds on which he proposes to rely at the hearing of his appeal. The combined effect of those grounds is the allegation that the magistrate's verdict was unreasonable in that "the prosecution produced no gun in support of the charge" so that "the Crown's case rested on the unsupported evidence of the complainant as to the existence of a gun".

The applicant now applies to be admitted to bail pending the determination of his appeal.

At the hearing of this application on Tuesday of last week Mr. Reckord, of the Office of the Director of Public Prosecutions, readily admitted that the only