THE JAMAICA LAW REPORTS

VOLUME 24

THE JAMAICAN BAR ASSOCIATION
in association with
THE CARIBBEAN LAW PUBLISHING COMPANY LIMITED
under the auspices of the USAID/Jamaican Bar Association
Sustainable Justice Reform Project

KINGSTON

1996

he said, she was holding the stake money of $2,000, on behalf of Mr. Lewis, that not having carried out the respondent's instructions, the respondent remained primarily liable to the appellant for the $2,000 which the appellant wanted to be paid into his own hands having regard to his financial circumstances at the time. He said that the failure of Miss Jones to pay was the failure of Mr. Lewis and that Mr. Thompson could, therefore, treat Mr. Lewis as not having performed his part of the bargain as is required under the contract of both the 15th March and the subsequent agreement of the 19th June.

His second ground, which I have already referred to, is very much tied up with the first and that was as to the true construction to be placed upon the agreement of the 19th June, 1978. He said that the clear, and the only clear, construction to be placed upon that agreement is that the money was authorised to be handed directly to Mr. Thompson, the appellant, and this Mr. Lewis had taken no adequate steps to do. His instructions to Miss Jones in that behalf, he said, was not sufficient in the circumstances.

Miss Jones gave evidence at the trial, and her evidence, as Mr. Wright in our view correctly commented, had grave contradictions. At one time, Miss Jones was saying that she had appropriated the money which had been paid to her by the respondent, to the account of Mr. Thompson and had given a series of accounts which would show exactly how the money had been appropriated. She gave a history of her dealings with Mr. Thompson showing that they were lawyers generally for Mr. Thompson and had a number of matters, some four or five files, dealing with at one and the same time in relation to Mr. Thompson's affairs. However, in cross-examination, near the very and of the trial, she admitted that it appeared that the file dealing with Mr. Thompson and the $2,000 had not been accounted for in the accounts which had been supplied to Mr. Thompson and that money was still in her office standing to his credit. This was used by Mr. Wright to submit to the court that even today Miss Jones has not carried out the instructions given by Mr. Lewis, notwithstanding, that the appellant has terminated her retainer, which she admitted, some five years ago.

We think that this might be relevant in relation to any action which Mr. Thompson might wish to bring in relation to how Miss Jones handles his own affairs, but we do not believe that this has any real bearing upon the construction to be given to the document of the 19th June, 1978. This was a clear instruction to Miss Jones to appropriate the $2,000 to Mr. Thompson, notwithstanding, the fact that the title had not been obtained and the steps to obtain the title were in their infancy at that time. We think that Miss Jones in inserting in that agreement the fact that she was to be considered not liable for the money which she was being given instructions to pass on to Mr. Thompson, in the event that Mr. Thompson was unable to make title, shows clearly that she understood that Mr. Lewis was instructing her to use money which was standing to his credit in Miss Jones's office for Mr. Thompson's account, and it can in our view have no other meaning.

We, therefore, go back to the question as to whether or not the learned trial judge was correct in holding that Mr. Jones and Miss Jones were acting were acting as agents for Mr. Thompson, the appellant, when she received instructions from Mr. Lewis to take the money out of Mr. Lewis' account and pay it to Mr. Thompson. We think that she clearly was agent for Mr. Thompson. Mr. Thompson had used her before. Mr. Thompson had taken Mr. Lewis to "his lawyer" to have the sale agreement prepared. When there was a problem Mr. Thompson took Mr. Lewis to "his lawyer" again in order to have the matter straightened out. We think that she received the money, as the learned trial judge found, as agent for Mr. Thompson and that was a sufficient payment by Mr. Lewis to Mr. Thompson in furtherance of the agreement of the 15th March, 1978.

We, therefore, hold that the learned trial judge was not in error on any of the points complained of by Mr. Wright and that the appeal ought to be dismissed, and that there should be costs to the respondent to be agreed or taxed.

RENEL HEWITT *v.* CARL PORTER

[COURT OF APPEAL (Rowe, P., Carey and White, JJ.A) March 17, 1987]

Landlord and Tenant—Nuisance to 'adjoining occupier'—Adjoining apartments on same premises—Meaning of 'adjoining occupier'—Rent Restriction Act, s. 25(1)(c).

The appellant, the landlord of premises at 9 Halsey Avenue, rented an apartment on the same building to Eleanor Dacres who complained of conduct on the part of the common law wife of the respondent, a tenant in the adjoining apartment on the same premises. The Resident Magistrate declined to make an order for possession on the basis that the complainant, E. Dacres, was not an 'adjoining occupier' within the meaning of s. 25(1)(c) of the Rent Restriction Act.

The landlord appealed.

On appeal:

Held: 'adjoining occupier' refers to a situation where there are separate tenancies, albeit on the same premises in the same building.

Appeal allowed.

Cases referred to:

(1) *Sedleigh-Denfield v. O'Callaghan* [1940] A.C. 800; 56 T.L.R. 887; [1940] 3 All E.R. 349

(2) *Titus v. Duke* (1963) 6 W.I.R. 135

Appeal from the decision of the Resident Magistrate declining to make an order for possession of premises, in the Resident Magistrate's Court for the parish of Kingston.

Gordon Robinson for appellant.

Garth Lyttle for respondent.

CAREY, J.A.: Section 25 (1)(c) of the Rent Restriction Act ordains as follows:

> "Subject to section 26, no order or judgment for the recovery of possession of any controlled premises, or for the ejectment of a tenant therefrom, shall, whether in respect of a notice to quit given or proceedings commenced before or after the commencement of this Act, be made or given unless -
>
> (c) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the court, deteriorated or become insanitary owing to acts of waste by, or the neglect or default of, the tenant or any such person, and, where such person is a lodger or sub-tenant, the court is satisfied that the tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant; or : . . "

Pursuant to that section, the landlord of premises at 9 Halsey Avenue, one Renel Hewitt, gave a notice to Carl Porter as the tenant of an apartment on those premises. The landlord had also, in respect of the same premises rented the adjoining apartment on the same building to one Eleanor Dacres, and she it was who complained of certain conduct on the part of the common-law wife of Mr. Porter.

The learned Resident Magistrate in his reasons for judgment found as a fact that what Miss Dacres complained of was proven, and he stated this:

"I found as a fact that loud music was being played as stated in evidence by Dacres and Hewitt, and that Dacres was threatened and abused when she complained to defendant's common-law wife. I found as a fact that the scaling of fish and setting fire under her clothes line were isolated instances not capable of amounting to a nuisance; that the loud playing of music did not affect the adjoining occupier, Lucille Hewitt."

Notwithstanding that clear finding as to the acts complained of, the learned Resident Magistrate, nonetheless, declined to make an order for possession.

The basis for that decision was his view that Miss Eleanor Dacres did not come within the contemplation of section 25 (c) as she was not an "adjoining occupier". The learned Resident Magistrate found, relying on *Titus v. Duke* [1963] 6 W.I.R. 135, that adjoining occupier means an occupier of premises separate and apart from that of the plaintiff's. He said, for the plaintiff to succeed in an action for nuisance, it must emanate from or must have arisen elsewhere than in or on the plaintiff's premises." The learned Resident Magistrate based that view on the judgment of Wooding, C.J., in *Titus v. Duke* (supra) where he quoted with approval the well-known dictum of Lord Atkin in *Sedleigh Denfield v. O'Callaghan & Others* [1940] A.C. 896, that:

" . . . nuisance is sufficiently defined as a wrongful interference with another's enjoyment of his land or premises by the use of . . . land or premises either occupied or in some cases owned by oneself."

Chief Justice Wooding commented—"as there must therefore be adjoining premises, separately occupied from the premises affected by the alleged nuisance, no question of nuisance can properly arise herein."

It is enough to say that no one challenges the validity of that statement; it is certainly good law. We think, however, that its application to the circumstances of this case, is misconceived. We are here concerned with interpreting the Rent Restriction Act which speaks of "adjoining occupier". *Titus v. Duke* deals with the tort of nuisance, and considered whether, as the respondent's claim was for damage suffered upon premises occupied by him and which was attributable to a nuisance proceeding from the selfsame premises there could be any liability in tort for that alleged nuisance, and held that no liability therefore attached to the appellants.

We were referred by Mr. Gordon Robinson to Megarry's Rent Acts 10th Edition at page 269, where the learned author, under the sub-head of "Nuisance or Annoyance", said as follows:

"An act is not a nuisance under the first limb, merely because it is made a nuisance for the purposes of some statute. By nuisance the legislature meant not a nuisance in a technical sense but a nuisance in fact, and the words 'to adjoining occupiers' govern nuisance as well as annoyance. No doubt the term nuisance must be construed in the normal way, that is, according to plain and sober and simple notions among the English people and not as covering anything merely fanciful or a matter of mere delicacy or fastidiousness."

This Court thinks that to be plainly right. In construing the term 'a nuisance' in the Rent Restriction Act, we are concerned with conduct which any ordinary Jamaican person can understand. What is complained of in the circumstances of this case, is abusive language and threatening language; playing of music loudly and the like. That, plainly, in our view, comes within the ambit of nuisance or annoyance. Such behaviour goes far beyond matters of mere delicacy or fastidiousness: it is intolerable conduct.

So far as the term "adjoining occupier" within the meaning of this Act goes, it seems to us, that it refers to a situation where there are separate tenancies, albeit on the same premises in the same dwelling house. To interpret that term in any other way would be

giving a licence for misbehaviour and anti-social conduct, in fine, grave annoyance in the crowded dwellings of the country and leaving aggrieved landlords without a remedy. This Court could hardly interpret the statute in such an absurd fashion. In our view the learned Resident Magistrate fell into error, and his judgment cannot be sustained.

In the result, the appeal will be allowed, the judgment of the Court below set aside, and judgment entered for the plaintiff for the recovery of possession of that part of the premises the respondent occupies. The order of the Court is that the defendant deliver up possession of the premises occupied by him on or before the 2nd July, 1987, and the appellant is entitled to costs of the appeal, which is fixed at $50.00.

R. v. COMMISSIONER OF POLICE EX PARTE HOWARD PATRICK BROWN

[SUPREME COURT - FULL COURT (Morgan, McKain and Wolfe, JJ.)
March 16, 17, 18, 1987]

Judicial Review— Police discipline—Prohibition—Court of Enquiry set up to investigate jail-break—Whether Court of Enquiry properly constituted—Whether hearing a nullity, thereby warranting a new Court of Enquiry to hear the matter de novo—Police Service Regulations, 1961, r. 46(2) (c).

The applicant was stationed at the Port Maria Police Station. A jail-break occurred at the station, and the Commissioner of Police, pursuant to r. 46(2) (c) of the Police Service Regulations, 1961, proferred charges against the applicant and appointed a Court of Enquiry to enquire into the said charges.

Two Superintendents were appointed to conduct the enquiry in accordance with the Regulations. However, on the first day of the hearing, Assistant Superintendent T.W. being absent, the other Superintendent proceeded to hear the evidence in his absence. The hearing was then adjourned to a new date, Superintendent T.W. being present on that new date. His presence was objected to on the ground that he was not present at the commencement of the hearing.

When the findings of the Court of Enquiry were presented to the Commissioner of Police he decided that the Court of Enquiry had not been properly constituted, as it failed to sit as appointed by him, and so, he appointed a new Court of Enquiry to hear the matter *de novo*. In consequence thereof, the applicant obtained an order nisi, to move the Full Court for an order of prohibition.

Held: (i) any report which did not represent the joint deliberations of both men contravened the joint terms of the appointment by the Commissioner;

(ii) an improperly constituted Court cannot be seized of jurisdiction and any action taken without being seized of jurisdiction is a nullity;

(iii) the applicant to succeed must satisfy the Court that there was a proper hearing of the charge proferred against him, and the applicant has failed to establish this. The hearing was a nullity and the Commissioner was entitled to appoint a new Court of Enquiry to enquire into the charges which were still outstanding.