JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE CIVIL APPEAL # 2/87

BEFORE: The Hon. Mr. Justice Rowe, President
The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice White, J.A.

BETWEEN	RENEL HEWITT	APPELLANT
AND	CARL PORTER	RESPONDENT

Mr. Gordon Robinson for appellant

Mr. Garth Lyttle for respondent

17th March, 1987

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 who was 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 offending 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 occupiers". 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 therefor 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 is to deliver up possession of the premises occupied by him on or before the 2nd July, 1987, and the appellant is entitled to the costs of the appeal, which is fixed at $50.00.