1951 — 1955

THE

JAMAICA LAW REPORTS

[6 J.L.R.]

DECISIONS

OF

THE HIGH COURT

AND OF

THE COURT OF APPEAL

PUBLISHED BY THE AUTHORITY OF THE SUPREME COURT
OF JUDICATURE OF JAMAICA

Editor — MR. JUSTICE MACGREGOR

PRINTED BY
THE GOVERNMENT PRINTER,
DUKE STREET, KINGSTON.

1956

COURT OF APPEAL 1954

DAVIS v. BOWEN

CARBERRY, C.J.

By his will dated 28th January, 1944, Richard Bowen devised his estate of 7½ acres to his wife, the defendant in this action, for life, and she was in possession on the date of the trespass complained of in this action.

The parcel of 62½ acres which was conveyed to Sarah and Rebecca Bowen was, on 13th February, 1920, conveyed by them to Hubert Morris Davis and has since passed to the plaintiff. The plaintiff said in evidence that in 1920 when he entered into possession of this land, the "Reserved Road" was in standing wood and that to enter his land he used another road which went through Richard Bowen's land, but that as a result of the objections raised by Richard Bowen, he, the plaintiff, cleared the area marked on the plan as a "Reserved Road" and that he then made a road over its surface and that he has enjoyed the exclusive user thereof ever since—namely, for a period of upwards of thirty years, and that throughout this period the wire fence which the defendant caused to be cut, has marked the southern boundary of the reserved road against the land the defendant occupies, and that this wire fence is therefore the party line between the defendant's land and the road, and that he, the plaintiff, has established title to the soil of the road under the Limitation of Actions Law.

The Resident Magistrate in his reasons for judgment stated: "I concluded that in law the plaintiff would have acquired the fee simple in the soil of the roadway by virtue of long possession thereof by his predecessors in title and himself."

This conclusion of law was challenged before us by the appellant's counsel. It was submitted that the available evidence—viz. exhibit 5 and the plan annexed to it—show that the roadway was a reserved road and that the plaintiff's predecessors in title had either an express or implied grant of an easement over it and that the fee simple remained in Richard Bowen and passed with his estate to the defendant; that the plaintiff has failed to show any abandonment of the soil of the roadway by Richard Bowen and that the acts by which the plaintiff claimed a prescriptive title were all clearly referable to the maintenance and enjoyment of the easement.

In *Leigh v. Jack* (1880) 5 Exch. Div. 264, it was held that acts of user committed upon land which are consistent with the purpose to which the owner intended to devote it, do not amount to a dispossession of the owner, and are not evidence of discontinuation of possession by him.

In *Huggett v. Miers* [1908] 2 K.B. 278, at p. 283 Sir Gorell Barnes, P., said:—

> "It is clear that, as a general rule, the grant of an easement imposes no obligation on the owner of the servient tenement to do anything in the nature of repair. Anything that may be requisite for the enjoyment of the easement by way of repair must be done by the owner of the dominant tenement for himself."

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In *Sack v. Jones* [1925] 1 Ch. 235, Astbury, J. at p. 241 quoted with approval from the judgment of Mellor, J. in *Colebeck v. Girdlers' Co.*, 1 Q.B.D. 234, at p. 241:—

> "It may be open to doubt whether the support of the plaintiff's house and the party wall was, strictly speaking, in the nature of an easement or not, but assuming that the right of support in this case is in the nature of an easement, founded on implied grant, it is well established that there is no obligation to repair on the part of the owner of the servient tenement, but the owner of the dominant tenement must repair, and that he may enter on the land of the owner of the servient tenement for that purpose."

In the circumstances of this case, the acts of the plaintiff in clearing and maintaining the roadway in question are all referable to the easement he enjoyed and are consistent with the intention of the grantor, and as there is no evidence of abandonment by Richard Bowen or the defendant of the soil of the roadway, they have not been dispossessed and the plaintiff has not prescribed title to it. Consequently, the defendant was not trespassing on her own land when she admitted a truck on it or cut the wire fence which stood between two sections of her own land.

For these reasons the plaintiff's action fails and the defendant must have her costs of this appeal which we fix at £12, and in addition her costs in the Court below, to be taxed.

Solicitors: Armstrong for the appellant; G. H. Campbell for the respondent.

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3 C.A.J.B. 420.

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July 13, 14, 15, 16, 20— Sept. 18

KAMECKA v. ZIADIE

Landlord and Tenant—Commercial premises—Sub-lease—Order for recovery of possession against tenant—Recovery of possession against sub-tenant—Rent Restriction Law, Law 17 of 1944, s. 17.

Court of Appeal—Principle governing review of Judge's findings—Trial by Judge alone—Question of fact.

L was the tenant of commercial premises in Kingston and the respondent was her sub-tenant of a part of the building. The appellant bought the premises and obtained an ejectment order against L, who informed the respondent of the order before she, L, surrendered possession of that portion of the premises occupied by her. The respondent obtained a spirit licence for the premises. She stated in evidence at the trial that the appellant consented to her remaining in possession of the rooms she occupied until she obtained

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suitable premises to which to transfer her licence, although no rent was fixed for her occupation. Correspondence from her solicitor and further particulars of her claim showed that the respondent had told him that her sub-tenancy had been created with the appellant's knowledge and permission and that, consequently, she was a statutory sub-tenant. As the respondent did not vacate the rooms she occupied, the appellant attended on her with two constables, the warrant of ejectment, signed by a Clerk of the Courts and issued in respect of the complaint of the appellant against L was read to the respondent, her goods were removed from the premises, and the appellant took possession of that portion of the premises occupied by her.

The Resident Magistrate accepted the respondent's evidence, apparently disregarding the inconsistencies created by her solicitor's letters and the particulars he supplied, and decided that the respondent was a bare licensee entitled to reasonable notice before she was dispossessed, and he awarded her damages.

HELD: (1) Although a Court of Appeal does not lightly interfere with the findings of fact of a trial judge, when it is satisfied that they are erroneous, it is its duty to correct the error. As the respondent's evidence was inconsistent with her case as set up by her solicitor, and as she was a discredited witness, the finding of fact by the Resident Magistrate was set aside.

Yuill v. Yuill [1945] P. 15, and

Watt v. Thomas [1947] A.C. 484, followed.

(2) S. 17 of the Rent Restriction Law, Law 17 of 1944, is only applicable when the relationship of landlord and tenant exists. That relationship does not exist between the original landlord and the sub-tenant. As the respondent was a sub-tenant of L, when L's tenancy was determined, the respondent's rights also ceased, as the relationship of landlord and tenant did not exist between the appellant and the respondent. The respondent was unable to rely on s. 19 (3) of the Rent Restriction Law, as that sub-section applies only to protect the interest of a sub-tenant of a dwelling house. The respondent therefore became a trespasser.

Hylton (Lord) v. Heal [1921] 2 K.B. 438, and

Dudley and District Benefit Building Society v. Emerson and Another [1949] Ch. 707, followed:

per curiam: A warrant to give possession of a tenement issued under s. 46 of Cap. 364 must be signed by the Resident Magistrate or by the Justices who determined the complaint. There is no authority for a Clerk of the Courts to sign such a warrant.

APPEAL from the judgment of Grosett, Resident Magistrate (Ag.) for Kingston.

Appeal allowed. Judgment entered for the defendant.

Blake for the appellant.

Manley, Q.C., for the respondent.

1954. September 18: The judgment of the Court (Carberry, C.J., Rennie, J. and Clare, J. (Ag.)) was read by the Chief Justice.

CARBERRY, C. J.

The action out of which this appeal arises was filed by the plaintiff-respondent on the 19th May, 1952, for trespass. In the particulars of claim it was alleged that on the 2nd May, 1950, the defendant and his

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servants, or agents, forcibly entered that part of 4 Spanish Town Road which the plaintiff occupied as a tenant and forcibly ejected her and her property therefrom, whereby the plaintiff sustained injury, suffered loss and incurred expense.

In compliance with a request from the solicitors of the defendant-appellant, the respondent's solicitor on 9th September, 1952, filed "Further and Better Particulars" of the plaintiff's claim and stated that the part of the premises occupied by the respondent consisted of two rooms on the lower floor and three rooms upstairs; that the contract of tenancy was entered into with Iris Lampart and it commenced on the 12th January, 1948, and when Mrs. Lampart moved out in March, 1950, the respondent became a statutory tenant of the appellant, and that the injury and loss complained of were the entry by the appellant into the premises in disturbance of the respondent's quiet enjoyment thereof.

The action came up for trial on 20th July, 1953, before a Resident Magistrate for Kingston, and when the respondent's case was opened her counsel stated that her occupation of the premises was based on her claim to be a statutory tenant, which had been pleaded, and the further claim which had not been mentioned before, that she was also a tenant by virtue of a contract entered into with the appellant.

The respondent's case, shortly stated, follows:

Mrs. Lampart, the respondent's sister, was tenant of 4 Spanish Town Road and the respondent was sub-tenant of a room upstairs in which she lived. Martin Brown was sub-tenant of a room downstairs in which he conducted a bar. The respondent bought Brown's business, his stock in trade and fixtures on 27th April, 1949. Brown was made a bankrupt on his own petition on 6th May, 1949. The respondent, on buying Brown's business, became her sister's sub-tenant of that room as well as of two additional rooms upstairs, and as she—the respondent—was unable to get a spirit licence for the bar immediately, she used the room downstairs temporarily for a cold supper business. About February or March, 1949, the appellant bought the property and Mrs. Lampart told the respondent that she had been ordered by the Court to surrender possession to the appellant by the 31st March, 1950. The respondent told the appellant what she had learnt from her sister and explained that she had just been granted a spirit licence for the room downstairs, effective as from 1st April, 1950, and asked him to allow her to occupy that room until she got other premises to which she could transfer her spirit licence. The appellant agreed to this and told her not to keep the room beyond the end of the year, and asked her to surrender to him immediate possession of the rooms she occupied upstairs; this she agreed to do.

The amount to be paid by her as rent was not agreed on and the appellant said he would advise her of this later. Shortly after this she delivered the keys of the room upstairs to a policeman sent by the appellant, who asked her for the key of the room downstairs as well, but she did not give it to him because of her agreement with appellant. Mrs. Lampart surrendered to the appellant the keys of the rooms which she—Mrs. Lampart—had occupied. About 7th or 9th April the appellant informed the respondent that he had discovered the relationship between her and Mrs. Lampart and that as he bore ill will for Mrs. Lampart she could not occupy the bar any longer. On 2nd May, 1950, the appellant attended at the premises with two policemen and about a dozen men; a constable read a warrant of possession to her, her stock was moved into the yard, the appellant locked the bar room and retained her fixtures.

The appellant's case was that he bought the property about February, 1949, and he served notice to quit on Mrs. Lampart, but as she disregarded it he obtained an order of possession from the Court, effective on 31st March, 1950. Mrs. Lampart gave him some keys of the building and said he would get the remaining keys later. The next day the respondent called on him and told him she had applied for a spirit licence for the premises and asked him to rent her the room downstairs. He refused to do this, and he explained that he needed the entire building for his purposes. As he did not get the remaining key of the building he interviewed the Clerk of the Courts and the police and later he obtained a warrant for possession; he attended at the premises with two constables and two of his storemen, that the latter removed the respondent's goods from the room and put them in the yard and he locked up the room. The respondent never said any thing to him about fixtures at any time and he was emphatic that he never agreed that she could occupy the room downstairs, or any other room in the building.

In his reasons for judgment the Resident Magistrate wrote:

> "I accepted the evidence of the plaintiff Kamecka that she saw the defendant Ziadie who agreed that if she gave him the room upstairs she could keep the shop until she got a place to transfer the licence but he asked her not to keep it for a whole year, and that in accordance with this arrangement she gave the keys for the room upstairs to the policeman who first came to her on behalf of the defendant.
>
> 2. I believed the evidence of the plaintiff that the defendant came to her shortly thereafter and informed her that as Mrs. Lampart and herself are sisters he wouldn't allow her to stay again because of the way in which Mrs. Lampart had treated him.
>
> 3. I came to the conclusion that the effect of the agreement set out in paragraph 1 hereof was to make the plaintiff the licensee of the defendant."

The Resident Magistrate went on to say that he was of opinion that even as a bare licensee the respondent was entitled to reasonable notice. He rejected the defence which had been raised that the warrant protected the appellant, and he stated although he was convinced that the respondent had bought the fixtures from Brown, he had not been satisfied of Brown's title to them. He awarded the respondent £50 damages.

For the appellant it was submitted before us that the finding of fact that the respondent agreed with the appellant in March, 1950, to permit the respondent to occupy the bar until she got a place to which to transfer her spirit licence was unreasonable in the light of the evidence, and that the Resident Magistrate had failed to consider the significant differences in the respondent's case as put forward originally and that presented at the trial, or that if he did consider these differences, he had failed to draw the correct inferences from them.

We now examine the facts on which this submission was based.

On the 5th April, 1950, a few days after the agreement in question was alleged to have been made, the respondent's solicitor wrote to the respondent as follows:—

> "I have been consulted by Mrs. Evelyn Kamecka who is now your tenant of a part of premises situate at 4 Spanish Town Road, Kingston. My instructions are that my client rented the part of the premises occupied by her from Mrs. Iris Lampart with your knowledge and permission. It appears that Mrs. Lampart has surrendered her tenancy, and as you are no doubt aware in such circumstances the sub-tenant then becomes your tenant.
>
> My client requested me to write you this letter in order to make the legal position plain in view of the fact that she feels that you have been under a misunderstanding. She states that you told her that since Mrs. Lampart has terminated her tenancy you were at liberty to require her to vacate the premises. This is of course incorrect, and I write you this letter with a view to avoiding any unpleasantness which might otherwise ensue should you attempt to remove her forcibly from the premises as she states you have threatened to do."

There is no reference to the alleged agreement in this letter or in the further letter from the respondent's solicitor to the appellant dated 16th May, 1950—three days before the action was filed. It is observed that the respondent's solicitor served notice on the appellant's solicitors to produce both these letters at the trial.

In the particulars of claim filed with the plaint on 19th May, 1950, there is an allegation that the respondent occupied the premises as a

tenant. On the 30th August, 1952, the appellant's solicitor served a request for further and better particulars on the respondent and, in particular, he wanted to know:

> "3. The particular part of premises which it is alleged is occupied by the plaintiff as tenant."

To this the respondent's solicitor replied:

> "3. The part of the premises occupied by the plaintiff as tenant consists of two rooms on the lower floor and three rooms upstairs of No. 4 Spanish Town Road in the parish of Kingston used by the plaintiff as a tavern."

The next question asked by the respondent's solicitor was:

> "4. With whom was the contract of tenancy entered into and the name and address of such persons."

The reply was:

> "4. The contract of tenancy was entered into with Mrs. Iris Lampart of 24 Spanish Town Road."

The next question was:

> "5. The date when the alleged tenancy commenced and the terms thereof and the amount of rental if any and to whom paid."

To this the respondent's solicitor replied:

> "5. The date of tenancy commenced on 12th January 1948 and when Mrs. Lampart in March 1950 removed, the plaintiff became a statutory tenant of the defendant."

It is therefore quite clear from the letters of the respondent's solicitor and the particulars which he supplied to the appellant's solicitors that from shortly after the entry of the respondent into the premises until September, 1952—that is, for a period of two years and five months, the respondent's claim of being a tenant of the premises was based solely on a statutory right. The allegation of a specific agreement between the parties was first advanced when the plaintiff's case was opened at the trial in July, 1953.

The respondent said under cross examination that she started operating her spirit licence in the premises on the 1st April, and that about the 5th, 6th or 7th April (the solicitor's letter is dated 5th April) the respondent told her that he had discovered that Mrs. Lampart was her sister and that she must quit the premises, and that a few days after the respondent had seen her solicitor she tendered rent to the appellant. The respondent was then asked:

> "Did you tell your solicitor that Mr. Ziadie had offered to allow you to stay on and operate your licence because you explained to him that it would cause loss if you were not allowed to remain?"

The respondent answered "Yes"; and again to the question:

> "Did you tell your solicitor that Mr. Ziadie had specifically given you permission to remain on the premises because you had explained that you had just got your licence?"

the respondent again answered "Yes", and her solicitor's letter dated 5th April, 1950, was then put in evidence. In the second paragraph of that letter the respondent's solicitor wrote that the respondent "states that you" (the appellant) "told her that since Mrs. Lampart has terminated her tenancy you were at liberty to require her to vacate the premises". Counsel for the appellant, no doubt with this paragraph in mind, said to the respondent:

> I am suggesting that the only conversation which took place with Mr. Ziadie was a conversation in which he told you that you could not be a tenant after Mrs. Lampart left the premises".

Respondent replied "No sir".

The next question was:

> "Didn't Mr. Ziadie tell you that the only tenant he knew was Mrs. Lampart and that there was no tenancy after her tenancy was terminated?"

to which the respondent replied:

> "No sir we never argued that way at all".

In the first paragraph of the letter of the 5th April, 1950, the respondent's solicitor wrote to the appellant:

> "My instructions are that my client rented the part of the premises occupied by her from Mrs. Lampart with your knowledge and permission."

and it would appear that when the respondent's solicitor stated that his client was a statutory tenant of the appellant he was relying on that statement and s. 19 (3) of the Rent Restriction Law; but in cross examination the respondent denied that she had told her solicitor that she had rented the premises with the permission of the respondent. She said that the respondent knew of her sub-tenancy because he was himself a sub-tenant to Mrs. Lampart.

In re-examination the respondent specifically repudiated her solicitor's letter of 5th April, 1950, and impliedly also his answers to the respondent's enquiries, but it is inconceivable that a solicitor would refer to facts as included in his instructions which were not mentioned to him and omit all reference to a vital agreement on which he was instructed, especially as he wrote to the appellant on or about the same day that the respondent interviewed him, when his instructions were fresh in his mind. If there existed any rational explanation of these differences the respondent's solicitor could have given it; he was instructing the respondent's counsel in the case and his silence was ominous to the respondent's case. It would appear that the statement

which the respondent made to her solicitor to the effect that she became the sub-tenant of Mrs. Lampart with the permission of the appellant was invented by her when she thought it would help her case, and it was abandoned because it was in conflict with the later invention of a specific agreement of tenancy. We are of opinion that the respondent was a discredited witness. The Resident Magistrate did not say why he accepted her evidence and there is nothing in his reasons to show that he considered these aspects of the respondent's case.

A Court of Appeal does not lightly interfere with the findings of fact of a trial judge who reaches his conclusions on the demeanour of the witnesses who testified before him, but when it is satisfied that the trial Judge has formed a wrong opinion, it is its duty to correct his error.

In delivering his judgment in *Yuill v. Yuill* [1945] P. 15, Lord Greene M.R. is reported at page 19 as having said:

> "We were reminded of certain well-known observations in the House of Lords dealing with the position of an appellate court when the judgment of the trial judge has been based in whole or in part on his opinion of the demeanour of witnesses. It can, of course, only be on the rarest occasions, and in circumstances where the appellate court is convinced by the plainest considerations, that it would be justified in finding that the trial judge had formed a wrong opinion. But when the court is so convinced it is, in my opinion, entitled and indeed bound to give effect to its conviction. It has never been laid down by the House of Lords that an appellate court has no power to take this course. Puisne judges would be the last persons to lay claim to infallibility, even in assessing the demeanour of a witness. The most experienced judge may, albeit rarely, be deceived by a clever liar, or led to form an unfavourable opinion of an honest witness, and may express his view that his demeanour was excellent or bad as the case may be. Most experienced counsel can, I have no doubt, recall at least one case where this has happened to their knowledge. I may further point out that an impression as to the demeanour of a witness ought not to be adopted by a trial judge without testing it against the whole of the evidence of the witness in question. If it can be demonstrated to conviction that a witness whose demeanour has been praised by the trial judge has on some collateral matter deliberately given an untrue answer, the favourable view formed by the judge as to his demeanour must necessarily lose its value."

In *Watt v. Thomas* [1947] A.C. 484 Lord Thankerton in his speech as reported on page 487 said:

> "I. Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial judge's conclusion; II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence; III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

and at page 489 he continued:

> "As regards the third proposition that I have ventured to express, an illustration of it will be found in the decision of this House in *Hvalfangerselskabet Polaris A/S v. Unilever, Ltd.* (1933) 46 Ll.L. Rep. 29 which is fully referred to by Lord Greene M.R. in *Yuill v. Yuill* [1945] P. 15, 20, which also would appear to illustrate the same proposition."

It seems clear that the Resident Magistrate has not taken proper advantage of his having seen and heard the witnesses in this case, and his finding of fact in favour of the respondent cannot stand. We are at a loss to know how he has reconciled the inconsistencies in the respondent's case. The demeanour of a witness cannot be divorced from the evidence he gives; mere plausibility of demeanour is valueless in the face of unreconciled inconsistencies. All the circumstances support the appellant's version and we are satisfied that he has shown that the agreement advanced by the respondent was not made. The finding of the Resident Magistrate on this point must be set aside.

The respondent's claim to a statutory tenancy must now be considered.

On behalf of the respondent it was submitted that the definition of "tenant" in section 2 of The Rent Restriction Law, Law 17 of 1944, included sub-tenant without any limitation on account of the context, and it necessarily followed that the protection of the possession of a tenant provided by section 17 also extended to a sub-tenant; so that when the appellant bought the property and found the respondent in occupation of a part of the building as a sub-tenant, the order for possession which he obtained against the tenant was ineffectual against the sub-tenant and to eject her the owner of the property would have to take separate proceedings against her and base his claim on one of the reasons mentioned in section 17 to obtain an order from the Court. This is the position, it was submitted, because sections 17 and 18 apply generally to extend the protection of the possession of the tenant to all sub-tenants including those of commercial premises. Section 19 (3), it was argued, deals with the special case of a

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dwelling house and since this special case adds something to the general case there is no room for the maxim *expressio unius exclusio alterius*. This argument has for its foundation the application of the definition of "tenant" in section 2 to "tenant" in sections 17 and 18 without reference to the context.

We are unable to accept this view. It leaves out of reckoning the definition of "landlord" in the Rent Restriction Law and the application of section 12 (1) of The Interpretation Law to all definitions.

In the interpretation section of the Rent Restriction Law, section 2 (1), it is stated that:

> " 'landlord' includes any person deriving title under the original landlord and any person who is, or would but for the provisions of this Law be, entitled to the possession of the premises."
> " 'tenant' includes a sub-tenant and any person deriving title from the original tenant or sub-tenant, as the case may be."

Section 12 (1) of The Interpretation Law, Law 17 of 1943, states:

> "Where expressions are defined in any Law, such expressions shall have the meanings assigned to them, unless there is anything in the subject or context repugnant to, or inconsistent with, such meaning."

With these directives in mind we examine section 17 of the Rent Restriction Law; it is observed that that section applies to the relationship of landlord and tenant in respect to any controlled premises; and to preserve that relationship in accordance with the definitions of the words 'landlord' and 'tenant' when a sub-tenant or a person who has derived title from the original tenant is being considered his landlord is the person who has derived title from the original landlord. In other words, section 17 is only applicable when the relationship of landlord and tenant exists—that is, as between the original landlord and the original tenant—or as between the original tenant and his sub-tenant. The relationship of landlord and tenant does not exist as between the original landlord and the sub-tenant and, consequently, section 17 is not applicable as between them. These principles are clearly set out in the judgment of Rowlatt J. in *Lord Hylton v. Heal* [1921] 2 K.B. 438.

The plaintiff, Lord Hylton, let a dwelling house to Mrs. Besley from year to year. In July, 1919, she gave notice to quit on March 25th, 1920, and the notice was accepted. On August 2nd, 1919, Mrs. Besley, with the consent of the plaintiff, sub-let the premises to the defendant for the residue of her own tenancy to March, 1920. The plaintiff then let the premises to one Monk as from March 25th, 1920, but the defendant refused to give up possession on that date. The plaintiff brought an action in the County Court against the defendant

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for possession and mesne profits. The defendant gave notice of his intention to rely by way of defence upon the 1920 Increase of Rent and Mortgage Interest (Restrictions) Act and particularly upon sections 5, 15 and 19. The County Court Judge gave judgment for the defendant on the grounds that in the interpretation clause of the Act, section 12 (1), he found that 'tenant' was defined as the original tenant or any person deriving title from the original tenant, that when the action was brought Mrs. Besley, the original tenant, had ceased to be a tenant to the plaintiff, and the defendant, the sub-tenant, was statutory tenant to the plaintiff under the Act and that the defendant, not having given notice to quit, the plaintiff's cause of action under section 5 (1) (c) failed. On appeal that judgment was reversed.

In his judgment at page 445 Rowlatt J. said:

> "In my opinion the term "tenant" in s. 5, sub-s. 1 (c) means the immediate tenant to the landlord, because he is the only person to whom the clause can apply. To explain my meaning with greater fulness and accuracy I may say that, having regard to the definition, I think that the term "tenant" as used in the Act is *prima facie* a generic term including the original tenant, a person deriving title under him, a sub-tenant, or any one else who comes within the definition, but that it is only used in that wide sense where the context does not otherwise require. It seems to me that in s. 5, sub-s. 1 (c), the context requires that the term should be used in a narrower sense. Inasmuch as that clause contemplates the case where the tenant has given notice to quit and the only tenant who can give notice to quit is the original and immediate tenant of the landlord, it follows, owing to the limitations imposed by the clause and the facts which it implies, that "tenant" as there used must mean the original tenant of the landlord. If that were not so many curious results would follow. The landlord, who is intended to be protected by this clause, although he had received notice to quit from his original tenant and had re-let the premises to another tenant, could nevertheless be deprived of the benefit of the clause by the tenant who had given notice himself sub-letting the premises at any time up to the last moment of his term.
>
> While I recognize that throughout the Act the term "tenant" is generally speaking to be taken to include both an original tenant and a sub-tenant, as the definition states, so as to represent any interest on the side of the bargain opposed to that of the landlord, I think that there are certain provisions in the Act, other than the clause in question, in which the context requires that the term be understood in a more restricted sense. Take, for example, clause (a) of s. 5, sub-s. 1, the sub-section now under consideration, which provides in effect that an order for recovery of possession of a house may be made where "any rent lawfully due from the tenant has not been paid." Can it be said that "tenant" there includes a sub-tenant, and that where a landlord has not been paid rent by his tenant, perhaps for years, and has given him notice to quit, the tenant at the last moment of his

tenancy can prevent the landlord from recovering by sub-letting to another person from whom no rent is as yet due? Or take clause (b) under which an order for recovery of possession may be made where the tenant has been guilty of conduct which is a nuisance or has allowed the premises to deteriorate by his neglect. Can it be said that where the original tenant has been guilty of conduct of that kind an order for recovery of possession cannot be made under that clause because the tenant has sub-let the premises to another person?"

and at page 448,

> "It seems to me that in all these cases the protection is given to the landlord because of his position in relation to the circumstances, and is in no way affected by the consideration that the particular person who happens to be in occupation of the premises, and against whom the ejectment proceedings are taken, is not the original tenant, but some other person who is a statutory tenant."

Section 5 (1) and the clauses (a), (b) and (c) of that section in the Imperial Statute and our section 17 (1) and the clauses (a), (c) and (d) are, respectively, substantially similar.

In *Dudley and District Benefit Building Society v. Emerson & Another* [1949] 1 Ch. 707, Emerson purchased a dwelling house which he mortgaged to the Building Society. This mortgage contained an express proviso excluding the statutory power of leasing contained in the Law of Property Act 1925. The mortgagor granted a weekly tenancy to the second defendant. The mortgagor defaulted in the instalments payable under the mortgage and the mortgagees started proceedings by originating summons to obtain possession of the premises. The second defendant resisted the claim for possession on the ground that he was entitled to the protection of the Rent Restriction Acts. Vaisey J. dismissed the summons on the ground that the second defendant was lawfully in possession to an extent sufficient to justify his claim to the protection under the Act.

When the case went before the Court of Appeal the appeal was allowed. It was held that no contractual relationship could be found or imputed between the plaintiffs as mortgagees on the one hand and the second defendant as tenant on the other hand. The plaintiffs were not the "landlords" of the second defendant within the definition of "landlord" in section 12 (1) (f) and (g) of the Increase of Rent and Mortgage Interest (Restrictions) Act 1920. The plaintiffs accordingly, by virtue of their paramount title were entitled to resist the claim of the second defendant to protection under the Act, and were entitled to possession of the premises.

The rights of a sub-tenant are, however, protected as against the original landlord by section 19 (3) when the interest of the original tenant is determined, and the sub-tenancy was created with the

consent of the original landlord or in accordance with express authority conferred by the lease or agreement. The sub-tenant then becomes the tenant of the original landlord. Apart from this specific provision, which applies only to dwelling houses, when the rights of the original tenant are determined the rights of the sub-tenant also cease. Section 19 (3) reads:

> "Where the interest of a tenant of a dwelling house is determined, either as the result of an order for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof have been sub-let *either with the consent of the landlord or in accordance with express authority conferred by or under the tenancy agreement or lease* shall, subject to the provisions of this Law, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued."

It is interesting to compare this section with section 15 (3) of The Increase of Rent and Mortgage Interest (Restrictions) Act 1920:

> "Where the interest of a tenant of a dwelling-house to which this Act applies is determined, either as the result of an order or judgment for possession or ejectment, or for any other reason, any sub-tenant to whom the premises or any part thereof *have been lawfully sub-let* shall, subject to the provisions of this Act, be deemed to become the tenant of the landlord on the same terms as he would have held from the tenant if the tenancy had continued."

and see an instance of the application of that section by the Court of Appeal in *Cairns and another v. Piper* [1954] 2 A.E.R. 611.

In the instant case the respondent was unable to bring her sub-tenancy within section 19 (3) of the Rent Restriction Law; and as stated above the relationship of landlord and tenant did not exist at any time as between the appellant and herself.

We are of opinion that the respondent's claim to be a statutory tenant of the appellant cannot be sustained. The appellant was entitled to possession when he entered the premises on the 2nd May, 1950. The respondent was then a trespasser on the appellant's property and there was nothing done by him or his agents on that occasion which could make him liable in damages to the respondent.

There was a lengthy argument by both sides on the questions of the notice to which a licensee is entitled and the protection which the warrant of possession afforded the appellant. It is not necessary for the purposes of this judgment to consider either of those matters. We would like to say, however, that it has been brought to our attention that the warrant given to the appellant in this case to enable him to obtain possession of the premises was signed by the Clerk of the Courts. Section 46 of Cap. 364 says—"It shall be lawful

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CARBERRY, C. J.

for the said Resident Magistrate or Justices" (who determined the complaint in Petty Sessions) "to issue a warrant under his or their hands and seals." There is no authority given to a Clerk of the Courts in that section to issue such a warrant. Such a warrant is bad and can afford no protection to a party who acted under it. But does the appellant require the protection of the warrant to enable him to succeed? We are of opinion that he does not. The respondent in our view was a trespasser *qua* the appellant and could be evicted provided no more force than was reasonably necessary was used. The evidence discloses that no force was used, consequently the appellant did no more than the law entitled him to do.

The judgment of the Resident Magistrate is set aside and judgment will be entered for appellant with costs in the Court below to be taxed. The appellant must have his costs of appeal, which we fix at £15.

Solicitors: George & Vendryes for the appellant; Richard Hart for the respondent.

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1954
Dec. 1
1955
Feb. 4

3 C.A.J.B. 473.

HARRISON v. MORDECAI

Appeal—From Resident Magistrate exercising special statutory summary jurisdiction—Notice of appeal headed as from judgment of Court of Petty Sessions—No effective notice of appeal.

A Resident Magistrate, exercising his special statutory summary jurisdiction, refused to make an affiliation order on a complaint by the appellant against the respondent in which she alleged that the respondent was the putative father of her child. The appellant gave notice of appeal against the decision of the Resident Magistrate. The notice was headed to indicate that the case had been tried in the Petty Sessions Court. By s. 9 (1) of the Bastardy Law, and ss. 296, 297 of the Resident Magistrates Law, Cap. 432, an appeal lies to the Court of Appeal. An appeal from the Resident Magistrate sitting in Petty Sessions lies to another tribunal.

HELD: the notice of appeal was not merely deficient in form, but was a notice appealing from a judgment of a Court of Petty Sessions, and there was no effective notice of appeal.

APPEAL from the decision of Barrow, Resident Magistrate, St. Mary.

Preliminary objection upheld. Appeal dismissed.

Parkinson for the appellant.

Blake for the respondent.

1955, Feb. 4: The reasons for the judgment of the Court (Carberry, C.J., Rennie and Cools-Lartigue, JJ.) were read by the Chief Justice.

CARBERRY, C.J.

CARBERRY, C.J.: The complainant in this case purported to appeal from the refusal of the Resident Magistrate for St. Mary to make an affiliation order against the respondent on an information in which she alleged that the respondent was the putative father of her child.

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HARRISON v. MORDECAI

CARBERRY, C.J.

On behalf of the respondent a preliminary objection was taken to the jurisdiction of this Court to hear the appeal because no effective notice of the appellant's intention to appeal was given to the Clerk of the Courts for the parish.

The notice of appeal given by the appellant is as follows:—

"IN THE COURT OF PETTY SESSIONS
FOR THE PARISH OF ST. MARY
HOLDEN AT PORT MARIA.

MYRTLE HARRISON
VS.
DENNIS MORDECAI
(BASTARDY)
NOTICE OF APPEAL

TAKE NOTICE that the complainant hereby appeals against the Judgment of His Honour the Resident Magistrate for the parish of St. Mary sitting in Petty Sessions at Port Maria on the 23rd September, 1954, whereby the complainant's Summons against the defendant that the defendant be adjudged the putative father of her child was dismissed by the Resident Magistrate.

Dated the 27th day of September, 1954.

(Sgd.) MYRTLE HARRISON.

.....
MYRTLE HARRISON

To: His Hon. the Resident Magistrate for St. Mary, Port Maria.

To: The Clerk of the Courts, Port Maria.

To: Messrs. Robinson, Phillips & Whitehorne, solicitors for the above-named defendant, Richmond."

Section 9 (1) of the Bastardy Law, Cap. 452, which gives the right of appeal in cases under the Bastardy Law, reads:

"An appeal shall lie to the Court of Appeal in manner provided by any Law in force for the time being regulating appeals in cases tried by a Resident Magistrate on indictment or on information in virtue of a special statutory summary jurisdiction from any order made by a Resident Magistrate under this Law, or from any refusal to make such an order, or from the revocation, revival or variation of such an order."

The reference in this section to the Law in force regulating an appeal from a Resident Magistrate in a case tried on indictment or on information in virtue of a special statutory summary jurisdiction is to sections 296 and 297 of the Resident Magistrates Law, Cap. 432, which say: