JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL No. 99 of 1970

BEFORE: The Hon. Mr. Justice Luckhoo, Presiding
The Hon. Mr. Justice Edun
The Hon. Mr. Justice Hercules

BETWEEN	EDWARD LEVY	PLAINTIFF/RESPONDENT
AND	PERCY HARDWARE	DEFENDANT/APPELLANT

Dr. R. Edwards for the Defendant/Appellant

Roy Taylor for the Plaintiff/Respondent

14th, 15th January, 1971
26th February, 1971

EDUN J.A.

On 29th January 1971 we gave our decision allowing the appeal and promised to put our reasons in writing. We do so now.

The plaintiff/respondent (hereinafter referred to as the "respondent") brought an action before the Resident Magistrate for the Parish of Clarendon claiming damages against the defendant/appellant (hereinafter referred to as the "appellant") for entering upon and destroying the respondent's cultivations growing upon lands owned by the appellant and without being given notice to quit. At the trial the appellant admitted that he re-entered his land and cut down catch crops but said (1) that he allowed the respondent to occupy an acre of his land rent free for the purpose of planting and reaping one only catch crop, and (2) without any further permission or agreement the respondent planted further crops despite requests for him to remove from the land.

The learned resident magistrate gave judgment for the respondent and in a part of his reasons stated thus, that:-

(1) the appellant agreed to allow the respondent to use and occupy a portion of his land to plant catch crops,
(2) in pursuance of that agreement the respondent went into occupation of about one acre,

(3) rent free,
(4) as from September 1968, but
(5) no date was agreed upon when the respondent should quit the premises, and
(6) no notice to quit and deliver possession was served by the appellant on the respondent.

Learned counsel for the appellant submitted that the agreement between the parties did not establish a contract of tenancy or an excepted holding within the meaning of sections 2 and 8 of the Agricultural Small Holdings Law, Chapter 8. When, therefore, the facts of the instant case were examined the learned resident magistrate did not direct his mind correctly to the real issues. Learned counsel for the respondent on the other hand submitted that whether or not the agreement between the parties established a contract of tenancy or an excepted holding there was at least a licence created and there was some evidence that the respondent did plant catch crops with knowledge of the appellant. He urged that the respondent was therefore entitled to reasonable notice to reap his crops and as the learned resident magistrate has found that the respondent received no notice he, the respondent, was entitled to damages for his cultivations so destroyed.

We are of the view that on a proper consideration of the relevant provisions of the Agricultural Small Holdings Law the agreement between the parties did not establish a contract of tenancy or an excepted holding, because there was undisputed evidence which showed

(1) that the act of the appellant in permitting the respondent to occupy his land was one of indulgence, out of charity and grace, and that
(2) there was no intention of the parties of creating the relationship of landlord and tenant between them.

But the question whether or not the appellant was justified in re-entering his land and cutting down the cultivations thereon can only be answered by a careful examination of the evidence and the findings of the learned resident magistrate.

Mr. Eric Chambers, a Barrister-at-Law, gave evidence on oath on behalf of the appellant. He said that between the period of January to July 1969 he visited the appellant's land on several occasions as his aunt was interested in buying it. In February 1969 when accompanied by a brown man he asked the respondent if the cultivations on a portion of the land was

his, the respondent replied that it was but he (the respondent) understood that the brown man bought the land. The brown man replied that it was so whereupon the respondent said he got notice to leave and he wondered if the new owners would allow him to stay when they took over the land. Mr. Chambers replied that he could not then discuss the matter.

In April 1969 Mr. Chambers said he again visited the land and observed new things such as corn, yams, oranges, breadfruit and mangoes planted. He asked the respondent how it was that he planted permanent crops when he was supposed to be off the land. The respondent replied that he was not coming off the land and that he (Chambers) can go and do what he liked. In May 1969 he made another visit and noticed the cultivations cut down. Under cross-examination by counsel for the respondent Mr. Chambers said: "It was in February 1969 plaintiff told me that he got notice. I am not mistaken. He never told me how he got notice".

The learned resident magistrate did not say whether he accepted or rejected Mr. Chambers' evidence except to state that the respondent "got no proper notice to quit". We are not for one moment saying that the learned resident magistrate was not entitled to reject the evidence given on oath by a Barrister-at-Law or by any witness for that matter, but in the face of the respondent's own admission we are at a loss to know on what basis he accepted without reservation the respondent's evidence. Before, however, examining the respondent's evidence, that of Basil Bent, led on behalf of the defence has also relevance and importance. Basil Bent said on oath that in July 1968 the respondent was present when the appellant allowed the respondent, Sydney Reid and himself to cultivate a season of catch crops, nothing was mentioned about permanent crops, and that they "should be off by February". He said he planted his catch crops, reaped them and left in February 1969 while the respondent reaped most of his catch crops at that time.

The respondent on oath said, inter alia, that he knew Basil Bent and Sydney Reid. They planted one month before he did and "they reaped before I did about one month. They pulled up and left". He however did not agree that his occupation was on the same terms as Bent and Reid. Under cross-examination he said "Yes. I told him (meaning appellant) a tall brown man had given me permission to cultivate clear the plants

and stay ..... Yes. Defendant did tell me Barrister Chambers wanted the land. Yes. I saw Mr. Chambers one day. Yes. I did tell Chambers that defendant promised to sell me the land but he sold it to some one else. No. I never asked Mr. Chambers to let me remain on the land."

There are two aspects of the findings of the learned resident magistrate which in the light of the evidence referred to above need particular scrutiny - (1) No date was fixed for the respondent to leave and (2) no proper notice to quit.

(1) No date fixed to leave.

Though the respondent claimed he was not on the same terms of occupancy with Bent and Reid yet he admitted that Bent and Reid reaped one month before he did. The respondent told the appellant that the brown man gave him permission to cultivate clear the plants and stay. The respondent said that the appellant told him Chambers wanted the land. He told Mr. Chambers that the appellant promised to sell him the land. It is obvious that the learned resident magistrate has misdirected himself on the facts of the case when he concluded that no exact date was fixed between the parties for the respondent to leave the land. In giving his reasons for so concluding he stated he believed there was a discussion about the appellant selling the land otherwise the respondent would not have known that the appellant had two titles for his land and therefore the respondent's arrangement with the appellant must have been on a different occasion and not on the same terms as Bent and Reid.

We fail to see how knowledge in the respondent of the appellant seeking to sell his land could have any significance in view of the undisputed terms of agreement which amounted to no more than a gratuitous permission to occupy and cultivate catch crops on the appellant's land. The obvious manoeuvre of the respondent was that he had no permission from the appellant to continue his occupancy and at the same time failed to obtain the permission from the new owners to continue his occupancy, yet nevertheless he proceeded to plant new crops.

(2) No proper notice to quit.

On this aspect of the case the learned resident magistrate in his reasons for judgment stated:-

> "I hold that plaintiff's occupancy of defendant's land was caught by the provisions of the Agricultural Small Holdings Law, Chapter 8, as he was in occupation of one acre at least and was therefore entitled to be served with a proper notice to quit. I consequently hold that the defendant's act in chopping down the plaintiff's growing crops was illegal as the plaintiff had the protection afforded tenants coming under the definition of an "excepted holding in section 2 of Chapter 8".

The learned resident magistrate having found in law that the evidence established an excepted holding within the meaning of the Agricultural Small Holdings Law he must have relied upon section 20 of that law to hold that the termination of the respondent's occupancy must be by a notice in writing. As stated already, we hold that no relationship of landlord and tenant or that of an excepted holding was established within the meaning of the Agricultural Small Holdings Law. The learned resident magistrate was therefore wrong in law in holding that the respondent was not served a proper notice to quit and that consequently the appellant's act in chopping down the cultivations was illegal.

In our view the nature of the respondent's occupancy was that of a mere licensee and as such the licence stood as revoked at the end of the period for which the licence was agreed upon to endure unless renewed or its continuation being acquiesced in. But if the respondent had property on the appellant's land he was entitled to reasonable time for removing same: (See Halsbury's Laws of England Volume 23, 3rd Edition, paragraph 1026, page 431.). On the respondent's own admission Bent and Reid had reaped before he did, about one month. Even assuming as Bent said that the respondent had reaped most of his catch crops at that time, the respondent had no lawful right to plant anew on the appellant's land without any further agreement or licence.

The following statement in Salmond on Torts 9th Edn. at page 258 has found approval in Thompson v. Park (1944) 2 A.E.R. p. 477 and with which we agree -

> "He who is ejected from land by the licensor in breach of his licence, or is otherwise disturbed by the licensor in the exercise of it, has even at common law, and notwithstanding, Wood v Leadbitter, a good cause of action in contract - Kerrison v Smith - if, however, the licensee

insists, notwithstanding the revocation of his licence (even though it is thus premature and wrongful), in entering or remaining on the land or otherwise exercising his licence, he becomes at common law a trespasser or other wrongdoer, and liable in an action accordingly at the suit of the licensor. The rule is an illustration of the difference between a legal power to do a thing effectively, and a legal right or liberty to do it lawfully. A licensor has at common law the power to revoke the licence at any time, but he has no right to revoke it before the expiration of the term".

When, therefore, the respondent's occupancy was properly discontinued and determined and the respondent given more than ample time to remove the remnants of his catch crops the respondent became a trespasser and apart from any agreement or right in law or equity, what was planted on the land by a trespasser belonged to the owner of the land. Upon the evidence in the instant case,

(1) there was no claim to any interest by the respondent in or over the appellant's land legally, equitably or otherwise;

(2) at no time and nowhere in the evidence has the appellant acknowledged or acquiesced in any right or ownership by the respondent in the crops that were severed;

(3) the respondent being a trespasser on the land at all material times, had no right of action against the appellant for the re-entry on his own land or for the removal of whatever was growing thereon; and

(4) there was no conversion in law by the appellant of any goods belonging to the respondent.

See Kilbourne v. The Caymanas Estates Law (1961-2) 4 W.I.R. 461.

In the course of his arguments, learned counsel for the respondent submitted that where the respondent was induced to expend monies on land, the law of equity would extend protection over a tenant at will or a licensee. He cited the case of Innswood et al v Baker (1965) 1 A.E.R. 446, in support. In any event he added the respondent was entitled to damages at common law because he was entitled to emblements and was wrongly deprived of same. First of all, there is no evidence in the instant case that the respondent was induced by the appellant to expend money in planting new things on the land or was ever assured of the fruits thereof. And secondly, the law of emblements has no application to trespassers.

For the reasons given we allowed the appeal, set aside the judgment of the learned resident magistrate and entered judgment in favour of the appellant with costs in the court of trial and the sum of $30.00 in the appeal.

McEdwin.
J.A. Luckhoo
R.O. Hercules.
J.A.(Ag.)