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which costs may be ordered have been embraced. Seen in this way, section 13 does no more than section 28 which gives a discretion to award costs. A

I must confess that during the arguments at the Bar, I had formed the view that Section 13 could very well have been included to remove the court's discretion. Parliament is deemed to know that costs follow the event. When the Act is read as a whole, however, it is perfectly plain that the discretion to award costs had not been removed. In my view any attempt to remove the discretion in the courts, whether to award costs or punishment should require words of the clearest import. The court should be slow to hold that any Act had removed a discretion from a superior court except compelled to do so by clear and unambiguous language. B

BEVERLEY McQUICK v. L. & V. REALTIES LIMITED

[COURT OF APPEAL (Kerr, P. (Ag.), Carey, J.A. Campbell, J.A. (Ag.) April 23, 1982)]

Landlord and Tenant—Notice to quit—Validity of Notice—Reason, sale of premises—Notice did not comply with statutory requirements—Rent Restriction Act, s. 25. C

The appellant was a tenant of controlled premises managed by the respondent. The appellant was given a notice to quit, the reason stated therein was that the premises were up for sale. The respondent then filed a plaint in the Resident Magistrate's Court seeking an order against the appellant for possession of the premises. The judge granted the order for possession of the ground that s. 25 of the Rent Restriction Act was not exhaustive. On appeal, the appellant contends that the notice did not comply with the Rent Restriction Act and was therefore invalid. D

Held: the respondent by their notice did not bring themselves within the circumstances laid out by s. 25 of the Rent Restriction Act, which is exhaustive, and therefore an order of possession could not be made merely on the basis that the premises were up for sale. E

Appeal allowed.

No case referred to.

Appeal from an Order granting possession by the Resident Magistrates' Court for St. Andrew. F

Howard A. Fraser for the appellant.

No Appearance for the respondent. G

CAMPBELL, J.A. (AG.): The appellant, Beverley McQuick, appeals to this Court from the decision of the learned Resident Magistrate in the Half-Way-Tree Resident Magistrate's Court in which he gave judgement for the respondent, L. & V. Realities Limited and made an order for the appellant to vacate premises not later than the 31st December, 1981. I

The background to this order is that L. & V. Realities Limited, who appears to be a real estate agent, filed a plaint in the Resident Magistrate's Court in which it described itself merely as the plaintiff, and sought an order against the appellant, Beverley McQuick, for possession of premises No. 14 Champlin Avenue in the parish of St. Andrew.

When the case came up before the learned Resident Magistrate, learned counsel on behalf of the appellant intimated as his defence, in limine, that he was taking exception to the validity of the Notice to Quit on the ground that it was a notice which was not in

A compliance with the Rent Restriction Act. Evidence was led on behalf of the respondent, the gist of which is that the appellant was a tenant of the respondent's company in respect of premises 14 Champlin Avenue in the parish of St. Andrew that the appellant had been given Notice to Quit and had not complied with the notice. A copy of the Notice to Quit was admitted in evidence as exhibit 1, and it is dated the 3rd day of June, 1981, requiring the appellant to vacate the premises on the 31st of July, 1981. At the top of the notice is the caption "Reason for Notice—House is for sale." B

The evidence before the learned Resident Magistrate further revealed that there was an agreement for sale of the property; that the vendor was one Miss Joyce Richardson, and that the agreement for sale was concluded in August, 1981. The respondent conceded that he was acting as agent for the vendor, and also that at the time the notice was served the property had not yet been sold. It appears the property had thereafter been sold before the action came on for trial. C

At the close of the case for the respondent the appellant's counsel intimated that the appellant would not be giving evidence. He made submission to the learned Resident Magistrate to the effect that notwithstanding that a Notice to Quit had been served, and even though there was no challenge to the validity of the notice in relation to the time given within which the property should be vacated, the appellant was challenging the Notice to Quit on the more substantial ground that it was not based on any of the known circumstances under Section 25, of the Rent Restriction Act on which the Resident Magistrate was empowered to make an order for possession. He rested his submission on this ground. D

The learned Resident Magistrate in his reasons for judgement made it clear that he agreed that under Section 25, an order for possession could not be made where the reason given is that the house is up for sale. He went on to say that if he had to decide the matter on this narrow premise namely the provision of Section 25 he would be bound to give judgement for the appellant. However, he went on to deliver himself to the effect that the wording of Section 25, was not to be considered exhaustive. It did not exclude a jurisdiction to make an order for possession in the circumstances before him since it must have been an oversight on the part of the legislature in not making specific statutory provision to cover the case in point. He propounded reasons based on a philosophy that the state never intends in general to deprive an owner of property from exercising his undoubted right of selling the property as one of the incidents of ownership. E

He went on to say that where fetters are apparently imposed by the legislature on the right of an owner to deal with his property as he considers fit, if such fetters are shown to be too onerous then for reasons which he mentioned, it must be assumed that it was never so intended by the legislature. F

Pausing here we must state that the true legal principle is that if the legislature by clear words imposes fetters however onerous on the disposition of property by individuals it must be construed as a matter of policy originated by the Executive and given expression to by the legislature. It is not part of a Court's function to say that the fetters are onerous and because they are onerous there resides in it an inherent power not to give effect to the clear legislative intent. G

Dealing with the Rent Restriction Act, it is very clear, and the learned Resident Magistrate did not seem to doubt that it imposed constraints or fetters on the right of a person at common law to deal with property which he owns. He did not appear to doubt the fact that the primary intention behind the legislation was the protection of tenants by giving to them security of tenure, particularly in situations where the Government itself cannot fulfil the social needs of providing houses for all its residents. H

Now Section 25 of the Rent Restriction Act, in summary, provides that notwithstanding that an otherwise valid Notice to Quit has been served on a tenant, which has expired, that

tenant cannot be required to vacate the premises which he occupies except by an order of the appropriate Court. In making an order, there is a general overriding principle which must be observed by the tribunal, namely that the order must in all the circumstances be just and reasonable. However even before the tribunal can consider whether the making of the order would be just and reasonable, it has to consider whether the order is being sought in one of the circumstances which have been specifically prescribed by the legislature as circumstances which would entitle it to make the order. One of those circumstances is where the landlord requires the premises for his own occupation or for occupation by members of his family or close relatives. If that circumstance is established by evidence, then the learned Resident Magistrate would thereafter be required to have regard to the circumstances of both the tenant and the landlord who requires the premises for his own occupation, thereby to determine where the balance of justice and reasonableness resides. If he considered that the balance is in favour of the tenant he makes no order. If he feels it would be just and reasonable for the landlord to have his property he makes an order on the tenant to vacate the premises.

Before the learned Resident Magistrate in this case was a plaintiff who described himself as agent for the vendor. By the definition of "landlord", such an agent is also a landlord, but what had to be considered here was whether the landlord be it L. & V. Realities Limited, or Miss Joyce Richardson, required the premises for occupation. It is clear on the evidence that such was not the case. Therefore, even though the plaintiff was brought by a landlord it was not a case which fell within any of the paragraphs of Section 25 under which an order for possession could have been made.

In looking through the record we anxiously considered whether the order for possession could be supported on some basis other than that propounded by the learned Resident Magistrate. We accordingly considered whether L. & V. Realities Limited in effect was bringing the action on behalf of the purchaser. The Notice to Quit was served, on the 3rd of June, 1981, the evidence which was before the learned Resident Magistrate, was that the contract of sale was executed in August, 1981, therefore at the time when the Notice to Quit was served it could only have been served on behalf of the prospective vendor because at that time there was no purchaser who could be considered as landlord. Had the agent, on the evidence, been able to establish that the notice had been served on behalf of the purchaser albeit at the time only a beneficial owner, the position would have been different because such a purchaser, even though he is not at the time vested with the legal estate, could properly on his own behalf or through an agent, bring an action for recovery of possession because he is, in our view, comprehended in the definition of "landlord" as he is a person who but for the provision of the Act would be entitled to possession on execution by him of the contract of sale. In this case, however, it is clear that the plaintiff was not brought on behalf of any such beneficial owner as a purchaser.

Reverting to the facts of the case, it is clear that however favourably one regards the position of the purchaser who desires to have the house for his occupation there is no action brought by him for recovery of possession. The only person who has brought the action is a person who is not entitled to have an order for possession at the time when the plaintiff was filed or at anytime thereafter for the simple and obvious reason that nowhere was the landlord contending that he desired the premises for his own occupation, and he is not entitled to an order merely on the basis that he wants vacant possession for the purpose of being able to sell the premises to some prospective purchaser. This being the case it is our view that the learned Resident Magistrate failed to consider the issue before him and proceeded on a dissertation on the philosophy of the Rent Restriction Act and of the legislative intent behind it which was totally irrelevant to the situation, which dissertation, we venture to say, certainly does not, in our view, reflect the national interest. On the

contrary we consider the legislature has clearly given expression to what in its view will better promote the national interest.

What the Court is required to do is to consider whether a person who seeks an order for possession has brought himself within the parameters set by Section 25. The respondent not having brought himself within the context of Section 25 the only order which appropriately could have been made by the learned Resident Magistrate was an order refusing possession, that is to say dismissing the respondent's claim.

We accordingly are of the view that this appeal must succeed.

KERR, P.: In the circumstances appeal allowed, judgement of the Court below set aside and judgement entered for the defendant with costs, such costs to be taxed. Costs of this appeal, \$50, to the appellant.

JOHN TREVOR SCARLETT AND CILMA SCARLETT v. VENORA THOMAS

[COURT OF APPEAL (Kerr, P. (Ag.), Carey, J.A. and Wright, J.A. (Ag.)) May 4, 1982]

Sale of land—Vendor and purchaser—Contract—Time of the essence—Summons—Civil procedure—Specific performance—Jurisdiction of Court—Registration of Titles Act, s. 67—Vendors and Purchasers Act, s. 7.

This was an appeal against the orders made by the Judge in the Supreme Court in respect of certain summonses heard together by him. The first dated July 22, 1981, was by the respondent seeking to have certain premises transferred to her in pursuance of a contract of sale dated November 22, 1977. The second summons dated September 24, 1981 by the respondent sought a declaration that the contract of November 22, 1977 had been lawfully rescinded as of September 14, 1981. The third summons dated September 25, 1981 by the appellant sought to have the respondent's summons struck out for being frivolous and vexatious and an abuse of the process of the court. It was argued in the court below on behalf of the appellant that the respondent should have sought specific performance of the contract by issuing an appropriate writ and that the jurisdiction of the court under the Vendors and Purchasers Act was limited and that the orders sought on the summons were outside the competence of the court. On January 25, 1980 the respondent had obtained a declaration that the contract of sale was valid and enforceable but the appellant had failed to effect a valid transfer and so the trial judge held that the respondent was competent to bring the summonses and that the contract had not been rescinded. He further ordered that the appellants transfer the land to the respondent. It was contended by the appellants on appeal that the orders made were in the nature of specific performance and were outside the jurisdiction granted by the Act.

Held: (i) since a competent court had held the contract to be in existence, valid and enforceable, the matters raised before the trial judge had properly been dealt with in the vendor and purchaser summonses.