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to which unfortunately I cannot at the moment refer, in which the court laid it down quite clearly that it is counsel's duty when retained to represent an accused in court, to be in court when the case is called up, and if he cannot be there, to take steps to see that someone else represents his client.

Learned counsel for the appellant cited the case of *Allette* v. *Chief of Police* (1), in which it was held that an accused person has the right to be represented by counsel at his trial and to have his witnesses give evidence, and that to deny him the opportunity of retaining and instructing counsel or securing the attendance of any witness in the usual manner to be called on his behalf is a clear denial of natural justice.

The facts of that case were quite different to the facts in the instant case. In that case the appellant was arrested at 12.45 p.m. on August 3, 1965. He was released on bail at about 4.30 p.m. that same day and he appeared before the magistrate the following morning—August 4—when he requested an adjournment to secure counsel and to summon his witnesses. This request was refused by the magistrate and the case proceeded. The appellant refused to cross-examine the prosecution witnesses and did not give any evidence or call any witnesses. Quite clearly in that case there was a denial of justice to the appellant and the Court of Appeal quite rightly ordered a new trial.

In the instant case the appellant had retained counsel from some time before and it was entirely the fault of counsel why the appellant was not represented when the case was tried on July 9. As far as the resident magistrate is concerned, the court cannot say that she acted in any manner which could be said to have denied the appellant his rights to natural justice. As I have said before, there was an overwhelming case against the appellant. He cross-examined the witnesses for the Crown and he also made an unsworn statement which was not accepted by the court.

This court is quite satisfied that there was no miscarriage of justice in this case and in the circumstances the appeal is dismissed.

Appeal dismissed.

STANLEY MEREDITH *v.* ALBERT GRAY

[COURT OF APPEAL (Waddington, Eccleston and Fox, JJ.A.), December 19, 1968]

Landlord and tenant—Landlord seeking to recover arrears of rent after tenant evicted by title paramount—Landlord disentitled to recover.

The respondent, in January 1962, rented five acres of land to the appellant at £7 10*s.* per year and put him in possession. In February 1962 the agent of the true owner of the land stopped the appellant from cultivating the land and advised him that the Commissioner of Lands was the true owner. The appellant thereupon went to the Commissioner and entered into an agreement with him to rent the five acres. In an action by the respondent against the appellant to recover arrears of rent the resident magistrate found, *inter alia*, that when the respondent rented the land to the appellant and put him in possession the respondent had no title thereto and was a mere trespasser. He held, however, that the appellant could not impugn the respondent's title at the time of the demise and, accordingly, entered judgment for the respondent.

On appeal,

Held: that while it would not have been permissible for the appellant, at the time of entering into the agreement with the respondent, to dispute the respondent's title, it was a perfectly valid answer to the respondent's claim for the appellant to establish as he in fact did, a title paramount in the Commissioner of Lands.

Appeal allowed. Judgment entered for the appellant.

A Case referred to:

(1) *Mountnoy* v. *Collier* (1853), 1 E. & B. 630; 22 L.J.Q.B. 124; 20 L.T.O.S. 277; 17 J.P. 132; 17 Jur. 503, 1 W.R. 179.

Appeal from a judgment of the resident magistrate for the parish of Saint Ann in favour of the respondent in an action for arrears of rent.

N. Hill for the appellant.

The respondent not appearing.

WADDINGTON, P. [Ag.]: This is an appeal from the judgment of the learned resident magistrate for the parish of St. Ann on March 17, 1967, whereby he entered judgment for the plaintiff for £36 5*s.* and costs £4 10*s.* 6*d.*, in a claim by the plaintiff against the defendant for rent due for five acres of land at Coley in the parish of St. Ann from sometime in 1962.

The facts of the case were not in dispute, as the magistrate said in his reasons for judgment. He said that it was undisputed that in January 1962, the plaintiff rented five acres to the defendant at a rental of £7 10*s.* per year, and put the defendant in possession; that the defendant then paid the plaintiff £1 5*s.* rent in advance; that in February 1962, the headman on Kellits told the defendant that the five acres belonged to the Government and he stopped the defendant temporarily from cultivating thereon; that the defendant went to the Lands Department in Kingston and there made arrangements to rent the five acres from the Government—the Commissioner of Lands; that the plaintiff repeatedly asked the defendant for rent; that on each occasion when asked by the plaintiff for rent, the defendant replied that he had been told by the Government not to pay rent to the plaintiff because the land belonged to the Government; that apart from the £1 5*s.* advance, the defendant had not paid the plaintiff any rent, and the defendant was still in occupation of the five acres.

The learned resident magistrate went on to say that he found as a fact that in January 1962 the plaintiff rented the five acres to the defendant at a rental of £7 10*s.* per year, and put the defendant in possession; that prior to and up to the time when the plaintiff put the defendant into possession, the plaintiff himself had been in occupation of the five acres, and that the defendant was still in occupation of the five acres at the time when this suit was brought and, indeed, at the time of the trial.

In para. 8 of his reasons the magistrate said:

> "It is perfectly clear and I so found as a matter of law, that in January 1962, when the plaintiff rented the five acres to the defendant and put him in possession, the plaintiff had no title whatsoever to the five acres and was a mere trespasser. It is perfectly clear, and I so found as a matter of law, that the owner of the five acres was then the Commissioner of Lands who had a registered title thereto."

The magistrate then stated that in his view a tenant cannot impugn his landlord's title at the time of the demise and he quoted from a passage in WOODFALL'S LAW OF LANDLORD AND TENANT (24th Edn.), p. 15:

> "It is one of the first principles of the law of estoppel as applied to the relations between landlord and tenant, that a tenant is estopped from disputing the title of his landlord. Thus a lessee cannot dispute his lessor's title by setting up an adverse title while retaining possession."

And he also quoted from p. 483 of the same treatise in the following words:

> "With regard to any defence which the tenant may set up, it must be borne in mind that he cannot deny that his landlord had a good title at the time of the demise, but he may show that his landlord's title has ceased since the demise."

The evidence was that after the defendant had been put into possession by the plaintiff, shortly after, a headman employed to the Commissioner of Lands had gone to him and told him that he should cease to cultivate the land because it belonged to the Commis-

sioner of Lands, and thereafter the defendant made new arrangements with the Commissioner of Lands for the rental of this parcel of land.

Learned counsel on behalf of the appellant has urged several grounds of appeal. The gravamen of the grounds are that the magistrate had erred when he found that the defendant could not set up the title of the Commissioner of Lands and in effect plead eviction by title paramount.

It is quite clear on the evidence that there was an eviction by the Commissioner of Lands who was the rightful owner of this parcel of land, and in the circumstances the tenancy between the plaintiff and the defendant ceased as of that moment.

Mr. Hill referred the court to the passage appearing at p. 364, para. 875 in WOODFALL (*op. cit.*) headed "Eviction by Title Paarmount", and that passage is as follows:

> "Eviction by title paramount is a defence to an action by the lessor for subsequent rent. Eviction by title paramount means eviction by a title superior to the titles of both lessor and lessee, against which neither is enabled to make a defence."

He also referred the court to the passage in FOA'S GENERAL LAW OF LANDLORD AND TENANT (7th Edn.) p. 157, paras. 254 to 255, wherein it is also clear that this defence of eviction by title paramount is a good defence to a defendant in the position of the defendant in this case. He submitted that it was not necessary after the eviction for the tenant actually to go out of possession if, in fact, he entered into a new arrangement with the rightful owner, and in support of this submission he cited the case of *Mountnoy* v. *Collier* (1).

The court is quite satisfied that whilst it would not be permissible for the defendant at the time of entering into the agreement to rent the land from the plaintiff to dispute the title of the plaintiff, nevertheless at the time when he was evicted by the Commissioner of Lands, it would be a perfectly good defence to the plaintiff's action for rent thereafter for him to plead title paramount in the Commissioner of Lands.

It is our view that the learned resident magistrate erred when he rejected the argument of the Deputy Crown Solicitor to this effect when he appeared in the court below, and it is our view that the judgment cannot be sustained. In the circumstances the appeal will be allowed and the judgment in the court below set aside and judgment entered instead for the defendant with costs.

The appellant will have the costs of the appeal fixed in the sum of £15.

ECCLESTON, J.A.: I agree.

FOX, J.A.: I agree.

Appeal allowed.

ALFRED TAPPER *v.* LEONARD MYRIE

[COURT OF APPEAL (Waddington, P.(Ag.), Eccleston and Fox, JJ.A.), December 19 1968]

Landlord and tenant—Implied covenant for quiet enjoyment—Landlord disconnecting supply of electricity to the demised premises—Tenant paying separately for electricity—Whether disconnection of electricity supply a breach of covenant.

The respondent had been a tenant of certain premises for six years for the last two of which the appellant was his landlord. He paid £2 15*s.* per month by way of rent and, in addition, the sum of 5*s.* monthly for electricity. The appellant disconnected the supply of electricity to the demised premises because, as he said, he wanted to get the respondent out. The resident magistrate found that this act by the appellant was a breach of the

appellant's covenant for quiet enjoyment since it had caused physical interference with the demised premises. On appeal it was contended that the agreement between the respondent and the appellant as to the supply of electricity was a separate agreement from that which created the relationship of landlord and tenant and that a breach of the former could not be said to be a breach of the covenant of quiet enjoyment.

Held: that the agreement as to the supply of electricity was part and parcel of the tenancy agreement and the covenant for quiet enjoyment was implied by reason of the relationship of landlord and tenant; the resident magistrate was, therefore, right in holding that the appellant's act in disconnecting the electricity supply to which the respondent was entitled was in breach of the covenant.

Appeal dismissed.

Cases referred to:

(1) *Perera* v. *Vandiyar*, [1953] 1 All E.R. 1109; [1953] 1 W.L.R. 672.
(2) *Angell* v. *Duke* (1875), L.R. 10 Q.B. 174; 44 L.J.Q.B. 78; 32 L.T. 25; 23 W.R. 307.
(3) *Baynes* v. *Lloyd*, [1895] 1 Q.B. 820; affirmed, [1895] 2 Q.B. 610; 64 L.J.Q.B. 787; 73 L.T. 250; 59 J.P. 710; 44 W.R. 328; 11 T.L.R. 560; 14 R. 678.
(4) *Budd-Scott* v. *Daniell*, [1902] 2 K.B. 351; 71 L.J.K.B. 706; 87 L.T. 392; 51 W.R. 134; 18 T.L.R. 675; 46 Sol. Jo. 617, D.C.
(5) *Markham* v. *Paget*, [1908] 1 Ch. 697; 77 L.J. Ch. 451; 98 L.T. 605; 24 T.L.R. 426.
(6) *Browne* v. *Flower*, [1911] 1 Ch. 219; 80 L.J. Ch. 181; 103 L.T. 557; 55 Sol. Jo. 108.

Appeal from a judgment of a resident magistrate for the parish of Saint Andrew in an action for damages for breach of a covenant for quiet enjoyment.

H. G. Edwards, Q.C., for the appellant.
H. Hamilton and *W. K. Chin See* for the respondent.

WADDINGTON, P. [Ag.]: This is an appeal from the judgment of the learned resident magistrate for the parish of St. Andrew whereby he entered judgment for the plaintiff on June 22, 1966, for the sum of £25 with costs on a claim by the plaintiff against the defendant to recover £50 damages for trespass, alleging that on August 14, 1965, the defendant by himself or his servant and/or agent entered a room rented by the plaintiff from the defendant situate at 9 Nathan Street in the parish of St. Andrew, and disconnected the electric current to the said room as a result whereof the plaintiff suffered great inconvenience and sustained loss.

In the alternative, the plaintiff claimed against the defendant to recover the sum of £50 as damages for breach of the covenant for quiet enjoyment of the same room.

The case for the plaintiff was that he rented this room at 9 Nathan Street from the defendant. He said that he actually occupied that room for some six years previously and then the defendant took over the premises and took him on as tenant, and that the rent agreed on was £2 10*s.* in addition to 5*s.* a month to be paid for electric lights. The plaintiff said that in August 1965 the defendant demanded 5*s.* more on the rent and he refused to pay it. As a result, he recieved a notice to quit the premises in August 1965. He did not leave, and one night in August when he returned home he found there was no light in his room. He spoke to the defendant about it and the defendant told him that he had cut off his light because he wanted him to come out and he would not.

The case for the defence was substantially the same as the plaintiff's case, except that the defendant said that the rent was £2 15*s.* per month and that there was arrangement for the plaintiff to pay him an additional 5*s.* a month for the lights. He said that the plaintiff made only one payment of the 5*s.* and as a result of that he served him a notice to quit. The plaintiff did not quit the premises, and he admitted that on August 14, 1965, he disconnected the wires supplying electric current to the plaintiff's room.

The learned trial judge found that the plaintiff had been a tenant of 9 Nathan Street for some six years, the defendant being his landlord for about two years; that the rent was £2 15*s.* plus 5*s.* a month for electric lights; that sometime in August 1965 the defendant by his servant and/or agent disconnected the electric wires that supplied electric light to plaintiff's room and when the plaintiff had complained to the defendant about