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OF

THE HIGH COURT

AND OF

THE COURT OF APPEAL

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COURT OF APPEAL 1951

NOAD v. PINNOCK

MACGREGOR, J.

what is the meaning of the words in section 12 (1) 'the amount permitted under this Law' by which the standard rent may be increased? Is the increase permitted by the Law, either so soon as the landlord is entitled to the ten per centum increase, or the Resident Magistrate has awarded an increase under section 7 of Law 65 of 1941, or there has been an increase in the rates or taxes, or, does the increase only become a permitted increase when the landlord has given the necessary notice?

Section 13 (1) permits an increase of the rent over the standard rent, only 'subject to the provisions of this Law', which in relation to ss. (a) (b) and (c) can only be a reference to section 14. Section 14 provides that these increases shall not be due or recoverable until after notice served. It appears to us that the object of the provisions in section 14 is to enable the tenant to give up his tenancy should he desire to do so in view of the increased rental. The only words to support the landlord's argument are the words 'is increased' in section 14, which suggest that the rental is increased by the mere addition of the amounts by the landlord. But section 13 (1) provides that the rent 'may' exceed the standard rent, leaving it entirely to the discretion of the landlord whether he seeks to make the tenant pay the increase or not.

In our judgment the rent may exceed the standard rent as provided by section 13 (1) (a) (b) and (c) only when the landlord has given the notices required by section 14 (1) and (2).

If there were any doubt in the matter, it seems to be resolved by section 12 (3) which is as follows:

> "If a landlord knowingly receives any rent which is by this Law made irrecoverable, he shall be guilty of an offence against this Law, and if he is convicted of any such offence the Court in which the conviction is obtained may, without prejudice to any other right which the tenant may have to recover the rent overpaid, order the landlord to repay the same."

From the fact that this sub-section is a part of the same section as sub-section (1), it would appear that 'rent which is by this Law made irrecoverable' in sub-section (3) refers to 'the amount of such excess' in sub-section (1), i.e., the excess over the standard rent by more than the amount permitted under the Law, which immediately brings us back to the same enquiry.

But section 14 makes provision that the increases shall be recoverable only after notice, or in other words, that they are irrecoverable until after notice. Therefore by section 12 (3) upon conviction the Court may order that these amounts be repaid. How can it be successfully argued that, because proceedings were under section 12 (1) he may keep these amounts, the same amounts which on prosecution under section 12 (3) he may be ordered to refund? The words "any other right which the tenant may have to recover the rent overpaid" must relate to the rights conferred by section 12 (1).

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In our judgment the learned Resident Magistrate arrived at a correct decision, and the appeal must be dismissed with costs fixed at £12.

We would like to call attention, once again, to the apparent confusion which exists at the Rent Assessment Board and elsewhere, as to the meaning of 'Standard Rent'. To put it shortly the standard rent is the rental at which the premises were rented on the prescribed date, with exceptions as set out in sections 9 and 11. It is not the rent which the tenant is required to pay after the addition of increases permitted to be added by sections 13 and 14. Throughout the case reference was repeatedly made by the Solicitors and the Resident Magistrate to the rental fixed by the Board £11 15/- as the standard rent. This is not correct. It is the permitted rent, c.f. section 8 of the Law.

We would also call the attention of the Board to the provisions of section 6 (8). We feel sure that all parties would be greatly assisted, if in each case where possible, the Board would in its finding set out the Standard Rent, and each permitted increase showing the date from which each increase is permitted. There would then be no necessity to state the permitted rent. Had the Board in this case decided what were the permitted increases between September 3rd, 1948, and December 3rd, 1949, and fixed the permitted rent for the duration of the plaintiff's tenancy, then this action would not have been necessary.

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2 C.A.J.B. 1079.

ROBINSON v. LEWIS

COURT OF APPEAL 1951

July 20, 27

Landlord and Tenant—Sale of reversion—Notice by landlord to tenant of sale—Breach of Covenant to pay rent—Right of purchaser of reversion to enter under covenant in lease and to recover the rent—Conveyancing Law, Cap. 354, s. 12—Statute of Frauds not pleaded at trial—Cannot be raised in Court of Appeal.

In 1942 one B. leased land to the plaintiff. In 1943 B. agreed to sell the land to the defendant who paid the purchase price except for ten shillings. B. gave notice in writing to the plaintiff directing him to pay rent to the defendant. Soon after, B. fell ill and, shortly before he died, he wrote the plaintiff directing him not to pay any more rent to the defendant. The plaintiff, acting on that latter notice, paid no rent to the defendant, who thereupon entered into possession of the land, acting under a covenant contained in the lease. The plaintiff brought an action for trespass but the trial was postponed with a view to settlement of the dispute, and he was allowed to remain in possession of the land. The Administrator General was granted Letters of Administration to the estate of B., and in 1948 conveyed the land to the defendant. The defendant thereupon filed a counterclaim for the rent due by the plaintiff from 1943 until the end of the lease.

HELD: (i) The defendant being entitled to the reversionary estate in the land, was entitled by virtue of section 12 of the Conveyancing Law, Cap. 354, to enforce the covenants contained in the lease and to receive the rent due.

Turner v. Walsh [1909] 2 K.B. 484, followed.

(ii) The Statute of Frauds not having been pleaded, could not be relied on in the Court of Appeal.

APPEAL from the decision of Graham, Resident Magistrate, Saint Catherine.

Appeal allowed.

Manley, K.C., for the appellant.

Blake for the respondent.

1951. July 27: The Reasons for Judgment of the Court (Carberry, Acting C.J. and MacGregor and Rennie, JJ.) were read by Rennie, J.

RENNIE, J.

RENNIE, J.: This is an appeal by the defendant from the decision of the Resident Magistrate for St. Catherine in an action in which the plaintiff claimed damages for trespass, and the defendant counterclaimed for rent, or, alternatively, for use and occupation.

In 1942 one Brown leased about 1½ acres of land to the plaintiff for a period of five years. The lease contained the usual covenant for re-entry on non-payment of rent. In 1943 Brown agreed to sell the land to the defendant, who paid all but ten shillings of the purchase price. Brown gave notice in writing to the plaintiff directing him to pay rent in the future to the defendant. Brown, soon after, fell ill and, while in the Linstead Hospital, sent a letter to the plaintiff directing him not to pay any more rent to the defendant. The defendant did not then know of this letter to the plaintiff. Soon after, Brown died. The plaintiff did not pay the rent to the defendant who thereupon entered, purporting to act under the covenant in the lease. The plaintiff thereupon brought his action for trespass and, upon the action coming before the Court, it was adjourned from time to time with a view to settlement, and the plaintiff was allowed to remain in possession of the land. The Administrator General applied for and was granted Letters of Administration to Brown's estate, and in 1948 he conveyed the land to the defendant. The defendant then filed his counterclaim for the rent due from the plaintiff from 1943 until the end of the term, forty-two pounds.

In his Reasons for Judgment the learned Resident Magistrate stated—

> "Before the defendant could have the benefit of any equitable rights he might have been entitled to, they would have to be vested in him by Deed and (in so far as receipt of rent is concerned) notice of such assignment would have had to be served on the plaintiff and so entry on the land was clearly a Trespass and defendant was not entitled to be paid rent (as Assignee) until he served notice of assignment on plaintiff (in this case of execution of Conveyance) and so he is not only liable for Trespass but not entitled to be paid rent."

It appears that at the trial all parties overlooked the provisions of section 12 of the Conveyancing Law, Cap. 354. We quote the relevant portions of the section—

> "Rent reserved by a lease, and the benefit of every covenant or provision therein contained . . . and every condition of re-entry . . . shall go with the reversionary estate in the land . . . and shall be capable of being recovered . . . enforced . . . by the person from time to time entitled . . . to the income . . . of the land leased."

The wording of this section is very clear, and the application of it is well illustrated in *Turner v. Walsh* [1909] 2 K.B. 484. At pages 493 and 494, Farwell L.J., in delivering the judgment of the Court of Appeal said—

> "The section provides, in our opinion, for two distinct matters quite independent one of the other; it first annexes rent and the benefit of covenants to the reversion, notwithstanding the severance of such reversion, and it then makes rent recoverable and covenants enforceable "by the person from time to time entitled, subject to the term, to the income of the whole or any part" of the demised land."

Who then in 1943 on the date when the defendant entered the land, was entitled to the income? In the words of Farwell L.J. 'the question then becomes simply one of fact'. The plaintiff stated "I received letter from Uriah Brown telling me to pay rent under Exhibit 1 (the lease) to defendant" and, "Letter said I to pay rent to defendant . . . I expected letter as defendant had spoken to me and I advised him I would require a written order to pay rent to him." There can be no doubt that Brown sold the land to the defendant, and that the latter was entitled to receive the rental. He therefore was entitled to the rights conferred by section 12 of the Conveyancing Law. Had this section been brought to the attention of the learned Resident Magistrate, there is no doubt he would have arrived at a different conclusion.

For the respondent it was submitted that the notice to pay rent to the defendant was revocable and was in fact revoked by the notice sent by Brown when he was in hospital. It was contended that the notice was not irrevocable because of the absence of valuable consideration and that the agreement for sale cannot provide consideration since it is incapable of proof. No evidence was given that it was reduced into writing as is required by the Statute of Frauds. It was also put forward that failure to prove the agreement left nothing to which section 12 of the Conveyancing Law could apply.

But these arguments overlook two matters. The Statute of Frauds was mentioned for the first time in this Court. It was not pleaded at the trial. The plaintiff must therefore be deemed to have waived any right to which he was entitled under it, and cannot now rely on it. And there is now in existence, and was at the time of the trial, a Con-

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veyance dated 17th September, 1948, signed by the Administrator General as personal representative of the deceased Brown, conveying the land to the defendant, containing recitals which set out in writing the terms of the agreement. This document is in evidence.

We are of opinion that the defendant was entitled to the benefits of the lease between Brown and the plaintiff, and was therefore entitled to enter under the term of re-entry contained therein. He was also entitled to the rent payable by the plaintiff after the date of the sale.

For these reasons we allowed the appeal and ordered judgment to be entered for the defendant on the claim, and for the defendant on the counter-claim for forty-two pounds, with costs.

We have been told that the plaintiff has paid rent to the Administrator General, and appellant's counsel has given an undertaking to the effect that the sum of Forty-two Pounds will be reduced by any sum which his client receives from the Administrator General in this connection.

ORAL JUDGMENT

COURT OF APPEAL 1951

July 25, 26

R. v. SAMUEL GRAHAM AND HERMAN MANDRO

Criminal Law—Murder—Common purpose to steal—Common purpose to use force while stealing—Insufficiency of evidence to justify verdict of jury.

The deceased, J., was alone at his home on the morning of March 14, 1951. That evening his body was found near his latrine, tied and attached to a tree by a rope. It had numerous injuries, some of which could have been caused by stones, others by being dragged over rocky ground similar to that where the body was found. There was also a linear fracture of the skull consistent with being inflicted by a stick. This injury caused haemorrhage and resulted in death. The circumstances under which the body was found indicated that J. was attacked with stones at about 8 to 9 a.m. while he was sitting on the seat of his latrine with his trousers and underpants let down. The home of the deceased was found to have been ransacked and goods stolen. At about 9.45 a.m., the two appellants were seen going from the direction of the home of the deceased, and about two chains from the gate, each carrying a sack, each of which was later found to contain goods stolen from the home of the deceased. M. confessed that they had come from the home of the deceased and said that he had put him (deceased) to sleep. Later the appellant G. left some of the stolen goods with one M.A.

HELD: The jury was justified in inferring a common purpose to steal, from all the facts of the case, but notwithstanding that it was a reasonable inference that the deceased was killed at the same time that the theft was taking place, there was no evidence of a common purpose to offer violence when stealing. The conviction of the appellant G. must therefore be quashed. But as the appellant M. had said 'I put him to sleep', and, as human blood was found on his clothes, for which he offered no reasonable explanation, there was evidence to support the verdict of the jury in his case, and his appeal must be dismissed.

APPEAL from convictions recorded in the Saint Ann Circuit Court.

Appeal of Graham allowed, and conviction quashed.
Appeal of Mandro dismissed.

Edwards for the appellant Graham.

Perkins for the appellant Mandro.

Swaby for the Crown.

1951. July 26: The judgment of the Court (Carberry, Ag. C.J., Rennie, J. and Semper, Ag. J.) was delivered by the Acting Chief Justice.

CARBERRY, AG. C.J.: Both appellants were convicted on the 5th of June, 1951, in the Circuit Court at St. Ann of the murder of Nathan Jackson by a jury before MacGregor, J. The facts of the case for the prosecution showed that Nathan Jackson lived on his property at Rosemount with his wife, May Jackson, and a school boy named Joseph Higgins. They employed no domestic servant. On Wednesday, the 14th of March, 1951, Mrs. Jackson and Higgins left their home at about 4.30 a.m. Mrs. Jackson was going to the Brown's Town market. It was a regular practice of hers to go to that market on Wednesdays. The lad, Higgins, accompanied her part of the way, as far as the district of "Quarrel". Higgins then returned home, attended to some chores, had breakfast and left for school, he having been given by Nathan Jackson, a penny, with which to buy his lunch, and sixpence, with which to purchase a pound of sugar. Higgins failed to get the sugar from the village grocery, but he collected Mr. Jackson's newspaper, the Gleaner, from the Post Office at Discovery Bay and he placed the money for the sugar in a paper bag which he folded in the Gleaner, and as it was getting late for school, he gave the Gleaner enclosing the sixpence to Rebecca Beacon and asked her to deliver it to Mr. Jackson. Rebecca Beacon was unable to go herself to Mr. Jackson's so she sent Mavis Hall, aged about 4, with these things to Mr. Jackson. She went off in that direction and returned at about 9.30 a.m. Mavis Hall was not called to give evidence, obviously because of her youth and her consequent inability to understand the meaning of an oath. CARBERRY, AG. C.J.

Higgins returned from school about 5.30 p.m. He observed that the house was disarranged and he did not see Mr. Jackson. He awaited Mrs. Jackson's return and made a report to her. She found her house ransacked and she missed a pair of scissors, dress materials, khaki, knives, forks, spoons, clothes, towels, buttons, a watch, some money and a large quantity of leaf tobacco, but in the house she found the Gleaner with the 6d. in a paper bag enclosed in it, indicating that Mr. Jackson had not opened it. The door of the latrine was open with paper spread out on the seat, as Mrs. Jackson said, in the manner which Mr. Jackson usually adopted when he used the latrine. There