CA 1/ LEASE — Order for recovery of possession by Resident Magistrate Premises expressly excluded from Rent Restriction Act - application of Common law principle — finding that lease expired by effluxion of time — finding that there would be hardship suffered by defendant — commercial premises — while recognising plaintiffs entitlement to recover possession, possession limited to take effect twelve months from order — whether discretion of R.M. improperly exercised in allowing twelve months and not some shorter period — no basis for interfering with discretion of R.M.

(Appeal dismissed)

JAMAICA

IN THE COURT OF APPEAL

R.M. CIVIL APPEAL NO: 22/87

BEFORE: The Hon. Mr. Justice Carey, J.A.
The Hon. Mr. Justice Campbell, J.A.
The Hon. Mr. Justice Wright, J.A.

No case referred to

LANDLORD AND TENANT

BETWEEN BARRINGTON SCOTT PLAINTIFF/APPELLANT

AND LERNER SHOP LTD DEFENDANT/RESPONDENT

Pamela Benka-Coker for Plaintiff

W. Kirlew, Q.C., for Defendant

6th June, 1988

CAMPBELL, J.A.

The plaintiff was the lessor of premises No. 2 Barracks Road, Montego Bay, St. James. The defendant had obtained its lease from one Mr. Marzouca who subsequently conveyed the premises to the plaintiff Mr. Barrington Scott. The defendant continued thereafter having attorned tenant to Mr. Scott. The lease was for five years, it contained an option which appeared to have been open ended as to the right of the lessee to exercise the option for a further term of five years. The said option was peculiarly worded because it was not an option exercisable to continue the lease at the same rent, but rather an option for a further term of five years at a new rental to be arranged. Be that as it may, the evidence led before the learned Resident Magistrate did not show that the defendant had done anything which could be treated as an exercise of the option. The premises had been expressly excluded from the Rent Restriction Act, accordingly the question of the sufficiency of the notice and questions on the other matters which the learned Resident

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Magistrate would have had to consider if she were dealing with premises under the Rent Restriction Act were not applicable. It was the common law principle which applied. She found that a Notice to Quit would not really be necessary because the lease would expire by the mere effluxion of time and did infact expire on the 1st of February, 1987. She therefore found that the plaintiff was entitled to recovery of possession. However, bearing in mind that, had the premises been subject to the Rent Restriction Act a twelve months notice would have been required to be given because the premises were commercial premises, and also bearing in mind that the plaintiff had not adduced any evidence indicative of hardship on his part but had apparently required possession solely for the purpose of re-letting at a higher rent, which we are not here saying was immoral, whereas the defendant was experiencing apparent difficulty in obtaining other suitable commercial premises, the learned Resident Magistrate though not mandated so to do found as a fact that there would be hardship suffered by the defendant. The business would have to be closed down, the workers would be, using her words 'dislocated'.

The learned Resident Magistrate having considered these facts and while recognizing the entitlement of the plaintiff to recover possession, limited such possession to take effect roughly twelve months from the date of her order. Against that part of the learned Resident Magistarte's decision the plaintiff appeals. Before us Mr. Kirlew indicated that in his view there was a matter of principle which ought to be decided as a guide to Resident Magistrates in future actions. He however was not able to indicate what this principle was or how fundamental it was having properly conceded that even in matters of common law, the learned Resident Magistrate would be entitled to allow a period of time to elapse before the order of the Court for Recovery of Possession was effected. It therefore was a question whether there was any improper exercise of her discretion by the learned Resident Magistrate in allowing twelve months

and not some shorter period. We have not been able to find any basis on which it could be said that the learned Resident Magistrate wrongly or improperly exercised her discretion. The period granted will expire at the end of this month which is just about three weeks away. We are not here saying that if there was any fundamental principle which demanded immediate consideration by us, we would not have considered it strictly as a matter of legal principle, but, as we have said, no such principle fundamental or otherwise emerge in this case. Accordingly, we find no merit in this appeal which is accordingly dismissed.