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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

that, the defendant said this to plaintiff: "I cut off your light because I want you to come out and you won't come out." The learned resident magistrate found that that was clearly a breach of the plaintiff's implied covenant for quiet enjoyment. He said that he accepted the evidence of the plaintiff and his witness and rejected the evidence of the defendant wherever it was in conflict, and he accepted the propositions of law which had been made to him that notwithstanding the act complained of was an act done off the premises, if it was an act which caused physical interference with the demised premises, then there was a breach of the covenant of quiet enjoyment. He relied on the case of *Perera* v. *Vandiyar* (1). He concluded that the landlord's act was deliberate and malicious and although it could not be regarded as a trespass, because there was no actual interference with any part of the demised premises, it certainly was a breach of contract.

Learned counsel for the appellant relied on one ground of appeal, namely, that the learned resident magistrate had misdirected himself in law as he failed to appreciate that the parties had entered into two separate contracts, to wit, the contract for the rental of a room, which gave rise to the relationship of landlord and tenant, and a contract for the use of eletrical current. That the parties had severed the two contracts as the respondent remained in possession of the room after the termination of the contract for use of electrical current, and further, that the payments in respect of each contract were separate.

Mr. Edwards submitted that the evidence showed that there were two separate contracts, one for rental of the room and the other for the supply of electric current; and he submitted that the two contracts had always been treated as separate and apart by the landlord and the tenant. He submitted that there had been no interference with the contract of tenancy and therefore there could be no liability either in trespass or in contract for breach of the covenant of quiet enjoyment. He admitted that there had been a breach by the landlord of the contract to supply electricity, but he submitted that as there was no claim for breach of this contract and no proof of any damages, no judgment could be given for the breach of that contract.

Mr. Edwards relied on the case of *Angell* v. *Duke* (2) for the proposition that the contract in respect of the supply of electricity was collateral to the contract of tenancy, and he submitted that the case of *Perera* v. *Vandiyar* (1), to which I have already referred, was not applicable to the instant case. As regards damages, Mr. Edwards submitted there was no proof of any special damage and that the award of £25 was completely unjustified.

Mr. Chin See, on behalf of the respondent, submitted that there was, in fact, only one contract; that the whole circumstances of the case should be looked at and this would seem to suggest that although the rent was £2 15*s*. and 5*s*. as agreed for light, it was really in effect one contract. He submitted that the room and the light went together and that the agreement to pay for the light was part and parcel of the agreement to rent.

In my view there is much force in Mr. Chin See's submissions. It appears to me that the agreement to pay 5*s*. for the lights supplied was not an agreement which could be said to be independent of the agreement to rent the premises. It was entered into at the same time as the agreement to rent the premises was entered into, and in my view it forms part of that agreement and was in no way independent of it. In other words, it was "part and parcel", to use Mr. Chin See's expression, of the same agreement. If the transactions had been embodied in a written agreement there would have been a clause, after reciting the agreement for the rental of the premises and the rent and so on, that in addition to the payment of the rent the tenant agreed to pay a further amount of 5*s*. a month for the supply of electricity. The tenant would thereby become entitled to a supply of electricity as part of his enjoyment of the premises. Normally, such an agreement would contain an express covenant for quiet enjoyment in the usual terms, and if the landlord interfered with the enjoyment by the tenant of the supply of electricity, that would clearly be a breach of the covenant for quiet enjoyment. In the instant case, the covenant for quiet enjoyment was implied by reason of the relationship of landlord and tenant but, nonetheless, it is just as effective as if it had been expressed in a written agreement.

It is my view that the judgment of the learned resident magistrate was correct, based on the authority of *Perera* v. *Vandiyar* (1), and the judgment should not be disturbed.

With regard to the damages, however, I am of the opinion that the amount of £25 was inordinately high. There was no proof of any damage suffered at all and although the award of general damages is at large and in the discretion of the judge, it must nonetheless be awarded in accordance with established principles. Another thing, there was no proof by the plaintiff to show that he did anything at all to mitigate his loss. He claimed that the current was cut off. He could very well have had a supply put in by the electricity undertakers and claim the costs of so doing as part of his special damages.

It is my view that the damages awarded were inordinately high and I would reduce the award to £15. I would dismiss the appeal with costs but would order that the judgment in the court below be amended by substituting the sum of £15 for £25.

ECCLESTON, J.A.: I agree.

FOX, J.A.: I agree that this appeal should be dismissed for the reasons stated by the learned President. Although there has been much conflict of authority on the point, the principle stated by LORD RUSSELL, C.J., in *Baynes* v. *Lloyd* (3) and approved in *Budd-Scott* v. *Daniell* (4) that upon any letting or agreement to let, whether in writing or oral, an undertaking by the lessor for quiet enjoyment is to be implied from the mere relationship of landlord and tenant, has now been accepted as "the common law both upon principle and authority", and as "the only view consistent with common sense", *per* SWINFEN EADY, J., in *Markham* v. *Paget* (5) ([1908] 1 Ch. at p. 716). The benefit of this implied covenant for quiet enjoyment accrued to the plaintiff when he first became a tenant on the premises, and was not affected four years later when the defendant became his landlord. Consequently, the insistence of the defendant that the total amount paid by the plaintiff should be apportioned so as to fix a charge of 5*s*. for electric current could not detract from the original demise, if, as the evidence seems to indicate, the plaintiff had always received electricity. To cut off the current as the defendant did, would be a physical interference with the plaintiff's enjoyment of the premises and therefore a breach of the covenant for quiet enjoyment: *Browne* v. *Flower* (6).

Even if, contrary to the evidence, it is assumed that the plaintiff did not receive electricity prior to the advent of the defendant, it is clear that the parties had bargained on the footing that electric current should come into the premises. This became a benefit which was in no way dissimilar from other benefits incidental upon the rental of the premises. Viewed in this manner, it is idle to enquire whether the arrangement in respect of electricity is regarded as having been embodied in the contract of rental, or independent thereof. To deprive the plaintiff of his supply of electricity would be in breach of the defendant's implied undertaking not to do so, and would render him liable as the learned resident magistrate has found.

I agree that the damages should be reduced to the sum indicated by the learned President.

Appeal dismissed.

R. *v.* ASTON TOBIN

[COURT OF APPEAL (Moody, Luckhoo and Fox, JJ.A.), December 20, 1968]

Criminal Law—Evidence—Admissibility—Res gestae.

The appellant was convicted of murder in the following circumstances. At about 8.30 p.m. on May 19, 1968, the deceased was walking along a road with C.R. when the appellant hurled a stone at one or other of them from a distance of some six feet and