JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO. 24/83

BEFORE: THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE ROSS, J.A.

BETWEEN	SUSAN WILKINS	PLAINTIFF/APPELLANT
A N D	LOLA WHITE	DEFENDANT/RESPONDENT

Mr. Sylvester Morris for the Plaintiff/Appellant.

Mr. Horace Edwards, Q.C. for the Defendant/Respondent.

September 23, 1983; January 20, 1984

KERR, J.A.:

I have had the benefit of reading the draft judgment of Ross, J.A., and I am in agreement with him that the appeal should be allowed and the judgment of the learned Resident Magistrate varied by setting aside the award of $3,000.00 to the defendant/respondent.

However, I propose to deal briefly in my own way with the questions of law raised on appeal. Ross, J.A. in his judgment has carefully summarised the evidence and identified the issues. I shall take advantage of this and refer to only so much of the evidence as may be necessary for easy comprehension of my decision on the question of law.

The plaintiff sought by her statement of claim to recover possession of lands at Rock Hall, St. Andrew, of which she was owner and of which the defendant was in possession.

The defence as stated was:

(1) That the notice to quit did not conform with the Rent Restriction Act, and

(2) On any event the land in dispute was the defendant/respondent's, she having entered with the knowledge and permission of the plaintiff/appellant and built her house thereon.

There was in addition, a challenge to the jurisdictional competence of the Resident Magistrate to try the action but this was not pursued.

The learned Resident Magistrate made an order for possession as asked by the plaintiff but awarded the defendant $3,000.00 compensation. It is against this award that the plaintiff appealed.

In his reasons for judgment after reviewing the evidence, the Resident Magistrate said:

> "I found no virtue in the second defence as the evidence discloses no transference of ownership of the land upon the plaintiff to the defendant. The only evidence is that the plaintiff allowed her son now deceased, and the common law husband of the defendant to build a house on a spot designated by her the plaintiff. I found that the spot allocated fell under the definition of building land and applied the provisions of section 25 (5) of the Rent Restriction Act, the defendant being a tenant at will of the plaintiff. In making the order considered the case of Inwards and Others vs. Baker (1965) 1 All E.R. p. 446 and awarded the sum of $3,000.00 to the defendant as compensation as I considered just as empowered by Section 25 (5) of the act."

The challenge to the award was first: that the relevant provisions of Section 25 of the Rent Restriction Act were not applicable to this case and accordingly the learned Resident Magistrate erred when he purported to make an award under this section; and secondly, that the case of Inwards v. Baker (1965) 1 All E.R. 446 was not applicable as the permission to build on the land was granted to the plaintiff's deceased son, and not to the defendant and the defendant was not claiming in a representative capacity or as a beneficiary.

With respect to Section 25 (7) of the Rent Restriction Act, Mr. Edwards in reply did not do much more than make the pontifical statement that the land was "building land" under the Rent Restriction Act.

The main thrust of his reply was based upon the principle in Inwards v. Baker, that the house on the land was built with money contributed by the defendant/respondent and that this was implicit in the findings of the learned Resident Magistrate. No doubt apprehending the problem of the Resident Magistrate's competence to make the award if the case was not within the ambit of the Rent Restriction Act, Mr. Edwards sought of the Court an amendment under the provisions of Section 190 of the Judicature (Resident Magistrates) Act. By the provisions of the Act says he, the Court has powers to amend whether or not there is anything to amend. It is not clear the form or extent of the amendment sought but from the trend of his arguments it seemed he was seeking to insert a claim because he was asking that the case be sent back for re-trial based on the amendment so "that the equitable rights of the respondent may be considered". He cited in support Knight v. Pratt 5 J.L.R. p. 57.

Now the relevant provision of the Rent Restriction Act is really Section 25 (7) which reads:

> "In granting an order or giving judgment under this section for possession or ejection of building land, the court may require the landlord to pay to the tenant such sum as appears to the court to be sufficient as compensation for damage or loss sustained by the tenant, and effect shall not be given to such order or judgment until such sum is paid."

"Building land" is defined in Section 2 of the same Act:

> "Building land" means land let to a tenant for the purpose of the erection thereon by the tenant of a building used, or to be used, as a dwelling or for the public service or for business, trade or professional purposes, or for any combination of such purposes, or land on which the tenant has lawfully erected such as building, but does not

> "include any such land when let with agricultural land."

There was in the instant case clearly no letting to the defendant; there was no relationship of landlord and tenant between the plaintiff and the defendant, and the finding of the Resident Magistrate in that regard was to the contrary.

Accordingly, if the award was purported to be made under Section 25 (7) of the Rent Restriction Act, the learned Resident Magistrate erred in so doing.

I now turn to the other plinth on which the learned Resident Magistrate's judgment rested, namely the case of Inwards v. Baker.

It is not clear whether this case was used as an alternative reason to Section 25 (7) of the Rent Restriction Act or the learned Resident Magistrate intended it to be complementary. It seems to me that they can only be alternatives as the tenure and relationship upon which the respective principles are to be applied are entirely different.

Under the Rent Restriction Act, there must be a letting of "building land" - no such finding is essential to the application of the principle in Inwards v. Baker. In that case:

> "In 1931, the defendant was considering the building of a bungalow on land which he would have no purchase. His father, who owned some land, suggested that the defendant should build the bungalow on his land and make it a little bigger. The defendant accepted that suggestion and built the bungalow himself, with some financial assistance from his father, part of which he had repaid. He had lived in the bungalow ever since. In 1951, the father died. The trustees of his will, who in fact visited the defendant at the bungalow, took no steps to get him out of the bungalow until 1963, when they claimed possession of it on the ground that, at the most, the defendant had a licence to be there which had been revoked."

It was held:

> "Since the defendant had been induced by his father to build the bungalow on his father's

> "land and had expended money for that purpose in the expectation of being allowed to remain there, equity would not allow the expectation so created to be defeated, and accordingly the defendant was entitled to remain in occupation of the bungalow as against the trustees."

It is manifest that in Inwards v. Baker the equity created was a defensive shield against the plaintiff's attack upon the defendant's tenure. In that case Dankwerts, L.J. approved of the observation of Lord Kingsdown Ransden v. Dyson (1866) L.R. 1 H.L. at p. 170 in which he expounded the doctrine of equitable estoppel.

The instant case was clearly distinguishable. The representations, if any, were made to the son and, if equity there be, it would be between the plaintiff and her son. In Inwards v. Baker, the doctrine was used as a "shield". Here the interest is to use it as a sword but there was no counter claim and no appeal was filed in relation to the order for possession. Therefore there was no basis on which the Resident Magistrate could make an award; nor can this Court interfere with the order for possession there being no appeal from this order hence Mr. Edwards' earnest endeavour to obtain an amendment.

Section 190 of the Judicature (Resident Magistrates) Act provides:

> "The Magistrate may at all times amend all defects and errors in any proceeding, civil or criminal, in his Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made, with or without costs and upon such terms as to the Magistrate may seem fit; and all such amendment as may be necessary for the purpose of determining the real question in controversy between the parties shall be so made."

In this regard, it is enough to say that the amendment sought by Mr. Edwards was to introduce for the first time a substantial claim. I know of no authority that would permit

this to be done at this stage where there would be manifest injustice to the plaintiff who would have had no opportunity t answer this claim.

As I understand Knight v. Pratt, 5 J.L.R. p. 57, th was in substance in the pleadings the wrong complained of but was wrongly categorised and accordingly an amendment would not work any injustice to the other party.

The amendment sought by Mr. Edwards would in effect be filing a new claim against the plaintiff. There really is no merit in this application to amend.

For these reasons I would allow the appeal as indic above.

CAREY, J.A.:

I have had the advantage of reading in draft the judgment of Kerr, J.A. and so fully do I agree with his analys of the law and his conclusion that I am content to say that I entirely agree with the order proposed and any addition on my part would be needless repetition.

ROSS J.A.

In this action before the learned Resident Magistrate for the parish of Saint Andrew at Half-Way-Tree, the plaintiff sought to recover possession of land at Rock Hall, St. Andrew, which was occupied by the defendant. The defence as stated in court was:

> "(1) The notice to quit served on the defendant did not conform with the Rent Restriction Act, 1972.
>
> (2) The defendant contends that the land the subject matter of the proceedings is hers and that she entered into possession with the full knowledge of the plaintiff and built thereon a dwelling house also with plaintiff's knowledge who took no steps to stop or discourage her. She lived there with plaintiff's son (since deceased) and she is still in possession and disputes plaintiff's claim to possession.
>
> (3) Since both parties are claiming ownership of the land the jurisdiction of this court would be ousted because the Resident Magistrate has no power to pronounce on declaratory judgment as to ownership of land.
>
> (4) The defendant will also dispute the jurisdiction of the court, having regard to the gross annual value of the land."

The plaintiff testified that the land in question had been devised to her under the will of her father and she had been in possession since 1962; that about 1974 she gave permission to her son Orville Mason to live on the land and she provided him with the materials and money to build a house on the land in which to live; that living with him on the land was the defendant together with a child she had borne him and three other children she had. Orville Mason remained on the land up to the time of his death in 1976, and after his death the plaintiff told the defendant that she could remain on the land until she received some death benefits, after which she was to leave the land. The defendant was eventually given written notice to quit.

The plaintiff further gave evidence that throughout the period of occupation by her son and up to the present she had continued to cultivate the land and to reap the produce thereof.

The defendant in her evidence stated that Orville Mason and herself had been living together for about four years when "he suggest" that his mother give him a bit of land at Rock Hall, on which he proceeded to build a house with money provided by the defendant; all the building materials were bought with her money and after the house was built they lived as man and wife in it up to the time of his death. She is claiming the land because the deceased Orville Mason had told her that after his death "everything will be mine and the child I have for him." There was no evidence that he had left a will or that she had obtained letters of administration of his estate.

The learned Resident Magistrate found no merit in the claim of ownership by the defendant as he said in his reasons for judgment, "the evidence discloses no transference of ownership of the land to the defendant. The only evidence is that the plaintiff allowed her son, now deceased, and the common law husband of the defendant to build a house on a spot designated by her, the plaintiff." He then made the order for possession and on the authority of Inwards etal v. Baker (1965) 1 All E.R. 446 and section 25 (5) of the Rent Restriction Act went on to award the sum of $3,000.00 to the defendant as compensation.

The plaintiff has appealed against this award to the defendant on the following grounds:

> "(1) That the verdict of the Learned Resident Magistrate in finding that the Defendant was entitled to compensation and/or damages was unreasonable and against the weight of the evidence.
>
> (2) That the Learned Resident Magistrate had no jurisdiction to award compensation and or damages to the Defendant and
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> (b) The Learned Resident Magistrate had no Jurisdiction to award the quantum awarded and
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> (c) The Learned Trial Judge had no Jurisdiction to attach the payment of the compensation to an order for the vacation of the premises."

In support of the appeal, Mr. Morris submitted that the learned Resident Magistrate fell into error because the case relied on by him is not applicable as the permission was granted by the plaintiff to her son and not to the defendant he further observed that the defendant is neither the administratrix nor the executive nor a beneficiary of the estate of the plaintiff's son, Orville Mason.

For the defendant/respondent, Mr. Edwards urged the Court to find that Inwards v. Baker relied on by the learned Resident Magistrate did apply in the circumstances of the present case, as I understand him, for the reason that the relationship between the deceased Mason and the defendant was a permanent one, the defendant being what Mr. Edwards described as a "permanent girlfriend."

In the case of Inwards v. Baker, the defendant was considering building a bungalow on land he would have to purchase. His father who owned some land suggested that the defendant should build the bungalow on his land. The defendant accepted the suggestion and built the bungalow with some financial assistance from his father, a part of which he had repaid. The defendant lived in the bungalow up to the time of his father's death and for many years afterwards. The trustees of the father's will took no steps to get him out of the bungalow until twelve years after the father's death when they claimed possession of it on the ground that, at the most, the defendant had a licence to be there which had been revoked. The Court of Appeal held that since the defendant had been induced by his father to build the bungalow on his father's land and had expended money for that purpose in the expectation of being allowed to remain there, equity would not allow the expectation so created to be defeated, and accordingly the defendant was entitled to remain in occupation of the bungalow as against the trustees.

With every respect to the learned Resident Magistrate and learned counsel for the defendant, the position here is quite different. The permission to build was granted not to the defendant but to the deceased Mason, and the defendant cannot be said to be the legal representative of the deceased, being neither executrix nor administratrix of the deceased. The defendant cannot therefore step into the shoes of the deceased Mason and obtain compensation which Mason may have been able to claim if he were alive and had been given notice to quit.

Mr. Edwards further submitted that the defendant was entitled in equity to the award made to her and that under the provisions of section 190, Judicature (Resident Magistrates) Act, the court may amend whether or not there is anything to amend. I would have thought that one can hardly amend where there is nothing to amend.

Section 190, Judicature (Resident Magistrates) Act reads as follows:

> "The Magistrate may at all times amend all defects and errors in any proceeding, civil or criminal, in his Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made, with or without costs, and upon such terms as to the Magistrate may seem fit and all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties shall be so made."

In support of this submission Mr. Edwards referred to the Knight v. Pratt 5 J.L.R. 57; it is necessary to set out the facts. In this case, the action as originally issued, and on which judgment was entered in the Resident Magistrate's Court was based on the submission that the agreement between the parties was a lease, and was based in tort. The Court of Appeal held that the agreement between the parties was a licence to enter on land and sow food crops, etc. Had an application been made to the Resident Magistrate at the trial he would have made the amendments "necessary for the purpose of determining the real question in controversy between the parties" as provided by section 190 set out above. Notwithstanding that the wrong remedy was sought, as it appeared that all the relevant evidence was before the court, and as the plaintiff was

entitled to judgment, a previous Court of Appeal directed that judgment be entered for him.

There were four limbs to the defence of this action brought in the Resident Magistrate's Court and in none of the limbs was there a claim that the defendant was the legal representative of the deceased son of the plaintiff or that a claim for compensation arose for consideration, and no evidence was adduced on which the Court could find that the defendant was the legal representative of the deceased. There was here no question of any amendment to be made to the defence, as there was no evidence adduced which would have enabled the learned Resident Magistrate to find that the defendant was a legal representative of the deceased and to make an award of compensation to the defendant.

Another submission made on behalf of the defendant was that the notice to quit was invalid as it did not disclose the reason for the requirement to quit as required by section 13 of the Rent Restriction (Amendment) Act 1979. The simple answer to this submission is that the notice to quit was issued on 29th January, 1979, and the Rent Restriction (Amendment) Act, 1979 did not come into force until 4th December, 1979, and consequently, it had no application at the time of the issue of the notice to quit.

In his reasons for judgment the learned Resident Magistrate stated that he was awarding $3,000.00 to the defendant "as compensation as I considered just as empowered by section 25 (5) of the Act" (the Rent Restriction Act). It would appear that the reference to section 25 (5) is incorrect, as this sub-section is not relevant, and that a reference to section 25 (7) was intended. This subsection provides:

> "In granting an order or giving judgment under this section for possession or ejectment in respect of building land, the court may require the landlord to pay to the tenant such sum as appears to the court to be sufficient as compensation for damage or loss sustained by the tenant, and effect shall not be given to such order or judgment until such sum is paid."

If the plaintiff's son Orville Mason were alive, or if the defendant were his legal representative and the learned Resident Magistrate had made a finding that Orville Mason or his estate had suffered damage or loss to whatever extent, it would have been open to the learned Resident Magistrate to make an appropriate award, but there is no legal representative of the deceased Mason and no finding of damage or loss to anyone. In the circumstances of the present case, it was not open to him to make the award which he did as there was no basis in fact on which such an award could be made and I regret that this award cannot be allowed to stand.

For the above reasons it is clear that the learned Resident Magistrate fell into error when he made an award of $3,000.00 to the defendant as compensation. In consequence, the appeal is allowed, the judgment is varied as follows:

> "The plaintiff/appellant is to have her order for possession; - the award of the payment of $3,000.00 to the defendant/respondent is set aside. Costs to the plaintiff/appellant in the sum of $50.00".