

PRYCE v. McL

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THE HIGH COURT

1976 No. 2760P

BETWEEN:-

ROBERT T. PRYCE AND RICHARD W. PRYCE

Plaintiffs

-and-

THOMAS McLOUGHLIN

Defendant

And a Circuit Appeal

IN THE MATTER OF THE LANDLORD  
AND TENANT ACTS 1931-1958

BETWEEN:-

THOMAS McLOUGHLIN

Applicant

-and-

ROBERT T. PRYCE AND RICHARD W. PRYCE

Respondents

Judgment of Miss Justice Carroll delivered the 25th day of February 1982

This matter concerns a claim for possession by Robert and  
Richard Pryce as Executors of Robert Pryce deceased of

1. The self-contained basement flat situate at number 9 Upper Baggot Street in the city of Dublin and all the appurtenances held by Thomas McLoughlin as monthly tenant terminated by Notice to Quit expiring on the 1st of December 1975 and,

2. For possession of the two yards at the rear of numbers 9 and 11 the property of the Estate of Robert Pryce deceased.

The matter also concerns a Circuit Appeal against the Order of Judge Ryan made on the 23rd of May 1979 refusing an Application under the Landlord and Tenant Acts to grant relief under Part 3 of the 1931 Act. There was an Application for a new tenancy in the two yards at the rear of numbers 9 and 11 Baggot Street on foot of a Business Equity based on a claim by Mr. McLoughlin of a yearly tenancy therein.

There was undoubtedly a letting of the basement flat made by Robert Pryce in 1970. The Pryce brothers claim that this was a monthly tenancy in the basement only and that there was a licence in respect of the two yards at the rear. Mr. McLoughlin claims to be entitled to a tenancy in the entire, i.e. the basement and two yards. He claims there was a single letting of the entire, not two separate agreements.

I have to decide what was comprised in the tenancy granted by Robert Pryce in 1970. He died on the 27th of February 1973 and Probate of his Will was granted to the Pryce brothers on the 14th of October 1975.

I find the following facts:-

Mr. Pryce had sold some years prior to 1970 the rear of both gardens to Manchester Chemicals Limited reserving a passage beside the side wall of number 11/13 as a right of way. The gate at the rear of number 9 was never used. There was no evidence that it was opened at any relevant date. No boundary division was made by Manchester Chemicals Limited and anyone looking at the two yards in 1970 would not know of separate ownership.

Mr. Pryce got ill in 1970 and was advised by his doctor to move to the basement of his house instead of using the upper floors.

Mr. McLoughlin, who was a friend of Richard Pryce, was brought in to help renovate the basement of number 11. At that time he was living in his father-in-law's house with his wife and five children. She was then expecting her sixth child. He carried on an engineering business from his father-in-law's house.

The basement of number 9 was unoccupied and was used as storage

and was only fit for this. Mr. Pryce agreed to let Mr. McLoughlin have the basement of number 9. He was to refurbish it for himself and his family. He started in the month of April and had enough work done to be able to move in there in June of 1970. He was to have it rent free for eighteen months to compensate for work done in numbers 9 and 11 and then he was to pay £12.00 monthly. A rent of £3.00 per week was mentioned but the final agreement was £12.00 monthly. This created a monthly letting. A rent book was provided which described the premises as the basement flat.

At that time Kylemore Bakeries had a shop on the ground floor and the use of the toilet at the rear which they reached by going out the steps at the rear of their part of the premises crossing the yard and going up steps at the other side of the yard. They still use this toilet in this way.

When the letting was made there was no bathroom or toilet in the basement. The McLoughlins used the toilet on the ground floor which they shared with Kylemore Bakeries and the bathroom on the second floor return with the tenants of the first and second floor. They also used the toilet on the return between the first and second floor. They had a separate inner hall door leading to their own

hallway and the stairs, down then to a bedroom/store and then to the back of the hall where the w.c. was.

I am satisfied that the letting made in 1970 included from the inner hall door at ground floor level to the wall of the lavatory at the rear of the hall not including the lavatory and passage outside. They had the entire basement area and the use in common with Kylemore Bakeries of the lavatory on the ground floor and the use in common with the tenants of the first and second floor of the lavatory on the return between the first and second floor and the bathroom on the second floor return. This is subject to one reservation. The twenty-one year lease granted to Kylemore Bakeries and made on the 30th of December 1975 includes as part of the demise

"the use in common with the lessor of the hallway and w.c.

at the end thereof at the premises 9 Upper Baggot Street".

They have not had the opportunity of giving evidence. As between the Pryces and Mr. McLoughlin, the exclusive use of the hall door and passage beyond by Mr. McLoughlin is not disputed. So I make that finding of fact without prejudice to whatever rights Kylemore may establish to use the hallway.

Use of the sanitary amenities is still part of the demise. There

is no evidence that they were surrendered to the landlord.

Even though Mr. McLoughlin has now provided a w.c. and shower area in his flat, this does not mean he is not entitled to use the lavatory and bathroom shared with other tenants and these still form part of the letting.

Now to move on to whether the two yards were included in the demise. Mr. Pryce agreed that Mr. McLoughlin could use both yards for storing his engineering equipment and stock. He agreed that a hole could be knocked in the dividing wall at the end of garden. This was done to bring materials into the basement. The gap was used for passing from number 9 to the laneway and to visit the Pryces. Mr. Pryce would not allow the wall to be demolished to ground level. He insisted on keeping sufficient of the wall to make a barrier because the Pryces had a dog and the McLoughlins had a dog and he wanted to keep the two apart. The McLoughlins and the Pryces were very friendly. Mr. McLoughlin often got in over the wall to see the Pryces who were an old couple and did shopping and messages for them. The Pryces used the back yard of number 11 for sitting in and keeping flowers. Later Mr. McLoughlin built a greenhouse for them along the dividing wall between numbers 9 and 11. This extended from the wall of the house to approximately 8 inches from the boundary of the plot

sold to Manchester Chemicals, which was still an invisible boundary.

Mr. McLoughlin helped Richard Pryce to build a boat in the yard of number 11. They also built a shed in the yard and Mr. McLoughlin used it for his business.

In 1974 Manchester Chemicals Limited sued Mr. McLoughlin for possession of their portion at the end of both yards. He claimed a tenancy in the entire rear area of numbers 9 and 11. The action was compromised and Mr. McLoughlin was paid £2,000. The shed was moved off the Manchester Chemicals' land and only a small portion left. It was a very flimsy structure. Mr. McLoughlin then told Richard Pryce that he could not run the business in the space he had. Richard Pryce agreed to let him have part of the greenhouse and to knock a hole in the wall between numbers 9 and 11. The size of the hole agreed is in dispute. Mr. Pryce said it was only for passing things through and Mr. McLoughlin said it was much larger. I am satisfied that it has been enlarged over the years without permission. Mr. McLoughlin paid £250.00 to Richard Pryce at the time this permission was granted and the cheque is dated the 20th of December 1974. Richard Pryce said the money was only for the use of the ground and not for the hole but it seems more probable that the money was in

respect of the entire transaction. After the hole had been made Mr. McLoughlin built a small extension (also very flimsy) in the yard of number 9 to connect with the extended work shop.

Mrs. McLoughlin described Mr. Pryce, senior, as business-like but not methodical. There is no suggestion that he was not in full command of his faculties. I do not believe that he had forgotten the sale of the land to Manchester Chemicals. If he had, the obvious thing to do in 1970 was to open the gate at the rear of number 9 and bring materials in and out of there.

The Pryces themselves used the yard of No. 11; they sat in it and grew flowers in it. They kept part of the wall to keep the dogs apart.

The very fact of keeping a dog meant that it had the run of the yard.

The greenhouse was built for the Pryces. Mr. McLoughlin built the boat with Richard Pryce in the yard. He paid money for permission to enlarge the shed in 1974 and to put the hole in the wall.

All of these facts are inconsistent with tenancy of the McLoughlins in the yard. I am satisfied there was a very friendly relationship between the Pryces and the McLoughlins and also between Mr. McLoughlin and Richard Pryce. The use made by Mr. McLoughlin of the yard is consistent with personal privilege granted to Mr.



McLoughlin. The use grew over the years but at all times it remained a licence. Therefore in so far as the yard of number 11 is concerned I am satisfied Mr. Pryce never granted a tenancy even of part of it.

In relation to the yard at the rear of number 9, in 1970 the only persons using the yard were the Kylemore tenants. The gate at the end was locked. The old coach house was falling down. This was on Manchester Chemical property. Mrs. McLoughlin said the yard was used by them for hanging out clothes, storing materials and for the children. There is no evidence that the Pryces ever used any part of it or that any of the other tenants of number 9 had access. It seems to me that as part of the letting made in 1970 the McLoughlins either got the residue of the yard of number 9 as part of their take subject to a right of way for Kylemore Bakeries or they had the use of the yard in common with Kylemore. The whole arrangement was so informal and casual that I think it unlikely that Mr. Pryce bent his mind to thoughts of including the yard in the demise and reserving the right of way. It is far more likely the intention was that the McLoughlins would have the use of the yard in common with Kylemore Bakeries.

I therefore hold that the user of the yard at the rear of number

9 (excluding the Manchester Chemicals portion) was included in the letting and was therefore one of the appurtenances, as was the use of toilet and bathroom.

The Notice to Quit was in respect of the basement flat and appurtenances. If that was on its own, it would have caught the use of the yard at the rear. But on the same date as that was served, a notice terminating the licence of Mr. McLoughlin in the yard of number 11 and number 9 was served thus showing that the Pryces excluded the yard of number 9 from being either part of the take or part of the amenities of the tenancy. Therefore the Notice to Quit was defective in that the use of the yard was clearly excluded as part of the letting. Because it was defective the Pryces cannot succeed in an ejection of the McLoughlins from the premises comprised in the tenancy. They are however entitled to succeed in a claim for possession of the yard of number 11. No formalities have to be complied with for the termination of the licence. The fact that they demanded possession of the yard of number 9 as well as number 11 is irrelevant. I will therefore grant an Order for Possession of the yard of number 11. This is not subject to any right of way in favour of number 9.