

ROYAL COURT

8th March, 1993

35.

Before: The Bailiff, and  
Jurats Bonn and Gruchy

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The Attorney General

- v -

Peter Andrew Hurel

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One Infraction of Article 14(1)(a) of the Housing (Jersey) Law, 1949.

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J.A. Clyde-Smith, Esq., Crown Advocate.  
Advocate D.J. Petit for the defendant.

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**JUDGMENT**

**THE BAILIFF:** This prosecution arises out of certain investigations carried out in 1992 regarding the occupation of Flat 3, 1 Waverley Terrace, St. Saviour's Road, owned by the defendant, Mr. Peter Andrew Hurel, who had bought it in 1978.

Amongst the various conditions attached by the Housing Committee to his purchase, was this particular one: ...."that the four units of private dwelling accommodation at the property shall be offered for sale to, let unfurnished to, or be otherwise occupied by, persons approved by the Housing Committee as being persons of a category specified in Regulation 1(1)(a), (b), (c), (d), (e), (f), (g) or (h) of the Housing (General Provisions) (Jersey) Regulations, 1970, as amended".

At the time Mr. Hurel bought the premises, they were described as consisting of four flats. The Court had the advantage of visiting the premises this morning and were shown the flat where Mr. Hurel lived, which we will call Flat 2, and above that was a bedroom, up some stairs, which he also occupied (I use that word in the widest sense). Next door to that was a self-

contained flat - I say self-contained because it has a bedroom, bathroom and kitchen. It has a number on the door (No. 3) and that was the flat about which some investigations took place in 1992.

Unfortunately, a number of witnesses have not been able to be called by the parties. Mr. Sugden, who is the principal Investigations Officer of the Housing Committee is ill, but his assistant has given very fair evidence as to what happened when he and she visited the premises.

Very little of the facts are in dispute. The question the Court had to decide was the status of Mr. Noonan in Flat 3. Unfortunately Mr. Noonan has either left the Island or is not available today to give evidence. Therefore, as Mr. Clyde-Smith quite properly has pointed out, we are left only with the evidence of the defence as to the relationship between Mr. Hurel and Mr. Noonan in respect of Flat 3.

To some extent Mr. Clyde-Smith relies on a series of letters written by Mr. Hurel shortly after Mr. Sugden and his assistant had visited the flat. Clearly, from those letters, if taken at their face value, one might infer that Mr. Hurel had committed an offence. He uses the words 'tenants' and as Mr. Clyde-Smith rightly says, adopts the terminology of a landlord.

However we have had an explanation, and I need hardly remind counsel that if an accused person gives an explanation which can be accepted by the Court, then it should be accepted, if the explanation might be true, and even though the Court might have doubts about it, again the Court has to accept that explanation.

Mr. Hurel has given an explanation about the contents of that correspondence and the Court accepts it. He said that he was not able, or at any rate did not, consult his present advocate until some time in the summer after writing that correspondence. Moreover he says that when the Housing Committee's Consent was given he only saw it for some two minutes on the desk of his then advocate and was not able to assimilate it completely; the only advice he was given was that tenants had to be persons who were qualified to occupy the flats under Regulation 1(1)(a)-(g) of the Housing (General Provisions) (Jersey) Regulations, 1970. But that did not mean in Law that Mr. Hurel, if he so wished, could not occupy the whole of the property. The restriction did not apply in that sense and Mr. Clyde-Smith quite properly has not sought to show that it did.

The question, therefore, which the Jurats had to ask themselves and which I directed them was the proper question to ask was: was Mr. Hurel occupying Flat 3? If he was, then was Mr. Noonan his lodger or a guest, or was he there under a contractual licence? In order to arrive at a conclusion as to the status of

Mr. Noonan there are a number of useful authorities to assist us, however the one relied upon by Mr. Clyde-Smith is a case decided in this Court, A.G. -v- Hogan (née Quinquis) (1989) J.L.R. 238. Before dealing with that authority I must first go into the facts of this case.

It is clear from the evidence of Mr. Hurel that Mr. Noonan and he were friendly, and that sometime before the circumstances arose, which the Crown alleges amount to an offence by Mr. Hurel, he invited Mr. Noonan to live with him because he had been asked to do so by a mutual friend. Mr. Noonan then became a friend of Mr. Hurel and indeed a friend of Miss Tannock, who was living and still is living, with Mr. Hurel.

The question which the Jurats asked themselves, as a result of my directions, was: on what basis did Mr. Noonan have accommodation in that household? The Court has no doubt that at the beginning he was nothing more than an invited guest, and that Mr. Hurel and Miss Tannock exercised full control over and occupied in the legal sense, Flat 3. Was there then any change in that situation when in or around 1988 - the exact date no one seems to know, but it is accepted that it seems to be about that time - Mr. Noonan made it known to Mr. Hurel that he intended to stay for at least the whole of that summer and it was agreed that he would pay Mr. Hurel £35 per week.

Was that rent for Flat 3? Did that make him a tenant or a lodger, or a contractual licensee? What were the circumstances? Certainly the Court takes the view that up to that time he was a friend of the family, who were in fact doing all manner of things for him: his washing was done by Miss Tannock; his bed linen was changed; his windows were cleaned; a carpet was replaced and he came and went more or less as he wanted. He occasionally slept in another room, which we saw this morning, attached to Flat 2. This was called the laundry room because that was what it had once been, and occasionally he slept upstairs in Mr. Hurel's other bedroom, adjacent to Flat 3 at the top of the stairs, up and down which Mr. Hurel and Miss Tannock must go to get to and from their bedroom, in the same way as the person who lives in (and I use that word in a quite open sense) Flat 3 has to go to reach the door of that flat.

Did anything change, therefore, when payment was asked for and received by Mr. Hurel? We do not think that it did. We think the evidence shows that Mr. Hurel and Miss Tannock retained occupation of that flat throughout the time that Mr. Noonan lived there. When, after seeing Mr. Sugden, he was asked to leave, and in fact left and did not come back, that was not, we think, because Mr. Hurel realised he had done something wrong, but because he had been told by Mr. Sugden that he was in breach of the Regulations and he did not wish to continue in breach. The

question we had to decide was whether that was the position in law.

There is no doubt that Mr. Hurel and Miss Tannock kept up the family arrangements. Mr. Hurel said in evidence that he regarded the flat as part of his house. That, we think, was the true position and we do not think that either party gave thought to any legal consequences nor do we think that there was any attempt to reach a legal contract. When payment was suggested it was no more than a family arrangement with somebody living in the house, perhaps on a more permanent basis than previously, but as part of the family. The rooms seemed to be interchangeable for social purposes. Miss Tannock, for example, used the lavatory there when she had to. We were told by Mr. Hurel that she had Crohn's disease which required her to go to the lavatory rather frequently; he told us she had a key which she used when necessary.

It is perfectly true, as Mr. Clyde-Smith has pointed out, that Mr. Noonan's tools were there, and that Mr. Hurel looked after the windows and that was about all. Nevertheless, we have to look at the substance and that is the purpose of my referring to the case of A.G. -v- Hogan where the Court clearly examined in great detail the question of lodging and tenancy and said that it was necessary to look clearly at the substance of what was involved. Looking at the substance, we have no doubt that first, Mr. Hurel retained occupancy of Flat 3, and secondly, that being so, Mr. Noonan was not a tenant in our view, nor was he occupying the flat contrary to the Law. We express no view as to whether he was a guest or a lodger.

As Mr. Clyde-Smith has conceded that if we find that Mr. Hurel retained occupancy and are satisfied thereafter that Mr. Noonan was a lodger or a guest no offence has been committed, we therefore find for the defendant. I think the costs should follow the event.

### Authorities

Housing (Jersey) Law, 1949, as amended.

Housing (General Provisions) (Jersey) Regulations, 1970, as amended.

Lodging Houses (Registration) (Jersey) Law, 1962.

B.G. Romeril & Co. -v- Andre Loyer (1980) Jersey Unreported.

Jersey Automatic Company -v- H.A. Gaudin & Company, Ltd. (1980)  
J.J. 159.

A.G. -v- Hogan (1989) J.L.R. 238.

A.G. -v- Larbalestier (1980) J.J. 223.

Facchini -v- Brysson (1952) 1 T.L.R. 1386.

Jowett's Dictionary of English Law: "Occupation": p.p.1274-5;  
"Possession": p.p.3787-90.

Stroud's Judicial Dictionary of Words and Phrases: "occupy";  
"occupied": 1739-42.

Shorter Oxford English Dictionary on Historical Principles Vol II:  
"Occupation": p.1433.

A.G. -v- F.R. Roberts & Son (Holdings) Limited and Ors. (3rd  
March, 1988) Jersey Unreported.

Silbers -v- Southwark L.B.C. (1977) L.G.R. (C.A.).