

Wilfred Isaac - - - - - - - - Appellant

v.

Alfred Francis - - - - - - - - Respondent

from

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 2ND OCTOBER 1979

Present at the Hearing:

LORD FRASER OF TULLYBELTON

LORD SCARMAN

SIR CLIFFORD RICHMOND

[*Delivered* by LORD FRASER OF TULLYBELTON]

This appeal raises a short but not altogether easy point of construction of the Summary Ejectment Ordinance of Trinidad and Tobago (Chapter 27 No. 17). The appellant is the owner of a parcel of land in Port of Spain. He let the land to a tenant named Myra Smith (also known as Edrina Smith and as Admira Smith) who was the tenant at the date of her death on 25th November 1966. Myra Smith was married and was survived by her husband but at the date of her death she was not living with him but was living with the respondent in her chattel house on the land which is the subject of this appeal. The respondent has continued to live there since her death. Before the magistrate the respondent contended that he had paid rent to the appellant after Myra Smith's death but the magistrate found that in fact he had paid no rent and had not been accepted by the appellant as tenant. As Myra Smith was survived by her husband, the respondent acquired no rights as tenant from her.

The appellant wished to obtain possession of the land and on 14th August 1972 he served a Notice to Quit on the Administrator General, who was administering Myra Smith's estate under the Administration of Estates Ordinance (Chapter 8 No. 1) and upon whom the tenancy had devolved on her death. The Administrator General raised no question about the Notice to Quit and took no action upon it, as neither he nor anyone authorised or represented by him was in occupation of the land. On 21st September 1972 the appellant served a Notice to Quit on the respondent informing him that the tenancy had been determined by the Notice of 14th August 1972. Notwithstanding the Notice to him the respondent remained in occupation and the appellant therefore had resort to the procedure laid down by the Summary Ejectment Ordinance. The question is whether that procedure has been properly followed out.

The relevant sections of the Ordinance are as follows:—

“3. When and so soon as the term or interest of the tenant of any premises held by him at will or for any term not exceeding two years, either without being liable to the payment of any rent or at a rent not exceeding the rate of two hundred and forty dollars per annum, shall have ended or shall have been determined by a legal

notice to quit or otherwise, and such tenant, or (if such tenant do not actually occupy the premises or only occupy a part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises or of such part thereof respectively, it shall be lawful for the landlord of the said premises or his agent to make complaint on oath before the Magistrate for the district in which such premises or any part thereof is situate. Such complaint may be in the form contained in the First Schedule hereto or such other form as the circumstances of the case may require.

4. The Magistrate shall, upon such complaint, issue a summons in the form contained in the Second Schedule hereto or such other form as the circumstances of the case may require, directed to such tenant or occupier, and requiring him to appear before such Magistrate at such place and time, being not less than three days after the service of such summons, as may be mentioned therein.

5. If the tenant shall not appear in obedience to such summons and show to the satisfaction of the Magistrate reasonable cause why possession should not be given up, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof as he is then in possession of, to the landlord or his agent, it shall be lawful for such landlord or agent to give to the Magistrate proof of the holding and of the end or other determination of the tenancy with the time and manner thereof, and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession, and upon proof of the service of the summons and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for such Magistrate to order such tenant or occupier to pay a fine not exceeding twenty-four dollars and the costs incurred by such landlord or agent, and such Magistrate shall within thirty days of the making of the order issue a warrant under his hand to any constable of the district within which such premises or any part thereof is situate commanding him, within a period to be named therein, being not less than three nor more than seven clear days from the date of such warrant, to enter, by force if needful into the premises and give possession of the same to such landlord or agent: Provided that entry upon any such warrant shall not be made on a Sunday, Good Friday, Corpus Christi, or Christmas Day. Such warrant may be in the form set forth in the Third Schedule hereto or such other form as the circumstances of the case may require."

There is no doubt that section 3 applied in the circumstances of this case and the contrary has not been suggested. The rent paid by Myra Smith was \$1.50 per month which is less than \$240 per annum. When Myra Smith's interest in the premises was terminated by the Notice of 14th August 1972 she of course did not actually occupy the premises. The person by whom they were then actually occupied was the respondent, who refused to quit, and it therefore became lawful for the appellant to make a complaint to a magistrate in accordance with section 3. That he did on 13th October 1972. The complaint concluded with the statement that the respondent

"being a person actually occupying the said parcel of land has refused to deliver up possession thereof".

The magistrate, in accordance with section 4, issued a summons directed to the respondent. The respondent appeared before the magistrate and defended the action on grounds with which this appeal is not concerned, but the magistrate rejected his defence and made an Order for Possession in favour of the appellant.

The respondent appealed to the Court of Appeal on several grounds, of which the only one that appears to have been argued, and the only one now

material, was that the magistrate had no jurisdiction to hear the complaint. The Court of Appeal (Corbin J.A. and Rees J.A.) upheld the respondent's contention to that effect, holding that the complaint which had been directed only against the respondent ought also to have been directed against the tenant. The learned judges said

"The conjoint effect of these two sections [section 3 and section 5] of the Ordinance clearly is that the tenant must be made a party to the complaint".

The words in section 5 which the Court of Appeal quoted, and on which their decision was largely based, were the opening words as follows

"If the tenant shall not appear in obedience to such summons . . ."

Their Lordships are unable to agree that these words, even conjointly with section 3, could have the effect that the tenant must be made a party to *the complaint*. The Administrator General, upon whom the tenant's rights had devolved, had acquiesced in the Notice to Quit and he was not occupying the premises either himself or by anyone deriving right from him. There was therefore nothing to complain of against him. The form of the complaint in the Schedule to the Ordinance is to the effect that the person against whom complaint is made "refused or neglected to deliver up possession" of the premises "and still detains the same, although he has been required to deliver up the possession thereof." That form shows that the complaint is intended to be (as might be expected) against the person who is in occupation and, while section 3 provides for a complaint to be in "such other form as the circumstances of the case may require", it is difficult to see how it could be adapted to apply to a tenant who was not continuing to occupy the premises or doing anything else to which the landlord could reasonably object.

But the opening words of section 5 quoted above do create a difficulty in respect that they seem to imply that the *summons* ought to be addressed to the tenant, either alone or in addition to the occupier; otherwise he could not appear "in obedience to" it. But their Lordships are of opinion that any implication to that effect cannot prevail against the express provision in section 4 that the magistrate shall issue a summons "directed to such tenant *or occupier*." Clearly it is not necessary for the tenant to be a party.

That conclusion is confirmed by more general considerations. One of these is that, in a case such as the present, service of the summons upon the Administrator General representing the tenant would have been merely a formality because, as already mentioned, there was no ground of complaint against him. The position would have been the same if Myra Smith herself had been alive and had acquiesced in a Notice to Quit served upon her as tenant. The summons is directed only to the question of possession and does not raise any question of title, so that there appears to be no reason why formal service on the tenant should be necessary.

A further consideration is that the three sections of the Ordinance quoted above clearly contemplate that the party against whom the whole procedure is directed may be either the tenant or the person actually occupying the premises. Section 3 refers to the tenant "or . . . any person by whom the [premises] . . . shall be then actually occupied", neglecting or refusing to quit. That is followed by the provision already mentioned in section 4. Finally section 5 provides that after proof of certain relevant matters, including "proof of the service of the summons and of the neglect or refusal of the tenant *or occupier*, as the case may be, it shall be lawful for such Magistrate to order such tenant *or occupier* to pay a fine" and the magistrate shall issue a warrant to any constable to enter the premises and give possession to the landlord. In all these provisions the alternative between the tenant or the occupier is preserved.

In the (English) Small Tenements Recovery Act 1838, from which no doubt the Trinidad and Tobago Ordinance is derived, the provision which corresponds to the opening words of section 5 of the Ordinance is (in section 1) “and if the tenant *or occupier* shall not thereupon appear” (emphasis added). The words “or occupier” in the English Act do not give rise to the implication suggested by the Ordinance and their Lordships are uncertain as to why similar words were not included in section 5 of the Ordinance. For the reasons already given, however, their Lordships are in no doubt that when sections 3, 4 and 5 are read together, it is manifest that the Ordinance does not require the complaint or the summons to be directed to the tenant in a case where the landlord seeks to recover possession not from the tenant but from some other person. The opening words of section 5 apply only in cases where the landlord’s complaint and the subsequent summons are directed against the tenant.

The learned judges of the Court of Appeal in their judgment, after pointing out (rightly) that the Summary Ejectment Ordinance is similar in terms to the (English) Small Tenements Recovery Act 1838, went on to say:

“It is now well established that that Act applies only when the relationship of landlord and tenant exists between the parties.”

With respect their Lordships do not regard that as an accurate statement of the effect of the English Act. The Act, now repealed by the Rent Act 1965, applied only where there was, or had been, a tenancy, and it therefore did not apply in the case cited in the judgment of *Ramsbottom v. Snelson* [1948] 1 All E.R. 201 where there had been a service occupancy and not a tenancy. But it was not necessary for the relationship of landlord and tenant to have existed *between the parties*; see *Lewis v. Gunter-Jones* [1949] W.N. 119. Indeed that relationship could not exist between the landlord and the person described in the Act as the person by whom the premises were “actually occupied”. All that was necessary was that the occupation to be terminated by the procedure of the Act should have originated in a tenancy.

For these reasons their Lordships are of opinion that sections 3 to 5 of the Ordinance do not require that the tenant be made a party to either the complaint or the summons, and that the Court of Appeal were wrong in the view that they took as to the effect of these sections.

Their Lordships will therefore allow the appeal with costs of the appeal and of the proceedings in the Court of Appeal, and will remit to the magistrate to make an Order that Warrant of Ejectment be issued.



Privy Council Appeal No. 23 of 1977

WILFRED ISAAC

v.

ALFRED FRANCIS

DELIVERED BY
LORD FRASER OF TULLYBELTON