de Carteret - v - Applegate and Anor. 1986/2

6th January, 1986.

Judgment of the Court (Unedited: Text with Sir Godfray)

Sir Godfray Le Quesne:

Mr. de Carteret, the appellant, is the owner of a house at 76, Rouge Bouillon. Part of that house he let as a flat to his father. His father, while in occupation of that flat as a tenant, allowed the respondents with their two infant children to occupy part of the flat, and the respondents therefore became licensees of Mr. de Carteret senior, the tenant, but not of Mr. de Carteret the landlord, who is the appellant. Mr. de Carteret senior was forced to give up his tenancy because of his poor health, and his tenancy in fact came to an end on the 31st October, 1985. The appellant called upon the respondents to vacate the property but they have not done so and the appellant therefore took proceedings in the Royal Court asking for an order that the respondents vacate the property immediately. The respondents entered no defence to this action, and when it came before the Royal Court on the 15th November, the Court confirmed the Order of Justice but directed that the respondents should not be evicted from the property before the expiration of three months from the Act of the Court, that is to say, not before the 15th February, 1986, and the Appellant has appealed, the ground of his appeal being that the Court had no power or jurisdiction to grant this stay of execution of its order.

Mr. Michel, who appeared for the Appellant, says that the only right of the respondents to be upon the premises was as licensees of the former tenant, Mr. de Carteret senior. When that tenancy came to an end, the respondents, Mr. Michel says, lost all right to be upon the premises and thereafter had the character simply of trespassers. Therefore, Mr. Michel submits, the appellant was entitled to possession of his property as against the trespassers, and the Court having found that to be the position in Law, was bound to award him possession immediately and had no power to grant any stay.

Mr. Benest who appears for the respondents has relied upon certain cases on similar facts in which the Royal Court has granted a stay of the order for possession. It is useful to list the cases upon which he relies. They start with the case of the Jersey Tufting Company Limited v. Giles in 1968. That was a case in which one month's delay was granted. In 1969 there are two cases, Gibaut v. Stoodley and Spearman v. Le Vaast. Those are interesting as both being on their facts closely similar to the present case, that is to say they were both cases of claims by a landlord for possession against the licensee of a former tenant. In both cases the Order of Justice was confirmed, but in both cases it was directed that the eviction should be delayed, in Gibaut v. Stoodley for twelve weeks and

in Spearman v. Le Vaast for three months. There is another case in 1972, that is the case of Complin v. Belloeil, that is the case of a defendant who in the ordinary sense of the term was a squatter. He had entered on certain property without the consent or even the knowledge of the owner of the property and refused to get out, and the Court there ordered that the eviction should not be effected before the expiration of three weeks. In 1973 there is the case of Laughton v. Miller; that was a case of a claim in a sense also against a licensee holding over. The position of the defendant actually was that she had been a caretaker of a former tenant of the premises, and in that character had been allowed by the tenant to occupy part of the premises. When that tenant's tenancy came to an end she declined to leave, and the claim for possession was brought against her by the new tenant, and the Court again confirmed the Order of Justice but directed that the Act should not be put into execution until after the 1st May, 1973, which was actually four weeks' delay. In 1974 there was the case of Fountain Court Investments v. Chappuis, in 1979 there was the case of Le Sueur v.L'Hermine, and finally in 1985 there was the case of Taylor v. Vasconcalos. These are all cases in which a landlord has been claiming possession from someone who had never been his tenant and has, at the time of the action, no right to be upon the premises, and are all cases in which the Royal Court confirmed the Order of Justice but directed that eviction should be postponed for a period, the period varying between three weeks and three months.

We thus have this succession of cases, spread over a period of seventeen years, in which the power to postpone eviction in circumstances similar to those of the present case has been exercised by the Royal Court. Now it is fair to say that nobody in these proceedings has been able to discover exactly the basis upon which the Royal Court began to exercise this power, but it is a power, as I say, which has been exercised repeatedly by more than one President of the Royal Court with long experience not only of the Law of Jersey but also of the working of the Court. It has been exercised in cases, some of which were certainly contested on their facts, although there is nothing in the records to show whether this particular jurisdiction was exercised in any of them. If it was not, that may itself be significant as indicating the opinion of the lawyers who took part in those proceedings that in fact no such challenge could successfully have been made. In the face of this line of cases in which the power has repeatedly been exercised we think the conclusion must be that the jurisdiction of the Court to make such an order postponing the operation of an order for possession is now established and such an order accordingly is now within the jurisdiction of the Royal Court.

I should perhaps refer to one case upon which Mr. Michel relies, that is the case of Granite Products Ltd. v. Renault, heard by the Royal Court in 1961. That was a case of a service occupancy. The employment of the occupant had been terminated by his employers, who were the owners of the property, and they therefore brought proceedings for his eviction from the house. The Royal Court held that his eviction must be ordered and the concluding sentence of their judgment was this,

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"Furthermore, we wish to express the hope that the company will use as much discretion as it can in enforcing the order to which it is entitled." Mr. Michel relied upon that as showing that Sir Robert Le Masurier, who was presiding at the trial of that case, must have thought he had no power himself to order such delay because, Mr. Michel submitted, the sentence which I have read showed clearly that Sir Robert thought that delay ought to be allowed, and if he had had the power to do it, he would certainly have ordered it himself, instead of expressing the wish that the landlord should do it voluntarily. There are two things to be said about this judgment. The first is that it certainly is not a decision upon the question whether this power to order delay does or does not exist. The second thing to be said is, at the highest, the case could be taken to be some indication of what Sir Robert's view of the Law was. It seems to me that that indication must carry very little weight when we find that in more than one subsequent case, Sir Robert himself actually exercised the power to grant a delay in the execution of an order for possession. The other case in which there was some discussion of the issues before us was the English case of McPhail v. Persons Unknown. That is the case in which the English Court of Appeal established the position of the landlord of the property which had been occupied by squattters. All that I need say about that is that the case depends so much upon the peculiar features of English legal history that it casts no light upon the question which has now to be decided according to the Law of Jersey.

It seems to me, therefore, that the power that was exercised by the Royal Court to defer the execution of the Order for Possession is a power which the Court does possess. I would only add that one would normally expect the exercise of this power to be accompanied by any order or payment by the defendants of some recompense to the plaintiff for the occupation of his premises during the period of the delay. In fact in three of the cases which I have mentioned, such an order was made. In Gibaut v. Stoodley the defendants were ordered to pay what was called rent. In Spearman v. Le Vaast and in Le Sueur v. L'Hermine the defendants were ordered to pay what was described as damages. As I say, whatever may be the correct terminology one would expect an order for delay to be accompanied by an order for payment of an appropriate sum during the period of delay. For reasons for which Mr. Michel has explained to us a claim for such damages was deliberately omitted from the Order of Justice in this case, and we have no doubt that if it had been included then the Royal Court would have made the order. In my judgment, therefore, this appeal has been dismissed.

Sir Patrick Neill: I agree.
Mr. Pownall: I agree.