

IN THE SUPREME COURT OF JUDICATURE  
COURT OF APPEAL

Royal Courts of Justice  
Friday, 15th July, 1960.

A

Before:

LORD JUSTICE HODSON  
LORD JUSTICE ORMEROD and  
LORD JUSTICE HARMAN

B

CHUNG KWOK HOTEL COMPANY LIMITED

-v-

LOUIS KENNETH FIELD

C

(Transcript of the Shorthand Notes of The Association of Official  
Shorthandwriters, Ltd., Room 392, Royal Courts of Justice, and  
D 2 New Square, Lincoln's Inn, London, W.C.2).

Mr. P.A.W. MERRITON (instructed by Messrs. Beach & Beach,  
London, N.W.6) appeared on behalf of the Appellant (Defendant).

Mr. ROBIN DUNN (instructed by Messrs. Cliftons) appeared on behalf  
of the Respondents (Plaintiffs).

E

J U D G M E N T

LORD JUSTICE HODSON: I will ask Lord Justice Harman to deliver the  
first judgment.

F LORD JUSTICE HARMAN: In the year 1958 a Mrs. Silvester was the  
freeholder of No. 24 Inverness Terrace, Lancaster Gate. The  
appellant on this issue, Louis Kenneth Field, was in occupation  
of the first floor of that house. He had been a tenant for a

good many years originally under a written agreement for a year and had held over and become a statutory tenant. In the year 1957 Mrs. Silvester brought an action for possession against him on grounds connected with the terms of his written tenancy, which of course applied to a statutory tenancy so far as might be. She did not get on very well with that action, but it became clear to the parties that, whether that succeeded or no, there would come a time -- in fact it arrived in 1958 -- when, under the Rent Restrictions Act, 1957, the statutory protection would cease to apply to Mr. Field and he would have to quit on six months' notice. He was served with such a notice in fact, and put in as part of his defence in the action that, having been served with such a notice, he was a statutory tenant until the notice expired. In February, 1959, an order was made by consent under which Field consented to give possession to Mrs. Silvester on the 1st September, 1959, and she agreed to pay all his costs of the action, and of a counterclaim, on Scale 4. Her object in bringing the action was to get possession of the property with a view to selling it to good advantage, as indeed she easily could, and did; and between February and July, 1959, the property changed hands three times, ending with the respondents, Chung Kwok Hotel Company Limited.

In the contract under which Mrs. Silvester agreed to part with her interest, to two gentlemen whose names do not matter, it was provided as one of the conditions of sale, Special Condition No. 5, that the property was sold subject to and with the benefit of Field's tenancy and subject to and with the benefit of the consent order which I have mentioned. Those purchasers never completed, but sold the benefit of their contract to a Mr. Chan, who in fact apparently bought with the intention of making the property over to a company, then unformed, which I take to be the respondent company. After taking an assignment of the contract, he declared himself a trustee for the company and entered that document on the register: thereafter (in July, I think) he made a registered transfer in favour of the company.

Mr. Chan, being the inheritor of the benefit of the contract with Mrs. Silvester, may, I think, and probably does have a right against her to call upon her to do what was necessary to enforce her judgment; but very unfortunately he omitted to transfer that right to the plaintiff company, merely executing in their favour a common form registered transfer. Consequently, so far as I can see, the company has not the benefit of the covenant with Mrs. Silvester that it was so desirable they should have. It may possibly be that they can call upon Mr. Chan to exercise his rights against her, but they have not ever purported to do so

In August, 1959, the time was drawing near when the defendant had agreed to vacate the property. He was not the sort of person who would propose to keep his word if he could get out of it, and he made an application of a very strange sort to the County Court to vacate the judgment on the ground that Mrs.

Silvester no longer had any interest in the property. The County Court Judge had no hesitation in saying that that was nonsense; and Counsel for the appellant very candidly appears here and he agrees that it was nonsense; but it had this result, that the attention of the judge was drawn by Counsel to the County Court

Rules, and he pointed to Order 25 Rule 6, which is in these terms so far as it matters: "Where (a) any change has taken place after judgment, by death, assignment, or otherwise, in the parties entitled to enforce a judgment or order or in the parties liable under a judgment or order" (I leave out (B)) "the party claiming to be entitled to enforce the judgment or order may apply on affidavit to the court for leave to issue the necessary process, and the court may (i) if satisfied that the party so applying is entitled to issue such process, make an order to that effect; or (ii) if not so satisfied, order that any issue....

necessary to determine the rights of the parties be tried in an action".

Such an application as that, in the High Court anyhow, can be made in the first place ex parte, and of course if the Judge or Master to whom it is made is not satisfied he will then direct

an issue to be tried. Something of that sort apparently happened here. When the issue came on, the learned County Court Judge, having heard argument on the matter, decided it in favour of the respondent company, and his order, which is dated 18th January of this year, is in these terms: First, that "the new owners" (that is to say the company) "have not created a tenancy in favour of the defendant" -- that was a point that was argued below and not taken here, so I need say no more about it -- second, that "All necessary assignments have been made and the plaintiffs are entitled to issue a warrant for possession".

When the Judge says "All necessary assignments have been made", he must I suppose be construing the legal documents because there is nothing oral in the way of an assignment, nor could there be in a matter of this sort. The learned Judge did not, I think, give any reason: he simply held that it was quite enough for the company to show that they had had a registered transfer of the land and were the registered owners of it at the present date; and held the point taken (which it is true has no merits except the ingenuity of its inventor) to have been abandoned.

On appeal to this court two points are taken: first, that an order for possession of this sort is not assignable at all: secondly, that, even if it is, there has been no assignment. I do not think that it is necessary to decide finally whether an order of this kind is assignable at law. I myself rather doubt it. There would be an obvious difficulty in this case in that the order itself contains an order for costs. Whether you can assign part of an order without the rest seems to me at least very doubtful. I should on the whole think you could not. So that I should be inclined to the view, without deciding it, that this order, or the part of the order which deals with possession, is probably not at law assignable.

But of course that is not the end of the matter at all. The order which I have read mentions the word "assignment". There is no doubt that many orders are assignable. Judgments

for debt clearly are; though that example does not sufficiently explain the word "assignment" in the order. Another kind of assignment is that by operation of law, where the judgment creditor or the judgment holder dies, or becomes bankrupt, or of unsound mind: in those events the statutory assignee -- that is to say the trustee in bankruptcy or the receiver in lunacy or the personal representative -- will have devolved upon him without more the benefit of the judgment obtained by his predecessor.

When one looks at the corresponding Order in the White Book Order 42 Rule 23, it does not contain the word "assignment" at all: it simply says: "Where....any change has taken place by death or otherwise" then the party is entitled to issue execution. That may have, I think, a little significance. The question here, then, is whether there has been any assignment if the judgment, or that part of it which relates to possession, be assignable. It is said by Mr. Dunn that the benefit of such a judgment passes on a mere conveyance of the land - as if it was, so to speak, one of the appurtenances passing under the general words of a conveyance. That is not a view I can take at all.

Mr. Dunn cited in support of that proposition a case of Goldthorpe v. Bain (1952 2 Queen's Bench, page 455), where Lord Justice Jenkins was dealing with a case of death and where the bold argument was put up that a judgment for possession, anyhow in a statutory tenancy case, was a thing merely personal to the person who obtained it and did not devolve on his or her personal representative. That view the learned Lord Justice had no difficulty in rejecting. He used words which, if they were taken without relation to the context in which they were used, might cover a case like the present. He said, at page 464: "In such a case, the judgment being one which concerns a proprietary interest of the deceased landlord which would normally pass to the landlord's personal representatives, those representatives, or a beneficiary claiming through them by means of an assent, on proof to the court of the grant of probate, and of the assent, if there is one, would prima facie be entitled as

of right to an order (under Order 25 Rule 6 of the County Court Rules) declaring them entitled to enforce the order for possession". That is all he decided; and the fact that he talks about such an assignee being a successor in title does not mean that a mere assignment of the land inter vivos and without more will pass the benefit of an order of this sort. Therefore it seems to me that the difficulty that the plaintiffs are in is that they have not got an assignment of the benefit of this judgment.

The other case cited to us was a case of Knight v. Clarke (15 Queen's Bench Division, page 294), where the landlord had (as Mrs. Silvester has) parted with the whole interest in the property after the date when he obtained judgment. The headnote reads: "Where a landlord has recovered judgment in an action against his tenant for the possession of premises which had been held over after the expiration of the tenancy, he will be allowed to issue the writ of possession notwithstanding that his estate in the premises terminated after the commencement of the action and before the trial, unless it be unjust and futile to issue such writ...." Therefore the proper person to enforce this judgment was Mrs. Silvester. It is quite true that the appellant might have come forward and said that it would be futile to do this because she has lost all interest in the premises; but if she was supported by the plaintiffs, who now have the beneficial interest, I do not doubt at all that the writ would go in Mrs. Silvester's favour. Therefore the respondents are not without remedy: they have merely taken the wrong way to achieve it.

In my judgment this point, although it is a technical point, succeeds, and the appeal must be allowed.

RD JUSTICE HODSON: I agree, and for the same reasons.

RD JUSTICE ORMEROD: I agree, for the same reasons.

(Appeal allowed with costs).