

In the absence of any provision of the order in council dealing with the matter, I feel no doubt that the Rules of the Supreme Court are applicable and that this Court has power under order 50 rule 3 to grant the injunction sought—if in the opinion of the Court the circumstances of the case justify this course.

The applicant is relying upon the judgment of the Court of Appeal in *Polini v. Gray*, 12 Ch. D. 438. In that case the person who was appealing against a judgment dismissing her claim to a share in a fund and who had obtained an injunction against the distribution of the fund pending the hearing of the action applied to have the injunction continued pending the hearing of the appeal. The persons to whom the fund would in the absence of an injunction be paid over, were all resident out of the jurisdiction of the Court.

In that case therefore, it is clear that unless the injunction was continued the whole object of the appeal would be defeated.

The present application is based on an allegation that the defendant has no other means out of which to satisfy the judgment if the applicant is successful, and hence that if she should dispose of the chattels claimed, the object of the present appeal may be defeated. No ground however, is suggested from which it may be inferred that the defendant has any intention of disposing of the jewellery and policy in claim. Moreover in the present case no application for an injunction pending the hearing of the action was ever made.

For the applicant it is said that the reason for this was that the applicant was not certain whether the chattels claimed, were in the defendants' possession or not. But his action was in detinue and hence was based upon the defendant's possession or control of the chattels claimed; and the applicant is now seeking to be placed in a better position than he had before judgment was given against him.

I see no reason to grant this application.

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## SITA SUCHIT v. RAMA.

[Civil Jurisdiction (Corrie, C.J.) August 12, 1938.]

*Covenant for quiet enjoyment by lessor—premises demolished by lessor in obedience to local authority's demolition order—whether a breach of covenant by the lessor—whether an eviction by title paramount.*

Premises in Renwick Road, Suva were owned by the plaintiff and occupied by the defendant and his subtenants under a lease for a term of ten years from 1st September, 1932. In April, 1937 a closing order was served on the plaintiff, and notice of this order on the defendant. In obedience to the order the defendant and his subtenants vacated the premises in on 31st July, 1932. Subsequently, in obedience to a demolition order, the plaintiff demolished the premises. Rent had been paid by defendant up to 31st July, 1937, the date when he vacated the premises.

**HELD.**—Neither vacation by a lessee in obedience to a closing order nor demolition by the lessor in obedience to a demolition order is eviction of the lessee by title paramount or breach of the lessor's covenant for quiet enjoyment.

Cases referred to :—

(1) *Popular Catering Association Ltd. v. Romagnoli* [1937] 1 A.E.R. 167.

**ACTION FOR RENT DUE** under a lease. The facts are fully set out in the judgment.

*S. H. Ellis* and *R. L. Munro* for the plaintiff.

*R. Crompton, K.C.*, and *R. A. Crompton* for the defendant.

**CORRIE, C.J.**—The plaintiff as owner in fee simple of land in Renwick Road, Suva, comprised in Lease No. 3875 granted to the defendant, is claiming the sum of £70 being rent due for the months August to December, 1937, inclusive, at £14 a month.

The defendant denies liability for rent and counterclaims for breach of the covenant for quiet enjoyment contained in the lease.

It is agreed that the land owned by the plaintiff was leased by George Suchit, since deceased, to the defendant for ten years from the 1st November, 1932, at a rent of £14 a month. The rent was paid up to the 31st July, 1937, but no rent has been paid since that date.

The leased premises included a building containing four shops constructed of wood and iron which were sublet by the defendant at rents amounting in all to £17 a month.

On the 19th April, 1937, the Local Authority of the Urban Sanitary Area of Suva served upon the plaintiff a closing order under s. 21 of the Public Health Ordinance 1935,<sup>1</sup> directing that after forty days from the date of the order the premises should not be inhabited or occupied by any person. A notice of this order was served upon the defendant.

The defendant and his subtenants occupied the leased premises up to the 31st July, 1937, when they vacated them in obedience to the closing order.

On the 20th September, 1937, the Local Authority served on the plaintiff a demolition order under the Public Health Ordinance, 1935.

On or about the 9th December, 1937, the plaintiff, in compliance with the demolition order, began to take down and remove the building, and the work of removal was completed during the month of December.

The lease granted to the defendant contains the following clauses :—

“ 5. The lessee shall keep the premises hereby demised in good and tenantable repair fair wear and tear and damage by fire storm and tempest and other act of God alone excepted ”.

“ 8. Provided that in case the demised premises of any part thereof shall at any time during the continuance of the lease be destroyed or damaged by fire, flood, lightning, storm, or tempest, so as to render the same unfit for the occupation and use of the lessee, then, and so often as the same shall happen the rent hereby reserved or a proportionate part thereof according to the nature and extent of the damage sustained shall abate and all or any remedies for recovery of the rent or such proportionate

<sup>1</sup> Cap. 107.

“ part thereof shall be suspended until the demised premises shall  
 “ have been rebuilt or made fit for the occupation and use of the  
 “ lessee, and in case of difference under this proviso the same shall  
 “ be referred to arbitration under the provisions of the Arbitration  
 “ Act 1889 (England).”

The lease contained no covenant by the lessor with regard to the repair of the building, but included a covenant for quiet enjoyment in the following terms :—

“ The lessor hereby covenants with the lessee that he paying the  
 “ rent hereby reserved and observing and performing the covenants  
 “ and conditions herein contained and on his part to be observed and  
 “ performed shall peaceably and quietly hold and enjoy the lands  
 “ hereby intended to be demised for and during the term hereby  
 “ granted without any lawful interruption from or by the lessor or  
 “ any person rightfully claiming from or under him ”.

Among other authorities, the plaintiff's counsel relies upon the judgment in the *Popular Catering Association, Ltd. v. Romagnoli* [1937] 1 A.E.R., p. 167, the facts in which closely resemble those of the present case.

In that case the plaintiffs were the lessees and the defendant was sublessee of certain premises, which became the subject of a dangerous structure notice served by the London County Council on the defendant and on the plaintiffs' superior landlords. The defendant forwarded the notice to the plaintiffs, but it was not complied with. Two further notices were served and demolition orders obtained. Eventually the County Council entered the premises and exercising their powers under the London Building Act, 1930,<sup>1</sup> s. 133, carried out the work necessary to comply with the dangerous structure notices, and in the course of such work they demolished and pulled down two storeys of the premises. In an action for arrears of rent, the defendant pleaded that he had been evicted from part of the premises by the London County Council on the default of the plaintiffs, and that such eviction constituted eviction by title paramount. Alternatively he pleaded that the eviction was due to the act or default of the plaintiffs in permitting the premises to become dangerous, and/or in omitting to remedy the dangerous condition of the premises, and/or in failing in breach of statutory duty to comply with the dangerous structure notices and demolition orders, and he pleaded that the underlease was frustrated. The defendant counterclaimed for an apportionment and reduction of the rent payable and damages for breach of the plaintiffs' covenant for quiet enjoyment.

The underlease contained (*inter alia*) the following covenant by the sublessee :—

“ And will at all times during the said term at his own expense  
 “ keep the said demised premises in good and substantial repair  
 “ (damage by fire or explosion excepted) ”.

And the lessor covenanted (*inter alia*) :

(a). That the lessee paying the said rent and observing and  
 “ performing the covenants by the lessee herein contained may  
 “ peaceably hold and enjoy the said premises during the said term

<sup>1</sup> A Private Act (20 & 21 Geo. 5, c. 158.)

“ without any interruption by the lessor or any person claiming  
“ by through under or in trust for him ; (b) that the lessee is not  
“ to be held responsible for any settlements in the structure or for  
“ the maintenance of the main timbers walls or structure or for  
“ repairs required thereto through age or decay or unless the same  
“ are occasioned through the negligence of the lessee his under-  
“ tenants or servants ”.

It was held (1) that there was no eviction of the defendant by title paramount ; (2) that there was no frustration of the underlease ; and (3) that there had been no breach of the plaintiffs' covenants for quiet enjoyment ; and the defendant was held liable for the full amount of the rent.

It is to be noted that while in the repairing covenant by the sublessee fair wear and tear was not expressly excepted, the terms of part (b) of the lessor's covenant which has been cited relieved the sublessee from all liability for damage to the main timbers, walls and structure due to fair wear and tear.

The position therefore of the sublessee in that case in respect of repairs was substantially the same as that of the defendant in the action now before this Court.

The defendant argues, however, that the present case is to be distinguished on the ground that whereas in the case cited, the demolition of the premises was carried out by the Local Authority, in the present case the plaintiff herself, in obedience it is admitted to the Local Authority's order, carried out the work of demolition.

I am unable to accept this view.

The defendant was in fact deprived of all enjoyment of the building by the closing order. And while it is true that the subsequent demolition was actually carried out by the plaintiff, the work was done in obedience to the Local Authority's order ; and if it had not been done by the plaintiff, the building would have been pulled down by the Local Authority itself.

That is to say, there was no eviction of the defendant by title paramount, and no breach of the plaintiff's covenant for quiet enjoyment.

The defence and counterclaim therefore fail, and judgment will be entered for the plaintiff for £70 and costs.

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