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ATTORNEY-GENERAL

v.

HARDEO SHANDIL

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[SUPREME COURT, 1974 (Tuivaga J.), 13th August]

Civil Jurisdiction

Land—ejectment—squatters—law relating thereto—Land Transfer Act 1971 s.169.

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On an application brought for vacant possession under the summary procedure provided in the Land Transfer Act 1971 s.169, the trial judge referred to the observations of Lord Denning in *McPhail v. Persons Unknown* [1973] 3 All E.R. 393 with regard to squatters.

It was held that the defendant, being a squatter, should have vacated the land when required so to do.

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Cases referred to :

London Borough of Southwark v. Williams [1971] 2 All E.R. 179 ; [1971] Ch. 734.

Browne v. Dawson (1840) 12 Ad & El 624.

Anon (1670) 1 Vent 89.

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R. v. Dormy (1700) 1 Ld Raym 610.

R. v. Bathurst [1755] Say 225.

R. v. Child (1846) 2 Cox C.C. 102.

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Hemmings v. Stoke Poges Golf Club [1920] 1 K.B. 720; [1918-19] All E.R. 798.

Harris v. Austin (1615) 1 Roll Rep 211.

Lacy v. Berry (1659) 2 Sid 155.

Aylionby v. Cohen [1955] 1 All E.R. 785; [1955] 1 Q.B. 558.

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Application for vacant possession of land under the Land Transfer Act 1971 s.169.

M. J. Scott for the plaintiff.

K. C. Ramraka for the defendant.

TUIVAGA J. : [13th August 1974]—

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This is an application brought by the plaintiff against the defendant for vacant possession under the summary procedure provided in section 169 of the Land Transfer Act, 1971.

The facts so far as these are not disputed appear to be as follows. The land in question is Crown land administered by the Director of Lands. It is part of Lot 21 in what is now known as the Nasole Subdivision. In 1969 the defendant and his family moved to this land without the consent of the Director of Lands who has at no time accepted any rent from the defendant. On or about 11th December 1969 the defendant somehow obtained the approval of the Town Planning Board and the Suva Rural Local Authority for the construction of a dwelling house. A house with a size of 22' x 15' was subsequently built on the said land. A notice to vacate the said land issued by the Director of Lands was served on the defendant on the 11th March 1970 but the defendant refused to comply with it and has continued to remain in occupation of the land.

The defendant claims that he occupied the land because of certain oral representations made to him by a staff of the Lands Department. He did not specify the nature of these alleged representations. They have been unequivocally denied by the Director of Lands. They appear too nebulous for this Court to attach any weight to them. It is also said that the approval given by the Town Planning Board and the Suva Rural Local Authority to the defendant to build a house thereon indicated that the defendant did have official authorization for his occupation of the said land. However in my view the granting of approval by those authorities cannot affect in any way the issue of tenancy. Their authority is merely confined to implementing housing regulations for which they are responsible and has no relevance to the question of land rights. The defendant also claims somewhat vaguely that there are triable issues involved in this case which ought not to be dealt with summarily. Much was made of the fact that the defendant is a Hindu priest who is serving a most useful purpose in the area concerned and it is said that for that reason he ought to keep his place there. I do not doubt this but I am afraid this Court cannot take cognizance of matters such as this in the present application which must be decided on legal grounds. The plaintiff on the other hand claims that the defendant is a squatter on the land in question who has been obstinate in refusing to vacate the land in which he has no legal or equitable right whatsoever.

I am satisfied on the material before me that the defendant is a squatter on the land in question and to whom the observations of Lord Denning in *McPhail v. Persons Unknown* [1973] 3 All E.R. 393 at pages 395 and 396 are apposite. There he says :—

“ 2 *The law as to squatters*

What is a squatter? He is one who, without any colour of right, enters on an unoccupied house or land, intending to stay there as long as he can. He may seek to justify or excuse his conduct. He may say that he was homeless and that this house or land was standing empty, doing nothing. But this plea is of no avail in law. As we said in *London Borough of Southwark v. Williams* [1971] 2 All E.R. 175 at 179, [1971] Ch. 734 at 744 :

‘ If homelessness were once admitted as a defence to trespass, no one’s house could be safe . . . So the courts must, for the sake of law and order, take a firm stand. They must refuse to admit the plea of necessity to the hungry and the homeless ; and trust that their distress will be relieved by the charitable and the good. ’

(i) *The remedy of self-help*

Now I would say this at once about squatters. The owner is not obliged to go to the courts to obtain possession. He is entitled, if he so desires, to take the remedy into his own hands. He can go in himself and turn them

A out without the aid of the courts of law. This is not a course to be recommended because of the disturbance which might follow. But the legality of it is beyond question. The squatters were themselves guilty of the offence of forcible entry contrary to the statute of 1381 (The Forcible Entry Act 1381). When they broke in, they entered 'with strong hand' which the statute forbids. They were not only guilty of a criminal offence. They were guilty of a civil wrong. They were trespassers when they entered, and they continued to be trespassers so long as they remained there. The owner never acquiesced in their presence there. So the trespassers never gained possession. The owner, being entitled to possession, was entitled forcibly to turn them out : see *Browne v. Dawson* (1840) 12 Ad & El 624. As Sir Frederick Pollock put it in his book on Torts (Pollock's Law of Torts (15th Edn., 1951), p. 292) :

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C 'A trespasser may in any case be turned off land before he has gained possession, and he does not gain possession until there has been something like acquiescence in the physical fact of his occupation on the part of the rightful owner.'

Even though the owner himself should use force, then so long as he uses no more force than is reasonably necessary, he is not himself liable either criminally or civilly. He is not liable criminally (1) because it was said in the old times that none of the statutes of forcible entry apply to the expulsion by the owner of a tenant at will : see *Anon* (1670) 1 Vent 89 ; *R. v. Dormy* (1700) 1 Ld Raym 610 ; *R. v. Bathurst* (1755) 3 Say 225 ; but, even if this is no longer true, (2) in any case the statutes only apply to the expulsion of one who is in possession : see *R. v. Child* (1846) 2 Cox CC 102. They do not apply to the expulsion of a trespasser who has no possession. The owner was not civilly liable because the owner is entitled to turn out a trespasser using force, no more than is reasonably necessary : see *Hemmings v. Stoke Poges Golf Club* [1920] 1 KB 720, [1918-19] All E.R. Rep. 798.

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E (ii) *The remedy by action*

Although the law thus enables the owner to take the remedy into his own hands, that is not a course to be encouraged. In a civilised society, the courts should themselves provide a remedy which is speedy and effective ; and thus make self-help unnecessary. The courts of common law have done this for centuries. The owner is entitled to go to the court and obtain an order that the owner 'do recover' the land, and to issue a writ of possession immediately. That was the practice in the old action of ejectment which is well described by Sir William Blackstone in his Commentaries on the laws of England 6th Edn. (1774) vol. 3, pp. 200-205 and Appendix No. II ; and by Maitland in his Equity (1909), pp. 352-354 ; and see The Forms of Action at Common Law (1936), pp. 58-60. So far as I can discover, the courts of common law never suspended the order for possession. Once the order was made, the owner could straightaway get a writ of possession for the sheriff to cause the owner to be put into possession. Sometimes the owner, although he got an order, might not wish to get the sheriff to turn out the trespassers, because the sheriff was known to charge extortionate fees. In that case the owner was entitled to take possession at once by his own hand : see *Harris v. Austin* (1615) 1 Roll Rep. 211 at 213 per Coke CJ ; *Lacy v. Berry* 1659) 2 Sid 155 at 155, 156 ; *Aylionby v. Cohen* [1955] 1 All E.R. 785, [1955] 1 Q.B. 558.

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Seeing that the owner could take possession at once without the help of the courts, it is plain that, when he does come to the courts, he should not be in any worse position. The courts should give him possession at once, else he would be tempted to do it himself. So the courts of common law never suspended the order for possession. ”

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I am satisfied that the defendant being a squatter on the land should have vacated it when he was required to do so. Equally I can find no substance in the defendant's claim that there are important issues in this case which should be the subject of a trial. In my view this is a simple case of trespass on land belonging to the Crown. In the circumstances I have no alternative but to grant the application and order possession to be given to the plaintiff.

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Order for possession given to the plaintiff.