

JUDGMENT

IN THE ROYAL COURT OF THE ISLAND OF JERSEY

(Samedi Division)

Between David Rochfort Luke Plaintiff  
and Miss Roselle May Le Moignan Defendant

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COMMISSIONER DOREY: Whether an agreement for the occupation of premises creates a licence for a tenancy depends on the actual circumstances of the case rather than on any form of words.

In the leading Jersey case of the Attorney General v. Larbalestier 1980, Jersey Judgments, page 223, four tests were laid down:

1. the control of the premises by the landlord;
2. exclusive occupation;
3. residence by the landlord on the premises; and
4. the intention of the parties.

In the present case, the landlord - and in the context, Mrs Roscouet must be described as the landlord - lived on the premises. As regards control of the premises, Mrs Roscouet seems to have exercised little control over the two rooms she had let but, no doubt, would have some control over where the van was parked. In practice, exercise of control by a woman of her age would be difficult.

As regards exclusive occupation, which is regarded as the most vital consideration in the case of Street v. Mountford, 1985, 1 Appeal Cases, page 809, it was admitted by the defendant that Mrs Roscouet's intention was not to grant exclusive occupation as she had demanded that the doors of the rooms be left unlocked. Finally, it appears, both from the evidence of Mr Roscouet and from the letter written by Mr Luke, that the real intention of Mrs Roscouet, and certainly of her family and friends, was to have people living in whose very presence, apart from such physical help as they gave her, would be of some protection in an emergency. We, therefore, conclude that, in the rather special circumstances of this case, no tenancy was created. Had we found that there was a tenancy created by Mrs Roscouet, we would have applied the principle set out in Darcel v. Hazart, a Jersey case on October 21st, 1880, that the customary law of Jersey does not permit a tenant to create a sub-tenancy without specific permission being granted by the landlord. We find that no such permission was

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granted and that any permission that was granted did not extend beyond taking in lodgers or licencees. We, therefore, find for the plaintiff.

(Advocate Thacker addresses the Court on Miss Le Moignan's finances and asks for a delay of three months to the middle of May.)

(Advocate Gould and his client withdraw briefly. Advocate Gould addresses the Court and asks for an order for costs and that Miss Le Moignan's eviction should be ordered with the shortest delay. (Advocate Thacker addresses the Court on costs.)

COMMISSIONER DOREY: The Court orders that Miss Le Moignan vacates the premises at the end of a four-weeks' delay and we recommend her (this is purely informally) to approach the Constable of the Parish to see if he can advise her on the matter of accommodation and we cannot do other than follow the normally accepted practice that costs, taxed on a party (indistinct) basis, follow the event so your difficulty in enforcing such an order might be considerable and I am sure that you will advise your client.

ADVOCATE GOULD: I shall.

COMMISSIONER DOREY: Thank you. I am grateful to counsel for producing cases which have been a great help in this matter.