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PETTY DEBTS COURT

3rd June, 1992

95A.

Before: D.A. Trott, Esq., Assistant Magistrate

Between: C. Le Masurier Limited Plaintiff
and: Geoffrey Arthur Alker First Defendant
and: Northern Inn Limited Second Defendant

Application by the defendants for adjournment of eviction proceedings, brought under Article 3 of the Loi (1946) concernant l'expulsion des locataires réfractaires, as amended.

Application refused; Court has no discretion.

Advocate R.J. Michel for the Plaintiff.
Advocate M.M.G. Voisin for the Defendants.

JUDGMENT

THE ASSISTANT MAGISTRATE: On 15th December, 1988, the plaintiff, owner of the premises used as an inn and restaurant known as "L'Auberge du Nord", situate in the Parish of St. John,

(hereinafter called "the premises") gave the defendants notice to quit the premises on 25th December, 1989.

Both Advocates, on behalf of the parties, agreed that under Article 1(3) of the Loi (1919) sur la location de bien-fonds, one year's notice to quit the premises expiring on Christmas Day could be given at any time.

In this judgment the Court shall not rehearse, as it is unnecessary for the purpose of this judgment, the facts of the case, save to the extent that the notice to quit expired on 25th December, 1989, and as the defendants remained in possession, it was necessary for the plaintiff to institute eviction proceedings in this Court, which proceedings have been adjourned on various occasions by agreement.

The case was called on 28th May, 1992, before the Court, when *inter alia*, the Court was requested to give judgment at the behest of the plaintiff, whilst the defendants requested a further adjournment of the proceedings, basing their requests upon the adjudication of various proceedings which are to take place before the Privy Council, and the Royal Court. The plaintiff resisted the application for an adjournment and requested an eviction order, albeit with an agreed stay of execution until 31st October, 1992.

The Court was referred to many authorities by the parties, but it is common ground that "*toute cause en expulsion de locataire*" will lie within the jurisdiction of the Petty Debts Court.

Thus this Court has to enquire if these proceedings have been brought properly, and it is not contended that they were

not, and therefore, the Court has to consider the Law on the matter.

I shall refer to Article 3(3) of the Loi (1946) concernant l'expulsion des locataires réfractaires which states:

"Sous la réserve des dispositions de l'alinéa (3A) de cet Article, la Cour, s'il y a lieu, en présence du défendeur ou sur son défaut, et après s'être assurée que toutes les formalités prescrites par la loi ont été dûment remplies, autorisera le Vicomte ou un membre assermenté de son Département à mettre le propriétaire en possession du biens-fonds et à en expulser sommairement le locataire".

In the Loi (1948) (Amendement) concernant l'expulsion des locataires réfractaires, the 1946 Law was amended by the insertion in that Law of a new paragraph (3A) which is as follows:

"La Cour aura le pouvoir de surseoir au jugement en vertu de l'alinéa précédent ou à l'exécution dudit jugement si la Cour estime que l'expulsion sommaire du locataire pourrait lui causer un préjudice plus grave que celui que pourrait être causé au propriétaire si le locataire restait en possession, et que le locataire mérite un délai:

Etant entendu que les dispositions de cet alinéa ne s'appliqueront pas s'il s'agit -

- (a) des maison, offices et terres d'une contenance excédant deux vergées; ou*
- (b) des terres avec ou sans édifices, mais sans maison, d'une contenance excédant une vergée".*

It was argued by the defendant that the use of the words "*s'il y a lieu*" in Article 3(3) (supra) gave the Court a discretion to grant or refuse an order, and taken with the Petty Debts Court (Jersey) Rules, 1967, Rule 17 - which gives the Court power *inter alia* to make practice directions, that the Court could order that these proceedings could be adjourned pending proceedings in the upper Courts. This is a novel interpretation of the Law and Rules, and one the Court does not subscribe to. This Court has not, and at this stage of these proceedings, will not make a direction that these proceedings be stayed; for to do so, would (a) be an attempt to circumvent the provisions of the aforesaid Article 3 (supra); and (b) would involve the Court "moving the goal-posts" to suit the ends of one party to the prejudice of the other.

Therefore, the request of the defendants for an adjournment is denied, for this Court was constituted by Statute, and unless Statute gives the Court a discretion, it is bound by Statute, as this Court is not a Common Law Court which would give its jurisdiction a broader scope, and discretion.

Thus this Court is bound by the aforesaid Article 3 as amended by the Article (3A) (supra), and unless the parties agree, which they do not, then this Court will not order a further adjournment.

As the aforesaid Proviso to Article (3A) of the 1948 Law does not give this Court any discretion in suspending the effects of an Eviction Order in this case, the Court has no choice but to grant an immediate eviction order, suspended, by the agreement of the parties, until 31st October, 1992. This order shall contain the usual provisions for the payment of the

costs of the proceedings, and the payment of rental to date when possession of the premises is given up to the plaintiff.

Authorities

Loi (1919) sur la location de bien-fonds.

Loi (1946) concernant l'expulsion des locataires réfractaires,
as amended.

Règlement (1854) établissant une Cour pour le recouvrement de
menues dettes.

Petty Debts' Court (Jersey) Rules, 1977.

Royal Court Rules, 1982, Rule 7/5.

Airport Restaurants Limited -v- Southend-On-Sea Corporation
(1960) 2 All ER 888.

Hinckley and South Leicestershire Permanent Benefit Building
Society -v- Freeman (1941) 1 Ch. 32.

Robertson -v- Cilia (1956) 3 All ER 651.

Re: Yates Settlement Trusts (1954) All ER 620.

Maxwell -v- Keun & ors. (1928) 1 KB 645.

Wilson -v- Church (No. 2) (1879) 12 Ch. 454.

Jefferson -v- Bhetcha (1979) 2 All ER 1108.

Finance and Economics Committee -v- Bastion Offshore Trust (9th
October, 1991) Jersey Unreported.