

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Jones v.
Stone, from the Supreme Court of Western
Australia ; delivered 18th January 1894.*

Present :

LORD WATSON.

LORD HALSBURY.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

LORD JUSTICE DAVEY.

[*Delivered by Lord Halsbury.*]

THE sole question at issue here is whether, on certain facts disclosed in affidavits filed by the parties in an Action of Ejectment commenced by the Respondent against the Appellant in the Supreme Court, it was a case proper for the application of Order XIV. of the Rules of the Supreme Court of Western Australia, which is in terms identical with Order XIV. of the Rules of the Supreme Court in England, under which the Judge may in certain circumstances make an Order empowering a Plaintiff to sign judgment on a writ specially endorsed.

The affidavits appear to disclose that the Plaintiff in this case, who asserts his title to certain property, has this connection with the property, that his mother for some time received rents in respect of it and that he has also himself received them. The question which is debated on the face of the affidavits is, in what character those rents were received. On the one hand it is said on behalf of the Plaintiff, that the Defendant, who was let into possession of the property, not by the present

Plaintiff, but by the present Plaintiff's mother, was let into possession by her, she claiming the property in her own right. The affidavits in support of this view are anything but clear; but their Lordships will assume for the purpose of this Appeal that it is to be inferred from them that the Plaintiff's mother did purport to exercise her right over the property in the manner above stated. On the other hand the Defendant, whilst allowing that he did in fact so pay rent for the property for some years, contended that the ground upon which he did so was that the person to whom he paid it purported to act as collector on behalf of a person of the name of Atkinson, who was rated for it, and who was its real owner.

Nothing is distinctly alleged in support of the Plaintiff's title to the property. The learned Counsel, who very strenuously argued the Appeal on the Plaintiff's behalf, urged upon their Lordships the view that the Plaintiff was not called upon to set out his title, because his claim against the Defendant was that he had let him into possession of the property as his tenant; that he had given the Defendant notice to quit; that the Defendant was no longer his tenant; and, therefore, that he was entitled to turn him out of the property by an Action of Ejectment, the Defendant being estopped by his conduct in paying rent from denying the Plaintiff's title. The fact that a Plaintiff in ejectment must establish his own title is clear, but the Plaintiff in this case argues that he is relieved from the necessity of proving his title by reason of the alleged estoppel. This might be a very legitimate argument if the facts were sufficient to establish such a proposition. But it is enough to say, for the purpose of this case, that these facts are the very facts in dispute.

The Chief Justice of the Supreme Court, who dissented from the order of the Court giving the

Plaintiff liberty to sign judgment, remarked in his judgment that the case seemed to him to be "eminently one which required the fullest investigation before a jury, as the conduct of the Plaintiff in his dealings with the Defendant in connection with the land in question was of a most suspicious character." Whether that is so or not, it is abundantly clear to their Lordships that there are very serious questions of fact in debate which never ought to have been determined in a summary manner under Order XIV. The proceeding established by that Order is a peculiar proceeding, intended only to apply to cases where there can be no reasonable doubt that a Plaintiff is entitled to judgment, and where, therefore, it is inexpedient to allow a Defendant to defend for mere purposes of delay. The present case is not one of that kind; and their Lordships cannot do otherwise than regret that the Action was not allowed to be defended on its merits in the ordinary course, in which event the expense and delay of the present Appeal to the Privy Council would have been avoided.

Their Lordships will humbly advise Her Majesty to reverse the Order for Judgment of the 20th April 1891, the Judgment of the 23rd April 1891, the Order of the Full Court of the 20th October 1891, and all other Orders and Judgments of the Court which are in the way of the trial of the case. The Respondent must pay the costs in both the Courts below and the costs of this Appeal.

