

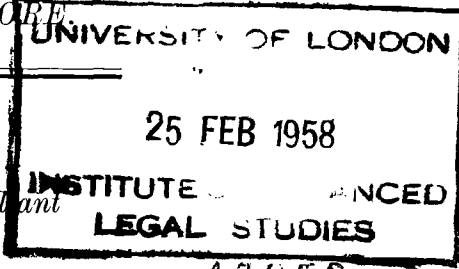
27, 1957

No. 17 of 1956.

In the Privy Council.

ON APPEAL

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF
THE COLONY OF SINGAPORE, ISLAND OF SINGAPORE



BETWEEN

LIM SIEW NEO (Defendant) *Appellant*

AND

PANG KEAH SWEE (Plaintiff) *Respondent.*

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Case for the Appellant

RECORD.

1. This is an Appeal, by leave, from a Judgment given on the 1st July, 1955, by the Court of Appeal of the Colony of Singapore (Justices Knight, Taylor and Storr), dismissing an Appeal from the Judgment of the High Court of the Colony of Singapore (Mr. Justice Whitton), whereby it was adjudged that the Respondent was entitled to an injunction restraining the Appellant from making in or upon the premises situate at 265 Orchard Road, Singapore, excessive noise so as to cause a nuisance to the Respondent in his occupation of the ground floor and yard at the back of the said premises so long as he should be in occupation thereof as a statutory tenant.

p. 135.

pp. 95-102.

p. 102, ll. 1-2.

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2. The facts giving rise to the present Appeal so far as material to be herein stated are as follows.

3. Since before 1939 the premises at 265 Orchard Road aforesaid were owned by one Ang Heng Kip, the mother of the Appellant. At all material times the Appellant, as agent of the said Ang Heng Kip, conducted all business transactions relating to the said premises. In April, 1951, the ownership of the said premises was transferred to the Appellant.

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4. In 1945, by an oral agreement between the Appellant and one Tay Wah Eng (hereinafter called "Tay"), Tay became tenant of the said premises. According to the contention of the Appellant Tay orally agreed with the Appellant as a condition of the said tenancy that she would not be allowed to sub-let the said premises.

5. In or about May, 1947, Tay sub-let the ground floor of the said premises to the Respondent at a rental of \$220 a month. At about the same time Tay sub-let the first floor of the said premises to one Teo Sin Hun and Tay herself continued to reside in the top floor of the said premises.

p. 143.
Ex. D.9.

p. 143.
Ex. D.4.

6. Tay determined her tenancy of the said premises by giving to the said Ang Heng Kip one month's notice to quit which expired on 31st March, 1951. At the same time Tay gave to the Respondent a notice to quit the said ground floor, and to the said Teo Sin Hun a notice to quit the said first floor, both of which notices expired on the 31st March, 1951. On the 31st March, 1951, Tay vacated the said top floor, and in December, 1951, 10 the said Teo Sin Hun vacated the said first floor. The Respondent continued, and still continues, in his occupation of the said ground floor.

pp. 1-3.

7. The proceedings giving rise to the present appeal were begun by Writ issued by the Respondent against the Appellant, the said Ang Heng Kip and one Lim Siew Teck on the 14th June, 1952.

pp. 28-30.
p. 28, ll. 31-34.

p. 29, ll. 22-26.

By his Statement of Claim delivered on the 6th August, 1952, and subsequently amended, the Respondent alleged that he had become a statutory tenant of the Appellant and that the Appellant, the said Ang Heng Kip and Lim Siew Teck and each of them had wrongfully entered upon the Respondent's property, being the ground floor of the said premises, 20 and had caused injury thereto and to his goods and had caused him nuisance by noise and the deposit of water, dirt and other noxious liquids on his property.

p. 33, ll. 23-30.

The Respondent accordingly claimed damages and an injunction restraining the alleged said wrongful entry and nuisances.

pp. 36-38.
p. 36, ll. 4-6.
p. 36, ll. 10-11.
p. 36, ll. 18-20.

8. By her Defence, delivered on the 30th October, 1952, the Appellant denied that the Respondent was a statutory tenant of the said ground floor and contended that the Respondent was a trespasser. The Appellant further denied the allegation of nuisance made in the said Statement of Claim. 30

9. In the present appeal no question arises with regard to the respective allegation and denial of the aforesaid acts of trespass and nuisance by the Appellant against the Respondent. As hereafter appears the learned judge of first instance (Mr. Justice Whitton) held that sufficient acts of nuisance had been proved to justify the grant of an injunction if the Respondent's occupation of the premises was a lawful one, and the Appellant has not sought to disturb that part of the finding. The issue in the present appeal is whether the Respondent was at the material time a statutory tenant of the ground floor of the said premises pursuant to the Colony of Singapore Control of Rent Ordinance, 1947 (No. 25 of 1947), 40 or whether, as the Appellant contends, he was a trespasser.

10. The aforesaid ordinance provides that in certain circumstances no order for recovery of possession shall be made against a tenant or

sub-tenant, who will thereby enjoy a statutory status of irremovability or "statutory tenancy." For the purposes of this appeal the relevant paragraphs of the said Ordinance provide as follows :—

" 14.—(1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases :—

* * * * *

" (e) where the tenancy has been determined by notice to quit given by the tenant.

10 " 15.—(1) No judgment or order for recovery of possession shall be enforced as against the sub-tenants (if any) of the tenant of the premises where the tenant was not prohibited from sub-letting by the terms of his tenancy and every such judgment or order shall declare whether it may be enforced as against such sub-tenants."

11. Tay having determined her said tenancy by giving notice to quit to the Appellant she would have been unable to resist a claim for possession under paragraph 14 (1) (e) of the said Ordinance and could not have claimed to be a statutory tenant of the said premises. The right of the Respondent to claim a statutory tenancy as against the Appellant depends in the first 20 instance upon whether Tay was prohibited by the terms of her tenancy from granting to the Respondent a sub-tenancy of the ground floor (ibid. paragraph 15).

12. The tenancy of Tay was granted orally and the only evidence of the terms of that letting was evidence given (A) by the Appellant and (B) by one Boswell.

The Appellant testified that, acting on behalf of her mother, the then owner, she had let the said premises to Tay in 1945 and had told Tay that she would not be allowed to sub-let. The Appellant stated that at the date of the letting she had hoped that in 1947 she might re-open a pre-war 30 family grocery business on the premises and that it was important to her that there should be no sub-letting.

The said Boswell was a solicitor who had been consulted by the Appellant in 1947 when the Appellant decided to recover possession of the said premises. According to the said Boswell the Appellant had then informed him that the terms of Tay's tenancy prohibited sub-letting and this evidence was admitted by the learned Judge as evidence of the state of the Appellant's mind at that time.

The whereabouts of Tay was unknown at the date of the hearing and she was not called as a witness.

40 13. In the course of his judgment given on the 23rd February, 1955, Mr. Justice Whitton reviewed this evidence and held in favour of the Appellant that the letting to Tay had contained a prohibition against sub-letting so that, prima facie, the Respondent was not entitled to claim a statutory tenancy as sub-tenant.

p. 46, ll. 23-26. 14. The Respondent had, however, contended in the alternative that if the letting to Tay had contained a prohibition of sub-letting this prohibition had been waived by the Appellant by her receiving rent from Tay with knowledge of the existence of the sub-letting.

p. 79, ll. 22-23.
p. 79, ll. 23-27. 15. On this issue the Appellant testified that she first became aware that a chemist's shop had been opened on the ground floor of the said premises in or about May or June, 1947. She asked Tay whether the shop had been sub-let and was told that there was no sub-letting to the Respondent but that Tay and the Respondent were in partnership with other persons and that the business belonged to the partnership. The Appellant further testified that she did not know that the Respondent was a sub-tenant of Tay until March, 1951, at or about the time when Tay vacated the premises. 10

p. 54, ll. 36-37. The Respondent agreed that he had not spoken to the Appellant with regard to his position on the premises between his entry in 1947 and his receipt of notice to quit from Tay in 1951.

16. On this issue the judgment of Mr. Justice Whitton contains the following passage :—

p. 98, ll. 40-51.
p. 99, ll. 1-7. “ Now as to [the Appellant's] knowledge or otherwise of the
“ existence of the sub-tenancy, she says that when [the Respondent] 20
“ commenced the chemist's business in 1947 she believed that he
“ was in partnership with Madame Tay and that she continued to
“ believe so up to 1951. I was not so favourably impressed by
“ [the Appellant's] demeanour in the witness box that I am prepared
“ to accept her unsupported word on any of the material points in
“ issue. After consideration in the light of events which are not
“ in dispute of what she has said about the matter I think it not
“ unlikely she did believe, in 1947 [the Respondent] had taken over
“ the ground floor as a partner of Madame Tay, but I also think
“ that probably for a considerable time before 1951 she realised he 30
“ was not a partner but a sub-tenant. On this first point [the
“ Appellant's] evidence as to being given the names of the four
“ partners and making enquiries that appeared to confirm the
“ matter rings to my mind true. But on the second point I consider
“ it improbable in the circumstances that [the Appellant], being a
“ Chinese lady of considerable business shrewdness in my estimation,
“ and interested in recovering possession of the whole premises
“ from at least 1947 onwards, had not discovered long before
“ Madame Tay vacated the top floor that the relationship between
“ Madame Tay and [the Respondent] was not one of partnership ; 40
“ and I find accordingly.”

In the submission of the Appellant the onus of proving such knowledge was upon the Respondent and no evidence thereof was tendered to the learned Judge.

p. 100, ll. 46-50. 17. In the result Mr. Justice Whitton held that the Respondent was entitled to a statutory tenancy of the ground floor of the said premises as against the Appellant.

18. The Appellant appealed to the Court of Appeal of the Supreme Court of the Colony of Singapore by notice of appeal dated the 2nd May, 1955, on the ground, inter alia, that there was no evidence on which the learned Judge could hold that the Appellant had waived the prohibition against sub-letting contained in the tenancy granted to Tay. pp. 105-107.
p. 105, ll. 18-20.

The Respondent did not enter a cross-appeal against the finding of Mr. Justice Whitton that the letting to Tay contained a prohibition of sub-letting.

19. The Appellant's appeal to the Court of Appeal was heard by 10 Justices Taylor, Storr and Knight. In his judgment delivered on 1st July, 1955, Mr. Justice Taylor declined to adopt the finding of fact of Mr. Justice Whitton that the letting to Tay had contained a prohibition against sub-letting and consequently held that the Respondent was entitled to a statutory tenancy without the necessity for considering whether there was evidence of a waiver by the Appellant of any such prohibition. Mr. Justice Storr and Mr. Justice Knight concurred in the last-mentioned judgment. pp. 130-133.
p. 131, ll. 45-47.
p. 133, ll. 23-24.
p. 134, ll. 17-19.
p. 129, ll. 28-31.

20. By Order dated the 3rd April, 1956, the said Court of Appeal granted leave to the Appellant to appeal to Her Majesty in Council. pp. 141-142.

20 21. The Appellant therefore humbly submits that this appeal should be allowed and that the aforesaid decisions of Mr. Justice Whitton and of the Court of Appeal of the Supreme Court of the Colony of Singapore should be reversed and that the Respondent's action should be dismissed and that judgment should be entered for the Appellant for the following amongst other

REASONS

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- (1) BECAUSE there was no justification for the reversal by the Court of Appeal of the finding of fact by the trial judge that the letting to Tay included a prohibition against sub-letting.
 - (2) BECAUSE in the absence of a cross appeal it was not open to the Court of Appeal so to find.
 - (3) BECAUSE there was no evidence upon which the trial judge could find that the Appellant had waived the said prohibition against sub-letting.
 - (4) BECAUSE the trial judge was wrong in law in holding that the Appellant's failure to take steps to evict Tay prior to March, 1951, could result in the creation of a Statutory tenancy in favour of the Respondent.

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Case for the Appellant

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