

Reginald Ernest Dickinson v Robert William Comyn Boucher

In the Matter of the Agricultural Holdings (Notices to Quit) Act 1977

In the Matter of an Arbitration



Positive/Neutral Judicial Consideration

Court

Court of Appeal (Civil Division)

Judgment Date

1 January 1984

In the Supreme Court of Judicature

Court of Appeal (Civil Division)

On Appeal from Order of His Honour Judge Clapham

Sittingbourne County Court

1984 WL 281624

Lord Justice Oliver and Lord Justice O'Connor

Wednesday 23rd November 1983

Representation

MR MICHAEL SEGAL , instructed by Messrs Attersoll Smith (Reigate), appeared for the Appellant (Landlord).

MR GEOFFREY JAKES , instructed by Messrs Robbins Olivey & Blake Laphorn, agents for Messrs Burges Salmon & Co., appeared for the Respondent (Tenant).

JUDGMENT (Revised)

LORD JUSTICE OLIVER:

This is an appeal from an order of His Honour Judge Clapham made in the Sittingbourne County Court on 16th December 1982, by which he answered a question posed in a Special Case propounded by an arbitrator under the [Agricultural Holdings Act 1948](#) in the sense that a particular notice (to which I will refer a little later) on 23rd January 1981, given by the landlord of an agricultural holding to a tenant of an agricultural holding, did not comply with the provisions of Case D(a) of section 2(3) of the Agricultural Holdings (Notices to Quit) Act 1977 . His Honour refused leave to appeal from his ruling but leave was subsequently granted by this court and so the appeal comes before us.

The position is this. The tenant in the arbitration was a Mr. Boucher, who was the tenant of an agricultural holding known as Lower Newlands Farm, Teynham, in Kent. The landlord was Mr. Dickinson. The rent payable for the holding was a rent of £2,500 a year payable quarterly. That meant that the quarterly payments came to £625. That rent appears not to have been paid with quite the regularity which the landlord was entitled to expect. Accordingly, on 23rd January 1981 he gave a notice under the provisions of section 2 of the Agricultural Holdings (Notices to

Quit) Act 1977 (a section which replaced [section 24 of the Agricultural Holdings Act 1948](#)) requiring payment of the rent within two months.

Turning now to that section, it provides as follows in subsection (1) : “Where - (a) notice to quit an agricultural holding or part of an agricultural holding is given to the tenant thereof; and (b) not later than one month from the giving of the notice to quit the tenant serves on the landlord a counter-notice in writing requiring that this subsection shall apply to the notice to quit, then, subject to subsection (2) below, the notice to quit shall not have effect unless the Tribunal consent to its operation”. Then there is an important qualification of that in subsection (2) , which provides: “ Subsection (1) above shall not apply in any of the Cases set out in subsection (3) below” . Subsection (3) details a number of Cases starting “Those Cases are” and I can go to Case D, which is the only material one for present purposes: “at the date of the giving of the notice to quit the tenant had failed to comply with a notice in writing served on him by the landlord, being either - (a) a notice requiring him within two months from the service of the notice to pay any rent due in respect of the agricultural holding to which the notice to quit relates; or” - and then there is an alternative which I need not bother about - “and it is stated in the notice to quit that it is given by reason of the matter aforesaid” .

So one sees the scheme of the Act. Notice to quit can be given but it is not to take effect without the Tribunal consenting to its operation, except in certain Cases. The protection which is furnished by subsection (1) is destroyed or forfeited if a case can be brought within one of the Cases in subsection (3) and in particular in relation to this case failure to comply with a notice to the statutory effect.

The notice in this case was in this form. It was headed “ Agricultural Holdings (Notices to Quit) Act 1977 . Re the Holding known as Lower Newlands Farm, Teynham, Kent. To: R.W.C. Boucher, Esq., Noads Farm, Teynham, Kent. We, Crow, Watkin & Watkin, Agents for your Landlord, Reginald Ernest Dickinson, hereby give you Notice requiring you to pay within two months from the service of this Notice the rent due in respect of the above holding as set out below: Rent due in arrear to 6th January 1981 - £650” . Then it is dated and signed. As I have already mentioned, the rent payable was not £650 but £625. It is common ground that the tenant did not pay the rent of £650 demanded or the rent of £625 which was due, and accordingly notice to quit was given, a counter-notice was served and the matter was referred to arbitration. There were a number of points arising. First, whether the notice was a valid notice non-compliance with which would enable the landlord to take advantage of subsection (2) of the section to which I have referred, and also questions as to the validity of the service of the notice and of the subsequent notice to quit.

The matter having come, as I have said, on Special Case from the arbitrator to His Honour Judge Clapham, His Honour decided, following a case in this court of *Pickard v. Bishop* (to which I shall have to refer), that the notice was not a notice non-compliance with which brought subsection (2) into operation and that, therefore, he found it unnecessary to decide the other two questions which had arisen about the service of the notice and of the subsequent notice to quit.

I do not think I need refer in any detail to Judge Clapham's helpful and clear judgment. It really rests upon the case of *Pickard v. Bishop* 31 P&CR 108 . That was a case in which a farm had been let to the tenant *Pickard* on a half-yearly tenancy. Some four years after the farm had been let the landlord, Mr. Arkwright, had transferred the ownership of the farm to two trustees on the trusts of a discretionary settlement. The tenant had not been informed of that. The same agents, who had dealt with the farm while it was owned by Mr. Arkwright personally, continued to deal with it and in 1972 they sent to the tenant a notice under [section 24\(a\)\(d\) of the Agricultural Holdings Act 1948](#) , which is for material purposes in exactly the same terms as the section of the 1977 Act to which I have referred. That notice was a notice which concluded “Mr. J.L.H. Arkwright ... One half year's rent due on September 29, 1972 £1,060.10” and then it was signed by the agent. Perhaps I should read the whole of the material part of the notice - it was cited in the judgment of Lord Denning M.R.: “Seeing that the question is whether the notice was valid, I must describe it. Much of it is printed. At the top in small print in a box it says: ‘This notice is to be regarded as a notice within the provisions of [section 24\(2\)\(d\) of the Agricultural Holdings Act 1948](#) ’ . Next the name in print: ‘Drew, Gibbins & Pearce, 14 Cathedral Close, Exeter’ . Then in handwriting: ‘Mr. C.A.J. Pickard, Owlcombe Farm, Roborough, Winkleigh, Devon’ . Date: ‘29 September 1972’ . That was a Friday. Then in print: ‘Dear Sir or Madam, We hereby give you notice to require you to pay within two months from the service of this notice the rent due to’ - so far in print. Then in handwriting ‘Mr. J.L.H. Arkwright one half year's rent due 29 September 1972, £1,060’ . Finally in print: ‘Yours faithfully, Drew, Gibbins & Pearce’ . That was the entire demand. There were no words saying ‘on behalf of or ‘as agents’ , or anything like that. At

the bottom there is a note in print saying that cheques should be payable to Messrs. Drew, Gibbins & Pearce” , and it repeats the address.

The court decided in that particular case, although Lord Justice Browne dissented, that the notice to pay, although it did not have to comply with any prescribed form under the 1948 Act, must comply strictly with the requirements of the section; that the notice must get the landlord right; that the notice in that case had not purported to be served by the landlords - who were, of course, the trustees of the discretionary settlement - and could not be said to have been properly served on their behalf; and that accordingly it was a bad notice. The judgment of the Master of the Rolls, which I need not read in full, I think, makes it clear what the ratio of the decision was. He refers to the meaning in the Act of the word “landlords” and then he goes on, in reference to the notice, “It requires payment of the rent due to Mr. Arkwright, the previous owner, who was not the ‘landlord’ . Mr. Pickard says that the notice is equivalent to a notice signed by ‘Drew, Gibbins & Pearce on behalf of Mr. Arkwright’ : which would plainly be bad” . Then he goes on: “In construing section 24(2)(d) it must be recognised that it is a provision which enables the landlord to forfeit the tenant's interest and obtain possession, to the great advantage of the landlord and great loss of the tenant. Now it is a settled rule of construction that forfeiture clauses are to be construed strictly. The party who seeks to enforce a forfeiture must comply strictly with every requirement leading to it. So I would construe section 24(2)(d) strictly so as to require the landlords to fulfil it to the letter” . Then he goes on a little later: “So far as the cases are concerned, the courts have construed the notices strictly. In Jones and Another v. Lewis and Others in this court we held that a service on one only of two joint tenants was bad. It should be served on both of them. In Magdalen College, Oxford v. Heritage a notice demanding rent was bad because it did not mention the two months.

“So, as a matter of principle, these notices must comply strictly with the provisions of the statute. This notice does not satisfy this strict test. It did not purport to be served by the ‘landlord’ , that is, by Mr. Bishop and Mr. Cotton. Nor was it served on their behalf. It was served by Drew, Gibbins & Pearce on behalf of Mr. Arkwright. At any rate, that is how I construe it. It required payment of the rent due to Mr. Arkwright. That imports that they were giving the notice on behalf of Mr. Arkwright and making the demand on behalf of Mr. Arkwright and serving it on his behalf. Now he was not the ‘landlord’ . I know that Mr. Bishop and Mr. Cotton are only trustees under a discretionary trust which was founded by Mr. Arkwright. But that does not cure the notice. In point of law it is the same as if Mr. Arkwright had sold to someone else for a vast sum. In order to be good, these notices must get the landlord right. This one did not.

“We were referred to Frankland v. Capstick . A notice claimed arbitration. It contained a mistake. It said: “As solicitors for your landlord Raven Frankland ... we hereby give you notice ...”, etc., whereas the real landlord was Edward Frankland. The county court judge held that the notice was bad. This court held that it was good because the operative word was ‘your landlord’ and the tenant knew perfectly well who the real landlord was. That case is quite distinguishable from this case. It was not concerned with a forfeiture. And here Mr. Pickard, the tenant, did not know anything about Mr. Bishop and Mr. Cotton at all” .

Sir John Pennycuik, who agreed with the Master of the Rolls, said this: “So far as now material, that paragraph” - he is referring to section 24(2) - “directs that two requirements must be satisfied, namely, (1) the notice must be served by the landlord, and (2) the notice must require payment of the rent due.

“So far as the first requirement is concerned, I have no doubt the notice may be served by the landlord's agent. That is not in dispute. So far as the second requirement is concerned, it seems to me that the word ‘pay’ contemplates payment to the landlord or his agent.

That is, I think, the natural meaning of the words 'pay any rent' in this context. It seems to me that an instruction to the tenant to pay rent or the equivalent of rent to a third party, whatever may be the consequence of such an instruction, would not constitute a requirement to pay rent, or, in more technical parlance, a demand for rent".

Then he goes on to deal with the construction of the notice and concludes: "Mr. Blum for the trustees contended that the words 'Mr. J.L.H. Arkwright' in the notice should be treated as a mere misdescription such as the misdescription in *Frankland v. Capstick*, or alternatively as a conventional description of the Arkwright estate, by reason that the trustees were in fact the trustees of a family settlement made by Mr. Arkwright. I am unable to accept that contention. The trustees are persons totally different from Mr. Arkwright. The words 'Mr. J.L.H. Arkwright' could not be regarded as a mere misdescription of Mr. Bishop and Mr. Cotton, or as a conventional description of them in their capacity as trustees of Mr. Arkwright's settlement".

The claim of the tenant in this case, of course, is that inasmuch as that case establishes a strict approach to the construction of the section and inasmuch as a strict construction requires that the notice to be complied with must be a proper and accurate notice, the notice in this case was bad and that the learned judge, therefore, was bound to come to the conclusion that the question raised before him must be answered in that way as a result of the case to which I have just referred.

In the instant case Mr. Segal, on behalf of the landlord, argues that this was no more than an unnecessary embellishment or misdescription in the notice - that is to say, the reference to £650. He points out that section 2(3) Case D(a) refers to a notice requiring the tenant to pay "any rent due". He says the words "any rent due" means "any rent which was due at the date of service of the notice". The notice, he says, does not, if you look at the terms of the statute, have to specify the amount of the rent that is due, because the tenant will know what this is. Indeed, I think without deciding the point that that may well be right. The difficulty that arises, as it seems to me, in this case, is that where the notice does go on to specify what the rent is and gets it wrong, it is then difficult to say that the tenant has failed to comply, if he does not pay what is demanded, with a proper notice under the Act. It is not simply that the notice to quit is allowed to operate if the tenant does not, within two months of the service of the notice, pay the rent due at the date of service to the landlord. The notice to quit is to operate if, at the date of the giving of the notice to quit the tenant had failed to comply with a notice in writing served on him by the landlord. So one is to ask, did the tenant fail to comply with a proper notice, i.e. one with which he was bound to comply? Of course, he failed to comply here with the obligation which was cast on him by the lease to pay his rent, but what was required by the notice was that he should pay a sum of £650, that being erroneously described as the rent due, and though no doubt he did not comply with that, he was not, of course, bound to do so. Mr. Segal submits that if the notice does not - and I will assume this is right - have to specify the amount of rent that is due, then, provided it requires the tenant to pay the rent due in respect of his holding, it is not invalidated, he says, by the addition of an incorrect amount. Finally, he submits it is not invalidated if it does not mislead the tenant.

He referred us to a number of cases which indicate a more liberal approach to notices of this type - I say "of this type" although in fact they were concerned with rather different situations, but he submits they are applicable to notices of this type and show a different approach from that which was taken by this court in *Pickard v. Bishop*. The first of those cases is *Frankland v. Capstick*. That was a case where, after the landlord and tenant had made an agreement for the surrender of a tenancy of an agricultural holding, the solicitors for the landlord made a claim for dilapidations and served a notice on the tenant in respect of them. That notice was expressed to be given "as solicitors for your landlord Raven Frankland", whereas in fact the landlord's name was Edward Frankland. It was held that the notice was ambiguous but it was clearly given on behalf of the landlord and it was valid, the tenant could not rely on the obvious blunder, which had in no way affected her or her understanding as to what the proceedings and her obligations were. But that, as was pointed out by Lord Denning in the case of *Pickard v. Bishop*, to which I have referred, was not a forfeiture case and therefore Lord Denning in his judgment implies that a more liberal approach was permissible.

In a case of *Carradine Properties Ltd. v. Aslam* in 1976 there was a provision in a lease that either party could terminate the lease at the end of the first 7 or 14 years on 12 months' prior notice in writing. A notice was served

on the tenant dated 6th September 1974 and it said "... we hereby give you notice that we intend to determine the term created by the lease on September 27, 1973, and that we require you to quit and deliver up possession ... on that date". Of course, the date in the notice should have been September 1975, because it was given at a time when the date of expiry was already passed. On the question of whether the notice to quit was invalidated it was held by Mr. Justice Goulding that "applying legal principles to the landlords' notice and adopting a benevolent approach, the court would treat the giving of a date past for termination of the lease as a slip which would be obvious to a reasonable tenant reading the notice". Mr. Justice Goulding says at page 444, and this statement has been subsequently approved, "I would put the test generally applicable as being this: 'Is the notice quite clear to a reasonable tenant reading it? Is it plain that he cannot be misled by it?' " Applying that test, he held the notice in that case was valid.

In a case of *Germax Securities Ltd. v. Spiegel* (1979) 37 P&CR 204 there was a similar problem but connected this time with a notice under section 25 of the Landlord and Tenant Act 1954 purporting to determine the lease on February 27, 1977. That was admitted to be wrong. On November 25, 1976, the plaintiffs' solicitors served by post another notice under section 25. A draft of that notice was prepared in the appropriate prescribed form but while preparing the actual document for despatch to the defendant its date of issue was put as March 25, 1977, instead of November 25, 1976, the actual date when it was despatched. The covering letter dated 25th November 1976 stated that a fresh section 25 notice terminating the tenancy on the following 24th June was enclosed. Of course, it required the tenant in the usual way to notify in writing whether he was willing to give up possession of the premises. No counter-notice was served and proceedings were issued in the county court seeking a declaration that the notice served on the defendant with the date stated was a good and effective notice. The court in that case applied the Carradine Properties Ltd. case as the test, to which I have referred, and Lord Justice Buckley approved the approach of Mr Justice Goulding in that case. He says at page 206 of the report: "Mr. Yajnik has submitted that in the present case the notice served by the landlords is open to the construction that it was intended by the landlords to take effect only from March 25, 1977; but, reading the notice with the covering letter, I do not think it can be said that any reasonable tenant would have been misled here. The mistake in this case was not in the operative part of the notice; it is merely a mistake in relation to the date at which the notice purports to have been given by the landlord. That that was a mistake is clear from association of the notice with the covering letter".

There again, of course, we were not dealing with a strict requirement of a section such as the present, which is designed to operate on non-compliance by the tenant with a notice containing a particular formula. It seems to me that the approach of this court in *Pickard v. Bishop* is one which, albeit in that case applicable to a misdescription of the landlord, must equally be applicable to the mis statement of the requirement with which the tenant is notified that he must comply.

With some little regret, I consider that *Pickard v. Bishop* was, as His Honour Judge Clapham found, binding upon him and it is binding upon us and is not readily distinguishable from the circumstances of the present case. In that case, Sir John Pennycuik observed at the termination of his judgment, "This is a highly technical point and I venture to think the mistake is a piece of outstanding good luck for Mr. Pickard. The fact remains that the notice to pay is made by section 24 of the Act of 1948 the foundation of forfeiture of an agricultural tenancy, and it is of general, and I think generally recognised, importance in connection with forfeiture that the requirements of the relevant statute or the lease, as the case may be, should be strictly complied with".

I think that that equally applies in the present case and, albeit with some little regret and a similar expression of my feelings that the tenant has been extremely fortunate in this case, I think that His Honour Judge Clapham was right in the conclusion to which he came and that this appeal must be dismissed.

LORD JUSTICE O'CONNOR:

I agree that the appeal should be dismissed for the reasons given by my Lord, but for my part I must not be taken as assenting to, or deciding, the proposition in this case as to whether a notice under Case D, paragraph (a) which does not specify the amount of rent required is a good notice.

MR JAQUES: Although your Lordships have described the good fortune of the tenant, I would ask your Lordships to increase that good fortune by dismissing the appeal with costs.

LORD JUSTICE OLIVER:

I do not think you can resist that, Mr Segal, can you?

MR SEGAL: I cannot resist that, my Lord.

LORD JUSTICE OLIVER: It is merely an additional piece of good fortune.

of my feelings that the tenant has been extremely fortunate in this case, I think that His Honour Judge Clapham was right in the conclusion to which he came and that this appeal must be dismissed.

LORD JUSTICE O'CONNOR:

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Order: Appeal dismissed with costs.

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