

KHOURY v. P.C. BANYA (ON BEHALF OF TRIBAL AUTHORITY)

Circuit Court (Macquarrie, J.): December 22nd, 1932

- 5 [1] Landlord and Tenant — determination of tenancy — summary ejectment proceedings — no proceedings under Summary Ejectment (Protectorate) Ordinance, 1927, s. 5 until tenancy duly determined — ejectment proceedings not equivalent to re-entry determining tenancy: While it is generally accepted that a landlord's bringing an action for possession against his tenant is equivalent to re-entry and re-entry determines the lease between them, the Summary Ejectment (Protectorate) Ordinance, 10 1927, s. 5 requires that a tenancy granted to a non-native by a tribal authority must be "duly determined" before any action can be brought against the tenant, and in such a case the action itself cannot therefore determine the tenancy (page 339, line 27—page 340, line 14).
- 15 [2] Landlord and Tenant — possession — re-entry — landlord's action to recover possession normally equivalent to re-entry — proceedings under Summary Ejectment (Protectorate) Ordinance, 1927, s. 5 exception to normal rule: See [1] above.

20 The respondent brought an action against the appellant in the District Commissioner's Court, Kailahun to secure the summary ejectment of the appellant from premises leased to him by the respondent.

25 The respondent, the Paramount Chief of the Luawa Chieftdom, instituted proceedings against the appellant, on behalf of the Tribal Authority, under the Summary Ejectment (Protectorate) Ordinance, 1927, s. 5 for the non-payment of rent. A proviso in the lease between them stipulated that if any part of the rent was in arrears for 21 days, whether demanded or not, and a written statement to that effect had been deposited with the District Commissioner, it would be lawful for the Tribal Authority to re-enter the premises, whereupon the tenancy would determine. 30 The District Commissioner gave judgment for the respondent by ordering the ejectment of the appellant and awarded the respondent damages and costs.

35 On appeal to the Circuit Court the appellant contended that, under the Summary Ejectment (Protectorate) Ordinance, 1927, s. 5, the tenancy must be "duly determined" — in this case by re-entry — and there was no evidence that this had taken place; and that since the tenancy had not been duly determined, no action could be brought against him. The respondent contended 40 that the bringing of an action for possession was itself sufficient as a re-entry.

The appeal was allowed.

C.C.

Case referred to:

- (1) *Moore v. Ullcoats Mining Co. Ltd.*, [1908] 1 Ch. 575; (1907), 97 L.T. 845.

Legislation construed:

Summary Ejectment (Protectorate) Ordinance, 1927 (No. 17 of 1927), s. 5:
The relevant terms of this section are set out at page 339, lines 17—23.

C.E. Wright for the appellant;
Kempson for the respondent.

MACQUARRIE, J.:

This is an appeal against a judgment of the District Commissioner's Court, Kailahun, ordering ejectment of the appellant within 14 days from premises leased to him by the respondent and awarding the respondent £10 damages and costs.

The proceedings were taken by the respondent under the Summary Ejectment (Protectorate) Ordinance, 1927, s. 5 of which, so far as relevant, provides that where a non-native holds land of a tribal authority on a tenancy "and such tenancy has been duly determined by notice to quit or otherwise," if the tenant refuses to give up possession, the tribal authority may obtain an order for summary ejectment by carrying out the provisions laid down by the Ordinance.

The main ground of appeal, and the one on which the appeal must succeed, is that there is no evidence that the tenancy was duly determined.

The terms of the tenancy are contained in a formal lease between the parties for a term of seven years at a rental of £10 a year which contains a provision which reads as follows:

"Provided always that if any part of the rent hereby reserved shall be in arrears for twenty-one days (whether demanded or not) or if any covenant or stipulation on the tenant's part herein contained shall not be performed or observed and a written statement to that effect has been deposited with the District Commissioner then and in any of the said cases it shall be lawful for the tribal authority at any time thereafter to re-enter upon any part of the demised premises in the name of the whole and thereupon this demise shall determine".

Mr. Wright for the appellant argued, on the authority of *Moore v. Ullcoats Mining Co. Ltd.* (1) that a re-entry by the lessor was

necessary before the demise would determine. There appears to be no answer to this and the question then arises — has the tribal authority re-entered? For it is under this proviso as to non-payment of rent that the respondent is claiming ejectment.

Now it is clear on the authorities that an action for possession by a lessor is the equivalent of a "re-entry," and Mr. Kempson for the respondent urged that this very action itself is sufficient as a re-entry. Mr. Wright, however, pointed out that these proceedings could not be brought by the respondent until the tenancy had been "duly determined." This is clearly laid down as indicated.

I can see no answer to Mr. Wright's contention from which it follows that the condition precedent to the jurisdiction of the District Commissioner to hear and determine the matter has not been fulfilled. The judgment of the court below is therefore reversed.

As the appeal has succeeded on a point not urged by the appellant in the court below, there will be no order as to costs in this court.

Appeal allowed.

IN THE MATTER OF THE PUBLIC LANDS ORDINANCE (CAP. 174)
and IN THE MATTER OF CERTAIN LANDS AT AND ABOUT THE
GRASSFIELDS, WELLINGTON and JACKSON

Supreme Court (Macquarrie, Ag. C.J.): April 12th, 1933

[1] Administrative Law — public officers — Curator of Intestate Estates — not agent of Crown but only a type of ordinary administrator — payment of commission and fees into general revenue not evidence of agency for Crown: The Curator of Intestate Estates is merely an administrator, whose rights and duties are governed by the laws applicable to administrators of intestate estates, and not a representative of the Government; and the fact that he takes a commission and fees on all money collected by him and pays them into the general revenue of the country is an incidental duty which does not clothe him with the rights and immunities of an agent of the Crown (page 345, lines 4—24).

[2] Civil Procedure — judgments and orders — effect — judgment not binding on person not party to proceedings: A judgment may affect, but does not bind, a person who is not a party to the proceedings (page 346, lines 29—31).

[3] Land Law — adverse possession — claim of Curator not in possession of intestate estate defeated by adverse possession throughout limitation