wholly to blame I did not submit a claim to the said land"—is in my opinion to invite a summary rejection of any petition she might be advised to send further.

The petition is dismissed. In the circumstances there will be no order as to costs.

Petition dismissed.

GARRICK *v.* WHITFIELD

SUPREME COURT (Luke, J.): April 4th, 1955
(Civil Case No. 310/53)

[1] **Civil Procedure—pleading—defence—plea of possession—plea sufficient denial of landlord's title to bar tenant's relief from forfeiture—amendment of pleading ineffective:** Where, in an action by a landlord to enforce forfeiture of a lease, the tenant in his statement of defence makes a plea of possession under O.XVIII, r.20 of the Supreme Court Rules, 1947, that amounts to a denial of the landlord's title so as to bar any relief from forfeiture being granted to the tenant; and it is impossible for the tenant to destroy the effect of his plea by subsequently amending it (page 400, line 40—page 401, line 31).

[2] **Equity—relief against forfeiture—relief not granted where landlord's title impugned—inadvertent denial in pleadings sufficient:** See [1] above.

[3] **Equity—relief against forfeiture—requisites of notice of breach of covenant:** Before a landlord commences proceedings against his tenant to enforce forfeiture of the lease, he must give the tenant notice of what is complained of and what has to be put right and allow him a reasonable time thereafter in which to remedy matters, but he does not need to give a detailed specification of the work to be done (page 399, lines 19–24; page 400, lines 1–18).

[4] **Landlord and Tenant—determination of tenancies—forfeiture—relief against forfeiture—relief not granted where landlord's title impugned—inadvertent denial in pleadings sufficient:** See [1] above.

[5] **Landlord and Tenant—determination of tenancies—forfeiture—relief against forfeiture—requisites of notice of breach of covenant:** See [3] above.

The plaintiff brought an action against the defendant for forfeiture of a lease and recovery of possession of the leased property.

The plaintiff and the defendant entered into a 25-year lease

under which the defendant covenanted to erect a shop on the leased land and to pay an agreed rent. The rent was subject to one deduction in respect of the defendant's expenditure in erecting the shop and another in respect of rent payable by the plaintiff to the defendant for one section of the shop. The plaintiff undertook to pay all rates, and was given the right to determine the lease in the event of certain breaches of the agreement. When the shop was completed, the defendant did not give the plaintiff the section she was entitled to under the lease, and then started building another shop on the land which he described as an extension. The defendant continued to make the agreed deductions in the rent payable to the plaintiff. The plaintiff then notified the defendant that unless the terms of the lease were carried out, legal action would be taken. The defendant admitted breaches of covenant but did nothing to discontinue them. The plaintiff thereupon instituted the present proceedings for forfeiture of the lease and recovery of possession.

In his statement of defence the defendant did not ask for relief from forfeiture; and in fact he stated that he was "in possession of the land and premises the subject-matter of this action." The Supreme Court considered whether in the circumstances of the case he was entitled to relief from forfeiture.

Cases referred to:

(1) *Horsey Estate Ltd.* v. *Steiger*, [1899] 2 Q.B. 79; [1895–9] All E.R. Rep. 515, *dictum* of Lord Russell, C.J. applied.

(2) *Kisch* v. *Hawes Bros. Ltd.*, [1935] 1 Ch. 102; [1934] All E.R. Rep. 730, followed.

(3) *Piggott* v. *Middlesex County Council*, [1909] 1 Ch. 134; (1908), 99 L.T. 662, *dicta* of Eve, J. applied.

Legislation construed:

Conveyancing and Law of Property Act, 1881 (44 & 45 Vict., c.41), s.14(1):

> "A right of re-entry or forfeiture under any proviso or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach."

C.B. Rogers-Wright for the plaintiff;
Edmondson for the defendant.

LUKE, J.:

The plaintiff's action is for forfeiture of a lease and recovery of possession. The facts briefly are that on May 1st, 1951 the plaintiff and the defendant entered into a lease, the terms of which, *inter alia*, are:

". . . [F]or the term of 25 years certain from the 1st day of May, 1951 yielding and paying therefor during the said term the yearly rent of £72 sterling payable by equal monthly instalments of £6 in advance on the first day of each succeeding calendar month during the said tenancy provided that the lessee shall deduct the sum of £2 monthly from the said £6 in respect of rent payable to him by the lessor for one section of the shop which shall be erected by the lessee and let out by him to the lessor.

That the lessee shall deduct a further sum of £2 monthly from the said £6 in liquidation of the sum of £500 being the amount which shall be expended by the lessee for the erection of a shop on the said land until the said sum of £500 is completely liquidated.

And the lessee hereby covenants with the lessor to erect a shop on the said land hereby demised to the value of £500 sterling, which shop shall be in three main sections in accordance with approved plan attached hereto and one section of which shall be let out to the lessee as aforesaid.

If at any time whenever the said rents shall be three calendar months in arrears or if whenever there shall be a breach on the lessee's part, the lessor may after three calendar months' notice determine the said lease of the said demised premises.

The lessor hereby covenants with the lessee in manner following, that is to say to pay all city and water rates in respect of the said demised premises."

The defendant, after he entered into this lease, started the building and according to the plaintiff's evidence completed it sometime in 1951. After the defendant completed this shop, instead of giving the plaintiff the section which under the lease she was entitled to, he rented the whole of it to a Syrian trader. Shortly after this, the defendant started building another shop which he

calls an extension. Immediately the plaintiff noticed, she consulted a lawyer and he wrote the defendant a letter dated June 16th, 1952 which was tendered in evidence and marked Exhibit D. In that letter the plaintiff enumerated the breaches which the defendant had committed under the lease, Exhibit B. On June 25th, 1952, the defendant's solicitor wrote a letter, Exhibit F, admitting the breaches in the covenant which the plaintiff had complained about but for the first time telling the plaintiff "that when the original plans referred to in Exhibit B were submitted they were not approved by the building authorities with the result that the building had to take the existing form." In this letter the defendant admitted that as the building then stood he found it impossible to keep to the covenant. In other words admitting that he had broken the covenant.

On July 2nd, 1952, the plaintiff's solicitor wrote to the defendant mentioning the arbitrary manner in which the defendant had been acting and again enumerating some of the breaches of covenant. The defendant, instead of seeking to settle this matter in a manner which would be satisfactory to the plaintiff, having found that he had broken the covenant in several respects, did nothing to ease the situation. He continued with his building of the extension, and on July 18th, 1953 the plaintiff issued a writ against the defendant. I must say at this juncture that two writs were issued, one claiming possession and damages and the other asking for a number of things; but owing to the plaintiff having to change solicitors there arose a confusion when the action was subsequently pursued, in that the wrong writ was made the title of subsequent proceedings. A little more care from those responsible could have obviated this confusion.

Even though the plaintiff had issued her writs, from the subsequent correspondence which passed between them it is evident that she would have been prepared to settle this matter amicably, seeing he was the defaulter. That this was the case was borne out by a letter written by the plaintiff's solicitor dated August 14th, 1953, to which the defendant's solicitor replied on September 2nd stating "that his client was building an extension to the said premises to enable him to observe the covenant contained in the original lease." In that letter he suggested an amendment of one or two alternatives to be embodied in that lease, and (b) reads:

> "To add a clause which enables my client to add the extension at the additional cost of £350 and that the rental stands

at £6 a month less £2 a month towards the liquidation of £850 to be spent on the original building and the extension till the completion of the said extension, which being completed shall be let to your client at £2 a month."

A settlement not having been arrived at, the plaintiff pursued her action and a statement of claim was served on the defendant stating the grounds of her complaint and asking for possession and damages. In answer to the statement of claim, the defendant put in a defence stating "that he was in possession of the land and premises the subject-matter of this action."

[The learned judge reviewed the evidence and continued:]

Having outlined very exhaustively the case for and against, three questions present themselves to me:

(a) Has the defendant committed a breach or breaches of this lease?

(b) If so, has the plaintiff served him a notice as required by s.14 of the Conveyancing and Law of Property Act, 1881?

(c) Has the defendant by his breaches forfeited the lease entered into between the plaintiff and himself?

In answer to the first question there is abundant evidence that the defendant has done so. Exhibit F, dated June 25th, written by his solicitor, states: "As the building now stands my client finds it impossible to keep the covenant." The defendant under the terms of the lease was to keep back £2 from the rent of £6 monthly which he was to pay the plaintiff monthly in advance. Not only did the defendant not pay the plaintiff the balance from the £6, but he kept deducting the sum of £2 for the section of the shop which he was to allocate to the plaintiff and which he did not do after the completion of the building in December 1951, as shown in Exhibit J, the defendant's solicitor's letter dated July 29th, 1952. On September 2nd, 1952, the defendant's solicitor wrote another letter in which he admitted his client had committed breaches and suggested one of two alternatives. The defendant in the witness-box admitted that the building which was first completed as agreed to in Exhibit B cost him £500 and this extension had cost him a further £350.

Having found that the defendant has committed not only a breach but breaches of this lease, did the plaintiff serve him a notice as required by s.14 of the Conveyancing and Law of Property Act, 1881? On June 16th, 1952, the plaintiff consulted a solicitor who wrote the defendant a letter, Exhibit D, in which *inter alia* he states:

"A part of the premises at No. 63B was leased to you by her with a proviso that a section of the part so leased was to be erected as a shop and let out to her for the sum of £2 (two pounds) monthly, which sum shall be deducted from rents payable to her in respect of the aforesaid lease. We are informed that in spite of the fact that you are deducting this sum every month, you have let this portion, which by the covenants in the lease you should have let to her, to a third party in violation of the terms of the covenants in the lease. We have been instructed to give you notice that unless you carry out the terms of the covenant as is stipulated in the lease, legal action will be taken to enforce the terms of the covenant."

It is this notice which the defendant's solicitor in his argument said did not comply with the requirements of s.14 of the Conveyancing and Law of Property Act, 1881. *Woodfall's Law of Landlord and Tenant*, 24th ed., at 936 (1939), quoting from Lord Russell, C.J. in *Horsey Estate Ltd.* v. *Steiger* (1) ([1899] 2 Q.B. at 91; [1895–9] All E.R. Rep. at 520), has this to say of the object of the notice:

". . . (1) that a notice shall precede any proceedings to enforce a forfeiture; (2) that the notice shall be such as to give the tenant precise information of what is alleged against him and what is demanded from him; and (3) that a reasonable time shall after notice be allowed the tenant to act before an action is brought."

Has Exhibit D fallen within these requirements? At the time the plaintiff's solicitor wrote that letter, the defendant had committed the breach in not letting to the plaintiff the section of the shop for which the defendant had been keeping back £2 of the rent. In order to rectify that breach, if we may so call it, the defendant committed further and graver breaches in that he then started to build the extension. When the plaintiff discovered this, she went and told her solicitor, who wrote the defendant a letter dated August 14th, 1952, Exhibit C. The defendant took no notice but continued with his building, and the plaintiff had to issue a writ on July 18th, 1953. So that not only did the defendant know what the plaintiff was complaining about, but he had ample time to correct the situation if he chose to do so before the writ was issued in August, 1953. Therefore there was a satisfactory notice served on him, as illustrated by the judgment of Eve, J. in the case of *Piggott* v. *Middlesex County Council* (3), in which he stated, *inter alia* ([1909] 1 Ch. at 146; 99 L.T. at 667):

"No doubt an action to recover possession is in the nature of a penal action; it often involves serious consequences to the lessee, and the desire of the Legislature has been, no doubt, to give the lessee every opportunity of preserving his interest and saving himself from the dire consequences of forfeiture. But, on the other hand, it was never intended by the Legislature to deprive the lessor of his right of re-entry if there had in fact been a substantial breach of the covenant, and if he had in fact given to the lessee an opportunity of remedying that breach."

He further stated (*ibid.*, at 147; 668):

"Mr. Jessel says the lessor did not indicate that which he required the lessees to do. That does not appear to me to be necessary, either under the statute itself or by reason of any of the decisions to which my attention has been drawn. He did indicate the matter of which he complained and the matter which he wished to be put right, and, like a prudent man, he left the lessees to find out how best they could undo that which they had done."

In this case not only did the plaintiff stipulate the breaches but she gave the defendant sufficient time to rectify them. The method which the defendant adopted to carry out the rectifications was to commit further breaches, such as an extension to the said building which would cause added burden in the payment of a further sum of £350 and additional rates.

There have been clear breaches by the defendant. Has he done anything to merit any relief from forfeiture? As a matter of fact the defendant has not in his pleading asked for a relief, which in many of these actions lessees usually pray the court to grant having taken into consideration all the circumstances of the case. The defendant, instead of showing contrition, has set up a defence stating "that he is in possession of the land and premises the subject-matter of the action." By such a defence, Mr. Rogers-Wright for the plaintiff states that even if the notice which was served on the defendant did not ask for forfeiture and possession, by that act of the defendant he automatically forfeits the lease and the plaintiff is entitled to possession. His authority for that submission is the case of *Kisch* v. *Hawes Bros. Ltd.* (2). I shall refer to a passage in the judgment of Farwell, J. which states ([1935] 1 Ch. at 106–107; [1934] All E.R. Rep. at 732):

"For the effect of such a plea it is necessary to refer to Order XXI, r.21. That Order is in these terms: 'No defendant in an

action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends upon an equitable estate or right or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove except as hereinbefore mentioned.' On that the plaintiff submits that she is entitled to re-enter on the ground that the first paragraph of the defence amounts to a denial of the plaintiff's title, and that a denial of the plaintiff's title by a tenant is a ground upon which a lessor is entitled to forfeit the lease. When the case was opened before me the defendants sought leave to amend their defence by adding to the end of the first paragraph the words 'under the lease hereinafter referred to,' and with some hesitation I permitted the defence to be amended accordingly; but in my judgment, notwithstanding the amendment, the defendants cannot escape from the result of their own plea. As soon as the defence was delivered on July 13, 1934, the plaintiff became entitled to forfeit the lease, and she made it plain on July 18, when the reply was delivered, that she was claiming the right to re-enter on that ground, and it is impossible in my judgment by amendment now to destroy the effect of what was done as soon as the defence was delivered. Accordingly, on that short ground, the plaintiff, in my judgment, is entitled to possession of the property, and to payment of the rent of £160 a year under the then existing lease down to the forfeiture."

That case is on all fours with the present case. Order XXI, r.21 is the same as O.XVIII, r.20 of our Supreme Court Rules. In the present case the defendant did not seek or obtain leave to amend his defence by adding the words "under the lease dated May 1st, 1951." But the plaintiff did not put in a reply asking for forfeiture, which she would have been entitled to from the date the defendant put in his defence. However on the last day of the trial her counsel sought and obtained leave to amend her writ asking for forfeiture.

Having ascertained that the plaintiff is entitled to the forfeiture of the lease, the question which I now have to consider is, when

is forfeiture to take effect? I fix the date as February 2nd, 1955. The plaintiff is entitled to her rent of £72 p.a. as from January 1st, 1953 under the terms of the lease until forfeiture. The plaintiff is to recover immediate possession, and I assess the damages at £100 together with the taxed costs of this action.

Judgment for the plaintiff.

IN RE PUBLIC LANDS ORDINANCE and IN RE FOURAH BAY ROAD BURNT-OUT AREA

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Coussey, J.A. and Luke, J. (Sierra Leone)): June 17th, 1955
(W.A.C.A. Civil App. No. 40/54)

[1] **Land Use Planning — compulsory acquisition — compensation — no acquisition without compensation unless statute expresses such intention clearly and unambiguously:** A statute should not be held to take away private rights of property without compensation unless the intention to do so expressed in clear and unambiguous terms (page 404, line 38—page 405, line 3).

[2] **Land Use Planning—compulsory acquisition—compensation—disputed assessments—Public Lands Ordinance (cap. 193), s.18(3) not restricted to disputed assessments—property may be compulsorily acquired without compensation if claim not brought within time limit:** The application of s.18(3) of the Public Lands Ordinance (*cap.* 193) is not restricted to persons disputing the quantum of compensation appropriate for the compulsory acquisition of property, but includes persons who have not been offered any compensation in respect of property compulsorily acquired; and therefore the Ordinance clearly and unambiguously permits compulsory acquisition of property without payment of compensation if a claim for compensation is not brought within the time limit laid down in the proviso to s.18(3) (page 405, lines 4–13).

[3] **Statutes—interpretation—statutes affecting existing rights—statute purporting to take away property rights—no compulsory acquisition without compensation unless statute expresses such intention clearly and unambiguously:** See [1] above.

[4] **Time—claim for compensation—compulsory acquisition of land—time limit for claim for compensation in Public Lands Ordinance (cap. 193), s.18(3) permits acquisition without compensation:** See [1] and [2] above.

The appellant filed a petition in the Supreme Court seeking an