

1958.

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MR. V. G. STOCKWELL.

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PROPERTY AT BRIDGE, NEAR CANTERBURY.

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HUNTLEY SON & ROWLANDS,  
92 Tooley Street,  
S.E.1.

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Immediately prior to the year 1902 one Wills owned a terrace of four buildings adjoining Brewery Lane in The Dever Road, Bridge, in the County of Kent.

The first of these buildings immediately adjacent to Brewery Lane was a shop subsequently occupied by my client Mr. Stockwell as a pharmacy. Next came a shop which after 1902 was occupied by Mr. Down Senior as a cycle shop. Then came a cottage occupied by an old lady and the last of the four buildings and the one most remote from Brewery Lane was occupied by Mr. Castle the baker.

In 1902 Mr. Down Senior took a tenancy from Mr. Wills of the cycle shop and residential accommodation over by an oral weekly tenancy at a rent of 5/6d per week. It appears from the papers now before me that there was never a written tenancy agreement. This shop and living accommodation over is in my view a dwelling house within the meaning of the Rent Acts see Whiteley v. Wilson (1953) 1 Q.B. 77 and Regina v. Brighton Area Rent Tribunal ex parte Slaughter (1954) 1 Q.B. 446. It is probable that this shop was first controlled in the 1914/18 War. Owing to its low rental value it would never have gone out of control by the Act of 1933.

Prior to the year 1927 the old lady, who occupied the cottage died and the cottage was divided into two. The half-cottage adjoining Mr. Castle's bakers shop was let to Mr. Castle and the half adjoining Mr. Down's shop was let to Mr. Down Senior. This half-cottage is clearly a dwelling house within The Rent Acts. Its rateable value is £12 per annum and it is not freed from control by the Act of 1957.

I am satisfied that when earlier this year Mr. Down Senior died he was still a contractual tenant of both the half cottage and the cycle shop and living accommodation over. I am instructed that no notices of increase have been served nor notices to quit given. I see no evidence in the papers now before me of such a notice to quit or such a notice of increase. I assume therefore for the purpose of this opinion that when Mr. Down Senior died he was the contractual tenant of both the half cottage and the cycle shop, which are two separate lettings.

Now when my client, who had purchased the Terrace in 1945 was in 1953 negotiating a sale of the half cottage to Mr. Baker, the successor to Mr. Castle, Mr. Down Junior's Solicitors wrote to my Instructing Solicitors claiming that he Mr. Down Junior was the tenant of the cycle shop and living accommodation over in that with the consent of Mr. Wills the tenancy had been transferred to him from Mr. Down Senior in 1939 shortly after Mr. Down Junior married.

This claim to a tenancy was not made by Mr. Down Junior till 1953. Mr. Down Junior went to the 1939/45 War and returned in 1945 from which time, so it is alleged, he has carried on the cycle shop, his father having retired. It does not follow that because Mr. Down Senior ceased to play an active part in the cycle business after his son came back from the War, that he gave up the tenancy of the shop. He might have been a sleeping partner in the business. He might have occupied rooms over the cycle shop.

When in 1953 Mr. Down Junior alleged that he was the tenant my Instructing Solicitors stoutly denied such tenancy and consulted Mr. Smith, Mr. Wills executor, who denied any knowledge of such a transfer. Unfortunately both Mr. Down Senior and Mr. Down Junior have the initial "F" and so if Mr. Down Junior paid the rent it would not appear whether he or his father was paying it.

This matter of the transfer of the tenancy is a question of fact. I see no real evidence that there was such a transfer.

I assume, therefore, that Mr. Down Senior was the tenant of the cycle shop at the date of his death.

Mrs. Down Senior was living with her husband in the half cottage at the date of his death, and the tenancy of the half cottage goes to her by transmission on death under the Rent Acts.

It is clear that the tenancy is not decontrolled by the Act of 1957. The rateable value is £12 per annum. The rent can be increased under the 1957 Act but a three months notice of increase of rent must be given in the prescribed form to expire on one of the rent days of the tenancy. Such Notice of Increase operates as a notice to quit also. See Section 6(3) of the 1957 Act.

The amount to which the rent for the half cottage can be increased can be worked out by applying the tests in Sections 1 to 6 and the first Schedule to the Act. I am not, in this opinion, going to work out the exact figure for the new rent of the half cottage as I am not fully conversant with all the relevant terms of the tenancy. Twice the gross value is, of course, the basic calculation.

Now let me deal with the shop and living accommodation over

The present rateable value is over £30 per annum and the "dwellinghouse" including the shop is decontrolled by virtue of Section 11 of the Act of 1957. A notice under Clause II of Part III of the Fifth Schedule of the Rent Act 1957 was served on my client in August 1957. It looks as though it was served by Mr. Down Junior. It seeks to reduce the rateable value by virtue of alleged improvements. But as Clause 12(3) has not been complied with this procedure is out of order. In any event it raises the old question is Mr. Down Junior the tenant and had he a right to serve such a notice.

I do not know whether or not Mr. Down Senior left a Will.

and if he purported to dispose of the shop and living accommodation by his will. If there is no will as the contractual tenancy still existed at the date of the death the widow would inherit the contractual tenancy of the shop. This shop ceases to be controlled on the 5th October 1958. Six months notice must be given to expire not earlier than the 5th October 1958. The question is who is the tenant now that Mr. Down Senior is dead. If the widow as the next of kin inherits the tenancy of the shop and she attempts to assign it over to her son possession could be obtained against her under sub-paragraph (d) of the First Schedule of the Act of 1933 she having assigned the whole "dwellinghouse" within the Rent Acts.

It is not possible to decide who now holds the tenancy of the shop until one knows whether Mr. Down died intestate or left a will and if he left a will a will to whom he left the shop. In certain circumstances the transmission of a contractual tenancy can be defeated by giving the President of the Probate Division notice to quit to expire before the tenancy has vested in the executor or administrator. As the 1957 Act requires a six months notice to expire not earlier than the 5th October 1958 there would be plenty of time to take out letters of administration to defeat this attempt to stop the tenancy vesting before the expiry of the notice to quit.

I think we must find out who claims the tenancy of the shop and by what title. We can then decide how to handle the matter. It is clear that if the rateable value cannot be reduced this shop becomes decontrolled on or after the 5th October 1958 at the expiry of the appropriate six months notice.

Now Part II of the Landlord and Tenant Act 1954 does not apply to a tenancy to which the Rent Acts apply, but at the moment the Rent Acts cease to apply, the Landlord and Tenant Act applies.

It follows that if the tenancy of the shop is lawfully transmitted by the death of the deceased to the mother or the son then after the dwellinghouse becomes decontrolled under the 1957 Act it becomes a business tenancy to which the Landlord and Tenant Act 1954 applies. Such a tenancy can only be determined by a prescribed notice of not less than six months nor more than twelve months.

Had there been a statutory tenancy of the shop and living accommodation over at the date of the death of Mr. Down Senior then the tenancy would not have been transmitted on death. As there was a contractual tenancy at the date of the death it can be transmitted by will or on intestacy but to whom it has been transmitted I do not know.

I suggest that we boldly approach the widow and ask her who claims the tenancy of the shop and living accommodation over and by what title and also asking her whether Mr. Down Senior left a will or died intestate.

We should not accept rent from anybody until the position is cleared up. Until we know who claims the tenancy we cannot decide to whom to give the notice under the 1957 Rent Act.

If Mr. Down Junior has obtained a tenancy of the shop and residential accommodation over either by transmission on the death of the deceased or by assignment by the widow to him then he could probably get a new lease under the Landlord and Tenant Act 1954 at a rent and on terms to be fixed by the County Court in default of agreement. Any attempt to reduce the rateable value should be vigorously contested. I again repeat that we must find out by direct approach if necessary, who now claims the tenancy of the shop and living accommodation over, and by what title.

If Mr. Stockwell simply wants a fair rent for the shop and does not want to get the son out the son may be prepared to abandon his attempt to reduce the rateable value and be prepared to negotiate for a new lease of the shop at a reasonable rent.

Give the usual notice under the Rent Act 1957  
after it is known who is claiming the tenancy and after  
it is decided who is now the tenant.

Campbell Lloyd-Davies.

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