[HIGH COURT OF AUSTRALIA.]

SEE TO SOO HING AND ANOTHER . . APPELLANTS ;
RESPONDENTS,

AND

PATTY AND OTHERS . . . . RESPONDENTS.
APPLICANTS.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

H. C. OF A. 1950.

BRISBANE, *June* 13, 23.

McTiernan, Williams, Webb, Fullagar, and Kitto JJ.

Landlord and Tenant—Recovery of possession of prescribed premises—Notice to quit—Premises not being a dwelling house required for occupation by lessor or person associated or connected with lessor in his trade—Alternative grounds—Particulars referable to one ground only—Validity of notice to quit—Costs—The Landlord and Tenant Acts 1948 *to* 1949 (Q.) (12 *Geo. VI. No.* 31—13 *Geo. VI. No.* 31), *ss.* 41 (5) (g) (ii), 45, 62.

Under s. 41 (5) (g) (ii) of *The Landlord and Tenant Acts* 1948 *to* 1949 (Q.) it is a ground for giving a notice to quit that the premises "not being a dwelling house are reasonably required for occupation by the lessor or by a person associated or connected with the lessor in his trade, profession, calling, or occupation." By s. 45 a notice to quit "shall specify the ground relied upon and shall give the particulars thereof and, in the proceedings, the lessor shall not be entitled to rely upon any ground not so specified."

The lessors of certain premises gave to the lessees a notice to quit in terms of s. 41 (5) (g) (ii). The particulars given in the notice stated that the premises were required for the occupation of two of the three lessors.

Held that although the notice to quit contained two separate and distinct grounds, it was not invalid, since the particulars showed that only one ground was relied upon and identified the specific ground so relied upon.

Frier & Sons v. *O'Rourke*, (1945) V.L.R. 107 ; *Ex parte Goddard* ; *Re Falvey*, (1946) 46 S.R. (N.S.W.) 289 ; 63 W.N. 168 ; *Electronic Industries Ltd.* v. *White Trucks Pty. Ltd.*, (1947) 48 S.R. (N.S.W.) 102 ; 65 W.N. 26 ; *Arnold* v. *Wood*, (1948) V.L.R. 261 ; *Rheuben* v. *Cremen*, (1948) 49 S.R. (N.S.W.) 38 ; 65 W.N. 286, approved.

Decision of the Supreme Court of Queensland (Full Court) affirmed.

APPEAL from the Supreme Court of Queensland.

This was an appeal from the judgment of the Full Court of the Supreme Court of Queensland discharging an order to review the decision of a stipendiary magistrate ordering the appellants to give possession to the respondents of certain premises in Brisbane known as the Hong Kong Cafe.

By a memorandum of agreement made on 7th March 1944 Paul Patty, Peter Patty and Charles Patty leased to See To Soo Hing and three others certain premises situated at Queen Street, Brisbane, known as the Hong Kong Cafe, for three years from 15th November 1943, with an option of renewal for a further period of two years. The option was duly exercised and on the expiration of the whole term on 15th November 1948 the lessees remained in possession. There was a provision in the agreement that if the lessees continued in possession of the premises beyond the expiration of the lease they would so remain as tenants from week to week and that such tenancy should be determined by either party giving to the other one week's notice in writing. Three notices to quit were given by the lessors; the first dated 6th December 1948, the second 20th December 1948, and the third, 7th February 1949. The third notice was given upon the ground "that the premises not being a dwelling house are reasonably required for occupation by the lessors or by a person associated or connected with the lessors in their trade, profession, calling or occupation." The notice stated that the following were the particulars:—"The lessors are cafe proprietors who for many years prior to letting the subject premises had carried on business therein on their own account. The premises had not previously been let. They were obliged to discontinue business temporarily during the war due to health reasons occasioned by the excessive strain of war-time conditions. One of the lessors Peter Patty is engaged in a cafe business at 394 Queen Street, Brisbane. The other two lessors Paul Patty and Charles Patty do not participate in the profits thereof and wish to resume business in the subject premises and to engage in the occupation for which they are properly fitted."

The lessees failed to vacate the premises and proceedings were instituted against them, which resulted in the magistrate adjudging that the lessors were entitled to possession and directing a warrant to issue to give possession of the premises to the lessors.

On an order to review the Full Court of the Supreme Court of Queensland (*Macrossan* C.J., *Mansfield* S.P.J. and *Matthews* J.) discharged the order, extending the time for the issue of the warrant to 27th September 1949.

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From this decision the lessees appealed to the High Court.

F. Connolly for the appellants. The first and second notices to quit were invalid. The third notice is uncertain. A notice to quit must specify the grounds relied upon and not state them as alternatives. Otherwise the tenant is left in doubt: *Frier & Sons* v. *O'Rourke* (1); *Ex parte Goddard; Re Falvey* (2). In this case the lessees, who had already received two invalid notices, must be left in a state of doubt by the third notice, which states alternative grounds: *Electronic Industries Ltd.* v. *White Trucks Pty. Ltd.* (3). The cases of *Arnold* v. *Wood* (4) and *Rheuben* v. *Cremen* (5) are distinguishable, as the particulars here do not remove the alternative purposes stated in the notice. A strict interpretation should be given to s. 45 as the statute is definite and imperative: *Dagger* v. *Shepherd* (6). The notice to quit must conform strictly to the requirements of the statute and be plain and unambiguous: *P. Phipps and Co. (Northampton and Towcester Breweries), Ltd.* v. *Rogers* (7); *Hankey* v. *Clavering* (8).

A. D. McGill K.C. (with him *C. Fairleigh*) for the respondents. The notice to quit is clear and has a definite meaning. The ground is set forth in the exact language of the statute and the particulars give full information. In so far as alternative grounds are stated the particulars definitely eliminate one alternative: *Arnold* v. *Wood* (4).

F. Connolly in reply. The ground is not stated definitely in the notice to quit if an alternative has to be eliminated.

Cur. adv. vult.

June 23.

McTIERNAN J. The circumstances in which this appeal arises are set out by my brother *Williams*.

In my opinion this appeal should be dismissed.

The only ground of appeal upon which the appellant relies is that the notice to quit upon which the respondents proceeded was void. The question whether the notice to quit is void cannot be decided apart from the provisions of *The Landlord and Tenant Acts* 1948 *to* 1949 (Q.) relating to the giving of a notice to quit and to

(1) (1945) V.L.R. 107.
(2) (1946) 46 S.R. (N.S.W.) 289; 63 W.N. 168.
(3) (1947) 48 S.R. (N.S.W.) 289; 65 W.N. 26.
(4) (1948) V.L.R. 261.
(5) (1948) 49 S.R. (N.S.W.) 38; 65 W.N. 286.
(6) (1946) K.B. 215, at p. 220.
(7) (1925) 1 K.B. 14, at p. 21.
(8) (1942) 2 K.B. 326.

its contents. If the present notice to quit satisfies these provisions of the Act, it is good.

Sub-section (3) of s. 41 makes the giving of a notice to quit a condition precedent to the taking of proceedings. In order to satisfy this condition the notice to quit must be given "upon one or more of the prescribed grounds but upon no other ground." The prescribed grounds are in sub-s. (5).

It is clear from the terms of the present notice to quit that the respondents gave a notice to quit upon one or more of such grounds and no other ground. The grounds are stated in the alternative with particulars referable only to the first ground. It cannot be said that because the grounds are stated in the alternative the respondents failed to give notice to quit upon one or more of the prescribed grounds.

The condition precedent to the taking of proceedings enacted by sub-s. (3) of s. 41 was satisfied. Then the question is whether the notice to quit is nevertheless invalid or, in other words, ineffective for the purposes of the proceedings taken by the respondents.

Section 45 says that a notice to quit shall specify the ground relied upon and give particulars thereof. The section also says that in the proceedings the lessor shall not be entitled to rely upon any ground not so specified. These provisions are of a procedural nature. The object of the section is manifestly to define the issues and limit the area of the controversy between the parties. The section does not say that a notice to quit must not contain any ground upon which the lessor does not rely in the proceedings. He satisfies the section by specifying the ground upon which he relies and by giving particulars of it. The section does not require him to specify in any particular manner the ground upon which he relies. It deprives him of any right to rely in the proceedings upon any ground not specified as a ground relied upon. The proceedings would be confined to the ground or grounds duly specified by the lessor. There is nothing in the section which invalidates the notice because it contains a ground upon which the lessor does not rely. A notice to quit would satisfy the section if the particulars mentioned or pointed out any ground upon which the lessor relied with sufficient definiteness to amount to the specifying of the ground. This view that the particulars contained in a notice to quit may make it conform to the requirements of s. 45 is in harmony with decisions in the Supreme Courts of the States in which the question of the validity of notices to quit depending on statutory provisions similar to Part III of the present

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Act was raised: see *Frier & Sons* v. *O'Rourke* (1); *Ex parte Goddard*; *Re Falvey* (2); *Arnold* v. *Wood* (3); *Rheuben* v. *Cremen* (4).

The present notice to quit uses the words of sub-s. (5) (*g*) (ii) in order to state the grounds upon which it was given. It is not material in the view which has been expressed as to the operation of s. 45, whether par. (*g*) (ii) states two separate prescribed grounds, or but one prescribed ground consisting of two alternative positions which a lessor may take up. The present notice to quit is clearly not invalid if par. (*g*) (ii) really states only one prescribed ground. However, accepting the view that par. (*g*) (ii) contains two separate grounds and the consequence of this view, namely, that the present notice to quit states two alternative grounds, the question is whether although the notice literally contains alternative grounds it conforms with s. 45. The notice does not say in terms that the respondents rely upon one or the other of the two grounds stated in the notice. That is immaterial if it can be clearly gathered from the contents of the notice what is the ground upon which the respondents rely.

The particulars contained in the present notice to quit do convey or point out to the appellants with certainty that the respondents rely upon the first ground stated in the notice. The second ground cannot be regarded as a ground so specified, although mentioned in the notice to quit, because the particulars furnished are unambiguously referable to the first ground and are inconsistent with any intention on the part of the respondents to rely upon the second ground. The result is that the second ground although included in the notice is not a ground upon which the respondents could rely in the proceedings. The presence of this ground does not invalidate the notice.

Section 45 is concerned with the notice to quit as the process for initiating proceedings for the recovery of possession of premises rather than with any effect which it may have on the duration of the interest of the lessee. The test of invalidity is not merely whether it is uncertain or ambiguous but whether it limits the controversy between lessor and lessee in the way in which s. 45 intends. Taking the whole of the contents of the present notice to quit it specified the first ground as that upon which the respondents relied. By reason of s. 45 the second ground not being specified as a ground upon which the respondents relied was excluded from the proceedings.

(1) (1945) V.L.R. 107.
(2) (1946) 46 S.R. (N.S.W.) 289; 63 W.N. 168.
(3) (1948) V.L.R. 261.
(4) (1948) 49 S.R. (N.S.W.) 38; 65 W.N. 286.

The argument that the notice to quit was defective cannot succeed because the giving of the notice fulfilled the condition precedent enacted by sub-s. (3) to proceedings under Part III of the Act and the notice also effectively defined the issues between the parties in accordance with s. 45.

Section 62 of the Act provides that no costs shall be allowed in relation to any proceedings to which Part III of the Act applies not being proceedings in respect of an offence arising under this Part. This section does not prevent this Court from allowing the respondents their costs of this appeal: *O'Mara* v. *Harris* (1); *Dalby* v. *Gazzard* (2).

The order of the magistrate was "Warrant to issue to give possession within a period of twenty-eight days from date of issue. Warrant to issue on this date." That date was 11th July 1949. The Full Court of Queensland amended the magistrate's order by deleting the words "Warrant to issue on this date" and substituting "Warrant to issue within seven days from 27th September 1949." This was the date of the order of the Full Court. It is necessary for this Court to vary the order of the Full Court and it does so by deleting the words "27th September 1949" and substituting therefor the words "23rd June 1950."

WILLIAMS J. This is an appeal from an order of the Full Supreme Court of Queensland discharging, subject to certain immaterial amendments, an order nisi to review the decision of a stipendiary magistrate ordering the appellants to give possession of certain premises in Queen Street, Brisbane, known as the Hong Kong Cafe, to the respondents. The only ground of appeal argued before us was that the notice to quit upon which the magistrate acted was invalid because it contained two alternative grounds and did not specify which ground was relied upon, so that the notice to quit did not correctly particularise any ground as required by s. 45 of *The Landlord and Tenant Acts*, 1948 *to* 1949 (Q.). The material facts are very short. The appellants became possessed of the cafe under a memorandum of agreement of lease made on 7th March 1944 for a term of three years from 15th November 1943 containing an option of renewal for a further period of two years which was exercised at a rent to be mutually agreed upon between the parties but otherwise upon the same terms and conditions as the original lease except for the option. The agreement contained a provision that if the lessees continued in possession of the premises beyond

(1) (1948) 77 C.L.R. 490, at pp. 491, 492.

(2) (1949) 78 C.L.R. 375, at p. 388.

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the expiration of the lease they would so remain as tenants from week to week and such tenancy should be determined by either party giving to the other one week's notice in writing. After 15th November 1948, when the term of the lease as extended by the exercise of the option expired, the appellants remained in possession of the premises and were given three notices to quit by the respondents. The first was dated 6th December 1948, the second 20th December 1948, and the third 7th February 1949. The respondents did not vacate the premises pursuant to any of these notices.

To be valid the notices to quit had to comply with the provisions of *The Landlord and Tenant Acts*. The first two notices did not so comply, and we are not concerned with them but only with the third notice which was the notice relied upon in the proceedings before the magistrate. This notice was given upon the ground "that the premises not being a dwelling house are reasonably required for occupation by the lessors or by a person associated or connected with the lessors in their trade, profession, calling or occupation." The notice stated that the following were the particulars :—"The lessors are cafe proprietors who for many years prior to letting the subject premises had carried on business therein on their own account. The premises had not previously been let. They were obliged to discontinue business temporarily during the war due to health reasons occasioned by the excessive strain of war-time conditions. One of the lessors Peter Patty is engaged in a cafe business at 394 Queen Street, Brisbane. The other two lessors Paul Patty and Charles Patty do not participate in the profits thereof and wish to resume business in the subject premises and to engage in the occupation for which they are properly fitted."

The question for decision is whether this notice to quit complies with *The Landlord and Tenant Acts*, and its answer raises the true construction of s. 41 and s. 45 of the Act. These sections, like their predecessors in the *National Security (Landlord and Tenant) Regulations*, place severe restrictions on the common-law rights of landlords to evict their tenants. It is unnecessary to set out s. 41 in full. The effect of sub-ss. (1), (2) and (3) is that a notice to quit, in order to terminate the tenancy of prescribed premises, must comply with the section and that a lessor may take proceedings in any court of competent jurisdiction for the recovery of prescribed premises if the lessor, before taking proceedings, has given to the lessee, upon one or more of the prescribed grounds but upon no other ground, notice to quit in writing for a period determined in accordance with the next succeeding section and that period of

notice has expired. Section 41 (5) then provides that the prescribed grounds shall be . . . and a number of separate paragraphs and sub-paragraphs follow. Paragraph (*g*), sub-par. (ii) contains the same words as those set out in the third notice to quit. Section 45 provides that " a notice to quit shall specify the ground relied upon and shall give the particulars thereof and, in the proceedings, the lessor shall not be entitled to rely upon any ground not so specified." Section 41 had already provided that proceedings could only be taken if the lessor had given the tenant a notice to quit upon one or more of the prescribed grounds, so that s. 45, so far as it requires that a notice to quit shall specify the ground relied upon, is redundant. The purpose of the section would appear to be to require that particulars of any ground relied upon should be given, and to provide that in the proceedings a lessor should only be entitled to rely on a ground which he had specified and of which he had given particulars. The purpose of these particulars is no doubt the same as that of any other particulars, that is to say, to give the tenant notice of the circumstances relied upon in support of the ground or grounds specified in the notice to quit.

In the Supreme Courts of New South Wales and Victoria there have been a number of decisions bearing upon the meaning of sections corresponding to ss. 41 and 45 of the Queensland Act and in particular upon the grounds prescribed in s. 41 (5) (*g*) (i) and (ii) : *Frier* v. *O'Rourke* (1) ; *Ex parte Goddard* ; *Re Falvey* (2) ; *Electronic Industries Ltd.* v. *White Trucks Pty. Ltd.* (3) ; *Arnold* v. *Wood* (4) ; *Rheuben* v. *Cremen* (5). In these cases it has been held that sub-pars. (i) and (ii) each contain at least two separate and distinct grounds, and I agree that they do each contain at least two separate and distinct sets of circumstances on which a notice to quit may be founded. In this sense they are separate and distinct grounds. But on the literal construction of s. 41 (5), it seems to me that each of these sub-paragraphs sets out what the Act intends to be a ground and that, when the paragraphs and sub-paragraphs of s. 41 (5) are considered as a whole, the grounds which it prescribes are the grounds identified by each paragraph and sub-paragraph. These grounds are generic in form and the purpose of particulars is to narrow the issue to those circumstances included in any ground on which the lessor intends to rely. A notice to quit which specifies the whole of any of these grounds cannot therefore be invalid as

(1) (1945) V.L.R. 107.
(2) (1946) 46 S.R. (N.S.W.) 289 ; 63 W.N. 168.
(3) (1947) 48 S.R. (N.S.W.) 102 ; 65 W.N. 26.
(4) (1948) V.L.R. 261.
(5) (1948) 49 S.R. (N.S.W.) 38 ; 65 W.N. 286.

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containing two separate and distinct grounds. But, in order to be valid, the notice to quit must give particulars of the ground specified and it is the particulars which pick out and narrow those circumstances included in the ground to those on which the lessor intends to rely. In this way any ambiguity which may lurk in the specification of a whole ground is removed and the issue clarified. This does not mean that a notice to quit which specifies, not the whole ground, but part of the ground included in one of the paragraphs is a bad notice. The grounds are, as I have said, generic in form, and the ground now under consideration includes at least two sets of circumstances sufficient to validate a notice to quit—(1) that the premises not being a dwelling house are reasonably required for occupation by the lessor ; and (2) that they are reasonably required for occupation by a person associated or connected with the lessor in his trade, profession, calling or occupation.

Complete literal compliance with the forms of grounds prescribed by s. 41 (5) is not essential so long as the notice to quit is founded upon and is authorized by one or more of these grounds. But a ground which literally complies with the Act cannot be invalid. In the present case the notice to quit set out the whole of ground (*g*) (ii) and therefore specified the ground relied upon. It gave particulars thereof which narrowed the generality of the ground and informed the lessee that the circumstances comprised in the ground on which the lessors relied were that the premises were reasonably required for occupation by two of them. In dismissing the appeal the Full Supreme Court of Queensland relied upon the decision of *Lowe* J. in *Arnold* v. *Wood* (1), followed by the Full Supreme Court of New South Wales in *Rheuben* v. *Cremen* (2). In my opinion these cases were rightly decided and the Supreme Court of Queensland was right in following them.

For these reasons I would dismiss the appeal.

WEBB J. There were three notices to quit dated respectively 6th December 1948, 20th December 1948 and 7th February 1949. In the first two the "ground" given was that the premises were reasonably required for occupation by the lessors. No particulars were given. In the third notice to quit the "grounds" given were: "That the premises not being a dwelling house are reasonably required for occupation by the lessors or by a person associated or connected with the lessors in their trade, profession, calling or occupation."

(1) (1948) V.L.R. 261.

(2) (1948) 49 S.R. (N.S.W.) 38; 65 W.N. 286.

This third notice contained the following particulars :—" The lessors are cafe proprietors who for many years prior to letting the subject premises had carried on business therein on their own account. The premises had not been previously let. They were obliged to discontinue business temporarily during the war due to health reasons occasioned by the excessive strain of war-time conditions. One of the lessors, Peter Patty, is engaged in a cafe business at 394 Queen Street Brisbane. The other two lessors Paul Patty and Charles Patty do not participate in the profits thereof and wish to resume business in the subject premises and to engage in the occupation for which they are properly fitted."

Section 45 of *The Landlord and Tenant Acts*, 1948 *to* 1949 (Q.) provides as follows :—" A notice to quit shall specify the ground relied upon and shall give the particulars thereof and, in the proceedings, the lessor shall not be entitled to rely upon any ground not so specified."

No doubt it was because of s. 45 that the lessors gave the third notice to quit. Mr. *Connolly* of counsel for the appellants stressed the fact that there were three notices to quit, suggesting uncertainty in the minds of the appellants as to the grounds of the notice. However, I think that the appellants would have understood that only the third notice to quit was relied upon by the respondent. But Mr. *Connolly* also submitted that in any event the third notice to quit taken alone created such uncertainty, as it specified two grounds. Section 41 (5) states what the prescribed grounds shall be. Included among these grounds is that lettered and numbered (g) (ii) : " That the premises not being a dwelling house are reasonably required for occupation by the lessor or by a person associated or connected with the lessor in his trade, profession, calling or occupation."

Mr. *Connolly* submitted that s. 41 (5) (g) (ii) states two grounds. I think this paragraph includes two grounds, and that without the particulars the appellants would have been left in a state of uncertainty as to the purpose for which the premises were required by the lessors. However the particulars made it quite clear for what purpose they were required. In these circumstances the presence of the second ground in the notice to quit was mere surplusage, but that did not invalidate the notice. Mr. *Connolly* relied on *Hankey* v. *Clavering* (1) where Lord *Greene* M.R., speaking of documents which, like notices to quit, are of a technical nature because they are not consensual, dissented from the proposition " that where such

(1) (1942) 2 K.B. 326, at p. 330.

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a document is clear and specific, but inaccurate on some matter, such as that of a date, it is possible to ignore the inaccuracy and substitute the correct date or other particular because it appears that the error was inserted by a slip." His Lordship added that "however much the recipient might guess, or however certain he might be, that it was a mere slip, that would not cure the defect because the document was never capable on its face of producing the necessary legal consequence." However, the third notice to quit in this case leaves nothing in doubt, as the particulars, which are fully set out above, show clearly that the second ground is not relied upon. In effect the particulars eliminate it from consideration as a ground. As *Evershed* J. (as he then was) said in *Daggar* v. *Shepherd* (1) the question is, what upon its fair and reasonable construction did the third notice to quit mean? Is the tenant left by its terms in any doubt as to its intended effect? The answer must, I think, be in the negative.

I would dismiss the appeal.

FULLAGAR J. I agree with the judgment of *Kitto* J.

KITTO J. The facts of this case and the relevant statutory provisions have been stated and I need not repeat them.

In my opinion sub-par. (g) (ii) of s. 41 (5) of *The Landlord and Tenant Acts*, 1948 *to* 1949 (Q.) states two "prescribed grounds," and a notice to quit purporting to be given upon one or other of these grounds, without any election between them, fails to specify any prescribed ground. It informs the tenant that the landlord relies upon one ground only, but leaves him uninformed as to what that ground is.

But a notice to quit, like any other document, must be read as a whole. When it proceeds to give particulars of the ground relied upon, as it must in order to comply with s. 45, it may thereby show beyond doubt that one only of the grounds stated alternatively is relied upon, and which ground that is. In such a case, in my opinion, a ground is specified, and the statutory requirements for a valid notice to quit are satisfied.

In the present case the particulars given left no room for doubt that the ground relied upon was that the premises were reasonably required for occupation by two of the lessors. Thus, having regard to s. 41 (6), the ground prescribed by the first part of sub-par. (g) (ii) was specified. The contention that the tenant would still be

(1) (1946) 1 K.B. 215, at p. 221.

in doubt, notwithstanding the particulars, because of the terms of two previous invalid notices to quit, has no substance.

In my opinion the appeal should be dismissed.

Appeal dismissed with costs. Order of the Full Court varied by deleting "27th September 1949" and inserting in lieu thereof "23rd June 1950." Costs to include reserved costs.

Solicitor for the appellants: *C. R. Ellison.*

Solicitors for the respondents: *Henderson & Lahey.*

B. J. J.