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CIRCUIT COURT APPEAL

Record No. 611/85

DAVID CLAYTON AND WILLIAM CLAYTON

.V.

MARTIN MANNION

Judgment delivered by O'Hanlon J., on the 9th April, 1986.

In this case I have come to the following conclusions upon a review of the oral evidence given in the cases:-

1. The premises were let by the Plaintiffs to the Defendant for a term of ten years from the 29th October, 1976, at a rent of £25 per week, by written agreement made the 29th October 1976. The premises, as described in that document, comprised a stable yard, two stallion boxes, "to be known as Yard M", paddock and gallop facilities". The agreed method of payment of rent was by banker's order to landlord's bank.

2. The Plaintiffs subsequently prejudiced their legal position vis-a-vis the Defendant by two actions taken by them. I am satisfied that in or about the year 1978, when abortive ejectment proceedings were brought against the Defendant, the Plaintiffs instructed their bank to send back instalments of rent paid by bankers' order, as it was apprehended that acceptance of rent at that time might operate as a bar to the ejectment proceedings, and I have no evidence that that direction was ever countermanded or

that notice was given to the Defendant that he should resume payment of rent in the agreed manner. Secondly, it is accepted by the Plaintiffs that the gallop facilities which formed an important part of the original letting, were cut off by the Plaintiffs in or about the year 1978. The field was kept locked for some months, and a considerable part of the gallop area was ploughed up and crops were sown which rendered it unusable for the intended purpose. The Plaintiffs explain this action by saying that the Defendant was not paying rent at the time and had allowed the gallop to fall into disuse and to become overgrown Such circumstances do not, however, entitle the lessors to take possession of the demised premises - they have other legal remedies, such as an action for the rent due or an action for possession for non-payment of rent under the provisions of the Landlord and Tenant Law Amendment Act, (Ireland) 1860 - Deasy's Act.

3. I have regretfully come to the conclusion that while the Plaintiffs have the merits on their side, the Defendant is entitled to invoke rather technical rules of law to resist their present claim to possession. I think the Plaintiffs have considerable difficulty in showing nonpayment of rent for one year and upwards when they refused to accept payment in the agreed manner, and I am also of opinion that their action in taking over possession of an important part of the demised property amounted to a wrongful dispossession of the Defendant of such a character as brought about a suspension of the obligation to pay rent while it continued. (See Woodfall, Landlord and Tenant, 25th Edn., p. 369, and cases there cited).

4. I am also of opinion that the document dated the 12th April, 1979, must be regarded as a valid assignment of the Defendant's interest in the demised premises to Peter Kilcommons, although the Defendant would have remained liable to the Plaintiffs in his capacity as lessee for the payment of rent, subject to any right to claim indemnity against the assignee.

5. In these circumstances I reluctantly feel that I must reverse the Order made by the learned Circuit Court Judge in this case and dismiss the Plaintiffs' claim to possession and for the arrears of rent set forth in the Ejectment Civil Bill. The Plaintiffs will, of course, be entitled to revive their claim to possession when the ten-year term expires in October 1986, subject to any rights that may be claimed by the Defendant or his assignee at that stage.

R.J. O'HANLON
9th April, 1986.