Privy Council Appeal No. 37 of 1987

(1) Crampad International Marketing Company Limited and
(2) Clover Brown *Appellants*

v.

Val Benjamin Thomas *Respondent*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH JANUARY 1989

Present at the hearing:-

LORD KEITH OF KINKEL
LORD BRANDON OF OAKBROOK
LORD OLIVER OF AYLMERTON
LORD JAUNCEY OF TULLICHETTLE
LORD LOWRY

*[Delivered by **Lord Oliver of Aylmerton**]*

This is an appeal against the judgment of the Court of Appeal of Jamaica (Kerr, Carberry and Campbell JJ.A.) allowing the appeal of the respondent (the defendant in the action) from a judgment of Vanderpump J. in the Supreme Court of Jamaica on 6th July 1984.

The proceedings concern a dwelling-house known as 6 Marvic Close, St. Andrew, Jamaica, the freehold title to which is and was at all material times vested in the respondent, Mr. Thomas. In 1980 he was desirous of emigrating and entered into negotiations to sell the house to a friend, a Mr. Ronald Brown, who is the father of the second appellant and a director of the first appellant, a limited company incorporated in Jamaica in that year. The sale did not materialise but on 15th August 1980 the respondent executed an agreement to let the property to the first appellant for a period of three years containing an option to purchase the property. The material terms of that agreement were as follows:-

(1) The respondent agreed to let the property to the first appellant for a period of three years from 1st August 1980, such letting being expressed to be "for the occupancy of [the first appellant] or its

nominee". It was provided that the occupancy should be changed only with the lessor's consent but permission was not to be unreasonably withheld.

(2) The rent was to be "at the annual rate of $14,400 per annum or $3,600 quarterly to be paid at the beginning of each quarter as of the 1st day of August 1980", lessor paying taxes, insurance and water rates.

(3) The lessee agreed to remedy damage caused by failure to keep sanitary, water and electrical apparatus in good order, not to make alterations, to maintain the gardens in a husbandlike manner, to use the premises as a dwelling-house only and to yield up the premises at the end of the term in the same condition as at its commencement, fair wear and tear accepted.

(4) There was a provision for re-entry in the event of the rent being fourteen days in arrear or on breach of the lessee's obligations.

(5) The two critical provisions are numbered (v) and (vi) and were in the following terms:-

"(v) If either party wishes to terminate this Agreement at any time before the expiration of the said term, he or she shall give the other party not less than SIX (6) MONTHS' notice thereof.

(vi) At any time during this Agreement prior to three months before its termination for the consideration of ONE DOLLAR ($1.00), the receipt of which sum is hereby acknowledged, the Lessor hereby grant (sic) to the Lessee the option to purchase the leased premises at a price or consideration, the exchange in ONE HUNDRED AND FIFTY THOUSAND DOLLARS ($J150,000.00) of the sum of TWO HUNDRED AND SIXTY-TWO THOUSAND DOLLARS FIFTY CENTS (US$262,000.50) and on the Lessee taking up this option the Lessee agrees to pay the amount of ten percent (10%) of the purchase price of the balance within thirty (30) days thereafter."

Following the execution of this document the lessee took possession of the premises through the second appellant who went in as its nominee. By mid-1981 the respondent had abandoned his intention of emigrating and desired to repossess the premises. Accordingly, on 23rd November 1981 his attorneys served on the first appellant a notice to quit in the following terms:-

" As Attorneys at Law for VAL BENJAMIN THOMAS, your Landlord, WE HEREBY GIVE YOU

> NOTICE TO QUIT and DELIVER up to VAL BENJAMIN THOMAS, possession of premises 6 Marvic Close, Red Hills Post Office in the parish of Saint Andrew, which you hold of VAL BENJAMIN THOMAS as Tenant thereof under the terms of a lease agreement dated the 15th day of August, 1980 on the 1st day of June, 1982 next or at the end of the complete month of your tenancy which will expire next after the end of six months from the service upon you of this Notice.
>
> AND WE REQUEST you to acknowledge receipt of this NOTICE by signing and returning the duplicate Notice enclosed herewith."

No point arises as regards the service of this notice, receipt of which was acknowledged by the appellants. They did not, however, vacate the property and on 1st June 1982, the respondent, together with a number of others engaged to assist him, entered the premises at 9.30 in the morning, burnt off one of the gate locks, gained entrance to the house and moved all the second appellant's belongings out of the house. On 7th June 1982 the appellants issued a writ claiming damages for trespass and an injunction and on the following day issued a summons claiming an injunction pending trial. An interlocutory injunction was granted on 10th June and on 19th June the respondent vacated the premises pursuant to that injunction, which was subsequently continued until the trial. On 23rd July 1982 the appellants resumed possession. In the meantime on 9th June the first appellant wrote to the respondent purporting to exercise the option to purchase contained in the agreement for lease and enclosing a cheque for $J15,000 which the respondent refused to accept. Nothing, however, was made to turn on this attempt to exercise the option in the appellants' pleading in the action, save that in paragraph 12 of the Statement of Claim it was alleged as a fact that the first appellant had delivered a letter "together with a cheque for $15,000 pursuant to its right to exercise the option contained in the said lease and the Defendant tore up the cheque and stated that he wanted the premises". The last paragraph of the Statement of Claim alleged that "by reason of the matters aforesaid, the Plaintiffs have suffered loss and damage" and the only relief claimed was damages, which were particularised as a liquidated sum for loss of goods and general damages for expenditure in procuring alternative accommodation. There was no claim for damages for breach of contract nor was any proper foundation sought to be laid for any such claim.

The defence admitted the receipt of the letter but denied that there was any option to exercise. By way of counterclaim the respondent claimed damages for deterioration of the house and garden, damages for

being deprived of the premises whilst out of possession and mesne profits.

The matter having come on for trial, the judge held, first, that the notice to quit was invalid both on the ground of uncertainty and also on the ground that it failed to state any reason why the respondent required the premises as required by section 31 of the Rent Restriction Act. He accordingly awarded damages for trespass to both appellants but also awarded damages to the respondent on the counterclaim of an amount which overtopped those awarded on the claim. But secondly and more importantly he decreed specific performance of a contract which he held to be concluded by the exercise of the option. This came about in a most extraordinary way. As already observed, no claim either for specific performance or for damages for breach of contract was contained in the Statement of Claim. Nevertheless, after the close of the respondent's defence, the judge, in the face of an objection from counsel for the respondent, granted the appellants leave to amend the Statement of Claim to include a prayer for a decree of specific performance and then proceeded to give judgment upon it. How the judge arrived at the conclusion that there was an enforceable and certain contract for a sale of the property at a sum of $J150,000 is not entirely clear but he seems to have done so by accepting direct evidence from Mr. Ronald Brown of his intention to purchase at that figure (based on an unexecuted draft resulting from a previous and incomplete negotiation), by disallowing a question in cross-examination challenging this on the ground that the question was seeking to contradict the lease and by simply ignoring the reference to the alternative consideration of US$262,000.50.

The respondent appealed from this decision to the Court of Appeal which, on 10th April 1987, set aside the order for specific performance but affirmed the judgment for damages for trespass and (by a majority) ordered on the counterclaim that the respondent recover possession of the property and mesne profits. In the view of the majority (Kerr and Campbell JJ.A.) the notice to quit was valid but, in view of the fact that at the time of the respondent's re-entry the notice had not expired, they held that the judgment for damages ought to remain undisturbed. Carberry J.A. would have held the notice invalid altogether on the ground that it did not comply with section 31 of the Rent Restriction Act and that the tenancy continued undetermined and was subject to the protection of the Act. As regards cross-appeals by the appellants against the damages awarded to the respondent, the Court was unanimous in dismissing them.

Before their Lordships' Board the appellants have not sought to disturb the order of the Court of Appeal as regards damages but have challenged the setting aside

of the order for specific performance and have sought, in attacking the order for possession made in the respondent's favour, both to impugn the validity of the notice to quit at common law and also to uphold the minority view of Carberry J.A. that the letting of the property brought it within the ambit of the Rent Restriction Act so that the notice was invalid on this ground also and so that the first appellant is, in any event, entitled to remain in possession as a protected tenant under the Act.

As regards the decree of specific performance, the principal ground relied upon by the Court of Appeal for setting this aside was that it was quite wrong for the judge, at the stage of the proceedings at which he did so, to allow the appellants' application for leave to amend by introducing, for the first time, a claim for this relief into their Statement of Claim without there being any factual basis pleaded to support it and without any opportunity for the respondent to plead and adduce evidence of matters which would affect the exercise of the Court's discretion to grant the decree even if an underlying basis for it had been established. Their Lordships need not devote time to any detailed consideration of this point beyond saying that they entirely agree with the Court of Appeal. To allow the amendment at that late stage of the case and without giving any opportunity for the matter to be properly pleaded and investigated was quite clearly a wrong exercise of discretion. But apart altogether from this, the claim for specific performance must founder simply on the provisions of the option itself, which is so contradictory and uncertain in its terms as to defy rational construction. In the absence of a claim for rectification, it was entirely impermissible on any ordinary principle of construction for the judge to have received, as he did, direct evidence of the appellants' director's intention. In their Lordships' view the appeal as regards this claim was and is hopeless.

In relation to the validity and operation of the notice to quit, however, more difficult questions arise. The appellants' primary submission is that the notice, which seeks to incorporate, although not with complete accuracy, what has become almost a classical formula in cases where it is desired to terminate a periodic tenancy and to guard against delay in service of the notice or error in the computation of the period of notice, is so ambiguous as to be misleading and is therefore invalid. The Court of Appeal was unanimous in rejecting this argument and their Lordships are unpersuaded that they were wrong to do so. The point which has given their Lordships more difficulty, however, is that which is developed in the dissenting judgment of Carberry J.A. This involves some consideration of the provisions of the Jamaican Rent Restriction Act. Although the Act is, to some extent at least, modelled upon the United Kingdom Acts, there are

significant differences both in definition and in the scope of the legislation. The Jamaican Act, for instance, is not confined only to dwelling-houses but extends to building land and to premises let for business or public purposes. It cannot therefore be approached on the footing that English decisions which turn either on the specific provisions of the United Kingdom legislation or upon the policy of the legislature in relation to that legislation are necessarily going to be applicable.

All building land, dwelling-houses or public or commercial buildings to which the Act applies are referred to as "controlled premises" (section 3(2)). Each of these expressions is defined in section 2(1) as follows:-

> '"building land' means land let to a tenant for the purpose of the erection thereon by the tenant of a building used, or to be used, as a dwelling or for the public service or for business, trade or professional purposes, or for any combination of such purposes, or land on which the tenant has lawfully erected such a building, but does not include any such land when let with agricultural land;
>
> 'dwelling-house' means a building, a part of a building separately let, or a room separately let, which at the material date was or is used mainly as a dwelling or place of residence, and includes land occupied with the premises under the tenancy, but does not include a building, part of a building, or room when let with agricultural land;
>
> 'public or commercial building' means a building, or a part of a building separately let, or a room separately let, which at the material date was or is used mainly for the public service or for business, trade or professional purposes, and includes land occupied therewith under the tenancy but does not include a building, part of a building or room when let with agricultural land;"

Section 3(1) provides:-

> "This Act shall apply, subject to the provisions of section 8" [which confers on the Minister a power to grant exemptions] "to all land which is building land at the commencement of this Act or becomes building land thereafter, and to all dwelling-houses and public or commercial buildings whether in existence or let at the commencement of this Act or erected or let thereafter and whether let furnished or unfurnished:" (There follow some exceptions which are immaterial for present purposes).

Sections 17 to 20 inclusive contain provisions for ascertaining and imposing standard rents and section 24 contains restrictions upon the demand of premiums in relation to controlled premises. Section 25 contains restrictions on the right to obtain an order for possession of controlled premises broadly along the lines of those contained in the United Kingdom legislation. Sub-section (1) provides:-

> "Subject to section 26, no order or judgment for the recovery of possession of any controlled premises, or for the ejectment of a tenant therefrom, shall, whether in respect of a notice to quit given or proceedings commenced before or after the commencement of this Act, be made or given unless" - (there follows in sub-paragraphs (a) to (q) a series of alternative conditions which require to be fulfilled by the lessor and the sub-section continues) - "and unless in addition, in any such case as aforesaid, the court asked to make the order or give the judgment considers it reasonable to make such order or give such judgment:
>
> Provided that an order or judgment shall not be made or given on any ground specified in paragraph (e), (f) or (h) unless the court is also satisfied that, having regard to all the circumstances of the case, less hardship would be caused by granting the order or judgment than by refusing to grant it; and such circumstances are hereby declared to include -
>
> (i) when the application is on a ground specified in paragraph (e) or (f), the question of whether other accommodation is available for the landlord or the tenant;
>
> (ii) when the application is on a ground specified in paragraph (h), the question of whether other accommodation is available for the tenant."

The conditions specified in paragraphs (e), (f) and (h) are of some importance in the context of the question whether the provisions of the Act restricting the making of an order for possession apply where the tenant of a dwelling-house is a corporate body. So far as material these paragraphs provide as follows:-

> "(e) the premises being a dwelling-house or a public or commercial building, are reasonably required by the landlord for -
>
> (i) occupation as a residence for himself or for some person wholly dependent upon him, or for any person <u>bona fide</u> residing or to reside with him, or for some person in his whole-time employment; or

(ii) use by him for business, trade or professional purposes; or

(iii) a combination of the purposes in sub-paragraphs (i) and (ii); or

(f) the premises, being building land, are reasonably required by the landlord for -

(i) the erection of a building to be used for any of the purposes specified in paragraph (e); or

(ii) use by him for business, trade or professional purposes not involving the erection of a building ...

(h) the premises, being a dwelling-house or a public or commercial building, are required for the purpose of being repaired, improved, or rebuilt ..."

Section 26 contains provisions which are specifically referable only to public or commercial buildings and enables the landlords of such buildings to terminate the tenancy by notice in writing given to the tenant specifying a date for the termination of the tenancy and given not less than twelve months before the specified date of termination or in the case of premises leased for a fixed term of years not more than twelve months before the date of expiry of the lease. The effect of that is that the tenant is entitled within nine months of the giving of notice to apply to the court for an order substituting a new date of termination at which the tenancy is to come to an end and the court then has power to fix a substituted date of termination not more than twelve months after the date of termination specified in the notice and such an order operates as an order for the recovery of possession of the premises on the substituted date of termination. Again the making of such an order is discretionary and the court is required to be satisfied that less hardship will be caused by the making of the order than by refusing to make it. Section 28 provides the conditions of the statutory tenancy resulting from the tenant retaining possession under the provisions of the Act and provides in sub-section (1):-

"A tenant who, under the provisions of this Act, retains possession of any premises, shall, so long as he retains possession, observe and be entitled whether as against the landlord or otherwise, to the benefit of all the terms and conditions of the original contract of tenancy, so far as the same are consistent with the provisions of this Act, and shall be entitled to give up possession of the premises only on giving such notice as would have been required under the original contract of tenancy ..."

Section 31 provides, so far as material, as follows:-

> "(1) No notice given by the landlord to quit any controlled premises shall be valid unless it states the reason for the requirement to quit. ...
>
> (2) Where the reason given in any notice referred to in subsection (1) is that some rent lawfully due from the tenant has not been paid, the notice shall, if the rent is paid before the date of expiry of the notice, cease to have effect on the date of payment.
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> (3) Where any notice referred to in sub-section (1), other than a notice under section 26(1), is given after a tenant has, under section 19A(3) of this Act ... applied to a Board to review a decision of the Assessment Officer the period of the notice shall ... be deemed to be not less than one month ..."

In the Court of Appeal, Kerr and Campbell JJ.A., basing themselves upon a line of English authorities of which *Skinner v. Geary* [1931] 2 K.B. 546 and *Reidy v. Walker* [1933] 2 K.B. 266 are, perhaps, the best known examples and which deny the protection of a statutory tenancy under the Rent Acts to a tenant who is not personally in occupation of a dwelling-house, held that the Jamaican Act does not apply at all to a tenancy of a dwelling-house in favour of a limited company which, in the nature of things, cannot be personally in occupation. They concluded that section 31 of the Act did not apply to the notice to quit which therefore effectively determined the appellants' tenancy, that the Act conferred on the first appellant no title to remain in possession of the premises by its agent or nominee, the second appellant, and that, accordingly, an order for possession of the property should be made in favour of the respondent.

In seeking to uphold this decision, Mr. White, who has argued the case for the respondent with conspicuous ability and clarity, rests his case on three propositions. First, he submits, a reference to the definition of a dwelling-house in section 2(1) of the Act demonstrates that dwelling-houses which are, for the time being, tenanted by corporate bodies are not controlled premises within the meaning of the Act and that consequently section 31 does not, on any view, apply to them. Secondly, and in any event, he submits that the provisions of section 31 apply only to a notice to quit given to terminate a periodic tenancy and not to a notice whose purpose is simply to exercise a contractual right of early termination in a tenancy for a fixed term. Thirdly, in relation to the particular notice given by the respondent in the instant case, he submits, adopting the reasoning of Campbell J.A. in the Court of

Appeal, that it does not fall foul of section 31 inasmuch as, since it was a six-month notice and referred to the tenant as holding under the lease, it can only have been referring to the option to terminate contained in sub-clause (v) which is itself a "reason" for the respondent's requiring possession.

Attractively as these arguments were advanced, their Lordships have not, in the end, felt able to accept them. The submission that the existence of a corporate tenancy of a dwelling-house takes it out of the purview of the Act altogether rests, first, upon a supposition that the same policy considerations which governed the decision of the English Court of Appeal in *Skinner v. Geary* (*supra*) require the Jamaican Act to be construed in the same way and, secondly, upon a construction of the words "used mainly as a dwelling or place of residence" which is dictated by those policy considerations. To restrict the protection of an Act, which, in terms, is directed to the control of residential lettings to those tenants who enjoy personal occupation and are the most obvious class of beneficiaries for such protection makes, no doubt, good sense, although the decisions which established this as a proper construction of the United Kingdom Act of 1920 were described by Lord Greene (in *Carter v. S.U. Carburetter Co.* [1942] 2 K.B. 288) as "courageous". But the Jamaican Act has a very much wider ambit and is expressly framed to cover not only residential premises but also building land and premises used for business, commercial and public purposes. In relation to the latter, in the absence of a clear context to the contrary (of which there is none), it is not readily conceivable that the legislature should have designed to exclude perhaps the most obvious example of a typical business or commercial tenant, the limited company. In the case of such a tenant there can be no policy consideration which dictates that the tenant, to gain the protection of the Act, must be an individual personally in occupation. One looks, therefore, for some clear indication in the Act that some different approach is to be adopted in the case of residential tenants. But whilst there are provisions which are clearly directed to the case of the individual tenant personally occupying- for instance, the provisions of section 4(a) inserted by amendment in 1979, which prevent the imposition of a term of a tenancy requiring that no children reside with the tenant - there is nothing in the terms of the Act which justifies the proposition that its protection is confined to such tenants. In particular, the words "was or is used mainly as a dwelling or place of residence" in the definition of "dwelling-house" mirror the words "was or is used mainly for the public service or for business, trade or professional purposes" in the definition of "public or commercial building". In the latter case there can be no sensible reason to construe the word "used" as importing the requirement that the user should

be a personal user by an individual and there is no compelling reason for construing the same word in the former definition in any different sense. Moreover, even assuming that the Act falls to be construed in accordance with the English authorities and whatever may be the position of a corporate tenant as regards the protection from eviction provided by section 25 - a matter to which it will be necessary to revert - it would not be in accordance with those authorities to exclude premises from the operation of the Act altogether simply by reason of characteristics possessed by the tenant. It was clearly established, for instance, in *Carter v. S.U. Carburetter Co.* (*supra*) that the other rights conferred by the United Kingdom Act of 1920 on a tenant of residential premises of the requisite rateable value such as, for instance, the fixing of a standard rent, are rights *in rem*. The standard rent provisions of the Jamaican Act apply to "premises" generally and clearly do not exclude premises in the possession of corporate tenants, who have the same rights as individuals to apply for determination of a standard rent; and the reference in section 31(3) to a notice given after a tenant has applied under section 19A(3) for a review of an Assessment Officer's decision is a clear indication that the provisions of section 31 are envisaged as applying as much to notices given to corporate tenants of controlled premises as they do to notices given to individuals. Their Lordships are, therefore, clearly of the view that premises which are, in fact, used for residential purposes are "controlled premises" within the meaning of the Jamaican Act.

It follows, accordingly, that if the notice with which this appeal is concerned is a notice to quit, as it purports on its face to be, it is a notice to quit controlled premises and thus subject to the provisions of section 31. Mr. White seeks to distinguish a notice to quit given to determine the tenant's contractual right to remain as a periodic tenant and a notice given under an express provision of a lease for a fixed term which, he submits, is not strictly a notice to "quit" in the sense in which the word is used in section 31 but merely a notice exercising an option to terminate. Their Lordships can discern no sensible distinction between the two. A "notice to quit" is the common and ordinary description of any notice given whose purpose is to terminate the estate of a tenant in the land, whether the notice be given by the landlord or by the tenant, and the expression is clearly used in the Act in this sense. For instance, the notice given to "terminate the tenancy" which is referred to in section 26(1) is described in sub-section (3) of the same section as "notice to quit". It is furthermore quite clear that such a notice is a notice to which section 31(1) applies, for section 31(3) refers to "any notice referred to sub-section (1) other than a notice under section 26(1)". The purpose of a notice is to terminate the tenant's

contractual right or his right to remain as a statutory tenant (see section 28(1)) as a necessary preliminary to an application to the court for recovery of possession and their Lordships find it impossible to construe section 31 as excluding such a notice merely because the contract between landlord and tenant makes express provision for it to be given if either party desires to give it. Nor, having regard to the express provision that no such notice "shall be valid" unless it states the reason for the requirement, is there any room for an argument that a notice not complying with the section has some limited effect as between the parties. If it is invalid it must be invalid for all purposes.

Finally the contention which found favour with Campbell J.A. that the notice given by the respondent in fact complied with the section is, in their Lordships' view, not one which their Lordships have, in the end, felt able to accept. Section 31(1) does not in terms limit the reasons which may be given in a notice in order to comply with its provisions, but sub-section (2) provides some support for the view that the "reasons" which the legislature had in mind were those reasons which are enumerated in section 25 as reasons which can be relied upon by a landlord in seeking an order for possession. It does not, for instance, make any real sense that a notice which states that the reason is breach of the repairing covenant should still be a valid notice for the purposes of the Act even though the landlord in fact seeks possession on the ground that he requires to occupy the premises himself. "The reason" is not the same as "a reason". The clear purpose of section 31 is to put the tenant on notice of the ground upon which possession is going to be sought against him so that he can either rectify the breach, if breach there be, or at least can prepare to meet the case which the landlord is going to make at the hearing; and the provision makes no real sense unless "the reason" is construed as meaning not only a genuine reason but a relevant reason. It is inconceivable that the legislature, in enacting this provision, should have contemplated that a notice, which is an essential precondition to successful proceedings where a contractual term or a statutory tenancy is still in being, should nevertheless be a valid fulfilment of that essential condition if it specifies some frivolous or totally irrelevant reason for requiring the tenant to leave. But even allowing that the section permits the statement of an irrelevant reason, it still requires a reason "for the requirement to quit" and the mere statement "because I require you to quit" or "I require you to quit because I am entitled to require you to quit" is not a statement of "the reason for the requirement". The argument advanced is that since the contract between the respondent and the appellants contained a right to terminate the term prematurely and because the notice (a) specified a period of six months and (b) referred to the tenant as

"tenant ... under the terms of" the agreement it left no room for doubt that the reason for giving the notice was that the contract permitted it to be given and that the landlord, to use the words in the agreement, "wishes to terminate this agreement". But that, with respect to the views of Campbell J.A., is saying no more than "I require you to go because I wish to terminate the agreement and have the right to do so". It states the contractual justification for giving the notice but it does not state the reason for the requirement.

It follows that the notice was, by reason of section 31 of the Act, invalid and of no effect, with the result that the contractual term continued until 1st August 1983 and was thus still in being at the date when the proceedings were commenced. At the date of hearing before the judge the contractual term had expired and the question then arises what was the status of the appellants at that date? The judge held that they were entitled to remain as statutory tenants and that was also the view expressed by Carberry J. in his dissenting judgment. In their Lordships' opinion, this was correct. As already mentioned, the Jamaican Act is so different in its scope from the United Kingdom statute that there is no compulsive reason for restricting the statutory protection against eviction within the limits which have been applied by the English Court of Appeal in *Skinner v. Geary* (*supra*). The term "statutory tenancy" is merely a convenient label for describing the status of the tenant whose contractual right to remain has determined but who remains in possession in reliance upon the restrictions contained in the Act upon the landlord's ability to resume possession. The framework of the Jamaican legislation precludes the argument that the corporate or other non-resident tenant cannot be a statutory tenant. It is true that section 26 contains separate provisions specifically relating to business tenants (which must include corporate tenants) and permits them a certain limited security of tenure. It is also true that section 25, which contains the restrictions upon the making of orders for possession and from which the tenant's ability to remain as a statutory tenant stems, is prefaced by the words "subject to section 26". The inter-relationship between these two sections is not immediately apparent and it is not necessary, for present purposes, to consider it in any detail. What is clear from paragraphs (e), (f) and (h) is that, at least in cases to which section 26 does not apply - where, for instance, the landlord gives a notice complying with section 31(1) but not complying with the time limits laid down in section 26(1) - the tenant of business premises has the same protection or, to put it another way, the same statutory tenancy as the tenant of residential premises. He or it retains possession by virtue of the Act and the terms imported into the statutory tenancy by section 28 equally apply. Similarly, a tenant of building land, whether an

individual or a corporation, is entitled to the same protection as the tenant of a dwelling-house. Their Lordships can, therefore, find no context, if corporate tenants are, as they clearly are, entitled to the protection of section 25 in respect of business premises and building land, for excluding that protection in the case of a corporate tenancy of property that is used for residential purposes.

It remains to consider the consequence of this in relation to the appeal. It follows from what has been said already that the first appellant was, after the expiration of the fixed term, entitled to remain in possession as statutory tenant unless and until an order for possession was made pursuant to section 25 by a competent court - a process which would have involved *inter alia* a consideration of the relative hardship of making and withholding an order. In ordering possession, the Court of Appeal did not purport to be exercising this jurisdiction and indeed Kerr J.A. expressly stated that a claim for possession on the ground of breach of covenant (which might have brought the respondent's counterclaim within section 25 if that had been pleaded) was an afterthought which need not be considered. It follows, therefore, that the order for possession ought not to have been made and that the judgment for mesne profits to be assessed in respect of the period from the expiry of the notice until possession was given cannot stand. It would, however, be entirely fruitless to remit the case to the Jamaican Court with a view to restoring the appellants to possession of the premises, since Mr. Henty, albeit without express instructions from the appellants, has been compelled realistically to concede that such a course could lead only to a prolongation of litigation which, in the end, must inevitably terminate, having regard to the respondent's claim to occupy the premises for himself and his family, in a fresh possession order in his favour under the provisions of section 25 of the Act. In the circumstances, however, the possession order must, their Lordships think, technically be discharged although this cannot practically affect anything but the claim for mesne profits and the question of the incidence of costs both in the courts below and before their Lordships' Board. In the result, this will mean that, up to the point when the respondent recovered possession of the premises under the Court of Appeal's order, the appellants were properly in possession under the terms of the agreement and so liable, not for mesne profits, but for the rent reserved by the agreement. The order for mesne profits to be assessed must therefore be discharged and an order substituted for payment of the rent due up to the time when possession was resumed by the respondent, the amount of which, in case of dispute, will have to be ascertained by taking an account.

That leaves only the question of the costs of this litigation. So far as concerns the costs of the hearing before Vanderpump J. the additional costs due to the claim for specific performance can hardly have been significant in the context of the litigation as a whole and the judge's orders for costs both of the appellants and the respondent should stand. As regards the costs in the Court of Appeal, plainly the respondent rightly succeeded on the issue of specific performance. On the other hand, the appellants, although unsuccessful, were clearly entitled to resist the order for possession sought by the respondent's counterclaim and the order for payment by the appellants of the whole of the costs of the appeal must plainly be discharged. It would, their Lordships apprehend, be quite impractical at this stage to tax the costs of the various issues separately and the only fair result can be that each side pay their own costs, a result that can be met simply by discharging the Court of Appeal's order for costs. As regards the hearing before their Lordships' Board both sides have been partially successful and their Lordships propose therefore that no order should be made for costs.

Their Lordships will accordingly humbly advise Her Majesty that the appeal should be allowed to the limited extent indicated.