

37/79

IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 23 of 1977

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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B E T W E E N :

WILFRED ISAAC

Appellant  
(Complainant)

- and -

ALFRED FRANCIS

Respondent  
(Defendant)

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RECORD OF PROCEEDINGS

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A.L. BRYDEN & WILLIAMS,  
20 Old Queen Street,  
London SW1H 9HU

Solicitors for the Appellant

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IN THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

No. 23 of 1977

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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B E T W E E N :

WILFRED ISAAC

Appellant  
(Complainant)

- and -

ALFRED FRANCIS

Respondent  
(Defendant)

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RECORD OF PROCEEDINGS

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No. 1

BACK OF  
EJECTMENT  
COMPLAINT

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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Adj. 22.8.73 A.O.D.

Adj. 1.10.73 A.O.D.

Adj. 15.11.73 A.O.D.

" 3.1.74 A.O.D.

20.11.73

Defendant appears

Adjourned 8.1.73 A.B.S.

Defendant appears

Adj. 14.2.73 A.B.S.

20

No. 1

Notes on back of  
ejectment  
complaint

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 1

Notes on back of  
ejectment  
complaint  
continued

Adj. 8.3.73 A.O.B.S.

Adj. 12.4.73 A.B.S.

Complainant apply through Mr. Gaspard

Adj. 30.5.73 A.B.S.

Defendant apply through Mr. Lalla holding  
for Gaspard

Adj. 9.7.73 A.O.B.S.

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Cite for Defendant 8.7.74

(i) Registrar of the Supreme Court  
3.1.74

Adj. 7.2.74 A.O.C.

A.B.S. Adj. 13.3.74 pending sentence

Complainant appears; Defendant appears;  
A.O.C.

Adj. 27.3.74 P.S.

Complainant appears; Defendant appears;  
A.O.D.

Adj. 8.4.74

C.A.) stood down Adj. 22.4.74 P.F.  
D.A.)

C.A.)

D.A.) Adj. 29.5.74 A.O.D.

C.A. Stood down

No appearance defendant Mr. Sinanan appears

Adj. 12.6.74 P.F.

C.A.; D.A.; Adj. 26.6.74 P.F.

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C.A. Mr. Gaspard for complainant

No appearance defendant; Mr. Sinanan appears  
Adj. 10.7.74 at 11 a.m. Part-Heard Mr.  
Gafoor

Complainant appears; Mr. Gaspard appears.

Mr. Sinanan appears

Adj. 11.7.74 No evidence led

C.A.) Part-Heard; Adj. 25.7.74

D.A.) Evidence led See 7th Court Note-book

C.A.) Adj. 7.8.74 Part-heard Mr. Gafoor

D.A.) 1.30 p.m. A.O.D.

Evidence led Adj. 2.10.74 at 1.30 p.m.  
documents not available.

for address of counsel on both sides

Part-heard Mr. Gafoor

Adj. 8.11.74 at 1.30 p.m.

2.10.74

Complainant Appears; Defendant appears

1.30 p.m. Adj. 14.10.74

Adj. 25.10.74 at 1.30 p.m.

Complainant appears

Defendant appears Mr. Sinanan. Adj. 1.11.74

1.30 p.m.

Adj. 8.11.74 at 1.30 p.m.

Part-heard Adj. 17.1.75 at 1.30 p.m.

for decision.

Complainant appears; Defendant appears

Warrant of possession to issue

Mr. Gaspard undertakes not to apply for  
warrant within 21 days.

Notice of appeal filed by defendant 24.1.75

- Bail with surety \$120.00.

C. Drysdale

Justice of the Peace.

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 1

Notes on back of  
ejectment  
complaint  
continued

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IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 2

EJECTMENT COMPLAINT  
TRINIDAD AND TOBAGO  
B E T W E E N

No. 2

Ejectment  
Complaint  
13th October  
1972

WILFRED ISAAC                      COMPLAINANT

-and-

ALFRED FRANCIS                      DEFENDANT

10

The Complaint of Wilfred Isaac, made before me Justice of the Peace for the County of St. George West, who says that he the said Wilfred Isaac did let to the late Myra Smith also called Admira Smith, a parcel of land situate in the city of Port of Spain, in the Island of Trinidad, comprising one lot measuring 50 feet by 60 feet (being portion of a larger parcel of land comprising two quarrees) known as Isaac Terrace and bounded on the North by lands of Wilfred Isaac in the occupation of Eleanora Noel, on the South by lands of Wilfred Isaac in the occupation of Joseph Peters, on the East by a road and on the West by lands of Wilfred Isaac at a monthly rental of under \$20.00 and that on the death of the said Myra Smith also called Admira Smith on the 25th day of November, 1966, the tenancy in respect of the said parcel of land vested in the Administrator General by operation of law which tenancy was determined by notice to quit given by the said Wilfred Isaac on the 14th day of August, 1972, to the said Administrator General and that the defendant Alfred Francis being a person actually occupying the said parcel of land has refused to deliver up possession thereof.

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30

DATED THIS 13th day of October, 1972.

Sgd. Wilfred Isaac

Sgd. T. Hamilton  
Justice of the Peace.

No. 3

EVIDENCE OF WILFRED ISAACPORT OF SPAIN MAGISTRATE'S FOURTH  
COURTBEFORE H.W.A. GAFOOR ESQ.,  
MAGISTRATE T'DAD & T'GO ST. GEORGE  
WEST

WEDNESDAY 26TH JUNE, 1974.

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 3

Evidence of Wilfred  
Isaac  
26th June 197410 INFORMATION NUMBER 18443MR. GASPARD FOR COMPLAINANTNO APPEARANCE DEFENDANT MR. SINANAN APPEARSWILFRED ISAAC SWORN STATES:

20 I live at Isaac Terrace, Upper Bournes Road,  
St. James. I am the owner of 2 parcels of land.  
There was a tenant on the land called Myra Smith  
also called Edrina Smith. She was a tenant of a  
portion 50 ft. x 60 ft. This was bounded on the  
north by my lands occupied by Elina Noel. Edrina  
Smith died on 25.11.66. On 14.8.72, I served  
the original of this notice on the Administrator  
General and left it with his Secretary Mrs. Riverra  
at the given address.

Mr. sinanan objects on the ground that a notice  
must be served on the tenant if the Administrator  
General has become the tenant, he should be brought  
here to defend.

30 Mr. Gaspard states: In law, upon the death of a  
tenant, whatever right a tenant has in respect of  
the tenancy, devours upon the Administrator  
General for all purposes unless there has been a  
grant of probate of a will. But until that is done  
the rights of the tenancy is vested in the  
Administrator General. Whenever such a tenancy  
should be delivered, service must be carried on  
to the Administrator General. Whatever rights may  
be vested in the tenant, the Administrator General  
is the proper person upon who all rights must be  
devoured.

40 Mr. Sinanan states: A copy of notice can only be  
put in by consent. I cannot consent for the  
Administrator General. I do not know if such a

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 3

Evidence of Wilfred  
Isaac  
26th June 1974  
continued

notice has been served.

Mr. Gaspard refers to Ch. 27 Number 17 Section 3. By virtue of this section, we can proceed. Whenever there is a person in occupation who does not come with the rent restriction ordinance, you can't stay (sic) in occupation once the tenancy rights has been determined.

Mr. Sinanan - We have not been served. If the Administrator General is now tenant, he must be the defendant. If this is a Court for tenant, what is the defendant doing here.

10

CONTINUING:

This is the copy of the notice. (Notice put in and marked W.I.1.) Edrina Smith was a tenant for about 6 - 7 years before her death. The defendant is now in occupation of that house. On 21.9.72 I served him with the original of this notice. (Notice put in and marked W.I.2.) The rent of the premises was \$1.50 per month. The tenancy runs from the 1st to the end of each month. He is still in occupation of this lot of land on which the house is.

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CROSS EXAMINED BY MR. SINANAN

The parcel of land on which the defendant occupied has a house on it. That is the house in which Myra Smith lived. I don't know if she lived with the Defendant. I know she was married. Her husband is alive. I do not know with whom she was living. The defendant is living in the house now. He was not there before she died. I rented her that piece of land. She built a house on it. The Defendant lives in it. By action 96 of 1969, I brought him up in the High Court. My solicitor was J.B. Wilson and Stephen Norman my Counsel, represented by Malcolm Milne & Co. My writ was endorsed, the plaintiff claim against the defendant for trespass, an order requiring him to remove the building from the premises. Mr. Gaspard objects to oral evidence of a written document, he wants the document itself. Mr. Sinanan withdraws the evidence. He states that the document cannot be found. I am cross-examining a witness about what he has done. I am not asking him to tell me about what is in the document. He is the

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one who made this document, it is his document this is his claim. I can't put in a document unless it contradicts what the witness says.

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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CONTINUING:

No. 3

Evidence of Wilfred  
Isaac  
26th June 1974  
continued

10 I filed a statement of claim, I can't remember if a counterclaim was put in. The case was tried. It was dismissed there was no decision. My claim was practically thrown out. It was for the same piece of land but it was a different claim. The same piece of land I bought the action for, is the piece of land I am now asking for possession of. I do not know the defendants defence was a counterclaim asking for the land. I do not know if in the counterclaim the judge ruled the defendant as owner of the land. I do not know there is a judgment of 9.10.72 by Julian McMillan that judgment be entered for the defendant for the claim and counterclaim. I do not know that Myra Smith left a will. I can't remember if that will was put in the High Court matter. It was a long time ago. I was in Court I do not know that the defendant asked for a declaration of the said will. Mr. Gaspard objects to the tendering of the judgment document on the grounds that it is not a certified copy.

20

Mr. Sinanan withdraws.

Mr. Gaspard - The document which is not certified does not have anything which says the defendant is a tenant.

30 Mr. Sinanan I do not think I am at fault for not having the document, by inquiring I found out that the Registrar can't find the file. At this stage I ask for an adjournment in order to find the document. I want to get action 1966 of 1969 between complainant and defendant which I will put in through my solicitor.

Adjourned 10.7.74.

PART-HEARD

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 4

EVIDENCE OF WINSTON COOPER

ON 10TH JULY 1974  
INFORMATION NO. 18443 RESUMED  
ADJOURNED 11TH JULY 1974  
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No. 4  
Evidence of  
Winston Cooper  
11th July 1974

ON 11TH JULY 1974  
INFORMATION NO. 18443 RESUMED  
WINSTON COOPER SWORN STATES:

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I live at El Socorro Extension Road, San Juan. I am a clerk attached to the Administrator General's Department. I was entrusted with a notice to quit, which was served on the 19th August, 1972 (witness shown notice). This is the notice I was served with determining the tenancy (tenancy of will tendered and marked Court Exhibit W.C.1.) This was in respect of the files of the estate.

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NOT CROSS EXAMINED BY MR. SINANAN

ADJOURNED 25.7.74

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 5

EVIDENCE OF WILLIAM ISAAC

ON THURSDAY 25TH JULY 1974  
INFORMATION NO. 18443 RESUMED  
MR. GASPARD APPEARS FOR THE COMPLAINANT  
MR. SINANAN APPEARS FOR THE DEFENDANT

No. 5  
Evidence of  
Wilfred Isaac  
25th July 1974

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WILFRED ISAAC SWORN STATES, CROSS EXAMINED  
BY MR. SINANAN:

I last got my rent a very long time ago, a matter of years. Myra Smith died the same length of time. I can't exactly say when. I did not get rent after she died. I cannot remember. He said she left a will, I say there is no will, I don't know when Myra Smith died. I can't remember when last I received rent - a very long time ago. I never paid any heed to the rent I got a postal order but I paid no heed to it. I got one (1) or two (2) plenty years ago about three (3) to four (4) years ago. I put

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them in evidence. This is after Myra Smith died.

RE-EXAMINED BY MR. GASPARD:

At the time of her death, this man was not living there. I said that she was married. Her husband was Fitzgerald Smith. I knew him personally. I know him while he lived at D'Abadie, Red Hill. He used to be backward and forward. I was asked about receiving rent. I never received rent from the defendant. Postal Orders were sent by him. I never paid any heed to it. I never issued receipts to the defendant at any time. He is now in occupation of these premises.

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CASE FOR THE COMPLAINANT CLOSED.

No. 6

SUBMISSION OF MR. SINANAN

MR. SINANAN SUBMITS:

I submit the defendant has no case to answer. In the ordinary law of the Rent Restriction if the contracting tenancy is terminated then the statutory tenancy is created. After his death rent was tendered and no heed was paid to it. If Myra Smith had a tenancy that was terminated the relation between landlord and tenant must be established. I defer my no case submission.

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MR. GASPARD STATES:

We were told of documents to be certified by the Registrar.

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ADJOURNED 7/8/74 Application of defendant to bring certified copy of document.

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 5

Evidence of  
Wilfred Isaac  
25th July 1974  
continued

RE-EXAMINATION

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 6

Submission of  
Mr. Sinanan  
25th July 1974

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 7

EVIDENCE OF ALFRED FRANCIS

ON WEDNESDAY 7/8/74

INFORMATION NO. 18443 RESUMED

MR. GASPARD FOR COMPLAINANT

MR. SINANAN FOR DEFENDANT

ALFRED FRANCIS SWORN STATES:

10

I live at Upper Bournes Road, St. James. The house I live in is at Isaac Terrace, St. James. Mr. Isaac is the owner. I am the next owner of the house. Myra Smith died in 1961. She lived there. I was living with her in this house on Isaac's land. We paid rent - sent it by post. It never came back. Myra Smith died. He brought an action against me in the High Court. I paid rent up to 1972.

CROSS-EXAMINED BY MR. GASPARD:

20

I am married. My wife lives in the house right now. She is Mildred Francis. I can't remember when I was married. It was after Myra died that I married. I lived with Myra since 1942. I know her husband he was Fitzgerald Smith. I don't know where he lives. At her death I don't know if Fitzgerald Smith was still alive. I didn't get any receipts. I have no receipts. Myra Smith had receipts. I have those receipts. I don't have them here. (Mr. Sinanan informs the Court that these receipts are proceedings in another case). Myra Smith died in 1966. The tenancy of the land is in the name of Myra Smith. Up to the time Myra Smith died she used to get receipts. After her death no receipts were issued. As a result of Myra Smith's death, I went to him and he said he would not take rent from me. I decided to post the rent. He told me he don't want me to be a tenant. I wanted receipts in my name. He said no. I decided to post the rent to him. I have no documents to indicate Isaac paid the rent. Mr. Milne, my solicitor, has the receipts. I don't have any such evidence in my pocket here.

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No. 7  
Evidence of  
Alfred Francis  
7th August 1974

RE-EXAMINED BY MR. SINANAN:

Mr. Isaac refused to put the tenancy in my name. After Myra Smith died I did a little tending up at the house.

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 7

Evidence of  
Alfred Francis  
7th August 1974  
continued

No. 8

EVIDENCE OF DEONARINE PORRANDEONARINE POORAN SWORN STATES:

I am a civil servant, a clerk in the Registry of the Supreme Court. I am in charge of documents. I have with me file No. 196 of 1969. The action is between Wilfred Isaac and Alfred Francis. The writ was filed on 27.1.67. (At this stage No. Gaspard objects to the admissability of this document on the ground that before this document could be admitted into evidence, it must first be shown to him. Court over-ruled). I have here High Court Action No. 196 of 1969. (Tendered into evidence and marked D.P.l.).

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 8

Evidence of  
Deonarine Porran  
7th August 1974

CROSS-EXAMINED BY MR. GASPARD:

(Witness looks at D.P.l.). I see here the formal order as made by the Judge on 9.10.70. Having seen this order, I also see the last writing on this document. I don't make out this signature. It's dated 16.7.74. I can't make out the writing. From the order, I mentioned, from the note in it I can't say if it is referring to this order No. 196 of 1969 (witness is shown other documents) This document refers to Order No. 196 of 1969 signed by the Deputy Registrar. This is a note addressed to the Registrar referring to an order). I don't know what order. I see on this order that judgment is entered to the defendant and counterclaim. Both these orders were signed by the Deputy Registrar. Since this note is on the proceedings there are no documents to indicate non-comformity of the judges order. There is one (1) order in this

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 8

Evidence of  
Deonarine Porran  
7th August 1974  
continued

order. This note was directed to the Registrar referring to the non-conformity of the proceeding. This order is written by a clerk. I had nothing to do with this matter. I was only requested to produce these documents. I don't keep these documents. I don't know anything of the contents of these documents. I have not read or studied them. In this envelope are exhibits put into evidence. In the exhibits there is one (1) receipt which has been put in as a receipt of Myra Smith dated 5.1.71. All these other documents that are exhibits in evidence does not have the name of anybody. There is nothing to indicate that these coupons were received by any particular person.

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ADJOURNED 2.10.74 for address by Counsel by both sides.

On 2.10.74 no evidence led - adjourned 14.10.74.

On 14.10.74 no evidence led - Adjourned 25.10.75

On 25.10.74 no evidence led - Adjourned 1.11.74

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On 1.11.74 no evidence led - Adjourned 8.11.74

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 9

Submission of  
Mr. Sinanan  
8th November  
1974

No. 9

SUBMISSION OF MR. SINANAN

PORT OF SPAIN MAGISTRATE'S FOURTH  
COURT  
BEFORE HIS WORSHIP ANTHONY GAFOOR  
ESQ.  
MAGISTRATE, TRINIDAD AND TOBAGO,  
ST. GEORGE WEST.  
FRIDAY 8TH NOVEMBER, 1974

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Information No. 18443 Part-heard Resumed

Mr. Gaspard appears for the Complainant

Mr. Sinanan appears for the Defendant:

MR. SINANAN SUBMITS:

- (1) If the defendant was a member of the household living there, he would be entitled to the tenancy after the death of the tenant.

- (2) If the defendant does not fall under that category, he is then half owner of the house. If he owns half of the property and was living with the woman there and he or she was paying the rent, the court can say he was also part-tenant.
- (3) If the defendant was given the whole property, the court would have to either assess the facts and see if he is owner of the whole property or would have to make an order if a person builds a house on it.
- (4) The defendant paid rent while he was in occupation of the premises hence, a new tenancy was created. The payment by an occupier is deemed to be a new tenancy. The rent was sent to the owner after the woman died. The money orders were not returned. The owner said that these were put aside. If he did so, then the defendant is a tenant.
- (5) If the defendant is not a tenant then he is a trespasser. Grounds should have been given on the notice when he was served to quit the premises. The complainant is saying that the defendant is not a tenant, he is a trespasser. (Counsel refers to Page 498 2nd Edition - Volume 13 Forms Prescedent Encyclopedia - Civil Proceedings).
- (6) There must be a relationship between the landlord and tenant for the court to make a jurisdiction. If the defendant is a trespasser, the complainant must go and get possession in the proper court.
- (7) Counsel refers to authorities:-
- (1) No. 390 of the 1965 Edition and the 1938 Rent Act. (Case of C. Lurch and Cynthia Balwant vs. J. Samaroo)
  - (2) Sections 3 and 5.

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 9

Submission of  
Mr. Sinanan  
8th November  
1974  
continued

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IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 10

SUBMISSION OF MR. GASPARD

No. 10  
Submission of  
Mr. Gaspard  
7th November 1974

- (1) Section 111 Chapter 27 No. 17 Pages 354 and 355 of West Indian Reports.
- (2) Section 21 of the Rent Restriction Ordinance.
- (3) Page 358 of the Rent Restriction Ordinance.
- (4) Arthur vs. Gomes 1966 II West Indian Reports Page 26.
- (5) Tinkham Vs. Perry - 1951 1 AER Page 249
- (6) By virtue of Section 3 and Section 10.

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P.H. Adjourned 17.1.75. for decision.

On 17.1.75 Information No. 18443 resumed.

MAGISTRATE'S DECISION:

Warrant of Possession to issue.

/s/ Anthony Gafoor  
Magistrate, Trinidad & Tobago  
St. George West.  
17.1.75.

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IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 11

ORDER OF EJECTMENT

(Ch. 27 No. 17 Section 5)

No. 11  
Order of  
Ejectment  
17th January 1975

DISTRICT OF THE COUNTY OF ST. GEORGE WEST,  
PORT OF SPAIN

CASE No. 18443

WHEREAS WILFRED ISAAC

did on the 13th day of October 1972, complain against ALFRED FRANCIS that the said Wilfred Isaac did let to the said ALFRED FRANCIS a Tenement consisting of A Parcel of Land at Isaac Terrace.

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not exceeding the rent of two hundred and forty

dollars by the year, and that the said tenancy expired on the 30th day of September 1972 by notice to quit given by the said Wilfred Isaac on the 14th day of August, 1972 and that the said Alfred Francis hath neglected to deliver up possession of the said Tenement, and still detains the same although he hath been required to deliver up the possession thereof, I Anthony Gafoor Esq., Magistrate of the said District do order a Warrant of Possession to Issue

10

Given under my hand at the Port of Spain Magistrate's Court this 17th day of January 1975.

To: S.P.O. Process and all other Police Constables acting for this District:

/sgd. Gafoor.  
Magistrate Trinidad  
& Tobago  
St. George West

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

---

No. 11

Order of  
Ejectment  
17th January 1975  
continued

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No. 12

NOTICE OF APPEAL

TRINIDAD AND TOBAGO

FORM OF NOTICE WHERE THE APPELLANT IS  
A DEFENDANT (Ch. 3 No. 4 Section 127)

TO: CLARENCE DRYSDALE Esq.,  
Clerk of the Peace Court.

TAKE NOTICE that I ALFRED FRANCIS aggrieved by an order of Anthony Gafoor Esq., dated the 17th day of January 1975, against me the said Alfred Francis for having as therein alleged on the 17th day of January 1974 (here state briefly the conviction or order) ordered that a warrant of possession be issued against me the said Alfred Francis

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do appeal against such order on the following grounds:-

1. I am not guilty
2. The decision of the learned Magistrate is

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 12

Notice of Appeal  
24th January 1975

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

erroneous in law in that the learned  
Magistrate held that the defendant was not  
the lawful tenant in relation to the premises.

Dated this 24th day of January 1975.

No. 12

Notice of Appeal  
24th January 1975  
continued

T.M. Milne  
Appellant's Sol.

N.B. The Defendant hereby applies for a free copy  
of the Notes of Evidence.

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 13

10

CF No. 1471921 \$120.00 deposited  
in lieu of surety

No. 13

TRINIDAD AND TOBAGO

Recognisance  
27th January  
1975

FORM 3A

RECOGNIZANCE ON APPEAL WHERE MONEY  
DEPOSITED IN LIEU OF SURETY

BE IT REMEMBERED that on Monday the 27th day of  
January in the year of Our Lord 1975

20

Alfred Francis

of Isaac Terrace, Upper Bournes Road, St. James  
(Appellant)

came before me the undersigned

Justice of the Peace for said (District)

and acknowledged himself to owe to Our Sovereign  
Lady the Queen the sum of \$120.00

which said sum has been paid into Court.

WHEREAS on Friday the 17th day of January 1975

Alfred Francis was convicted before  
A. Gafoor Esq., Magistrate

30

the for that the said Alfred Francis did on the  
17th day of

Ejectment of a piece of land at Isaac Terrace, P.O.S.

(OR WHEREAS on the                      day of  
the said

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

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No. 13

Ejection of a parcel of land at Isaac Terrace,  
P.O.S.

Recognisance  
27th January  
1975  
continued

And whereby a warrant of possession was ordered  
to be issued

10      AND WHEREAS the said Alfred Francis  
has appealed against the said order.

Now the condition of this recognizance is such  
that if the said Alfred Francis shall personally  
appear at the sitting of the Court of Appeal

20      when his appeal comes on to be heard (and at  
every sitting of such Court to which his appeal  
may be from time to time adjourned) and shall  
then and there duly prosecute such his appeal,  
and shall not depart the Court without leave,  
and shall abide by and perform the Judgment of  
the said Court of Appeal and pay all such costs as  
shall be awarded against him by the said Court,  
then this recognizance shall be void, but  
otherwise shall be in full force and effect.

(appellant) signed

Alfred Francis

(Thumb Mark)

C. Drysdale

Justice of the Peace.

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

No. 14

M A G I S T R A T E ' S   R E A S O N S

IN THE MATTER OF EJECTMENT COMPLAINT NO. 18443 -

No. 14

Magistrates  
reasons

5th January 1976

ALFRED FRANCIS

APPELLANT/DEFENDANT

VERSUS

WILFRED ISAAC

RESPONDENT/COMPLAINANT

1. The complainant Wilfred Isaac instituted ejectment proceedings against the defendant Alfred Francis seeking possession of a parcel of land situate in Port of Spain and known as Isaac Terrace. 10

2. The complainant testified that he was the owner of the land in question and that the tenant was a woman called Myra Smith also called Edrina Smith. Edrina Smith died on 25th November, 1966 and a Notice dated 14th August, 1972 was served on the Administrator General. (See exhibit W.C.1.)

3. The defendant has been in occupation of the land in question and he too was served with a notice dated 21st September, 1972. This notice informed him that the estate which had devolved on the Administrator General on the death of Myra Smith had been determined by a Notice to Quit. The defendant was never recognised as a tenant by the complainant. 20

4. The evidence of the defendant was that he was living with Myra Smith in a house on the land in question. He contended that he paid rent up to 1972. No receipt was tendered in support of this allegation. He himself said when he was cross-examined by Mr. Gaspard: "Up to the time Myra Smith died she used to get receipts. After her death no receipts were issued .....I went to him and he said he would not take rent from me." 30

5. The Court found on the evidence that the defendant was not a tenant as defined under Ch. 27 No. 18 (P.965). The evidence of both the complainant and defendant was that the deceased was married, and the complainant testified that the husband one Fitzgerald Smith is alive. This was accepted by the Court. Where as in this case there is a surviving spouse the occupied does not acquire the status of a tenant as contemplated above. 40

(See Tinkam V. Perry (1951) 1 A.E.R. P. 249)

6. The Court found also that the defendant paid no rent to the complainant nor was he accepted as tenant by the complainant.

IN THE ST. GEORGE  
WEST MAGISTRATES  
COURT

7. The Court having considered all the evidence made an Order for possession, bearing also the principle laid down in Gafooran Ali V. Ashraph 7 W.I.R. P.354 - whenever a tenant dies and the tenancy devolves on the Administrator General he is the one on whom notice must be served. The person brought before the Court is the person affected.

No. 14

Magistrates  
reasons  
5th January 1976  
continued

10

.....  
A.J. Gafoor  
Magistrate  
St. George. West. P.O.S.

-----  
CERTIFICATE OF THE CLERK OF THE PEACE  
-----

I, the undersigned Clerk of the Peace, Magistracy, St. George West, do hereby certify the foregoing pages to contain a true and correct copy of the Notes of Evidence and Proceedings in the matter of Information No. 18443 - WILFRED ISAAC Complainant, versus ALFRED FRANCIS which was heard and determined at the Port of Spain Magistrate's Fourth Court before His Worship A. Gafoor Esq., Magistrate Trinidad and Tobago, on Friday the 17th day of January, 1975.

20

Dated this 5th day of January 1976.

.....C. Drysdale  
Clerk of the Peace  
St. George West  
Port of Spain

30

IN THE COURT OF  
APPEAL

No. 15

Notice of application to amend  
grounds of Appeal

No. 15

Notice of  
application to  
amend grounds  
of appeal  
30th April 1976

TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

(MAGISTERIAL)

No. 9 of 1976.

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BETWEEN:

ALFRED FRANCIS

APPELLANT

AND

WILFRED ISAAC

RESPONDENT

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TAKE NOTICE that at the hearing of the appeal herein on the 10th day of May 1976 the appellant intends to apply to the Court to amend his grounds of appeal by adding the following ground :

- (3) The Learned Magistrate erred in law in holding that he had jurisdiction to hear the complaint.

20

Dated this 30th day of April 1976.

T.M. Milne  
Appellant's Solicitors

TO: The Registrar of the Court of Appeal  
Trinidad House  
St. Vincent Street  
Port of Spain.



IN THE COURT OF  
APPEAL

No. 16

Judgment  
16th November 1976  
continued

had continued to occupy the premises and was still doing so despite the notice to quit. The Magistrate made an order of ejection against the appellant on that complaint, but this he was not entitled to do.

The Summary Ejection Ordinance is similar in terms to the English Small Tenements Recovery Act of 1878 which applies to tenancies held in relation to premises below a certain rental value. It is now well established that that Act applies only when the relationship of Landlord and tenant exists between the parties Vide: 13 Halsbury's Statutes of England (2nd Edn.) p. 587 and Ramsbottom V. Gnelson (1948) 1 A.E.R. 201 7

10

The definition of "tenant" contained in S.2(1)b of the Rent Restriction Ordinance so far as material is as follows:

"(a) a sub-tenant and any person deserving title from the original tenant or sub-tenant as the case may be .....

20

(b) when a tenant.... is a woman, such member of the tenant's family was residing with the tenant for not less than six months immediately before the death of the tenant as may be decided in default of agreement by a Board."

There is no evidence that the respondent was a member of the tenant's family and therefore the appellant does not fall within the category of a member of the tenant's family as was residing with the tenant for not less than six months immediately before the death of the tenant. He was therefore never a tenant.

30

Counsel for the respondent submitted that section 3 of Ch. 217 No. 17 relates not only to tenants but also to occupiers, and that the appellant can proceed against an occupier in the absence of the tenant. This, he submitted, is the result if section 3 is read in conjunction with section 5. We think that such a reading is not in his favour.

40

Section 3 provides that when and so soon as

the term or interest of the tenant of any premises shall have ended or shall have been determined it shall be lawful for the landlord to make complaint.

Section 5 reads (so far as is material):

"If the tenant shall not appear in obedience to such summons...."

10 the magistrate shall be entitled to make an order for possession. The conjoint effect of these two sections clearly is that the tenant must be made a party to the complaint. If that is done any order made by the magistrate operates by virtue of section 3 against all occupiers as well as against the tenant, but the complaint must name the tenant.

In this case since there was no evidence that the relationship of landlord and tenant existed between the parties named the magistrate had no power to make an order against the appellant.

20 The appeal is allowed with costs and the magistrate's order is vacated.

M.A. Corbin  
Justice of Appeal

E.A. Rees  
Justice of Appeal

No. 17

ORDER ON APPEAL

TRINIDAD AND TOBAGO

30

ORDER ON APPEAL  
(Judicature Ordinance Ch. 3  
No. 1)

Mag. No. 9/76

Case No. 18433

AT a Sitting of the Court of Appeal held at the City of Port of Spain on the 9th day of June 1976 Alfred Francis of Isaac Terrace, Upper Bournes Road St. James appeared and through Counsel prosecuted

IN THE COURT OF  
APPEAL

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No. 16

Judgment  
16th November 1976  
continued

IN THE COURT OF  
APPEAL

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No. 17

Order on Appeal  
16th November  
1976

IN THE COURT OF APPEAL

No. 17

Order on Appeal  
16th November  
1976  
continued

his appeal against an Order for Possession under the hand of His Worship Mr. A. Gafoor Magistrate of P.O.S. dated and made on the 17th day of January 1976 for that Wilfred Isaac did let to Admira Smith a parcel of land situate at P.O.S. at a monthly rental under \$20.00 and that on the death of the said Myra Smith also called Admira Smith on the 25/11/66 the tenancy in respect of the said parcel of land vested in the Administrator General and that by the operation of law which tenancy was determined by notice to quit given by the said Wilfred Isaac on the 14/8/72 to the said Administrator General and that Alfred Francis being a person actually occupying the said parcel of land has refused to deliver up possession thereof and by which said order the said Magistrate did adjudge that a Warrant of Possession do issue .....

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Now therefore, at the said Court so holden as aforesaid upon hearing of the said Appeal AND MATURE DELIBERATION THEREUPON HAD it is considered and adjudged by the said Court that the said order be and the same hereby in all things set aside.....

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.....  
and it is also by the said Court further ordered and adjudged that the said.....be dealt with and punished according to the said conviction or order and adjudication. And also that the said Wilfred Isaac do pay to Alfred Francis..... the(or appellant) in the said Appeal the amount of the costs sustained by the said Alfred Francis..... and by him incurred by reason of the said Appeal to be paid forthwith after taxation which said costs are to be paid to the Registrar and be by him paid over to the party entitled to the same.

30

Entered the 16th day of November, 1976.

/sgd. S. Cross  
Asst. Registrar.

No. 18

ORDER GRANTING SPECIAL LEAVE  
TO APPEAL TO THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL

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IN THE JUDICIAL  
COMMITTEE OF THE  
PRIVY COUNCIL

No. 18

Order Granting  
special leave  
to appeal to  
the Judicial  
Committee of the  
Privy Council  
9th March 1977

L.S.

AT THE COUNCIL CHAMBER WHITEHALL

The 9th day of March 1977

BY THE RIGHT HONOURABLE THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL

WHEREAS by virtue of the Trinidad and Tobago Appeals to Judicial Committee Order 1976 there was referred unto this Committee a humble Petition of Wilfred Isaac in the matter of an Appeal from the Court of Appeal of Trinidad and Tobago between the Petitioner and Alfred Francis Respondent setting forth that the Petitioner prays for special leave to appeal from the Judgment of the Court of Appeal of Trinidad and Tobago dated the 16th November 1976 allowing an Appeal from a decision of the Port of Spain Magistrates' Court granting the Petitioner an order for possession of premises and causing a warrant for ejectment to be issued against the Respondent: And humbly praying the Judicial Committee of the Privy Council to grant the Petitioner special leave to appeal against the Judgment of the Court of Appeal of Trinidad and Tobago dated the 16th November 1976 and for further or other relief:

THE LORDS OF THE COMMITTEE in obedience to the said Order have taken the humble Petition into consideration and having heard Counsel in support thereof no one appearing at the Bar on behalf of the Respondent Their Lordships do grant special leave to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal of Trinidad and Tobago dated the 16th November 1976 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs.

And Their Lordships do further order that the proper officer of the said Court of Appeal be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy of the Record proper to be laid before the Judicial

IN THE JUDICIAL  
COMMITTEE OF THE  
PRIVY COUNCIL

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Committee on the hearing of the Appeal upon payment  
by the Petitioner of the usual fees for the same.

E.R. MILLS  
Registrar of the Privy Council

No. 18

Order Granting  
special leave  
to appeal to  
the Judicial  
Committee of the  
Privy Council  
9th March 1977  
continued

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O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

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B E T W E E N :

WILFRED ISAAC

Appellant  
(Complainant)

- and -

ALFRED FRANCIS

Respondent  
(Defendant)

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RECORD OF PROCEEDINGS

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A.L. BRYDEN & WILLIAMS,  
20 Old Queen Street,  
London SW1H 9HU

Solicitors for the Appellant