Errington v Errington and Another

LANDLORD AND TENANT; Security of Tenure

COURT OF APPEAL
SOMERVELL, DENNING AND HODSON LJJ
25, 26 OCTOBER, 10, 19 DECEMBER 1951

Licence – Licence to occupy premises – Occupation conditional on payments being made to third party.

Landlord and Tenant – Tenancy – Tenancy at will – Permission to occupy premises conditional on payments being made to third party.

In 1936 a father bought a house for his son and daughter-in-law. He paid £250 in cash and borrowed £500 from a building society on the security of the house, the loan being repayable with interest by instalments of 15s a week. The house was in the father's name, and he was responsible to the building society for the payment of the instalments. He told the daughter-in-law that the £250 was a present to her and her husband, handed the building society book to her, and said that if and when she and her husband had paid all the instalments the house would be their property. From that date onwards the daughter-in-law paid the instalments as they fell due out of money given her by her husband. In 1945 the father died and by his will left the house to his widow. Shortly afterwards the son left his wife. In an action by the widow against the daughter-in-law for possession,

Held – (i) the occupation of the house by the son and the daughter-in-law was not determinable by the widow on demand, since they were entitled to remain in possession so long as they paid the instalments to the building society, and, therefore, they were not tenants at will of the premises.

(ii) the payments of instalments could not be regarded as payments of rent made for convenience to the building society and not to the father, since the daughter-in-law and her husband were not bound under any agreement with the father to make those payments, and, therefore, they were not weekly tenants or tenants for the period during which the instalments fell to be paid.

(iii) the daughter-in-law and her husband were licensees, having a permissive occupation short of a tenancy, but with a contractual or equitable right to remain in possession so long as they paid the instalments which would grow into a good equitable title to the house when all the instalments were paid, and, therefore, the widow was not entitled to an order for possession.

Notes

As to a Licence see *Halsbury*, Hailsham Edn, Vol 20, pp 8–12, paras 5, 6; and for Cases see *Digest*, Replacement Vol 30, pp6526–543, Nos *1635–1773*.

Cases referred to in judgment

Foster v Robinson [1950] 2 All ER 342, [1951] 1 KB 149, 2nd *Digest* Supp.
Lynes v Snaith [1899] 1 QB 486, 68 LJQB 275, 80 LT 122, 31 *Digest*, Replacement, 34, *1909*.
Thomas v Sorrell (1673), Vaugh 330, 124 ER 1098, 19 *Digest* 196, *1496*.
Doe d Thomes v Chamberlaine (1839), 5 M & W 14, 9 LJEx 38, 151 ER 7, 31 *Digest*, Replacement, 36, *1927*.
Peakin v Peakin (1895), 2 IR 359, *Digest* Supp.
Howard v Shaw (1841), 8 M & W 118, 10 LJEx 334, 151 ER 973, 40 *Digest* 194, *1628*.
Booker v Palmer [1942] 2 All ER 674, 2nd *Digest* Supp.
Minister of Health v Bellotti [1944] 1 All ER 238, [1944] KB 298, 113 LJKB 436, 170 LT 146, 2nd *Digest* Supp.

Southgate Borough Council v Watson [1944] 1 All ER 603, [1944] KB 541, 113 LJKB 337, 171 LT 26, 108 JP 207, 2nd *Digest* Supp.
Minister of Agriculture and Fisheries v Matthews [1949] 2 All ER 724, [1950] 1 KB 148, 2nd *Digest* Supp.
Marcroft Wagons Ltd v Smith [1951] 2 All ER 271, [1951] 2 KB 496.
Webb Ltd v Webb [1951] 24 October (unreported).
Bramwell v Bramwell [1942] 1 All ER 137, [1942] KB 370, 111 LJKB 430, 2nd *Digest* Supp.
Pargeter v Pargeter [1946] 1 All ER 570, 2nd *Digest* Supp.
Old Gate Estate Ltd v Alexander [1949] 2 All ER 822, [1950] 1 KB 311, 2nd *Digest* Supp.
Middleton v Baldock [1950] 1 All ER 708, [1950] 1 KB 657, 2nd *Digest* Supp.
Wood v Leadbitter (1845), 13 M & W 838, 14 LJEx 161, 4 LTOS 433, 9 JP 312, 30 *Digest*, Replacement, 542, *1771*.
Thompson v Park [1944] 2 All ER 477, [1944] KB 408, 113 LJKB 561, 170 LT 207, 30 *Digest*, Replacement, 539, *1736*.
Winter Garden Theatre (London) Ltd v Millennium Productions Ltd [1946] 1 All ER 678, *revsd* HL [1947] 2 All ER 331, [1948] AC 173, [1947] LJR 1422, 177 LT 349, 2nd *Digest* Supp.
Rogers v Hyde [1951] 2 All ER 79, [1951] 2 KB 923.
Thompson v Earthy [1951] 2 All ER 235, [1951] 2 KB 596, 115 JP 407.

Appeal

Appeal of the plaintiff from an order of His Honour Judge Richardson, at Newcastle-upon-Tyne County Court, made on 25 July 1951, in an action for possession.

In 1936 the plaintiff's husband bought a house through a building society for his son and daughter-in-law, the first defendant, and agreed that so long as they kept up the repayment of the instalments on the mortgage they could occupy the house, and that when the mortgage was finally paid off the property would be theirs. In 1945 the father died and left the house by will to the plaintiff. At about the same time the first defendant's husband left her and she continued in occupation with her sister, the second defendant. In the claim by the plaintiff for possession the defendants contended that the first defendant and her husband were tenants at will and that the claim was barred by the Limitation Act, 1939, or, alternatively, that they were occupying the premises as tenants as a rent represented by the instalments paid to the building society and were protected by the Rent Acts. The plaintiff contended that the first defendant and her husband were in occupation under a bare licence revocable at will. The learned county court judge held that they were tenants at will and that the claim was statute-barred.

Hanlon and *J D B Richardson* for the plaintiff.
Marnan for the defendant.

Cur adv vult

19 December 1951. The following judgments were delivered.

SOMERVELL LJ. In 1936 the plaintiff's husband, who was the father-in-law of the first defendant, bought a house, 27, Milvain Avenue. The purchase was financed through a building society part of the purchase price being paid down and the rest left on mortgage repayable with interest by instalments over a period. The details were not before us, but the instalments are still running. The plaintiff's son had recently married and the father bought the house as a home for the son and his wife. The total purchase price was £750. The father paid £250, and the couple went into the house and paid the instalments. The question is: What was the agreement between the father and the son and his wife, the first defendant?

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In 1945 the plaintiff's husband died leaving all his property by will to the plaintiff. Up till almost that time the first defendant and her husband had lived in the house. Differences then arose between husband and wife. The husband wanted his wife to come and live with his mother. She did not want to do so. Since about that time he has lived with his mother and the first defendant has lived at 27, Milvain Avenue. The second defendant is the wife's sister who has lived with her since the husband left. In these proceedings the plaintiff claims possession. The defences were (i) that the plaintiff's claim is barred by the Limitation Act, 1939, on the basis that the first defendant and her husband were tenants at will; (ii) alternatively, they were paying a rent and are protected by the Rent Acts. The learned county court judge decided that the first defence succeeded. He decided that they were tenants at will and that on this basis the claim was barred by the Limitation Act, 1939. He went on to say that, if the instalments were regarded as rent, the claim for possession also failed under the Rent Acts.

There is no written agreement or record of what happened between the plaintiff's husband and his son and daughter-in-law in 1936. At the trial the son gave evidence for the plaintiff and the first defendant gave evidence in support of her case. I will read the learned judge's findings as to the facts.

> "The marriage took place in 1932 and in 1936 the husband of the plaintiff bought 27, Milvain Avenue with a building society mortgage of £500. The first defendant and her husband were on good terms until after the death of his father, and the first defendant was on very affectionate terms with her father-in-law. He wanted them to have a house of their own and said he would foot the bill for 27, Milvain Avenue for her and her husband to occupy. The first defendant said that he told her he 'would put down £250, as a present for Stan and I, but the house would go into his name.' He left her with 15s. a week to pay to the building society. The first defendant later went to see him about the rates which were 10s. a week and he told her, first, that he would give her 10s. to pay all rates and later said he would pay them himself. He handed the building society book to her and told her not to part with this and that the property would be hers and her husband's when the mortgage was paid. She made the payments to the building society from that date out of the housekeeping moneys paid to her by her husband. Her father-in-law died in July, 1945, and by his will left the house with all his other property to his wife, who after his death was living at Woolsington Gardens alone. After her father-in-law's death the first defendant went away for a short holiday. She was exhausted with looking after him in his last illness. When she came back her husband met her at the Central Station and told her that they would both go to Woolsington Gardens. She said she would go home to 27, Milvain Avenue. He said he would see her tomorrow, but he never came. She went and saw him and pleaded with him to return. He said his mother was in need of him and he has never been back to his wife since. For a time he paid her £2 10s. per week which was subsequently reduced to £2, and at periods went down to £1. Since 1945 it was not disputed that the first defendant had continued to pay the instalments either out of the money provided by her husband or from other resources, if any."

After the conclusion of the argument we came provisionally to the opinion that under the agreement the son and his wife were neither tenants at will nor tenants paying rent, but that the plaintiff was nevertheless not entitled to possession. We, therefore, had the case re-argued and had the assistance of counsel on both sides as to the terms of the agreement as they appeared to us to be on the findings of the learned judge.

I will state what seem to me to be the intended terms of the agreement and then consider whether there are any legal obstacles to their enforcement. The **151** father was undertaking to convey the house to the son and his wife if and when they had paid all the instalments. If and when they had done that they would, of course, have paid with interest two-thirds of the purchase price. The gift of the £250 was not a future gift in the sense that the father was undertaking to convey the house for two-thirds of the price which the vendor was charging. The son and his wife were to occupy the house in consideration of their paying the instalments to the building society. Two further questions remain to be considered which are connected. First, were they undertaking to pay the instalments? If they failed, would they have committed a breach of the agreement? I have hesitated about this. It would have been on the face of it advantageous for them so to undertake. They would be getting a house on ordinary building society terms for two-thirds of its price. I do not think that the transaction as found by the learned judge justifies finding that they had so undertaken. Further, if this had been the intention it is difficult to see why the father did not convey the house then and there. If the instalments were not paid I think their rights were at an end. If this happened towards the end of the period the father or his successors in title would have a good bargain, but the parties were not considering future possibilities at arm's length and the contemplation was that the son and his wife would complete the payments. Secondly, were their rights assignable? I think not. The father desired to benefit his son and daughter-in-law by making a present of the £250. He wanted to assist them to get a house to live in on advantageous terms. If they did not want it to live in, then, I think, the proper inference from the fact that he remained the owner is that he intended it should come back into his control.

I find it impossible to regard the son and his wife as tenants at will. In *Foster v Robinson* ([1950] 2 All ER 347) Sir Raymond Evershed MR considered the possibility of a tenancy at will with a promise that the tenancy should not be determined. Without deciding whether a tenancy could remain "at will" with such a promise annexed I find the conception a difficult one.

We were invited to find a tenancy, for the period of the instalments, the latter, though paid to a third party, being rent as between the parties to the agreement. In the absence of any express agreement to that effect, it seems to be impossible to treat as rent payments made to a third party which differed in kind from rent in that they were instalments of the purchase price with interest payable under a mortgage. The position here was, as it seems to me, analogous to that of a purchaser who is admitted into possession before completion. One can imagine an ordinary contract of sale in which the purchase price was payable by instalments over a long period. If one also imagines a term that, if instalments were not paid, the vendor would have a right to rescind but no other right, one gets near to the present position. It might be suggested that the title of the son and his wife so long as the instalments were paid was the same as that of a purchaser who goes into possession before completion under an ordinary contract of purchase and sale. The transaction in the present case, although it

seems a not unnatural one, is, so far as the researches of counsel and ourselves have gone, legally novel. The equitable title under which a purchaser in possession before completion can rely is based, as I understand it, on the contract of sale under which he has undertaken to purchase and he is regarded in equity as owner subject to his fulfilling his part of the bargain. The contract here was different.

I think, therefore, that the son and his wife were licensees, and for the reasons elaborated by Denning LJ in his judgment, which I have had the advantage of reading, there is no legal obstacle to holding that as licensees possession cannot be claimed so long as the instalments are paid. The right to a conveyance if and when the instalments are paid might raise a question under s 53(1) and s 55 of the Law of Property Act, 1925, as the contract was oral. The issue is not directly before us, but it would seem to me that the doctrine of part performance would clearly apply. Counsel for the defendants argued that, if it was a licence, there would be no relief if an instalment was in arrear for however short a time. Assuming **152** this is so, it would be explicable on the ground that the transaction is an unusual one and neither equity nor the legislature have intervened to modify the letter of the bond.

The position as between the husband and the wife does not arise in these proceedings. The wife only was defendant, but subject to any proceedings between husband and wife she was, of course, entitled to rely on the joint contract as showing she was not a trespasser. With regard to the second defendant, she, as I have said, is a sister of the first defendant, and if, as I have held, the first defendant is entitled to retain possession, no question arises as to her. The payment of rates by the father should, I think, on the evidence be regarded as a gift from week to week which could have been stopped at any time and does not affect the position. I think, therefore, that the appeal must be dismissed.

DENNING LJ. The facts are reasonably clear. In 1936 the father bought the house for his son and daughter-in-law to live in. The father put down £250 in cash and borrowed £500 from a building society on the security of the house, repayable with interest by instalments of 15s a week. He took the house in his own name and made himself responsible for the instalments. The father told the daughter-in-law that the £250 was a present for them, but he left them to pay the building society instalments of 15s a week themselves. He handed the building society book to the daughter-in-law and said to her: "Don't part with this book. The house will be your property when the mortgage is paid."

He said that when he retired he would transfer it into their names. She has, in fact, paid the building society instalments regularly from that day to this with the result that much of the mortgage has been repaid, but there is a good deal yet to paid. The rates on the house came to 10s a week. The couple found that they could not pay those as well as the building society instalments so the father said he would pay them and he did so.

It is to be noted that the couple never bound themselves to pay the instalments to the building society, and I see no reason why any such obligation should be implied. It is clear law that the court is not to imply a term unless it is necessary, and I do not see that it is necessary here. Ample content is given to the whole arrangement by holding that the father promised that the house should belong to the couple as soon as they had paid off the mortgage. The parties did not discuss what was to happen if the couple failed to pay the instalments to the building society, but I should have thought it clear that, if they did fail to pay the instalments, the father would not be bound to transfer the house to them. The father's promise was a unilateral contract—a promise of the house in return for their act of paying the instalments. It could not be revoked by him once the couple entered on performance of the act, but it would cease to bind him if they left it incomplete and unperformed, which they have not done. If that was the position during the father's lifetime, so it must be after his death. If the daughter-in-law continues to pay all the building society instalments, the couple will be entitled to have the property transferred to them as soon as the mortgage is paid off, but if she does not do so, then the building society will claim the instalments from the father's estate and the estate will have to pay them. I cannot think that in those circumstances the estate would be bound to transfer the house to them, any more than the father himself would have been.

What is the result in law of those facts? The relationship of the parties is open to three possible legal constructions: (i) That the couple were tenants at will paying no rent. That is what the judge thought they were. He said that in the present case, just as in *Lynes v Snaith*, the defendant "was in exclusive possession, and was, therefore, not a mere licensee, but in the position of a tenant at will." But, in my opinion, it is of the essence of a tenancy at will that it should be determinable by either party on demand, and it is quite clear that the relationship of these parties was not so determinable. The father could not **153** eject the couple as long as they paid the instalments regularly to the building society. It was, therefore, not a tenancy at will. I confess that I am glad to reach this result because it would appear that, if the couple were held to be tenants at will, the father's title would be defeated after the lapse of thirteen years, long before the couple paid off the instalments, which would be quite contrary to the justice of the case. (ii) That the couple were tenants at a rent of 15s a week, such rent being for convenience paid direct to the building society instead of to the father and the tenancy being either a weekly tenancy or a tenancy for the duration of the mortgage repayments. But I do not think that 15s can possibly be regarded as rent, for the simple reason that the couple were not bound to pay it. If they did not pay it, the father could not sue for it or distrain for it. He could only refuse to transfer the house to them. If the 15s was not rent, then it affords no ground for inferring a tenancy. (iii) That the couple were licensees, having a permissive occupation short of a tenancy, but with a contractual right, or, at any rate, an equitable right to remain so long as they paid the instalments, which would grow into a good equitable title to the house itself as soon as the mortgage was paid. This is, I think, the right view of the relationship of the parties. I will explain how I arrive at it.

The classic definition of a licence was propounded by Vaughan CJ in the seventeenth century in *Thomas v Sorrell* (Vaugh 351):

> "A dispensation or licence properly passeth no interest, nor alters or transfers property in any thing, but only makes an action lawful, which without it had been unlawful."

The difference between a tenancy and a licence is, therefore, that in a tenancy an interest passes in the land, whereas in a licence it does not. In distinguishing between them, a crucial test has sometimes been supposed to be whether the occupier has exclusive possession or not. If he was let into exclusive possession, he was said to be tenant, albeit only a tenant at will: see *Doe d Tomes v Chamberlaine, Lynes v Snaith*; whereas if he had not exclusive possession he was only a licensee: *Peakin v Peakin*. This test has, however, often given rise to misgivings because it may not correspond to realities. A good instance is *Howard v Shaw*, where a person was let into exclusive possession under a contract for purchase. Alderson B, said that he was a tenant at will, and Parke B, with some difficulty agreed with him, but Lord Abinger CB said (8 M & W 122):

> "While the defendant occupied under a valid contract for the sale of the property to him, he could not be considered as a tenant."

Now, after the lapse of a hundred years, it has become clear that the view of Lord Abinger was right. The test of exclusive possession is by no means decisive. The first case to show this was *Booker v Palmer* where an owner gave some evacuees permission to stay in a cottage for the duration of the war, rent free. This court held that the evacuees were not tenants, but only licensees. Lord Greene MR said ([1942] 2 All ER 677):

> "To suggest there is an intention there to create a relationship of landlord and tenant appears to me to be quite impossible. There is one golden rule which is of very general application, namely, that the law does not impute intention to enter into legal relationships where the circumstances and the

conduct of the parties negative any intention of the kind."

Those emphatic words have had their effect.

We have had many instances lately of occupiers in exclusive possession who have been held to be not tenants, but only licensees—when a requisitioning authority allowed people into possession at a weekly rent: *Minister of Health v Bellotti*, *Southgate Borough Council v Watson*, *Minister of Agriculture and Fisheries v Matthews*; when a landlord told a tenant on his retirement that he could live in a cottage rent free for the rest of his days: *Foster v* **154** *Robinson*; when a landlord, on the death of the widow of a statutory tenant, allowed her daughter to remain in possession paying rent for six months: *Marcroft Wagons Ltd v Smith*; when the owner of a shop allowed the manager to live in a flat above the shop, but did not require him to do so, and the value of the flat was taken into account at £1 a week in fixing his wages: *Webb Ltd v Webb*. In each of those cases the occupier was held to be a licensee and not a tenant. Likewise there are numerous cases where a wife who has been deserted by her husband and left by him in the matrimonial home has been held to be, not a tenant of the husband owner, *Bramwell v Bramwell*, *Pargeter v Pargeter*, nor a bare licensee, *Old Gate Estates Ltd v Alexander*, but to be in a special position—a licensee with a special right—under which the husband cannot turn her out except by an order of the court, *Middleton v Baldock*.

The result of all these cases is that, although a person who is let into exclusive possession is, *prima facie*, to be considered to be a tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy. Words alone may not suffice. Parties cannot turn a tenancy into a licence merely by calling it one. But if the circumstances and the conduct of the parties show that all that was intended was that the occupier should be granted a personal privilege with no interest in the land, he will be held only to be a licensee. In view of these recent cases I doubt whether *Lynes v Snaith*, and the case of the gamekeeper referred to therein [1899] 1 QB 490) would be decided the same way today.

Applying the foregoing principles to the present case, it seems to me that, although the couple had exclusive possession of the house, there was clearly no relationship of landlord and tenant. They were not tenants at will, but licensees. They had a mere personal privilege to remain there, with no right to assign or sub-let. They were, however, not bare licensees. They were licensees with a contractual right to remain. As such they have no right at law to remain, but only in equity, and equitable rights now prevail. I confess, however, that it has taken the courts some time to reach this position. At common law a licence was always revocable at will, notwithstanding a contract to the contrary; *Wood v Leadbitter*. The remedy for a breach of the contract was only in damages. That was the view generally held until a few years ago: see, for instance, what was said in *Booker v Palmer* ([1942] 2 All ER 677); *Thompson v Park* ([1944] 2 All ER 479). The rule has, however, been altered owing to the interposition of equity. Law and equity have been fused for nearly eighty years, and since 1948 it has become clear that, as a result of the fusion, a licensor will not be permitted to eject a licensee in breach of a contract to allow him to remain: see *Winter Garden Theatre (London) Ltd v Millennium Productions Ltd* ([1946] 1 All ER 680), *per* Lord Greene MR ([1947] 2 All ER 336), *per* Viscount Simon; nor in breach of a promise on which the licensee has acted, even though he gave no value for it: see *Foster v Robinson* ([1950] 2 All ER 346), where Sir Raymond Evershed MR said that as a result of the oral arrangement to let the man stay, he "was entitled as licensee to occupy the cottage without charge for the rest of his days … " This infusion of equity means that contractual licences now have a force and validity of their own and cannot be revoked in breach of the contract. Neither the licensor nor anyone who claims through him can disregard the contract except a purchaser for value without notice.

I ought, perhaps, to mention two cases which appear at first sight to revert to the former view. The first is *Rogers v Hyde*, where a landlord promised that a sharing arrangement (which was really a licence) should be within the Rent Acts. It was held by this court that the licensee was not protected, because the Rent Acts operate only on tenancies, and that, just as parties cold not contract out of the Acts, so they could not contract into them. No argument was put forward that the landlord's promise was equivalent to saying: "I promise to give you, my licensee, the same protection as the Rent Acts give to tenants."

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If that argument had been put forward, the very point might have arisen which arises in the present case, but, as it happened, the point was not taken, so there was no decision on it. The other case is *Thompson v Earthy*, where a husband, for good consideration, gave an undertaking that he would allow his wife and children to remain in his house rent free. It was held that the husband was entitled to defeat his promise by selling the house over the wife's head, even though the purchaser took with full knowledge of the promise. I notice, however, that, in coming to this decision, Roxburgh J emphasised that the wife was not a licensee, basing himself on something I said in *Old Gate Estates Ltd v Alexander* ([1949] 2 All ER 825), but the later decision of this court in *Foster v Robinson* ([1950] 2 All ER 346) shows that she was a licensee and that the husband could not have ejected her in breach of his promise. I cannot help thinking that, if that case had been cited to the learned judge, the decision might have been different. I see nothing, therefore, in these recent cases to shake the view I have expressed about contractual licences.

In the present case it is clear that the father expressly promised the couple that the property should belong to them as soon as the mortgage was paid, and impliedly promised that, so long as they paid the instalments to the building society, they should be allowed to remain in possession. They were not purchasers because they never bound themselves to pay the instalments, but nevertheless they were in a position analogous to purchasers. They have acted on the promise and neither the father nor his widow, his successor in title, can eject them in disregard of it. The result is that, in my opinion, the appeal should be dismissed and no order for possession should be made. I come to this conclusion on a different ground from that reached by the learned judge, but it is always open to a respondent to support the judgment on any ground. If there is a dispute between the son and the daughter-in-law as to their respective rights in the house, that must be decided under s 17 of the Married Women's Property Act, 1882. If the father's widow should cease to pay the rates, the actual occupier must pay them, because the father did not bind himself to pay them. He only did so out of paternal affection.

HODSON LJ. I agree that the appeal fails. The problem is to decide what, on these apparently simple set of facts, is the true legal relationship between the parties. The learned county court judge thought that a tenancy at will had been created. This disregards the promise that the tenancy should not be determined. The promise not to determine the tenancy seems to me to be inconsistent with a tenancy at will, and I, like Somervell LJ find the conception which was referred to by Sir Raymond Evershed MR in *Foster v Robinson* ([1950] 2 All ER 347) a difficult one. The alternate finding that there was a weekly tenancy is not, I think, maintainable, since the payments of the instalments by the supposed tenants to the building society cannot be regarded as rent payable to the landlords.

Counsel for the defendants put forward as a possible solution a tenancy for the term of years during which the instalments were payable. One objection to this solution is that the length of the term of years would depend on the contract between the father and the building society which might be varied in length as, for example, by the instalments being spread over a longer period. Would such a tenancy be assignable and subject to forfeiture? These questions do not admit of an easy answer. If there was not a tenancy, there is some attraction in the view that here there was a contract of sale followed by part performance when the son and daughter-in-law went into possession to be completed on payment of the last instalment. If this had been the intention of the parties, there seems to be no reason why the father should have taken the conveyance in his own name, and, moreover, there is the further difficulty that it would be necessary to imply a promise by the son and daughter-in-law to pay the instalments.

The plaintiff contends that there was nothing more than a bare licence revocable at will. She argues that the evidence taken at its highest shows no more than an imperfect gift which failed on the death of the father so that the son and daughter-in-law remained in occupation as licensees so long as the mother was willing for them to do so. I think that the real position is that they did occupy the house as licensees, but did so under a personal contract providing that the son and daughter-in-law should, so long as they occupied the house, pay the instalments to the building society. In consideration of their promise to pay the instalments, the father, and the mother (as his successor), agreed to permit them to occupy the house as long as the instalments were running and being paid by them. If they left the house, the contract would be at an end, and if and when the instalments are fully paid the question will arise whether the mother is bound to convey the property to her son and daughter-in-law. Any question between the son and the daughter-in-law, who are now, it appears, at arm's length, will fall to be decided under s 17 of the Married Women's Property Act, 1882.

Appeal dismissed.

Solicitors: *Bentleys, Stokes & Lowless* agents for *Criddle, Ord & Muckle*, Newcastle-upon-Tyne (for the plaintiff); *Hyde, Mahon & Pascally* agents for *Frank J Lambert & Co*, Gateshead (for the defendants).

J D Pennington Esq Barrister.