Jones v. Herxheimer

[1950] 2 K.B. 106

Somervell and Jenkins L.JJ. and Romer J.

Court of Appeal **C–151**

The appellant was the tenant of the demised premises, consisting of four rooms on the first floor and one room on the ground floor, which he held on a lease for one year from March 25, 1943. In the lease, the tenant covenanted, *inter alia*:

> "To keep the interior of the premises and the doors and windows and the fittings and fixtures (including those specified in the schedule hereto) in good and tenantable repair and the stairs and staircase leading from the ground floor and the landing and the carpets thereon clean and dusted."

The tenant remained in possession after the expiration of the one year tenancy but gave up possession on May 19, 1949 whereupon the landlord commenced proceedings for damages for breach of the covenants to keep and deliver up the premises in repair. The landlord claimed approximately 71 in respect of decorative repairs such as painting and repapering. In the county court the landlord conceded that the claim should be reduced to 50 on the ground that some of the works were not within the covenant whilst the tenant argued that the cost of the repairs amounted to 32.

HELD: (1) In a case where a tenant is in breach of its repairing covenant the lack of repair may itself be evidence of damage to the reversion and the cost of carrying out the necessary repairs may amount to evidence of the extent of that damage.

(2) There is no rule of law emanating from *Hanson v. Newman* (1934) (Digest) that in all cases the damage to the landlord is to be calculated by valuing the reversion in repair and the reversion unrepaired and treating the difference as the diminution in the value of that reversion.

(3) The diminution in the value of the reversion test is not appropriate in a simple case where the tenancy in question is of a few rooms in a house and where there can be no question of the separate sale of the rooms.

(4) In the circumstances, if there is evidence that the repairs undertaken (being within the covenant) were no more than were reasonably necessary to make the rooms fit for occupation or re-letting for residential purposes the proper cost of the repairs may be regarded prima facie as representing the diminution in the value of the reversion due to the tenant's breach of covenant.

(5) On the facts, there was evidence for the county court judge to find that the cost of executing the repairs was the measure of the damage to the reversion.

Text Cross Reference: 9–09; 11–05.

Cross-reference to other digested cases.

The following digested cases were cited in this judgment:
Hanson v. Newman [1934] – explained. C–123
Joyner v. Weeks [1891] – considered. C–153
Landeau v. Marchbank [1949] – disapproved. C–162

Salisbury (Marquess) v. Gilmore [1942] – distinguished. C–251
Portman v. Latta [1942] – distinguished. C–233

This decision has since been cited in the following digested cases:
Smiley v. Townshend [1950] – applied. C–268
Crewe Services & Investment Corporation v. Silk [2000] – considered. C–059
Crown Estate Commissioners v. Town Investments Ltd [1992] – considered. C–060
Drummond v. S&U Stores Ltd [1981] – considered. C–074
Mather v. Barclays Bank Plc [1987] – considered. C–192
Shortlands Investments Ltd v. Cargill plc [1995] – considered. C–264