Neutral Citation Number: [2022] EWCA Civ 1446

Case No: CA-2022-001190

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
CHANCERY APPEALS (ChD)
ORDER OF ZACAROLI J DATED 26 MAY 2022
APPEAL REF: CF084/2021CA

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/11/2022

Before :

LORD JUSTICE LEWISON
LADY JUSTICE ASPLIN
and
LORD JUSTICE NUGEE

- -

Between :

O G THOMAS AMAETHYDDIAETH CYF	**Appellant/ Second Defendant**
MR OWEN GWILYM THOMAS	**First Defendant**
-and-	
TURNER AND ORS	**Respondent**

- -

Stephen Jourdan KC and Gavin Bennison (instructed by **Ebery Williams**) for the **Appellant**
Oliver Radley-Gardner KC (instructed by **JCP Solicitors**) for the **Respondents**

Hearing date : 27/10/2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on 03/11/2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Lewison:

Introduction and facts

1. The issue in this case is whether a notice to quit an agricultural holding is valid.

2. The facts are agreed and may be shortly stated. The subject matter of the tenancy is a farm at Pentre Canol, Dyffryn Ardudwy. Mr Owen Gwilym Thomas was granted an oral tenancy of the farm by the then owner of the farm, a Mr Morris. Mr Thomas lived at Bodlondeb, Dyffryn Ardudwy, Gwynedd, LL44 2EU. Because the tenancy was oral, it contained no restriction on its assignment by the tenant.

3. On Mr Morris' death, the freehold passed to Jane Louisa Jones. On her death, it passed to Mr Owen, as executor of her estate to whom probate was granted on 4 June 2019.

4. On 30 October 2019, Mr Thomas incorporated a company called O G Thomas Amaethyddiaeth CYF (in English: "OG Thomas Agriculture Ltd"). Mr Thomas became the sole shareholder and officer of the company and its secretary. Its registered office was the same as Mr Thomas' home address.

5. On 1 November 2019, without telling the landlord, Mr Thomas executed a deed of assignment of the tenancy to the company. It is common ground that this was effective to vest the tenancy in the company. Thereafter Mr Thomas was the person responsible for the management of the farming enterprise (which included the farm) on behalf of the company.

6. On 4 November 2019, Mr Owen (who was unaware of the assignment of the tenancy) served a notice to quit. It was sent by recorded delivery post to Mr Thomas at his home address, which was also the registered office of the company. The covering letter was addressed to Mr Thomas. The relevant parts of the notice read:

> "**Notice to Quit given by Landlord** …
>
> To Owen Gwilym Thomas of Bodlondeb…
>
> Re: Lands at Pentre Canol, Dyffryn Ardudwy…
>
> I [Mr Owen] as Sole Executor of the last Will and Testament of Jane Louisa Jones… Give you notice to quit and deliver up possession of ALL THAT holding and premises known as lands at Pentre Canol… which you hold of me as tenant on [13 November 2020] or at the expiration of the year of your tenancy which shall expire after the end of 12 months from the date of service of this notice."

7. Neither Mr Thomas nor the company served a counter-notice in response to this notice.

The judgments below

8. Both HHJ Jarman QC and, on a first appeal, Zacaroli J held that the notice to quit was valid, despite having been addressed to Mr Thomas. They both held that a reasonable recipient of the notice would have appreciated that a mistake had been made in naming the tenant and would have read it as having been addressed to the company. Zacaroli J's judgment is at [2022] EWHC 1239 (Ch).

9. Zacaroli J summarised his reasoning thus:

> "[35] The only (but in this case critical) requirement, therefore, is that the notice conveys to the tenant an instruction to quit the premises the subject matter of the lease.
>
> [36] As I have already noted, the test under *Mannai* is whether, in the context in which the Notice was given, the reasonable recipient would have understood it to have been addressed to the Company as tenant under the Lease.
>
> [37] The relevant context includes the following:
>
> (1) The Notice correctly identified the Lease as the one that had been granted to Mr Thomas (because it referred to "you", i.e. Mr Thomas, as the person holding the Land "of me" as tenant);
>
> (2) The Notice correctly identified the Land that was the subject of that lease;
>
> (3) The lease had been assigned to the Company; and
>
> (4) The landlord was unaware of that assignment.
>
> [38] On the basis of those facts, I am satisfied that the reasonable recipient would have no doubt that the Notice was intended to convey an intention to require the person who was in fact the tenant of the Lease to deliver up possession of the Land. Since the reasonable recipient would have known that the Company was, in fact, the tenant under the Lease, he would therefore have understood the Notice to be addressed to the Company."

10. He concluded at [43]:

> "… the Notice was quite clear to a reasonable tenant reading it, in that it would be obvious that it was intended to be addressed to the Company because it was the Company alone that met the description of the person holding the Land under the Lease from Mr Owen. It is plain, in my judgment, that the reasonable recipient could not have been misled by the Notice."

Legislative framework

11. The Agricultural Holdings Act 1986 does not require a notice to quit to take any particular form (except that it is invalid if it purports to terminate the tenancy before the expiry of twelve months from the end of the then current year of the tenancy): section 25 (1). The only other potentially relevant provisions of the Act are section 26 and section 93. Section 26 provides:

> "Where—
>
> (a) notice to quit an agricultural holding or part of an agricultural holding is given to the tenant, and
>
> (b) not later than one month from the giving of the notice to quit the tenant serves on the landlord a counter-notice in writing requiring that this subsection shall apply to the notice to quit,
>
> then, subject to subsection (2) below, the notice to quit shall not have effect unless, on an application by the landlord, the Tribunal consent to its operation."

12. The exceptions in section 26 (2) are not relevant in this case. Section 26 (1) plainly assumes that notice to quit has been "given to the tenant".

13. Section 93 provides:

> "(1) Any notice, request, demand or other instrument under this Act shall be duly given to or served on the person to or on whom it is to be given or served if it is delivered to him, or left at his proper address, or sent to him by post in a registered letter or by the recorded delivery service.
>
> (2) Any such instrument shall be duly given to or served on an incorporated company or body if it is given or served on the secretary or clerk of the company or body.
>
> (3) Any such instrument to be given to or served on a landlord or tenant shall, where an agent or servant is responsible for the control of the management or farming, as the case may be, of the agricultural holding, be duly given or served if given to or served on that agent or servant.
>
> (4) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service by post), the proper address of any person to or on whom any such instrument is to be given or served shall, in the case of the secretary or clerk of an incorporated company or body, be that of the registered or principal office of the company or body, and in any other case be the last known address of the person in question.

> (5) Unless or until the tenant of an agricultural holding has received—
>
> (a) notice that the person who before that time was entitled to receive the rents and profits of the holding ("the original landlord") has ceased to be so entitled, and
>
> (b) notice of the name and address of the person who has become entitled to receive the rents and profits, any notice or other document served upon or delivered to the original landlord by the tenant shall be deemed for the purposes of this Act to have been served upon or delivered to the landlord of the holding."

14. If there had been a deeming provision equivalent to section 93 (5) applicable to an assignment by the tenant, there would have been no problem. But there is not; and so we are thrown back on the common law. We have seen from section 26 that the need to serve a counter-notice only arises where notice to quit "is given to the tenant". So the question is: was notice to quit given to the tenant?

Blue paper v pink paper

15. In *Mannai Investment Co Ltd v Eagle Star Assurance Co Ltd* [1997] AC 749 the House of Lords considered the validity of a notice given under a contractual break clause contained in clause 7 (13) of a lease. Such a clause is in the nature of an option. Those of their Lordships in the majority distinguished between formal requirements on the one hand, and requirements to impart information on the other. Lord Steyn at 767 referred to what he described as "indispensable" conditions for the effective exercise of the right. Among them was "service ("on the landlord or its solicitors")". Lord Hoffmann illustrated the difference graphically at 776:

> "If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease. But the condition in clause 7(13) related solely to the meaning which the notice had to communicate to the landlord. If compliance had to be judged by applying the ordinary techniques for interpreting communications, there was strict compliance. The notice clearly and unambiguously communicated the required message. "

16. Lord Clyde said at 781:

> "The substance of the power is expressed by the words, 'The tenant may . . . determine this lease.' The method of its exercise is specified by the intervening words. The tenant must give six months' notice; the notice must be in writing; the notice must be served on the landlord or its solicitors. The sub-clause also states that the notice is to expire on the third anniversary of the term commencement date."

17. It is, I think, clear from *Mannai* that if a notice fails to satisfy the substantive conditions upon which its validity turns, the question of how it is to be interpreted does not arise. In *Trafford MBC v Total Fitness UK Ltd* [2002] EWCA Civ 1513, [2003] 2 P & CR 2 the question was whether a break clause had been validly exercised. Having referred extensively to *Mannai*, Jonathan Parker LJ (with whom Mummery LJ agreed) said at [49]:

> "The process of determining whether a notice complies with the requirements of the provision pursuant to which it is given (be that provision statutory or contractual) involves, as a first step, a consideration of what, on its true construction, the notice says. The contents of the notice then have to be matched against the relevant requirements in order to determine whether it meets them. *Speedwell Estates* and *Burman* make it clear that, at this second stage, there is no basis in either *Carradine* or *Mannai* for, in effect, rectifying any defects or omissions in the notice so as to bring it into line with the relevant requirements."

18. Neuberger J said much the same in *Procter & Gamble Technical Centres Limited v Brixton Plc* [2002] EWHC 2835 (Ch), [2003] 2 EGLR 24 at [17] to [21] (where a notice failed because it was served by the wrong person). At [36], having referred to *Mannai*, he said that there was "a potential difference between the wrong date and the wrong person identified in the notice".

Giving notice

19. It is common ground that, at least in principle, the contents of valid notice to quit terminating a tenancy of an agricultural holding must satisfy the requirements of the common law. Woodfall on Landlord and Tenant (Looseleaf edition) states at para 17.196:

> "In the absence of express terms to the contrary or statutory provisions a periodic tenancy can be determined by notice to quit by either party. In the case of the landlord, it is a requirement to the tenant to quit. In the case of the tenant, it is a notification to the landlord of intention to quit."

20. Woodfall goes on to state at para 17.235:

> "A notice to quit given by the landlord should be given to his immediate tenant, or to his assignee in whom the term is then vested, and not to a mere sub-tenant."

21. It is clear that at common law, notice to quit may be given orally: *Doe d Macartney v Crick* (1805) 5 Esp 196. But in the case of a written notice, there is a potential ambiguity in using the word "given". It may simply mean that the tenant must receive the notice; or it may mean that not only must the tenant receive it, but also that if it is addressed to anyone, it must be addressed to him either by name or by designation.

22. As far as service is concerned, again the position is clear. Where the tenancy has been assigned by the original tenant, notice to quit must be served on the assignee (or his authorised agent). As an illustration of the general principle that a notice such as a notice to quit must be given to the holder of the tenancy at the date of the notice, both judges were shown the decision of this court in *Old Grovebury Manor Farm Ltd v W Seymour Plant Sales & Hire Ltd (No 2)* [1979] 1 WLR 1397. The case concerned the service of a notice under section 146 of the Law of Property Act 1925, but it is not suggested that any different principle applies to a notice to quit. The claim concerned a lease that had been granted to Mr Armstrong. Mr Armstrong, in breach of covenant, assigned the lease to Seymour Plant Sales and Hire Ltd. The landlord served a section 146 notice, but the notice was served on Mr Armstrong, rather than on Seymour Plant Sales. This court held that the notice was invalidly served. It should have been served on the person in whom the term was vested.

23. Mr Jourdan also relied on a decision of mine in *Standard Life Investments Property Holdings Ltd v W&J Linney Ltd* [2010] EWHC 480 (Ch), [2011] L & TR 9. In that case Capita granted a sub-lease of business property on terms that contained a break clause. The break clause was exercisable by giving notice to "the Landlord" as defined by the lease no later than August 2009. In 2004 Capita granted an overriding lease to Standard Life, and Linney paid rent to Standard Life. In 2008 Linney purported to exercise the break clause by giving notice addressed to and served on Capita. A copy of the notice was also sent to Jones Lang LaSalle as agents for Capita. It was not until after the last date for exercising the break clause that Standard Life was sent a copy of the notice. I held that the purposed exercise was invalid. Again, that was a case in which the notice had been given to the wrong person. I added at [24]:

> "There is also the additional factor that if the reasonable recipient had looked at the lease on receipt of the notice, he might have formed the view, as Linney's own solicitors did, that Capita was the right person on whom to serve the notice. In the light of the unambiguous wording of the notice and of the covering letter sent to James [sic] Lang LaSalle, I cannot conclude that the reasonable recipient of the letter and the notice would have understood that it was meant to be addressed to Standard Life."

24. That was a case where, on the facts, I took the view that it was not possible to say that Jones Lang LaSalle would have realised that a mistake had been made. It does not lay down any general principle.

25. In the present case, it is accepted that the notice was validly served. The notice to quit had to be given to the company. Section 93 (2) provides that notice is duly given to or served on an incorporated company if it is given [to] or served on the secretary or clerk of the company. Mr Thomas was the secretary of the company; and the notice to quit was served on him. So section 93 (2) is satisfied.

26. In *Jones v Lewis* (1973) 25 P & CR 375 two brothers, Henry and Emlyn Jones, were the tenants of a farm. The landlord decided to serve a notice to repair; but addressed it to Henry alone. Lord Denning MR (with whom the other members of the court agreed) said:

> "When there is more than one tenant the notice must give the names and addresses of the tenants. The notice in this case did not comply with the prescribed form. It did not give the names and addresses of the tenants. There were two: Henry Jones and Emlyn Jones. Instead of giving them both, as it should have done, it only gave one, that of Henry Jones. It seems to me that the notice did not fulfil the statutory requirement."

27. He then turned to consider whether the notice could be validated by section 92 (3) of the Agricultural Holdings Act 1948 (which was in the same terms as section 93 (3) of the 1986 Act). As to that, he said:

> "In an attempt to overcome this difficulty, Mr. Hooson drew attention to section 92 (3) of the Act of 1948. It provides that a notice can be served on an agent where there is one who is responsible for the control of the management or the farming. But I do not think that that is of any assistance. It is only dealing with the service of the form. It does not deal with the contents of it."

28. It is true to say that section 92 (3) did not deal with the contents of the particular notice that was served in that case (since they were prescribed by regulations). But it is perhaps arguable that it is an over-simplification to say that it only deals with service. That would give no effect to the word "given" in the phrase "be duly *given* or served if *given* to or served on that agent". It may be that the word "given" was included in order to cater for the possibility of an oral notice to quit, which while no doubt unusual, is a theoretical possibility. But whether or not that is so, in my judgment we are bound by *Jones v Lewis* to hold that section 93 is only concerned with service of documents, and not with their form.

Does the addressee matter?

29. Mr Jourdan KC accepts that it is not a requirement of the common law that a notice to quit actually be addressed to the tenant by name. It may refer to the tenant by designation. It may even be addressed to no one at all in which event it will be valid if served on the tenant: *Doe d Matthewson v Wrightman* (1801) 4 Esp 5. But where the notice is addressed to a person by name, the person on whom it is to be served must be correctly identified. Although *Mannai* can rescue a notice where the name of a correctly identified recipient is wrongly spelled, it cannot rescue a notice where the recipient is wrongly identified. He summarises his argument pithily: this is not a case of the wrong language used to identify the right person: it is a case of the right language used to identify the wrong person. Although the court has the power to read a document (whether a contract or a notice) as if obvious mistakes had been corrected, that only applies where there has been an error in the language used, rather than a substantive error. Thus, he says, that where A gives a notice required to be "given to" B it cannot be validly given by a document addressed and delivered to C.

30. At the heart of Mr Jourdan's argument is the proposition that because the landlord did not know that the lease had been assigned to the company, the notice to quit could not be understood to refer to an entity of which the landlord had no knowledge. The landlord made no mistake about the language of the notice. His mistake was about the

identity of the tenant. There can be no real doubt that the landlord intended to give notice to quit to Mr Thomas personally. He had no reason to give notice to anyone else. It could not be right to conclude that the landlord intended to give notice to a company of whose existence he was completely unaware.

31. As Zacaroli J noted, in *Mannai* Lord Hoffmann gave as one of the examples of the correction of a mistake in a notice to quit *Doe d Cox v Roe* (1802) 4 Esp 185. In that case the landlord of a pub in Limehouse gave notice to quit "the premises which you hold of me . . . commonly called . . . The Waterman's Arms." The evidence showed that the tenant held no premises called The Waterman's Arms; indeed, there was no pub in Limehouse called The Waterman's Arms. Equally important, the tenant did not hold any other premises from the landlord. But the tenant did hold premises of the landlord called The Bricklayer's Arms. By reference to the background, the notice was construed as referring to The Bricklayer's Arms. The meaning was objectively clear to a reasonable recipient, even though the landlord had used the wrong name. If the tenant had held other premises from the landlord, or if there had indeed been a pub called The Waterman's Arms in Limehouse, the position might well have been different.

32. In *Harmond Properties Ltd v Gajdzis* [1968] 1 WLR 1858 the tenant was Wladyslaw Gajdzis. Notice to quit was served on him addressed to "Walter Gajdzis". This court held that the notice was valid. That was a case in which the correct recipient of the notice to quit had been identified and served, but his name was misspelled.

33. In *Hawtrey v Beaufront Ltd* [1946] 1 KB 280 Beaufront Ltd was the tenant of a house in Somerset, which became the company's registered office. The landlord served notice to quit addressed to the directors of the company at the company's registered office. The body of the notice stated:

> "Registered Office formerly at Beaufront, Camberley, Surrey, but now at Marks Barn, Crewkerne, Somerset. As solicitors and agents for [the landlord] we hereby give you one month's notice to quit and deliver up possession of the furnished dwelling house."

34. The company argued that "you" in the notice meant the directors and that hence the notice was invalid. Croom-Johnson J rejected that argument. He said that the question was a question of construction and went on to say that:

> "… any solicitor looking at this document would see that, while it is addressed to the directors, it is addressed to them, not in their capacity as tenants or as parties to the agreement of September 3, but as being the persons acting on behalf of the limited company. I think, therefore, that on a fair construction of the document it is a good notice to the defendant company."

35. The key, here, in my judgment is the inclusion in the notice of the details of the registered office, which can only have referred to the company. That too was, therefore, a case in which the right person had been identified.

36. The position is different, Mr Jourdan says, where the wrong person has been identified. In *R (Morris) v London Rent Assessment Committee* [2002] EWCA Civ 276, [2003] L & TR 5 a lease of a flat had been granted to Mr HG Barnby by Cadogan Estates in 1962. He assigned the lease to Mr Fry in 1979. Although the contractual term was limited to expire on 19 September 1995, the tenancy continued under Part I of the Landlord and Tenant Act 1954. On 21 April 1995 Cadogan Estates gave notice proposing a statutory tenancy. Section 4 of that Act required the notice to be "given to the tenant in the prescribed form". The notice was addressed to "HG Barnby tenant of premises known as" (the address was then given). The notice was in fact served on Mr Fry who was the tenant at the date of the notice. This court held that the notice was invalid. Mummery LJ described the issue at [3] as whether notice had been given "to the tenant". Although Mr Radley-Gardner KC correctly submitted that the form of notice was prescribed, that fact does not appear to me to have played any part in the court's reasoning. In support of the validity of the notice it was argued that "HG Barnby" was no more than a misnomer, and that a reasonable recipient would have known that Mr Fry, rather than Mr Barnby, was the tenant of the flat. The mention in the notice of "tenant of premises" could only refer to Mr Fry. The argument in support of the appeal was entirely based on *Mannai* and other cases on the interpretation of notices. Mummery LJ rejected that argument. He said at [11]:

> "The notice was not addressed to the tenant, Mr Fry, either expressly by name or implicitly by status as tenant. It was expressly and unambiguously addressed by name to an altogether different person, Mr H.G. Barnby. That was not a minor error or slip. Mr Barnby was not Mr Fry, and he was not, and had long ceased to be, tenant of the flat. The reaction of the reasonable tenant receiving the notice addressed to Mr H.G. Barnby (or receiving an envelope so addressed) would be to think that the notice or the envelope and its contents were meant for Mr Barnby. The notice cannot be construed as a notice given to Mr Fry."

It is not difficult to understand why Mr Fry, receiving an envelope in the post addressed to Mr Barnby, would not think that it was meant for him. Indeed, most people would not even open an envelope addressed to someone else. Nevertheless, although the decision proceeded on the basis that the notice had been served on Mr Fry, what was fatal was that it was not addressed to him either by name or designation.

37. Mr Radley-Gardner stressed the fact that Mr Barnby had ceased to be the tenant of the flat many years before, whereas the gap between the assignment of the tenancy in this case and the notice to quit was only three days. Although that is a factual distinction between the two cases, I cannot see that it has any legal relevance.

38. Mr Jourdan illustrated his proposition further by reference to two decisions of the Inner House (which, while not formally binding, are of persuasive authority).

39. In *Ben Cleuch Estates Ltd v Scottish Enterprise* [2008] CSIH 1, [2008] SC 252 a lease contained a break clause which required the tenant to give one year's notice to the landlord. The landlord was Ben Cleuch Estates Ltd, but the notice was addressed and sent to the landlord's parent company with whom it shared a registered office. The

notice was read by Mr Cairns, who was a director of both companies. The court held that the notice had not been validly given. Giving the opinion of the court, Lord Macfadyen said at [60]:

> "[60] The matter turns, in our opinion, on the proper application of Clause FOURTH (B). That clause confers on the tenants an option to bring the lease to a premature end after 14 instead of 25 years. It provides that, in order to exercise that option, the tenants must 'give to the Landlords' at least one year's written notice of termination. It was accepted on the defenders' behalf, rightly in our opinion, that for a break notice to be effective, it required to comply with that requirement … The dispute was as to whether what occurred constituted such compliance. In our opinion, that dispute can be resolved very shortly: a notice addressed to a party other than the landlord and sent to the registered office of that other party cannot be regarded as a notice given to the landlord."

40. At [62] he dealt with the argument that the notice could be regarded as addressing the landlord, whoever he might be. He rejected that argument:

> "Senior counsel suggested that the notice could be regarded as addressing the landlord, whoever that might be, independently of the identity of the named party to whom the notice bore to be addressed. That is not, in our view, a tenable argument. The notice was addressed to Bonnytoun. The reference in the text of the notice (Appendix, item 55) was in these terms: 'We refer to the Lease … in respect of which you are the current landlords'. That must be read as an assertion that Bonnytoun are the current landlords, rather than as an observation addressed to whichever party was the current landlords, whether Bonnytoun or some other party."

41. Thus the fact that the notice was addressed to someone other than the landlord was a failure to comply with a formal condition. He added at [64]:

> "Nothing turns in this case on the construction of the notice. It was invalid because it was not given to the landlord, but to a third party. The stage of considering how the notice would be understood by the recipient is not reached. Mr Cairns's candid admission that he was not misled by the terms of the notice is therefore of no avail to the defenders. None of the cases cited which turned on construction of the notice was concerned with the situation in the present case, where the notice was given to the wrong party. They concerned the different question of how a notice, given to the correct party but containing erroneous information on other matters, would be understood by the correct recipient."

42. That case was followed by another division of the Inner House in *Balgray Ltd v Hodgson* [2016] CSIH 55, 2016 SLT 839. In that case Mr Hodgson farmed two farms

under two tenancies. One was owned by Mr Jardine Paterson. The other was owned by Balgray Ltd of which Mr Jardine Paterson was a director. The tenant in each case was a partnership of which Mr Hodgson was the general partner and Mr Jardine Paterson and Balgray were limited partners. Under the relevant legislation, where a limited partnership was dissolved the general partner could become the tenant by giving notice to the landlord. Notice was given to Mr Jardine Paterson in respect of the farm owned by Balgray; and the question was whether it was valid. The Inner House at [28] described the reasoning of the Land Court (from which the appeal was brought) had said as follows:

> "The Land Court then turned to its first question. It noted that while there were no requirements as to the form of the notice or mode of service stipulated by s.72(6), it had to be given "to the landlord" and that was the nub of the case. What had happened was that the notice was addressed not to the appellant, which was the true landlord, but to Mr Jardine Paterson, who was not. It was said in the body of the notice that it was given to Mr Jardine Paterson "in [his] capacity as landlord". It was therefore, according to the Land Court "clearly a notice to Mr Jardine Paterson and not to Balgray Ltd" (para.131). Had the Land Court been following *Ben Cleuch*, as counsel for the respondent said it had been, it is difficult to understand why that conclusion did not lead it to the further conclusion that the answer to its first question was that the disputed notice had not been validly given; it being recalled that in *Ben Cleuch* given the break notice was sent to Bonnytoun and not to Ben Cleuch, "for that simple reason [it] was ineffective to terminate the lease": *Ben Cleuch* at p.268, para.65."

43. The Inner House expressed its own conclusion at [32]:

> "We consider the Land Court's conclusion to be wrong and we regard that as so from a number of perspectives. First, and fundamentally, it fails to address the short and simple point made to it by counsel for the appellant and repeated to this court: to be valid, a s.72(6) notice must be given "to the landlord". As the Land Court found, what the respondent relies on as notice, that is the letter of 29 May 2014, was not given to the landlord; it was given to somebody else. Were there any doubt about that (and we do not suggest that there is), it would be resolved by consideration of what was said in *Ben Cleuch* at p.267, para.60: "a notice addressed to a party addressed to a party other than the landlord … cannot be regarded as a notice given to the landlord." What is said on behalf of the respondent in the present case is that this may be so but nevertheless the contents of the letter came to the attention of Mr Jardine Paterson and he is someone who, for practical purposes, can be regarded as the equivalent of the appellant, as its directing mind and will. That of course is to shift the emphasis away from a juristic act by the general partner, which is what the subsection

> requires, to something done (acquiring information) by, or at least on behalf of, the landlord, but again the matter is dealt with in *Ben Cleuch*: "That … a director of Ben Cleuch … acquired knowledge of the notice, and was able to react to it in that capacity does not … convert a notice given to Bonnytoun into a notice given to Ben Cleuch."

44. The Inner House concluded at [33]:

> "In this area of the law there is a need for certainty, to the extent that that is possible. Parties need to know their respective positions and thus need to be able readily to ascertain whether or not a notice has been given. The law must therefore provide a bright line test."

45. Mr Radley-Gardner suggested that there might be a difference between Scots law and English law, although the difference was not identified. I also note that in *Ben Cleuch* the authorities listed at [54] as having been cited in support of the appeal include both Scots and English cases; and the Inner House decided the case in accordance with both. These cases and *Morris* seem to me to send a clear message. If a notice is addressed to A (by his correct name) and sent to A's proper address, it cannot be treated as a notice given to B.

46. There is some further support for that view in *Doe d Carlisle (Earl) v Woodman* (1807) 8 East 228, although it is not an easy case to understand. In that case the Earl of Carlisle had let land to the Corporation of Morpeth as tenant from year to year. He served notice to quit on two bailiffs or head officers of the corporation purporting to terminate the tenancy; and then brought an action in ejectment against them. The corporation itself was not made a party to the action. The two bailiffs successfully moved for a non-suit. The argument for Lord Carlisle was that the corporation could not have had possession and could not have been served with notice to quit. That argument was rejected, but the three judges gave different reasons for their decision, which do not make for easy reconciliation. I quote their reasons in full:

> "Lord Ellenborough C.J. The bailiffs, as such, not being a distinct corporation, cannot have the possession; whatever they enjoy, as bailiffs, must be in right of the corporation at large. There is no evidence at all to affect these defendants; for the bailiffs are no corporation of themselves, and therefore can have no succession; and consequently cannot, as bailiffs, be affected by the receipts for rent given to their predecessors. There is no privity in law between them.
>
> Lawrence J. Though trespass cannot be maintained against a corporation as such; yet the lessor is not without remedy: for at any rate the tenancy may be determined by notice to the corporation, served on its officers. And if after such determination the cattle of any person be found upon the premises, they may be distrained as trespassing upon the Earl of Carlisle's ground: or Lord Carlisle might have turned his

> own cattle in or ejectment might be brought against any person being tenant in possession under the corporation.
>
> Le Blanc J. These defendants have never paid any rent for this ground; and not being a corporation in themselves, they cannot be affected by what former bailiffs have done; though it is rather evidence that they paid the rent on behalf of the corporation. And when the tenancy is determined the lessor will have his remedy against any person in possession, or whose cattle shall be found trespassing on his land.
>
> Lord Ellenborough C.J. added, that there was no great difficulty in the lessor's asserting his right; but at any rate he had mistaken his way in adopting this mode of doing it."

47. Lord Ellenborough appears to have decided the case on the basis that the bailiffs were not in possession on their own account, and hence were not the proper defendants. Lawrence J appears to have decided the case on the basis that trespass could not be maintained against the corporation at all (although the reasons for that conclusion are, to my mind, obscure). Le Blanc J appears to have decided the case on the basis the bailiffs were not affected by what their predecessors as bailiffs had done. It is, however, fair to say that both Lawrence J and Le Blanc J seem to have taken the view that the notice to quit had not validly terminated the tenancy. The form of the notice is not given in the report, so it is difficult to extract any clear principle from it.

48. On the other side of the debate are the obiter observations of Sir Robert Megarry V-C in *Townsends Carriers Ltd v Pfizer Ltd* (1977) 33 P & CR 361. That case, like many others, concerned the exercise of a break clause in a lease. The landlord in that case was Townsend, and the tenant was Pfizer. A letter purporting to exercise the break clause was sent by Unicliffe, an associated company within the Pfizer group, to Wilkinson Transport, which like Townsend was a subsidiary of Lex Services. The Vice Chancellor held that the break clause had been validly exercised. The notice relied on referred to:

> "our leasing arrangements under the basic contract of August 13, 1970, between Unicliffe and Braybrook Townsends as amended by our letter of January 15, 1974."

49. It then went on to give formal notice to terminate. The case was, in my judgment, decided on the basis of general agency, which arose from the mutual course of dealing. But the Vice-Chancellor went on to say at 366:

> "This last case gave rise to some discussion before me on the distinction between addressing a notice and giving a notice. I do not propose to explore this at any length. Clause 4 (c) of the lease says nothing about addressing a notice. The requirement is merely that the party concerned "shall give to the other party 12 months previous notice in writing of such its desire …" If one party were to deliver to the other a notice which was not addressed to any named person, but simply stated "I hereby give you notice …," and so on, I do not see why that should not

> suffice to comply with the lease. If the notice was addressed to the wrong person but was nevertheless delivered to the right person, the question would be whether the mis-addressing prevented the notice from being "given" to the right person. The purpose of a notice is, of course, to convey information; and if the notice, despite its being mis-addressed, suffices to convey the requisite information to the right person, I would have thought that it would satisfy the terms of the lease. However, on the footing that Wilkinson Transport Ltd. was Townsends' general agent for the demised premises, as I hold to be the case, the point does not arise …"

50. In addition to that, there is the decision of this court in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702. That case concerned the validity of notices given under the Housing Repairs and Rents Act 1954. They were addressed to "Mr E. G. Brasley, tenant of 13, The Palatinate, S.E.1," though Mrs Violet Beasley had become the statutory tenant of the flat on the death of her husband, Mr E C Beasley, two years previously. The notice thus contained a number of defects. First, it purported to be addressed to a previous tenant; and second it mis-stated the name of that former tenant. Nevertheless, Mrs Beasley's challenge to the notice on that ground failed. Denning LJ said at 710:

> "Two technical objections were taken to the validity of the documents. The first objection was that the documents did not give the correct name of the tenant. They were addressed to "Mr. E. G. Brasley, tenant of 13, The Palatinate, S.E.1," whereas they should have been addressed to "Mrs. Violet Beasley." This misnomer was an obvious mistake which does not affect the validity of the documents. The documents were addressed to "the tenant," Mrs. Beasley knew that she was the tenant, and she was not misled in any way. Indeed, she admitted in her defence that she was served with the documents. In these circumstances she cannot complain of the misdescription."

51. Morris LJ said at 713:

> "A notice, which purported to be a notice in the prescribed form, of the intention of the landlords to increase the rent pursuant to the provisions of the Housing Repairs and Rents Act, 1954 , was served on the tenant. The notice was addressed to "Mr. E. G. Brasley" as the tenant of No. 13, The Palatinate. The tenant was, however, Mrs. Violet Beasley. She had become the tenant after the death of her husband, Mr. E. C. Beasley, … The facts were fully known to her, and the fact that the notice referred to the "tenant" as being "Mr. E. G. Brasley," whereas she was the tenant as the successor to her late husband, did not in any way mislead her. She appreciated that a name had been wrongly inserted and wrongly spelt, and she must have understood that notice was being given to her as the tenant of No. 13, The Palatinate, that the rent was being increased."

52. Parker LJ said at 722:

> "Finally, the tenant asserted that the declaration was invalid in that it was sent by post addressed to "Mr. E. G. Brasley" and not to Mrs. Violet Beasley. It, however, reached the tenant, and was understood by her to be intended for her. Indeed, she applied for and obtained a certificate of disrepair. I am satisfied that the misdescription in no way affects the validity of the declaration in this case."

53. In that case, all three members of the court appear to have asked themselves whether Mrs Beasley was in fact misled, rather than how a reasonable recipient would have understood the notice objectively. Denning and Morris LJJ relied also on the fact that the notice was addressed to "the tenant" by designation, and Parker LJ's judgment hints at waiver of the defect or estoppel. In addition, however, Mrs Beasley's appeal was allowed on other grounds, so strictly speaking those observations may also be obiter.

54. Accordingly, in my judgment we are bound by *Morris*.

The question

55. Mr Radley-Gardner correctly submitted that, as with many areas of the law, it is important to frame the question to be asked before attempting to answer it. In *Mannai* at 768 Lord Steyn summarised the test as follows:

> "That test postulates that the reasonable recipient is left in no doubt that the right reserved is being exercised."

56. Mr Radley-Gardner submitted that it was obvious what the landlord was trying to do: he was trying to terminate the tenancy by notice to quit. But in my view that poses the question at too high a level of generality. In *Mannai* the right being exercised was the right to terminate the lease in accordance with clause 7 (13) on the third anniversary of the term. That clause was specifically invoked in the notice under consideration in that case. The right being exercised in this case was not simply a right to terminate the tenancy by notice to quit. It was the common law right to terminate a tenancy by giving notice to quit *to the tenant*. As Lord Steyn accepted at 773 not all mistakes can be corrected. Similarly, Lord Clyde said at 781 that there are some cases where the validity of the notice cannot be saved by any construction and will have to be regarded as bad. Contrary to Mr Radley-Gardner's submission, therefore, some mistakes are outside the reach of *Mannai*. In my judgment, as in *Morris*, this is one of them. Lord Hoffmann at 775 posed a slightly different question. In his view all that matters "is the objective meaning of the words which [the giver of the notice] has used". At 779 he equated that with "the meaning [that] the use of the words was intended to convey". The *Mannai* principle in his view prevented one party from taking adventitious advantage of "another's verbal error". If that test is applied; the question is: can a notice addressed to Mr Thomas by name, and repeatedly asserting that he is the tenant be understood to mean that the notice was addressed to a company of which the landlord knew nothing? In my judgment the answer to that question is "no". Since the reasonable recipient in the shoes of Mr Thomas knew that

the landlord was unaware of the assignment, he would not have understood the notice as referring to the company. There was no verbal error: there was a factual one.

57. Moreover, as both *Morris* (which binds us) and the Scottish cases hold, whether a notice addressed to and received by A is a notice "given" to B is not a question of interpretation at all. It is a question of satisfying formal conditions. They hold that a notice addressed to A and received by A cannot be regarded as being a notice given to B, even if A knows that B would have been the correct recipient of it.

58. It is also, I think, important to distinguish between what the landlord *would* have done if he had better knowledge and what in fact he did. No doubt if he had known the true facts, he would have given notice to quit to the company. But that is not what he did. Equally, it is important to distinguish between what the landlord *could* have done (i.e. not named the tenant at all, or described the tenant simply as "the tenant") and what he in fact did.

Result

59. For the reasons I have given, I do not consider that the question that Zacaroli J posed at [36] was the only question. The question he was answering was what the notice to quit meant. But the anterior question was whether the notice was "given to" the tenant. I do not consider that it was. But even if the question that Zacaroli J posed was the right question, I do not consider that he reached the right answer to it.

60. I reach that conclusion with some reluctance, because it seems to me to be clear that the landlord fell into a trap wittingly or unwittingly created by the tenant. But I do not think that, consistently with principle, we can rescue him from it. I would allow the appeal.

Lady Justice Asplin:

61. I agree.

Lord Justice Nugee:

62. I also agree.