ALMEIDA and others v CITY COUNCIL

Supreme Court
Bacon, C.J.
17 April 1947

Public health — building unfit for human habitation — danger to life and limb.
Nuisance — prohibition order — relevance of cost of works — Public Health Ordinance, s. 84 (2).

The City Council obtained an order under s. 119 of the Public Health Ordinance (Cap. 88, 1935 Ed.) prohibiting the use for human habitation of certain buildings. The tenants of part of those buildings appealed to the Supreme Court, asking that the order be set aside as regards that part or alternatively that an order be made requiring the landlords to abate the nuisance.

Held: (i) On the evidence, the premises could not be said to be free from danger.

(ii) It would be wrong, for the protection of the tenants, to compel the landlords to spend a disproportionate amount on a worn-out property.

Notes. (The Public Health Ordinance, Gibraltar, 1907 (No. 10 of 1907) which appeared in the 1935 Ed. as the Public Health Ordinance (Cap. 88) was repealed by s. 352 of the Public Health Ordinance, 1950 (No. 7 of 1950; Cap. 104, 1950 Ed; Cap. 131, 1970 Ed.). Section 81 [now s. 84] of Ord. No. 7 of 1950 replaced ss. 118 and 119 of Ord. No. 10 of 1907.

This case was distinguished in *Marrache v City Council* (infra, p. 215) on the ground that the changes introduced by Ord. No. 7 of 1950 had rendered it obsolete, but it is printed for the reasoning behind the decision, as well as for the definition of "unfit for habitation." Both cases were mentioned in *Carina Ltd. v Chief Public Health Inspector,* (infra, p.374).

Cases referred to in the judgment.

Summers v Salford Corporation, [1943] 1All E.R. 60.
Hall v Manchester Corporation, (1915) 113 L.T. 465.

Appeal

This was an appeal to the Supreme Court against an order of a court of summary jurisdiction prohibiting the use of certain premises for human habitation. The appeal was brought by tenants of part of the premises.

A.R. Isola for the appellants.
S. Benady for the respondents.
E.M. Russo, holding a watching brief.

18 April 1947: The following judgment was read—

This is an appeal by three persons, some of the occupiers of a flat forming part of a large rambling old block of buildings known as Nos. 10–12 Pitman's Alley comprising tenements, stores, staircases and corridors and enclosing four patios of various shapes and sizes.

The appellants, claiming to be aggrieved by an order of a court of summary jurisdiction made on 7 March 1947 prohibiting the use of the whole of those buildings for human habitation, ask that that order be set aside as regards their particular flat, which is on the first floor at the North–West corner of the block.

Under that flat are an office, a passage–way and a portion of a patio. Above it is a maisonette on the second and third floors. This North–West corner, though built as one with the remainder of the buildings, is in a sense self–contained inasmuch as it can be marked off on the plan by an irregular line following certain main walls which enclose the rooms, the common staircase and the last–mentioned patio.

Under the Criminal Justice Administration Ordinance, s. 207B(c) [now s. 154(c)], this court has jurisdiction to affirm, quash or vary the order of the court below. Variation would include the making of a modified form of order under the Public Health Ordinance, s.118.

Three questions arise:—

First, can the buildings concerned be divided for present purposes as between the North–West corner and the remainder?

Secondly, if so, is that part of that corner which consists of the appellants' flat fit or unfit for human habitation?

Thirdly, if it is unfit, what order should this court make?

Let it be made clear, in passing, that I am not concerned either with any question of alternative accommodation or with any question of housing policy. Those matters are entirely outside this case, and such references as have been made to them are in my view irrelevant.

Nor am I primarily concerned with the landlords' position or views. They are not parties to this appeal, nor have they intervened. They have maintained a discreet silence both in the court below and before this court. The proved facts shew that since August 1945 they have refrained from effecting any of the repairs required by the City Council. For some reason unexplained in these proceedings the City Council authorities allowed them to persist in this attitude up to 26 February 1947 when the summons was taken out. It may be that the landlords will ultimately gain. But that is not the matter with which this court is really concerned in the present proceedings.

As regards the City Council, though it might well be contended that they should have acted long ago, when their notice of August 1945 produced no result, nevertheless in my view their recent application to the lower court, much less their appearance as respondents in this one, is not open to criticism. Doubtless it was inspired by the result of other recent proceedings before me, in which the landlords obtained possession of two of the tenement dwellings contained in these buildings, largely on the strength of the evidence of the City Engineer and the Medical Officer of Health.

I now turn to the relevant law. The Public Health Ordinance deals with unfitness of buildings for human habitation. An inhabited building, when so unfit, is what the law knows as a nuisance. As such, its use for human habitation may be prohibited. The real object of ss. 116 and 119 may be described as the reduction of the evils of bad housing accommodation for the compulsory protection of the occupiers, however willing they may be — perhaps owing to force of circumstances — to accept improper conditions.

The test as to unfitness for human habitation is expressed as follows per Lord Atkin in *Summers v Salford Corporation* [1]:

> "if the state of repair of a house is such that by ordinary user damage may naturally be caused to the occupier, either in respect of personal injury to life or limb or injury to health, then the house is not in all respects reasonably fit for human habitation."

And Lord Wright observed [2] that "It is not the amount but the consequence of the disrepair which determines whether a room is fit for human habitation." That observation must, of course, apply equally to a house. I accept the contention, put forward by counsel for the appellants, that a high

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1 [1943] 1 All E.R. 60, at p. 70. 2 At p. 72.

degree of unfitness must be shewn to exist in such a case as the present.

In an earlier case which also went to the House of Lords, *Hall v Manchester Corporation* [1], the following further propositions were laid down: a house may be unfit for human habitation, in the place in which it stands, for any reason, not merely because of some intrinsic defect in the house itself; secondly, the expression "unfit for human habitation" is vastly different from "not up to modern or model requirements"; thirdly, unfitness is a pure question of fact in each case, the standard applicable being that of the ordinary reasonable man; fourthly, an order should not be made as to a whole building if part only is unfit for habitation; and lastly, since public health is the matter in hand, a house which is unfit to be inhabited should not be inhabited, whatever be the cause or whosesoever the fault.

What, then, is the evidence? On both sides expert testimony has been given. And I have been able to deal with this part of the case with less difficulty than would otherwise have occurred, by reason of having viewed the premises at considerable length with counsel.

The basic problem is this: are the appellants' premises uninhabitable in the sense that they are dangerous? If they are not safe to live in — if they are not free from the risk of partial or entire collapse — they are clearly dangerous. It is a question of whether there is a risk, not whether there is a certainty, of disaster.

There is without doubt a substantial difference between the condition of the North-West corner of the buildings and that of the remainder — a distinction which was not investigated in the court below.

The burden of proof is on the appellants; but, apart from this, in my judgment, taking both the intrinsic and the extrinsic factors into account, it seems clear that the appellants flat cannot be said to be free from danger to life and limb. For various reasons, all much the same though expressed slightly differently, the City Engineer, the Assistant City Engineer and the City Architect have pronounced the premises to be unsafe. Each says he would refuse a certificate of safety, as the premises now are. That is their considered view, after a minute examination of the question to what extent the North-West corner can be differentiated, or physically treated as a separate entity, from the remainder of the buildings.

That leaves the question as to whether the order of the court below should be affirmed or varied. In other words, should an order be made under s. 118, rather than under s. 119, of the Public Health Ordinance?

It is true that the existing nuisance could probably be abated for the time being without condemning the North-West corner altogether. The expenditure of large sums of money could effect the repair of the great majority of insecure buildings; provided that the ratio between that expenditure and the value of the building is of no importance, it could be done as a matter of

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[1] (1915) 113 L.T. 465.

practical engineering. But it would in my view be wrong for a court to make an order, in protection of tenants, which in effect compelled the landlords to spend a wholly disproportionate sum of money on a comparatively worn-out and worthless property.

That appears to be the effect of the appellants' alternative submission in the present case. Their expert witness mentioned £200 as about the total expenditure needed. But the Assistant City Engineer puts it as high as £900 to £1,000, excluding the roofs on which he says a great deal of work would be required, and, moreover, subject to a doubt as to whether the main framework of the premises in question would be found to endure in a state of safety for more than a year or so.

In view of all the evidence I think it would not be exercising a proper judicial discretion to make any order involving a compulsory patching up of this ancient structure which cannot be of any lasting or considerable value even in its repaired condition.

It follows that, in my judgment, the order of the court of summary jurisdiction should be substantially affirmed. In view, however, of the grave difficulty into which the appellants and others would thereby be put I shall vary that order to the extent that the prohibition of the use for human habitation of the North-West corner of 10-12 Pitman's Alley is to take effect as from 25 April 1947.