# THE ATTORNEY-GENERAL v. ESTATE OF RHODA HAYTON.

1909. *November* 4. FAWKES and WARD, JJ.

*Land. — Extra quitrent. — Sec.* 10 *of chap.* 69 *of the Law Book. — Sufficient occupation.*

Where G sued the estate of H deceased, who had during her life been resident in the Cape Colony, for arrear extra quitrent under sec. 10 of chap. 69 of the Law Book, on the ground that a farm belonging to her had not been occupied, *Held*, that the occupation contemplated by the section would include that of a person in possession with the leave and license of the owner.

The plaintiff sued the defendant estate for extra quitrent amounting to £60 under sec. 10 of chap. 69 of the Law Book, with interest at 10 per cent. under sec. 15, and asked for the farm in question to be declared executable. It appeared that the deceased Mrs. Hayton, during her life resident in Grahamstown, had owned a farm called Klein Constantia in the district of Hoopstad, and that she had let it under a written lease to one Wiese, the owner of an adjoining farm, called Lemoenfontein, from the 1st January, 1903, to the 31st December, 1905. A further verbal lease had been entered into between the parties from the 1st January to the 30th June, 1906, to enable the lessee to reap the crops he had sown. There was then an intervening period of nine months, after which a written lease dated the 1st April, 1907, for three years, was entered into. The lessee had used the farm for crops up to the end of the year 1905, and for grazing continuously, including the period intervening between the leases. It was admitted that nobody actually resided on Klein Constantia, but the defendant contended that during the whole period from the beginning of 1903 Mr. Wiese had been in occupation of the farm, first on behalf of the deceased and then of her representatives after her decease, and that therefore sec. 10 of the law, which im-

poses an extra quitrent of £5 on farms belonging to persons resident outside the State which are not occupied, did not apply.

*P. U. Fischer*, for the plaintiff: Occupation here means personal residence, and not merely "effective occupation," as it is interpreted in the English statutes. The Dutch word is *occupeer*, which is synonymous with *bewoon*, which clearly implies a personal residence. See art. 13 of Law 3 of 1887, where the words *bewoond door blanke persoon* are used; see art. 3 of Law 7 of 1877, which supplies the reason of the law by requiring each such farm to provide an armed burgher. This law was revised in Law 1 of 1888, in art. 21 of which the word *occupeer* was first used. The law was then split up, quitrents being dealt with in chap. 69 and commando law in chap. 40. See also the meaning given to sec. 16 of Law 8 of 1886 (Transvaal) in *Mamabolo* v. *Registrar of Deeds* ([1907] T.S. p. 80), where the word *bewoon* is translated "occupy."

*De facto* occupation was necessary; the only occupation recognised by the law would be a legal one, *e.g.* that of a tenant, and not that of a trespasser, as Wiese was from the 30th June, 1906, to the 31st March, 1907.

*Blaine, K.C.*, for the defendant estate, was not called upon.

FAWKES, J.: It is not for the Court to look at the history of a law for the interpretation of its terms, unless there is a real doubt as to the construction to be placed on it. There is nothing in sec. 10 which points to any other object on the part of the legislature than the raising of revenue and the prevention of a farm going to waste because it is not being worked. Moreover, it is a principle of law that when a tax is imposed by the legislature the enactment must be construed most liberally in favour of the persons taxed.

As to the second argument that Mr. *Fischer* has used, he has urged that, because Wiese was on the farm without an actual lease for a certain number of months, he was there as a trespasser. We are satisfied that he had been allowed by the lessor to stay on, and he was therefore a tenant from month to

month during the intervening period, the farm being occupied by a person who was liable to pay rent to the lessor. I am of opinion that, as Wiese was there with the leave and license of the owner, the farm was occupied in accordance with the terms of sec. 10 of chap. 69. Judgment must therefore be for the defendant with costs.

WARD, J.: I concur. In this action the Government seeks to recover under sec. 10 of chap. 69 extra quitrent and interest for a number of years on a farm situate in this colony, on the ground that during those years the farm belonged to a person non-resident in this colony and was not occupied. The defendant admits that the owner was non-resident, but he says that the farm during the period in question was let and occupied by the owner of an adjoining farm. The facts, which are not disputed, are as follows: The owner of the farm was a lady resident in Grahamstown. There were no buildings on the farm, and no person ever resided on it. During the period to which the action relates the farm was let to the owner of the adjoining farm at a rental of £40 a year, first under a written lease, on the expiration of which there was a verbal lease. Then there was a period of six months, during which there was no arrangement as to a lease, negotiations being in progress as to a new lease. The new lease was finally agreed upon, and is still running. The evidence of the lessee is that throughout the whole period (including the time there was no lease) he had used the farm for grazing his stock and growing mealies just as he used his own.

The question to be decided is whether this is occupation within the meaning of sec. 10 of chap. 69. I must say that I have no doubt that it was. Counsel for the plaintiff states, however, that the provisions, or somewhat similar provisions, now contained in the section referred to, were formerly contained in a law which dealt with burgher services, and more especially those relating to the duty of burghers to render military service. On that ground he asks us to hold that "occupation" is synonymous with "residence," and as in this case there was admittedly no residence there could, he says,

be no occupation. Had the original legislation remained unaltered, I will not say that there might not have been some force in this contention. But the law has been altered and the legislation relating to burgher services (now repealed) separated from that relating to quitrents, and in the Law Book of 1891 (if not earlier) they appear in entirely different chapters. Moreover, it would seem from what fell from counsel during the argument, that in the earlier law when burgher services and quitrent were mixed up in the same law the verb used was *bewoonen* (or its equivalent), whereas when the separation came the verb used in the quitrent law was *occupeeren*. To me it seems that the object of the quitrent law is an economic one, namely, to penalise the non-occupation of farms and prevent a public asset being locked up and rendered unproductive. In the view I take, so long as a farm is *bonâ fide* used in the way it is capable of being used it is immaterial so far as the Government is concerned whether the person thus using it lives thereon, or, as in this case, on an adjoining farm. The arguments, therefore, advanced by Mr. *Fischer* are not sufficient to induce me to put a forced and unnatural meaning on the word *occupy*, so as to make it equivalent to *reside*. In my opinion there has been occupation of this farm, although there has been no residence, and the judgment should be for the defendant with costs.

Plaintiff's Attorneys: *Fraser & McHardy;* Defendant's Attorneys: *Fraser & Scott.*