RATNAYAKE
v.
BANDARA

COURT OF APPEAL.
SENEVIRATNE, J. (PRESIDENT, COURT OF APPEAL) AND JAMEEL, J.
S.C. No. 579/76(F) CA 579/76 (F).
D.C. MATALE No. 2059/L.
NOVEMBER 4, 21 AND 22, 1985.

Kandyan Law–Gift creating a fideicommissum–Abolition of Fideicommissum Act No. 20 of 1973 – Revocation – Roman Dutch law – S. 5(1)(d) of Kandyan Law Declaration and Amendment Ordinance No. 39 of 1938.

Held–

(1) Although a donation by a Kandyan is expressed in the deed to be absolute and irrevocable under the Kandyan Law (s. 5(1)(*d*)) of the Kandyan Law Declaration and Amendment Ordinance No. 39 of 1938) the gift can be revoked by the donor.

(2) Although the deed of gift created a valid fidei commissum, as fidei commissum had been abolished with effect from 12.5.1972 by Law No. 20 of 1972, the donee took free of the fidei commissum.

Per Seneviratne, J.:

> "..... the principles of Roman-Dutch law can be applied to ascertain whether a deed made by a person subject to the Kandyan law is a fidei commissum, still to determine other connected matters it is the Kandyan law that should be considered. By executing such a deed a person subject to Kandyan law will not be metamorphosed into a person governed by the Roman Dutch law."

(3) The question of revocability is governed by Kandyan law.

Cases referred to:

(1) *Assistant Government Agent, Kandy v. Kalu Banda (1921) 23 NLR 26.*
(2) *Menika v. Banda (1923) 25 NLR 207.*
(3) *Tikiri Banda Dullewe v. Padma Rukmani Dullewe (1968) 71 NLR 289 (PC).*
(4) *Punchi Banda v. Nagasena (1963) 64 NLR 548 overruled by Dullewe v. Dullewe (1968) 71 NLR 289.*
(5) *P. Thepanisa et al v. P. Haramanisa et al (1953) 55 NLR 316.*
(6) *Kiriheneya v. Jothiya (1922) 24 NLR 149.*
(7) *Ukku Banda v. Paulis Singho (1926) 27 NLR 449.*
(8) *Bogahalande v. Kumarihamy (1926) 8 CL Rec. 91.*
(9) *Tikiri Bandara v. Gunawardena (1967) 70 NLR 203.*
(10) *Noorul Muheetha v. Sittie Leyaudeen (1953) 54 NLR 270.*
(11) *Molligoda R. M. v. D. Sinnethamby (1878) 7 SCC 118.*

APPEAL from judgment of the District Court of Matale.

Dr. H. W. Jayewardene, Q.C. with *Lakshman Perera, Miss Premila Seneviratne* and *Miss T. Keenewinne* for defendant-appellant.

H. L. de Silva, P.C. with *Gomin Dayasiri* and *Chitralal Fernando* for plaintiff-respondent.

Cur. adv. vult.

January 21, 1986.

SENEVIRATNE, J. (President, C/A)

I agree with the judgment of my brother Jameel, J., but I wish to supplement that judgment. The facts pertaining to this appeal have been fully set out in the judgment of Jameel, J. The parties to this case are persons subject to the Kandyan Law. The main matter in issue in this case in the original court was whether the deed No. 39373 of 31.1.73 (P2) had the effect of revoking the prior deed of gift No. 8247 of 11.6.60 (P1) from Tikiri Kumarihamy to Jayalatha Kumarihamy. As such, the main issues raised at the trial were as follows:–

(1) Did Tikiri Kumarihamy by deed No. 39373 of 31.1.73 revoke the deed of gift No. 8247 of 11.6.60?

(2) By such revocation, did the property re-vest on Tikiri Kumarihamy?

(3) Is the deed No. 8247 of 11.6.60 irrevocable ?

The learned District Judge answered the issues (1) & (2) in the affirmative and issue No. 3 in the negative. As such the learned Judge held that the deed of gift (P1) was validly revoked by the deed (P2), and that the plaintiff got title to the land from the said Tikiri Kumarihamy on the deed of gift No. 72 of 17.2.73 (P3). The consequence of this finding was that the defendant did not get title to the land from Jayalatha Kumarihamy on deed of transfer (P3).

In the original court there was no consideration in any way of the fact that the deed of gift No. 8247 of 11.6.60 (P1) from Tikiri Kumarihamy to Jayalatha Kumarihamy was subject to a fidei commissum. The learned counsel for both parties in this appeal agreed that the deed of gift (P1) was subject to a fidei commissum. As the deed (P1) on the face of it created a fidei commissum, and as both counsel agreed on this matter, the Court permitted the learned Queen's Counsel for the appellant to make submissions based on the fact that the deed of gift (P1) created a fidei commissum. It can be surmised that in the original court, the parties have ignored the fact that the deed of gift (P1) created a fidei commissum, because that aspect of the deed has been considered (I should say correctly) irrelevant to the consideration of (P1) as at the time of the execution of the deed of revocation (P2) of 1973 fidei commissum had been abolished. Fidei commissum had been abolished by the Abolition of Fidei Commissum Act No. 20 of 1972 which came into operation from 12.5.72. The facts and the documents which are relevant to this case are those which came into being after fidei commissum was abolished with effect from 12.5.72.

After the abolition of fidei commissum with effect from 12.5.72. Jayalatha Kumarihamy became the absolute owner of the gifted land in question. Jayalatha Kumarihamy by deed No. 5204 of 6.1.72 (P2) transferred the land to her husband P. B. Ratnayake the defendant. On the findings of the learned District Judge the plaintiff was held to be entitled to the land, and the defendant has appealed against that order.

The submissions made in this Court on behlaf of the defendant-appellant were that the deed of gift (P1) was an irrevocable deed of gift and these submissions were tied to the fact that the deed of gift (P1) created a fidei commissum. It was submitted by the learned Queen's Counsel for the defendant-appellant that as the deed of gift (P1) created a fidei commissum, a concept of law kown to the Roman-Dutch Law, the revocability of the deed must be considered

under the Roman-Dutch Law, and as such it was not the Kandyan Law pertaining to the revocability of a deed of gift that should be applied in this instance. This submission ignored the fact, and the legal position, that when the deed of gift (P1) of 1960 was revoked by the deed of revocation (P2) of 1973, fidei commissum had been abolished in 1972. What is exactly meant by holding that a deed creating a fidei commissum has been executed by persons subject to the Kandyan Law has been set out by the learned Judge De Sampayo, J., in the case of *Assistant Government Agent, Kandy v. Kalu Banda* (1). In this case he said:

> "It is being contended that the deed should not be construed on principles of Roman-Dutch Law to which fidei commissa are peculiar, that fidei commissa are unknown to the Kandyan Law, and that, therefore, the conditions in the deed should be ignored and the immediate donees should be taken to have acquired absolute title to the property".

De Sampayo, J. in answer to this submission has set out as follows:

> "In this case, as I ventured to remark in the course of the argument, it is not a question of applying any particular rules of the Roman-Dutch Law to the construction of this deed of gift. It is rather a question of right of an owner of property to dispose of it according to his pleasure. I am not aware of any principle of the Kandyan Law which prevents a Kandyan from giving a limited interest to one person, and providing that at the termination of that interest the property should vest in another person. Such a disposition would, of course, be called in the Roman-Dutch Law a fidei commissum. It may not be a proper expression to describe a similar disposition by a Kandyan. It is, however, a convenient expression, and if the thing itself may be done among the Kandyans, the Court will not hesitate to give effect to it, simply because the disposition may also amount to a fidei commissum".

This case sets out clearly the position that when a person subject to the Kandyan Law executes a deed of gift, subject to certain conditions and restrictions which deed is a valid deed in Kandyan Law, such an instance will be identified by the term or concept known to Roman-Dutch Law as fidei commissum "as a convenient expression" because there is no legal concept known to Kandyan Law as fidei commissum. In the case of *Menika v. Banda* (2) Jayewardene, A.J. held as follows:

"The deed of gift, although it creates a fidei commissum, is valid under the Kandyan Law. Although we may resort to the Roman-Dutch Law to ascertain whether the deed creates a valid fidei commissum or not, yet to ascertain who the lawful heirs are we have to resort to the Kandyan Law."

This case asserts the principle that the principles of Roman-Dutch Law can be applied to ascertain whether a deed made by a person subject to the Kandyan Law is a fidei commissum, still to determine other connected matters it is the Kandyan Law that should be considered. By executing such a deed a person subject to Kandyan Law will not be metamorphosed into a person governed by the Roman-Dutch Law. The leading case, judgment of the Privy Council in *Tikiri Banda Dullewe v. Padma Rukmani Dullewe and Another* (3) has dealt with a deed of gift which created a fidei commissum (*see* the relevant passage in the deed quoted at page 290). Though that deed created a fidei commissum, and a valid fidei commissum as the deed in issue in that case had been executed long prior to the abolition of fidei commissum, and it had also taken effect prior to that, their Lordships of the Privy Council have not at all considered the revocability of this deed of gift–

(*a*) On the basis that it was a fidei commissum, and

(*b*) That as such the principles of Roman-Dutch Law pertaining to the revocability of a deed should apply.

Their Lordships of the Privy Council have determined the revocability of that deed on the principles pertaining to the Kandyan Law.

The case of *P. Thepanisa et al v. P. Haramanisa et al* (5) is the case which President's Counsel for the respondent referred to as the case which laid down the correct law pertaining to this subject. In this case Pulle, J. held that–

"the creation of a fidei commissum by a Kandyan deed of gift does not by itself affect its revocability".

must add that the learned Queen's Counsel for the appellant stated that he is challenging the correctness of the decision in *Thepanisa's case (supra)*, and made submissions on the basis that this case had not been correctly decided. I hold that there is no authority for the proposition that in case of a deed of gift made by a person subject to Kandyan Law creating a fidei commissum the rovocability of that deed should be determined according to the Roman-Dutch Law principles.

I will now deal with the revocability of deed of gift No. 8247 of 11.6.60 (P1). In this deed of gift (P1) the donation was made as follows, to the daughter Jayalatha Kumarihamy–"as a donation inter vivos *absolute and irrevocable* .....to have and hold the said premises for ever."–(the emphasis is mine). The main issue in this case was whether the use of the words "absolute and irrevocable and to have and hold the said premises for ever" was a sufficient declaration under the Kandyan Law to make this deed of gift irrevocable by the donor Tikiri Kumarihamy. In considering this matter–that is the revocability of a deed of gift, or a deed of gift which cannot be revoked, the provisions of the Kandyan Law Declaration and Amendment Ordinance No. 39 of 1938–Vol. 111, Cap. 59. C.L.E.–Section 5(1)(*d*) has to be considered, and which section is as follows:

> "any gift, the right to cancel or revoke which shall have been expressly renounced by the donor, either in the instrument effecting that gift or in any subsequent instrument, by a declaration containing the words 'I renounce the right to revoke' or words of substantially the same meaning. . . . . ."

In *Dullewe's case (supra)* the Privy Council considered the provisions of the deed set out above in relation to section 5(1) (*d*) of the said Ordinance to determine whether the said deed was revocable or not. The majority judgment of the Privy Council held–

> "accordingly the words as a gift irrevocable in a deed of gift do not satisfy the condition for irrevocability prescribed in the section, such a gift is subsequently revocable by the donor".

In coming to this decision this majority judgment of the Privy Council overruled the then leading case on this subject *Punchi Banda v. Nagasena* (4), in which Sansoni, J. held that–

> "by the use of a single word 'irrevocable' in a Kandyan deed of gift the donor may, under section 5(1) (*d*) of the Kandyan Law Declaration and Amendment Ordinance, expressly renounce his right to revoke".

Lord Donovan in his dissenting judgment upheld the judgment of the District Court of Kandy, which was affirmed by the judgment of the Supreme Court holding that the words used in the said deed of gift makes the gift irrevocable. Lord Donovan expressed himself as follows:

> "the words irrevocable means 'not capable of revocation'; and the capacity to revoke obviously depends upon the existence of a right to do so.....When therefore he uses a word which

indicates that the gift is not to be capable of revocation, he is saying that he shall not enjoy the right to revoke which he would otherwise possess. In other words he is renouncing that right. He is not using words which 'substantially' means the same thing as the prescribed formula, but exactly the same thing. True, the Ordinance requires that whatever words are used the right shall be 'expressly' renounced. The words 'as a gift irrevocable' are express".

In coming to this conclusion His Lordship Lord Donovan has in detail analysed the Kandyan law pertaining to the revocation of a gift with reference to cases both before and after the Kandyan Law Declaration and Amendment Ordinance of 1938. In fact Lord Donovan's dissenting judgment affirmed the decision in *Punchi Banda v. Nagasena (supra)* overruled by the majority judgment.

Learned Queen's Counsel for the defendant-appellant strenuously submitted that the dissenting judgment of Lord Donovan was the correct view of the Law, and asserted that he will be duly challenging the majority judgment. After due consideration I agree with the dissenting judgment of Lord Donovan and it is mainly to express this view that I have written a supplementary judgment. However, this Court is bound by the majority judgment of the Privy Council in *Dullewe's case (supra)*, as it was at that time the supreme and final Court of Appeal.

For the reasons set out above I agree with the judgment of my brother Jameel, J. and I dismiss the appeal with costs.

JAMEEL, J.

By his plaint dated 26.7.74, the plaintiff-respondent sued the defendant-appellant for a declaration of title to the land called Walauwewatte *alias* Ayapattu Walauwewatte.

It is common ground that the planintiff's mother, Tikiri Kumarihamy Ellepola was the former owner of this land and that she had on deed (P1) 8247 of 11.6.1960 gifted it to her sister Jayalath Kumari Ratnayake, the wife of the defendant-appellant.

It was admitted in the course of the argument before this court that this deed (P1) created a valid fidei commissum in favour of the donee with a gift over to her children and that should the donee leave no children then the property was to revert to the donor and her children. This gift has been accepted by the donee. That was on 11.6.1960. On 12.5.72 the Abolition of Fidei Commissum Act came into

operation. On 5. 10. 72 by deed No. 5204 (V3) Jayalath Kumari transferred the land to her husband, the defendant-appellant. On 31.1.73 by deed No. 30373 (P2) Tikiri Kumarihamy Ellepola revoked the deed of gift (P1) and on 17.2.73 by deed No. 72 (P3) she gifted the land to her son the plaintiff-respondent.

Learned Queen's Counsel who appeared for the defendant-appellant conceded that if deed P1 is in fact revocable then, deed P2 would be an effective act of revocation and that title would then have passed on to the plaintiff-appellant. He also did not press the appeal with regard to the quantum of compensation awarded by the Learned District Judge to the defendant-respondent for improvements effected by him to the premises.

The arguments of learned Queen's Counsel were a three-pronged attack on the judgment of the learned District Judge.

The first line of argument was that this deed P1 which admittedly is a Kandyan deed of gift is irrevocable.

The relavant portions of the deed relied on by learned Queen's Counsel are, "Give, Grant, Convey, Assure and Make Over as a Donation intervivos *absolute and irrevocable.*" And, "to have and to hold the said premises.....unto the said donee and her aforesaid *forever*, provided....."

On the strength of the cases *Kiriheneya v. Jotiya* (6) wherein the deed carried the words 'I shall not revoke.....at any time' and *Ukku Banda v. Paulis Singho* (7), wherein the deed carried the expression 'absolute and irrevocable' and, in *Bogahalande v. Kumarihamy* (8), wherein both *Kiriheneya's case (supra)* and Ukku Banda's case (supra) were reviewed. (All decided before the Kandyan Law Declaration And Amendment Ordinance No. 39 of 1938 was passed) and the cases reported in *Punchi Banda v. Nagasena (supra)*, wherein the words used were 'irrevocable' and *Tikiri Banda v. Gunawardena* (9), wherein the word used was 'irrevocable' and the renunciation was unconditional, learned Queen's Counsel contended that Deed P1 was irrevocable. In the light of the decision of the Privy Council in *Dullewe v. Dullewe (supra)* I am unable to accede to this very forceful argument. Their Lordships of the Privy Council (Lord Donovan dissenting) held, that unless the Kandyan Deed of Gift carried a declaration expressed in the words contained in the statute, namely, "I renounce the right to revoke" or words which substantially carry the

Held–

(1) The appellant's failure to pay the rents even after he received confirmation by P 6 that it was R who had signed the letter requesting attornment to the respondent and that the premises had not vested in the Commissioner of National Housing, was a repudiation of his tenancy and such a person is not entitled to notice. Pleading a termination in the plaint therefore did not arise.

(2) The Rent Act required three months' notice to be given. Although there was no pleading or issue on the point, the notice P 7 was received in evidence without objection. Therefore there was compliance with the requirement of the Rent Act and the respondent was entitled to maintain the action.

Cases referred to

(1) *Edirisinghe v. Patel, (1979) 79 (1) N.L.R. 217, 219.*

(2) *David Silva v. Madanayake, (1967) 69 N.L.R. 396.*

(3) *Hassan v. Nagaria, (1969) 75 N.L.R. 335, 336.*

APPEAL from a judgment of the Court of Appeal.

I. G. N. de J. Seneviratne with *S. Parathalingam* for defendant-appellant.

H. L. de Silva S. A., with *W. D. D. Weerasinghe* for plaintiff-respondent.

Cur. adv. vult.

April 5, 1984

SAMARAKOON, C.J.

This is an appeal with the leave of the Court of Appeal for decision by this Court on two issues raised by that Court. The appellant was the tenant of premises he occupied under one M. Muthiapillai since the year 1969. Muthiapillai died and his son M. Radhakrishnan became the owner of the premises and the appellant attorned to him and paid rents to him till the end of December, 1971. By Deed No. 17 dated 1.4.1971 Radhakrishnan transferred the premises to his wife, the respondent in this appeal. By letter dated 24.1.72 (P 1) the respondent, acting by her attorney-at-law, requested the appellant to pay her all rents from 1.1.1972. By letter dated 1.2.1972 (P 2) the appellant, acting by his attorney-at-law, requested the respondent's attorney to forward to him a letter from " the previous landlord Mr. Radhakrishnan " authorising the appellant to make payments to the respondent. He also asked the particulars of the Deed of Transfer. A letter dated 1st November, 1973 (P 4) signed by Radhakrishnan was forwarded to the appellant. This letter requested the appellant to make

payments to the respondent. The appellant appears to have doubted the genuineness of the signature of Radhakrishnan on P 4 and he therefore wrote through his attorney a letter dated 13.3.1974 (P 5) to the respondent's attorney asking him to confirm that it was in fact signed by Radhakrishnan. He also sought information as to whether the premises had vested in the Commissioner of National Housing. The attorney added–

> " On your confirmation that the said letter is genuine my client shall pay to your client all arrears of rent. "

By letter dated 17.9.1974 (P 6) the respondent's attorney replied to the attorney of the appellant providing the necessary confirmation and stated that the premises had not vested in the Commissioner of National Housing. No rents were however forthcoming. On 20.12.74 the respondent instituted action in the District Court of Colombo praying for–

(*a*) a declaration that the appellant was in wrongful and unlawful occupation of the premises ;

(*b*) for a decree in ejectment ; and

(*c*) for damages at Rs. 50 per month from date of action until ejectment.

On 26.5.75 the appellant tendered to the respondent a cheque for Rs. 960/72 being rents due from 1.1.1972 to 31.12.73 less a sum of Rs. 331/87 being rates paid to the Colombo Municipal Council. This cheque was returned to the appellant by the respondent. The appellant filed answer on 29.10.1975 denying the averments in the plaint and pleading the facts set out above. He also pleaded–

(*a*) that no rents were paid for the period subsequent to 1.1.74 " as the plaintiff had not furnished proof that the said land and premises had not vested in the Commissioner of National Housing " ;

(*b*) that he was not wrongfully in arrears of rents and the failure to pay rents was due to the default of the plaintiff (respondent) in not providing the documents asked for by him ; and

(c) that the action cannot be maintained as the tenancy had not been duly terminated.

With his answer he brought into Court to the credit of the case a sum of Rs. 1171/95 on account of rent from 1.1.1972 to 31.10.1975.

After trial the District Judge entered judgment in favour of the respondent. The appellant's appeal to the Court of Appeal did not succeed. Both Courts were of the view that the action as constituted on the plaint read with the admissions on record and the issues framed was not one of *rei vindicatio* based on title but a tenancy action based on a breach of contract. The first question for decision is stated by the Court of Appeal as follows :–

> " Could the plaintiff respondent have maintained an action in respect of premises governed by the Rent Act of 1972 without pleading termination of tenancy ?"

It appears to me that the manner in which the plaint has been drafted has been the cause of some confusion and the source of needless argument. It recites the ownership by reference to the Deed of Transfer. No devolution of title has been pleaded. It recites the fact that the appellant declined to pay rents to the respondent and that the appellant by his conduct repudiated the contract of tenancy between himself and the appellant and therefore was not entitled to any relief under the Rent Act, No. 7 of 1972. What this latter pleading seeks to convey is hard to comprehend. The sum and substance of it is that the appellant declined to pay rent to the new owner. The plaint goes on to place a value " on the subject matter of the action ". Perhaps he values the premises at this figure – which again is hard to accept. It then prays for damages from date of action. Nowhere does it claim arrears of rent or damages equivalent to the monthly rent. It does not pray for a declaration of title but asks for a decree in ejectment. It has been numbered as a land action. The answer has done no better. It does not even plead the benefit of the Rent Act. It only pleads the absence of a termination of tenancy which could mean one under the Common Law or one under the Statute Law.

On the first date of trial the dispute took a different course. Counsel for respondent raised three issues. They are–

> " (1) Has the defendant paid any rent to the plaintiff after she became the owner of the premises ?
>
> (2) If not, is the defendant in wrongful occupation of the premises ?
>
> (3) If issues 1 and 2 are answered in the affirmative, is the plaintiff entitled to the relief prayed for in the plaint ? "

There was no necessity for these issues for the reason that the facts were admitted of record. It is recorded at the outset that the respondent admits that the appellant is the lawful owner of the premises in suit (this fact was denied in the answer). Further that the appellant had been requested by the respondent in writing to pay rents. This must be read with the admission in the answer that no rents were paid to the respondent in response to those requests. It is also recorded that by consent of parties damages were fixed at Rs. 50 per mensem. The entire case of the respondent was therefore conceded and the burden was on the appellant to prove that he had a right to continue in occupation. His counsel then raised the crucial issue as follows :–

"(4) Is the defendant in occupation of the premises as the lawful tenant of the plaintiff ?"

A tenancy has been referred to in para 5 of the plaint in a quizzical manner. For good measure his counsel raised on the next date of trial the following issues based on para 5 of the plaint–

"(5) As pleaded in paragraph 5 of the plaint has the defendant repudiated the contract of tenancy between himself and the plaintiff ?

(6) If not, can the plaintiff have and maintain this action ?"

If the appellant succeeded in proving that he was the lawful tenant then other questions arose due to the fact that an admission was entered of record that the premises were governed by the provisions of the Rent Act, No. 7 of 1972. No further pleadings were filed but the respondent was permitted to mark in evidence notice to quit dated 13th November, 1973, (P7) which gave the appellant three months notice to vacate the premises.

The Court of Appeal has held that this was an action on a tenancy and I am of opinion that it was correct in so holding. Title has been pleaded to show that the respondent was the new owner and therefore by operation of law she stepped into the shoes of the seller who was the landlord and that therefore she was entitled to the rents. Repudiation of the contract of tenancy is pleaded because of the decisions of the Supreme Court that such a tenant is neither entitled to notice to quit nor to claim any rights to a tenancy. Vide the cases cited in *Edirisinghe v. Patel* (1). The appellant did not deny the tenancy. He only wanted confirmation of a kind which was provided on 17.9.1974

by P6. He was silent thereafter and did not pay any rent. In his answer filed on 29.10.1975 he pleaded that rents were not paid firstly because the respondent failed to furnish proof that the premises were not vested in the Commissioner of National Housing and secondly because the respondent failed to provide the documents asked for by him. Neither reason is true to fact and therefore both are unacceptable. Having elected to remain in occupation he was bound to pay rent to the respondent. In this case he did not fulfil his undertaking to pay even though he received the confirmation he asked for by his letter P5. The respondent was, in these circumstances, entitled to sue the appellant in ejectment. *David Silva v. Madanayake* (2). As stated earlier a termination of tenancy has been pleaded in para 5 of the plaint by a plea that the appellant himself repudiated the tenancy. This is a termination by him. The appellant did not expressly admit the tenancy. He held the respondent at bay for a long time without either an admission or denial of the tenancy. In his answer filed in Court he gave two reasons for not paying rent which were patently false. Such a person is not entitled to a notice to quit. *Hassan v. Nagaria* (3). Pleading a termination in the plaint therefore does not arise.

Issue (b) reads as follows :–

"(*b*) Is it competent for a Court to enter judgment against the appellant on the ground of termination of a tenancy within the Rent Act where no issue in relation to the question of termination of tenancy has been taken up at any stage."

The Rent Act required a period of three months notice to be given. It was neither pleaded nor raised in issue. But such notice was given by P7 which document was marked in evidence without objection. There was therefore proof of compliance with the requirement of the Rent Act and the respondent was therefore entitled to maintain the action. Pleadings have been defective and no issue therefore could be raised. But these were corrected during the trial. In the result there was proof that the tenancy had been lawfully terminated and that the action could be maintained under the provisions of section 22 (3) (*a*) of the Rent Act. An order of ejectment was therefore correctly made.

In view of the above I dismiss the appeal with costs here and in the Court of Appeal.

COLIN THOME', J.–I agree.

ABDUL CADER, J.–I agree.

Appeal dismissed.