

1917.

*Present* : Wood Renton C.J. and De Sampayo J.

WIJESIRIWARDENE *v.* GUNASEKERA *et al.*

232—*D. C. Galle, 14,442.*

*Enormis læsio—Lease—Loss of profit due to war.*

The principle of *enormis læsio* is applicable to a lease as much as to a sale, but for this purpose the difference in value should exist at the time of the lease or sale, and not thereafter. Apart from *enormis læsio*, a lessee may claim relief on the ground that on account of such a cause as war he has not had beneficial enjoyment of the property, but that must be due to some direct military operation or military orders.

THE facts appear from the judgment:

*J. S. Jayewardene*, for plaintiff, appellant.—The judgment of the learned District Judge cannot be supported on legal grounds. The doctrine of *enormis læsio* is inapplicable to the case. The

<sup>1</sup> (1914) 18 N. L. R. 57.

difference in value is not shown to have existed at the date of the lease. A drop in price does not entitle one to claim the benefit of the principle of *enormis læsio*. A lessee is entitled to relief only when he has not had the enjoyment of the leased premises at all.

Counsel cited *Walter Pereira's Laws of Ceylon 657; Grotius' Introduction 3, 52, 2; Morice's English and Roman-Dutch Law 91, 162.*

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Wijesiriwardena v.  
Gunasekera

*Cur. adv. vult.*

August 6, 1917. DE SAMPAYO J.—

The defence in this case is somewhat extraordinary. The plaintiff, by deed of lease dated September 28, 1913, leased to the defendant a certain cinnamon plantation for a term of four years, commencing from August 23, 1913, for Rs. 800 as rent, of which Rs. 200 was paid at the execution of the lease, and the balance was agreed to be paid in instalments of Rs. 100 before the expiration of every six months. This action was brought on August 1, 1916, for the recovery of Rs. 500 as arrears of rent, and for cancellation of the lease in pursuance of the conditions of the lease. The defendants pleaded payment of the instalments of rent up to July 23, 1916, and further stated that at the time of the execution of the lease the price of cinnamon was 56 to 70 cents a pound, and that on account of and since the present war the ruling price of cinnamon had gone down to 25 to 30 cents a pound, and ask for relief on the ground of *enormis læsio*. The principle of *enormis læsio* is certainly applicable to a lease as much as a sale, but for this purpose the difference in value should exist at the time of the lease or sale and not thereafter. (*Grotius' Introduction 3, 52, 2; Walter Pereira's Laws of Ceylon 657.*) For this reason Morice on *English and Roman-Dutch Law (2nd ed.)*, p. 91, says that *enormis læsio* would not apply to shares in mining companies which have exhibited a drop after the purchase. Apart from *enormis læsio*, a lessee may, of course, claim relief on the ground that on account of such a cause as war he has not had beneficial enjoyment of the property, but that must be due to some direct military operation or military orders. See *Morice 162*, where such cases are distinguished from a case of loss of profit in a business owing to the war. In my opinion the defendant is not entitled to any relief on the state of facts pleaded by him.

The District Judge found against the defendant on the issue of payment, but on the ground of *enormis læsio* and by way of relief to the defendant he gave judgment for the plaintiff for Rs. 250 only, instead of Rs. 500, in respect of the instalments. I think the plaintiff is entitled to judgment as prayed, and would reverse the decree appealed from and enter judgment for the plaintiff accordingly, with costs of appeal.

WOOD RENTON C.J.—I agree.