

WAMBECK v. LE MESURIER.

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March 7.
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C. R., Batticaloa, 4,325.

Landlord and tenant—Lease—Agreement by letter to lease land for a term of years—Ordinance No. 7 of 1840—Effect of entering into possession of land on an informal lease.

A tenant entering into possession of land, under a written lease void in law, thereupon becomes tenant from month to month upon the terms of the writing as far as they are applicable to and not inconsistent with a monthly tenancy ; and so long as the relation of landlord and tenant exists in fact, the tenant is bound to pay the rent to his lessor.

Where A expecting to acquire legal title to land agreed by letter to execute a valid lease on his acquiring title in favour of B, and placed him in possession of the land ; but on acquiring title sought to eject B on the ground that the lease was void under Ordinance No. 7 of 1840,—*Held*, that A was bound to execute the lease, and that if B was not willing to accept it, he must quit the land, paying rent for the use and occupation of the land during the term already occupied by him.

IN this case plaintiff and another person were the executors of the estate of the original owner of the land in question, and the plaintiff, in anticipation of acquiring title in himself, agreed to execute a valid lease of the land to the defendant by a letter, which ran as follows :—“ I agree to lease to you the strip of land “ between my store and the market premises at Koddaimunai for “ five years from the 20th April, 1896, at Rs. 10 per month, and to “ sign the formal lease directly the transfer to myself is completed. “ I also agree to indemnify you against all loss should the lease “ not be completed and should you be ousted within the period “ above specified.”

The defendant replied to the above in the following terms :— “ I have yours of this date, and will lease the land on the terms “ agreed upon by you. Please have all my machinery, &c., “ removed to it as soon as possible.”

When the transfer referred to in plaintiff’s letter was executed in his favour, he gave notice to the defendant to quit the land and deliver over to him the possession thereof.

The defendant refused to do this, and the plaintiff brought the present action, claiming a sum of Rs. 63·41 as compensation to him for the occupation of the land by the defendant, to recover possession of the land and have the defendant ejected, and damages continuing until the land is delivered to plaintiff.

The defendant denied his entry on the land as plaintiff’s tenant, the plaintiff’s right to eject him, and the plaintiff having sustained any damage, and stated that he was ready and willing to

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pay a sum of Rs. 10 a month during a period of five years as rent for the use and occupation of the land to such person or persons as were legally entitled to demand the same. He also denied as matter of law the jurisdiction of the Court as a Court of Requests to hear the case, inasmuch as the value of the land was above Rs. 300.

The Commissioner held that the plaintiff, having the control of the land as executor of the deceased owner, agreed to give to the defendant a lease of the land for five years as soon as he himself obtained title to the land, and the defendant agreed to take the lease and pay Rs. 10 per month when the lease was given, but no lease was given ; that defendant did not enter on the land as plaintiff's tenant, but he entered on the promise that he was to be given the lease, and he was entitled to hold it till the promise is fulfilled. He, however, dismissed the plaintiff's action, as the value of the land was stated by the plaintiff in his evidence to be between Rs. 300 and Rs. 500, and this took the question out of the jurisdiction of his Court, and he could not therefore order the delivery of the land.

The plaintiff appealed.

Sampayo, for appellant.

Van Langenberg, for respondent.

7th March, 1898. LAWRIE, J.—

The plaintiff by letter agreed to lease to the defendant a plot of land for five years from the 20th April, 1896, at Rs. 10 a month, and to sign a formal lease directly a transfer to him was completed. He also agreed to indemnify the defendant against all loss should the lease not be completed and should he be ousted within the period above specified.

The defendant replied, " I have yours of this date, and will lease the land on the terms agreed upon by you. Please have all my machinery, &c., removed to it as soon as possible."

The defendant entered into possession.

On the 12th November, 1896, the plaintiff's proctor wrote to the defendant :—

" I am instructed by Mr. Wambeck to give you notice that he requires you on the 31st December, 1896, to quit and deliver up possession of all that piece of land.....now in your possession, and held by you as Mr. Wambeck's tenant. Please also note that in case of any refusal or neglect on your part to comply with this an action of ejectionment will be commenced against you without delay."

The defendant refused to quit. This action was instituted on 28th March, 1897, praying for compensation at the rate of Rs. 10 a month for use and occupation of the premises from 20th April to 31st December, 1896, and for damages at Rs. 10 a month since that date and for ejection.

In his answer the defendant denied his lessor's title, and declared that he was willing to pay the rent for five years to any one legally entitled to demand it.

By our Ordinance No. 7 of 1840 the informal contract of lease has no force or avail in law, but on the authority of *Doe v. Rigg, Bell and Clayton v. Blakey* (2 *Smith's L. C.*, 110-119), and *C. R., Batticaloa, 3,318* (*Grenier's Report, 1873, p. 16*), and *Perera v. Fernando* (*Rámanáthan's Report, 1864, p. 83*), I am of the opinion that a tenant entering into possession under a lease void in law thereupon becomes tenant from month to month upon the terms of the writing as far as they are applicable to and not inconsistent with a monthly tenancy, and that so long as the relation of landlord and tenant did in fact exist, the tenant was bound to pay the rent to his lessor. I give judgment for Rs. 10 a month for use and occupation.

With regard to ejection, the plaintiff said in the witness box that the transfer to him of the land had been completed. The plaintiff is bound to give a lease. If the defendant will not accept a lease he must quit the land.

I adjourn the hearing of this appeal for one month. The plaintiff is also given the opportunity of informing the Court whether he is or is not willing now to grant lease of the premises for five years from 20th April, 1896, at Rs. 10 a month.

In his evidence the defendant said he had removed his machinery from the land; it may be that he does not want to get a lease, that he is willing to give the land up. I give him the opportunity of stating whether he wishes to get a lease or is content to give up possession.

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