1896.
November 4 and 11.

JUANIS *et al.* *v.* DISSANAIKE *et al.*

D. C., Mátara, 1,334.

Landlord and tenant—Liability of outgoing tenant to the incoming tenant for waste on land leased.

Per LAWRIE, J.—As a general rule an incoming tenant has no right of action against the outgoing tenant for damages for waste committed by the latter on the land leased. He must look to his landlord to put him in possession of the land leased in such order as he and the landlord agreed on. If, however, the outgoing tenant has acted contrary to local custom, facts admitted or proved in a case may disclose liability in him to the incoming tenant.

Per WITHERS, J.—Where the incoming tenant has entered into possession of the leased premises and has not withheld from the landlord so much of the stipulated rent as made up for the alleged waste, and has instituted proceedings against the landlord to recover damages for delivering to him the premises in a wasted condition, he has a right of action against the outgoing tenant, but it is incumbent on him to prove that the latter committed the acts imputed to him, that the acts were unlawful, and that they have injured the reversion he has leased.

THE facts of the case sufficiently appear in the judgments.

Dornhorst, for appellants.

Wendt, for respondents.

11th November, 1896. LAWRIE, J.—

The plaintiffs allege that they, on the 2nd November, 1894, took a lease of a garden, with entry on the 1st January, 1895; that the defendants, the tenants then in occupation, after the expiration of the plaintiffs' lease and before the term of their occupation commenced, unlawfully and maliciously and contrary to the terms of their lease and to the local custom, plucked half-ripe, unripe, and tender fruits, and damaged the flowers of the trees of the garden, and caused great damage, to wit, Rs. 500.

The defendants pleaded that no cause of action was disclosed against them.

The District Judge sustained that plea and dismissed the action, and hence this appeal.

I am of opinion that it is necessary that the Court should have all the facts admitted or proved before it can decide whether the defendants are or are not liable in damages to the plaintiffs. It is necessary that there should be evidence as to the local custom.

There is no privity of contract between the plaintiffs and the defendants, but the principle *sic utere tuo ut alienum non lædas* applies.

Did the defendants so deal with the garden during the last two months of their lease as to injure the rights of those who lawfully succeed them in occupation?

Whether the plaintiffs' rights were unlawfully damaged will, I think, depend upon whether the defendants acted contrary to the local custom.

I cannot say that as a general rule an incoming tenant has an action against the outgoing tenant for damages for waste, or if the land and houses be not left in good order and repair.

As a general rule I would say that the incoming tenant must look to his landlord to put him in possession of the subject let in such order as the new tenant and the landlord had agreed on.

In the great majority of cases I should say that the landlord is the proper plaintiff to recover damages for waste committed by his tenant. I am not sure that the landlord can assign his right to these damages, so as to put the incoming tenant in a position to sue.

I notice that the plaintiffs here allege that the outgoing tenants' duty, with regard to the state in which they were to leave the garden, was fixed by the lease; if this be so the landlord with

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whom the contract was made is the only party who can sue for a breach of it.

I feel the danger of exposing outgoing tenants to two actions for the same wrong, an action by the landlord and another by the succeeding tenants.

Before deciding that these plaintiffs cannot recover damages the Court must know the facts and the custom : it will then be able to determine to whom the wrong was done.

I would set aside the dismissal of the action and remit for trial.

The appellants are entitled to the costs of this appeal.

WITHERS, J.—

On the 21st November, 1894, the owner of certain premises signed a contract of lease with the plaintiffs for a term of two years, to take effect from the 1st January, 1895.

The defendants, of whom the first and second held the premises under a lease from the owner, which expired on the 31st December, 1894, unlawfully and contrary to the terms of the lease to the first two defendants, plucked between the 21st November and the 31st December, 1894, half-ripe, unripe, and tender fruits, and further damaged the flowers of the trees of the said garden. It is further alleged that by such unlawful acts the value of the said leasehold premises was depreciated to the plaintiffs' damage in an amount estimated at Rs. 500.

On this question of law the Judge has decided against the plaintiffs. Two decisions were cited to him. The earlier decision is reported at page 8 of Rámanáthan's Reports for 1863. That case is exactly in point. I have referred to the Supreme Court Minutes, and it appears that three Judges sat at the hearing of that case in appeal, Sir Edward Creasy, Chief Justice, presiding. The ground of that decision I understand to be this. There was no privity of contract between the outgoing and the incoming tenant, but the waste of the premises, which the incoming tenant had a right to expect to be delivered to him in an unwasted condition, amounted to a delict committed by the outgoing tenant to the injury of the incoming tenant.

It was urged in argument that such waste would be an injury to the landlord, and that it would be competent to him to recover damages for the abuse of his property.

It was further argued that he had the sole right of action for such damages, and that he had not assigned those rights to his new lessees.

But it may I think be argued that it was an injury to the landlord's reversion, and this he had parted with for a term to his new lessees.

The landlord, if his rent is paid him by the old and new lessees, is not injured at all. Are not the new lessees bound to pay him his rent if they accept the lease and enter into enjoyment of the premises ?

Have they any other remedy than a claim against the landlord for depreciation of the premises leased to them in a wasted condition ? Does not a course here adopted avoid a circuity of action ? It certainly does. And are not the new lessees, as a matter of fact, injured by the waste committed by the old lessees ? They certainly are.

The decision of this Court above referred to is consistent with equity, and as it has not been shown to be contrary to law I think we ought to follow it.

The Judge has preferred to follow a decisión of Mr. Justice Clarence, which is not reported, but which is to be found in the Minutes of this Court. It is dated 8th July, 1890, and was pronounced in appeal from a Court of Requests, Mátara, case No. 153. This is the judgment :—

" I am reluctantly compelled to set aside this judgment, what- " ever rights of action the plaintiff lessor may have against this " defendant. Plaintiff himself has none in respect of these acts " done before his lease came into play."

I have had this case sent for, and I find that it is on all fours with this case and the earlier decision of this Court.

The earlier decision was not brought to the attention of Mr. Justice Clarence. As this learned Judge gave a reluctant decision in the opposite sense, I have the less hesitation in pronouncing for the former decision.

I observed above that the plaintiffs have suffered injury by the alleged acts of the defendants. They have only, if they entered into possession of the leased premises under their contract and have not withheld from the landlord so much of the stipulated rent as will make up for the alleged waste, or have not instituted proceedings against him, to recover damages for the premises being delivered to them in a wasted condition.

It is incumbent on the plaintiffs to prove that the defendants committed the acts imputed to them, that the acts were unlawful, and that the acts have injured the reversion which they have leased.

They will also have to prove to what extent the reversion leased to them has been injured. The case, then, will go back with a declaration that the plaintiffs are entitled to recover compensation in money for the injury sustained to the reversion which they have leased if the injurious acts are found to be unlawful as alleged.

The appellants are entitled to their costs in appeal and the costs of the trial of the issue of law found in their favour.