Learned Counsel for the appellants argued that the charge was bad inasmuch as it stated that the tea was found in the possession of the appellants at Upcot Road, Maskeliya, whereas it was in fact found at Glentilt Gap, three miles away from Maskeliya. If this had been the only infirmity in the charge I should have ignored it as a mere irregularity. The other considerations which I have already adverted to leave me with no option but to interfere in this case. I would, therefore, set aside the conviction and sentence and remit the case for trial *de novo* before another Magistrate.

I trust that the prosecution will avail itself of the services of a pleader to draft a fresh report under section 148 (1) (*b*) of the Criminal Procedure Code on which a proper charge could be based and also to lead evidence. The absence of a pleader for the prosecution at the trial already held had apparently compelled the learned Magistrate to examine the appellants at some length after they had been cross-examined by the Police Sergeant, himself a witness, who conducted the prosecution.

Fresh trial ordered.

1949 *Present :* **Nagalingam J.**

PERERA, Appellant, *and* JANSZ, Respondent

S. C. 65—C. R. Colombo, 14,637

Landlord and tenant—Notice to quit—Incorrect assessment number assigned to premises—Premises otherwise accurately described—Validity of notice.

A notice to quit given by a landlord to his tenant referred to the premises in question by an incorrect assessment number. The tenant, however, could have had no misgiving as regards the particular premises which he was asked to quit.

Held, that, in the circumstances, the maxim *falsa demonstratio non nocet* applied and that the notice to quit was valid.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

H. W. Jayewardene, for defendant appellant.

E. B. Wikramanayake, K.C., with *M. M. Kumarakulasingham*, for plaintiff respondent.

Cur. adv. vult.

December 5, 1949. NAGALINGAM J.—

This is a tenant's appeal against a judgment directing his eviction from the premises occupied by him. Two points have been urged on this appeal, firstly, that the notice served on the tenant is insufficient

in law to terminate his tenancy and, secondly, that having regard to the provisions of the Rent Restriction Act it cannot be said that the premises are reasonably required by the landlord for the purpose of his trade or business.

The first point taken is based on the incorrect assessment number assigned to the premises by the plaintiff. The correct assessment number of the portion of the premises occupied by the defendant is admittedly 127, Galle Road. In the notice, however, the title is set out as premises No. 127/1, Galle Road, Wellawatte. There is evidence which shows that, prior to 1948, 127/1 was the number assigned to a part of the rear portion of the building, the front portion of which was occupied by the defendant, but that in 1927 that number was removed from the assessment registers as the portion to which that number was assigned was included in the adjoining premises No. 135 and treated as part of those premises. At the date, therefore, when notice was served on the defendant terminating his tenancy, there was in fact no premises bearing assessment No. 127/1, Galle Road, Wellawatte. In fact the defendant had been written a letter by the landlord in which the correct number was quoted, namely, 127, Galle Road. Although in the notice to quit, D1, the incorrect assessment number had been quoted, the contents, however, did not refer specifically to the premises No. 127/1, but required the defendant " to quit and deliver over peaceful possession of the premises now occupied by you". The tenant, therefore, could have had no misgiving as regards the particular premises which he was asked to quit. This is a case where the maxim, *falsa demonstratio non nocet* would apply. It has not been suggested that the tenant was in any way misled or inconvenienced as a result of the incorrect number quoted by the plaintiff's proctor in his notice.

A similar question appears to have arisen under the English Law where premises known as " Bricklayer's Arms " were incorrectly referred to as " Waterman's Arms," and the situation was set out incorrectly as in the parish of D instead of in the parish of H. It is true, however, that the premises were otherwise fully and accurately described. It was held that the notice was sufficient to terminate the tenancy. See *Doe d. Armstrong v. Wilkinson* [1].

[His Lordship then upheld the finding of the Commissioner that the premises were reasonably required by the landlord for the purpose of his trade or business, and dismissed the appeal with costs.]

Appeal dismissed.

[1] *(1840) 12 A. & E. 743.*