

1895.  
April 10.

WIJERATNE v. HENDRICK.

C. R., Colombo, 8,453.

*Landlord and tenant—Monthly tenant and tenant for a term of years—  
Right of notarial lessee to demand rent from monthly tenant  
under the landlord—Want of priority of contract by attornment or  
assignment.*

Defendant was a monthly tenant of R, paying him ground rent for occupation of a house built on a garden belonging to R. R let the whole garden to plaintiff on a notarial lease for a term of years—*Held*, that on the strength only of the lease plaintiff could not maintain an action against defendant for ground rent.

Defendant will not be liable except by attornment to plaintiff, or by express assignment to plaintiff by R of the benefit of his contract with defendant, and due notice of such assignment to defendant.

IN this case, while the defendant was under contract to pay one Laity Ramanaden a monthly ground rent for occupation of a house built on his garden, the plaintiff took the whole garden on a notarial lease from Ramanaden for a term of years, and sued the defendant for ground rent for some months after its execution. The defendant pleaded that he was not liable, as there was no contract between him and the plaintiff to pay such rent, and that he was liable to pay rent to Ramanaden only. The Commissioner gave judgment for plaintiff. On appeal by defendant—

*Wendt*, for appellant.

*Sampayo*, for respondent.

10th April, 1895. WITHERS, J.—

I am quite with the Commissioner when he decides against the defendant on the issue as to whether he has up to the 1st January, 1894, been paying the ground rent of No. 42 to plaintiff's lessor, Laity Ramanaden.

But in the issue whether defendant is liable to pay the plaintiff as Ramanaden's lessee a rent of Re. 1 a month from the 1st January, 1894, to the 1st October, 1894, I am unable to concur when he pronounces the defendant to be liable to pay plaintiff the rent now demanded. For I cannot discover under what contract, express or implied, the defendant is bound to pay plaintiff this money. It is clearly under no express contract of lease with the plaintiff.

At the date of plaintiff's lease defendant, as the plaintiff alleged, was a monthly tenant of Laity Ramanaden. As long as that contract subsisted Ramanaden could not lease to the plaintiff. He could of course assign to the plaintiff the benefit of his lease with the defendant, who, on notice of that assignment,

if he continued to occupy the premises, would be obliged to pay rent to the plaintiff. Again, defendant, in consideration of Ramanaden's releasing him from future payment of rent, and of the plaintiff continuing to let him enjoy the premises on the same terms as Ramanaden, could bind himself to attorn to the plaintiff. There is no allegation or proof of attornment however.

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It is alleged in the plaint that on the 2nd April Ramanaden required the defendant to pay ground rent to plaintiff for No. 42, but it does not say that defendant undertook to do as he was required.

Except under such an attornment as I referred to above, or under an assignment by Ramanaden of his contract of tenancy with the defendant with notice, I fail to see how this claim can be sustained.

Mr. Sampayo argued that the lease from Ramanaden to plaintiff was in the nature of an assignment, and he relied on the provision that " Plaintiff, &c., shall recover as ground rent a sum not exceeding Rs. 2 per month during the said term from each of the said " houses," including 42 ; but it is clear that this is not assignment of the ground rent : the *habendum* is an ordinary lease and not the assignment of a current lease.

Then, the case is embarrassed by the apparent existence, if not subsistence, of a prior lease from Ramanaden to the plaintiff's brother (since deceased) of the same premises but I need not enlarge upon this. Suffice it to say that in my opinion plaintiff has failed to sustain any obligation on defendant's part to pay him ground rent for 42, and I accordingly dismiss his action.

In view, however, of the nature of the defence, I make no order as to costs.

Judgment set aside and plaintiff's claim dismissed.

