1939 *Present :* **Soertsz S.P.J. and de Kretser J.**

HANEEF *v.* DINGIRI AMMA.

280—D. C. Kandy, 48,754.

Lease—Misrepresentation regarding extent of land—Claim for damages by lessee.

Innocent misrepresentation on the part of a lessor with respect to the extent of the land leased does not entitle the lessee to claim damages.

Innocent misrepresentation may be a ground for rescinding a contract or refusing to perform it.

APPEAL from a judgment of the District Judge of Kandy.

H. V. Perera, K.C. (with him *F. C. W. VanGeyzel*), for plaintiff, appellant.

E. F. N. Gratiaen, for defendants, respondents.

Cur. adv. vult.

March 29, 1939. DE KRETSER J.—

The defendants leased to the plaintiff for a period of three years with the option of renewal for a further period of two years and at the sum of Rs. 400 a year seven allotments of land. The first and seventh of these allotments are parts of one land called Polgodawatta described as being 6 acres and 2 perches in extent.

The second, third, fourth and fifth allotments seemed to be parts of a land called Oligodapitiyahena. All of these allotments are described in paddy sowing extents and in addition the fifth land is stated to be 7 acres 1 rood and 4 perches in extent.

We were told that 1 pela was equivalent to ½ an acre. An amunam is usually 4 pelas; 2 amunams would therefore be 8 pelas or 4 acres. How the fifth named land was described to be 2 amunams or 7 acres 1 rood and 4 perches cannot be understood except perhaps on the footing that somebody confused the Sinhalese for *four* and *seven* which are very much alike.

The sixth named land was called Galagodahena *alias* watta and was described as being 2 acres 1 rood and 30 perches in extent.

Adopting these measurements, one gets at the most 16 acres 2 roods and 36 perches for all the lots excepting lot 4 which is described as being 6 lahas in extent.

Adopting a generous computation of ⅓ of an acre for this lot one gets 17 acres and 9 perches, but if the extent of the fifth land be taken in amunams, it would be about 4 acres and at least a deduction of 3 acres must be made. The result would be roughly 14 acres.

Before taking the lease the plaintiff inspected the premises and considered what extents they would be. The seven allotments seem to have been put together at some time as one property.

The plaintiff says that at the Notary's office a calculation was made of the extent and it came to 17 acres and 4 perches. According to the plaintiff, he took his lease calculating on an acreage basis and he says

he calculated at Rs. 22.50 an acre; but this does not work out at Rs. 400, and according to his own evidence the acreage had not been worked out till they met at the Notary's office, by which time presumably the terms of the lease had been agreed upon.

The lease provided for the possibility of one acre of Polgodawatte being required for the benefit of Government, and this was explained to mean that the land was required for a cemetery. If required, the lessee was to give it up and no provision was made for his being compensated for the loss.

Counsel for the appellant was inclined to think therefore that the rent had really been calculated for 16 acres at Rs. 25 an acre. This brought him into line with P1 and enable him to strengthen his argument that the lease had been given *ad quantitatem* and not *ad corpus*. But P1 is rather a complaint that the lessor had been paid for 16 acres and not for 17, and the true position may be that after the lease had been executed the plaintiff made a deduction for an acre which he was going to lose. On this and on many other points the case has been starved of evidence.

Whether it be 16 or 17 acres which he took on lease, the plaintiff applied for coupons for 18 acres which apparently he thought the property might extend to. If his claim was not a dishonest one, then acreage played a part only when it suited his purpose and he had really taken the whole property as it stood.

The defendant was the first person to complain. Within six months he was complaining that the plaintiff had failed to attend to the property as he had agreed to do. He followed this up by suing the plaintiff for a cancellation of the lease and damages for neglecting the premises. A commission seems to have issued to Mr. Northway to report on the condition of the land, and his report showed that there was a very large number of vacancies, a large proportion of which had come into existence during the lease. He reported there had been neglect in other respects as well.

On April 27, 1936, besides agreeing on the commission provision was made for the plaintiff being allowed to continue the lease. It was the plaintiff who was anxious to continue the lease. The three years originally agreed upon ended on July 5, 1936. There was no obligation on the part of the plaintiff to renew the lease. but he was anxious to do so. He got another opportunity on September 20, 1927, when it was left to him to deposit the rent and so continue the lease or have it cancelled. and he chose to continue the lease.

Long before this the Tea Controller had stepped in and had reduced the plaintiff's assessment. and for this purpose surveys had been made, and plaintiff, well knowing the extents of the different allotments went on with his contract.

He now brings this case alleging that the defendant lessor had represented to him that the acreage was 17 acres and 4 perches whereas he received coupons for 10 acres only, and claiming that the defendant should make good his loss because he had been induced to take the lease on the defendants' representation as to the acreage.

He did not claim a reduction of the price, nor a cancellation of the lease, but he claimed damages.

In the trial Court attention was concentrated on the single question as to whether the lease had been *ad corpus* or *ad quantitatem* and the District Judge held that it had been *ad corpus.*

Before us it was admitted that any misrepresentation which the defendant had made had been an innocent one. If that be so—and there is no reason to think it was not—then the plaintiff has no cause of action for damages.

Nathan (vol. II., page 626) says: " . . . . But if a man makes a representation in the honest belief that it is true, and there is reasonable ground for such belief, a fraudulent intent will not be imputed to him, although the representation may turn out to be false. In other words, it may be laid down that misrepresentation not amounting to fraud, that is, misrepresentation which is honest and not reckless, will not render the party making it liable to the legal consequences of fraud, although he may be liable for misrepresentation ".

At page 633 he says: " The legal consequences of fraud are to entitle the party defrauded either to rescind the contract (*restitutio in integrum*) or to claim damages in tort (*delict*). But misrepresentation which is material to the contract, that is, which induced it, although it be innocent, may entitle the person misled by it to rescind the contract or to refuse to perform it ".

Therefore innocent misrepresentation may be a ground for rescinding a contract or refusing to perform it, but it is only a false representation amounting to fraud which entitles a person to claim damages.

Even in the case of fraud " the action will not lie where the party who has suffered the fraud elects, notwithstanding the fraud, to abide by the contract, in the belief that the contract will be advantageous to him. In such a case he is regarded as ratifying the fraudulent contract following the maxim *quisque juri pro se introducto renunciare potest* " (vide page 630).

Lee, in his *Introduction to Roman-Dutch Law,* states at page 236 that even the right given to sue for the rescission of a contract induced by innocent misrepresentation is a modern development, due to the influence of English practice. He agrees with Nathan's statement of the law.

It will thus be seen the plaintiff is doubly out of Court, for not only was the misrepresentation, if any, innocent, but knowing of the same he elected to abide by the contract.

In fact, however, it seems to me very doubtful that the plaintiff has proved that he did not obtain the extent leased to him. What he has done is to attempt to prove for what acreage he received coupons and then to ask the Court to infer that that acreage covered the hole of the property leased, and that the defendant made a representation to him not only as to acreage but that the acreage represented would be available. for assessment under the Tea Control Ordinance. The two things are not the same.

He admitted the Tea Controller made deduction for " the road and like things ", meaning presumably buildings and vacant spaces. His evidence was not scrutinized carefully enough in the lower Court. At one stage he made the statement that as a result of the surveys made at the instance of the Tea Control Board the extent was found to be 11 acres and 4 perches and he produced three plans marked P7 to P9.

P7 cannot be identified as any one of the allotments leased. If it does refer to one of the allotments, there must be some confusion in the names and the extents must be added either to Polgodawatta or to Oligodapitiyahena.

According to him that plan showed that Galgodapitiya was 3 roods and 10 perches, but he also produced letter P10 and alleged that it dealt with Galgodapitiya and this letter gives the extent as 2 acres 1 rood and 10 perches—a difference of only 20 perches from the extent given in the lease, and this may have been due to "roads and like things". If therefore one substitutes 2 acres 1 rood and 10 perches for 3 roods and 10 perches, one must add to the extent of 11 acres and 4 perches, 1 acre and 2 roods which makes a total of 12 acres 2 roods and 4 perches. He says that P12 refers to Polgodawatta, but while that letter refers to a land of 4 acres and like P10 is addressed to one Jamaldeen, the plan P9 shows an extent of 4 acres 2 roods and 11 perches.

The letters give numbers to the allotments ranging from 13,691 to 13,697, but the letters actually produced refer only to three such allotments. One knows nothing about the remaining four.

P11 states that some allotments had been previously assessed at being 9 acres in extent and had been reduced to 3 acres 3 roods and 18 perches. It is said that this letter refers to Oligodapitiyahena, but whether it refers to all the four blocks of that name or to one is not clear, and it will be remembered with regard to Oligodapitiyahena that any representation that was made, was made with reference to paddy sowing extents and not with regard to acreage.

The plaintiff's case fails entirely and the appeal will be dismissed with costs.

SOERTSZ S.P.J.—I agree.

Appeal dismissed.