

1948

*Present : Wijeyewardene S.P.J.*ALIKANU, Appellant, *and* MARIKAR, Respondent.*S. C. 188—C. R. Colombo, 9,787.**Rent Restriction Ordinance—Notice to quit by tenant—Agreement to deliver possession—Ordinance No. 60 of 1942—Section 8 (b).*

An agreement by a tenant to deliver possession or determine the tenancy by a certain date is not such a notice to quit as is contemplated by section 8 (b) of the Rent Restriction Ordinance.

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

H. W. Tambiah, for defendant, appellant.*M. S. Abdulla*, for plaintiff, respondent.*Cur. adv. vult.*

November 29, 1948. WIJEYWARDENE S.P.J.—

The defendant was a tenant under the plaintiff of the properties bearing assessment Nos. 126 and 128, Bankshall Street. In 1947, the plaintiff asked the defendant to quit both the properties. The defendant gave

¹ (1893) 3 *Ceylon Law Reports* 91.² (1926) 28 *N. L. R.* 314.

plaintiff quiet possession of No. 126 and gave a writing P1 with regard to No. 128 at the request of the plaintiff. That writing reads :—

“ I (the tenant) do hereby engage from (the landlord) the premises No. 128, Bankshall Street, Colombo, as from the 1st day of September, 1947, for a period of two months.

And I have deposited with the landlord Rs. 150 to be held by him and accounted for at the termination of the tenancy on my redelivery of quiet and vacant possession of the premises to my landlord on the 31.10.47.

And I further agree to deliver or cause to be delivered quiet and vacant possession of the said premises on the 31.10.47 without invoking the benefits of the provisions of the Rent Restriction Ordinance or provisions of any other Ordinance or Ordinances restricting the right of landlord to collect rent or to sue the tenant in ejection.

And I do hereby give notice that I will quit on the 31.10.47 and deliver or cause to be delivered quiet and vacant possession as aforesaid and the notice hereby given is deemed to be a notice under section 8 (a) of the Rent Restriction Ordinance, No. 60 of 1942, now in force.

And I shall pay the monthly rental of Rs. 75 on or before the 1st day of each and every month.

In the event of one month's rent being in arrear and unpaid I shall immediately quit and deliver peaceful possession of the said premises to my landlord his agent or nominee without any dispute whatever.”

The question to be decided on this appeal is whether P1 could be regarded as a notice to quit as contemplated by section 8 (a) of the Rent Restriction Ordinance, No. 60 of 1942. Reading the document as a whole and bearing in mind the fact that it was given at the plaintiff's request I have reached the decision that P1 is merely an agreement embodying the terms on which the plaintiff was willing to permit the defendant to continue in occupation of No. 128. No doubt, the defendant has said expressly that P1 should be regarded as a notice to quit under section 8 (a) of the Rent Restriction Ordinance. But that cannot alter the true nature of the document. To quote the words of Scrutton L.J. in *Barton v. Fincham*¹, a Court should be slow “ to hold out any encouragement that a landlord may make it a term of all his lettings ” that section 8 of the Ordinance shall not apply.

The appellant's Counsel cited *De Vries v. Sparks*². That is a case decided under section 5 (1) (c) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by the Act of 1923. It is true that the English Act differs from our Ordinance in requiring, in addition to a notice to quit given by a tenant, proof of some serious prejudice of a particular nature that would be caused to the landlord, if the plaintiff failed to quit the premises. But, in spite of that difference I think the case of *De Vries v. Sparks* (*supra*) is an authority for the proposition that “ a notice to quit and an agreement to surrender or determine a tenancy are essentially different in their nature ”.

I allow the appeal and set aside the decree entered by the Commissioner. The appellant will have the costs here and in the Court below.

Appeal allowed.

¹ (1921) 2 K. B. 291.

² (1927) 137 Law Times Reports 441.