1948 *Present :* **Nagalingam J.**

CADER, Appellant, *and* NICHOLAS APPUHAMY, Respondent

S. C. 147—C. R. Colombo, 10,874

Landlord and tenant—Agreement with owner to collect rent—Attornment by tenant—Termination of agreement—Right of tenant to refuse payment to agent—Estoppel—Evidence Ordinance, Section 116.

Plaintiff entered into an agreement with the owner of the premises in question to possess and manage her property and collect her rents and the defendant, in consequence, attorned to the plaintiff and paid him the rent. Thereafter the owner determined the agreement and notified the defendant of that fact.

Held, that the defendant was not liable thereafter to pay rent to the plaintiff and was not estopped under section 116 of the Evidence Ordinance from showing that the plaintiff had since the attornment lost his title.

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

E. B. Wikramanayake, K.C., with *S. P. Wijewickreme* and *S. Kulatilleke*, for plaintiff, appellant.

M. M. K. Subramaniam, with *C. Weeramantry*, for defendant, respondent.

Cur. adv. vult.

November 11, 1948. NAGALINGAM J.—

This is an appeal from a judgment of the Commissioner of Requests, Colombo, dismissing the plaintiff's action for rent and ejectment against the defendant. It would appear that the premises occupied by the defendant is one of several tenements the admitted owner of which is Noorul Hatheeka. By an agreement (P1) of 1948 entered into between

Noorul Hatheeka and the plaintiff, it was *inter alia* agreed that the plaintiff who had been entrusted by Noorul Hatheeka with the possession and management of the entire premises should continue to occupy and manage the said premises for a period of three years. The plaintiff in pursuance of the agreement P1 obtained from the defendant a " tenancy agreement " P2 dated August 8, 1947. Noorul Hatheeka purported to cancel the agreement P1 and notified the defendant among others not to pay rent to the plaintiff by letter P1 dated November 15, 1947. The defendant refused to pay rent thereafter and the sequel is the present action which has been instituted by the plaintiff claiming not only arrears of rent but also ejectment after formal notice to quit had been given to the defendant.

The contention on behalf of the defendant is that the plaintiff was at no time a lessee of the premises which the plaintiff claimed to be. The defendant urges that at best the document P1 is an authority conferred on the defendant by Noorul Hatheeka to collect rents on her behalf and that on the cancellation by Noorul Hatheeka of the authority conferred on the plaintiff the latter ceased to have any rights to demand or recover rents or even to assert any right to terminate the tenancy of the defendant.

The dispute between the parties centres round the question as to what is the true legal relationship between the parties to the agreement P1. On the face of the document it does not claim or purport to be a lease by Noorul Hatheeka to the plaintiff. An indenture of lease is an instrument which is very well known not only to legal practitioners but to land owners as well. The more one considers the document P1 the more is one struck by the studied attempt to refrain from using any words from which the relationship of lessor and lessee could be inferred. The usual terms whereby the owner of property lets and demises are wholly wanting. The terms lessor and lessee are not used. The premises are not demised, no rent is reserved as such, nor is there prohibition against subletting or assignment, the ordinary concomitants of a lease. It is also significant that though the agreement says the plaintiff is to be *regarded* as the landlord in respect of the tenement and has also been conferred express power to sue for arrears of rents and damages in his own name, no authority or power has been conferred on him to sue the tenants in ejectment, the necessary and essential right that would devolve on a lessee to whom premises are demised. On the other hand, very many of the adjuncts of a lease in substance are incorporated in the document. The plaintiff is to have the control and management and collect the rents of the houses for a term of three years commencing from February 1, 1947. It further provides that the plaintiff " shall be regarded as the landlord by the tenants of the houses and he is to have full power to collect rents and sue for all arrears of rents and damages in his own name." The plaintiff is to pay a sum of Rs. 500 to Noorul Hatheeka as collection of rents—be it noted not as rent. Further, the plaintiff was not to give " the business of collection and control to any other person on a similar agreement."

It will be observed that these clauses to which I have drawn attention are easily identifiable with the recognised counterparts in an ordinary indenture of lease. While it is true that the Court would not be governed

in the construction of a document by the mere label or name attached by parties to it, where the parties have deliberately chosen phraseology with a view to prevent well understood legal consequences which would otherwise result from attaching to the instrument, it becomes incumbent upon the Court to ascertain from the terms of the document as best it can the legal relationship intended to be created by the document. From what I have already said it would be manifest that Noorul Hatheeka and the plaintiff were determined that the ordinary relationship of lessor and lessee was not to be created between them. Although the terms "possession and management" and the right to continue "to collect and manage" have been used in the recitals, what may be termed the operative clauses of the document are precise and exact language has been used by the draftsman to indicate the extent of the right conferred on the plaintiff by Noorul Hatheeka. The plaintiff is to have "full control and management" and collect all the rents of the houses. These words coupled with the obligation or duty cast on the plaintiff that he should pay "as collection of rents only a sum of Rs. 500" to Noorul Hatheeka, to my mind establish clearly that nothing more than the relationship of principal and agent was to be created between the parties. If, therefore, the plaintiff was merely an agent of Noorul Hatheeka to manage the property for her and to collect the rents on her behalf, it would follow that on the determination of the agency the right of the plaintiff to manage or to recover rents would cease.

An argument was, however, put forward that even if the agreement P1 be considered as constituting nothing more than an agency between the parties, nevertheless, the agency being one coupled with interest, the authority conferrred on the plaintiff as agent was irrevocable. It is true that where the agency is created for the benefit of and for securing to the agent an interest or right, the agency would be irrevocable. A familiar instance of the application of this principle would be a warrant to confess judgment. Once the mortgagor executes a warrant to confess judgment which is in reality a proxy in favour of a proctor, so long as the mortgage remains, the mortgagor would have no right to cancel the warrant, and any attempt by him to do so would be regarded as nugatory. The question here, however, is whether the agreement P1 is one which was executed by the principal in favour of the agent in order to secure to the latter rights or benefits. That the agreement was executed primarily for the benefit of the principal and not in the interests of the agent is obvious on a perusal of the document. The object of the agreement was to enable the owner of the land to obtain the income of the premises herself by employing an agent to attend to the collection of the rents on her behalf and for the services the agent was to perform, he was allowed certain remuneration which consisted in his appropriation of the entirety of the collection from the tenements less the sum of Rs. 500 which he was obliged to pay to the principal and in order to ensure that the agent should perform faithfully his part of the covenant to make payment of the sum of Rs. 500 out of the collections, he was called upon to deposit a sum of Rs. 2,500 and he was permitted to recoup himself this sum by appropriating a sum of Rs. 50 every month out of the Rs. 500 he had to pay to the principal.

Had the object of the agreement in the main been to secure to the plaintiff the recovery of the sum he had advanced, as would have been the case where a lender of money is given authority to recoup the debt by collecting the rents of the premises, then clearly such an agency or authority conferred would be irrevocable.

In the case of *Taplin v. Florence*[1] it was held that the authority given to an auctioneer to sell goods even after he had incurred expenses in respect of the sale was not irrevocable by reason of his lien on the goods for the expenses incurred by him. I do not therefore think that the agreement P1 is one which was irrevocable.

There remains, however, the question as to what is the effect of the tenancy agreement P2 signed by the defendant in favour of the plaintiff. There is little doubt that that document created the relationship of landlord and tenant betweeen the plaintiff and the defendant. It is common ground that the plaintiff did not let the defendant into occupation of the premises. The defendant was already in occupation under the owner, Noorul Hatheeka. Without going into the difficult question as to whether the tenant who has not been placed in occupation is estopped from denying the title of the person to whom he has been subsequently paying rent, it is sufficient to say that the estoppel of a tenant as enunciated in section 116 of the Evidence Ordinance only bars the tenant from denying that the landlord had at the beginning of the tenancy a title to the property. It does not, however, prevent the tenant from showing that the landlord has lost title since.

In this case it has been shown that the plaintiff's right to recover rent or to continue to assert his rights as landlord had ceased after the cancellation of his authority by Noorul Hatheeka.

The plaintiff, therefore, has no right to institute this action either to recover the rent or to claim judgment. For these reasons I would affirm the judgment of the learned Commissioner with costs.

Appeal dismissed.

[1] *(1851) 10 Q. B. 744.*