

1953

*Present : Gratiaen J.*

MRS. E. D. HENSMAN, Appellant, and MRS. MARY  
STEPHEN *et al.*, Respondents

*S. C. 198—C. R. Colombo, 34,496*

*Rent Restriction Act, No. 29 of 1948—Death of tenant—Continuance of tenancy—  
Scope of Section 18.*

Where a monthly tenant, who has been given due notice to quit residential premises to which the Rent Restriction Act applies, dies during the pendency of an action for ejectment instituted against him by the landlord, his widow and family are no longer entitled to occupy the premises as against the landlord. Section 18 of the Rent Restriction Act, which provides for continuance of tenancy upon the death of a tenant, has no application where the original contractual tenancy had already been determined according to the common law so that all that the former "tenant" thereafter enjoyed was a statutory protection which was personal to him.

**A**PPEAL from a judgment of the Court of Requests, Colombo.

*H. W. Jayewardene*, with *D. R. P. Goonetilleke*, for the plaintiff appellant.

*H. W. Tambiah*, for the substituted defendants respondents.

*Cur. adv. vult.*

October 12, 1953. GRATIAEN J.—

This appeal involves a consideration of the scope of section 18 of the Rent Restriction Act, No. 29 of 1948.

The appellant has let certain residential premises, to which the Act admittedly applies, on a monthly tenancy to S. M. Stephen. She filed action against him for ejectment on 8th August, 1951, having previously

<sup>1</sup> (1937) 39 N. L. R. 241.

<sup>2</sup> (1938) 39 N. L. R. 433.

given due notice terminating the contractual tenancy, and she claimed that he was not entitled to statutory protection from ejection because, *inter alia*, the premises were reasonably required as a residence for herself and her family within the meaning of section 13 (1) (c).

S. M. Stephen died on 24th December, 1951, pending the action for ejection, but his widow (who is the respondent to the present appeal) purported on 8th January, 1952, to serve a notice on the appellant under section 18 (2) (a) to the effect that she proposed, as "the surviving spouse of the deceased tenant", to continue in occupation of the premises as tenant. There can be no doubt that, if the section applies to a case of this nature, the respondent would have become, by operation of the Act, a substituted tenant of the premises with effect from 1st January, 1952. In that event, the appellant would not be entitled to eject her or the other members of her household on the footing that they had ceased to enjoy rights of occupation under the previous "tenant" (S. M. Stephen).

The learned Commissioner of Requests has taken the view that the respondent was entitled to avail herself of the provisions of section 18 of the Act. The appellant contends, however, that section 18 does not apply because, in the present case, S. M. Stephen had in truth ceased to be a "tenant" long before the respondent had purported to invoke section 18.

In dealing with this issue, it is necessary to remind oneself of the extent to which the Act interferes with the common law rights of a landlord *vis a vis* his contractual tenant. The provisions of the Act "do not prevent an owner from terminating the tenancy of his tenant in the ordinary way; what they do is to give the person *who has been tenant* a right (in certain specified circumstances) to remain in possession after the tenancy has gone"—*Baker v. Turner*<sup>1</sup>. It follows, therefore, that the contractual monthly tenancy between the appellant and S. M. Stephen was lawfully determined by due notice at a date long prior to his death, but that, although he ceased to be a tenant thereafter, he still enjoyed "a purely personal right" to remain in occupation of the premises against the wish of his landlord until an order for his ejection was made by a Court of law. In other words, he could not be turned out of possession so long as he complied with the provisions of the Act and until the landlord could establish against him that this statutory protection had been forfeited for one or other of the reasons specified in section 13. *Keeves v. Dean*<sup>2</sup>. In that decision Bankes L. J. emphasised the point that such statutory protection, being of a purely personal nature, cannot be passed on to another person *unless the statute expressly authorises him to do so*, and that, subject to this qualification, "must cease the moment he parts with possession or *dies*". That is the limit of what Evershed M. R. describes as the "statutory right of irremovability" enjoyed by a person whose contractual rights as a tenant have been previously determined under the common law. *Marcroft Wagons v. Smith*<sup>3</sup>.

<sup>1</sup> (1950) A. C. 401 at 436.

<sup>2</sup> (1924) 1 K. B. 685.

<sup>3</sup> (1951) 2 K. B. 496 at 501.

Apart from section 18 whose scope I shall later examine, the widow of a tenant (under a subsisting contract of tenancy) or of a so-called "statutory tenant" (who still enjoys some statutory protection notwithstanding the termination of the contractual tenancy) is conceded no special privileges under the local enactment. In England, on the other hand, section 12 (1) (g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 defines the term "tenant" so as to *include* a man's widow or, in certain circumstances, his other relations thereby conferring on her or them (as the case may be) the privileges of what *Megarry (Rent Acts, 7th Ed., p. 211)* calls "a transmitted statutory tenancy". In such cases, the widow or other relation enjoys, *by succession*, the right to continue *in the same tenancy* (i.e., either contractual or "statutory") with its original advantages and disadvantages unaltered. *Bolsover Colliery Co., Ltd. v. Abbot* <sup>1</sup>. If the deceased person was only a "statutory tenant" at the time of his death, his successor would also become a statutory tenant "under the same tenancy by virtue of which the original statutory tenant was in possession"—*American Economic Laundry, Ltd. v. Little* <sup>2</sup>. By this means, *either* the contractual rights of the deceased person under a tenancy which has not been determined under the common law or the statutory protection enjoyed by him if his contractual rights no longer exist would be transmitted to the succeeding "tenant" who steps into his shoes by virtue of the Act.

The learned Commissioner appears to have assumed that the operation of section 18 of the Rent Restriction Act, No. 29 of 1948, confers upon the respondent, as Stephen's widow, the same rights as she would have had if section 12 (1) (g) of the English Act had applied to the case. He accordingly decided that, as the respondent had exercised her option under section 18, she still enjoyed her deceased husband's statutory protection under section 13. In this view of the matter, he held that a decree for ejectment would cause greater hardship to the respondent than a refusal of such a decree would cause to the appellant. The appellant's case was therefore dismissed with costs.

In my view, the scope of section 18 (2) (a) of the Act is entirely different. It confers on the widow of a deceased "tenant" the option of compelling the landlord to recognise her as a *new tenant* as from a point of time which commences after (but not immediately after) the date of her husband's death. If the landlord protests, the jurisdiction of the Board under section 18 (3) is restricted to a consideration of whether or not the widow was in truth a person "entitled to give the notice for which provision had been made" under section 18 (2). In other words, the Board has no discretion to refuse a widow's claim to a new tenancy by reference to any other considerations (such as those of convenience or desirability). And, if that new tenancy be established, it follows that the new tenant's rights would be quite unaffected by the events which have gone before—for instance, the earlier tenant may have been in arrears of rent; he may have caused the premises to have deteriorated by neglect, or have used them for an illegal or an immoral purpose; all

<sup>1</sup> (1946) 1 K. B. 8.

<sup>2</sup> (1951) 1 K. B. 400 at 406.

that would be beside the point—because the new tenant would nevertheless be vested with the status of a tenant enjoying *in her own right* the superadded protection of the Act.

Section 18, in my opinion, was not intended to produce any such startling results. It only permits the widow or relation of a deceased “tenant” to claim a fresh tenancy if the latter was a “tenant” in the strict sense of the term—i.e., *if there was still subsisting at the time of the death a contractual tenancy between himself and the landlord.*

I agree with Mr. Thambiah that, in section 13 of the Act, the word “tenant” is wide enough in that particular context to include a person whose contractual tenancy has already been determined. I agree also that, as a general rule, the same meaning should be implied by the use of the same expression in a statute. But this is not a rigid rule of interpretation. There are other sections, for instance, in which a “tenant” clearly refers only to a *contractual* tenant, and I am perfectly satisfied that it is in this sense that the word was used in section 18. Section 18 has no application where the original contractual tenancy had already been determined according to the common law, so that all that the former “tenant” thereafter enjoys is a statutory protection which is personal to him and dies with him. That was the position when Stephen died in the case with which this appeal is concerned. I would therefore hold that the respondent and her family were no longer entitled to occupy the premises as against the appellant.

I set aside the judgment under appeal, and direct that judgment be entered as prayed for in the petition of appeal. Having regard, however, to the difficulties in which the respondent and her children have been placed, I would direct that writ of ejectment should not issue until after 31st January, 1954.

*Appeal allowed.*

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