1953 *Present :* **Nagalingam A.C.J.**

M. A. PONNIAH, Appellant, *and* R. SELLAN, Respondent

S. C. 20—C. R. Anuradhapura, 4,792

Jurisdiction—Trespass by licensee—Action in ejectment—Valuation thereof—Test to be applied—Evidence Ordinance, s. 116—Courts Ordinance, s. 75.

The value which should be placed on an action in ejectment instituted by an employer against an overstaying servant or licensee in respect of premises which the latter had been permitted to occupy free of rent is only a nominal value, and not the value of the premises ; if, however, the servant was given a month's notice to quit the premises, the value would be a reasonable amount payable for the use and occupation of the premises.

" The principle that a tenant cannot deny his landlord's title extends to the case of a person coming in by permission as a mere lodger, a servant or other licensee."

APPEAL from a judgment of the Court of Requests, Anuradhapura.

S. J. V. Chelvanayakam, Q.C., with *J. C. Thurairatnam*, for the plaintiff appellant.

E. R. S. R. Coomaraswamy, for the defendant respondent.

Cur. adv. vult.

[1] *(1934) A. I. R. Nagpur 83.* [2] *(1950) A. I. R. Orissa 220.*

October 2, 1953. NAGALINGAM A.C.J.—

What is the proper test to be applied for the valuation of an action instituted by an employer to eject his caretaker or watcher of property from a building permitted to be occupied by the latter during the period of his employment, free of rent, is the problem that arises for determination in this case.

The facts are not in dispute. The plaintiff-appellant employed the defendant-respondent as his caretaker of certain lands on a monthly salary of Rs. 50. On these lands stood a house, a room in which was made available for the occupation of the defendant. The defendant's employment was terminated in early April but the defendant refused to vacate the room. The plaintiff thereupon caused his Proctors to send the defendant a formal letter on 23rd April noticing him to quit and deliver possession of the room on or before 31st May, 1952. The defendant failed to quit the premises and the plaintiff instituted this action in August, 1952. In the plaint, after setting out the relevant facts as stated above, the plaintiff averred not only that he continued to suffer damages at the rate of Rs. 5 a month from the date on which the defendant was asked to quit but also proceeded to value the house. The value he set on the house was Rs. 250.

The plaintiff has brought all the trouble on himself by valuing the house. The defendant denied that the house was worth only Rs. 250 and alleged that it was worth more than Rs. 4,000, and that the Court therefore had no jurisdiction to entertain the action.

Although all the issues that arose between the parties were raised in the case and evidence given by the plaintiff, no evidence was led on behalf of the defendant, but the action was dismissed on the ground that the Court had no jurisdiction inasmuch as the value of the house was over Rs. 300.

A servant is neither a monthly tenant nor a tenant at will. A monthly tenant, as is well known, is one whose tenancy runs from month to month unless previously determined. A tenant at will is a person whose tenancy could be determined at the will of the landlord without any previous notice being given to him ; but both in the case of a monthly tenant and a tenant at will it is important to bear in mind that the foundation of the relationship is based upon an agreement as to the amount of rent payable. It is therefore manifest that a servant who is permitted to occupy a room or house during the period of his employment by his employer free of rent is not entitled to regard himself either as a monthly tenant or as a tenant at will. It is to be noted that the notice given by the plaintiff was one which was appropriate to a case of a monthly tenancy.

The point that arises is, if a servant is neither a monthly tenant nor a tenant at will, then does he on termination of his services become a trespasser of the apartment in his occupation ? Learned Counsel for the respondent contended that he was in the fullest sense of the term a trespasser and that the action against such a person to eject would have to be valued on the basis of the capital value of the premises occupied.

Neither legal precedent nor even the view of any text-book writer was cited in support of the contention. I do not think the proposition is sound.

A servant cannot deny the title of the employer to the apartment of which he was placed in possession by the employer. From the earliest times the view has prevailed that in such circumstances the servant is estopped from questioning the title of the employer.

In *Doe v. Baytup* [1] the principle was laid down that where a person had entered property by leave of the party in possession, such person could not defend an action in ejectment by putting in issue the title, but was bound to deliver up possession of the premises before he could be permitted to contest the title. I have, however, not been able to find any Roman Dutch Law proposition in regard to the position of a servant or licensee nor has counsel been able to assist me in this respect, although a very similar principle underlies the doctrine of *exceptio domini* in the Roman Dutch Law relating to Landlord and Tenant. But it is unnecessary to investigate the position of the Roman Dutch Law, for section 116 of the Evidence Ordinance expressly enacts the law in the sense in which *Doe v. Baytup* (supra) has been decided. The section not only creates an estoppel as between landlord and tenant but goes further and provides :

> " And no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had the title to such possession at the time when such licence was given."

The defendant therefore cannot be permitted to deny the plaintiff's title to the land. In fact the defendant does not in his answer set up title to the room occupied by him, nor did he place any oral evidence from which even an inference could be drawn that he claimed title to or that he disputed the title of the plaintiff ; but on a false issue arising upon the pleadings as to what is the value of the house the case has been decided. In an unreported judgment of this Court [2] E. W. Jayawardene A.J. said :

> " A watcher is usually a monthly paid servant employed by the owner to protect the land and its produce. He can be in no better position than a monthly tenant or a tenant-at-will. He is a mere licensee. The principle that a tenant cannot deny his landlord's title extends to the case of a person coming in by permission as a mere lodger, a servant or other licensee."

Obviously the value of the house is not the test for determining the jurisdiction of the Court. What, then, is the test to be applied ? In the case of a monthly tenant the test is the monthly rent, in the case of an yearly tenant the yearly rent, and in the case of a weekly tenant the weekly rent. But here there is no rent as such and the duration of the occupation is not for any definite term but for an indeterminate period which could be terminated without previous notice, as stated earlier.

[1] *(1835) 3 Ad. & El. 188.*
[2] *S. C. 18/C. R. Colombo 49968, S. C. Min. 1.7.30.*

Could it then be said that no value should be placed on the right claimed by the employer to eject the servant from the premises occupied by him because there is no agreement as to rent or even because the period of occupation is indeterminate? I should say only a nominal value should be placed on such right. But it is unnecessary to decide that question for the purposes of this case, for the plaintiff has signified by his conduct his willingness to treat the defendant as one who is entitled to occupy the premises at least for a month. In such a case although there was no rent fixed, the value of the right would be a reasonable amount payable for the use and occupation of the premises. The plaintiff fixes the amount at Rs. 5 per mensem and claims it by way of damages for the period the defendant has remained in possession of the premises after termination of his occupation.

The test of valuation of the action would therefore be the value of such right, namely Rs. 5 plus the damages claimed up to the date of the institution of action, all of which amount to less than Rs. 300. The Court of Requests, therefore, has jurisdiction. Issue 5 is irrelevant and need not be answered, but issues 1, 2 and 3 must be answered in favour of the plaintiff, and issue 4 in regard to damages at Rs. 5 per mensem.

I would therefore set aside the judgment of the learned Commissioner and enter judgment for plaintiff as prayed for with costs both of appeal and of the lower Court.

Appeal allowed.