1972 *Present:* **Wijayatilake,**

D. THANGIAH, Appellant, *and* M. YOONUS and 2 others, Respondents

S. C. 112/68—C. R. Matale, 15160

Rent Restriction Act (Cap. 274), as amended by Acts Nos. 10 of 1961 and 12 of 1966—Section 12 A (1) (d)—Meaning of "wanton destruction"—Notice to quit—Not necessary in case of wanton destruction.

Plaintiffs let certain premises to the defendant, a hardware merchant, for purposes of his trade. The authorised rent was less than Rs. 100. Subsequently, the tenant removed, without the landlord's permission, a whole window frame from the upstair portion of the premises in order to enable him to stack there a heavy load of galvanised pipes and gunnies. Such heavy articles in which he was trading could not normally be taken up the stairway of the premises.

Held, that the damage caused to the premises by the conduct of the tenant was "wanton destruction" within the meaning of that expression in section 12 A (1) (*d*) of the Rent Restriction Act. "The expression 'wanton damage' or 'wanton destruction' does not rule out a wilful act altogether; what is conspicuous being the senseless nature of the conduct."

Held further, that once section 12 A (1) (*d*) of the Rent Restriction Act applies to a case, it supersedes any rights arising on the tenancy agreement in regard to the period of notice to terminate the tenancy.

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

H. W. Jayawerdene, Q.C., with *P. Somatilakam*, for the defendant-appellant.

C. Ranganathan, Q.C., with *M. S. M. Nazeem*, for the plaintiffs-respondents.

Cur. adv. vult.

January 14, 1972. WIJAYATILAKE, J.—

The plaintiffs let to the defendant, a hardware merchant, for purposes of his trade, the premises bearing No. 526 Trincomalie Street, Matale, on the Agreement P4, the tenancy commencing on 18.2.64. This Agreement provides for a monthly tenancy and one of the conditions is that either party shall give six months' notice of their intention to terminate the tenancy. It also sets out that at the execution of the agreement the tenant has given to the landlord Rs. 2,250 as security and that any wilful damage caused by the tenant shall be paid for by the tenant or in default it shall be deducted out of the said security. Although this Agreement is in writing and signed by Mohamed Yoonus as the landlord with the authority of his two brothers, the 2nd and 3rd plaintiffs, and by the appellant in the presence of two witnesses it is not notarially attested. The authorised rent of the premises in question is less than Rs. 100. The plaintiffs by letter dated 2.12.65 gave the defendant notice to quit and vacate the premises on or before 17.1.66. It may be noted that the tenancy commenced on 18.2.64.

The principal question which has arisen in this Appeal is whether certain damage caused to the premises let amounts to "wanton destruction and damage" as averred in the plaint, and whether such damage falls within the meaning of "wanton destruction or wilful damage" occurring in Section 12A of the Rent Restriction Act 10 of 1961 as amended by Act 12 of 1966.

On the evidence led in this case it is clear that apart from other damage to the premises, such as broken window panes, a window frame had been removed by the tenant from the upstair portion without any intimation to the landlord. The evidence for the plaintiffs is that this appears to have been removed to enable the tenant to manoeuvre the entry of galvanised pipes to the upstair portion with the object of stacking them there as such articles could not possibly be taken up in the normal way up the stairway provided in the premises. It is alleged that the stacking of a heavy load of galvanised pipes and gunnies had resulted in the several cracks to the building.

The tenant sought to explain away the necessity for the removal of the window frame as it had got dislodged on its own; and at a certain stage, when his attention was drawn to the broken window panes it was suggested that this damage in particular was caused by cats! The "cat theory" is so fantastic that one could dismiss it without hesitation. It is worthy of note that at the commencement of the trial the parties agreed to the learned Commissioner of Requests inspecting the premises and making an order on this issue; but later the defendant resiled from this undertaking giving a lame excuse that he had not appreciated the implications of such settlement—despite the fact that he was represented by counsel! The more one probes into this aspect of the case the more it is evident that the defendant has removed the window in question to enable him to stack heavy articles he was trading in on the upper floor which could not be taken in the normal course up the stairway. In my

opinion, the damage thus caused comes within the meaning of " wanton damage or wilful destruction " within the meaning of section 12A (1) (*d*) referred to above. No doubt the landlord should have expected his tenant, a hardware merchant, to stack hardware both up and down stairs but he could not possibly have visualised the prospect of a whole window frame being dislodged for the purpose of storing material which could not be taken up the stairs in the normal way. This would certainly not be a natural or reasonable user of these premises.

Mr. Jayewardene, Q.C. submits that the plaintiffs have in their plaint averred only " wanton destruction and damage " and not " wilful destruction " which the plaintiffs seek to prove in this case. He contends that wanton destruction and wilful destruction are not synonymous as they clearly refer to two distinct mental elements. He has referred me to the meaning of the expression " wanton damage " in the case of *Arumugam v. Carolis*[1] 67 N. L. R. 84 which was cited by Mr. Ranganathan, Q.C., where T. S. Fernando, J. comments that in the context in which we find it in the Rent Restriction Act, he thinks, that the word (wanton) means " purposeless ", and the expression " wanton damage " means purposeless damage of the kind which irresponsible schoolboys and soldiers of an invading army have been known to cause on certain occasions. Mr. Jayewardene stresses the fact that the defendant was using the premises for the purpose for which it was rented out and even if a window frame had to be removed for this purpose it would not be wanton damage or destruction. Mr. Ranganathan has drawn my attention to the concluding paragraph of this judgment :

> " To partition a house in such a way that the doors thereof cannot be put to one of their ordinary uses and, having done so, to take a large quantity of heavy articles of furniture over the roof through an upstair window causing not inconsiderable damage to the roof was, to my mind, to put the roof to irresponsible use. Notwithstanding that the tenant achieved his purpose of taking the furniture into the house, the damage caused was reckless and purposeless. It was, in my opinion, wanton damage. "

On a careful reading of this judgment it may be noted that a person may have a purpose when he proceeds to act but in seeking to attain such purpose he sets about in a senseless and/or reckless manner, when he could have attained the same object in a sensible manner. So that the expression " wanton damage " or " wanton destruction " does not rule out a wilful act altogether ; what is conspicuous being the senseless nature of the conduct. Even irresponsible schoolboys and soldiers of an invading army may behave in a wanton manner to attain an object they have in view—when they could very well have achieved this end in a more sensible and sober manner. With great respect, I agree with the conclusion arrived at by Fernando, J. Perhaps, the headnote to this judgment needs modification to bring out the essence of the finding which is contained in the last paragraph of the judgment.

[1] *(1964) 67 N. L. R. 84.*

In the light of my above observations I am of the view that the averment of " wanton destruction and damage " in the plaint is adequate ; as in the instant case too an object has been achieved—namely of bringing in heavy and cumbersome articles of hardware to the upstair portion by removing a window altogether, without any intimation to the landlord. I need hardly refer to the other damage relied on by the plaintiffs as the damage I have referred to comes within section 12 A (1) (*d*) of the Act.

Mr. Jayewardene submits that, in any event, by virtue of the tenancy Agreement the tenant is entitled to six months notice. In my opinion once section 12A (1) (*d*) applies it supersedes the rights in regard to notice arising on a tenancy agreement. Mr. Ranganathan submits that this clause in the Agreement is of no avail to the defendant as the Agreement is not notarially attested. Several conflicting judgments have been cited by both counsel ; but I do not think it necessary for me to decide this particular question as I am of the view that section 12A (1) (*d*) supersedes any rights arising on a tenancy agreement in regard to notice. Whether such agreement is notarially attested or not would be immaterial in this context. Otherwise the very salutary provisions in section 12A would be rendered nugatory.

The learned Commissioner of Requests in a carefully considered judgment has accepted the version of the plaintiffs on the question of " wanton damage and destruction " and I see no reason whatever to take a different view. In coming to this conclusion I have constantly kept in mind the prevalent privileges of tenants but to my mind if tenants are permitted to mess up the premises they rent out in this fashion and the law turns a blind eye to such destruction, ultimately, well conducted tenants will stand to suffer considerably as landlords will be slow to rent out their premises not knowing their propensities, not to speak of their cats!

I dismiss the appeal with costs.

Appeal dismissed.