1950 *Present :* **Swan J.**

ZACKARIYA *et al.*, Appellants, *and* BENEDICT, Respondent

S. C. 62—C. R. Colombo, 19,101

Landlord and tenant—Transfer of leased premises—Option of tenant to claim cancellation of the lease.

When a landlord sells or donates leased premises it is open to the tenant to elect whether or not he should continue as tenant of the new landlord.

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

M. H. A. Azeez, for the plaintiffs appellants.

J. N. David, for the defendant respondent.

Cur. adv. vult.

September 18, 1950. SWAN J.—

The appellants sued the respondent for rent and ejectment in respect of premises No. 3, Rajasinghe Road, Wellawatte. The respondent denied tenancy under the appellants. After trial the action was dismissed with costs.

The respondent had on January 22, 1948, taken these premises on rent from one I. L. M. Ahamed. He paid Ahamed on that day a sum of Rs. 1,000 in advance and obtained receipt D4 in which it is stated that the monthly rent would be deducted from the advance.

On April 13, 1948, Ahamed gifted the premises by P1 to the plaintiffs. As there was an error in the description of the property a deed of rectification was written on May 3, 1948—see P2. Ahamed, through his proctor Mr. S. D. M. Burhan, gave the defendant notice of the gift by letter D1 dated June 19, 1948, and requested the defendant to pay rent to the donees as from April 1, 1948. This letter contains the following reference to the sum of Rs. 1,000 paid by the defendant to Ahamed :—

" As regards the advance you have paid to my client, Mr. Ahamed, I request you to *settle the same* with Messrs. Zackariya and Fuard."

Apparently the defendant could not settle this very vital question with the plaintiffs because the evidence clearly proves that, not only did he refuse to acknowledge them as his landlords but even went to the extent

of inquiring about the validity of the deed of gift (see P3) and, when they approached him for some money, gave them two sums of Rs. 40 each not as *rent* but as *loans*. In these circumstances the learned Commissioner held that the plaintiffs could not have and maintain this action against the defendant.

It was argued by learned counsel for the appellants that upon the execution of the deed of gift the right of Ahamed as landlord passed to the plaintiffs and that the tenant was bound to accept the donees as his landlords and to pay them rent.

Ordinarily a purchaser of property " steps into the shoes of the landlord and receives all his rights and becomes subject to all his obligations, so that he is bound to the tenant and the tenant is bound to him in the relation of landlord and tenant "—see *Wille on Landlord and Tenant, 1910 Edition, p. 221.* That this principle has been accepted by our Courts will be seen from *Silva v. Silva* [1] and *Wijesinghe v. Charles* [2].

By a parity of reasoning the same principle might be applied as between a donee from the landlord and the tenant in occupation. But our Courts have recognised an exception to the rule. In *Silva v. Silva* [1] Pereira J. queried whether the tenant was bound to remain the tenant of the new landlord or whether he could exercise the option of claiming a cancellation of the lease. That query was answered by de Sampayo J. in *Wijesinghe v. Charles* [2]. He accepted the right of the tenant to exercise the option.

The question that arose for decision in *Wijesinghe v. Charles* [2] was whether a vendor could sue his tenant in ejectment after the sale. After discussing the law on the subject de Sampayo J. said—" if then the tenant has the privilege of choice I do not see any reason why the purchaser should not have the corresponding privilege. The purchaser having then the two courses above-mentioned open to him it would be a question of fact in a particular case whether he has elected to take the property with the vendors tenant in occupation. If he has not adopted that course and insists on the vendor giving him free and exclusive possession it seems to me to follow that the contract of tenancy as between the vendor and the tenant continues, and that the vendor can take the ordinary steps to eject him and recover damages."

In this case, as the defendant refused to comply with Ahamed's request contained in D1, it might be open to Ahamed, subject to the provisions of the Rent Restriction Act, to give the defendant notice and sue him in ejectment. It is also conceivable that the plaintiffs might bring an action for recovery of possession on the strength of their title. In any event this action was misconceived and was rightly dismissed. The appeal fails and is dismissed with costs.

Appeal dismissed.

[1] *(1913) 16 N. L. R. 315.*

[2] *(1915) 18 N. L. R. 168.*