

1943

Soertsz S.P.J.

MOHAMED, Appellant, and KURUPPU, Respondent.

209—C. R. Colombo, 84,664.

Landlord and tenant—Quitting premises without notice—Vis Major—Fear of enemy invasion.

Where a tenant who quits premises held by him on a monthly tenancy without a month's notice asks for remission of that month's rent on the ground of *Vis Major* caused by fear of enemy invasion.

Held, that the fear of enemy invasion must be reasonable fear, as urgent as if the enemy was at the city's gates.

A - PEAL from a judgment of the Commissioner of Requests, Colombo.

H. Wanigatunge, for plaintiff, appellant.

S. W. Jayasuriya, for defendant, respondent.

Cur. adv. vult.

March 23, 1943. SOERTSZ S.P.J.—

The question for decision in this case is whether a tenant who quitted the premises he held on a monthly tenancy without giving his landlord a month's notice is entitled to a remission of that month's rent because, he says, he quitted the premises in view of the fact that in his opinion, at the time he quitted "the war conditions were unsatisfactory and I wanted to evacuate", again "about the 7th of December Japan entered the war. About the end of December things were bad and I left the premises".

The Commissioner found himself able to entertain this plea and hold the defendant entitled to the remission of rent, although he held that, in the ordinary course, the landlord would have been entitled to a month's notice. This is what the Commissioner says :—

“It is clear from the facts of this case that the defendant quitted the house because he had reasonable fear of *vis major* During December itself Japan had secured such quick and startling success that defendant's fear of any early extension of enemy operations in Ceylon itself cannot be said to be without foundation”.

In my opinion, this kind of writing from a place of authority can only serve as an incentive to persons, who really do not appear to stand in need of any incentive, to bring the civil life of a country into such a state of deplorable confusion as prevailed in April last year.

The only excusing circumstance so far as the tenant's obligation to pay rent is concerned is “reasonable fear” of *vis major*, not the vain fear of a pessimist, not the fear of the man that “fleeth when no man pursueth”.

It is impossible, in the circumstances of this case, to say that, at the time in question, there was reasonable fear of *vis major*. Indeed the Roman-Dutch Law authorities indicate that the fear must be almost as urgent as if the enemy was at the gates of the city.

I allow the appeal and enter judgment for the plaintiff with costs in both Courts.

Appeal allowed.

