1970 *Present :* **H. N. G. Fernando, C.J., and Sirimane, J.**

Mrs. D. KARUNARATNE, Appellant, *and* Mrs. N. S. FERNANDO, Respondent

S.C. 224/66—D. C. Colombo, 1316/ZL

Landlord and tenant—Notice to quit—Acceptance of rents thereafter by landlord—Whether renewal of the contract of tenancy can be inferred thereby—Rent-controlled premises—Service of notice to quit on tenant—Death of tenant thereafter—Continuance of tenancy—Rules applicable—Rent Restriction Act, ss. 13, 18.

Acceptance of rents by a landlord after notice to quit has been given by him to his tenant does not by itself operate to renew the contract of tenancy if there is evidence showing that there was no *consensus ad idem* between the parties for such a renewal of the contract.

Where a tenant of rent-controlled residential premises who has been given notice to quit dies before action in ejectment is brought against him, his widow and family are nevertheless entitled to continue the occupation of the premises after a notice is given to the landlord in terms of section 18 (2) of the Rent Restriction Act. The term "tenant" in section 18 (2) includes a person ordinarily referred to as a "statutory tenant"; it does not bear the restricted meaning of "contractual tenant".

***Hensman v. Stephen* (55 N. L. R. 89) not followed.**

Where a landlord challenges the right of a person, who has given him a notice under section 18 (2) of the Rent Restriction Act, to continue in occupation as a tenant, his proper remedy, according to section 18 (3), is to make an application to the Rent Control Board. In such a case it is not open to the landlord to resort to the expedient of filing an action in a court of law.

[1] *(1921) 3 C. Law Recorder 82.* [2] *(1929) 31 N. L. R. 126.*

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, Q.C., with *J. Fernandopulle, L. W. Athulathmudali, G. M. S. Samaraweera* and *Ravindra Tennekoon*, for the defendant appellant.

C. Ranganathan, Q.C., with *D. S. Wijewardene* and *K. Kanagaratnam* for the plaintiff-respondent.

Cur. adv. vult.

October 5, 1970. SIRIMANE, J.—

One Karunaratne (the defendant's husband) was the tenant of premises No. 31, Norris Canal Road, Colombo, under one Porolis Fernando, from about the year 1943. Porolis Fernando died in 1960, having devised these premises to his sister, the plaintiff, whose residence is at Bandarawela.

By D1 dated 29.4.60 the plaintiff made a request to Karunaratne for vacant possession of the premises. Karunaratne replied almost immediately by D2 that he had been the tenant of these premises for over 17 years paying rent regularly, that he had no alternative accommodation and that he was willing to attorn to the plaintiff. By D5 dated 26.7.62 the plaintiff through her Proctor gave Karunaratne a notice to quit. Karunaratne replied through his Proctor on 15.8.62 more or less on the same lines as in D2 adding that the premises were urgently in need of repairs and that he would be taking the matter before the Rent Restriction Board, which he later did. He continued to pay the rent.

Thereafter, there have been several letters sent by the plaintiff and replies thereto by the defendant. The plaintiff changed his Proctor in the course of this correspondence and sent Karunaratne two further notices to quit, the last of which was P1 dated 30.10.63 to quit on 30.11.63. This notice, too, was met with the usual reply.

Karunaratne died on 13.1.64, and 8 days later on 21.1.64 his widow, the present defendant, sent a notice—D15—to the plaintiff through her Proctor under Section 18 of the Rent Restriction Act (Chapter 274) together with a cheque for the rent for that month. The plaintiff replied through her Proctor that the defendant was not entitled to send such a notice, in view of P1 referred to above, and returned the cheque. Thereafter however, it would appear that the defendant made monthly payments direct to the plaintiff until July 1964. The plaintiff had apparently been advised to file an action for declaration of title and ejectment and obtained a limited probate for this purpose in Porolis Fernando's Testamentary Case on 13.7.64. She filed this action a couple of months later.

Mr. Jayewardene for the Defendant-Appellant contends that the acceptance of rent after the notices to quit shows that there was a waiver of those notices and that Karunaratne continued to be the contractual tenant until his death, and thereafter his widow continued the tenancy. I have examined the correspondence between the parties and I am unable to find anything therein which indicates that the plaintiff agreed to a tenancy between herself and Karunaratne or the defendant after the notices to quit. As Wijeyewardene, C.J. said in *Virasinghe v. Peris* [1] :—

> "The question of waiver of notice—if one may use an expression which has been condemned as a loose and unscientific expression—cannot be discussed as an abstract question of law but should be considered with reference to the facts of each particular case."

When there is a clear expression of the intention of one party to terminate the contract—e.g., by a notice to quit—there must be strong evidence to indicate that there was a change in this intention. The oral evidence of the defendant herself points to the inference that there was no *consensus ad idem* between the parties for such a renewal of the contract to have taken place.

I think the learned District Judge was right when he reached the conclusion that the acceptance of the monthly payments made by Karunaratne and his wife after the notices to quit did not by itself operate to renew the contract.

But the important point which arises for consideration is the scope and effect of the notices under Section 18 of the Rent Restriction Act. This section enables any person, who is the surviving spouse or a child, parent brother, sister, or dependant of the deceased tenant, and who was a member of the tenant's household during the period of three months preceding the tenant's death, to give a written notice to the landlord before the 10th day of the month succeeding that in which the death occurred, to the effect that such person proposes to continue the tenancy. The Section also provides that the person giving such a notice shall be deemed to be the tenant of the premises thereafter. In *Hensman v. Stephen* [2] Gratiaen, J. sitting alone decided that where a tenant who has been given a notice to quit dies, his widow and family are no longer entitled to continue the occupation of the premises after a notice under Section 18.

The correctness of this decision has been strongly challenged before us.

One has to ascertain the true intention of the legislature in enacting this Section. It is beyond question that the object of the Rent Restriction

[1] *(1913) 46 N. L. R. 139.*

[2] *(1953) 55 N. L. R. 59.*

Act was to protect the tenant. Under the common law only a month's notice was needed to effectively terminate a contract of monthly tenancy, and such a notice was the precursor to a successful action for ejectment if the tenant did not leave the premises. Section 13 of the Rent Act placed a number of fetters on the common law right of the landlord to eject his tenant. Unless the conditions set out in that Section were present, the notice to quit was quite ineffective and in no way touched " the right of irremovability " of the tenant. He was protected, and despite the unwillingness of the landlord to have him as the tenant he continued to be in exactly the same position as he was before the notice.

But lawyers and judges have pointed out that the term " tenant " is strictly inapplicable to a person who remains in occupation, after the termination of the tenancy by the landlord, by virtue of the protection conferred on him by statute. He was therefore referred to sometimes as a " statutory tenant" or a " tenant on sufferance ". But whatever label one chose to place upon him he could not be ejected from his home unless the conditions set out in Section 13 were present. That was the protection conferred on him by the Rent Restriction Ordinance of 1942. But what of his widow and dependants in the event of his death ? The view of the law then was that a monthly tenancy was a personal right which did not pass to a person's heirs. In 1957 Basnayake, C.J. (with Pulle, J. agreeing) said so in *Abdul Hafeel v. Muttu Bathool* [1]. A different view was taken in 1966 in *Fernando v. de Silva* [2]. It is unnecessary to consider this question for the purpose of this case, but one has to take note of the fact that the law as understood in 1948 was that a monthly tenancy ended with the death of the tenant. The housing shortage had become more acute since 1942, so that the widow and children of a deceased tenant faced the danger of being rendered homeless merely at the will of the landlord.

It was to meet this situation that in 1948 the legislature introduced Section 18 of the present Rent Restriction Act.

I think it is fairly obvious that the legislature intended to extend the same protection which the tenant enjoyed to his widow, children or dependants. In enacting this section the draftsman had used the word " tenant ". In my view, to give that word the restricted meaning of " contractual tenant " would defeat the very purpose of the legislation. It would expose the deceased tenant's family to the very danger which that section, in my view, was intended to avert, for a landlord by resorting to the simple device of sending a tenant a notice to quit could, by his unilateral act, bring the operation of Section 18 to a standstill.

The word " tenant " is used in many places in the Act to include one whose contract has been terminated by a notice to quit—e.g., Sections 9

[1] *(1957) 58 N. L. R. 409.*

[2] *(1966) 69 N. L. R. 164.*

and 10 prohibit the "tenant" from sub-letting or permitting residential premises from being put to any other purpose ; Section 11 enables the "tenant" to apply to the Board for certain amenities and repairs ; Section 12 (2) enables the "tenant" to apply for a receipt from his landlord. There is then the all important Section 13 which *inter alia* applies to a "tenant" who has fallen into arrears of rent or has damaged the premises. Sub-section (2) of that Section refers to a person against whom a decree for ejectment has been entered, as a "tenant". Section 14 provides for the continuance of the tenancy by a "tenant" after an action for ejectment against him has been dismissed. Surely such a person must have received a notice to quit before the action commenced. Section 15 enables a "tenant" to recover excess rent and Section 16 enables a "tenant" to demand from his landlord a statement in writing setting out the standard rent of the premises. The whole Act would be unworkable if one were to give the term "tenant" the restricted meaning of "contractual tenant".

It is true that in England "The Increase of Rent and Mortgage Interest (Restriction) Act" of 1920 defines the term "tenant" to include a widow and other relations. But the absence of such a definition in our Act does not, in my view, indicate an intention on the part of the legislature to withdraw the protection conferred by Section 18 to the widow of a person who may be described as a "statutory tenant".

The key note of the legislation introduced by Section 18 is the protection of the home after the death of the tenant who was protected by the Act.

In *Remon v. City of London Real Property Company Limited* [1] Bankes, C.J. said—

> "It is, however, clear that in all the Rent Restriction Acts the expression 'tenant' has been used in a special, peculiar sense, and as including a person who may be described as an ex-tenant and who had continued the occupation without any legal right to do so, except possibly such as the Acts themselves conferred upon him."

Megarry in "The Rent Acts" (Seventh Edition) at page 6 quotes certain dicta from the judgments in the above case, *Curl v. Angelo* [2] and *Read v. Goater* [3] thus—

> "'The Court must endeavour to place reasonable interpretation upon the statute if the language used admits of such interpretation.' 'A certain amount of common sense has to be brought to the

[1] (1921) 1 K. B. 49. [2] (1948) 2 A. E. R. 189.
[3] (1921) 1 K. B. 611.

consideration of these Acts' and 'it is essential that wherever possible (the Acts) should be construed in a broad, practical, common sense manner so as to effect the intention of the legislature.' "

In *Hensman's case* (supra) action had already been filed and the tenant brought to court. In such a case the rights of parties and their privies are determined as they stood at the date when plaint was filed. These facts appear to have influenced the learned judge to some extent, for, he takes the example of a tenant who has fallen into arrears of rent, or caused damage to the premises, or used them for an illegal or immoral purpose, and points out that all these acts " would be beside the point " if the widow was to be given a new tenancy. The example, with respect, does not appear to be a good one. If indeed the tenant had done any or all of those acts, he would be ejected, and the applicability of Section 18 would not arise. It is only in the very rare instance of a tenant who having committed such misdeeds dies shortly thereafter that a notice under Section 18 may cause some hardship to the landlord. But would it be reasonable to give the term " tenant " in Section 18 a restricted meaning on this ground, when one considers the other consequences which would flow from such an interpretation ? I do not think so.

In the course of his judgment in *Hensman's case* (supra) Gratiaen, J. agrees that the word " tenant " in Section 13 of the Act was wide enough to include a person whose contractual rights had been determined, and that generally the same meaning should be implied by the use of the same expression in other parts of the statute. But he goes on to say that there are other sections in which the term " tenant " referred only to a *contractual* tenant and that he was perfectly satisfied that it was in this restricted sense that the term was used in Section 18. He did not, however, give any reasons for this conclusion. With the utmost respect I am unable to share this view and I am of opinion that the term " tenant " in Section 18 includes a person ordinarily referred to as a " statutory tenant ".

There is one other matter to which I would like to refer. What should a landlord do if he challenges the right of a person, who has given him a notice under Section 18 (2), to continue tenancy ? I think sub-section (3) provides the answer :

> " 18 (3) The landlord of the premises in relation to which any written notice is given under sub-section (2) by any person may make application to the Board for an order declaring that such a person shall not be deemed as provided in that sub-section to be the tenant of the premises ; and the Board may make order accordingly if satisfied that such person is not entitled to give the notice for which provision is made by that sub-section."

The legislature has thought it fit that the Board should decide certain questions which arise under the Act, without the necessity for expensive

and often tardy litigation in the Courts. The question whether a person who has given notice under Section 18 (2) is one who is entitled to do so is a very simple one which the Board can speedily decide. Learned Counsel for the plaintiff-respondent said that the object of sub-section (3) was to enable the Board on the application of a landlord to decide which one of the several heirs or dependants of the deceased tenant was entitled to " to be deemed to be the tenant ". But surely a plain reading of the sub-section negatives such an interpretation. Sub-section (4) provides for the case of more than one person who gives notice under sub-section (2).

I take the view that the plaintiff in this case on receipt of the notice D15 from the defendant should have, if he challenged her right to continue in occupation as a tenant, taken the matter before the Board instead of resorting to the expedient of filing an action for declaration of title and ejectment.

I set aside the judgment and decree entered in this case and dismiss the plaintiff's action with costs at both Courts.

H. N. G. FERNANDO, C.J.—I agree.

Appeal allowed.