Present: Pereira J. and De Sampayo A.J.

1913.

SILVA *v.* SILVA.

106 and 107—D. C. Galle, 10,729.

Lease—Sale by lessor—Vendee succeeds to all the rights of lessor without assignment.

Where a land is sold by a person who has already leased it, the vendee succeeds to all the rights of the vendor on the lease without a special assignment of it by the latter to the former.

PEREIRA J.—*Quære,* Is the tenant bound to remain the tenant of the new landlord, or may he exercise the option of claiming a cancellation of the lease ?

THE facts appear from the judgment.

H. A. Jayewardene (with him *Arulanandam*), for the defendant.—The plaintiff did not get an assignment of the lease from the two co-owners, from whom he bought their interests in the land. The sale itself did not give the plaintiff the right to recover damages from the defendant for his breach of a covenant in the lease. Counsel cited *Wijeratne v. Hendrick.*[1]

A. St. V. Jayewardene, for the plaintiff.—An assignment of the rights of the lessors is not necessary to enable the plaintiff to sue the lessee for damages. Counsel cited *Allis v. Sigera;*[2] *Wille on Landlord and Tenant 222; V. L. Com., 4, 21, 7; Van der Linden 1, 15, 12.*

Cur. adv. vult.

May 30, 1913. PEREIRA J.—

There are cross-appeals in this case. The question involved in the defendant's appeal is whether where a land is sold by a person who has already leased it, the vendee succeeds to all the rights of the vendor on the lease without a special assignment of it by the latter to the former. The land in dispute belonged to five persons, who by deed dated October 13, 1907, leased it to the defendant. Two of the owners, by their deed dated July 21, 1909, sold their two-fifths share to the plaintiff, but did not expressly assign to him their interest in the lease. Without going into details, I may say that the question involved is whether the plaintiff is entitled to recover a two-fifths share of the damage sustained by the owners by reason of a breach by the defendant of certain covenants in the lease. The District Judge has held that he is, and I think he is

[1] *(1895) 3 N. L. R. 158.*   [2] *(1897) 3 N. L. R. 5.*

right. With reference to the law of letting and hiring, a principle of the Roman-Dutch law is enunciated by means of the aphorism "Hire goes before sale" (see *Van der Linden's Inst., 1, 15, 12, p. 145, Juta's Trans.; Grot. Intr., 3, 19, 16; Van Leeuwen's Com., 4, 21, 7, vol. II., p. 174, of Kotze's Trans. Cens. For. 1, 4, 22*). The rule as understood in South Africa is found in *Wille on Landlord and Tenant in South Africa 221.* It is there laid down as follows: "A purchaser from the landlord of the property leased 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." Bayne in his *Treatise on the Law of Letting and Hiring, compiled from the leading Roman-Dutch Jurists, &c.*, says (*p. 37*): "'Hire goes before sale' is an axiom of our law, and purchasers of, and persons succeeding to, the possession of landed property are bound by the leases made by the vendors." I need not discuss here the question (because it does not arise in the present case) whether the tenant is bound to remain the tenant of the new landlord or is entitled at his option to cancel the lease. In my opinion, our law is exactly the same as laid down above. It has, I am aware, been said, although, I may mention, the point has not been taken in the present appeal, that since our Ordinance No. 7 of 1840 the rights under a notarial lease cannot be said to pass to the purchaser of the property leased unless they are expressly assigned by means of a notarial deed. I think there is a clear fallacy in this contention. The law says that the sale of property leased passes with it to the purchaser the rights on the lease, in other words, it gives a certain effect to the deed of conveyance, and it would therefore be superfluous to execute another deed, or otherwise to expressly assign to the purchaser the rights on the lease. The defendant's appeal, in my opinion, fails. The plaintiff's appeal is from a decision on a question of fact which, it was practically admitted at the end of the argument in appeal, has been rightly decided by the District Judge. I would dismiss both the appeals and allow no costs in appeal to either party.

DE SAMPAYO A.J.—

In the Roman civil law the sale of land which is subject to a lease determined the lease, and the purchaser was able to eject the tenant. But the Roman-Dutch law adopted the contrary principle, which is expressed by the saying "Hire goes before sale." So far as the commentaries on the Roman-Dutch law go, however, I hardly find anything more than that the tenant is entitled to continue in possession notwithstanding the sale, and that, on the other hand, the purchaser has the right to claim the rent, which takes the place of the "fruits" which he would otherwise have. The principle of privity of contract to that extent is thus broken through,

but it is contended for the defendant that the purchaser is not entitled to enforce the other covenants entered into between the lessor and lessee without an assignment of the lease to him. The claim in this case is for damages for not clearing the land at the expiration of the lease in terms of the covenant in that behalf. It is argued that for this breach of covenant the right of action is in the lessor only. This is undoubtedly correct according to the strict law of contracts, but the question is whether our law does not allow of an exception in view of the peculiar nature of the relation between the lessee and the purchaser. Wille in his book on *Landlord and Tenant in South Africa, 221*, cites certain decisions of the South African Courts, which are not available to me, and says: "A purchaser from the landlord of the property leased 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." The Roman-Dutch law being in force in South Africa, where that law has received the fullest and best application, I am content to say that I see no reason why the same extensive interpretation of the law should not be considered as adopted in Ceylon, though it is curious that there are no local decisions on the special point involved in this case. In *Allis v. Sigera*[1] Withers J. held that a purchaser of property subject to a lease could receive the rent without an assignment of the contract of lease. He went on the well-known passage in *Voet 19, 2, 19*, observing, " Plaintiff's right may not rest on the contract of the lease, but as long as the tenant holds the premises with notice of the sale he cannot be heard to say that he should not pay the rent to the purchaser. The vendor has sold his interest, and with it the right to receive the rents." Similarly, I should say, though not without some hesitation, that the owner has sold his interest, and with it the right to recover damages for failure on the lessee's part to keep or deliver the property in good order.

I agree that the appeal in this case should be dismissed.

Appeal dismissed.

---

[1] *(1897) 3 N. L. R. 5.*