

1928.

Present: Jayewardene A.J.

MUNICIPAL COUNCIL, COLOMBO v. APPUHAMY

30—C. R. Colombo, 39,070.

Municipal Council—Licence for meat stall—One month's notice—Right to determine licence—Jurisdiction—Court of Requests.

Where a person holds a licence for a meat stall in the public market from the Municipal Council upon the condition that the licence should expire on a given date or at any previous date of which one month's notice is given to him in writing,—

Held, that the Council was entitled to determine the licence by giving a month's notice.

Held, further, that where the rental for the stall was Rs. 50 per mensem the Court of Requests had jurisdiction to entertain an action for the ejectment of the stall-holder.

A PPEAL from a judgment of the Commissioner of Requests, Colombo.

H. V. Perera, for defendant, appellant.

Keuneman (with *Navaratnam*), for plaintiff, respondent.

June 5, 1928. JAYEWARDENE A.J.—

The plaintiff, the Municipal Council of Colombo, seeks to eject the defendant from the meat stall bearing No. 2 of the Colpetty market. The defendant held this stall under licence No. 60 dated January 13, 1927, marked P 1. This licence was to expire on December 31, 1927, or at any previous date after one month's due notice in writing according to the 7th condition of the licence. The plaintiff complains that the defendant refuses to quit after due notice.

By section 198 of Ordinance No. 6 of 1910 public markets are vested in the Municipal Council, and by section 199 the Council may charge such rents, tolls, and fees as to them may seem fit for the use of or right to expose goods for sale in such markets and for the use of shops, stalls, sheds, pens, and standings therein.

In his answer the defendant stated that he was the holder of the stall in question and that he was entitled to continue as the holder of the said stall, which was of the value of Rs. 5,000. The defendant pleaded that the Court of Requests had no jurisdiction if the value of the subject-matter of the action exceeded Rs. 3,000 in value. The defendant also pleaded that, even assuming that he was the tenant of the plaintiff, the tenancy had not been legally determined.

The issues framed were whether the plaintiff let the premises in question to the defendant and whether the Court had jurisdiction.

The claim to recover rent in this case has been withdrawn with the leave of Court.

In the first place we must refer to the contract itself to see how the relation between the parties could be ascertained. The document P 2 is very precise. By it the defendant is licensed to hold stall marked No. 2 in the Colpetty market for the sale of beef on payment by him of a monthly rental of Rs. 50, provided that he conforms to all the by-laws of the Municipal Council and also to certain conditions, one of which (No. 7) was " This licence expires on December 31, 1927, or at any previous date of which one month's notice in writing signed by the Chairman of the Municipal Council or by any officer holding a special or general authority from him shall be given to the licensee or his agent or servant."

In *Wilson v. Turner*,¹ where the plaintiff was allowed by an arrangement with the defendant to erect hoarding on the forecourt of a building in Falcon road, Battersea, and also to the use of the gable end of another house in the same road for the purpose of posting bills thereon, it was held that the effect of the documents was to give the plaintiff a licence which was always revocable at any time subject to the terms of the express contract, and that the Court must look to the contract to see how the relation between the parties could be determined. It was held that it was not a tenancy from year to year, but a licence revocable at will on reasonable notice.

In the present case the licence is to expire on December 31, 1927, or on a month's notice.

In *Amerasinghe v. Abdul Sheriff*² it was argued that so long as a stall-holder was willing to pay the rent according to the authorized scale of charges and conformed himself to the other conditions the permission of the Chairman could not be withdrawn and must be taken to have been continued, but the Court held that the contention could not be sustained at all.

In *Cory v. Bristow*³ the plaintiffs were granted permission by the Conservators of the Thames to lay down moorings attached to which they might place a derrick hulk opposite the sluice at East Greenwich, but the Conservators retained the right of causing the moorings to be removed on giving a week's notice. It was held by the House of Lords that the plaintiff had a right to lay down and occupy the moorings until upon a week's notice being given the Conservators shall remove them from their occupation. In the language of Lord Hatherby: " He is in beneficial occupation for a term, though that term is limited by certain contingencies which

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Appuhamy*¹ (1901) 1 Chan. 578.² (1918) 5 C. W. R. 81.³ (1877) L. R. 2 A. C. 262.

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may possibly determine his interest at an earlier period" (p. 277). So here the defendant may hold the stall for one year unless his interest is determined by a month's notice.

The position of the defendant is that of a licensee. It is now well established that even a licensee is entitled to reasonable notice. (*Mellor v. Watkins*.¹)

The defendant has had more than a month's notice.

The Court of Requests had jurisdiction to try this case. There is no conflict between the parties of adverse rights of possession. The defendant is in occupation under the plaintiff as a licensee, and cannot be heard to say that he has an adverse right of possession. (*Mudiyanse v. Rahman*.²)

I think the judgment of the learned Commissioner is right, and I dismiss the appeal with costs.

Appeal dismissed.

