Present : Fisher C.J. and Drieberg J. 1928.

AUNERIS *v.* ARALIS.

266—D. C. Galle, 23,315.

Lease—Lessee on informal writing—Notice to quit—Subsequent notarial lease—Action for ejectment.

An informal lessee of land is not entitled to formal notice in the same way as a monthly tenant before he can be evicted by a person who has taken a subsequent notarial lease of the land.

It is sufficient if the action is brought one month after the informal lessee has been given notice to leave.

APPEAL from a judgment of the District Judge of Galle.

F. de Zoysa, K.C. (with *Rajapakse*), for first defendant, appellant.

Soertsz, for plaintiff, respondent.

December 14, 1928. DRIEBERG J.—

The respondent sued on a deed of lease of October 27, 1924, for two blocks of rubber land : (1) Totupolagahawatta and (2) Tembiligahawatta for five years granted by the second defendant, the owner of them.

On January 7, 1922, the second defendant leased them on an informal writing 1 D 1 to the appellant for a term of four and a half years expiring on July 6, 1926.

[1] *1 Browne 77.* [2] *3 Bal. Rep. 61.*

[3] *1 Cur. L. R. 22.*

1928

DRIEBERG J.

Auneris v. Aralis

The respondent says that he was given possession of the first land, but that the appellant wrongfully took the coupons of it for the first half of 1925, and wrongfully remained in possession of the second land until the end of the term of 1 D 1, July, 1926.

The learned District Judge held that the appellant's detention of the coupons of the first land and his possession of the second after the respondent's lease was unlawful, and that the appellant was entitled to recover damages in respect of both lands for the first half of 1925, and in respect of the second land up to July, 1926, he gave the respondent judgment for Rs. 462. The appellant has not shown that this assessment of damages is not right.

The action was brought on January 10, 1926. It is quite clear that after the execution of the lease to the respondent the latter and the second defendant made active efforts to get the land from the appellant—correspondence between the parties and the Rubber Controller and the Government Agent is in evidence. From P 2 it appears that on January 14, 1925, the respondent asked the Rubber Controller to give him the coupons for these lands which were then being issued to the appellant. The respondent got possession of the first land, and the coupons for it were issued to him from July, 1925. The appellant continued to hold the second land and got coupons for it until he surrendered them when his lease expired in July, 1926.

The second defendant says that the appellant paid him rent for two years only and that on two occasions—one two months and the other one month before the lease to the respondent—he gave the appellant notice of his intended lease. His evidence that he gave this notice has been accepted, but the Judge has not accepted his evidence that the appellant failed to pay rent after two years. In the writing 1 D 1 the second defendant acknowledged the receipt of rent for the whole term of four and a half years.

Now, though it is beyond doubt that for a year before the action was brought the respondent and the second defendant were making every endeavour to secure the lands and disposses the appellant by getting the coupons, without which the mere possession of the lands would be of comparatively little value to the appellant, and though they ousted him from the actual possession of the first land in January, 1925, and secured the rubber coupons for it from July, 1925, the appellant claims that he was not in wrongful possession of the land after the lease to the respondent. He says that as a person in possession on an informal and invalid lease he was in the position of a monthly tenant and that he was entitled to continue in possession until his tenancy was determined by due notice from the second defendant.

The trial proceeded, apart from the question of damages, mainly on the second issue. "Did the first defendant receive due notice to quit ?" and I take this to mean before institution of action. Mr. de Zoysa relied on the decision *in Bandara v. Appuhamy*[1] and contended that there was no proof of a formal notice such as a monthly tenant would be entitled to. For my part, I doubt whether a lessee on an informal lease—who is not a monthly tenant by contract but by implication or by an equitable view taken of his position to relieve him of the loss he sustains by the invalidity of a transaction to which his lessor is a party—is entitled to such notice as is required in a monthly tenancy by contract with all the requirements of the law regarding such a notice.

In *Bandara v. Appuhamy* (*supra*) the defendant, who held on the informal lease, pleaded that he had no knowledge of the notarial lease in favour of the plaintiff, and the plaintiff did not expressly state that he had demanded possession from the defendant. In the present case the plaint alleges that the appellant continued in possession in spite of the protests and representations of the plaintiff.

In my opinion it is sufficient if an action is brought against the informal lessee a month after he has been noticed to leave. In this case, as I have pointed out, strong efforts were being made for a year before action to get possession of the lands from the appellant, and the action cannot fail for want of prior demand for possession.

As damages have been allowed from January 1, 1925, the appellant would not be liable in damages unless he had received notice a month before that date ; the correspondence regarding the coupons begins on January 14, 1925.

The second defendant says that he gave notice on two occasions before the lease. This evidence has been criticised on the ground that he said that one notice was given in the presence of the peace officer, who has not supported him ; also on the ground that if as he says he was advised by a Proctor to give notice it was unlikely that he would not have asked the Proctor to send a formal notice. The trial Judge has however believed the second defendant on this point and I cannot say that he is wrong.

The appeal is dismissed with costs.

FISHER C.J.—I agree.

Appeal dismissed.

[1] *(1923) 25 N. L. R. 176.*