

*Present:* Pereira J.

1913.

ABDUL CAFFOOR *v.* MOHAMAD.

215—C. R. Colombo, 33,453.

*Landlord and tenant—Notice to pay increased rent.*

Plaintiff gave defendant (his tenant) notice on December 23, 1912, increasing the rent as from January 1, 1913.

*Held*, that the notice could not be construed as a sufficient notice for increase of rent as from February 1, 1913.

THE facts appear sufficiently from the judgment.

*A. St. V. Jayewardene*, for the plaintiff, appellant.—There is no rule which requires a landlord to give one month's notice for raising the rent. If the notice given on December 23, 1912, was not sufficient to enable plaintiff to recover enhanced rent from January 1, 1913, it was sufficient to recover enhanced rent from February 1.

Counsel cited *L. R. 3 Q. B. 303*.

*Gooneratna*, for respondent, not called upon.

*Cur. adv. vult.*

July 17, 1913. PEREIRA J.—

I do not agree with the Commissioner when he says that the defendant is entitled to six months' notice before the plaintiff can alter the existing contract. No doubt six months' rent was paid by the defendant to the plaintiff in advance, but it is clear that by that means the parties could not evade the requirements of Ordinance No. 7 of 1840. The tenancy still remained a monthly tenancy, and it was quite open to the plaintiff to terminate it or to enhance the rent by means of a legally sufficient notice. The application of the amount deposited would be a matter of account between the parties. If the tenancy is terminated before that amount could be wholly applied in payment of rent, the plaintiff would, of course, be liable to make good to the defendant any part of the amount not so applied. But the question has been raised whether the notice given by the plaintiff to the defendant for the purpose of enhancing the amount of rent payable per mensem is a sufficient notice. I do not think it is. The notice was given on December 23, 1912, increasing the rent as from January 1, 1913. I did not understand the appellant's counsel to contend that the notice was a sufficient notice to render the defendant liable to pay the enhanced rent as from January 1, 1913; but he certainly

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contended that the notice was sufficient to render the defendant liable to pay the larger rent from the commencement of the following month. No authority was cited in support of this proposition, and I am by no means prepared to uphold it. Admittedly, the notice, if it had been a notice requiring the defendant to quit the house, would not have been sufficient to render the defendant liable to quit it at the end of January, 1913. For this reason, although the defendant's counsel endeavoured to draw a distinction between the two situations, the defendant could not be said to be liable on the present notice to pay enhanced rent as from February 1, 1913. The notice was bad for the reason that the time allowed was not sufficient. A notice increasing the rent means that the tenant should either pay at the increased rate or quit the house. Now, a reasonable notice to quit would in the circumstances be a month's notice. If a person giving a shorter notice is not entitled to claim that it be construed to have effect from a date later than that fixed in it, I fail to see how he can be allowed to achieve, in effect, the same object by giving an insufficient notice enhancing the monthly rent payable.

I dismiss the appeal with costs.

*Appeal dismissed.*

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