Present: Wood Renton A.C.J. and De Sampayo A.J.

1914.

ROSAIRO *v.* ABRAHAM.

236—D. C. Puttalam, 2,428.

Married woman—Rents of immovable property—Separate property.

Rent of immovable property to which a married woman is entitled is her separate property, and she is entitled to accept payment of any such rent and give a valid receipt for it.

THE facts are set out in the judgment.

G. Koch, for first defendant, appellant.—Payment of rent due by the lessee to one of two joint lessors operates as a complete discharge and the fact that the lessor giving the discharge is the wife of the co-lessor should make no difference. The plaintiff can sue only for his share of the rent due when his joint lessor refuses to join him. *(1 N. L. R. 206, 7 N. L. R. 16.)*

In any case the payment operates as a discharge of the lessee's liability to the extent of the wife's interests. The learned District Judge is in error in applying section 19 of Ordinance No. 15 of 1876 to the case. Although rent, being money, may be treated as movable property, section 9 empowers the wife to deal with the rents and profits of the immovable property independently of the husband.

Similarly, in regard to damages claimed by the plaintiff, he can only recover to the extent of his interest in the property leased, and as the wife makes no claim for damages in respect of her portion of the land, it is not open to the husband to recover any damages accruing in respect of the wife's share of the land leased. The case must be treated as one which is governed by the Matrimonial Rights Ordinance, No. 15 of 1876, for if the plaintiff wished to bring it within the operation of the Roman-Dutch law of community, the burden was on him to prove a marriage in community.

First defendant should not have been condemned to pay the costs of the action. The substantial claim was for a cancellation, which plaintiff has failed to obtain.

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E. W. Jayewardene, for respondent.—The District Judge was wrong in holding that the payment was made. Assuming the payment, it did not discharge the lessee either wholly or in part, as rent, being money, vested absolutely in the husband according to section 9 of Ordinance No. 15 of 1876.

July 30, 1914. Wood Renton A.C.J.—

This is an interesting, but, in my opinion, it is not really a difficult, case. The plaintiff, who is the respondent, sued the first defendant, the appellant, claiming rent, and damages for breach of covenant, under an indenture of lease. The lease was granted to the first defendant jointly by the plaintiff and his wife, who has been made the second defendant to the action, for she refused to be joined as a plaintiff. The rent claimed amounted to Rs. 900. The first defendant alleged that he had paid the whole rent to the second defendant, one of the joint lessors, and that the plaintiff had, therefore, no further claim against him in respect of the debt. The damages were denied. The case went to trial upon six issues, of which the first raised the question whether the rent had, in fact, been paid by the first defendant to the plaintiff. The second was: " Has the plaintiff alone the right to demand the whole amount of the rent due under the lease ?" The third and fourth concerned themselves with the alleged breach of covenant and the claim for damages. The fifth raised the question whether the first plaintiff was entitled to a cancellation of the lease. And the sixth related to the point as to whether the payment, if made, by the first defendant to the second discharged him from his liability for rent. The learned District Judge heard evidence on both sides, and came to the following conclusions. He held on the facts that the first defendant had paid the rent, as he alleged, to the second; that there had been a breach of covenant which entitled the plaintiff to damages, and that the plaintiff was not entitled to have the deed of lease cancelled. He held on the law that the payment by the first defendant to the second did not discharge his obligation to pay the full rent to the plaintiff. On these findings the learned District Judge gave judgment in the plaintiff's favour against the first defendant for the Rs. 900 claimed as rent, and for Rs. 138 the amount at which he assessed the damages. The first defendant appeals. Several points may be dismissed at once. The first defendant's counsel has not contended that he can reasonably claim a cancellation of the lease. We have had the evidence read to us, and I see no ground for differing from the conclusion of the District Judge that the payment of the Rs. 900 by the first defendant to the second was actually made. The first defendant's counsel has not pressed the point, which was taken, however, in his petition of appeal, that the damages for breach of covenant have been wrongly assessed in the District Court. He has confined his argument on that point to a

contention with which I shall deal when I have disposed of the real and important issue in the case. The main ground on which the appeal has been argued before us is that the learned District Judge was in error in holding that the payment of the rent by the first defendant to the second defendant did not operate as a discharge of the first defendant's liability under the lease. The deed of lease itself shows, although, as Mr. E. W. Jayewardene has pointed out in his argument on behalf of the plaintiff, its language is somewhat ambiguous, that the plaintiff and his wife possessed separate interests in some at least of the lands which formed the subject-matter of the lease. There was no issue upon that point, but the learned District Judge has held that of the lands leased a one-third share belongs to the second defendant, and a two-thirds share to the plaintiff. In these circumstances, the first defendant's counsel argues that, even if the payment by his client to the second defendant did not exonerate him altogether, it should have been treated by the learned District Judge as a discharge of the debt in so far as the wife's interest in the lands was concerned. It appears to me that that contention is well founded, and I am all the more disposed to give effect to it, because I find that the plaintiff in his own evidence states that, when the first defendant approached him with regard to the payment of the rent, he was prepared to accept the amount which would correspond to his interest in the lands, and leave the first defendant to pay the remainder to the second. The second defendant and the plaintiff have unfortunately quarrelled, and they are not living together. In so far as the facts are concerned, there seems to me to be a strong case for an apportionment of the rent between the first plaintiff and the second defendant in conformity with their respective interests in the lands, whatever those interests may be. Does the law prohibit us from carrying out an arrangement which is so eminently reasonable ? Counsel for the first defendant relied on section 9 of the Matrimonial Rights and Inheritance Ordinance, 1876 (No. 15 of 1876), for the purpose of showing that the rent of any land belonging to the second defendant would be her separate property, that she would be entitled to accept payment of any such rent and give a valid receipt for it to her debtor, and that, while she would have, of course, no right to preclude her husband from recovering the portion of the rent that was due to him, her receipt would be conclusive of the debtor's liability so far as she was concerned. Mr. E. W. Jayewardene argued that section 9 of the Ordinance in question had not this effect with regard to such properties as we are here concerned with; that while a married woman's immovable property becomes her separate estate, she has only a *primâ facie* right to the rents of that immovable property, and that the husband may step in whenever he pleases and claim it as his own under section 19. No authority was cited which would constrain us to adopt that construction of the section and I am not

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prepared to give effect to it. Section 9 clearly provides, by necessary implication, that not only the immovable property with which it deals but the rents of that property become the married woman's separate estate. The object of the section was, in my opinion, to confer on married women the kind of interest in property which the Courts of Equity in England, and subsequently the Married Women's Property Act, 1870, recognized. The interpretation that I put on this section is, I think, strongly confirmed by the provision imposing a fetter on the power of a married woman to dispose of her immovable estate without her husband's written consent. The immovable property is erected into a separate estate. The fetter is imposed, and then we have the clause which shows that there is no such fetter as regard the rents of the immovable property, but that the married woman may receive these and give a valid discharge in respect of them to her debtor herself. I would hold, therefore, on the law, that the second defendant was entitled to receive, and to give the first defendant a valid discharge in respect of, the rent corresponding to her interest in the lands demised. This brings me to the question of damages. As I have already indicated, the first defendant's counsel has confined his appeal on this point to a single contention, which is itself dependent on the success of his argument under section 9 of Ordinance No. 15 of 1876. The second defendant has made no claim for damages. The plaintiff is therefore entitled to recover only damages corresponding to his share in the rent. I agree with Mr. Jayewardene that we have not before us sufficient material to enable us to say what the respective interests of the husband and the wife in the lands leased really are. I would propose, therefore, the following order. The decree of the District Court will be set aside, and the case sent back for a determination on evidence, unless the parties should obviate the necessity for an inquiry on that point by an agreement before the District Judge, of what are the respective interests of the plaintiff and the second defendant in the lands demised. The District Judge will then enter up decree in the plaintiff's favour for the amount of rent, and for the amount of damages, which correspond to his interests in the lands. The first defendant has succeeded on all the material points in the appeal, and he is, therefore, entitled to the costs of the appeal. There will be no costs to either side in the District Court. The costs, if any, of any further inquiry before the District Judge will abide the event.

The District Judge has dealt with this case on the footing that it is one to which Ordinance No. 15 of 1876 applies, and we have treated it on the same footing here. I would, however, reserve liberty to the plaintiff, if he is in a position to do so, to show that the marriage was actually a marriage in community.

DE SAMPAYO A.J.—I entirely agree.

Sent back.