

1955

Present : Sansoni J.

J. H. DE SILVA, Appellant, and H. M. D. ABAYARATNE, Respondent

*S. C. 153—C. R. Panwila, 1,075**Landlord and tenant—Sale of rented premises—Right of vendor to sue tenant for ejection.*

When a landlord sells the rented premises it is open to him to sue the tenant thereafter in ejection, in order to give vacant possession to the vendee.

Wijesinghe v. Charles (1915) 18 N. L. R. 168, followed.

APPPEAL from a judgment of the Court of Requests, Panwila.

M. B. G. Dissanayake, for the plaintiff appellant.

M. Rafeek, for the defendant respondent.

March 4, 1955. SANSONI J.—

The plaintiff sued the defendant in ejection relying on the document P1 of 1950 by which the defendant promised the plaintiff to quit and vacate certain premises within 30 days and hand over peaceful possession of the same. The defendant denied that the plaintiff had any right to sue him and pleaded that the plaintiff's remedy was a partition action. He also pleaded that he had taken a lease of these premises in 1954 from certain parties who were alleged to be co-owners of the land. Issues were framed when the case came up for trial, each proctor suggesting a definite set of issues, the total number being nine. The record does not show that the parties agreed to dispense with oral evidence. The plaintiff's proctor marked P1 and the defendant's proctor marked D1, a transfer executed by the plaintiff, and D 2, the proceedings of a case filed by the plaintiff's vendee against the defendant. The Commissioner then made an order holding that, as the plaintiff has transferred the premises which are the subject matter of this action, he cannot sue the defendant who was alleged to be his former tenant. It is wrong to suppose that where an

owner of a land sells it after having put a tenant in occupation he is precluded from bringing an action thereafter to eject his tenant. If authority is needed it could be found in *Wijesinghe v. Charles* ¹. The plaintiff, therefore, as I see it, was not precluded from bringing this action merely because he had parted with his interests in the land. The learned Commissioner relied on the case reported in 53 *N. L. R.* 311 where Swan J. decided that when a landlord sells leased premises it is open to the tenant to elect whether or not he should continue as the tenant of the new landlord. That is an entirely different proposition. Undoubtedly it is open to a tenant to refuse to continue as tenant under a new landlord after the former landlord has sold the land, but if he refuses to continue as tenant his first duty is to quit the premises. If he chooses to stay in occupation he remains there as tenant and if the landlord's vendee wants vacant possession it is open to the landlord to sue the tenant in ejectment. I am assuming, of course, that the defendant was the plaintiff's tenant, although, if he was not the plaintiff's tenant, I cannot see how his proctor could have asked the learned Commissioner to decide this case. The trial can only take place satisfactorily if the parties first lead such evidence as they choose to lead on the issues that have been suggested and the Commissioner then makes his findings on those issues. I set aside the order made by the learned Commissioner and sent the case back for a fresh trial on the issues framed. Costs of this appeal will abide the result of the fresh trial.

Order set aside.
