1946 *Present :* **Keuneman S.P.J., Wijeyewardene and Jayetileke JJ.**

GUNARATNE, Appellant, *and* THELENIS *et al.*, Respondents.

332—C. R. Galle, 25,044.

Lessor and lessee—Expiry of term of notarial lease—Right of lessee to plead the benefit of Rent Restriction Ordinance thereafter—Rent Restriction Ordinance, No. 60 of 1942, s. 8.

A lessee can plead the benefit of section 8 of the Rent Restriction Ordinance, No. 60 of 1942, where the premises in question were occupied by him under a notarial lease which has terminated by effluxion of time. The terms of the Rent Restriction Ordinance are wide enough to apply to premises leased as well as to premises held on a tenancy from month to month.

THIS was a case referred by Howard C.J., under section 38 of the Courts Ordinance, to a Bench of three Judges.

The reference was as follows :—

" The appellant in this case appeals from a judgment of the Commissioner of Requests, Galle, dismissing his action with costs. The appellant brought his action on an Indenture of Lease dated December 2, 1939, whereby he let to the defendants the premises described in the schedule for a period of four years terminating on November 30, 1943, at a monthly rental of Rs. 30. The appellant further alleged that notwithstanding the termination of the lease on November 30, 1943, the defendants have failed to deliver possession of the premises and were in unlawful occupation thereof to the appellant's damage of Rs. 50 per month. The appellant claimed Rs. 250 as damages. The defendants in their answer pleaded that the premises in question were in the Municipal limits of Galle and that the appellant cannot maintain this action as he has failed to comply with section 8 of the Rent Restriction Ordinance, No. 60 of 1942. The Commissioner found that the defendants were bound by the terms of the agreement embodied in the lease of December 2, 1939, but the defendants can plead the benefits of section 8 of the Rent Restriction Ordinance. He also found that the defendants are the tenants of the appellant after December 1, 1943, and that the appellant cannot maintain this action in view of section 8 of the Rent Restriction Ordinance, No. 60 of 1942.

" Section 8 of the Rent Restriction Ordinance is worded as follows :—

' Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises to which this Ordinance applies shall be instituted in or entertained by any Court, unless the Assessment Board, on the application of the landlord, has in writing authorised the institution of such action or proceedings :

Provided, however, that the authorisation of the Board shall not be necessary in any case where—

(*a*) rent has been in arrear for one month after it has become due ; or

(*b*) the tenant has given notice to quit ; or

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(c) the premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord or for the purpose of his trade, business, profession, vocation or employment ; or

(*d*) the tenant or any person residing or lodging with him or being his sub-tenant has, in the opinion of the Court, been guilty of conduct which is a nuisance to adjoining occupiers, or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the Court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person ;

For the purposes of paragraph (*c*) of the foregoing proviso, " member of the family " of any person means the wife of that person, or any son or daughter of his over eighteen years of age, or any parent, brother or sister dependent on him '.

" The only point that requires consideration is whether the Commissioner was right in holding that these are premises to which the Ordinance applies. The exact point was considered by de Silva J. in *Asia Umma v. Cader Lebbe* [1]. In that case the learned Judge held that the Ordinance seemed to contemplate the case of a tenancy which is terminable by notice and though there is a reference to the rent provided in a lease in section 5 of the Ordinance that reference is to the rent payable during the term of the lease. At the termination of the lease there is no longer a tenancy as between the parties. Neither the attention of de Silva J. in the case I have mentioned nor of myself in this case was invited to the case of *Cruise v. Terrell* [2] which indicates that in England a different view has been taken of the matter now under consideration. In these circumstances as the question is one of considerable importance I refer the appeal under section 38 of the Courts Ordinance for decision by three Judges ".

N. Nadarajah, K.C. (with him *E. B. Wikramanayake*), for the plaintiff, appellant.—

The question referred for determination is whether section 8 of the Rent Restriction Ordinance, No. 60 of 1942, applies to a lessee where the term of the lease has expired. In *Asia Umma v. Cader Lebbe* [3] de Silva J. held that section 8 did not apply to an overholding lessee, but a different view has been taken in *Cruise v. Terrell* (*supra*).

In the Ordinance No. 60 of 1942, section 2 deals with the premises which were to come under the operation of the Ordinance. Section 3 restricts the increase of authorised rent. Sections 4, 5 and 6 deal with authorised rent, standard rent and permitted increases. Section 7 prohibits premiums and other additional payments. Thus sections 2 to 7 deal with the premises as such. On the other hand sections 8, 9 and 10 deal with the personal rights and duties of landlord and tenant as such.

[1] *(1946) 47 N. L. R. 230.* [2] *(1922) 1 K. B. 664.*
[3] *(1946) 47 N. L. R. 230.*

The term " tenant " used in various contexts has an extended meaning but when used in relation to landlord has one meaning only in our law, namely, a person holding a month-to-month tenancy of premises from a person authorised to give them on rent, *i.e.*, landlord.

Under our law a lessee on the expiry of the lease becomes a trespasser so that on the expiration of the lease such a person cannot be called a tenant. See *Abdul Rahim v. Hasamal* [1] ; Nathan : *Common Law of South Africa, para 916* ; Wille : *Landlord and Tenant, p. 247*. The English Rent Restriction Acts are materially different from our Rent Restriction Ordinance. Under section 15 (1) of Rent Restriction Act 10 and 11 Geo. v., ch. 17 provision is made for overholding lessees by creating a statutory tenancy. A statutory tenant cannot therefore become a trespasser. See *Felse v. Hill* [2]. There is no provision corresponding to section 15 (1) of the English Act in our Ordinance.

The termination of a lease is a bilateral act agreed upon beforehand both by the lessor and lessee but a monthly tenancy under common law can be terminated by the landlord giving a month's notice. The reasonable interpretation of section 8 is that it only curtails the common law right of the landlord to terminate the tenancy by his unilateral act. Thus section 8 would not apply to leases because the termination of the lease has already been agreed upon by lessor and lessee beforehand.

N. E. Weerasooria, K.C. (with him *A. M. Charavanamuttu* and *B. Senaratne*), for the defendants, respondents.—

It is clear that the Rent Restriction Ordinance, No. 60 of 1942, applies to leases. The terms " landlord " and " tenant " are not Roman-Dutch Law terms. They have been borrowed from English Law and are used to mean lessor and lessee. The term tenant includes a lessee. See Wille : *Landlord and Tenant, p. 1.*

Further there are clear indications in the Ordinance itself that it is meant to apply to leases as well. Section 2 applies to all premises and sections 3, 4 and 5 lay down authorised rents and standard rents to all premises. No distinction is made where the premises are held on a monthly tenancy or under a lease for a stated period. Furthermore leases are definitely referred to as coming under the purview of the Ordinance, *e.g.*, proviso to section 5 (1), proviso to section 5 (2) and proviso to section 6 (2). Thus the Ordinance takes in all persons occupying premises on payment of rent.

" Tenant " under Rent Restriction Law includes a person occupying premises under the statute even against the will of the landlord. See *Keeves v. Dean* [3] · *Remon v. City of London Rent Property Co., Ltd* [4]. *Cruise v. Terrell* (*supra*) is exactly in point. English courts have decided that Rent Restriction Act 10 and 11, Geo. v., ch. 17 applied to all tenants irrespective of section 15 of that Act. Section 15 of that Act was only one of the indications that the Act applied to all tenants.

N. Nadarajah, K.C., in reply.—

English cases have no application because statutory tenancy is not created by our law.

[1] *(1911) 1 C. A. C. 5.*
[2] *(1924) 130 Law Times Reports 76.*
[3] *(1924) L. J. 93, K. B. 203 at 207.*
[4] *(1920) L. J. 89, K. B. 1105 at 1107.*

The plaintiff in this case can ask for ejectment of the defendants (tenants) under proviso (*b*) to section 8. Agreement to quit on a certain date in the lease can be regarded as notice by the tenant to quit.

Cur. adv. vult.

October 16, 1946. KEUNEMAN S.P.J.—

This matter has been referred to us by the learned Chief Justice under section 38 of the Courts Ordinance to determine the question whether the defendants can plead the benefit of section 8 of the Rent Restriction Ordinance, No. 60 of 1942, where the premises in question were occupied under a notarial lease which has terminated by effluxion of time.

In the reference the Chief Justice drew attention to the decision of de Silva J. in *Asia Umma v. Cader Lebbe* [1] and to the fact that in England a different view was taken in the same connection—see *Cruise v. Terrell* [2].

The argument of the appellant in short was that section 8 applied only to the case of a monthly tenancy and not to the case of a lease for a fixed term. In the present case the plaintiff by P1 dated December 2, 1939, leased the premises in question to the defendants at Rs. 30 a month for a term of 4 years expiring on November 30, 1943. The lessees agreed that at the expiration of the lease they would peaceably and quietly surrender and give up the premises to the lessor, and that in the event of their failure to do so they would pay damages at Rs. 50 per month for every month or part of a month for which possession was withheld from the lessor.

In *Asia Umma v. Cader Lebbe* (*supra*) de Silva J. said.—" The provisions of the Rent Restriction Ordinance seem to contemplate the case of a tenancy terminable by notice, and though there is reference to the rent provided in a lease in section 5 of the Ordinance, that reference is to the rent payable during the term of the lease. Where a person enters into a lease for a definite term it seems to me that the relationship of landlord and tenant expires at the end of the term, and it cannot therefore be said that there is a tenancy between the parties. I am therefore of opinion that the Rent Restriction Ordinance has no application in this case ".

I think it is necessary to examine the terms of our Rent Restriction Ordinance to determine the question referred to us. The first section that requires our attention is section 8, which runs as follows :—

" Notwithstanding anything in any other law, no action or proceedings for the ejectment of a tenant of any premises to which this Ordinance applies shall be instituted in or entertained by any court unless the Assessment Board, on the application of the landlord, has in writing authorised the institution of such action or proceedings ".

This is followed by a proviso which declares that the authorisation of the Board is not necessary in certain cases, of which the following may have application to this case :—(*a*) that rent has been in arrear for one month after it became due, or (*b*) the tenant has given notice to quit, or (*c*) that the premises are in the opinion of the court required as a residence for the landlord or any member of his family, or for the purposes of his trade, business, profession, vocation or employment.

[1] *(1946) 47 N.L.R. 230.* [2] *(1922) 1 K.B. 664.*

One of the first points argued for the appellant was that the term "tenant" in section 8 has no application to a lessee whose term has expired. It was first contended that the terms "landlord" and "tenant" had no real application to the case of a lease. I do not agree with this. No authority has been cited in support of it. The essence of a contract whether for lease or for monthly tenancy is the contract of letting and hiring, and in my opinion the phrases "landlord" and " tenant " are applicable both in the case of a lease and of a monthly tenancy. Further, under section 16, "landlord" in relation to any premises means the person for the time being entitled to receive the rent of such premises. This language is wide enough to cover a lessor of the premises. I do not think the word " tenant " is inappropriate to describe a lessee, or that a restricted meaning should be given to the word " tenant ".

The further point was urged that the word " tenant " cannot be properly applied to a lessee after the expiration of the lease. It was said that by effluxion of time tenancy expired and the overholding lessee must be treated as a trespasser, and no longer a tenant. I do not agree with this argument either. Section 8 itself contains in proviso (*b*) a reference to the case where a tenant has given notice to quit. This proviso will certainly cover the case of a monthly tenancy, and in that case the tenant can certainly determine the tenancy by giving due notice to quit. Yet in the proviso he is still referred to as a tenant although the contract of tenancy may have been determined. In my opinion the word " tenant " includes a person who has at one time occupied the position of a tenant, even though at the time of action the tenancy was no longer in existence.

In England, under the Rent Restriction Acts, a similar meaning has been assigned to the word " tenant ". In *Remon v. City of London Real Property Co., Ltd.* [1] Bankes L.J. said—" It is, however, clear that in all the Rent Restriction Acts the expression tenant has been used in a special, a peculiar sense, and as including a person who might be described as an ex-tenant and who had continued in occupation without any legal right to do so, except possibly such as the Acts themselves conferred upon him ". This finding was directly approved by Warrington L.J. and indirectly by Lord Sterndale M.R. in *Cruise v. Terrell* (*supra*). In my opinion the finding in these cases is equally applicable to the Ceylon Ordinance.

The further point has been urged by counsel for the appellant that the Rent Restriction Ordinance applies only to monthly tenancies and not to a lease for a fixed term. A similar argument was advanced in England in the case of *Cruise v. Terrell* (*supra*) and rejected by all the Judges on the ground that the section (12 of the Act of 1920, 10 and 11 Geo. v., ch. 17) which applied to all lettings must also apply to a letting for a term certain, and further that expressions in various other sections of the Act supported that contention.

The Ceylon Ordinance is not in exactly the same terms as the English Act, but section 2 (2) applies to all premises which are used or occupied or intended to be used or occupied for the purposes of residence, or for the purposes of any trade, business, undertaking, profession, vocation or

[1] (*1921*) *1 K. B. 49.*

employment, or for any other purpose whatsoever. This is very wide language, and no attempt has been made in the Ordinance to draw any distinction between monthly tenancies and leases for a fixed term. As I have already pointed out, the words " landlord " and " tenant " are equally appropriate to monthly tenancies and to leases.

Further, under section 5 (1) the " standard rent " broadly speaking is the annual value of the premises assessed by the local authority as at November, 1941, but the proviso states that where premises are let at a progressive rent under a *lease* the standard rent is the rent payable in respect of that period under the terms of the lease. I think this is a clear indication that premises leased are also affected by the Ordinance.

Reference may also be made to a similar proviso in section 5 (2). The special reference to leases at a progressive rent is necessary because in those cases there was a variation in the rent from time to time. But if such leases are affected by the Ordinance I think it follows that leases where there was no variation in the rent must equally be affected.

Further, in section 6 (2) there is a reference to rents payable under the terms of the tenancy by the month or the quarter or the half year. This appears to contemplate continuing tenancies for periods of more than one month, and under our law the continuing tenancy from month to month is the only valid tenancy recognised in the common law, and we do not have the continuing tenancy from year to year or for other fractions of the year, though perhaps they may be created by a lease.

On the matter referred to us, I am of opinion that the terms of our Rent Restriction Ordinance are wide enough to apply to premises leased as well as to premises held on a tenancy from month to month. Also I do not see any reason why the legislature should have drawn a distinction between the two tenancies.

In his reply and at the very end of his argument, counsel for the appellant endeavoured to raise a new point which has not been referred to us. He contended that the agreement by the lessees in the lease P1 to surrender and give up possession of the premises at the expiration of the lease amounted to a notice to quit given by the tenant under proviso (*b*) of section 8.

It is a matter of doubt whether this agreement in the deed can be regarded as a notice to quit, more especially in this case where there was the further agreement that in the event of the failure of the lessees to deliver over possession they would pay damages at an enhanced rate. I do not think it is necessary to consider this point for several reasons.

First, it has not been raised in the plaint as a ground on which the authorisation of the Assessment Board is unnecessary. In *Maroof v. Leaff* [1], I have expressed the opinion that in view of section 8 " it is now necessary for a plaintiff to allege that he comes in under one of these cases ", *i.e.*, under provisos (*a*) to (*d*). Further there is no issue in the case which specifically raises this matter. Also this was not at any stage of the trial raised as a ground for dispensing with the necessity of authorisation by the Assessment Board. Obviously the point was not raised before the Chief Justice in appeal, nor has it been referred by him to the

[1] (*1944*) *46 N. L. R. 25.*

Divisional Court. In my opinion this matter cannot now be considered by this Court. The arguments of the counsel for the appellants cannot be sustained.

The appeal is accordingly dismissed with costs.

WIJEYEWARDENE J.—I agree.

JAYETILEKE J.—I agree.

Appeal dismissed.