LOO KAY *v.* SENGODAN AND RANGASAMI NAIDU

[Appellate Jurisdiction (Vaughan, C.J.) August 3rd, 1951]

S. 12 *of the Fair Rents Ordinance,* 1947—meaning of word " lease ".

Upon the expiry of the term of a lease the appellant held over with the consent of the owner paying the rent monthly ; the appellant also sublet part of his tenancy. The respondents then purchased the leased premises and entered into separate agreements with the sub-lessees. The appellant who remained in possession of his part of the premises and whose rights were not affected by the above agreements endeavoured to persuade the respondents to accept £4 a month as his share of the rent and no agreement being reached the respondents gave the appellant three months' notice to quit the premises, stating that they required the premises for their own purposes. The appellant did not vacate the premises upon the expiry of the notice and the respondents then brought an action in the Magistrate's Court at Rakiraki.

The Magistrate found for the respondents holding that section 12 of the Fair Rents Ordinance did not apply to the matter before him.

HELD.—That the term " lessee " in section 12 of the Fair Rents Ordinance, now section 14 of the Fair Rents Ordinance, 1954, must be interpreted as including a person who originally held such a lease as defined therein but was holding over after the expiry of the contract of the lease.

[**EDITOR'S NOTE.**—The Fair Rents Ordinance, 1947, was repealed by the Fair Rents Ordinance, 1954. Section 12 of the former ordinance is similar to section 14 of the Fair Rents Ordinance, 1954, and the particular sub-paragraph in question is identical.]

Cases referred to:—

Cruise v. Terrell [1922] 1 K.B. 664.
Remon v. City of London Real Property Ltd. [1921] 1 K.B. 49.

H. M. Scott for the appellant.

A. D. Patel for the respondents.

VAUGHAN, C.J.—The defendant has appealed from the learned Magistrate's decision, and his appeal is based upon the single ground that section 12 of the Fair Rents Ordinance applied to the appellant's case and that therefore the learned Magistrate should have applied those provisions.

The reason given by the learned Magistrate for his finding on this point was that the appellant was a tenant on sufferance and no lease as defined in section 2 of the Ordinance was in existence, consequently the Fair Rents Ordinance had no application to the case.

The facts are that the appellant became a tenant of the former owner of the premises by virtue of a written contract under the terms of which he leased the premises concerned for a fixed term (1st January 1947 to 27th December 1948) at a monthly rental of £14. Upon the expiry of the term of this lease the appellant held over with the consent of the former owner and paid the rent monthly as before. At some

time during this period the appellant sublet parts of the premises independently to two other persons at a monthly rental of £5—he collected the £10 a month from these two sub-tenants and adding £4 to that amount continued to pay £14 to the former owner. This was apparently done with the consent of the former owner, though there is no direct evidence on the point. Some time before January, 1950, the present respondents purchased the premises (the evidence as to the circumstances in which they acquired the premises is very unsatisfactory). Upon becoming the owners of the premises the respondents forthwith entered into an agreement with the two sub-tenants as a result of which they remained in occupation of their parts of the premises as tenants of the new owners (the respondents): the appellant was not apparently a party to this agreement and consequently his rights (if any) cannot have been affected by it. The appellant remained in possession of his part of the premises and endeavoured to persuade the respondents to accept £4 a month as his share of the rent: the respondents refused to accept £4 and demanded £10: no agreement was reached between them, and in July, after correspondence between the parties' solicitors, the respondents gave the appellant three months' notice to quit the premises, stating that they required the premises for their own purposes, and demanding arrears of rent at £10 a month. The appellant did not vacate the premises on October 31st, and the respondents then brought their action in the Magistrate's Court.

In order for the appellant to succeed it is necessary for him to show that for the purposes of section 12 of the Fair Rents Ordinance the relations betwen himself and the respondents were those of lessor and lessee; or that the law requires them to be regarded as such, those being the terms used throughout that section, as indeed throughout the Ordinance. Mr. Scott for the appellant has referred me to two English cases, *Remon v. City of London Real Property Ltd.* [1921] 1 K.B. p. 49, and *Cruise v. Terrell* [1922] 1 K.B. 664, which are clearly authority for the proposition that for the purposes of the *English Rent Restriction Acts* a tenant at will or a tenant on sufferance is protected by the Acts and also a person who, were it not for the effect of those Acts, could not strictly be described as a tenant at all, e.g. a person who originally held under a tenancy agreement but holds over after the expiry of his term against the will of the landlord or after a lawful notice to quit. As was pointed out by the Court of Appeal in *Remon's case,* any other interpretation of the word " tenant " would wholly defeat the purpose of the Act, which was to enable a tenant whose tenancy by agreement had expired but who was willing to carry out the terms of the expired agreement to stay on against the will of the landlord. In *Remon's case Banks L.J.* made the following observation which was approved and adopted by the Court in the later case referred to:—

> " In no ordinary sense of the word was the respondent a tenant of the premises on July 2. His term had expired. His landlords had endeavoured to get him to go out. He was not even a tenant at sufferance. It is however clear that in all the Rent Restrictions 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, someone whose occupation had commenced as tenant and who had continued in occupation without any legal right to do so except possibly such as the Acts themselves conferred upon him."

Applying this principle to section 12 of the Fair Rents Ordinance I am bound to hold that the term " lessee " in that section must be interpreted as including a person who originally held under a lease as defined in the Ordinance but was holding over after the expiry of the contract of lease. It follows that at the time the respondents acquired the premises the relationship between the appellant and the former owner were those of lessor and lessee for the purposes of section 12 of the Ordinance. This, however, does not conclude the matter: the question of the effect of the change of ownership has still to be considered. On this point I have not had the advantage of Counsel's arguments, but applying the general principle " *non dat qui non habet* ", in other words that no man can transfer a greater right or interest than he himself possesses, I find that the disqualification or disability attaching to the former owner's title, namely that he could only evict the appellant by proceeding under section 12 of the Fair Rents Ordinance, devolved upon the respondents. I find, therefore, that the learned Magistrate was wrong in finding that the Fair Rents Ordinance did not apply to the appellant's case, and the order of eviction of the appellant made by him without reference to the provisions of section 12 of that Ordinance must be quashed.