

## MORRIS HEDSTROM LTD.

v.

## KANJI RATANJI JOGIA AND ANOTHER

[SUPREME COURT, 1966 (Hammett P.J.) 4th November, 2nd December]

## Civil Jurisdiction

*Practice and procedure—summary proceedings—application for possession of land under s.186 of the Land (Transfer and Registration) Ordinance—scope of section—determination of validity of notice to quit—Land (Transfer and Registration) Ordinance (Cap. 136) ss.186, 189.*

*Landlord and tenant—expiration of lease—holding over by agreement—monthly rent paid—notice to quit—whether intention to create annual or monthly tenancy—Land (Transfer and Registration) Ordinance (Cap. 136) s.189.*

*Land—possession—recovery of—summary proceedings after expiry of legal notice to quit—Land (Transfer and Registration) Ordinance (Cap. 136) ss.186, 189.*

At the expiration of a five year lease from the plaintiff company to the defendants the plaintiff company stated that it could not agree to a renewal, but agreed to extend the lease until its plans for the use of the building were ready. On that basis the defendants held over and paid rent monthly for three months, at which time a month's notice to quit was served upon them. The defendants claimed that they had become yearly tenants. On an application for possession by the plaintiff company under section 186 of the Land (Transfer and Registration) Ordinance—

*Held*: 1. The issue whether a notice to quit has been validly given or otherwise can be determined in summary proceedings under section 186 of the Land (Transfer and Registration) Ordinance.

2. On the facts the intention of both parties was to create a monthly tenancy and the notice to quit given was a valid one.

Cases referred to: *Adler v. Blackman* [1953] 1 Q.B. 146; [1952] 2 All E.R. 945; *Ladies' Hosiery and Underwear Ltd. v. Parker* [1930] 1 Ch. 304; 46 T.L.R. 171; *Thompsons Ltd. v. Phillips* [1945] 2 All E.R. 49.

Application in chambers in the Supreme Court for possession of land under section 186 of the Land (Transfer and Registration) Ordinance; reported by direction. The facts were agreed and are stated in the Order of Hammett P.J.

*J. N. Falvey* for the plaintiff company.

*M. J. C. Saunders* for the defendants.

HAMMETT P.J. : [2nd December, 1966]—

A This is an application by the Plaintiff under the provisions of Section 186 of the Land (Transfer & Registration) Ordinance (Cap. 136) calling upon the Defendants to show cause why they should not give up possession of the land comprised in Certificate of Title No. 5323 in Suva and the premises erected thereon.

B The facts in the affidavit in support are either admitted or not challenged in the Defendants' affidavit in reply. At the hearing before me, it was made clear that none of the facts are in dispute. The Defendants' case is firstly that on these facts it is not open to the Plaintiff Company to avail itself of the summary procedure for ejectment provided under Part XXII of the Land (Transfer & Registration) Ordinance and secondly that no valid Notice to Quit has been given to terminate the Defendant firm's tenancy.

The facts are as follows :

C The Plaintiff Company is the registered proprietor of the land comprised in Certificate of Title No. 5323 situated in Suva with frontages on Thomson Street and Renwick Road.

In 1961 the Plaintiff Company gave the Defendant firm a five year lease of the shop built on part of the land.

D On 25th February, 1966, the Plaintiff Company wrote to the Defendant firm in the following terms :

#### YOUR TENANCY FROM US

E "... Your present tenancy from us of part of the Pacific Insurance Company Building will expire on 31st March next. We regret that as we require this part of the building for our own purposes we shall be unable to offer you a renewal."

F In March 1966 one of the partners in the Defendant firm asked one of the directors in the Plaintiff Company for an extension of the lease until 31st December, 1966. This was not granted but it was agreed that the lease would be extended until the Plaintiff Company's plans for the use of the building were ready. On this basis the Defendant firm held over after the expiry of the lease and paid rent for each of the months of April, May and June 1966.

G On 23rd May, 1966, the Plaintiff Company wrote to the Defendant Company that possession would now be required by 18th June, 1966. The Defendant firm did not vacate the premises and on 30th June, 1966, a notice was served on the Defendants by the Plaintiff Company's Solicitors in the following terms :

H "On instructions received from your Landlord Messrs. Morris Hedstrom Limited we hereby give you notice to quit and deliver up vacant possession of the shop premises occupied by you as tenant in Thomson Street, Suva on the 31st day of July, 1966, or at the expiration of the month of your tenancy which will expire next after the end of one month from the service of this notice on you."

The Defendant firm's Solicitors replied to this notice to quit by their letter dated 7th July, 1966. In this letter they contended that by holding over with the consent of the Plaintiff Company the Defendant firm had become a tenant from year to year and that the notice served was therefore ineffective and not a valid Notice to Quit. A

The Defendant firm did not vacate the premises on 31st July, 1966, and on 17th October, 1966, this application for ejectment was filed returnable on 4th November, 1966.

At the hearing on 4th November, 1966, Counsel for the Defendant firm first raised the preliminary objection that it was not open to the Plaintiff Company to bring these summary proceedings for ejectment under the Land (Transfer & Registration) Ordinance Cap. 136. B

This argument is based on the wording of Section 186 the material parts of which read :

"The following persons may summons any person in possession of land to appear before a judge in chambers to show cause why the person summoned should not give up possession to the applicant C

(a) to (c) . . .

(d) a lessor against a lessee or tenant where a legal notice to quit has been given or the term of the lease has expired." D

It is submitted that since the Defendant firm maintains it is now a tenant from year to year, six months' notice to quit is required and the one month's notice given is insufficient. As a result it is contended that no "legal notice to quit has been given" as is required by Section 186(d). If this is the position or if the Court has to determine this issue it is submitted that the summary procedure followed in this case is not appropriate and that a formal writ should have been issued claiming possession. E

I do not and did not accept this preliminary objection to the validity of these proceedings. In my view the provisions of Section 186(d) expressly contemplate summary proceedings by a Landlord against his tenant to whom he has given a notice to quit. I do, however, agree that it is open to the Defendant in these proceedings to challenge the legality or validity of the Notice to Quit that has been given to him. F

The second defence is raised under the provisions of Section 189 of which the material part reads :

"If the person summoned appears he may show cause why he refuses to give possession of such land and, if he proves to the satisfaction of the judge a right to the possession of the land, the judge shall dismiss the summons with costs against the proprietor, mortgagee or lessor or he may make any order and impose any terms he may think fit." G

It is the contention of the Defendant firm that by holding over after the expiry of the five year lease on 31st March, 1966, with the consent of the Plaintiff company and by the acceptance by the Plaintiff H

A Company of monthly rents for each of the months of April, May and June 1966 it automatically became a tenant from year to year. It is submitted that the Defendant firm now holds a yearly tenancy only terminable by six months' notice at the end of any complete year of the tenancy.

B In reply Counsel for the Plaintiff Company has referred me to the decision of *Adler v. Blackman* [1953] 1 Q.B. 146. In that case it was held that where in a tenancy agreement for one year the rent is expressed to be so much per week and the tenant holds over at the end of the term only a weekly tenancy should be presumed. In reaching this decision the Court applied a dictum of Maugham J. in *Ladies' Hosiery & Underwear Ltd. v. Parker* and in doing so Somervell L.J. said, at p.150 :

C "I agree with that: I think that when as here, a term comes to an end one has, of course, to consider what inferences are properly to be drawn from the payment and acceptance of rent."

I have also considered the case of *Thompsons Ltd. v. Phillips* [1945] 2 All E.R. 49 where it was held that the acceptance of payments of rent was, in the absence of any intention on the part of either the landlord or the occupier to create a new tenancy, no evidence from which the creation of a new tenancy could be inferred.

D In my view there can be no question that the Defendant firm ever contemplated becoming a tenant from year to year when it held over and paid its monthly rent and the Plaintiff Company never considered or agreed to any such tenancy being created.

E The Defendant firm only sought the agreement of the Plaintiff Company to be allowed to occupy the premises until the end of 1966. The Plaintiff Company expressly agreed to allow the Defendant firm to hold over on a month to month basis until such time as they required the premises for their own use.

F In these circumstances I hold as fact that a monthly tenancy was intended and agreed to and created by the payment of rent by the Defendant firm when it held over after the expiry of its five year lease. That tenancy was properly determined with effect from 31st July, 1966, the notice to quit dated 30th June, 1966, which was that day served on the Defendant firm.

G The Plaintiff Company did therefore become entitled to possession on 1st August, 1966. The Defendant firm has not shown good cause why it should not give up possession of the premises. It has not proved to my satisfaction any right to the possession of the land.

The Plaintiff Company is therefore entitled to an order for immediate possession with costs under the provisions of the Land (Transfer & Registration) Ordinance Cap. 136 and I do so order.

*Application granted. Order for immediate possession.*