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against those other persons, but the defendant was exempted from the decree, and costs were awarded to him against the plaintiff-respondent, and the former was thus a decree-holder for the amount of costs against the plaintiff-respondent. This decree was dated the 24th December, 1878. On the 16th June, 1880, the plaintiff sought to execute his decree against those other persons, and he sought to set off the costs awarded to the respondent against the amount due to him. On the 6th August, 1880, the appellant preferred objections to his costs being set off in this manner, and, on the 2nd September, 1880, his objections were disposed of. The appellant then, on the 19th July, 1883, applied for execution of his decree for costs. The application has been rejected on the ground that it was not made within three years from the date of the decree. The appellant contends that his application was within time; that is, within three years from the date of the objection to the application of June, 1880. In other words, he contends that by filing his objections he took a step in aid of the execution of his own decree.

This contention is not sustainable. We think that art. 179 of the Limitation Act requires that the decree-holder should make a direct and independent application for execution of his own decree on his own account; and it is not sufficient to satisfy the requirements of the law to offer objections under the circumstances under which they were offered in the present case. Were we to allow this contention, we should have to hold that resistance to another person's decree is a step in execution of a man's own decree. In this view of the matter, we dismiss the appeal with costs.

Appeal dismissed.

FULL BENCH.

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July 18.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Brodhurst and Mr. Justice Tyrrell.

BRADLEY (DEFENDANT) *v.* ATKINSON (PLAINTIFF.)*

Landlord and tenant—Notice to quit—Act IV of 1882 (*Transfer of Property Act*), *s.* 106.

On the 11th December, 1882, *A*, who had, on the 1st July, 1882, let rooms in a dwelling house to *B*, sent a letter to the tenant in the following terms :—

* Appeal No. 2 of 1885, under s. 10 of Letters Patent.

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"If the rooms you occupy in the house No. 5, Thornhill Road, are not vacated within a month from this date, I will file a suit against you for ejectment, as well as for recovery of rent due at the enhanced rate." On the 1st February, 1883, the lessor instituted a suit against the tenant for ejectment, with reference to the above letter.

Held by the Full Bench, with reference to the terms of s. 106 of the Transfer of Property Act, that the letter was not such a notice to quit as the law required, inasmuch as it was not a notice of the lessor's intention to terminate the contract at the end of a month of the tenancy.

Per STRAIGHT, J., *quære*, whether the letter was a notice to quit at all.

Also *per* STRAIGHT, J.—A notice to quit must be certain, at all events in respect of the date of the determination of the tenancy: in other words, there must be a clear and explicit intimation to the tenant as to the date after which he will, if he remains in occupation of the premises, become a trespasser. *Ahearn* v. *Bellman* (1) distinguished.

The judgment of MAHMOOD, J., (2) reversed, and that of OLDFIELD, J., (3) affirmed.

THIS was an appeal to the Full Court, under s. 10 of the Letters Patent, from a judgment of Mahmood, J., in a second appeal, in which that learned Judge differed in opinion from Oldfield, J., who held that the appeal should be allowed. The facts of the case and the judgments of Oldfield and Mahmood, JJ., will be found reported at p. 596, *ante*. It will be sufficient here to state that, on the 11th December, 1882, Mr. R. A. Fairlie, the agent of the plaintiff, Mrs. Elizabeth Mary Atkinson, who had, on the 1st July of the same year, let rooms in a dwelling-house to the defendant Mr. John Bradley, sent a letter to the tenant in the following terms:—"If the rooms you occupy in the house No. 5, Thornhill Road, are not vacated within a month from this date, I will file a suit against you for ejectment, as well as for recovery of rent due at the enhanced rate." On the 1st February, 1883, the rooms not having been vacated, the plaintiff instituted a suit against the defendant for ejectment, with reference to the above letter. At the hearing of the appeal, Mahmood, J., concurring with the Courts below, was of opinion that the letter was a valid notice to quit under ss. 106 and 111 of the Transfer of Property Act (IV of 1882), and that the suit for ejectment was maintainable. Oldfield, J., was of the contrary opinion. The defendant appealed to the Full Court.

(1) L. R., 4 Exch. Div. 201. (2) *Ante*, p. 599.
(3) *Ante* p. 597.

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Mr. *C. H. Hill*, for the appellant.

Mr. *G. E. A. Ross*, for the respondent.

PETHERAM, C. J.—I am of opinion that in this case the judgment of Mr. Justice Oldfield was right, and that the notice to quit, which was given by Mr. Fairlie on the 11th December, 1882, was not such a notice as could terminate the contract of tenancy. The law on the subject is contained in s. 106 of the Transfer of Property Act, and the portion of that section which applies to the present case provides that "a lease of immoveable property for any other purpose" than agricultural and manufacturing purposes "shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice, expiring with the end of a month of the tenancy." This provision is incorporated in every contract of tenancy of this kind; and, this being so, the contract between the lessor and the lessee was a contract of monthly tenancy: that is, a tenancy at a rent which was payable monthly. Further, one incident of such a contract was that either party might terminate the arrangement at the end of any current month by giving fifteen days' notice of his intention to do so. This would be the only right which the parties had to terminate the contract. The meaning of such an arrangement is that the rent was to be paid monthly, and that there should be no broken rent, so that the tenancy was one from month to month, and terminable at the end of the month at the will of either party.

Now, in order to terminate the tenancy, either party must give the other notice of his intention; but it must be a notice of his intention to do what he is legally competent to do. The question here really is, whether the notice in question was a notice of Mr. Fairlie's intention to terminate the contract at the end of a month of the tenancy. I am of opinion that it cannot be so considered. The words of the notice are:—"If the rooms you occupy in the house No. 5, Thornhill Road, are not vacated within a month from this date, I will file a suit against you for ejectment, as well as for recovery of the rents due at the enhanced rate." It is obvious that the words "the enhanced rate" referred to something before. Then, was this an intimation of an intention to terminate the tenancy on the 31st December, 1882? I am clearly of opinion that it was not.

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It is an intimation on the part of the lessor that, if the rent should not be paid within a month's time from that date, he would bring a suit against the lessee. He merely tells the lessee to vacate the rooms or to pay the penalty. This is not a notice which can terminate the tenancy, and therefore the tenancy was not determined. Under these circumstances, judgment should be for the defendant. The appeal must be decreed with costs of all Courts. The decree of the lower appellate Court will be varied to this extent, that the portion decreeing ejectment will be set aside with costs, and the residue of the claim will stand as decreed with costs.

STRAIGHT, J.—I have considerable doubts as to whether the document in question is a notice to quit at all. I am inclined to think that it was only a demand for possession of the premises: in other words, it was an intimation by the plaintiff that, within a period not exceeding a month from that date, the defendant should deliver up possession of the rooms which he then occupied. But as the document has, throughout the case, been treated as a notice to quit, it will be convenient if I deal with it on that assumption, and state the view which I hold upon the question whether it sufficiently complies with the provisions of the law. A notice to quit has been described as "a certain reasonable notice required by law, or by custom, or by special agreement, to enable either the landlord or the tenant, or the assignees or representatives of either of them, without the consent of the other, to determine a tenancy from year to year, from two years to two years, or other like indefinite period." Documents of this kind must be certain, at all events in respect of the date of the determination of the tenancy; in other words, there must be a clear and explicit intimation to the tenant as to the date after which he will, if he remains in occupation of the premises, become a trespasser. In the notice now in question, no date is specified, but the lessee is informed that "if the rooms you occupy in the house No. 5, Thornhill Road, are not vacated within a month from this date, I will file a suit against you for ejectment, as well as for recovery of the rent due at the enhanced rate." It has been argued by Mr. Ross that the defendant, being presumed to know the law, must consequently be presumed to know that, under the notice, he would have to leave the premises by the 1st January, 1883, and that if he remained in

possession after that date he would become a trespasser; that is to say, he was to read a notice which gave him till the 11th January as meaning the 1st January. It appears to me that if the plaintiff, between the 11th December, 1882, and the 12th January, 1883, had attempted to take steps for the ejectment of the defendant, the latter would have had a good answer by setting up that he was in possession with the leave and license of the plaintiff. Under these circumstances, I am of opinion that the document is not one which gave the lessee notice to quit on the 1st January, 1883.

The learned Chief Justice has referred to the provisions of the law upon this point. It appears to me that the words in s. 106 of the Transfer of Property Act—"fifteen days' notice expiring with the end of a month of the tenancy"—mean what they purport to mean. In the present case, the tenancy began on the 1st July, 1882, and a good notice to quit would have to be so dated as to require the tenant to quit upon the first of a month.

Mr. Justice Mahmood has referred in his judgment to several cases. Of these I need only mention *Ahearn* v. *Bellman* (1). There the lessor gave the lessee notice in writing to quit upon a specified day, and then went on to say—"and I hereby further give you a notice that, should you retain possession of the premises after the day before-mentioned, the annual rent of the premises now held by you from me will be £ 160, payable quarterly in advance." In that case, there was a difference of opinion. Bramwell and Cotton, L. JJ., were of opinion that the clear and explicit first portion of this notice was not impaired or rendered nugatory by the alternative given by the second portion, of continuing to hold the premises at an increased rent. As I understand those learned Judges, all they said was that the document constituted a determination of one tenancy, and was not invalidated because it proposed another. No doubt Brett, L. J., differed, and his judgment mainly proceeded on a well-known dictum of Lord Mansfield; but neither from his remarks nor from those of his colleagues do I find any authority for the view that a document of the character before us would constitute a legal notice to quit, or that any notice not stating with certainty the correct date the tenancy should determine would be legally good.

(1) L. R., 4 Exch. Div. 201.

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I am therefore of opinion that my brother Oldfield was right; and I concur in allowing the appeal with all costs, and in varying the decree of the lower Court as proposed by the learned Chief Justice.

BRODHURST, J.—I am of the same opinion.

TYRRELL, J.—Under s. 106 of the Transfer of Property Act, the notice to quit the tenancy of a house may be in excess of fifteen days, at the pleasure of the lessor; but it is imperative that a valid notice must be such a notice that its last day will be the same as the last day of a month of the tenancy.

APPELLATE CRIMINAL.

1885
July 20.

Before Mr. Justice Tyrrell.

QUEEN-EMPRESS *v.* TULLA AND OTHERS.

Practice—Trial in Sessions Court—Non-production of material witnesses for Crown—Duty of Public Prosecutor.

It is the duty of the Public Prosecutor at a trial before the Court of Session to call and examine all material witnesses sent up to the Court on behalf of the prosecution, and the Judge is bound to hear all the evidence upon the charge.

The Public Prosecutor is not bound to call any witnesses who will not, in his opinion, speak the truth or support the points he desires to establish by their evidence; but in such circumstances he should explain to the Court that this is his reason for not calling these witnesses, and he should offer to put them in the box for cross-examination by the accused at their discretion. In the absence of any such explanation, or of other reasonable grounds apparent on the face of the proceedings, inferences unfavourable to the prosecution must be drawn from the non-production of its witnesses.

IN this case, six persons named Tulla, Chidda, Chiddu, Jairam, Kallu and Lalji, were tried before the Sessions Judge of Moradabad, under s. 411 of the Penal Code, for dishonestly receiving stolen property, knowing or having reason to believe the same to be stolen property. All the accused were convicted and were sentenced, the first four to six months' rigorous imprisonment, and the last two to three and two years' rigorous imprisonment respectively with reference to the provisions of s. 75 of the Penal Code. Five of the witnesses for the Crown, who had been present on the various occasions when the premises of the accused were examined, and who had been sent up to the Sessions Court, were not called, and no reason for the exclusion of