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the Legislature to all persons presenting documents for registration. It is obvious that the insignificant piece of land at Patna was not "some portion" of the hypothecated property, using that expression in the sense in which I believe it to have been used in s. 28. Under that section, therefore, an irregularity was committed, and the question then arises whether or not that irregularity is condoned by any provision of Act VIII of 1871, or any other Act, or by any principles which ought to be applied in the construction of statutes. The learned pleader for the respondents relied on s. 85 of Act VIII of 1871:—"Nothing done in good faith pursuant to this Act or any Act hereby repealed by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure." Now, the imperative direction of s. 28 is addressed not to the registering officer, but to the person presenting a document to that officer for registration. S. 85, on the other hand, is not addressed to the parties, but relates to the registering officer. I do not think, therefore, that s. 85 can help the respondents' case, especially as that section refers only to defects in the appointment or procedure of the registering officer. Here there is no question of defective appointment, nor, looking to the sections of the Act which appear under the heading of procedure, do I think that any defect of procedure under these sections can be shown. The only remaining question is that of notice to *bonâ fide* transferees for value, which is one of the main objects of the Registration Law. The registration being vitiated by irregularity, as the learned Chief Justice has shown, I am further of opinion that no other notice to the purchaser has been sufficiently proved. I concur, therefore, in decreeing the appeal with costs.

Appeal allowed.

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January 15.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

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

Landlord and tenant—Notice to quit—Act IV of 1882 (*Transfer of Property Act*), *ss.* 106, 117.

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:—"If the rooms

* Second Appeal No. 8 of 1884, from a decree of F. S Bullock, Esq., Officiating District Judge of Allahabad, dated the 2nd October, 1883, affirming a decree of Babu Ram Klai Chaudhri, Subordinate Judge of Allahabad, dated the 18th June, 1883.

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 OLDFIELD, J., (MAHMOOD, J., dissenting) that, with reference to the terms of s. 106 of the Transfer of Property Act, the letter was not such a notice to quit as the law required, inasmuch as the notice did not expire with the end of a month of the tenancy; and that this defect was not cured by the circumstance that the lessor waited until the end of the month to enforce his right to eject by suit.

Held by MAHMOOD, J., (OLDFIELD, J., dissenting) that the letter dated the 11th December 1882 was a valid notice to quit under ss. 106 and 111 of the Transfer of Property Act, and sufficient to determine the tenancy, inasmuch as it gave the tenant more than fifteen days' notice, and its terms were such that he could with perfect safety have acted upon it by quitting the premises at the proper time, namely, by the end of the month, which he must be presumed to have known was the right time to leave, without any risk of incurring liability to payment of further rent, the landlord having clearly indicated his intention to terminate the tenancy, and the notice being binding upon him; that the additional time given by the notice must be taken to have been given for the convenience of the tenant, and not with the object of continuing the tenancy; and that the suit for ejectment, not having been brought till long afterwards, was maintainable. *Doe* v. *Smith* (1), *Ahearn* v. *Bellman* (2), *Nocoordass Mullick* v. *Jewraj Baboo* (3), and *Jagut Chander Roy* v. *Rup Chand Chango* (4) referred to.

Also *per* MAHMOOD, J.—The words "fifteen days" in s. 106 of the Transfer of Property Act imply a fixation of the shortest period of notice allowed by the section; and the term "expiring" means that the terms of the notice must be such as to make it capable of expiring according to law at the right time, so as to render it *safe* for the tenant to quit coincidentally with the end of a month of the tenancy, without incurring any liability to payment of rent for any subsequent period.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Oldfield, J.

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

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*) for the respondent.

OLDFIELD, J.—This is a suit to eject the defendant-appellant from premises let to him by the plaintiff, and to recover rent. The tenancy commenced on the 1st July, 1882. For the purposes of this appeal, the only facts necessary to state are, that on the 11th December, 1882, the plaintiff sent a letter to the defendant, which was in effect, a notice to quit. He wrote that "If the rooms you occupy in the house No. 5, Thornhill Road, are not vacated

(1) 5 Ad. & E. 353.
(2) L. R., 4 Exch. Div. 201.
(3) 12 B. L. R., 263.
(4) I. L. R., 9 Calc. 48.

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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."

This was a notice to quit expiring on the 10th January, 1883, and the present suit, which was instituted on the 1st February, 1883, has been brought with reference to the above notice.

The Courts below have decreed the claim for ejectment and for a portion of the rent claimed.

This appeal on behalf of the defendant refers only to the decree for ejectment, which it is contended could not be made, there having been no valid notice to quit or termination of tenancy.

The law which governs contracts of this kind is s. 106 of the Transfer of Property Act :—"In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy ; and a lease of immoveable property for any other purpose 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."

The lease we are dealing with comes under the last part of the section, and is a lease from month to month, and in the absence of a contract or local law or usage to the contrary, is terminable by the lessor or lessee by fifteen days' notice expiring with the end of a month of the tenancy.

The notice of the defendant does not fulfil the requirements of the law, as it did not require the tenant to quit at the proper time ; or, in the language of the Act, the notice did not expire with the end of a month of the tenancy. The tenancy commenced on the first of the month, and the end of a month of the tenancy was the last day of a month on which the notice should have expired, whereas it expired on the 10th of the month.

This notice therefore was not such as the law requires, and had not the effect of terminating the tenancy on the 10th January, the day on which it expired ; and it does not help the plaintiff that he wanted until the end of the month to enforce his right to eject by

suit. He cannot in this way cure the defect in the notice. The notice was ineffectual to terminate the tenancy on the day on which it expired, and is not good for the purpose of terminating it on a subsequent date to which the notice had no relation.

The Judge admits that "the law in England is, that the validity of a notice is supported by its being for a period which does not expire with the tenancy;" but adds that he knows of no such law in this country, and that by the custom in this country the only notice recognized is a month's notice without regard to the period of tenancy.

The Judge appears to have overlooked the provisions of s. 106 of the Transfer of Property Act, which is the law on the subject; and there is no evidence on the record by which such a custom as he refers to is established which can override the law.

The appeal is allowed, and I would modify the decrees of the Courts below by disallowing the claim for ejectment. The appellant will have his costs in all Courts.

MAHMOOD, J.—The learned counsel for the appellant has limited his argument to the question of the validity or otherwise of the notice to quit, dated the 11th December, 1882, and I confine my judgment to the same point. The sole question therefore is, whether or not that notice was sufficient in law to determine the tenancy, and to enable the plaintiff to maintain a suit for the ejectment of the defendant. Mr. Hill referred to ss. 106 and 111 of the Transfer of Property Act, the former of which runs thus:—"In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose 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." The last clause obviously applies to the present case, which is one of a lease for purposes other than those mentioned in the first clause, and therefore, in the absence of a contract or local law or usage to the contrary, we must take the lease to have

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been a lease from month to month, and subject to the provisions contained in the second part of the section which I have just read. Then s. 111 shows how a lease of immoveable property determines, and cl. (*h*) gives the following instance:—"On the expiration of a notice to determine the lease, or to quit, or of intention to quit the property leased, duly given by one party to the other." I here lay stress upon the word "*duly*," and the whole question before us is, whether the notice to quit, dated the 11th December, 1882, was duly given in accordance with the requirements of s. 106.

Before explaining the construction which I place upon that section, I will notice Mr. Hill's argument relating to the English law on this subject. To me it seems that even under the English law (and I say this with regret, because my brother Oldfield differs with me) this notice would be sufficient to determine the lease. In the first place, what is precisely the reason why notice should be necessary before a lease can be ended? Mr. Hill argued very soundly that the relation of landlord and tenant, being the result of a deliberate contract, is subject to the general rule of jurisprudence that no contract can be rescinded except by the mutual consent of the parties to it, or some other rule to which the law has given similar effect. Now, in regard to the contract of a lease between landlord and tenant, the law says that the relation between them may be terminated at the choice of either, subject to certain specified conditions. Notice is absolutely necessary in a case such as this, and that notice, in order to be effectual, must fulfil the requirements of the law. Now, the object of giving tenants notice to quit is, that "as the tenant is to act upon the notice when he receives it, it should be such a notice as he may act upon *safely*, and therefore it must be one which is binding upon all parties concerned at the time it is given, and needs no recognition by any one of them subsequently ..... No particular form of the notice is necessary, but there must be a *reasonable certainty* in the description of the premises, and in the statement of *the time* when the tenant must quit." (Parsons *On Contracts*, Vol. I, p. 514). What this means is, that the terms of the notice must make the matter so clear as to enable the tenant to take action on it *safely*, in the sense of leaving the premises at the proper time without any further liability for rent, because, as Story in his work

On Contract says, in s. 1257, "if the lodgings be kept beyond the term for which they are let, a new term commences, for which the tenant is bound to pay full rent, whether he occupy them during the whole term or not." And because the main object of the notice is to save the tenant from running a risk of incurring such liability, the same learned author in s. 1260 of his work goes on to say.—"The notice must be explicit and positive. It must not give the tenant an option of leaving the premises or entering into a new contract. But it need not be worded with the accuracy of a plea;" and to this observation, relying upon certain cases, he appends a note to the effect that "the notice to be served by the landlord upon the tenant-at-will to determine his tenancy need not specify the time within which the premises must be surrendered. If a time is specified in the notice served upon the tenant, which elapses within less than one month from the time of service of the notice, it will not vitiate the notice. It is sufficient if the tenant has thirty days' notice in writing of the intention of the landlord to terminate the tenancy." Of course this passage is not fully applicable to the present case, because, by reason of the statutory provisions contained in s. 106 of the Transfer of Property Act, the lease here must "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." The principle, however, which regulates the object of the notice is applicable, because even a tenant from year to year,—to use the words of Mr. Woodfall (p. 204),—"is substantially a tenant at will; except that such will cannot be determined by either party without due notice to quit," and the "notice to quit must be clear and certain, so as to bind the party who gives it, and to enable the party to whom it is given to act upon it at the time when he ought to receive it." (p. 318.) Thus the *object* of the notice to quit, whenever it is required by law to terminate the tenancy, is identical, whether the tenancy be from year to year, or, as in this case, from month to month. In both cases the turning point as to the validity of the notice is, whether it was sufficiently clear to make it safe for the tenant to quit at the proper time without incurring the risk of liability to rent after he has quitted the premises. I am not aware of any rule of law

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which requires the landlord, any more than the tenant, to inform the other of the specific time when such notice would legally terminate the tenancy. Both are by a necessary legal presumption supposed to know the law, and it is obvious that, both being contracting parties to the lease, they must be taken to be aware of the terms of the contract. The principle of the rule is the same as that in the case of *Right* v. *Darby* (1), cited in Addison *On Contracts* (p. 353), where it is laid down that "when a lease is determinable on a certain event, or at a particular period, no notice to quit is necessary, because both parties are equally apprised of the determination of the term." And the same principle prevailed in another case—*Doe* v. *Smith* (2)—cited by the same author (p. 358), where a notice was given to quit "at the expiration of half a year from the delivery of this notice, or at such other time as your present year's holding shall expire after the expiration of half a year from the delivery of this notice," and the notice was given towards the close of the current year. It was held that the word "present," which rendered the notice inaccurate and unmeaning, might be rejected, as there was no *danger* of the tenant having been *misled* by it.

The other English authorities, to be found in Addison *On Contracts* and in Woodfall *On Landlord and Tenant*, go to show that it was formerly held that a notice to quit, which was accompanied by an intimation giving an option to the tenant to continue the tenancy on other terms, was bad in law; but even in the former treatise it is laid down on the authority of *Doe* v. *Wrightman* (3, that when the notice is given in the alternative, in order to hit one of two periods on which the term is known to end, such notice is a perfectly good notice, and possesses all the certainty that is *reasonably* requisite for the information of the tenant. But the latest case is *Ahearn* v. *Bellman* (4), decided by the Court of Appeal, in which the judgment of Brett, L.J., may possibly go to a certain extent to support the reasoning upon which Mr. Hill's argument is based, but the *ratio decidendi* adopted by the majority of the Court—Bramwell and Cotton, L.JJ.,—certainly does not favour the contention pressed upon us on behalf of the appellant. The majority of the Court in that case laid down the

(1) 1 T. R. 162.
(2) 5 Ad. & E. 353.
(3) 4 Esp. 6.
(4) L. R., 4 Exch. Div. 201.

principle that a notice to quit which is in itself sufficient to enable the tenant to quit at the proper time without any chance of being liable to payment of any rent for any period subsequent to his quitting the premises, is valid in law to terminate the tenancy. I am of opinion that the same principle applies to this case. Our statute law says that a tenancy, such as the one in this case, could be terminated by giving fifteen days' notice to the landlord—the "notice expiring with the end of a month of the tenancy." Here the notice is dated the 11th December, 1882, so that the tenant had more than fifteen days' notice, and its terms were such that he could have *perfectly safely* acted upon it by quitting the premises at the proper time, namely, by the end of the month, which he must be presumed to have know was the right time to leave without any risk of incurring liability to payment of further rent—the landlord having clearly indicated his intention to terminate the tenancy, and the notice being perfectly binding upon him. It is true that in this case the notice gave the tenant longer time than that required by the law, but such additional time must be taken to have been given for the convenience of the tenant, and not with the object of continuing the tenancy. What the notice meant was:—"I no longer want you as my tenant; the sooner you leave the better, but I give you a month's time to vacate the premises, and if you do not do so, I will sue you for ejectment, but will not do so before the end of the time which I am giving." I fail to see how the notice could have misled the tenant into thinking that any choice was left to him to continue the tenancy, nor am I able to see any reason why a notice to quit, which showed indulgence to the tenant to have longer time than that absolutely required by the law, should vitiate its legal effect. There is nothing in the notice to suggest that the landlord intended to claim rent for any period subsequent to the end of December, and I take the period of a month named therein simply to mean that the landlord would not put the tenant into Court before the lapse of that time. Indeed, the plea urged on behalf of the defendant is at its best based upon an extremely technical ground which I, speaking for myself, would never allow unless it is founded upon substantial grounds of justice, equity, and good conscience, which must guide the

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administration of the rules of law in our Courts. But to what does the whole argument of the appellant amount? Mr. Hill conceded that if the notice to quit had simply required the tenant to quit at the end of the month, it would have been valid; and the question therefore is, whether a notice, which merely desires the tenant to quit within a month (which included the proper period), or accept the alternative of a suit for ejectment, is invalid. I must here point out that the notice did not say that the tenant was to quit at the end of the month, but "*within a month.*" I have carefully considered the cases cited by Mr. Hill, but I do not think that they are on all fours with this case, because in them the notice to quit did not, as here it does, leave any choice to the tenant to leave at the proper time required by law. If this notice had in like manner peremptorily and without any alternative ordered the tenant to leave the premises at an improper period specified in the notice—say the 10th of January next—I should have agreed with Mr. Hill. But it gave a month's time, enabling the tenant to leave at any time during the month in which his tenancy would legally end. I hold that it was a good notice for the purpose of determining the tenancy.

Now, in order to justify this conclusion by the terms of s. 106 of the Transfer of Property Act, I must refer to three important expressions in that section. The first of these is "*terminable,*" and there can be no doubt that the lease in this case is "terminable," meaning by that term capable of being ended. Then the words "fifteen days." I take to imply a fixation of the shortest period of notice allowed by the section. Lastly, what is meant by the term "*expiring*"? I think the meaning is that the terms of the notice must be such as to make it capable of expiring according to law at the right time, so as to render it *safe* for the tenant to quit co-incidentally with the end of the month of the tenancy, without incurring any liability to payment of rent for any subsequent period. The terms of the notice in this case were undoubtedly clear enough to indicate that the defendant was no longer wanted as tenant of the premises, and the expression "*within a month from this date*" certainly cannot convey the meaning either that the landlord intended to continue the tenancy, or that the tenant was in any manner precluded from acting in

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accordance with the behests of law by quitting the premises at the end of the month. Indeed, the notice threatened the defendant with an action for ejectment if he did not vacate the premises "within a month;" and though the expression included some days of the month of January, the effect was simply to give time to the defendant to vacate the premises, and if such time exceeded the limits of the legal length of the notice, it certainly did not place the tenant at a disadvantage, nor convey any intention on the part of the landlord to give the tenant the option of continuing the tenancy after the end of December, which was the legal limit of the notice. Confining myself to the limited scope of the case as argued before us, the test of the matter seems to be: how has the defendant Bradley been aggrieved by the terms of the notice? Was it so ambiguous as to preclude him from quitting at the end of December, or to render him liable for payment of rent for subsequent period if he did quit the premises at that time? I think the case of *Doe* v. *Smith* (1), which I have already cited, was even a stronger case than the present, and I should say here, as was said there, that the notice left no danger to the tenant of being misled by its terms, so as to subject him to the liability of payment of rent if he quitted at the right time required by the law to terminate the tenancy. The law does not require one party to explain its principles to the other, and the rule as to giving notice to quit cannot be administered regardless of the reason upon which it is based.

In conclusion I wish to refer to two cases which were cited at the hearing—*Nocoordass Mullick* v. *Jewraj Baboo* (2) and *Jagut Chunder Roy* v. *Rup Chand Chango* (3). Both of these cases were decided before the Transfer of Property Act came into force, and are therefore no authorities governing this case. But if any matter of principle is to be evolved from them, both of them would go to support my view, because in the former case the terms of notice left it open to the tenant to leave the premises before or at the end of the month—the length of the notice being of course now modified by s. 106 of the Transfer of Property Act. The rule laid down in the latter case has of course been similarly modified, but if the *ratio decidendi* may be taken to lay down any

(1) 5 Ad. & E. 353. (2) 12 B. L. R., 263.
(3) I. L. R., 9 Calc, 48.

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matter of principle applicable to this case, the tendency of the ruling is to support the view adopted by me in this case.

Under the circumstances of this case, and regarding it in the limited manner in which it has been argued before us, I am of opinion that the notice, dated the 11th December, 1882, was valid under s. 106 and s. 111, cl. (*h*) of the Transfer of Property Act, and was therefore sufficient to determine the tenancy, and that as this suit for ejectment was not brought till long afterwards, namely, the 1st of February, 1883, it was maintainable. And in order to guard myself against being misunderstood, I wish to observe that in this appeal, as it has been argued before us, we are not concerned with the question whether the plaintiff is entitled to recover any money as rent or otherwise from the defendant for any period subsequent to the end of December, 1882. I may add that no case has been cited in which the notice to quit, being worded as in this case, was held to be invalid in law for the purpose of terminating the tenancy.

I would dismiss the appeal with costs.

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February 21.

FULL BENCH.

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

JAMAITUNNISSA (DEFENDANT) *v.* LUTFUNNISSA (PLAINTIFF).*

Civil Procedure Code, ss. 540, 561, 584—*Decree—Judgment—Appeal—Objections by respondent to decree—Res judicata—Civil Procedure Code, s.* 13.

In a suit to obtain possession of certain property, and to set aside a deed called a deed of endowment (*wakfnama*) on the ground that the defendant had fraudulently obtained its execution, the defendant pleaded (i) that the deed was a valid one, and (ii) that she was in possession of the property in satisfaction of a dower-debt, and her possession could not be disturbed so long as the debt remained unsatisfied. The Court of first instance held that the deed was invalid, but that the defendant was entitled to remain in possession of the property till her dower-debt was satisfied, and the Court passed a decree which merely dismissed the suit, without embodying the finding as to the deed. On appeal by the plaintiff to the District Judge, the defendant filed objections under s. 561 of the Civil Procedure Code in regard to the first Court's decision that the deed of endowment was invalid. The Judge dismissed

* Second Appeal No. 1186 of 1883, from a decree of C. J. Daniell Esq., District Judge of Moradabad, dated the 9th May, 1883, affirming a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Moradabad, dated the 10th March, 1883.