1923.

MORARJI PREMJI v. MULJI RANCHHOD VED & CO.

Solicitors for appellants: Messrs. *Payne & Co.*

Solicitors for respondents: Messrs. *Amarchand & Mangaldas.*

Appeal dismissed.

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Pratt.

1923. *July* 18.

WILLIAM JACKS & Co., PLAINTIFFS *v.* JOOSAB MAHOMED, DEFENDANT*.

Estoppel—Indian Evidence Act (I of 1872), section 115—Transfer of Property Act (IV of 1882), sections 106 and 116.

A tenant, holding over after the expiry of his original lease, received from his landlord notice to quit at the end of the following month. In reply thereto he wrote a letter which contained *inter alia* an admission that he was a monthly tenant. At the hearing of a suit in ejectment filed thereafter by the landlord, the tenant relied on sections 106 and 16 of the Transfer of Property Act and contended that, his original lease being for manufacturing purposes, he had in fact held over on a tenancy from year to year, and was, therefore, entitled to six months' notice:

Held, that he was not estopped from so contending inasmuch as (*a*) the facts affecting the tenancy were within the knowledge of both parties, and

(*b*) although the language of section 115 of the Evidence Act extended to the encouragement of an erroneous belief, the landlord had already given notice to quit, and had not been able to show that he had altered his position by reason of the tenant's subsequent admission.

TRIAL of a preliminary issue.

The defendant entered into possession of certain premises situate in Nesbit Road, Mazgaon, as a tenant of the plaintiffs under an agreement for a lease for a period of one year as from the 1st of April 1918. Th agreement did not indicate for what purposes the defendant required the premises, but the plaintiffs

* Suit No. 1501 of 1923.

were in fact aware that the defendant was going to manufacture and store furniture thereon. The original period having expired, the defendant remained on in possession and continued to pay rent. Later, disputes arose between the parties, the plaintiffs alleging that the defendant was encroaching on adjacent land not included in the lease.

Eventually, after considerable correspondence had passed betweeen the parties, the plaintiffs, on 30th December 1922, sent the following notice to th defendant through their solicitors :—

"On behalf of our clients, Messrs. William Jacks & Co., we hereby give you notice to quit and deliver up possession on or before the 1st day of February next of that portion of the two storeyed bungalow in Nesbit Road, Mazgaon, now in your occupation and of the compound adjacent thereto now in your occupation whether lawful or unlawful. Our clients require the bungalow and compound for their own use and occupation."

To this the defendant's pleader replied as follows on the 16th January 1923 :—

"Your letter of the 30th ultimo addressed to my client, Mr. Joosab Mahomed, has been placed by him in my hands with instructions that my client denies that the premises are required *bona fide* for their own use. My client will, while seeking protection under the Rent Act expose the conduct of your clients before the proper Court and will succeed in showing how arbitrary and unreasonable as landlords your clients have been.

Your clients' lease with their superior landlord has expired long since and their position also is that of a monthly tenant."

The defendant having failed to vacate, the plaintiffs in April 1923 filed the present suit in ejectment. At the hearing of the suit it was contended on behalf of the defendant that, under the provisions of sections 106 and 116 of the Transfer of Property Act, inasmuch as the original lease was one for manufacturing purposes, the defendant must be deemed to have held over on a yearly tenancy and was entitled to six months' notice, and that, therefore, his tenancy had not been determined. It was, however, *inter alia* argued for

1923.

JACKS & CO. v. JOOSAB MAHOMED.

the plaintiffs that the defendant, by reason of his letter of the 16th January 1923, was estopped from denying that he was in fact a monthly tenant. The suit was set down for the trial of this question of estoppel as a preliminary issue.

Coltman, with *Kemp*, for the plaintiffs:—The presumption under section 106 of the Transfer of Property Act is only conditional, and the statement in the defendants' letter that his tenancy was a monthly one is an admission of a state of facts which displaces the presumption. The only question is whether that admission is conclusive. It is submitted the case comes directly within section 115 of the Evidence Act. The defendant has intentionally permitted the plaintiffs to believe that he was a monthly tenant, and permitted them to act on that belief in filing this suit. As to the word intentionally, see *Sarat Chunder Dey* v. *Gopal Chunder Laha*[1]. The plaintiffs were put off enquiry: see *Bloomenthal* v. *Ford*[2], and *Macnaghten* v. *Paterson*[3]. The defendant in fact waived his right to longer notice: see *Friary Holroyd and Healey's Breweries, Limited* v. *Singleton*[4] and *Toronto Corporation* v. *Russell*[5].

Kanga (Advocate-General), with *F. S. Taleyarkhan*, for the defendant:—The meaning attempted to be placed on the words of the defendant's letter is not justified. To create estoppel the statement must be unequivocal and unambiguous: *Gajanan* v. *Nilo*[6]. Further, there can be no question of estoppel where both parties know the true legal position: *Honapa* v. *Narsapa*[7] and *Gurulingaswami* v. *Ramalakshmamma*[8]. Moreover, the plaintiffs' belief existed

(1) (1892) 20 Cal. 296.
(2) [1897] A. C. 156 at pp. 168 to 170
(3) [1907] A. C. 483 at p. 493.
(4) [1899] 2 Ch. 261.
(5) [1908] A. C. 493 at pp. 500 to 501.
(6) (1904) 6 Bom. L. R. 864.
(7) (1898) 23 Bom. 406.
(8) (1894) 18 Mad. 53 at p. 58.

prior to the defendant's letter, and was not caused thereby. The use of the word "permitted" in section 115 cannot extend to the encouragement of an existing belief. It is simply used as an expression apt to cases of omission, see Ameer Ali's Law of Evidence (7th Edition), p. 821. In any event the notice which was given before the letter from the defendant, was bad, and anything said or done thereafter by the defendant cannot cure it. Section 111 (*h*) of the Transfer of Property Act requires a due notice to quit before the lease is determined. There can be no question of waiver of such a notice, because in the absence of it the tenancy in fact still subsists.

Coltman, in reply:—Where a belief is "*caused*" by anything it could not have existed before, but where it is "*permitted*" the obvious inference is that it existed already.

PRATT, J.:—The plaintiffs in this suit granted to the defendant a lease of a part of a bungalow and compound in the Nesbit Road, Mazgaon, for the period of one year from 1st April 1918. The lease terminated by efflux of time on the 31st March 1919.

But the defendant held over. There had been a dispute as to alleged encroachments by the defendant and the plaintiffs now aver that they require the premises included in the original lease as well as those encroached upon for their own use and occupation, and gave notice on the 30th December 1922 terminating the tenancy as from 1st February 1923.

It is admitted that the defendant required the premises to the knowledge of the plaintiffs for manufacturing purposes and that he has so used them. The defendant accordingly pleads that he is entitled to six months' notice under section 106 of the Transfer of Property Act, and that the notice given on the

1923.

JACKS & Co. v. JOOSAB MAHOMED.

supposition that the tenancy was monthly is ineffectual to terminate the lease. As against this the plaintiffs contend that the defendant is estopped from setting up a yearly tenancy by his letter in reply to the notice to quit. That letter is Exhibit G, dated 16th January 1923 of which the concluding paragraph is as follows:—

"Your clients' lease with their superior landlord has expired long since and their position is also that of a monthly tenant."

I have no doubt the word "also" means that you are, like me, a monthly tenant. This is an admission by the defendant that he is a monthly tenant but he would be entitled to show that this admission is wrong unless it operates as an estoppel. But I feel clear that there is no estoppel and for the following reasons:—

In the first place the facts affecting the tenancy were within the knowledge of both the parties, and when that is so, there is no scope for the doctrine of estoppel: *Honapa* v. *Narsapa*[1].

Again, the plaintiffs, before receipt of the letter, believed the defendant to be a monthly tenant, so that, the belief was not induced by the letter of 16th January 1923. But, I think, it must be conceded that the language of section 115 of the Indian Evidence Act extends to the encouragement of an erroneous belief as in *Ramsden* v. *Dyson*[2]. But even so, can it be said that the plaintiffs have acted on such belief in consequence of the letter? I think not. The phrase "act upon such belief" means that the plaintiffs must have altered their position with reference to the subject matter of the representation. What have the plaintiffs done but the filing of the suit? Merely filing the suit does not alter their position. It is only a process of enforcement of the position taken up before the misrepresentation.

(1) (1898) 23 Bom. 406 at p. 409. (2) (1866) L. R. 1 H. L. 129.

Again, even if the filing does fulfil the words of the section—"acts upon such belief,"—is it certain that the plaintiffs would not have filed the suit if the letter had not been written? As to this the remarks of Jenkins, C. J. in *Narsingdas* v. *Rahimanbai*[1] are very pertinent (p. 446):—

"The law of estoppel is defined by section 115 of the Evidence Act, and all the Judge is able to say is that it may well be doubted whether the plaintiff would have acted in the way he did but for the way in which the defendants had acted. That is not sufficient. It must be found as a fact that the plaintiff would not have acted as he did."

So here, for I have no doubt that the plaintiffs would have filed this suit even if the defendant had made no reply to the notice to quit.

I accordingly find on the issue, namely: whether the defendant is estopped by his letter of 16th January 1923 from asserting that he is an yearly tenant?—in the negative.

Solicitors for plaintiffs: Messrs. *Crawford, Bayley & Co.*

Solicitors for defendant: Messrs. *Mulla & Mulla.*

K. MCI. K.

[1] (1904) 28 Bom. 440.

APPELLATE CIVIL.

Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and Mr. Justice Coyajee.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT No. 11), APPLICANT *v.* NARSIBHAI DADABHAI PATEL AND OTHERS (ORIGINAL PLAINTIFFS AND DEFENDANTS NOS. 1 AND 3 TO 10), OPPONENTS*.

1923. *July* 23.

Civil Procedure Code (Act V of 1908), section 115—Interlocutory order—High Court's power to interfere—Suit filed in Subordinate Judge's Court—

* Civil Extraordinary Application No. 367 of 1922.