

The Federal Bank of India (Pb.), Ltd., (in liquidation) regarded as an authoritative statement of a general principle of law, and his decision was upheld in the Letters Patent Appeal on entirely different grounds.

v.
Shri Som Dev Grover and others

Falshaw, J.

On the general grounds I cannot see any reason for not placing the surety in the same position as a co-debtor in this matter and, adopting the view of the majority of the High Courts, I hold that unless it appears otherwise in the terms of the surety's contract an acknowledgment of payment by a debtor does not extend limitation against the surety.

The result is that I dismiss the suit against defendants 2 and 3 and grant the Bank a decree for Rs. 18,496-9-0 with costs against Som Dev Grover defendant No. 1, Defendants 2 and 3 will bear their own costs.

APPELLATE CIVIL

Before Falshaw, J.

MUL RAJ, ALIAS RAJINDAR SINGH—*Appellant.*

versus

SHRI PREM CHAND PURI—*Respondent.*

Regular Second Appeal No. 265 of 1954

1955
April, 15th

Transfer of Property Act (IV of 1882)—Sections 106 and 110—Monthly tenancy—Notice of ejection—Notice asking the tenant to vacate the premises on the last day of the month and not the 1st day of the following month—Notice in accordance with Section 106 and not strictly so with Section 110 of the Act—Such notice, whether valid.

Held, that a notice of ejection served in time on the tenant in accordance with Section 106 of the Transfer of Property Act was not invalid simply because it did not strictly comply with the technical provisions of Section 110 of the Act.

Benoy Krishna Das v. Salsiccioni (1), Kanwar Ram v. Ghugi and others (2), and Sidebotham v. Holland (3), considered.

Regular Second Appeal from the decree of Shri Raj Indar Singh, Senior Sub-Judge with enhanced appellate powers, Ludhiana, dated the 25th March, 1954, affirming that of Shri Vishnu Datta Aggarwal, Sub-Judge IV Class, Ludhiana, dated the 14th December, 1953, granting the plaintiff a decree for ejection of the site in suit shown in plan Ex. P. 2, after the removal of construction and for Rs. 60 against the defendant, in view of the fact that the suit for the recovery of Rs. 60 as rent was necessitated by the plaintiff's own conduct.

H. L. SARIN, for Appellant.

I. D. DUA, for Respondent.

JUDGEMENT

FALSHAW J. This second appeal has arisen out of a suit instituted by Prem Chand respondent for the ejection of Mul Raj petitioner from a certain vacant site after allowing him time to remove the materials of certain structures erected by him on the site and for Rs. 60 as arrears of rent at Rs. 12 per mensem. Falshaw, J.

The suit was contested by the defendant on all possible grounds. He raised the preliminary objection that the suit was not competent in view of the provisions of the Punjab Rent Restriction Act, III of 1949, but this was decided against him as a preliminary issue, and the finding of the trial Court was upheld in revision by this Court, and on the merits he disputed the validity of the notice of ejection and claimed that he had built certain structures on the site with the consent of the plaintiff who was therefore liable to compensate him on this account. Although it

(1) A.I.R. 1932 P.C. 279
(2) A.I.R. 1928 Lah. 148
(3) (1895) 1 Q.B. 378

Mul Raj, alias, was found by the trial Court that the value of the structures erected by the defendant was Rs. 583, it was found against him that the structures were erected without the plaintiff's consent and that the latter was not liable to pay compensation and the validity of the ejectment notice was upheld. The result was that the plaintiff's claim for ejectment of the defendant and for the recovery of Rs. 60 as arrears of rent was decreed and this decree was upheld by the Court of first appeal.

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The only point raised on behalf of the defendant in the second appeal was the validity of the notice of ejectment. The site in suit was leased by the plaintiff to the defendant by a deed, dated the 29th of October, 1949, the tenancy being for a period of 11 months starting on the 1st of November, 1949, after which it became a monthly tenancy. A notice of ejectment was served by the plaintiff on the defendant on the 15th of November, 1952, the terms of which required him to vacate the premises by the 30th of November, 1952.

Regarding the validity of the notice, the learned counsel for the appellant relied on the provisions of section 106 of the Transfer of Property Act which provides for fifteen days' notice expiring with the end of a month of the tenancy, and section 110 which provides that where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. It is claimed that the effect of these provisions is that since the tenancy in the present case began on the 1st of November, 1949, i.e. the first day of a month, the end of any particular month of

tenancy must be the first day and in order to be a valid notice the notice in the present case should have called on the tenant to vacate the premises not by the 30th of November but by the 1st of December, 1952. Reliance was placed on the decision of their Lordships of the Privy Council in *Benoy Krishna Das v. Salsiccioni*, (1), in which it was held that a lease from the 1st of June, 1921, for a term of four years ends on the midnight of 1st June, 1925 and a notice given by the lessee on 1st February, 1928, for leaving the premises on 1st March, 1928, is a notice expiring with the end of a month of the tenancy. Reliance was also placed on the decision of Kapur, J., and myself in *Bawa Singh and another v. Kundan Lal* (2), in which we followed the above Privy Council decision and held that a notice of ejection given on the 12th of September 1950, and requiring the tenant to vacate the premises on or before the 1st of October, 1950, was valid notice.

On the other hand it is argued by the learned counsel for the respondent that the Transfer of Property Act is not in force in the Punjab, and that since in the present case the monthly rent was being paid for the period ending each month on the last day of that month, the notice should not be held to be invalid because it required the tenant to vacate the premises by the 30th of November, instead of the 1st of December. My attention was invited to the following remarks of Tek Chand, J., in *Kanwar Ram v. Ghugi and others* (3):—

“Now it is well known that the Transfer of Property Act is not in force in the Punjab and though the Courts of this province sometimes follow the equitable

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(1) A.I.R. 1932 P.C. 279
(2) (1952) 54 P.L.R. 358
(3) A.I.R. 1928 Lah. 148

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principles of common law which have been embodied in certain sections of the Act, it has been held over and over again that the technical rules contained in it cannot be relied upon by any litigant in this province. Reference may in this connection be made to *Teja Singh v. Kalyan Das Chet Ram* (1), and *Dula Singh v. Bela Singh* (2).

None of these cases deals with the question of whether a notice of ejection was a valid notice, but I should be very reluctant in view of the general principles laid down in these and other cases to hold that a notice of ejection served in time on the tenant in accordance with section 106 of the Transfer of Property Act was invalid simply on the ground that it did not strictly comply with the provisions of section 110 by omitting to include the first day of the following month as the end of the month of the tenancy. It certainly cannot be said that because in the case of *Bawa Singh and another v. Kundan Lal* (3), Kapur, J., and I held that a notice which did comply with the provisions of section 110 was a valid notice, we either held or implied that a notice like the one in the present case would be an invalid notice in this State, and in fact the point was never considered at all. In the course of his judgment Kapur, J., also cited the observations of Lindley L. J. in *Sidebotham v. Holland* (4), which are as follows :—

“The validity of a notice to quit ought not to turn on the splitting of a straw. Moreover, if hypercriticisms are to be

(1) A.I.R. 1925 Lah. 575
(2) A.I.R. 1925 Lah. 92
(3) (1952) 54 P.L.R. 358
(4) (1895) 1 Q.B. 378

indulged in a notice to quit at the first moment of the anniversary ought to be the last moment of the day before. But such subtleties ought to be and are disregarded as out of place.”

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Neither party has been able to cite any decision on a case in point from a State or province in which the Transfer of Property Act is not in force, and on the whole I am of the opinion that the notice in the present case ought not to be held to be invalid, and the plaintiff nonsuited, simply because it did not strictly comply with the technical provisions of section 110 of the Act. I accordingly dismiss the appeal with costs.

Falshaw, J.

CIVIL APPELLATE SIDE.

Before Kapur, J.

DASS MAL,—*Plaintiff-Appellant,*

versus

The UNION OF INDIA THROUGH THE SECRETARY,
MINISTRY OF DEFENCE, NEW DELHI,—*Defen-*

dant-Respondent.

Regular Second Appeal No. 171 of 1953

Government of India Act, 1935—Section 240(3)—Constitution of India—Articles 310, 311—Army Act (VIII of 1911)—Section 16—Specific Relief Act (I of 1877)—Section 42—Member of Defence Services or persons holding posts connected with defence—Removal of from office—Suit for being retained in service—Whether competent—Compulsory retirement from service—Whether dismissal, or removal from service—Declaration as to a right—Declaration sought when right not subsisting—Declaration whether can be granted.

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D. M. was born on the 16th March, 1894. He joined the army as a civilian clerk on the 4th January, 1918. In the Second World War he became full-fledged member of Defence Forces. On the 7th June, 1947, D. M.'s services were terminated as he was not suitable for retention in the post-war