

J. O'Brien Donaghey and Others Vs George Weatberdon and Others

Court: Allahabad High Court

Date of Decision: July 7, 1910

Citation: 7 Ind. Cas. 201

Hon'ble Judges: John Stanley, C.J; George Knox, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The Suit, out of which this appeal has arisen, was one for the recovery of rent of a furnished house in Mussoorie, known as Church View

Terrace. On the 9th of April 1905, this house was let to the defendants at a rental of Rs. 700 to be paid in monthly instalments of Rs. 100. Shortly

before the defendants had taken possession, an earthquake had occurred, namely on the 4th of April 1905, and many of the houses in Massoorie

were damaged thereby. A Mr. Keelan, a retired Engineer, was appointed by the Municipality to examine houses which were damaged by this

earthquake, and on the 21st of April, he made an examination of the plaintiff's house apparently at the request of one of the plaintiffs and he gave a

certificate in the following terms: "The building does not seem in imminent danger of collapse, but the south-west corner, room would come down

under another shock. Repairs should be immediately carried out and the south-west rooms be at once vacated." Upon receiving this certificate, the

defendant vacated the house and took another house. This suit was then brought by the plaintiffs landlords for recovery of the rent agreed to be

paid. Both the lower Courts dismissed the claim. u/s 103(e) of the Transfer of Property Act, a lessee is entitled to determine a lease if, among

other things, by fire &c., or other irresistible force any material part of the property is wholly destroyed or rendered substantially and permanently

unfit for the purposes for which it was left. According to the certificate of Mr. Keelan, the building was not in imminent danger of collapse but it

was necessary to carry out repairs immediately, and he was of opinion that the southwest rooms should be at once vacated; that is, pending the

repairs. It is apparent from this that the building was not rendered by the earthquake substantially and permanently unfit for occupation by tenants.

This the lower appellate Court has found. In his judgment the District Judge observes: ""It is pretty clearly established by the evidence that no part

of the house was dangerous,"" and then his conclusion is that Section 108(e) of the Transfer of Property Act has no application. This section having

no application, we are not aware of any other provision of law which justifies a lessee in avoiding a lease if by reason of an earthquake he is

apprehensive that there may be danger to life or limb if he continue in occupation. He can only avoid the lease, if the house be rendered

substantially and permanently unfit for the purpose for which it was let. According to Mr. Keelan's certificate repairs alone were needed. But

strange to say though the District Judge finds that Section 108 has not application, he came to the conclusion that the plaintiffs cannot succeed

because of the fact that Mr. Keelan, who was Engineer in that part of Municipality, had been invited apparently by one of the plaintiffs to examine

the house. He says: ""When Mr. Keelan, who was called in by Mr. Donaghey himself and may be considered the plaintiffs' own expert,

pronounced that one room was unsafe for habitation, the situation amounted almost to the plaintiffs telling the defendants that they had better go or

would stay on at their own risk."" We cannot follow the learned District Judge in this reasoning which dictated the dismissal of the plaintiffs' suit.

Mr. Keelan was not the plaintiffs' expert and Mr. Keelan did not pronounce that the house was substantially and permanently unfit for occupation.

This being so, no grounds were shown for holding that the plaintiffs are not entitled to the rent which the defendants agreed to pay. We allow the

appeal; we set aside the decree of the learned Judge of the Court of first instance and decree the claim with costs in all Courts including fees in this

Court on the higher scale.