

Chapter V

Of Leases of Immovable Property

* 105. **Lease defined**—A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Case Law

Sections 105 to 117—Agricultural leases—
Sections not applicable.

By virtue of section 117 of the Transfer of Property Act, the provisions of Chapter V of the Act which includes sections 105 to 117 do not apply to agricultural leases except to the extent declared by the Provincial Government by notification in the official Gazette. *Rajabali vs Gujarat Bus Service. PLD 1961 (WP) Karachi 486.*

Sections 105, 107—Agreement to vacate house site—Does not make it a lease.

In a suit by 'A' to eject 'B' from a site on

which 'B' had built a house, 'A' pleaded that 'B' had executed an agreement in favour of 'A' whereby 'B' agreed to vacate the land and remove the building materials whenever called upon to do so. 'B' pleaded that it was built with the consent of the erstwhile owners and 'A' did not repudiate the fact. The agreement was held to be inadmissible.

Held: that once the agreement was ruled out of consideration the parties would be relegated to *status quo ante* and B could not be ejected as the constructions were made with the consent of the erstwhile owners. *Subrati vs Kunj Behari. AIR 1946 All 403.*

Section 105—Agreement by which land was transferred to a person for half produce and services—Lease.

The plaintiff gave possession of certain lands to the defendant under an arrangement, evidenced by a letter, that the defendant was to render village service as usual and to give plaintiff a half share in produce. The arrangement was to ensure for plaintiff's life.

Held: that the arrangement amounted to a lease under section 105 the half share in the produce which was payable to the plaintiff being the rent. *Sayi vs Subanna. AIR 1946 Mad 310.*

—Lease—May be absolute transfer of property—No need to reserve reversion to lessor.

Lease as defined in section 105 of the Transfer of Property Act is a transfer of right to enjoy immovable property, made for a certain time express or implied, or in perpetuity, thus lease in ordinary parlance can be an absolute transfer without any possibility of reversion to the lessor. *Mohsin & Tahir vs Feroze Nana Ghulamaly. PLD 1958 (WP) Kar 32—10 DLR (WP) 45.*

—Servant—Whether occupies premises as a licensee or a tenant—Test.

The question whether a servant's occupation of his master's premises is that of a tenant or licensee depends upon the terms agreed upon and the intention of the parties at the time the premises are allowed to be occupied. If the servant occupies the premises in the course of his employment and his occupation is subservient to and necessary for his service, then it is the occupation of a

licensee. But if he is permitted to occupy the premises by way of remuneration for his services and he is not required to reside on the premises primarily for the performance of his duties, then his occupation is that of a tenant. *Hasani Academy Society vs Ali Muhammad PLR 1957 (2) WP 519.*

Sections 105, 101—Tenant-at-will—Status of—Rights and Liabilities—explained.

The designation "tenant-at-will" though gives the impression of a tenant, it lacks the incidents of an ordinary tenancy, for, a tenant-at-will is not liable to pay any rent and there being no question of demise or lease in his case he is not liable for mesne profits or damages like a trespasser because his occupation is permissive but he is liable to pay compensation for such use and occupation.

The other incident of the tenancy which is lacking in the case of a tenant-at-will is that a tenant-at-will is not entitled to any ejectment notice as in the case of other tenants and the landlord may file an ejectment suit straightaway without serving any notice of ejectment on him. If a suit has to be filed against him, Article 139 of the Limitation Act will not apply but Article 144 will apply and this latter Article also applies to a suit against a trespasser. *Roy Moyan vs Tajendra Lal. 6 DLR 577.*

—Lease and licence—Line of demarcation.

The line of demarcation between a lease and a licence will sometimes be very thin. A lease is a transfer of an interest in immovable property. Ownership of physical property consists of a number of rights and the owner

of such property, when he creates a lease, transfers to the lessee a part of the rights of ownership. *Abdullah Bhai vs Ahmad Din* 16 DLR(SC) 169.

—The right of ownership as well as the rights of which it is composed are rights *in rem* and not *in personam* and by the lease a *right in rem* is transferred to the lessee. On the other hand, a “licence”, as will appear from its definition in section 52 of the Easements Act, is merely a competence to do something which except for this permission would be unlawful. It does not confer any rights in physical property. There is in the case of a licence only a personal agreement between the licensor and the licensee whereby the licensor agrees not to interfere with the doing of particular acts on property which is in his possession. No right *in rem* passes to the licensee.

The criterion for distinguishing between a lease and a licence is simple, i.e. whether any right in immovable property itself, a *right in rem*, has passed to the person concerned. But the determination of this question may be difficult in the circumstances of a particular case. Where there is a document the evidence will have to be considered with due regard to the provisions of sections 91 and 92 of Evidence Act, 1872. *Ibid.*

—Government servant occupying Government quarter allotted to him is neither a licensee nor his possession is permissive like the possession of a tenant-at-will—He is a lessee from month to month. *Md Aboo Abdullah vs Province of East Pakistan* 22 DLR 392.

—Lease and licence—Lease creates limited interest in immovable property which

is both heritable and transferable—Licence does not create any interest in property; so it is neither heritable nor transferable. *Mianjan Ali vs Province of East Pakistan*, 22 DLR 235.

—Tenant-at-will liable to pay compensation and not rent.

The designation “tenant-at-will” though gives the impression of a tenant, it lacks the incidents of an ordinary tenancy, for a tenant-at-will is not liable to pay any rent and there being no question of demise or lease in his case he is not liable for mesne profits or damages like a trespasser because his occupation is permissive; but he is liable to pay compensation for such use and occupation. 6 DLR 577.

—Nowhere in the Transfer of Property Act a tenant-at-will is recognised as a lessee. Section 105 recognises only a lease for a certain time, express or implied, that is, periodic lease or leases in perpetuity. *Ibid.*

⊗ Sections 105 and 106—Purpose of the lease will determine whether a lease will be governed by the Bengal Tenancy Act or the Transfer of Property Act.

Where the purpose for which a lease was granted was for residential and shop purposes the mere fact that part of the lease-hold was agricultural will not take it out of the scope of the Transfer of Property Act, the principle being that the purpose of the lease will determine whether a lease will be governed by the Bengal Tenancy Act or the Transfer of Property Act. 11 DLR 253.

✍ Essential features of a lease.

The essential elements constituting a lease are the following: (a) the right must be

one as to immovable property; (~~b~~) the right must be that of enjoyment of immovable property; (~~c~~) there must be a transfer of such right; (~~d~~) the right of transfer is an interest in property; (~~e~~) the transfer must be made for a certain time, express or implied, or in perpetuity; (~~f~~) the transfer must be one for consideration; (g) the consideration must be of the particular kind namely, premium or rent, as defined by the section either or both of them. *Abdus Satter vs Suresh Chandra Das* 32 DLR (AD) 170. ✓

—Termination of a lease on quit notice—
Right of occupation is a personal one and cannot create any interest in the land. This right ceases with the death of either of the parties and hence not heritable. *Abdus Satter vs Suresh Chandra Das* 32 DLR (AD) 170.

—Lease—The English rule that a conveyance to operate as a lease must reserve reversion has no application to the Transfer of Property Act. 10 DLR (WP) 45.

Section 105—The Act uses the word ‘lease’ not merely for interests which can be created only by registered instrument but for all interests of the character defined in section 5. 54 C 813—1927 C 725. To determine whether a document is a lease or not, the name of the document is nothing. Contents must be looked into. 82 IC 949—1925 C 370. Lease of an immovable property is a transfer of a right to enjoy such property. A lessee who allows a man to work the premises cannot be said to transfer an interest in the leased properties. Where the lessee agrees to sell the lease to another and allows the prospective assignee to enter upon the premises and to work them pending the grant of consent by the lessor to the transfer, the

transaction does not amount to a sub-lease. 15 P 460—1926 P 372. Even if a transaction does not amount to a lease under section 105, it may nevertheless be a lease for the purposes of the Stamp Act. An agreement by which an oil company was permitted to occupy a portion of the Railway premises for the construction of a petroleum installation is a “lease” within the meaning of the Stamp Act, even though by reason of the several conditions and limitations on the enjoyment of the property by the oil company and the fact that there was no transfer of a right to enjoy the property for a certain time, it may not amount to a “lease” within the meaning of the Transfer of Property Act. 1933 ALJ 749 1933 A 735 (FB).

The ‘right to enjoy such property’ which is spoken of in section 105 means the right to enjoy the property in the manner in which that property can be enjoyed. If the subject-matter of the lease is coal and it can only be enjoyed and occupied by the lessee by working it as indicated in section 108, Transfer of Property Act, which regulates fully the rights and liabilities of lessors and lessees in India. 21 PLT 897—1940 P 633—20 Pat 13 (FB). Under section 105, there can be a lease of immovable property by virtue of a registered document executed by the lessee in favour of the lessor.

The subject-matter of the lease must be immovable property and the immovable property may be actual land or may be a reversion upon an existing term. There is nothing in the Act to preclude the lease of a reversion. Under the English Law it is always open to a landlord to create concurrent leases, that is, he can execute a lease today for a term, and tomorrow he can execute an other

lease for another term to run from the date on which he executed the latter lease. Such a lease has always been held to be valid, and in law would operate as an assignment upon the existing term.

There is nothing to preclude the applicability of this principle in India, and indeed it has been adopted by the Indian High Courts. There is always a *distinction between an assignment of the rents and profits and a lease* of a reversion. In the case of an assignment of the rents and profits, all that the assignee will be entitled to is the right to realise the rents and profits by virtue of the assignment in his favour, but in the case of a reversion, it is not merely the right to recover the rents and profits that is transferred to him, but also the rights which the lessor had on the date of the reversion, for example his right to recover possession immediately on the expiry of the previous term, and also the right of re-entry, if any, on forfeiture. 46 LW 730—1938 M 100—(1937) 2 MLJ 871. Definition of lease contained in this section compared with the definition contained in the Registration Act. 5 R 95. *Lease and mortgage*, distinguished. 1927 MWN 556; 1933 L 786; 1934 P 217. The question whether there is a relationship of landlord and tenant is to be determined first according to this Act and not English decisions. 57 C 1176—57 IA 110—58 MLJ 293 (PC). Land titles in Berar cannot always be compared to leases under the Act. 98 IC 16—1927 N 50. A mere *agreement to lease* does not operate as a lease; nor does it affect the land until the agreement is specifically enforced on a suit. 19 CWN 347—28 IC 879; 30 C 831. Where the lessee actually takes possession of the property on the very day of the agreement and pays rent,

the agreement certainly amounts to a lease and to that extent it is void if not in writing registered. But the agreement would still be an agreement for a lease, and insofar as it is an agreement for a lease, it is not void, merely because regarded as a transfer of property, it is void. 38 Bom LR 486—1936 R 246. See also 1939 L 162; 1938 M 746. A mere writing to the effect that a person has taken a certain bungalow at a certain rent for one year and not signed by the owner is not a lease. 148 IC 548(1)—1934 Pesh 81(1).

A lease may come into operation and commence on a future date.

The transfer of interest in the land is the test. 18 IC 496—97 PLR 1913; 42 IC 372. See also 1 MHC 153. The mere execution of the *kirayanama* cannot entitle the person executing the deed to continue in possession of the premises covered by the deed. 102 IC 123 (1). A *patta* tendered to, but not accepted by, a tenant is not a lease for the purposes of the Registration Act. 8 MLT 371—7 IC 750. A tenancy in respect of fractional share of a field or fields not defined by metes and bounds is impossible. Therefore a suit for joint possession of an undivided share on the basis of a lease is not maintainable. 78 IC 636—1926 N 120. See also 51 B 274—1927 B 115; 25 Bom LR 84—1923 B 228. As to applicability of this section to *mining leases*, see 36 CWN 709—1932 C 775. Inclusion of lands not belonging to the lessor would not make the lease void, if there was no fraud or misrepresentation. There could be an apportionment of rent for the remaining land. 39 C 1016—16 CWN 606. An agreement between the co-sharers that each party should take the profits for years in turn, is not a lease: 25 OC 39—1922 O 201(1). "*Yajman*

vriti"—Where amounts to lease. 25 *SLR* 451.

Distinction between Lease and Licence

There is a transfer of an interest in land in a lease. Grant of exclusive possession is necessary, whereas in the case of licence there is no transfer of interest, although the licensee acquires a right to occupy the land. 16 *IC* 703—17 *CWN* 166; 48 *M* 368—48 *MLJ* 161(*FB*). See also 51 *B* 274—29 *Bom LR* 78; 35 *C* 82 (*FB*); 1925 *M* 434; 29 *M* 353; 1926 *N* 174; 48 *M* 368; 32 *Bom LR* 332—1930 *B* 165. See 25 *Bom LR* 85—1923 *B* 228. In deciding whether a document amounts to a lease or is only a licence, the recitals therein can never be conclusive; the Court has to look to the substance of the terms agreed upon and not to the nomenclature given to the deed by the parties 1933 *ALJ* 749—1933 *A* 745 (*FB*). The definition of a lease in this section does not apply to a restricted use of a portion of a house. 51 *B* 274—1927 *B* 115. Permission to build on payment of rent without lease deed amounts only to a licence. 38 *A* 178—32 *IC* 346.

An agreement to pay a certain quantity of grain to another for being allowed to take his cattle or cart along a definite strip of land amounts to a lease under section 105. It is not a licence. Suit for the recovery of such grain is a suit for rent and is exempted from the cognizance of the Small Cause Court. 92 *IC* 683—1926 *N* 174. A *kabuliyat* executed by a person occupying certain premises and accepted by the owner of the premises can in no way be considered to be a lease as defined by section 105 and is not sufficient to bestow title on the occupant of the premises. But

though it does not operate as a lease it is not on that account inadmissible against the executant himself when the *kabuliyat* contains a statement against his own interest. 1937 *ALJ* 1297—1938 *A* 32.

Lease and Family Arrangement

If a transaction is in fact a lease as defined by section 105, the requirements of law regarding registration cannot be evaded merely by calling it a family arrangement. (1937)1 *MLJ* 679—1937 *M* 882 (*FB*). A transfer of the right to enjoy immovable property in perpetuity made by the holder of an impartible *Zamindari* to a junior member on terms, or in pursuance of an agreement, that the junior member will give up all claims for present or future maintenance and will pay annually to the *Zamindar* a sum of money, which is called *poruppu*, is not a lease within the meaning of section 105, and is effective, though oral and not in writing registered. (1937)1 *MLJ* 679(*FB*)—1937 *M* 882.

Rent

Rent may be in money (22 *C* 680); or by way of service rendered (15 *C* *PLR* 42; 32 *C* 243); or by way of royalty (as) in the case of mines: see 5 *CLJ* 148(172). The word used in a rent-note to denote the duration of the lease was *aniyamit* which means indefinite or unrestricted or unlimited. But reading the rent note as a whole, it appeared that the period of the lease was to extend so long as the *Kesari* and *Maratha* institutions were in existence.

Held: it was not a permanent lease and the lease was valid in law: 33 *Bom LR* 590.

Fraud or Mistake

In the absence of fraud or common mistake, a lessee is entitled to the possession of a plot of land described in the lease as boundaries. *16 CWN 225—13 IC 481* A lease obtained by fraud is not void, but only voidable at the option of the lessor. *36 C 675—9 CLJ 523—1 IC 626*. A lease by a minor is void; it is incapable of ratification express or implied by the acceptance of rent by the lessor on attaining majority. *33 Bom LR 111—1931 B 178*. That it was executed by the lessee in favour of the minor lessor and not by the lessor does not cure its invalidity. A lease is essentially a bilateral contract: *1931 M 147—59 MLJ 941*.

Municipality

A municipality is not outside the provisions of the Transfer of Property Act and, therefore, leases by municipality are governed by the Act. *26 ALJ 328—1928 A 95*.

Sections 105 and 107—The letting by a Municipal Council of the right to collect the fees of municipal slaughter-houses and fish-bazars is lease as defined by section 105; the right to collect the said fees amounts to profit arising out of land, and is therefore immovable property. Under section 107, such a lease must be executed both by the lessor and the lessee and a lease for one year reserving an yearly rent has to be made by a registered instrument. Where such a lease is executed by the lessee alone and registered, it is invalid under section 107. Where it is not executed on behalf of the Municipal Council before registration, it is not in conformity with the requirements of section 107, although subsequent to registration the

President and some members of the Municipal Council put their signatures on it. If the lessee has had the advantage of the lease, the invalidity of the lease would not prevent the Municipal Council from recovering such amount as may be found reasonable under section 65 of the Contract Act. *47 LW 668—1938 M 746*. See also *1936 B 246*. The plaintiff brought two suits for recovery of rent in respect of certain property. The leases were for a period of less than one year. The plaintiff did not rely on any oral agreement. The suit was based merely on certain rent notes which were not registered and the plaintiff did not sue on the basis of his title for recovery of compensation for use and occupation. The defendants were already in possession before the execution of the leases and there was no question of fresh delivery of possession. The plaintiff could succeed only if she had sued for rent on the basis of registered leases. *41 PLR 578—1939 L 162*. See also *1939 L 423*.

Sections 105, 106, 108 and 111: lease, If heritable property

A lease for which no term is fixed is a lease running from month to month, terminable upon proper notice. Such lease is heritable property. *ILR (1937) N 406—1937 N 321*.

Section 105—The relationship between the lessor and lessee is a jural relationship, cautiously guarded by section 105 Transfer of Property Act. *National Engineers Ltd. vs Ministry of Defence 44 DLR (AD) 179*.

Section 105—A tenancy can also be created by oral agreement. The fact that no one actually saw payment of rent does not detract from the fact that the appellant was

described by PWs as a tenant under the respondent. *Narayan Chandra Rajak Das vs Md. Amjad Ali Miah & others* 44 DLR (AD) 228.

Section 105—Heritability of a monthly tenancy—Maintainability of execution proceeding against the heirs of a deceased tenant—A monthly tenancy being a lease is an interest in an immovable property and a transfer of interest in the property—an incidence of heritability is easily discernible from the tenancy created either under a statute or a contract. Right in such a tenancy is ordinarily heritable, though this right is limited "to enjoy" and occupy the property only and the tenant is liable to be ejected. *Pradhip Das alias Shambhu & others vs Kazal Das Sarma & others* 44 DLR (AD) 1.

Section 105—The trial Court has not committed any illegality in declaring that the plaintiff was entitled to inherit the leasehold right in the shop as it is now well settled that monthly tenancy is heritable. *Islamic Foundation Bangladesh vs Firoz Alam and others* 51 DLR 141

Section 105—Since a co-sharer of a vested property has a preferential claim to lease than the stranger, in the instant case, the petitioner having claimed right and title in the case land and being admittedly in possession, there is no illegality in the impugned judgment. *Government of Bangladesh and others vs Nidhi Ram Moni and others* 54 DLR (AD) 14

Section 105—BFDC is a lessee under the government in respect of the disputed stalls to run a fair price fish selling centre there and in pursuance thereof they appointed the petitioner as a commission agent to sell such

fish at those stalls. The Court is justified in holding that the petitioner is a licensee under the BFDC who has the legal authority to revoke such licence. *Habibur Rahman (Md) vs Government of Bangladesh and ors* 51 DLR (AD) 39

Section 105—The period for which the suit was brought, namely, 1401-1402 BS has already expired and the plaintiff had no subsisting leasehold right in suit fishery at the material time. Moreso, defendants 1-6 cannot be made liable for any damage done to the plaintiff by a third party, namely, defendant No. 7. The lease period having expired the plaintiff cannot also get any declaration of title against anyone including the defendant No. 7. *Bangladesh vs Abdul Alim Sarkar* 6 BLC (AD) 38

Section 105—Learned trial Court failed to differentiate between an owner of an immovable property and a licensee on the basis of temporary use of the godown on the suit property and thereby, ignored and did not place any reliance on the Ext 'A' and 'C' which proves that the permission was given by the defendant No. 3 to the plaintiff to use the suit property for a very short period and the plaintiff is none but a mere licensee. *Government of Bangladesh & others vs Paper Converting & Packaging Ltd & others* 6 BLC 467

Section 105—According to this section, a lease is a transfer of an interest in immovable property. *New Dhamai Tea Estate Limited vs Chemia Kurmi & others* 35 DLR (AD) 155.

Section 105—Whether a lease for 99 years is a lease in perpetuity—The preamble of the indenture of the lease clearly provided

that it was a lease for the specified period of 99 years. Term No. 23(3)(a) of the indenture reserved the right of option for the lease for the renewal of the lease after the expiry of the specified period of 99 years and in case of exercise of such option the lessor shall have to renew the lease but on such terms, covenants and conditions and for such period as the lessor may determine. This is not a lease in perpetuity but is one for a fixed period, though a lease in perpetuity is unlike in England sanctioned under the law of the country, as provided in section 105 of the Act. *MH Khandker Advocate, vs Bangladesh 30 DLR (SC) 1.*

Section 105—Licensee of plot—Rights and obligations—Extent—Right of lease was to be conferred on such licensee after fulfilment of specified conditions—Plaintiff being licensee was authorised to enter upon land and raise construction thereon in accordance with approved plan of Authority and thereafter, he was to be granted lease in his favour—Licensee could have no right or interest in land in question until he could get leasehold rights over such land subject to fulfilment of conditions mentioned in agreement between plaintiff and defendants—Such conditions having not yet been fulfilled by plaintiff in respect of plot in question, suit filed by him against rival claimants (defendants) for possession thereof, was not maintainable in law—Court below having misread evidence on record, their finding based thereon, amounted to illegality, therefore, same were set aside—Plaintiff, however, would be at liberty to move authority for putting him in possession

of plot in question, in accordance with law. *Mst Noor Bibi vs Karachi Municipal Corporation 1998 CLC 1523.*

Section 105—“Lease” and “Licence”—Distinction—Right transferred through lease would amount to right *in rem*; while right transferred through licence as provided under section 52, Easements Act, 1882, was only a right *in personam*, whereby licensor would agree not to interfere with the doing of particular acts on property which was in possession of licensee. *Royal Foreign Currency vs Civil Aviation Authority 1998 CLC 374.*

Section 105—Lease deed—Cancellation of allotment on the ground of alleged violation of the terms and conditions—Notwithstanding condition of lease deed under which Development Authority reserved a right to forfeit the lease, to re-enter upon the demised land, cancel the allotment of the plot and recover its possession that could not be done without a valid show-cause notice and establishing violation of the terms and conditions of the lease—After execution of lease of immovable property, a valuable right is created in favour of transferee which cannot be taken away by a unilateral act of revocation/cancellation—Such right is further strengthened after delivery of physical possession and approval of building plan in favour of the lessee which cannot be cancelled without the intervention of Court of law. *Munawar & Co (Pvt) Ltd vs Karachi Development Authority 1998 MLD 1771.*

Section 105—Lease and licence—Distinction—Written agreement between the parties existed—To find out the real nature of relationship between the parties, actual

wordings and spirit of the agreement has to be looked into, rather than the terminology used therein, as the line of demarcation between a lease and licence is very thin. *Civil Aviation Authority PLD 1999 Kar 181.*

Section 105—"Lease" and "licence"—Nature and distinction—Licence merely would grant licence/permission to enter upon licensor's property and do something, which in absence of such grant, would be unlawful—Such grant of permission would amount to a licence as per Section 52, Easements Act, 1882—If such a grant would create an interest in property, same could not be construed as a "licence" and in that connection intention of parties would also have to be considered—Specific performance of agreement—Specific performance of agreement whereby defendant Authority had allotted plot in dispute to plaintiff on certain terms and conditions was resisted by defendant Authority on ground that transaction between the parties was a licence and plaintiffs who were licensees could not specifically enforce licence agreement to become lessees of plot in question—Validity—Plaintiffs to whom plot in question was allotted had paid substantial amount to defendant Authority—One of the terms of allotment was that industrial unit for which plot was allotted, should be completed within specified period, but plaintiffs were unable to do so on account of failure of Authority to provide infrastructure facilities agreed to between the parties—Plaintiffs, in circumstances, could not be penalised on that score—Subsequent correspondence between the parties also established that right from the very beginning, intention of parties was to construct building of permanent nature on

plot in question—Transaction between the parties, in circumstances, amounted to agreement to "lease" rather than "licence". *Sindh Industrial Trading Estate Ltd vs Kemia Industries Ltd 1999 CLC 1076.*

Section 105—Lease—Meaning and scope—Lease of property—Lease is transfer of a property in favour of the lessee and no one could transfer the title better than what he had. *Rehman Feeds (Pvt) Ltd vs Agriculture Development Bank of Pakistan 2001 YLR 2240.*

Sections 105 & 106—Lease is created under section 105 and, as such, statutory notice must be given under section 106 for termination of tenancy, else no suit for ejection of a tenant can be filed.

A notice under section 106 of the Transfer of Property Act is mandatory in all cases of eviction under the Ordinance as well, because a tenancy is created under the Transfer of Property Act and Contract Act and those two Acts are not entirely excluded by the provisions of the Ordinance. The Ordinance has not excluded the operation of section 106 of the Transfer of Property Act either expressly or by implication. That is the basic reason why a notice under section 106 of the Transfer of Property Act is mandatory in a case of eviction under the Ordinance. *Abdul Aziz vs Abdul Mazid 46 DLR (AD) 121.*

Sections 105 & 106—Lease, meaning or—Nature of the right and interest created under a lease—'Lease' and 'Tenancy'—Relationship between.

Held: (i) By a lease a subordinate interest is created by a person in favour of another person in respect of some immovable

property on condition of payment of premium or rent.

(ii) The right which is created by a lease is the right of tenancy 'Lease' and tenancy are cognate terms, implying the same kind of jural relationship. *M H Khandker, Advocate vs Bangladesh 30 DLR (SC) 1.*

Sections 105 & 106—Lease set out in patta—Construction of document—stipulations of Lease—Mode of constructing a Lease Deed ascertaining the purpose of the lease.

The lease deed in respect of a tank and its bank, recite that if the land remains unproductive then it will not be entertained as an excuse for non-payment or reduction or rent; the lease was required to look after and manage the demised land and if after survey the area increased the lessee will be liable to pay additional rent; the lessee will be entitled to appropriate fish after rearing them in the tank which will continue from generation to generation and will also enjoy the usufructs of the trees which may be planted on the bank of the tank. Question arose whether the lease was for agricultural purpose.

Held: The true test as to whether the lease is for agricultural purpose or not is to be ascertained from the object of the lease on reading the instrument as a whole and where

the terms of the lease are not free from ambiguity, it is permissible to take into consideration the conduct of the parties for the purpose of determining its true nature. Held further that the lease was for agricultural purpose. *Azizur Rahman vs Hedayet Ahmed Chowdhury and others 3 BSCR 230.*

Sections 105, 106 & 111—Lease, creation of—Its duration—Lease is a right only of occupation of an immovable property for a certain time. This right is created by transfer from one person to another. A lease whatever may be its purpose or duration, year to year or month to month, is created only under section 105. This section does not say that a lease for an agricultural purpose or manufacturing purpose shall always be a lease from year to year, or a lease for any other purpose shall always be a lease from month to month. Section 111 shows different ways and grounds for determination of a lease—death of the lessee has not been mentioned as a ground for its determination. In the decision of this Court reported in *32 DLR (AD) 171* a distinction was made between a lease under section 105 and a lease under section 106 whereas these two sections do not appear to say so. *Pradhip Das alias Shambhu and others vs Kazak Das Sarma & others 44 DLR (AD) 1.*

✱ **106. Duration of certain leases in absence of written contract or local usage**—In the absence of a contract or local law or usage to the contrary, a lease of immovable 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 immovable 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.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and ¹[either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party], or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Case Law

⊗ **Section 106**—Lease for a manufacturing purpose—notice to quit

A lease for the purpose of preparing ornaments being for a manufacturing purpose, is to be determined by 6 months' notice under section 106 of the Transfer of Property Act. *10 DLR (WP) 40.*

—Notice to quit—monthly tenancy.

When a monthly tenancy commenced from a particular month, it means that the tenancy commenced from the 1st date of that month to be terminated with the last date of every Bengali month. Notice was served on the 4th of Kartick, 1351 asking the tenant to quit by the last date of the month of Kartick, 1351.

Held: The notice served was a valid and sufficient notice. *7 DLR 56.*

—Notice refused by addressee—
Addressee fixed with knowledge of its contents.

—If a person refuses a notice, he should be affected with knowledge of its contents.

If a letter reached the other party and was refused by him, he must be affected within the knowledge of the letter which he refused to read.

If the defendant has minded to satisfy the court that he got no opportunity to get the letter, it was for him rather than for the plaintiff to call evidence to prove what he asks the court to accept. *11 DLR (WP) 165.*

—Monthly tenant—holding over, has an accruing interest during every month thereafter as a tenant.

1. Substituted by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 54, for "tendered or delivered either personally to the party who is intended to be bound by it."

—Under the Transfer of Property Act, a tenant holding any premises for a month has an accruing interest during every month thereafter springing out of the original contract and as parcel of it, and oral agreement of lease accompanied by delivery of possession is valid for the first month and thereafter the lessee continuing in possession with the assent of the lessor, expressed or implied, becomes a tenant by holding over under section 106 of the Transfer of Property Act. Therefore, a tenant, holding such a tenancy has an interest for the month with an accruing interest during every month thereafter springing out of the original contract and as parcel of it.

Such a tenancy is also transferable if allowed under the terms of the lease and under the provisions of law. *12 DLR 37*

—On the death of the original tenant the tenancy devolves on the heirs and can only be terminated by a notice to quit. *Ibid.*

—A pucca building consisting of 3 rooms and the land on which the building stood and also the open space lying to the west of the building were let out and the demised leasehold is described as consisting of 'niskar land' etc, and the pucca building for a term of two years with the option of one renewal. The lessee failed to exercise the option of renewal and continued to hold the tenancy as monthly tenant. The plaintiffs determined the tenancy by 15 days' notice to quit after the expiry of the month.

Held: The notice to quit is valid, legal and sufficient; the tenancy being a monthly tenancy 15 days' notice was quite sufficient. *3 DLR 116.*

—An ex-tenant under East Bengal Non-Agricultural Tenancy Act cannot claim the benefit of service of notice. *10 DLR 472.*

—No notice to quit is necessary as against a sub-tenant. *9 DLR 102.*

—Notice to quit.

—The other incident of the tenancy which is lacking in the case of a tenant-at-will is that a tenant-at-will is not entitled to any ejectment notice as in the case of other tenants and the landlord may file an ejectment suit straightaway without serving any notice of ejectment on him. If a suit has to be filed against him, Article 139 of the Limitation Act will not apply but Article 144 will apply and this latter Article also applies to a suit against a trespasser. *6 DLR 577.*

⊗ —Monthly tenant 15 days' notice

—Where a non-agricultural land is held by a non-agricultural tenant as a monthly tenant the provisions of 106 of Transfer of Property Act will apply and the tenant will be entitled to 15 days' notice for the purpose of a suit for ejectment. *7 DLR 525.*

—The provisions in section 106 of the Transfer of Property Act for 15 days' notice expiring with the end of the month of the tenancy is one and the single rule of law and cannot be split up into two—one as to the length of the period of notice and the other terminating that period with the ending of the month of the tenancy. *8 DLR 316.*

—The agreement was to the effect that three months' notice will be required to be served on the tenant for vacating the premises.

Held: The agreement about three months' notice being contrary to section 106, this provisions about 3 months' notice is to be taken from the date of service of notice and after the expiry of three months the tenancy will terminate. 8 DLR 316.

—In terms of agreement a 3 months' notice was served on 12-3-54 asking the tenant to vacate the house on the expiry of the 1st day of July, 1954.

Held: This is a valid compliance with the agreement between the parties. Section 106 Transfer of Property Act has no application in this case. *Ibid.*

—A notice to quit though not strictly accurate or consistent in its statements, may be effective, and should be construed not with a desire to find fault in the notice which would render it defective but on the principle that it is better for a thing to have the effect than be void. *Ibid.*

—Plaintiffs are entitled to get a decree for rent as, under section 116 of the Transfer of Property Act, defendants would be held to be tenants under plaintiffs, by holding over after the termination of the lease. Settlement of a new lease in favour of a third party cannot affect defendant's right which can only be terminated by a valid notice under section 106. Transfer of Property Act, 3 DLR 526—1 PLR (Dac) 593.

—In the absence of a valid notice to quit the defendants who are tenants by holding over are liable to pay rent. 3 DLR 526.

—Even supposing that the tenancy was terminated by a lease to a third party then also defendants, though having no lawful title, are

tenants on sufferance and liable to pay rent. *Ibid.*

—Notice to quit on or before a date, being the date on which tenancy expires, is a good notice.

In the case of monthly tenancy where it does not appear from what date the tenancy commenced, a notice terminating the lease with the end of the month following is valid and legal. 10 DLR 271.

—Notice need not contain the date of the commencement of the tenancy when evidence during trial clears the point. Monthly tenancy expires on the midnight of the 30th of each month. 11 DLR 253.

—The lease in this case expired on the last day of the month. One month's notice given on 3rd August, 1954 and received by the tenant on 8th August, 1954, the regulating suit having been instituted on 13th November, 1954, was held in order, not only because it did not contravene section 106, but also because the suit had been instituted more than 3 months after notice ruling out any possibility of prejudice on the score of the notice not having expired on the last day of the month of tenancy. (1956)PLR(Lah)112.

—Denial of the title of—forfeiture.

—In a suit for ejection by landlords the denial of the title of the plaintiff would in law result in the forfeiture of the right of the lease-hold interest of the defendants. Lessees whose tenancy is terminated by notice under section 106 of the Transfer of Property Act is estopped in an ejection suit from setting up title subsequently acquired by them in the suit lands 2 DLR 360.

Section 106—Tenancy created on payment of rent—A monthly tenancy is terminable by 15 days' notice.

The Bangladesh Premises Rent Control Ordinance says, a tenant means a person by whom, or on whose account, rent is payable for any premises and includes a legal representative as defined in the Code of Civil Procedure, and a person continuing in possession after the termination of tenancy in his favour. A glance at the definition along with the definition of 'landlord', which is nothing but the counterpart of the tenant, indicates that the definition was inserted in the Ordinance only to emphasise the tenant's liability to pay rent and nothing more, and this meaning becomes clear when we advert to the second half of the definition of 'tenant', which says that it also includes a person continuing after the termination of his tenancy. *Abdus Sattar vs Suresh Chandra Das 32 DLR (AD) 170.*

—Tenancy-at-will creates a personal relation between the original landlord and the tenant and is terminable by the death of either—Lease is created under section 106 of the Transfer of Property Act. *Abdus Sattar vs Suresh Chandra Das 32 DLR (AD) 170.*

—Notice received by the addressee's wife's brother (who had been in the service of the addressee) on the addressee's premises is a proper service as contemplated under section 106, though he may be regarded as a member of the family. *Hajee Khabir Uddin Ahmed vs Md Salam Kabir 34 DLR (AD) 271*

Section 106—Observations that the notice under section 106 of Transfer of Property Act having not been served by PW

1, the landlord, was bad in law, are beyond the pleading and amounts to making out a new case for the defendant. *Kutubuddin Ahmed vs Hasna Banu and another 40 DLR (AD) 75.*

—A benamdar is a trustee for the beneficial owner A suit for eviction at the instance of the owner's wife and son in whose name the Kabalas stand is maintainable. *Kutubuddin Ahmed vs Hasna Banu and another 40 DLR (AD) 75*

—A benamdar represents the real owner. A proceeding by or against the benamdar, although the beneficial owner is no party to it, is fully binding on the beneficial owner. *Kutubuddin Ahmed vs Hasna Banu and another 40 DLR (AD) 75*

—There was no oral or written contract whatsoever between the parties that the defendant is entitled to pay arrear rents in lump as and when it suits him, In the absence of such contract he has to pay rent for the previous month by the 15th of the following month. As the defendant has not done so he is a defaulter in the payment of rent on a number of occasions. *MM Zaman vs Mrs Sakina Ahmed 38 DLR 313.*

—The tenancy (which was for manufacturing purpose commenced on 1st Falgoon, 1362 BS—Notice to quit the premises by 31st Chaitra, 1382 was served under section 106 of the Transfer of Property Act giving 9 months' time to vacate—Defence contention was that the terminating of the tenancy should coincide with the year of tenancy—Here it should be on 31st Magh. 1382(i.e. last day of the year of tenancy)—**Held:** In place of 6 months' notice under

section 106 of the Transfer of Property Act the defendant in this case has got 9 months' time to quit and, as such, notice to quit is valid in law. *Juman Mia vs Zainab Bibi* 35 DLR 351.

—Printing and publishing business, not a manufacturing business—Type-foundry, no doubt, a manufacturing business, but where it is just subsidiary to the printing business which is the principal business, such type-foundry can not acquire the status of manufacturing business. *Mst Shamsher Nessa vs AH Mohsenuddin Ahmed*. 27 DLR 643.

—Monthly tenancy cannot be terminated without notice under section 106

In the absence of legal proof that a valid notice as required under section 106 of the Transfer of Property Act terminating a monthly tenancy as served on the tenants, a suit for eviction of the tenancy is not maintainable in law. *Mir Delwar Hossain vs Joynal Abedin*. 29 DLR 214.

—If a tenancy is a monthly tenancy the month must either be referable to a calendar month or fixed by contract.

A monthly tenancy is required to be specific according to any calendar month, in the absence of any contract to the contrary.

Where the plaintiff, seeking to evict the tenant could not adduce any evidence to indicate that the tenancy was referable to a month according to any calendar month or contract the suit must fail—*Ibid*.

—A wrong number given in the notice to quit issued under section 106 of the Transfer of Property Act will not invalidate a suit for

eviction, if the party had a clear conception of the actual subject of the suit notwithstanding the wrong description. *Fazilatunnessa vs Nowshad Ali*. 29 DLR 315.

—Notice to quit—Its purpose.

Notice to quit is intended to afford an opportunity to the tenant to vacate the premise without resorting to any litigation and it is only when he refused to vacate that he can be evicted through due process of law.

Notice to quit though not strictly accurate or consistent in the statements embodied in them may still be good and effective in law and that the test of their sufficiency is not what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they relate but what they would mean to tenants presumably conversant with all those facts and circumstances and further, that they are to be construed not with a desire to find faults in them which would render them defective. *Fazilatunnessa vs Nowshad Ali* 29 DLR 315.

—A liberal construction should be put on notice to quit.

It is the duty of the court to put a liberal construction in order that the notice to quit is not defeated by any slight inaccuracy and the recipient is not misled as to the intention of the notice giver. *Fazilatunnessa vs Nowshad Ali*. 29 DLR 315.

—Sufficiency of notice—As decided by the Privy Council.

In the case of Benoy Krishna Das, (37 OWN PC 1) the terms of the lease showed that the lease was "from the 1st day of June, 1921 for the term of four years thence next

ensuing." The lease ended on the midnight of 1st June, 1925. Any notice to determine the tenancy thereafter given must be a notice to quit expiring with the month ending at midnight on the first day of the month. Here the tenants held over and notice to determine their monthly tenancy was given on 1st February, 1928. The Judicial Committee held that the notice was a proper notice under section 106 of the Transfer of Property Act and it expired on the midnight of 1st March and not on the 29th of February. *Nur Banu vs Nur Mohammad* 35 DLR (AD) 182.

— Issue as to sufficiency of notice not having been raised in the court below, the defendant cannot be allowed to raise it now. *Nur Banu vs Noor Mohammad* 35 DLR (AD) 182.

—Plaintiff was the tenant of the shop room under Pourashava who transferred the same to defendant 4 with notice to the plaintiff and instructing him at the same time to attorn to defendant 4 as his landlord failing which he was required to vacate the premises—Plaintiff was further asked to clear off arrears to the Pourashava—Plaintiff did neither—Notice to the plaintiff by the Pourashava is a notice under section 106 and on his failure to vacate the premises he was liable to be evicted. *Md Zahir Abdullah Khan vs Abdul Latif* 35 DLR (AD) 354

—Terminating a tenancy from year to year. How to be counted?

Whether the notice period of six months as contemplated in the law for terminating a tenancy from year to year under section 106 of the Transfer of Property Act must end with the expiry of the calendar year and whether

the notice terminating the tenancy, therefore, conformed with statutory requirement

According to the learned Counsel, if the lease is from year to year which, in his opinion, it is, the notice to vacate should have been given six months prior to the end of the year of the lease, and not with the end of the calendar year. As the kabuliyat was registered on 9th Falgun, 1356, BS corresponding to February 21, 1950 the period under notice should have ended on 8th Falgun of the year in which notice was given, Instead of this, the notice which was served by registered post on 25th Aswin, 1366, BS asked the appellant to vacate by 30th Chaitra, 1366 BS As no particular date has been mentioned in the kabuliyat as to when the lease commenced, according to Mr Khondker it commences from the date of the lease. *Nur Banu vs Noor Mohammad* 35 DLR (AD) 182.

Sections 106 & 107—Whether a lease is monthly or yearly, depends upon the contract.

It is not at all correct to say that there cannot be a yearly lease for the purpose of a shop. Where a lease is monthly or yearly, depends primarily upon the contract by which it was made. It is only in the absence of any contract or local law or usage that the question of its purpose arises; and the rule is that a lease for any purpose, other than for agriculture or manufacture, must be deemed to be a lease from month to month.

No doubt section 106 of the Transfer of Property Act draws a line of division between lease for agricultural or manufacturing purposes on one side and the rest on the other; but it does not interfere with the freedom of contract, 6 DLR 250.

—Reservation of an annual rent.

—The reservation of an annual rent is not by itself sufficient to prove in every case that the lease is from year to year. A mere reservation of an annual rent would not make a lease from year to year unless the deed is registered or where a contrary intention is deducible from the contract between the parties. *Ibid.*

—Where an annual rent has been reserved with a provision for forfeiture, fixing 30th Chaitra every year as the fatal date of default it does not show that a monthly tenancy was intended. The default of monthly instalment has no adverse consequence until the end of the year and this fact is of importance, for it goes to show that the tenant is not to be disturbed even though he had failed to pay the rent until the end of this year. *Ibid.*

When the question is whether the lease was for dwelling purpose or manufacturing purpose.—Matters to be looked into.

In order to decide whether a tenancy has been obtained for a manufacturing purpose, one must find the actual purpose for which the lease was obtained. If a lease of some premises was obtained for the purpose of dwelling and the said premises had been used for manufacturing purpose, it cannot be held that mere use of the building for manufacturing purpose would make the lease a lease for manufacturing purpose within the meaning of section 106 of the said Act. Conversely, in the absence of any other evidence to the contrary, a long user for a manufacturing purpose would constitute a good circumstantial evidence that the lease

was obtained for such a purpose. *Shaikh Mahmudur Rahman vs Amulya Kumar Sarker 19 DLR 743.*

Quit notice—After the expiry of the lease period (which provided for 6 months' notice) period of quit notice shall be as provided by section 106. *AK Fazlul Huq vs Nibaran Chandra Saha 19 DLR 901.*

Notice to quit—Slight inaccuracies will not render the notice invalid. *Nehar Ali Biswas vs Naam Negar Rashida 19 DLR 905.*

Notice to quit should be interpreted liberally and not found illegal for slight inaccuracies.

By the notice the plaintiff has directed the defendant to quit the premises by the 31st December, 1960.

It was contended that the word "by" has no legal meaning but its dictionary meaning is 'during' and accordingly, the possession of a tenant of a premises during subsistence of the tenancy is a lawful one and, as such, the tenant could not have been asked to vacate during the subsistence of the tenancy.

Held: The rule of construction of a notice to quit is not put upon it a liberal construction in order that it should not be defeated by slight inaccuracies in the date of the expiry of the notice. But at the same time the notice must be reasonably certain so that the recipient of it is not misled as to the intention of the notice-giver. *Messrs Memon Trading Co vs Messrs. Hajee Gaffar Hajee Janno 17 DLR 677.*

Lease—notice to vacate on or before a date, being the date on which the lease terminates is a valid notice.

The landlord served a notice on the tenant (a monthly tenant) on the 1st Bhadra under section 106 of the Transfer of Property Act to vacate the premise on or before the 1st day of Aswin next.

It was contended that the notice was bad inasmuch as the defendant was asked to vacate on or before the 1st day of Aswin although the lease would terminate by the mid-night of 1st day of Aswin.

Held: For the fact that by the notice the defendant was asked to vacate on or before the 1st day of Aswin, it cannot be held that the notice was bad. A notice to quit on or before a date being the date on which the tenancy expires is a good notice. *Ahmadur Rahman vs Sheikh Mafazzal Hossain 14 DLR 826.*

Presumption of due service of notice under the section.

The question is, has the notice been served validly. It has been proved that it was sent by post to the address of the defendant and that it has come back to the plaintiff on refusal by defendant to accept service of the said notice. The postal cover under which the notice was sent bears the endorsement of the postal peon to the effect that it was refused. It is, therefore, clear that the Appellate Court below has rightly held that the said tenancy was terminated by a good notice under section 106 of the Transfer of Property Act and that it has been properly served, as required by law. *Sultan Ahmed vs Sayed Ahmed 19 DLR 42.*

Suit for ejectment of tenant—Sufficiency of notice under section 106 of the Transfer of Property Act determining tenancy in respect of suit premises belonging to the

wakf estate in his personal capacity but he filed the suit as mutawalli of the wakf estate—Held: Notice so served is not valid, legal and sufficient and the suit filed on its basis must fail, *Abdul Hafiz vs Syed Md Kazem 23 DLR 12.*

Printing and publishing business, not a manufacturing business—Type-foundry, no doubt a manufacturing business, but where it is just subsidiary to the printing business which is the principal business, such type-foundry can not acquire the status of manufacturing business. *Mst. Shamsher Nessa Sakeba Banoo vs AH Mohsenuddin Ahmed 27 DLR 643.*

Period of notice provided in section 106—has no application when period of such notice is mutually agreed upon. *Goalundo Fishing Industries vs Pakistan 22 DLR 349.*

Premises at the inception taken for use as a godown—Subsequent conversion of it without the landlord's consent for manufacturing purpose will not change its original character. *Must. Hayatunnessa vs Abdur Rahman 26 DLR 342.*

In the absence of a contract or local usage a lease of immovable property for agricultural or manufacturing purpose is a yearly lease and 6 months' notice is necessary. All other leases are to be deemed as leases from month to month terminable with 15 days' notice. *Must. Hayatunnessa vs Abdur Rahman 26 DLR 342.*

Termination of tenancy by service of notice under section 106 of the Transfer of Property Act does not entitle the Government to evict tenant by the summary procedure of Act X of 1953.

The petitioners who were monthly tenants under the Government had their lease of monthly tenancy terminated by service of notice under section 106 of the Transfer of Property Act by the Government. When on demand they refused to vacate the premises, they were sought to be summarily evicted by the application of the provisions of section 5 of the Act of 1953. The petitioners then moved the High Court under Article 98 of the Constitution of Pakistan, 1962 on the ground that invoking the summary provisions of a different Act, namely, Act X of 1953, for evicting the petitioners was wholly unauthorised in law.

Held: The petitioners as monthly tenants of the building who are not Government servants do not come within the mischief of Act X of 1955 and therefore, not liable to be evicted under the provisions of the Act. *Amin Medical Hall vs Province of East Pakistan* 22 DLR 555.

Sections 106 and 110—Where after the expiry of the lease the tenant holds over, the notice to quit should be served considering the provisions of section 106 read with section 110 of the Transfer of Property Act.

Where after the expiry of the original lease, a tenant continues to be a tenant by holding over, then as regards service of notice to quit, the terms of the original agreement shall govern the same unless a new agreement is made. It is created quite independent of the original tenancy unless an agreement to the contrary is to be found. *Kobbat Ahmed vs Abul Sabur Sawdagar*, 25 DLR 282.

Sections 106 and 111(g)(e)—When the denial of title will operate as a forfeiture whereby notice under section 106 dispensed with.

The denial of the title of the plaintiff in order to operate as a forfeiture enabling the plaintiff to dispense with the notice under section 106 of the Transfer of Property Act is available when the same is done on an earlier occasion prior to the filing of the suit itself.

Denial of the title of the plaintiff landlord in the written statement of a suit is not available as a ground for forfeiture, which dispenses with necessity of serving a notice so far as is required to be provided in that suit itself though such a denial may be clearly taken advantage of for purposes as well as in subsequent suits.

The denial of the title of the plaintiff by the defendant in this suit, however, is possible to be taken advantage of by the plaintiff on a subsequent occasion. *Ahmed Hossain Choudhury vs Mst Zakia Khatun*, 20 DLR 1154.

Sections 106 and 116—Lease agreement of a premises expired—Tenant continued in possession in absence of renewal of the original lease or further agreement and the landlord accepted the rent—Holding over of such premises by the tenant will be governed not by the original lease but by the general provisions of section 106 of the Act. *Md Rafique vs Md Siddique* 22 DLR 56.

—**Holding over**—Where the terms and conditions of the old agreement would continue to guide the relationship between the landlord and tenant. *Dr Suraiya Hossain vs Taherunnesa* 41 DLR 441.

Sections 106, 117—Agricultural leases—Provisions of section 106 should not be applied rigorously unless there is notification in the official gazette.

The principles embodied in section 106 of the Transfer of Property Act are not to be regarded as being opposed to principles of justice, equity and good conscience, but at the same time they are not to be applied in all their rigour to agricultural leases, in the absence of a notification in this behalf under section 117 of the Transfer of Property Act. *Rajabali vs Gujarat Bus Service. PLD 1961 (WP) Karachi 486.*

Sections 106, 116—Tenants holding over—Continue to be tenants—Not trespassers. The defendants who were inducted on the fisheries as tenants by the plaintiffs, were estopped from disputing the title of the lessors, the plaintiffs, in the fisheries. Even if there was no holding over after the termination of the written lease, the defendants possessed the lands as tenants on sufferance and they were not entitled to dispute the title of the plaintiffs until and unless they surrendered their possession to the plaintiffs. *Almas Ullah vs Srish Chandra Ram PLD 1952 Dacca 256—PLR 1951 Dacca 593—3 DLR 526.*

Section 106—Monthly tenancy—Tenant has an accruing interest during every month following the first.

Under section 106 of the Transfer of Property Act, 1882 a tenant holding any premises for a month has an accruing interest during every month thereafter springing out of criminal contract and as parcel of it, and oral agreement of lease accompanied by

delivery of possession is valid for the first month and thereafter the lessee continuing in possession with the assent of the lessor, expressed or implied, becomes a tenant by holding over under section 106 of the Transfer of Property Act, 1882. Therefore, a tenant holding such a tenancy has an interest for the month with an accruing interest during every month thereafter springing out of the original contract and as parcel of it. Such a tenancy is also transferable if allowed under the terms of the lease and under the provisions of law. *Gouribala Pal vs Kunjala Saha. PLD 1960 Dacca 355—12 DLR 37.*

—Monthly tenancy—How may be terminated—Not to be terminated by death of a party to it.

The lease of a house on monthly basis or on year-to-year basis is a lease of immovable property and it is transferable under the Transfer of Property Act, 1882. The only provision for termination of monthly tenancy is by a notice to quit under section 106 of the Transfer of Property Act, 1882 and, in the case of lease from year-to-year under section 111(h) of the said Act. It is nowhere stated in the Act itself that it is terminated by the death of either party. So, the necessary consequence is that it is heritable and the heirs and legal representatives of the original monthly tenant, immediately after his death, do not become trespassers liable to be dispossessed from the premises. The tenancy can only be terminated by notice on either side. *Gouribala Pal vs Kunjala Saha PLD 1960 Dacca 355—12 DLR 37.*

—Hosiery manufactures—Lease to is for purposes of manufacture.

Held, as the essential part of the hosiery manufacture, namely, the knitting and cutting operations, was carried on in the premises in suit, the lease must be taken to be for manufacturing purposes and consequently it must be deemed to be a lease from year-to-year terminable with six months' notice expiring with the end of the year of the tenancy. The fact that yarn used for manufacture of hosiery was not produced in the premises in suit was immaterial. *Joyanti Hosiery Mills vs Upendra Chandra AIR 1946 Cal 317.*

Preparation of ornaments—Lease is for manufacturing purposes—Six months' notice to quit necessary.

Sections 106, 107—Yearly or monthly lease—How may be determined—*Harsana* lease is a yearly lease.

Whether a lease is monthly or yearly, depends primarily upon the contract by which it was made. No doubt section 106 of the Transfer of Property Act draws a line of division between leases for agricultural or manufacturing purposes on one side and the rest on the other but it does not interfere, with the freedom of contract, it makes provision for a case where there is neither any contract nor local law nor usage to determine whether the lease is from month to-month or from year-to-year. Whether the lease will be monthly or yearly, is a concern of the lessor and lessee, and, if they agree to make a yearly lease for any purposes, the law does not prevent them.

Reservation of an annual rent is not by itself sufficient to prove in every case that the lease is from year-to-year. That a lease

reserving an annual rent is not necessarily a yearly lease, is made evident by section 107 of the Transfer of Property Act. *Muhammad Siddik vs Rabea Khatun PLD 1956 Dacca 245—PLR 1953 Dacca 726.*

Ex-tenant—Not entitled to notice under the section

An ex-tenant is not entitled to a notice as provided in section 106 of the Transfer of Property Act. *Nihar Ranjan Pal vs Nurunnessa Chowdhurani PLD 1959 Dacca 111.*

Monthly tenancy—No date of commencement—Notice to vacate on the last day of month—Valid.

In a case coming under section 106 of the Transfer of Property Act, tenancy begins from the date on which the lease is executed in the absence of contract to the contrary. In the absence of any date of commencement, monthly tenancy commences from the beginning of the month. *Saish Chandra vs Mazidan Begum. PLR 1958 Dacca 541.*

Notice to quit "on or before" the date—Proper notice.

The insertion of the words on or before in the notice to quit was on a proper construction, an offer to the tenant to accept from him a determination of the tenancy on or any earlier date than that named on which he would give possession of the premises. *Buma Balu vs Saleh Muhammad Jamal. PLD 1953 Sind. 31 Foll; 46 Cal. 485, 1931 Mad. 352, 1933 Cal 260, 1953 Bom 306; 46 BLR 244; 1946 AER 133.*

Notice to quit though not strictly accurate or consistent in the statement embodied in

them may still be good and effective in law. The insertion of the words "on or before" in the notice to quit is, on a proper construction, an offer to the tenant to accept a determination of the tenancy on or any earlier date than that named on which he would give up possession of the premises. *Mossa Bhai vs Saleh Muhammad Jamal. PLD 1956 Karachi 423.*

Notice not expiring with period of lease—When not invalid.

Section 106, Transfer of Property Act applied "in the absence of a contract to the contrary": Where parties had agreed on one month's notice before ejection, the agreement amounted to a contract and the requirement of section 106 that the notice should expire with the lease had no application.

The lease in this case expired on the last day of the month. One month's notice given on 3rd August, 1954, and received by the tenant on 8th August, 1954, the resulting suit having been instituted on 13th November, 1954 was held in order not only because it did not contravene section 106, but also because the suit had been instituted more than 3 months after notice, ruling out any possibility of prejudice on the score of the notice not having expired on the last day of the month of tenancy. *Faiz Baksh vs Shah. PLD 1956 Lahore. 261—PLR 1956 Lah 112 Reg. AIR 1933 Lah 377; AIR 1926 Lah 129; Diss AIR 1923 Lah 659.*

Notice refused by party—Party affected with the knowledge of contents. If a person refuses a notice he should be affected with knowledge of its contents. *Byramji Harmosji*

vs Sarabai PLD 1959 (WP) Karachi 645—PLR 1960 (1) WP 437.

Notice—Plea that notice was not proper not raised in trial Court—Not allowed to be raised in appeal.

Where the validity of notice was not challenged in lower court but was sought to be raised for the first time in appeal.

Held: the appellant is not entitled to raise the question of the validity of the notice of ejection at this stage. *Rajabali vs Gujrat Bus Service. PLD 1961 (WP) Karachi 486.*

Notice to quit—How should be construed. Notice to quit are to be construed not with a desire to find faults in them which would render them defective, but, in accordance with the maxim "*Ut res magis valcat quam pereat.*" *Juma Falu vs Saleh Muhammad Jamal. PLD 1953 Sind, 31*

Preparation of ornaments—Lease is for manufacturing purposes—Six months' notice to quit necessary.

Ornaments cannot be prepared without transforming one thing into another and transformation of one thing into another for the purpose of making a different thing is a manufacturing process and, it cannot be said that preparation of ornaments is not manufacturing. The lease was, thereafter, for manufacturing purposes and was to be determined by 6 months' notice under section 106 of the Transfer of Property Act. *Ramani Mohan Majumdar vs Jashoda Kujar Nath. PLD 1959 Dacca 827—11 DLR 253.*

Sub-tenant—No notice to quit necessary against him.

In a case of a person who is in possession of the premises as a sub-tenant under the tenant, no question of permission from the House Rent Controller to eject such a sub-tenant is necessary and his sub-tenancy need not be terminated by a notice under section 106 of the Transfer of Property Act. *Md Amir Ali vs Abdur Rahim* 9 DLR 102—1957 Dacca 637.

Tenancy by Bengali month—15 days' notice for ejectment according to that calendar—Valid.

The notices give more than 15 clear days' notice ending with the month of the tenancy which is a monthly tenancy according to the Bengali calendar month. The notices served on the defendants in this case are quite valid, legal and sufficient. *Faizur Rahman vs Jogendra Mohan Das*. PLD 1951 Dacca 120—PLR 1951 Dacca 157—3 DLR 115 Ref; 19 CWN 489; 38 CLJ 177; 36 CWN 918.

Tenant—Cannot deny title of landlord who gave him possession.

A tenant who had been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to landlord.

The tenant cannot dispute the title of his landlord by alleging that he is in possession of the premises by paying rent to some other person whom the tenant considered to be the landlord. *Abdul Karim Khan vs Tarifur Rahman* PLR 1960 Dacca 207.

Sections 106, 107 & 110

Kabuliyat being a document executed by one party only, provisions of sections 106 &

110 will not apply to it. *Nur Banu vs Noor Mohammad* 35 DLR (AD)182.

Section 106—Notice signed and issued by one of the landlords on behalf of himself and others terminating the lease is a valid notice in terms of section 106. *Dr. Sultan Ahmed vs AKM Fazlur Rahman* 44 DLR 281.

Section 106—A liberal consideration should be given to a notice under section 106 of the Transfer of Property Act and minor inaccuracy or omission will not invalidate the service of such notice. *MG Jilani vs Md. Waheduddin Sardar* 44 DLR 348.

Section 106—Reagitating a point—When leave was granted with the tacit admission that the notice under section 106 of the Transfer of Property Act was defective the Court cannot in fairness embark upon a fresh inquiry into the validity of such notice. The landlord-appellants having abandoned that point, they cannot be allowed to reagitate the same in the absence of the respondent. *Zahura Khatun vs Rokeya Khatun* 43 DLR (AD) 98.

Section 106—A sub-tenant has no right to stay in the suit premises and no notice to quit is necessary. *Commander (Rtd) AA Chowdhury vs. AKM Imam Hossain and others* 49 DLR 23

Section 106—In the absence of any agreement between the landlord and the tenant a 15 days' notice determining the tenancy is required. But if the tenant denies title of the landlord in the suit premises, the necessity of serving any notice upon him is waived. Even if there is an agreement for 30 days' notice for terminating tenancy and the notice served falls short of 30 days, but the

suit for ejectment is filed after one month, the notice will be regarded as a valid one. *Solaiman (Md) vs. Sufia Akhtar Alam* 49 DLR 288

Section 106—When a tenant denies the title of the landlord in the demised premises without any valid reason it operates as a forfeiture of his tenancy right and in such a case a notice under section 106 of the TP Act may be dispensed with. *Solaiman (Md) vs Sufia Akhtar Alam being dead, her heirs Narjesa Rahamatullah & others* 50 DLR (AD) 90

Section 106—Without serving any notice under section 106 of the Act no tenant can be evicted. *Abdur Noor and others vs Mahmood Ali and others* 54 DLR (AD) 67

Section 106—Allowing more than one month's notice to determine the tenancy has not contravened any of the provisions of the Transfer of Property Act or the Premises Rent Control Ordinance. *Santosh Kumar Das vs Hajee Badiur Rahman* 54 DLR (AD) 93

Section 106—The tenancy in question was according to Bengali Calendar month but the notice that has been given has no reference to the Bengali Calendar. The notice served upon the defendant cannot therefore be regarded as a notice for expiry of the tenancy with the end of a month. *Kamruzzaman Khan vs Shahidul Alam Khan and others* 51 DLR 393

Section 106—Contention of six months' notice is necessary as the suit premises as a manufacturing factory is done away as the defendant described the suit premises as shop in two house rent cases and from the evidence on record it appears that there cannot be any

factory in a residential building. In such circumstances, 15 days' notice under section 106 of the TP Act is a valid and sufficient notice determining the tenancy. *Sudhan Chandra Roy vs Md Hanif* 1 BLC 107

Section 106—As the house rent case was filed subsequent to the issuance of the notice under section 106 of the Transfer of Property Act it cannot be said that the Courts below erred in law in disposing of the SCC suit during the pendency of the house rent control case and the respondent has got bonafide requirement of the suit premises. *Sudhan Chandra Roy vs Md Hanif* 2 BLC 66

Section 106—The petitioner having continued as a tenant in the remaining part of the demised premises after the demolition of the front portion he will be deemed to be a tenant of whatever portion he occupies and there can be no manner of making the notice given under section 106 ineffective because of changes in the size of the demised premises. *Mukti Pada Shil vs Golam Mohammad* 3 BLC 164

Section 106—Agreement regarding advance is void—For the eviction one month's notice is sufficient—Agreement accepting an advance on condition of monthly adjustment is void as it is contrary to section 10(b) of the Premises Rent Control Ordinance. The agreement being void the High Court Division has rightly found that tenancy must be held to be a monthly tenancy and one month's notice under section 106 of the Transfer of Property Act is sufficient in spite of three months' notice prescribed in the agreement. *Rafique Sowdagor (Md) vs Haji Ahmed Miah Sowdagor* 4 BLC 283

Section 106—Notice by post—Postman not examined before the court, question as to requirement of law—Notice returned with the postal endorsement 'always absent' whether a valid service.

The plaintiff-respondent filed a SCC suit against the present petitioner (Defendant in the suit). The trial Court decreed the suit in favour of the plaintiff-respondent, directing the petitioner to vacate the suit premises and deliver vacant possession in favour of the plaintiff respondent. Against the decree and order, the petitioner moved the High Court under section 25 of the Small Causes Court Act. In revision, the High Court upheld the order of the trial Court.

The questions arose for decision were whether (i) High Court was justified in holding that the "notice under section 106 of the Transfer of Property Act was served in accordance with law in spite of the fact that the postal peon who served the notice was not examined before the Court" and (ii) Whether the endorsement 'always absent' on the envelope can be treated as a valid service.

Held: (i) "So far as non-examination of the postal peon is concerned, there is no requirement of law that he should be so examined."

(ii) The endorsement "always absent" on the returned envelope containing the notice, was sufficient to accept the service as valid service. *Matiur Rahman Khan vs Afsarun Nessa & others* 1 BSCD 295.

Section 106—Notice—premises originally for bakery business and not for manufacturing purpose—six months' notice for determining the tenancy, whether essential.

In the instant case the suit premises was let out originally for carrying on the business of bakery. Thereafter the petitioner (in the special leave petition before the Supreme Court) made out a case of the business of cane manufacture.

Since the tenancy was not for manufacturing purpose six months' notice for determining the tenancy, Held : not essential. *Moinullah & others vs Amanullah & others* 1 BSCD 295.

Section 106—Notice—Tenancy—Refusal to accept notice, Effect of.

Held: Refusal to accept notice under this amounts to service of notice *Oli Mia & another vs Md Abu Taher & another* 1 BSCD 295.

Section 106—Notice—Notice served on the defendant by registered post—Presumption under section 27 of the General Clauses Act attached to the postal receipt of the post office of origin—no interference with the High Court's decision. *Rokeya Khatoon & others vs Rohini Kumar Paul & others* 1 BSCD 296.

Section 106—Ejectment suit—Essentials—In an ejectment suit all that needed be established is that of relationship of landlord and tenant, either the tenant is a defaulter or there is *bona fide* requirement for use by the landlord and that the tenancy has been terminated in terms of section 106 of the Transfer of Property Act subject to the provision of the Premises Rent Control Ordinance, 1963. *Mst. Nurjahan Begum vs Dulal Chandra Sarkar & other* 1979 3 BSCR 400.

Section 106—Landlord and tenant relationship—Landlord by several notices asked the tenant to quit but thereafter accepted the rent of the premises by money-order in lump and did not act upon the notices—His formal objection was waived by his acceptance of rent—The landlord cannot after accepting the rent turn round and speak against his own act of acceptance—The default in terms of the Rent Control Ordinance will always depend upon facts of each case—Unless the facts constituting default is established by the landlord, he cannot get a decree for ejection on ground of default of rent, nor can the tenant get any protection unless he proves payment of rent in terms of the enactment. *Hajee Md Islam Khan Sowdagar vs Abdul Khaleque Chowdhury and another 2 BSCD 182.*

Section 106—Sufficiency of notice—validity of house-owner's notice under section 106 of the Act served upon the agent representing an enemy concern—Deputy Custodian of Enemy Property or the Government if a necessary party on whom notice under section 106 must be served before instituting a suit for ejection and for recovery of khas possession.

The respondent Company was a monthly tenant under the appellant. On the outbreak of Indo-Pakistan war on 6-9-65, the Defence of Pakistan Ordinance and the Rules thereunder came into effect. The Company was brought under the operation of Rule 181 and United Traders was appointed as its Managing Agent to carry on the Company's business under a Notification date 29-9-65. The appellant, on 5-9-67, served a notice under section 106 of the Transfer of Property Act on the Company

as represented by the Agent which was received on 8-9-67. On 11-12-67 the appellant as plaintiff, filed a suit for ejection and recovery of possession and for arrears of rent against the Company alleging that the tenant Company was a defaulter who sublet a portion of the demised premises to defendant No.2 without permission and that he required the premises for his business. The defendant company, *inter alia*, denied the liability of ejection challenging the competence of the suit and also questioned the sufficiency of the notice under section 106 of Transfer of Property Act which was served upon it. The trial Court held that Deputy Custodian of Enemy Property was a necessary party and since no notice to quit was served on him, there was no valid notice under section 106 of the Transfer of Property Act, and the suit, as such, was incompetent. On revision the High Court concurred with the trial Court's view on holding that Deputy Custodian of Enemy Property, and the Government were necessary parties. The question arose whether the notice that was issued and served as purported by the appellant is a valid notice to quit.

Observed: On facts the case stands in favour of the plaintiff and the fate of the appeal depends on the decision of the validity of the notice under section 106 of the Transfer of Property Act. As noticed earlier both the courts below, on a somewhat different reasoning have held that the notice is invalid and that is under challenge.

Held: (1) Sub-rules (1) & (2) of Rule 181 along with sub-clauses indicates that the person appointed under sub-rule (1) shall be deemed to be acting as an agent of the firm

and the agent shall have all the powers of management of the firm and the firm shall not have the right of control in the carrying on of the trade or business. It, therefore, follows that as soon as a person is appointed under sub-rule (1) by the Government to carry on the trade, he becomes an agent of the firm and he is authorised to do all that a firm would have done in the carrying on of trade or business. What is material in this regard is that under Rule 181, it is the management of the company or the firm as the case may be that is taken over by an order of the Government, and the Government has been empowered to make the order. The effect of the order under this Rule, is that the corpus of the Company and its corporate existence remain unaffected by the operation of the Rule. The Company therefore, remained the tenant of the premises.

(ii) If the company remains a tenant which cannot be disputed rather it has been conceded then the operation of section 106 of the Transfer of Property Act can only be effective if the landlord serves notice to quit on the tenant. Both the notice and the plaint clearly show that the company on whom the notice has been served has been made a party. It is true that it has been mentioned in the notice that the company was being represented by United Traders who has been appointed by the Custodian and the evidence is that the notice was duly received by the United Traders. It cannot be disputed that United Traders was appointed under Rule 181 as an agent and since service of notice was made on the agent it was a valid notice.

(iii) On a review of the position set out above, we find that the company remained the tenant and the notice was duly served on

the tenant and in that view of the matter the decision of the Courts below, that the notice was invalid, cannot be sustained.

(iv) On the question of either the Custodian or the Government being a necessary party, it is to be observed that when the notice to quit was served on 8-9-67 by the landlord on the tenant company, the position was that only an agent was appointed by the Government on 29-9-65 in terms of Rule 181. When the notice to quit was served the relationship of landlord and tenant subsisted with the plaintiff and the defendant Company in that view the Courts below were in error in holding that either the Custodian or the Government or both was/were necessary parties in the ejectment suit. It is to be observed that the trial Court found that the defendant was defaulter and the landlord requires the premises for his *bona fide* use and occupation and this finding has not been disturbed by the High Court in revision. The challenge to the validity of notice to quit and the impleading of party having been filed, the suit shall succeed. *Rajab Ali Mullick vs Ms Adhayaksha Mathur Babu's Sakti Aushadhalaya Ltd. & another 2 BSCD 183.*

Section 106—Main question was in case of joint tenants, whether service on one of the two tenants would be regarded as good service and also whether notice under section 106 of the Transfer of Property Act is mandatory and section 19 of the Premises Rent Control Ordinance does not dispense with the requirement of service of notice to quit—Notice under section 106 of the Transfer of Property Act was addressed to both the tenants which was returned with the endorsement "refused," It cannot be held that proper notice was not served—Service of

notice to quit upon one joint tenant is *prima facie* evidence that it reached the other joint tenant. *SM Bindu Bashini Chandra vs Al-haj Jahanara Begum & another 2 BCR (AD) 181.*

Section 106—Notice upon tenant under this section—endorsement of "Refused"—acceptability as valid service.

The plaintiff respondent filed a SCC suit for eviction of the tenant petitioner on the ground that he was a defaulter and also for *bona fide* requirement. While dismissing the suit trial Court held that the plaintiff had genuine need of the suit premises but the defendant was not a defaulter as the notice under section 106 had not been legally served on the tenant. The High Court in revision took the view that mere denial by the defendant that he did not receive the notice or that it was not tendered to him is not sufficient. Tenant is to adduce evidence that he was not tendered any notice and that he did not refuse any notice. Mere denial is not enough to rebut the presumption of service which was evident from the endorsement "refused." The Court held that notice was duly served and since the trial Court accepted the *bona fide* requirement, the High Court set aside the trial Court's order, made the Rule absolute and decreed the suit. At leave stage, it was argued that mere endorsement of "refusal" is not enough to put that the notice was ever tendered.

Held: The High Court has cited a number of authorities where it has been held that the endorsement "refused" is a *prima facie* evidence that the addressee had an opportunity to accept it and that the service that was effected is a good and valid service.

This proposition of law is well settled. *Md Kemaluddin vs Jamashed Bakth 3 BSCD 132.*

Section 106—Where the tenancy is one and one of the several joint tenants by the act of sub-letting incurred liability of forfeiture of the tenancy, the tenancy will lapse as a whole and the landlord will have the right of ejectment against all the tenants jointly.

The question of sub-letting having been established which entitled the landlord to eject the tenants, the only question left was whether in the Solenama in question, the tenants (defendants) 1 & 3 treated as joint tenants with one tenancy or there was two or more tenants. The Solenama clearly showed that one tenancy was created. The plaintiff (landlord) clearly asserted that the tenants were jointly and severally liable to pay rent and the notice to quit under section 106 of the Transfer of Property Act was served on the defendant treating them as belonging to one tenancy. The Solenama between the earlier landlord and the defendants 1 & 3 on the basis of which the defendants were recognised as tenants, clearly showed one tenancy was created, as in that view of the matter, the High Court was wrong in treating defendant 1 and defendants 2 & 3 as two separate categories of tenants.

Held : The tenancy being one, and one of the several joint tenants having sublet and thereby incurred the liability of forfeiture of the tenancy, it will lapse as a whole and the landlord will have the right of ejectment against all the tenants jointly. *Sufi Abdul Hakim & others vs Azizur Rahman Master & others 4 BSCR 471.*

Section 106—Suit for ejectment of tenant—SCC Judge held the tenant defendant to be a defaulter and decreed the suit—tenant's civil revisional application was dismissed for default by the High Court—Subsequent restoration petition was rejected by the High Court on holding that the SCC Judgment was based on evidence—Whether restoration of application could be disposed of on merit by the High Court without giving an opportunity to the party's Advocate to submit arguments and without discussing in full the case on merit.

Held: The restoration petition cannot be made a good ground for re-opening of a matter which is otherwise closed by evidence, the finding of fact being that the defendant is a defaulter and the suit being decreed on that finding there is hardly any scope to challenge that finding. *Debendra Chandra Ghose vs Sajjatunessa & others 1 BCR (AD) 188.*

Section 106—With the service of notice under section 106 of the Transfer of Property Act, a lease is determined but the tenant's liability to pay rent for use and occupation till he is evicted in execution of the decree continues, acceptance of rent for the period subsequent to the decree but before it is executed does not confer any fresh tenancy right under section 116 of the Civil Procedure Code. *Obaidar Rahman vs Gulam Murshed 3 BSCD 132.*

Section 106—Notice under this section—tenant refused to accept the Landlord's notice sent by post terminating the tenancy—effect of refusal.

The plaintiff-respondent (landlord) filed a SCC suit for a decree for eviction of the

defendant-tenant from the suit premises on the ground that the defendant was a habitual defaulter and a notice under section 106 of the Transfer of Property Act for eviction was issued. The defendant tenant resisted the suit on the ground that the notice was bad. The trial Court dismissed the suit though on merit it was found that the defendant was a defaulter. The plaintiff then filed a Civil Revision Case before the High Court and the case was remanded to the SC Court "to explain the inconsistency or mistake in the notice" under section 106 of the Transfer of Property Act., The matter was heard by the trial Court again and the suit was again dismissed. Thereafter the plaintiff's civil revisional application on being filed, the High Court Division held that the notice was a good one under section 106 of the Transfer of Property Act terminating the tenancy.

Held: A notice under section 106 of the Transfer of Property Act is intended for the termination of the tenancy. The High Court Division noticed that the tenant understood the purport of the notice and the technical battle that was fought by the tenant apparently successfully was only over a date though in fact he was given more time to vacate the premises as required by law.

The High Court Division correctly came to the conclusion that when the notice were issued in accordance with law and the tenant refused it, notwithstanding his refusal the notice would operate in full force terminating the tenancy since the intention of the parties were clear, namely, that the landlord terminated the monthly tenancy and tenant understood it so. *Md Abdur Rahman vs Akbar Ali Mondal & others 4 BSCD 226.*

Section 106—Service of notice upon a close relation of the defendant and receipt of the notice by him at the premises concerned should be treated as a due service of notice. *Hajee Khairuddin Ahmed vs Muhammad Salam Kahi* 34 DLR (AD) 271; 12 BLR (AD) 177; 1983 BLD (AD) 53.

Section 106—Landlord & Tenant—Service of notice—evidence showing that notice under this section was delivered by registered post to the defendant's Karmachari (employee) at the shop-premises; the trial Court held that it was not delivered as there was defect in the address of the defendant—the lower Appellate Court held that there was no change of misdelivery and that notice was duly delivered to the karmachari but this was not due service according to the provisions of law and on that view refused eviction—High Court held that service of notice upon the defendant's karmachari at the shop premises, in his absence, was due service upon the defendant and on that view decreed the suit for eviction—service of notice by delivery to karmachari—whether a valid service.

Held : This section provides four manners of service of notice, one being delivery upon a member of the family or servant of the defendant at his residence—On perusal of the acknowledgement-receipt, containing the karmachari's signature, the High Court Division is found to have rightly held that notice was duly served under this section of the Act. *Ahmed Hossain vs Haji Jahanara Begum* 4 BSCD 227.

Section 106—Monthly tenancy—suit for eviction of a tenant on the ground of *bona fide* requirement and default in payment of rent—tenant respondent being a defaulter on

his own admission has no concern as to who is the legal heir of the plaintiff—the defaulter tenant respondent cannot ask for succession certificate from the heirs of the plaintiff. *Abul Khair Hossain & others vs Ramesh Chandra Roy* 4 BCR (AD) 39.

Section 106—Suit for eviction of a tenant on the ground of *bona fide* requirement and default in payment of rent—Decree holder dies during the pendency of civil revision case at the instance of the tenant-respondent—tenant being a defaulter on his own admission, has no concern as to who is the legal heir of the plaintiff—he cannot demand asking for succession certificate from the heirs of the plaintiff—High Court Division passes order taking into consideration an irrelevant matter—Such order is without jurisdiction. *Abul Khair Hossain & others vs Ramesh Chandra Roy* 4 BCR (AD) 39.

Section 106—Attornment—change of ownership of shop—service of notice under this section upon the appellant determining the tenancy between the respondent No.1 and the appellant was challenged on the ground that the notice did not communicate the change of ownership nor did the notice mention about the surrender of lease by the previous lessees and the execution of Hibab-Il-Ewaz—reference to the document and the relevant paragraphs of the notice left no room for ambiguity as to the change of ownership and the reference to the assertion to demolish the shop were evidence of the intention to exercise acts of ownership over the shop premises—It is no longer open to the appellant to repel the respondent's contention that he had sufficient knowledge of the

change of ownership—the appellant cannot succeed on the plea that no attornment took place. *Doliluddin Ahmed vs Syed Iftekar Ahmed & others* BCR 1984 (AD) 83.

Section 106—Application—It is not necessary at all to determine in this appeal as to whether preparation of sweetmeat is a manufacture or not within the meaning of this section as it has not been established by the evidence on record that the exclusive or at least the dominate purpose of the tenancy was for manufacturing purpose. *Nani Gopal Ghosh & another vs Prof. Md Ishaque* 1991 BLD (AD) 233.

Section 106—When the tenant raises the question of sufficiency of notice and asks for a notice of a longer duration on the ground of the tenancy being for manufacturing purposes within the meaning of this section the burden of proof lies on the party who claims it to be so—The extent of the burden is to establish that either the exclusive purpose or the dominate purpose of the lease was manufacturing purpose. *Nani Gopal Ghosh & another vs Prof Md Ishaque* 1991 BLD (AD) 233.

Section 106—Suit for declaration and permanent injunction—Trial Court allowed the prayer for temporary injunction relating to half of the suit premises—The appellate Court and the High Court Division rejected the appellant's prayer for temporary injunction without considering the facts of the case—Appellant's husband was admittedly a tenant in the suit premises. Claiming tenancy to herself the appellant asserted her possession—The service of a notice under this section by defendant No.3 on her lends support to that assertion—None

of the Courts considered whether the Deputy Commissioner whose order of eviction has been challenged in the suit had at all any authority to issue such notice—The question is not whether the plaintiff is or is not a tenant in the suit premises but whether there is any *prima facie* ground for an eviction notice to be served upon her—Appellate Division restrained the defendant from disturbing the plaintiffs' possession till the disposal of the suit. *Most Akhtare Begum vs Administrator & others* 8 BSCD 226.

Section 106—Eviction of a person inducted by the monthly tenant—Whether a suit for eviction of such a person in the Small Cause Court is maintainable—When the defendant No. 1 was admittedly a monthly tenant who inducted the defendant No.2 in the suit premises without the knowledge and consent of the latter such transaction was in the nature of a sub-lease. No question of giving consent to the sub-lease arises—When tenancy in favour of defendant No.1 was terminated the sub-lease in favour of defendant No.2 cannot subsist—It would be merely a legalistic approach to any that the defendant No.2 became a trespasser and a suit for eviction did not lie against him—Technicalities of law may sometimes prove to be a great value in winning even a bad case, but when the very bottom of a case is struck off, no one can hope to score victory on such technicalities alone. *Tajabunnessa & others vs Nazma Begum & others* BCR 1987 (AD) 361; 1987 BLD (AD) 205; 40 DLR (AD) 36.

Sections 106 & 116—Handing over—Doctrine of—Applicability—Mere non-payment of rent does not terminate the tenancy to make the possession of the tenants adverse to the landlord. *Haji Abdus Sattar vs*

Mohiuddin and others 1984 BLD (AD) 224; BCR 1986 (AD) 76.

Section 106—Default in payment of rent—Ejectment of lessee—Conditions—Notice to tenant when not necessary—Suit property being situated in rural area, lease of suit property would be deemed from month to month terminable on part of either lessor or lessee by fifteen days' notice expiring with the end of month of tenancy—Lessee was defaulter in payment of rent of suit property and landlady had refused to extend lease of suit property to lessee by not accepting defaulted rent—Lessee who remained in possession of suit property after expiry of term, in defiance of authority of lessor/landlord was not entitled to notice to quit under section 106 of Transfer of Property Act, 1882—Lessee, having committed default in payment of rent, could not escape from statutory provisions of law contained in section 106 of Transfer of Property Act, 1882 and was rightly ordered to be ejected by Courts below. *Sanaulah vs Bibi Shahnaz Akhtar 1998 CLC 1971.*

Section 106—Tenancy—Tenancy can be statutory, contractual or by attornment and acceptance—Real owner would be within his right, to accept an occupant, to be his tenant instead of treating him as a licensee or an illegal occupant, if occupant approaches the real owner for creation of tenancy—If an occupant as a result of direct settlement with real owner, agrees to an arrangement by which real owner attorned occupant to be a tenant, violence of such arrangement cannot be challenged at instance of real owner. *Bhatti & Company vs Shahnawaz Ltd 1998 CLJ 727.*

Abstract

1. Section 106: Scope and Applicability
2. Contract for Renewal
3. Notice to quit and demand of enhanced rent in alternative
4. Permanent Tenancies
5. Tenant-at-sufferance or tenant-at-will
6. Sections 106 and 111 Clause (h)
7. Sections 106 and 116

1. Section 106: Scope and Applicability

Section 106 does not apply to the Punjab—*106 IC 537—1928 L 348.* See also *1923 L 659.* This section has no application to a notice under section *108(e): 31 IC 697—19 CWN 1019;* section does not apply to *agricultural leases: 20 IC 374—24 MLJ 571; 90 IC 51;* See also *1929 N 169—116 IC 662.* (A notice asking agricultural tenant from year-to-year to quit immediately is not proper) *851 IC 339—1925 M 346.* Section 106 does not apply to a tenancy proved to have originated before the Transfer of Property Act. *35 CWN 1047;* See also *25 CWN 420—60 IC 826.* The only leases recognised by section 105 are leases for a certain time, periodical leases, and leases in perpetuity.

Where, therefore, the status of a person does not fall under any of these heads, he cannot be a lessee; and hence he cannot insist upon a notice to quit as contemplated by section 106: *151 IC 971—1934 R 291.* The essence of a lease as defined by section 106 is that the right to enjoy the property demised must be given for a certain period, express or implied or in perpetuity. The transaction is

nonetheless a lease, because the interest may be determined before the expiry of the time fixed or after the expiry of the time fixed. *ILR (1939) B 320—41 Bom LR 297-1939 B 215*. Section 106 is subject to the exception of being set aside in particular cases by proved usage or contract. *79 IC 106—1924 A 726*. See also *78 IC 416—1925 N 48; 1924 N 200; 84 IC 532-1924 O 309*. Thus, where the lessee of a house agrees to vacate the same whenever wanted, section 106 cannot be made applicable and the omission to give notice cannot be regarded as fatal to a suit in ejectment. *79 IC 26—1924 A 726*. Section does not apply to the case of a *lessee for fixed term* when the term has expired. *1931 ALJ 666*. After the expiry of the period, the tenant is only a tenant at sufferance and is not entitled to any notice to quit. *1933 ALJ 682—1933 A 756(2)*.

In the case of *utbandi* holdings, unless there is a special custom to that effect, the right to occupy the land does not enure beyond a particular season or a particular year and the tenancy not being a lease from year-to-year, section 106 does not apply *60 C 681—37 CWN 335—1933 C 609*. A renting by the lessee for twenty years of shops at a fixed rent as long as the sub-lessee kept them and paid monthly rents, creates a monthly lease. *180 PLR 1913—19 IC 493*. Where tenant who originally came into possession of the demised land under an invalid lease for 10 years and continued in possession with the consent of the lessor paying rent at a monthly rate, the presumption is that a monthly tenancy was created between the parties by oral agreement, accompanied by possession. *33 MLJ 684—43 IC 310* See also *1933 P 485—144 IC 781*. To determine the nature of

the tenancy, the length of possession, variation of rent, if any, manner of dealing by the tenants and other connected circumstances have to be considered. *12 IC 1-21 MLJ 845*. See also *28 C 738; 11 CWN 242; 8 CWN 297; 32 CD 51; 43 C 902; 32 C 41; 5 CWN 846*. Where no term is mentioned in a lease, it must be regarded as a lease from year-to-year terminable by notice either side according to law. *3 PLJ 576—43 IC 965*. The tenancy of a house is presumed to be monthly. *61 IC 976—2 PLT 178*.

If under a lease created after the Transfer of Property Act, the tenant enters into possession on the basis of an oral agreement and continues in possession on payment of rent to the lessor, and the purpose of tenancy is neither agricultural nor manufacturing, the lease must be taken to be a lease from month-to-month under section 106 of the Act. *ILR (1939) 2 C 254—43 CWN 797—1940 C 89*. Unless there is some indication to the contrary, the term 'ordinary tenant' would in Calcutta mean monthly tenant, even though there was no reference to payments of monthly rent, and such a tenancy would be terminable on 15 days expiring with the end of the month of the tenancy. *43 CWN 309—41 Bom LR 684; 1939 PC 11; (1939) 1 MLJ 365 (PC)* See also *42 CWN 1115; 1939 P 296*.

Where yearly rent is reserved, though payable in instalments, the tenancy may be presumed to be from year-to-year. *24 IC 183—19 CWN 525; 23 CWN 641—51 IC 415*. There is no presumption, from the mere fact that a lease is for building purposes, that it creates a permanent tenancy. In the absence of anything in the lease itself the Court should infer a monthly tenancy only. *48 LW 894—1939 M 247; 1941 A 399—1941*

ALJ 557. A tenancy may well be a monthly tenancy though the rent may be mentioned as so much per year. *1941 PWN 513—1941 p 488—1941 IC 300*. When a tenant under a lease of premises in Calcutta for a term of three years holds over after expiry of the term, he does so as a monthly tenant, and each month of the tenancy expires at midnight on the first day of the succeeding month. *38 CWN 782—1934 C 837*. But when the contract is not registered, it will be monthly. *44 C 403—33 IC 899; 26 IC 962*. The mere fact that the rent is fixed for a year does not make the tenancy a yearly one: *51 IC 44*; nor the fact that rent is payable yearly: *50 IC 918; 61 IC 976—2 PLT 178*. A provision for enhanced rent in a lease after the expiry of the term does not take away the landlord's right to eject the tenant after due notice. *23 CWN 641—51 IC 415*.

Where enhanced rate of rent is proposed by a landlord and the tenant continues to occupy the property without any protests he should be deemed to have accepted the proposal. But when the tenant protests against the enhancement, the remedy of the landlord is ejectment and where he did not pursue that remedy, he cannot subsequently claim the enhanced rent. *10 OWN 1000—1933 O 465*. The presumption of the section does not arise when there is a *contract to the contrary*. *32 IC 692*. See also *42 CWN 598—1938 C 656*.

2. Contract for Renewal

Contract of renewal of lease runs with the land and can be enforced against the lessor's transferee with notice. *89 IC 273—1925 N*

281. See also *19 CWN 1197—27 IC 397*. No renewal can operate when its terms are undefined and are dependant upon the will of the lessor. *34 IC 92—21 CWN 183*. When the terms are undefined, it may be taken that the renewed lease is on the same terms as the old one. *33 IC 448—20 CWN 948*.

Notice to Quit—The object of the legislature in providing for a notice to quit is to prevent eviction of the tenant arbitrarily at any moment without giving him time to gather the produce of his labour, rendering his position very insecure. *2 C 156*. Yearly tenant is entitled to 6 months' notice and monthly tenant to 15 days' notice. *1919 p 235—50 IC 8*. See, as to tenant holding over, cases under section 116. The provisions of the section as to notice to quit are subject to a contract to the contrary. *1923 L 281; 34 IC 516; 47 IC 19; see also 32 IC 692*. The words "in the absence of an agreement to the contrary" in section 116 refer to an agreement as to the terms of the holding over.

Where there was a term in a lease that the lessee would give up possession without notice and on the expiry of the lease, the lessee held over on payment of rent. The term as to notice is not carried over to the new lease and notice is necessary to terminate the later lease: *37 CWN 971*. See also *1938 N 506—1938 NLJ 317*. A notice to quit should not be construed with a desire to find faults in it, but with a view to its validity. A notice is good notwithstanding that the addressee is described therein as a trespasser. Nor does the fact that two months' time is given where only 15 days' time necessary invalidate the

notice. 36 CWN 918 See also 68 CLJ 411. Where a person undertakes to surrender whenever required, no notice is necessary. See 100 IC 398—1928 M 687; see also 1910 MWN 794—8 IC 362. In the case of a lease for fixed period, notice of termination is not necessary. 1932 ALJ 126. In cases not governed by the Transfer of Property Act, reasonable notice is sufficient. 23 CWN 641—51 IC 415; 42 IC 375; 30 IC 886—22 CLJ 74; 20 IC 363—17 CWN 1073; 57 IC 311. A person claiming from a tenant at sufferance is not entitled to notice to quit. 114 IC 725—1929 A 610.

In cases of *agricultural leases*, notice need not ask the tenant to quit exactly at the end of the year. 1925 M 346—85 IC 339. A notice demanding an agricultural tenant from year-to-year, to quit the land immediately or forthwith is not proper, and reasonable notice is necessary. 1929 N 169 If the notice makes it quite clear to him that the landlord intends to take possession of the whole of the *jama* the notice is valid although it contains an inaccurate description of the land. 68 CLJ 481—1939 C 291. Permission to build on payment of rent without a lease-deed amounts only to a licence and no notice is necessary. The remedy will be for wrongful revocation of licence. 38 A 178—32 IC 346. Where the lessee is allowed to construct a building on the land leased, and the lease is found to be one from month-to-month, it is unjust for the lessor to claim the structure to be demolished. He should give the lessee a notice to quit. 1939 p 428.

A tenant who holds against the wishes of the landlord is not entitled to notice to quit. 53 IC 180(P). A person not prepared to accept 15 days' notice is not entitled to ask the notice

to be served under section 106. 1927 S 24 97— IC 577. Where according to the contract, a lease is terminable only on the happening of a particular contingency, a prior notice to quit will be of no avail. 53 IC 109. *Notice by some of the co-owners* is sufficient if others have consented to it by conduct. 34 IC 56. But see 9 IC 110. Where a *notice given by agent of a manager of temple property* is not headed as such, it is not bad. 1925A 199—78 IC 651. *Notice served by post* will be presumed to have been served. 46 C 458—45 IA 222(PC) [This was the law even before the present amendment of 1929. Now this has been specially provided for by the amendment] "Sending by post" in section 106 must mean sending by post to the tenant's proper address. 43 CWN 309—41 Bom LR 684—1939 PC 11—(1939) 1 MLJ 365 (PC).

Where a registered notice was returned with a notice 'refused' in view of presumption that posting of a letter in due course raises, it cannot be said that there has not been a proper service of notice. 1938 ALJ. 511—1938 AWR (HC) 328—1938 A 388. Service on one of many joint tenants will be evidence of service on others. 46 C 458—45 IA 222—35 MLJ 707 (PC); 37 CLJ 478—75 IC 105. *Notice must be served on all*. 29 CWN 620. Service must be where the lessee resides and on the lessee. 13 IC 59—9 ALJ 574. *Affixture* is bad, unless tender or delivery is impracticable. 51 IC 44. As to *service of notice in the case of joint tenants*, see 87 IC 708—29 CWN 620; 37 CLJ 478—75 IC 105.

Where the lessee surrendered, the sub-lessee is not entitled to any notice. 20 IC 11—

11 ALJ 951. A notice to be valid should be of a period terminating with the end of the month or year of tenancy 18 ALJ 854—57 IC 593; 26 IC 962—19 CWN 489. See also 27 Bom LR 102—1925 B 167; 22 B 241; 38 CLJ 177—1923 C 524. Notice not bad by reason of its being too long by a few hours. "The validity of a notice to quit ought not to turn on the splitting of a straw." 1931 M 352—60 MLJ 293. If the tenancy is per Bengali year, the month and the period of the notice should be calculated as per Bengali calendar. 30 IC 887—22 CLJ 78; 30 IC 886—22 CLJ 74. Lease of house—Termination of—Notice asking lessee to vacate by midnight of the 31st July—Not necessary that lessor should send the notice on the 15th July or that he should ask the lessee to vacate on the expiry of the 1st August, 1937 A 36. Notice to quit by a certain date, meaning of: 1937 N 139.

When a house is taken on rent and occupied in the middle of a month and rent is paid separately for the days during which the house has been occupied prior to the first of the following calendar month, the intention of the parties is that the tenancy should begin on the first of each calendar month. 1936 OWN 514—1936 O 306. A notice was given on 9th November, 1927, to the lessee stating that he should vacate the land on 13th May, 1927. 1927 in the notice was a mistake for 1928 and parties were not misled. The notice is valid. 1934 ALJ 674—1934 A 787. Objection to the legality of the notice is not to be raised on appeal for the first time. 1923 R 13. In reckoning the period, the day on which the notice is served is excluded and the day

on which it expires is included. 36 IC 962—19 CWN 489. Section 106 implies the existence of a lease. Where the relationship of landlord and tenant between the parties has been created not by a lease but by a decision of a Court, the tenancy cannot be legally terminated by a notice to quit under this section. 46 CWN 464.

3. Notice to Quit and Demand of Enhanced Rent in the Alternative

Where a notice to quit or pay enhanced rent is issued to a tenant, and he refuses to quit, it does not necessarily follow that he is bound to pay the enhanced rent from the date of the termination of the tenancy. He may be entitled to remain for some reasonable time as in the case of a shop-keeper who has been in a particular place for a long time paying only the original rent. But where a tenant refuses to quit, he cannot also refuse to pay the enhanced rent. When he has been asked to quit or pay enhanced rent, if he does not quit, he must be deemed to have agreed to pay at the enhanced rent, if such rate is neither penal nor improbable. The Court has always a discretion in fixing the amount. 1940 NLJ 118—1940 N 140. Where the notice was to quit or to pay rent at an enhanced rate, the tenancy is at an end if the payment at enhanced rate is not agreed to. 43 A 330—10 ALJ 92; 19 IC 758. Notice to quit—Construction—Offer to pay compensation to tenant—Lease silent as to payment of compensation—Right to eject without payment of compensation. 1936 C 581.

4. Permanent Tenancies

The burden of proving permanency of tenure is on the lessees. Otherwise, the leases

shall be presumed to be monthly or yearly as the case may be. 43 IC 643—35 MLJ 281. See also 13 CWN 513—9 CLJ 362. *Joint lessees* cannot object to partition on the ground that the permanent leases were granted by the lessors in excess of their powers and are liable to be set aside. 43 C 1118—53 IC 129. In case of *building leases* the presumption is in favour of permanent tenancies 1 P 717—1922 p 258; 34 C 358; 164 IC 1003. The lease of land for the purpose of putting up a permanent construction cannot be deemed to be a permanent lease. Such a lease in the absence of any contract or local law or usage must be deemed to be a lease from month-to-month. 1941 ALJ 557—1941 A 399 See also 48 LW 894—1939 M 247; 23 p 294. The use of the words *Istimirari Maurasi Mokurari* in a lease *prima facie* creates a heritable and permanent tenancy and not merely an estate for the life of the grantee. 41 IC 875; but the word "*Istimirari*" or "*Istimirari Mokurari*" *prima facie* refers only to life estate. 56 IC 656; 30 C 883.

The following are presumed to create a permanent tenancy—*Patni* tenure, 3 BLR (AC) 437; 25 C 13; *Mulgini* tenure, 17 M 218; *Mirasi* tenure, 1888 PJ (B) 304; *Kayam saswatha* tenure, 35 MLJ 129. See also 25 C 13; 3 Bom LR 437; 17 M 218. A *forfeiture clause* in a lease deed does not derogate from the otherwise permanent nature of the tenancy. 34 C 358. *Long and continued possession* coupled with the tenant's building on the land pucca structures from time to time would give rise to a presumption of permanent tenancy. See 28 C 738; 32 C 51; 34 C 902 But see 15 B 647; 31 B 185. A permanent tenancy created before the passing

of the Act to which, if created after its passing, its provisions would apply is transferable. 33 IC 502(C).

5. Tenant-at-Sufferance or Tenant-at-Will

The representative of a tenant at sufferance is a mere trespasser and his possession is not that of tenant entitled to receive a notice to quit as required by section 106; 114 IC 725. It is doubtful if tenancy by sufferance exists after the passing of the Act. 39 M 54-33 IC 705; see also 25 IC 109—1914 MWN 728. But see *contra* 90 IC 98—1925 C 1171. The defendants who were holding for a long time under yearly leases, and, on the expiry of the term under the last lease, were holding over on payment of rent to the lessor. There was no provision in the contracts between the parties what, if any, should be the notice in case the defendants held over.

Held: that the tenancy should be deemed to be renewed from month- to-month (though rent was paid per year) and that fifteen days' notice ending with a month of the tenancy was sufficient. 36 CWN 918. The defendant was a tenant for a term of four years commencing from the 1st June, 1921. After the expiry of his lease, he continued to hold over till 1928. A notice given on the 1st February, 1928, of his intention to quit on the 1st March is valid and effective. The lease of 1921 expired at midnight on the 1st June, 1925 and the notice expired with the end of a month of the tenancy, viz, the midnight of the 1st March, 1928 : 37 CWN 1—1932 PC 279—63 MLJ 685 (PC). See also 16 Luck. 44. Where the tenants take possession under a document which clearly purports to be a lease for a term of years, but which is not duly

stamped and registered, the tenants are only tenants-at-will. *90 IC 98—1925 C 1171*. But see *25 IC 109—1914 MWN 728*. Where the evidence showed that the defendant was the tenant of the predecessor of the plaintiff and that he had been paying rent for the possession : the plaintiff could not eject the defendant as trespasser but only under the terms of the lease. *1930 ALJ 1409*.

6. Sections 106 and 111 Clause (h)

Tenancies from year-to-year or month-to-month created after the passing of the Transfer of Property Act are leasehold interests and are, both transferable and heritable. Consequently a notice to quit served on the surviving tenants alone but not

on the heirs of some of the tenants who are dead is not valid and sufficient in law to determine the tenancy. *ILR (1939) 2 C 254—43 CWN 797—1940 C 89*

7. Sections 106 and 116

Section 106 applies only when there is a valid lease created as required by section 107 and the tenancy is subsisting. Where a lease is not according to law, the tenant is only a tenant-at-will if he continues in possession after the period fixed in the invalid lease, without the landlord's consent, he become a tenant at sufferance, and is not entitled to any notice to quit prior to ejection. *1940 OWN 586—1940 O 401*.

¹~~107~~. **Leases how made**—A lease of immovable property from year-to-year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

²[All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.]

³[Where a lease of immovable property is made by a registered instrument, such instrument, or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

1. As to limitation to the territorial operation of section 107, see section 1 supra; section 107 extends to every cantonment in the provinces, etc., see section 287 of the Cantonments Act, 1924 (XX of 1924).
2. Substituted by the Transfer of Property (Amendment) Act, 1904 (VI of 1904), section 5 for the original paragraph.
3. Inserted by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 55.

¹[Provided that the ²[Government] may, ^{3*} from time to time, by ⁴notification in the ⁵[official Gazette], direct that leases of immovable property, other than leases from year-to-year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.]

Case Law

Section 107—Applicability—Extends to Municipal areas of the Punjab.

Section 107 of the Transfer of Property Act is in force in all the Municipal Areas of what used to be the Punjab. Under the section a lease of property reserving a yearly rent or for more than one year can be effected only by means of registered instrument. *Fazal Din vs Mun Committee Lyallpur PLD 1956(WP) Lahore 916—PLR 1957(1) WP 348.*

Kabuliyat executed by tenant alone—No right in property is transferred.

The petitioner could not have validly acquired the right claimed by him by a mere kabuliyat executed unilaterally by the petitioner himself without the lessor thereof also executing the instrument to that effect. *Muhammad Abdul Aziz vs Province of East Pakistan PLD 1961 Dacca 710—13 DLR 873.*

Licence by Government—No registration necessary.

A licence given by Government to prospect red oxide of iron in land need not be registered as it is in the nature of a Crown grant. *Rangaswami vs Vishnu Nimbaker AIR 1946 Mad. 180.*

Lease for indefinite period—defendant's liability.

Lease for indefinite period—implies a life-grant unless it is otherwise from words used or conduct of parties. *6 DLR 474.*

Verbal lease for one year—Lease continues after first year with possession and landlord accepting rents—valid tenancy, as holding over.

A verbal lease for more than one year accompanied by delivery of possession is valid for the first year and if the tenant continues in possession even after the first year and the landlord accepts rent from him, he will be regarded as tenant by holding over. *Roshan Ali vs Mosammat Abedur Nessa 14 DLR 583.*

1. Proviso inserted by Act VI of 1904, section 5.
2. Substituted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973) section 3 and 2nd Schedule for "Provincial Government" (with effect from the 26th March, 1971).
3. The words "with the previous sanction of the GG-in-C" repealed by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973) section 3 and 2nd Schedule.
4. For notifications by the Governments, see different local Rule and Order.
5. Substituted by AO 1937, for "Local Official Gazette".

Even in a monthly lease the lessee not liable to eviction on 15 days' notice if his claim of tenancy is in respect of land.

Defendants purchased plaintiff's shop and took settlement of the land on which the shop stood and claimed a tenancy right in respect of the land by oral agreement accompanied by a delivery of possession.

It was contended that such a lease other than for agriculture or manufacturing purposes shall be deemed to be a monthly lease and the defendant is liable to eviction by 15 days' notice.

Held: The defendant in the present case claimed his tenancy right to the land itself; so he is not liable to ejection on 15 days' notice. *Sarat Chandra Biswas vs Mozam Sardar*, 22 DLR 102.

Unilateral lease document void for offending against provisions of section 107 of Transfer of Property Act—Lessor and lessee respectively executed unilateral patta and kabuliyat the same day—The two documents cannot be treated as one for complying with provisions of section 107.

As each of the document has not been executed by both the lessor and the lessee, the lease is void. *Sheikh Md Siddique vs Hari Lal Nath*, 22 DLR 359.

Lessor created a perpetual lease-deed in respect of some non-agricultural land in favour of lessee for some commercial purpose—The lease-deed (a registered document) was executed by the lessor alone and not by the lessee.

Held: No valid deed is created unless the lease-deed is executed by both the lessor and the lessee.

Whether a tenancy will be governed by the Transfer of Property Act or by the Bengal Tenancy Act will depend upon the purpose for which the tenancy was created and not on the actual user of the land. *Syed Imteyazuddin Hossain vs Md Abdul Majid*, 22 DLR 451.

Amalnama (not registered) showing lease for 11 years—It is admissible only to show that there was a lease just for one year.

It is urged that the tenant took settlement of the fishery for eleven years from the ex-rent receiver under an Amalnama. It was argued that the Amalnama evidencing a lease of 11 years being an unregistered instrument cannot operate to create a right in the land.

Held: Although there could not be any lease for all the eleven years in the absence of a registered instrument but there was still a tenancy for a period of one year and it has been found that the rent was paid for the first year. Hence he was a tenant for that particular year. *Province of East Pakistan. vs Nakuldas Mridha*, 20 DLR 769.

Lease, purpose of—Lease created by an unilateral document is not hit by section 107 of the Transfer of Property Act where reading the document as a whole it appears that the lease was created for agricultural purposes—Recitals to the effect that if the land remains fallow and unproductive, still the same will not be admitted as an excuse for non-payment of rent or reduction of the same and if the area of the land is found to be more on survey then the lessee will be liable for higher rent along with the stipulation that the lessee will be entitled to plant trees on the bank of the tank and rear fish therein indicate that the lease created is for agricultural purposes. *Azizur*

Rahman vs Hedayet Ahmed Chowdhury 24 DLR 11.

A patta unless executed by the lessor and the lessee is void under section 107 of the Transfer of Property Act. A patta or order to create an interest must be executed by both the lessor and the lessee as required by this section. Where a patta was executed and registered only by the lessor the patta is void being in contravention of the provisions of section 107 of the Transfer of Property Act. Therefore, the defendant No. 1 did not derive any right, title or interest in the land in suit on the basis of the said patta. *Narendra Nath vs Abdur Rahman 26 DLR 45.*

No need of registration of an instrument creating tenancy for a year or less although governed by the Transfer of Property Act. *Province of East Pakistan vs Abdul Jalil Molla 20 DLR 1223.*

A lease-deed (10 years in the present case)—not an agreement of lease within the meaning of section 107 of the Transfer of Property Act unless the rent to be paid by the lessee is fixed and the deed registered. *Sh Barkat Ullah vs Khawaja Mohammad Ibrahim 22 DLR (SC) 419.*

Unregistered lease-deed of immovable property from year-to-year is inadmissible in evidence for lack of registration. *Abdul Majid Mia vs Mvi Nabiruddin Pramanik 22 DLR (SC) 360.*

Section 107—Unregistered lease deed of immovable property from year-to-year is inadmissible in evidence for lack of registration. *Bangladesh vs Md. Aslam 44 DLR 69.*

Section 107—Plaintiff got the settlement by dakhilas on 15 Chaitra 1355 corresponding to March, 1948 for which Non-agricultural Act will not apply to the suit property as it came into force on 20-10-49. The High Court Division acted illegally and without jurisdiction in reversing a concluded finding of fact in exercise of its revisional jurisdiction and wrongly held that the suit land was a non-agricultural land and that the plaintiff's settlement of the suit land having not been made by a registered instrument she did not acquire any valid title thereto. *Nirmala Bala Das vs Ganesh Chandra Dhupia 4 BLC 133*

Section 107—According to clause 23 of the standard lease agreement between the DIT and the lessee, the defendants are not liable to pay the transfer fee as the transfer in question is not made by the defendant-respondents but by Court at the instance of House Building Finance Corporation in execution of a decree. *Salma Islam vs Parveen Banu & ors 3 BLC 11*

Section 107—Any lease granted for a longer period say for 10 years by an unregistered documents will be valid for one year in view of the provision of this section. *Khodeja Begum and another vs Sagarmal Agarwal & others BCR 1987 (AD) 172.*

Section 107—Lease of property for two years—Tenant after expiry of lease period, holding over possession wilfully and contumaciously—Tenant being trespasser after lapse of lease period, Courts below had rightly awarded double the rent for period of holding over premises—Concurrent findings of Courts below in awarding mesne profits for unjustified and contumacious holding over a premises, after expiry of lease period, was neither against the weight of evidence nor

illegal to warrant interference. *Sabiha Nighat vs Saadat Ali Khan* 1998 MLD 69.

Section 107—Lease through open auction' or 'sealed tender'—Distinction—An open auction could not be equated with bidding through a sealed tender because in the former case any person could participate, but in latter case required fulfilment of certain pre-conditions like call deposit, etc. *Hotel Summer Retreat, Nathiagali vs Government of NWFP* 1999 MLD 2418.

Abstract

1. Change in Section [before the amendment there was a conflict of views]
2. As to Scope of Section
3. Third Paragraph
4. Unregistered Lease Deed
5. Oral Agreement to Lease
6. Lease for one year
7. Delivery of Possession
8. Sections 107 and 117

Section 107—As to limitation to the territorial operation of section 107, see section 1, supra. Section 107 extends to every cantonment in British India—see the Cantonments Act, section 32 (1).

1. Change in Section

[Before the Amendment there was a Conflict of Views]

The Allahabad High Court held that a lease must be by deed signed by the lessor also 26 A 368; 27 A 190; 31 A 276. This view was taken by the Madras and Calcutta High Courts in the earlier cases (30 M 322; 32 M

532; 14 CWN 73, but abandoned in 35 M 95—21 MLJ 202(FB) 1 LW 236—24 IC 784 and 39 C 1016. The Rangoon and Bombay High Courts adopted the Allahabad view (3 R 379; 27 Bom LR 626). Now a lease should be executed by both the lessor and the lessee. A registered *kriyanama* executed by the lessee only cannot operate as lease, but he is bound by its terms unless of course he proves fraud or coercion. Nor is the document a licence. 1942 ALW 373. Before the Transfer of Property Act, for the execution of a permanent lease, the execution of a patta was not necessary and the acceptance of a *kabuliyat* was sufficient. 14 CLJ 614—10 IC 489.

2. As to Scope of Section

The amendment of section 107 which requires leases to be in a bilateral form applies to leases executed subsequent to April 1st, 1930, in pursuance of an agreement entered into before that date, although such agreement provides for two separate documents by the lessor and the lessee. 43 CWN 956 Section 107 does not apply to agricultural leases. 11 OWN 1565—1935 O 90. Nor to any grant or other transfer of land or any interest therein made or on behalf of the Crown in favour of any persons, 6 p 446—104 IC 209—1927 p 319 —74 IC 369—1923 O 114. But see 36 A 176; 3 ALJ 129. By virtue of section 287 of the Cantonments Act, section 107 of the Transfer of Property Act is made applicable to cantonments. 1931 L 501.

For purposes of registration the term of a lease means the length of time for which the lessee is entitled to undisturbed possession provided he himself fulfils all the stipulated conditions. 36 A 176_12 ALJ 219—22 IC

933. A rent deed does not fall within the purview of section 107. 42 PLR 75. A rent note signed only by the intending lessee is not a lease under the Act and it would not require registration under section 107. Further, if it is neither from year-to-year nor for a term exceeding a year, nor reserving a yearly rent, it does not require registration, though it may amount to a lease under Registration Act, Section 2(7). 1940 NLJ 110—1940 N 143.

3. Third Paragraph

Prior to the enactment of this paragraph, there was a conflict of decisions as to whether a *kabuliyat* or other document by the lessee alone operated as a lease. For decisions holding that it did, see 55 C 435; 39 1016; 35 M 95; 27 Bom LR 626; 24 IC 784 (1) (M); 24 NLR 68. For decisions holding that it did not, see 26 A 369; 27 A 190; 31 A 266; 1927 A 729; 3 R 379; 1925 N 121; 1926 N 391; 104 IC 410; 1924 A 514; 46 A 303; 27 A 462; 9 O C 296; 14 CWN 73; 1930 A 678. The latter view is upheld by the amendment.

Before a lease can be validly executed and registered, there ought to be a writing signed by the lessor when immovable property is leased out, and a mere *kabuliyat by the lessee* is of no avail. A lease for more than a year and continuing in perpetuity could not be given effect to without a registered document. The mere fact that the lessee obtains possession would not entitle him to force upon the lessor terms which would amount to grant in perpetuity. 166 IC 897—1937 A 36 Section 53 A would not bind the lessee when there is no writing signed by the lessor containing any such condition.

Again, the part performance of the contract would entitle the lessee to remain in possession until evicted on notice and would entitle the lessor to claim rent from the lessee but, in the absence of written contract signed by the lessor, would not grant to the lessee permanent rights of a perpetual lease. 1937 A 36. See also 1939 OA 170—1939 OWN 102. Lease and agreement to lease, see 11 CLJ 543—6 IC 632. Section 107 only prescribes the mode of creation of a lease.

The effect of its non-compliance will be that the lease will be of no effect for the period. The statute does not say about the rights of the parties under the invalid lease and does not prevent the doctrine of holding over being applied, as that has been recognised by the statute itself. 144 IC 788—1933 p 485.

Where the lessee executes a registered *kabuliyat* in favour of the lessors and the lessors accept it by means of an unregistered *amalnamah* no valid lease is constituted, as the *kabuliyat* executed by the tenant is not a lease nor can the acceptance of the lessor be proved either by the *amalnamah* or by oral evidence. 1935 p 291(FB). Sections 4 and 107 must be read together with section 17(d) of the Registration Act and instrument which does not fall under section 107 is not compulsory registerable. 32 M 532_4 IC 1039. See also 39 MLJ 639, *infra*; 21 M 109; 44 M 55; 11 IC 863; 1926 O 609; 15 p 460—17 PLT 217—1936 P 372; 1939 AMLJ 148.

The Act is inapplicable to *mulgeni* leases and registration is unnecessary. 28 IC 599—1915 MWN 271; also to agricultural leases which may be made without a written instrument: 90 IC 51—1926 N 9. But where

a lease is executed mainly with the object of making an arrangement for collection of rents and not with the object of cultivation, the lease cannot be regarded as an agricultural lease and is, therefore, subject to the provisions of section 107. Such a lease is invalid, if the lessee is no party to it as required by that section. *164 IC 830—1936 OWN 757—12 Luck. 514_1937 O 151*. See also *1940 O 425 Kabuliyat* need not be registered. *24 NLR 68—95 IC 183*. But when an instrument is executed for that purpose, it is affected by the provisions of section 17(1)(d) of the Registration Act and must be registered; and if it is not registered, it is inadmissible in evidence by reason of section 49 of the Registration Act. *62 CLJ 534—1936 C 770*. Lease for an indefinite period, need not be registered: see *97 PR 1915—32 IC 35*; nor a tenancy at will: see *44 C 214—21 CWN 206*. Lac cultivation falls within the extended definition of agriculture given in section 2(2) of *Civil Procedure Tenancy Act* and a lease for three years for working out lac bearing trees need not be in writing and registered. But if reduced to writing, it must be registered because lease of a lac jungle is "the right of planting lac on the trees," that is to say, the right of sowing, cultivating and harvesting the crop. *ILR (1938) N 31—1937 N 289*.

A lease for planting casuarina trees is not one for agricultural purposes and must be registered. *34 IC 539—3 LW 319*. (See also under section 117). Fishery rights constitute immovable property and the provisions of section 107 excludes the possibility of an oral lease of such rights for term exceeding one year. *1941 OWN 1065—1941 AWR 823 (Rev)*. Where the lease of a rice mill is executed for one month with a condition that

if there was paddy left unmilled at the expiry of the lease a fixed monthly rent would be paid every month for five years, the lease is a lease for over one year and requires registration. *194 IC 31—1941 R 117*. Where rent is mentioned in a lease which is inadmissible in evidence on account of its being unregistered, though the figures as to the rent mentioned in the lease cannot be looked at in order to establish the rent fixed, it might be looked at to establish what damages the landlord suing for arrears of rent was entitled to by way of rent. *32 PLR 361—1931 L 501*.

Execution of a rent note by tenant without delivery of possession does not transfer any interest in the property. *27 Bom LR 626—88 IC 648(1)*. A rent-note in respect of house for a period of eleven months, which is unregistered cannot operate as a lease. A registered instrument is necessary in every case, except where the lease is by oral agreement accompanied by delivery of possession. *164 IC 557—1936 N 174*. Such an unregistered rent note is not receivable in evidence either for proving the duration of the lease or for proving the rent in view of section 49 of the Registration Act. *1936 N 174*. A perpetual lease of a plot of ground on an annual rent is not valid unless registered. *1936 N 295*. Whether a tenancy comes into existence before or after passing of Transfer of Property Act, a landlord is *prima facie* entitled to possession of his *ghair mazrua* land subject, of course, to such right (if any) as the tenant may show to have been conferred upon him by the landlord.

A permanent right can only be based either upon a contract express or implied, or upon some statement of fact grounding an

estoppel. 23 *PLT* 294. Tenancy reserving yearly rent must be registered. 59 *IC* 788. The fact that rent is reserved at a certain amount a year does not by itself show that it is a *tenancy from year to year*. A *tenancy at will* can be created orally. 44 *C* 214—21 *CWN* 206. See also 23 *IC* 318—18 *CWN* 858. 32 *IC* 35. A lease from month to month which requires registration under section 107, Transfer of Property Act, but not under section 17 of the Registration Act is admissible in evidence to prove the nature of possession under the instrument. Section 49 of the Registration Act applies only to instruments which are required to be registered by section 17 of the Act, 1931 *L* 501. An oral lease of property for a period of one year is valid. 146 *IC* 640—1933 *R* 262: 63 *C* 31. But if coupled with a covenant to renew it from year to year must be registered. 26 *IC* 962—19 *CWN* 89; 18 *IC* 844—17 *CLJ* 167. See also 4 *P* 139—84 *IC* 586_1925 *p* 216.

All leases for more than a year must be in writing and registered. A lease for life must be registered. 59 *IC* 893. Where possession had been delivered under an agreement, but documents have not been executed or registered, the position is the same as if they have been executed, only the party will have to file a suit for specific performance. 27 *CWN* 159—1923 *C* 130; 32 *IC* 692_8 *LBR* 351; 5 *IC* 562(C); 14 *A* 176; 31 *A* 276; 1925 *C* 1171; 35 *M* 95; 11 *IC* 863. Under section 107 a lease made by oral agreement should be accompanied by delivery of possession. Delivery of the key of a vacated bungalow is a sufficient delivery of possession. 148 *IC* 548(1)—1934 *Pesh* 81(1). A verbal lease for more than one year is valid for one year if

possession is delivered. 20 *IC* 715. An oral contract of lease for five years is invalid and the tenure would be presumed to be from month to month. 89 *IC* 1019—1926 *N* 147. Where a lease, which would have been valid if it had been merely oral accompanied with possession, is reduced to writing and is accompanied by delivery of possession, the document does not require registration. 1937 *OWN* 1030—1937 *O* 505. If a lease for residential purposes reserving a yearly rent is not registered, the tenancy must, in the eye of law, be deemed to be a tenancy from month to month. 42 *CWN* 771.

Lease of house for 8 months in writing—Registration—Necessity. See 1938 *OWN* 1080. Irregular arrangements between lessor and lessee pertaining to non-agricultural land purporting to be a lease for a period of years cannot be held to be a valid lease unless there is a writing and registered document. 1937 *R* 180. Lease deed being inadmissible in evidence—Proof of oral lease—Permissibility. 37 *CWN* 473. Where a zamindar sells by auction his right to recover the rent due to him by the ryots, for a period of three years the transaction amounts to a lease of immovable property, the right to collect rents being a right to receive a benefit to arise in future out of land and therefore an interest in the land. The subject of the lease is not land itself and the object of it is not agricultural. Such lease must be effected by an instrument in writing registered; otherwise it is not valid or enforceable and no suit for rent on the basis of such lease can be maintained. 45 *LW* 387—1937 *M* 656. When the lessee under such lease, has, however, collected rents it has to be regarded as use and occupation, for which the lessee is liable

for damages, the measure of which is the amounts actually collected by him from the ryots. *1937 M 656—45 LW 387.*

4. Unregistered Lease-Deed— Admissibility in Evidence

When the origin of a tenancy is known and the document by which it purports to have been created and which is the primary evidence of the transaction is ruled out, oral evidence as to the terms of the tenancy is not admissible nor can attendant circumstances be looked into to find out its nature or incidents. *37 CWN 473—1933 C 612.* But when possession of the leased property is admitted, the lessor could recover money for the use and occupation. *37 B 500—15 IC 830; 18 IC 844—17 CLJ 167; 89 IC 1019; 29 PWR 1922—1922 L 329.* [See now section 53A giving legislative recognition to the doctrine of part-performance. *27 ALJ 1134—1929 A. 831* is not now good law. See also *1923 C 63*] But an unregistered lease deed is admissible in evidence for purposes other than to prove the lease: *44 M 55—39 MLJ 639(FB); 1942 OWN 357—1942 OA 258.* For instance that possession was permissive and not adverse: *39 MLJ 639—59 IC 330 (FB).*

See also *32 PLR 361.* Also reference may be made to the deed for ascertaining damages. *32 PLR 361.* If there was a letting by oral agreement and delivery of possession, the mere existence of an instrument which is inadmissible, for want of registration does not exclude other evidence of tenancy. *32 M 532—4 IC 1039.* The instrument itself is inadmissible, though it is in the form of a letter written to the lessee by the lessor after the grant of a lease. *37 C 293—4 IC 713.* But

see *90 IC 51—1926 N 9,* holding that a letter written by lessor to lessee and referring to an already existing lease is evidence of the prior lease and is admissible without registration. A sub-lease which requires registration but which is not registered is void; and a condition in the original lease against transfer is not broken by the sub-lease or transfer which is void. Such an illegal sub-letting would not entail forfeiture for breach of condition against transfer. *15 p 460—1936 p 372.* A document given by the owner of land to his tenant or by the tenant to his landlord, varying the term of the tenancy with reference to the amount of rent to be paid requires registration. [*2 IC 89,* impliedly over-ruled by *39 C 284 (FB)*]; *24 C 20 and 22 M 217, Not foll.] 162 IC 33—40 CWN 638—1936 C 155.*

5. Oral Agreement to Lease

An oral agreement to lease, which contemplates specifically the formal execution of a deed can be specifically enforced, and section 107 is no bar to the same. *100 IC 404—1927 C 275.* See also *1926 N 157; 20 IC 715*(oral lease for more than one year accompanied by delivery of possession will be good for one year). *20 IC 715.* See also *ILR (1939) 2 C 854—43 CWN 797—1940 C 89; 63 C 31; 19 PLT 791—1938 P 435.* An oral lease of agricultural land cannot be complete or valid without delivery of possession. Where there has been no delivery of possession it can only be regarded as an agreement to lease. Such a lessee cannot alone maintain an action in ejectment against a person in possession and not claiming under the lessor. Where a written unregistered lease is inadmissible for want of

registration, an oral lease cannot be allowed to be set up. 20 p 346—22 PLT 971—1941 p 577. But in the absence of a registered instrument, the verbal agreement alone could not create a permanent lease and the doctrine of part-performance could not be applied so as to modify or override the mandatory provisions of the Act, so as to nullify the statutory requirement of a registered instrument. 58 IA 91—35 CWN 550—60 MLJ 538(PC) (See section 53A). Whether an oral agreement is a lease or merely an agreement to let, is a question of intention of the parties. If the intention was not to create immediately the relation of landlord and tenant or something more had to be done before the relation commenced, it is to operate only as an agreement to let and not as a lease. 1933 R 220. An oral agreement for a lease of three years, where the lessee was already given possession and rent was taken from him and only the formal execution of the deed was to be done later, amounts to a lease and not merely an agreement to lease and necessitates a registered document. 57 M 760—1934 M 418—67 MLJ 54. The requirements of the section cannot be evaded by the parties simply by saying that the parties agree to be bound by the terms of an old lease which has become extinct by forfeiture. 126 IC 284 (2)—1930 M 272.

6. Lease for One Year

Though a Hindu *samvat* year is more than one year according to the British Calendar a lease for one *samvat* year is not compulsory registrable. 1924 N 216(1). A registered instrument is necessary under section 107 for creating a lease for any term

exceeding one year or reserving a yearly rent. 4 P 139—84 IC 586. An unregistered lease for a term less than one year is invalid if possession is not delivered to the lessee. 96 IC 410—1926 O 609. A rent deed for less than a year executed by the transferee and not the transferor of the interest to be conveyed by the lease is not a "lease" within the definition given in section 105 of the Transfer of Property Act requiring registration, and would, therefore, be admissible in evidence though unregistered. ILR (1940) L 70—41 PLR 498—1939 L 423. See also 1940 N 143.

7. Delivery of Possession

A lease can be created by the mere registration of the deed, without delivery of possession, and therefore a lessee or sub-lessee can maintain an action against the lessor for mesne profits as damages for keeping the lessee out of possession. 6 P 94—96 IC 558. See also 1940 C 89. The doctrine of privity of estate is applicable in India also; for the application of the doctrine all that is necessary to be found is whether possessory title has passed or not, and the question whether possession has been taken is immaterial. The mere fact that an assignee from the lessee does not take any effective step to obtain possession or to realise his share in the profits of the estate is not sufficient to defeat the landlord's right to realise royalty or rent from the assignee. Actual possession is not necessary. 19 P 433—1940 P 516.

8. Sections 107 and 117

A *darpatni lease* is not a lease for agricultural purposes within the meaning of section 117 and would accordingly be

governed by section 107. 65 CLJ 590—1938 C 172. The criterion for distinguishing between a lease for agricultural purposes and one not for agricultural purposes is whether the primary object of the transaction is agriculture. A combination of a lease of shops in Lucknow with a lease of zamindari rights rather than cultivatory rights, in a village cannot be a lease for agricultural purposes and therefore requires registration, 1940 OWN 842—1940 O 425. See also 1937 O 151.

108. Rights and liabilities of lessor and lessee—In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :—

(A) Rights and Liabilities of the Lessor

- (a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :
- (b) the lessor is bound on the lessee's request to put him in possession of the property:
- (c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision:

(f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:

(h) the lessee may ¹[even after the determination of the lease] remove, at any time ²[whilst he is in possession of the property leased but not afterwards] all things which he has attached to the earth: provided he leaves the property in the state in which he received it:

1. Inserted by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 56.

2. Substituted *ibid* for "during the continuance of the lease."

- (i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:
- (j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transfer of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

nothing in this clause shall be deemed to authorise a tenant having an un-transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee:

- (k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:
- (l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:
- (m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his

agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition, and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

- (n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:
- (o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell ¹[or sell] timber, pull down or damage buildings ¹[belonging to the lessor, or] work mines or quarries not open when the lease was granted or commit any other act which is destructive or permanently injurious thereto:
- (p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes:
- (q) on the termination of the lease, the lessee is bound to put the lessor into possession of the property.

1. Inserted by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 56.

Case Law

Section 108(e)—When entire subject-matter of lease destroyed by fire section 108(e) of Transfer of Property Act not applicable—Such case governed by general principles of law. *Golam Rahman vs Emaratannissa Begum* 22 DLR 126.

Section 108(n)—When a person puts himself in the position of a tenant under another, if the former allows tax to fall in arrears and then on a decree obtained *ex parte* himself (i.e., the tenant) purchases of the property in the *benami* of some person, he puts himself in relation to his landlord in a fiduciary position and in purchasing, this property (*benami*) in execution proceedings he acts in violation of the provisions of section 108(n) of the Transfer of Property Act and thus cannot retain the benefit of his purchase.

Held: Section 108(n) of the Transfer of Property Act imposes an obligation upon the lessee to notify to the lessor of any invasion upon his proprietary rights by legal proceedings or otherwise, D in the present case had reposed confidence in K to fulfil this statutory obligation truly and faithfully and to this extent there was a fiduciary relationship between them which prevented K from putting himself in a position where his duty and his own interest came in conflict and to obtain an advantage over D when he was bound to protect by giving timely information of the threat to his property rights. *Bejoy Ranjan Kanungo vs Khan Bahadur Khalilur Rahman*, 20 DLR (SC) 286.

Section 108(o)(p)—Lease—Restrictive covenant—Terms of lease prohibiting

construction on leased plot of land without consent of lessor—Lessor cannot unreasonably withhold sanction if proposed alteration constitutes improvement. *Haroon EH Jaffar vs Sind Industrial Trading Estate Ltd* (1969) 21 PLD, (Karachi) 227.

Section 108—Material defect in the property.

The provisions of section 108 of the Transfer of Property Act can be invoked only if the plaintiff specifies the material defect in the property with reference to its intended use, and alleges that the defendant was aware of such defect and not the plaintiff and the plaintiff would not with ordinary care discover such defect. 11 DLR (SC) 313.

Section 108(d)—Accession during the continuance of the lease

Section 108(d) of the Transfer of Property Act provides that if during the continuance of the lease any accession is made to the land of the property such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease (a). 6 DLR 497.

Section 108(f)—Repairs without notice to the landlord

Section 108(f) of the Transfer of Property Act and also section 18 of the Calcutta House Rent Control Ordinance do not entitle a lessee of a lease-hold premises to make repairs, however, urgent the repairs may be without giving notice to the landlord. 2 PLR (Dac) 457.

Section 108(n)—Trustees or lessors clothed with fiduciary character—their disability. Where a lessor reposes confidence in the lessee to fulfil the statutory obligation embodied in section 108(n) of the Transfer of Property Act, truly and faithfully there is to this extent a fiduciary relationship between the lessor and the lessee and the latter who will not be allowed to put himself in a position where his duty and his own interest come in conflict and to obtain an advantage over the lessor whom he is bound to protect by giving a timely information of the threat to his proprietary right. *Khan Bahadur Khalilur Rahman vs Bijoy Ranjan Kanungo* 14 DLR 84

Section 108—Assignment by tenant of his rights without permission of landlord—Sub-lease within the meaning of section 108.

The three classes of Transfer, mentioned in sub-clause (i) of section 108 of the Transfer of Property Act are not mutually exclusive. The general meaning of the word sub-lease granted by the lessee as sub-lessor, does not matter whether the grant is absolute or only limited. The Act is used in the general sense. Hence a transfer by a tenant of all his rights in premises by way of assignment without permission of the landlord would be sub-lease within the meaning of section 10 of the Karachi Rent Restriction Act. *Mohsin & Tahir vs Feroze Nana* PLD 1958 (WP) Karachi 32—10 DLR (WP) 45 App. AIR 1930 PC 59; AIR 1939 PC 14.

—Agreement to lease containing a term entitling tenant to occupy land—Tenant has a right to possession—Damages for non-delivery of.

Although ordinarily in an agreement for lease no implied promise of quiet enjoyment arises, but if it contains a term which entitles the tenant to occupy the plot under it of which specific performance would be granted, he stands in the same position as if the lease had been granted to him.

Section 108 imposes a statutory obligation on the lessee to put the lessee in possession of the property leased out to him. If the lessor fails to discharge his statutory obligations and does not hand over possession of the land, he is not entitled to claim rent from the lessee. In case of breach of an agreement for lease the tenant is entitled to claim damages from the landlord but it is to be assessed on the actual loss including loss or profit which the tenant had suffered on account of the alleged breach. *Trustees of the Port of Karachi vs Islamistan Industries Ltd.* PLD 1960(WP) Karachi 433—PLR 1960 (2) WP 834.

—Lessee—May transfer lease—Position of transferee not that of sub-tenant. Under section 108, Transfer of Property Act (IV of 1882) a lessee is entitled to transfer lease rights in the absence of a contract to the contrary. Such a transferee, therefore, is not a sub-tenant within the definition of that term as given in Sind Rent Restriction Act (X of 1947). *Ramzanali Premji Khoja vs Kassim Brothers & Co* PLD 1957(WP) Karachi 224—PLR 1957(1)(WP) 823.

Section 108(c)—Lessee—Has a right of uninterrupted enjoyment of property.

The salutary rule under the common law is that the lessee is entitled to enjoy the properties leased out without interruption and

there is an implied covenant that the lessor's title is such that no entry, eviction or interruption will occur. *Niazi Khanam vs Pakistan. PLD 1960(WP) Karachi 616.*

Section 108(a)(b)—Lease—Onus of proving delivery of possession to lessee is on lessor—Rent payable only on such proof—Shifting of burden of proof.

The onus of proving that the lessee was put in possession would be initially on the lessor so as to entitle him to make claim for rent. Unless he discharges this liability he would not be entitled to make any demand for payment of lease money because if the lessee does not receive possession at all the lessor fails to fulfil his obligation in that respect, and there would be no consideration for the payment of rent.

The position, however, will change if the tenant had already paid rent under the lease in which case it will be for the lessee to prove either that he was not put in possession at all or having been so put he was subsequently dispossessed or that his possession was disturbed. *Fakir Sahibdino vs Court of Wards Sind. PLD 1959(WP) Kar 777.*

Section 108(e)—Property entirely destroyed by fire—If tenancy in the property subsists.

Section 108, clause (c) of the Transfer of Property Act does not apply where the entire subject-matter of lease is destroyed. *Golamar Rahman Sowdagar vs Emaratan Nissa Begum PLD 1957 Dac. 372—PLD 1956 Dac. 837.*

Section 108(e)—Clause (e) of section 108 of the Transfer of Property Act provides

for instances in which a material part of a property is wholly destroyed or rendered substantially and permanently unfit for use for the purpose it is let, in which case the tenant has an option to terminate the lease. Section 108(e) does not deal with the case of total destruction of the subject-matter of the lease. *Azizur Rahman vs Abdus Sakur. (1984)36 DLR(AD) 195.*

Section 108(1)—Repairs—Lessee not entitled to effect without giving notice to lessor.

In no circumstances a lessee will have the right to make any repairs however urgent they may be without giving notice to the lessor. *Kazi Rehnuddin Ahmed vs Sona Mia. PLD 1954 Dac. 32—PLR 1952 Dac. 457.*

Section 108—Unauthorised structure raised by tenant—Landlord cannot claim damages—Remedies.

The raising of the unauthorised structure or violation of the implied terms of the provisions of section 108, Transfer of Property Act, 1882 did not in the least entitle the landlord to claim damages unless and until it was also proved that the tenant by any of his acts had caused physical injury to the property which had resulted in some loss to the landlord. The misuse of property is one thing and wrongful use and occupation of property is another thing. The occupation or possession of tenant can become wrongful only after the tenancy is terminated and not before that. As long as the tenancy subsisted the occupation of the tenant, in the instant case, was not that of a trespasser and no damages could be claimed from him by the landlord simply because the tenant was

wrongfully making beneficial use of the demised property. *Aslam Fazal Ahmad vs Ghulam Muhammad. PLD 1961(WP) Kar 248.*

Section 108(e)—The advantage of doctrine of frustration cannot be taken by the appellant as he continued to occupy even after constructing a pucca two-storied stall on the suit land as a tenant of the respondent. The frustration of a contract of lease is a mixed question of law and fact and no issue on frustration was framed by the SCC Court as the appellant failed to allege it at the earliest opportunity and he cannot say that he is not a tenant and cannot claim title either, and there is no misinterpretation of section 108(e) of the Transfer of Property Act and section 56 of the Contract Act. *Mokbul Hossain Khandker (Md) vs Jaheda Khatun 2 BLC 43*

Section 108(p)—Additions to the existing structure of rented house made by tenant without permission of landlord would be at risk and cost of tenant himself—He cannot be permitted to put premium on his own illegal act, so as either to claim that by this addition his claim to purchase rented house stood fortified in any manner or that he was entitled to compensation therefore. *Ghulam Hussain vs Riaz Hussain 1998 AC 300.*

Abstract

1. Section 108 : General
2. Section 108(a)
3. Section 108(b)
4. Section 108(c)
5. Section 108 (c) and (g)
6. Section 108(d)
7. Section 108(e)

8. Section 108(f)
9. Section 108(g)
10. Section 108(h)
11. Standing crops
12. Section 108 (j)
13. Section 108(I)
14. Section 108(m)
15. Section 108(m) and (o)
16. Section 108(o)
17. Section 108(p)
18. Section 108(q)
19. Renewal of lease

1. Section 108 : General

Section 108 has no application to a tenancy at will. *14 PLT 685—1933 P 561.* Though section 108 is not in force in the Punjab, the principle relating to covenant for quiet enjoyment is of universal application and applies. Where a lessor covenants to indemnify the lessee against all persons, this is a covenant to indemnify against lawful title and not against unlawful acts of trespassers. *171 IC 114—1937 L 930.* The principle of this section may be applied to Crown grants regarding the nature of ordinary covenants between lessors and lessees: *40 M 910—30 MLJ 575;* also to agricultural leases as enunciating rules of justice, equity and good conscience : *25 IC 812—1 LW 858; 40 IC 590; 26 MLJ 160; 22 IC 515; 38 B 716—28 IC 140; 33 M 253; 33 M 499; 1940 M 410;—(1940) 1 MLJ 200* Section 108—Original lease for agricultural purposes—Under-lease by lessee for non-agricultural purposes—Law applicable. *22 PLT 821.* A lease by a usufructuary mortgagee will enure only for the duration of the mortgage and the lessee

will be presumed to know the lessor's limited rights. *11 IC 817—8 ALJ 802*. A lessee for a term has no right to avoid a lease on the ground of breach of covenants. His remedy is only by way of damages. *1923 M 833—48 MLJ 397*.

A lessee cannot repudiate the lease and claim refund of deposit, merely because the lessors could not produce documents of title where it appeared that they had *prima facie* a good title. *57 C 1189—1930 C 561*. Where lands held under an agricultural lease are silted up by floods, the tenant is not entitled to treat the lease as void on the analogy of section 108; *1929 M 575*. The landlord can claim special damages where a tenant holds over, either for breach of contract to yield possession or for possession. *50 C 667—1924 C 240*. Lease drawn up so as to be collateral security for a mortgage also—Effect. See *44 MLJ 728—1922 PC 347(PC)*.

One of the joint lessors could not enforce the covenants of the lease where the co-lessor impleaded as party defendant comes forward to support an oral agreement which modified the lease set up by the lessee. *185 IC 284—1939 P 428*. In connection with proceedings for the determination of mesne profits, a receiver was appointed to auction the land and the respondent executed a security bond to raise the second crop and give certain amount of paddy.

Held : that though the Transfer of Property Act did not apply, the principles of section 108 applied and that the respondent's liabilities were those of a lessee subject to the same legal incidents *1933 M 465—38 LW 263*.

2. Section 108(a)

The 'defect' has reference to the nature and condition of the property and not defect in the lessor's title. *19 IC 815—17 CWN 960*. The obligation of a lessor is the same as that of a vendor so far as regards the duty to give a good title, though the obligation to give disclosure or to furnish proof thereof may be different. (*57 C 1189, Ref*) *38 CWN 244—1934 C 437*.

3. Section 108(b)

The lessee will be entitled to possession though the premium is not paid in the absence of a contract to the contrary. *42 M 203—36 MLJ 313*. The lessee is entitled to enforce his right to obtain possession by ejecting another in possession and he can enforce his right against person holding under his lessor, who is bound to put him in possession. *1932 ALJ 126; 43 IC 210—33 MLJ 684; 1931 ALJ 666*. *But see contra 53 IC 140—6 OJL 378*. The mere fact that the lessor in the course of the suit entered into a compromise with the former lessee, whose lease had expired does not disentitle the latter lessee from obtaining a decree against former lessee. *1932 ALJ 126—1932 ALJ 126—1932A 314*.

Notice to tenants to attorn would amount to delivery of possession only when the transferor himself is in possession. *40 IC 684—19 PR 1918*. See also *33 M 102—20 MLJ 20*. Delivery of possession is a condition necessary for a suit for rent. *58 IC 186*. Non-delivery of possession would be a good defence in suit for rent. *23 MLJ 119; 15 IC 711; 58 IC 186; 9 CLJ 595—4 IC 63; 34 M 108—6 IC 727*. As to the effect of tenant taking possession before the actual execution of the lease deed, see *15 CWN 976—9 IC*

374. *See also 7 MLT 199.* Where lessor fails to deliver possession lessee may recover damages. *34 M 108—6 IC 727; 53 IC 140; 6 P 94.*

A lessee to whom possession is not delivered on the agreed date can rescind the contract of lease. *110 IC 420—1928 N 328.* When the lessor, knowing he has no title fails to secure the lessee in undisturbed possession, he fails to carry out the obligations imposed by this section. *47 A 63—1825 A 275(1).* Where the lessee undertakes to get possession from third party, lessor cannot sue for possession, at any rate without joining the lessee in the suit. He would be only entitled to a mere declaratory decree. *119 IC 169—1929 M 611.* Where there is no dispute as to the identity of the subjects let, but the tenant denies that he has ever got possession of the subjects, it is for the landlord to prove that he has discharged his obligation to put the tenant in possession before he can enforce the tenant's obligation to pay rent.

The landlord must not only show that the tenant is in possession of the subject of the lease, but such possession was attributable to the lease or might be so. *59 IA 29—59 C 1012—62 MLJ 336 (PC); 152 IC 231_1934 Pesh.* 101 Where in a lease for term the lessee undertakes to surrender vacant possession on expiry of term and to remove structures erected by him a lessee vacating without removing structures retains no interest in land or structure. *43 Bom LR 576—1941 Bom 337.*

4. Section 108 (c): Scope

Where the lessee of a theatre grants a lease of the theatre to another for a certain

period but before the expiry of the period, the original lessor, determining the lease, intervenes and prevents the sub-lessee from using the theatre and the latter is compelled to take a fresh lease from him the proprietor on payment of an additional sum, there is a breach of covenant for quiet enjoyment, which entitles the sub-lessee to bring a suit for damages against the original lessee and recover from him the extra amount which he was required to pay to secure a fresh lease from the property over and above other damages. *181 IC 394—1938 N 439.*

Where a stranger claims by paramount title, the lessee need not pay rent till the lessor proves his ability to secure quiet enjoyment. *63 IC 754.* *See also 12 WR 109; 23 WR 121; 13 WR 338; 15 WR 230;* cases decided before the passing of the Act. *25 B 269.* "Interruption" includes disturbance by a person with a paramount title. *53 IC 754; 19 IC 815—17 CWN 960; 63 IC 477; 50 C 68_1923 C 41.* *Covenant for quiet enjoyment* is not conditional on payment of rent. *15 IC 711—23 MLJ 119.* *See also 39 MLJ 233.* Provisions of sections 108 and 55 compared as regards *warranty of title* in cases of lease and sale. *57 C 1189—128 IC 321—1930 C 561—34 CWN 347.*

This clause does not extend any protection to disturbance by mere trespassers, for against them the lessee has his proper remedy; nor can he on account of being evicted by such person be relieved of his liability to pay rent. *50 C 68—1923 C 41.* *See also 17 CWN 960; 60 IC 477; 35 CLJ 292; 38 LW 263—1933 M 465.* Where the lessee's possession is disturbed for a few days and he gets back into possession before the term of

the lease comes to an end, it is his duty at the termination of the lease peaceably to surrender the premises leased to him. *94 IC 121(2) — 1926 L 371*. But where the lessor has no title to the property and the lessee is ejected by the true owner, the lessee is not bound to pay any rent to the lessor. *47 A 63—85 IC 756*.

Where a tenant is evicted of a portion of his holding, the fact that he was in enjoyment of another holding of the lessor which was not contiguous will not render him liable for the entire rent. *33 CWN 106—1929 C 272*. Inclusion of the land not belonging to the lessor would not make the lease void if there was no fraud or misrepresentation. There could be apportionment of rent for the remaining lands. *39 C 1016_16 CWN 606—14 IC 540*. As to the effect of lessee being evicted by an Act of the legislature or the executive, for instance under the Epidemic Diseases Act, see *23 B 510*. See also *8 WR 275* (Eviction on acquisition of land under the Land Acquisition Act). As to measure of damages for breach of covenant for quiet enjoyment, see *33 CWN 106—1927 C 272*.

5. Section 108(c) and (g)

Lease for property subject to maintenance charge—Lessor undertaking to pay maintenance—Sub-lease by remainder of term—Demand for arrears of maintenance left unpaid by lessor—Payment by sub-lessee entitles him to deduct from rent payable to immediate lessor. *1940 M 410—(1940) 1 MLJ 200*.

6. Section 108(d)

The principle of this clause is applicable to cases not coming within the Act. The benefit of an encroachment by the lessee on

the neighbour's lands enures to the lessor. *42 CLJ 276—1925 C 1114*. It enures for the benefit of the tenant for the period of the lease, and afterwards for the benefit of the landlord. *22 WR 246' 16 WR 96*. See also *26 C 739; 10 C 820*. A tenant (even with rights of permanent tenancy) cannot by prescription acquire a right of easement over the adjoining lands of the lessor. *14 A 185; 29 C 363*.

7. Section 108(e)

There is no justification for restricting the meaning of the word 'flood' in section 108(c), to flooding by other than sea water. *1936 M 664—71 MLJ 352*. Section applies even if there is no destruction of the leased premises, but it is rendered substantially and permanently unfit for occupation or the purpose of the lease; see *7 IC 201*. Where the shed in which the plaintiff carries on business and which he had obtained under a lease for a period of three years was blown off, it is optional to him to avoid the lease, unless the contract had provided otherwise. *1933 L 517*. The lease determines *ipso facto* on the serving of the notice by the lessee of intention to determine the lease on the lessor. No time need be given as in a notice under section 106. *31 IC 697—19 CWN 1019*. See also *17 M 98; 7 IC 201*.

As soon as the lessee elects to avoid the lease, he must give vacant possession of the leased building or land to the landlord. *33 B 333—12 Bom LR 1055—8 IC 1049*. If he gives notice of his intention to avoid the lease while keeping some of his goods or articles on the premises, that will not be an extinguishment of the lease. *35 B 333*. If rent had been paid in advance, the lessee would on the avoidance of the lease be

entitled to the refund of excess rent paid. 25 B 15. In *agricultural leases* tenant is entitled to proportionate, abatement of rent when a portion of the land becomes unfit for cultivation. 43 M 132_37 MLJ 654. As to applicability of section 108(B) to agricultural leases, see 71 MLJ 352. Trees perishing or decaying owing to natural causes—If ground for abatement of rent. (*Ibid*). As to abatement of rent in a *permanent lease* on land being acquired by the Government, see 128 IC 899—1930 B 992.

8. Section 108(f)

In the absence of a contract to the contrary the lessor need not make any repairs. Even when there is a contract to effect repairs, the lessee is not entitled to terminate the lease. He can after notice make the repairs and deduct the amount from the rent. 38 CLJ 177—1923 C 524. See also 51 B 274—1927 B 115. Tenant can deduct from the rent payable by him expenses incurred by him for necessary repairs to the leased premises: 6 IC 139; but only such repairs as the landlord would be bound to do, the burden of proof of which lies on the tenant: 3 ALJ 134. Though there is a contract to pay rent without deduction, the lessee may deduct the expenses of repairs. Such a deduction is in the nature of payment to the landlord and not in the nature of set-off. 12 CLJ 351—6 IC 131.

9. Section 108(g)

Where the lessee is threatened with disturbance or eviction by the Act of the prior mortgagee, for payment of which debt the lessor has made himself liable by covenanting with some third party, such as

the mortgagee or his own vendor of the leased premises, that threat amounts to a breach of covenant, for his enjoyment. If so, such a sum paid by the lessee to avoid eviction and disturbance must in reason be one which the lessor is bound to make good, and hence the lessee is entitled to recover the same from the lessor. 40 LW 545—1934 M 658. See also (1940) 1 MLJ 200.

10. Section 108(h)

The intention of clause (h) of section 108 was to declare the law and to substitute a general principle inconsistent with the principle of *Quicquid plantatur*, but it limited the tenants' right to remove as a right to be exercised during the term of the lease. 60 C 1042—37 CWN 791. When the terms of a lease do not allow compensation for superstructures on eviction the Court has inherent power to grant time for their removal. 41 MLJ 265—1922 M 349. See also 37 M 1—7 IC 202. Where a lease deed provided that the lessee might remove the fixtures within a reasonable time, if he paid the rent and acted in accordance with the terms of the lease and the lessee having defaulted in paying rent the lessor entered into possession, the lessee is not entitled to remove them. 34 CWN 785—1931 C 133. When the lease is found to be invalid, the lessee is not entitled to compensation for superstructures except in the case of fraud, but he can remove them. 34 IC 1—(1916) 1 MWN 180.

Apart from contract or estoppel, a tenant is not entitled to compensation for the buildings erected by him. He cannot remove them after quitting the premises, 38 M 710—25 MLJ 625. See also 27 M 211: 19 CWN

361. (The option is with the lessor either to take the building on payment of compensation, or if he was unwilling to pay compensation to allow the tenant to remove the superstructure : see *27 M 211*; *38 M 710*). A tenant should be awarded compensation under section 108(h) for the trees planted by him during the tenancy with the landlord's knowledge. (*1914*) *2 UBR 11—24 IC 708*. The mere fact that the landlord knew that improvements were being effected but did not interfere, does not entitle the tenant to compensation for improvements, unless the landlord has created or encouraged a hope in the tenant that he shall have a certain interest in land. *37 M 1—7 IC 202*. A permanent tenant can cut down and use trees which he had planted. *38 B 716—28 IC 140*; *31 IC 12—29 MLJ 334*.

Where the dispute related to right to trees in a non-permanent holding, if the tenancy is proved to have originated before the Act came into operation, the landlord will be entitled to the same, unless the tenant proves some custom to the contrary. But if the tenancy came into existence after the Act was passed, under section 108(h) the ownership of the trees grown by the tenant will be in the tenant, *32 CWN 242*. The prohibition against felling timber contained in clause (o) of section 108 applies only to timber that stood on the land at the time of the lease. *108 IC 242_32 CWN 366*. Though section 108(h) does not by reason of section 117 of the Act apply to an agricultural lease, it lays down a principle which does apply in the absence of any special custom to the contrary. The English law of fixture has no application to this country. It is wrong to hold that apart

from special custom, the tenant has a right to cut trees by him on his holding. *25 OC 181—1922 O 249(1)*.

11. Standing Crops

The landlord when his right to re-entry accrues is not only entitled to take possession, but can take the standing crops on it as the law of emblements is not in force in India. *11 CLJ 87—5 IC 306*. Where, in a redemption suit of a *kanom* mortgage, the decree directs the mortgagor to deposit the decree amount within six months from the decree, the *kanom* mortgagee sought to be redeemed is deemed to hold the mortgaged property under a "lease of uncertain duration". *26 MLJ 348—22 IC 515*.

12. Section 108 (j)

Clause (j) does not apply to an assignee of the lessee. *18 IC 479—17 CWN 813*; *88 IC 79—1925 B 330*; *79 IC 557—1925 C 423*; nor to leases created before the Transfer of Property Act. *1924 C 1012*. (This clause is not retrospective. *1924 P 324*). The rule as to alienability of leases laid down in this section is subject to the special agreement of parties. *26 M 156*; *33 IC 408*. Section 108(j) while giving the lessee the right to transfer his interest, also lays down that the lessee shall not by reason only of such transfer cease to be liable for the obligations under the lease. This latter provision is for the benefit of the lessor and he has the option either to take advantage of it and to enforce his rights against his lessee alone or to accept the transfer and sue the transferee for the enforcement of his rights under the lease. Where a mortgagee from a lessee had not only notice of the terms of the original lease

between his mortgagor and the lessor, but also actually undertook by an express term in the deed of mortgage in his favour, to pay the rent to the original lessor and did in fact pay it to him, such a mortgagee is a person claiming under a party, to the original lease, by a title arising subsequent to the contract of lease.

As such, the lessor is entitled to sue such a mortgagee for the rent fixed in the original lease. *ILR (1938) A, 288—1938 ALJ 66—1938 A 167*. An absolute demise by sub-lease for the unexpired residue of the term operates not as an assignment, but only as sub-lease and is not a breach of covenant against assignment. *57 IA 110—57 C 1176-58 MLJ 293 (PC)*. The lessee transferring a portion does not escape liability to pay rent under lease: *40 M 1111—32 MLJ 442; 1924 C 359; 88 IC 79—1925 B 330*; even though his transferee is willing to pay it; *49 IC 800; 1925 C 423*. Lessee is personally liable for rent—Prohibition of transfer, effect of. *33 CWN 865(PC); 47 IC 800(C)*. The lessor can proceed against the lessee or his transferee or against both, but he can have execution only against one. *87 IC 802—1925 S. 296*. See also *1924 C 859; 42 CWN 1088*. The lessee of a homestead land can transfer the lease. *46 IC 656*. See also *37 A 144—26 IC 446; 51 IC 953(C)* The under-lessee is not liable for the rent reserved by nor on the covenants contained in the head-lease *20 CLJ 551—19 CWN 1197; 33 IC 408*. But see also *55 IC 113—1 PLT 84*.

There is no privity of contract nor privity of estate between the head-lessor and underlessee: *19 CWN 1197—27 IC 397*. See also *1925 C 423; 47 IC 800; 34 C 902 (PC)* Lessee creating a mortgage. Extinction of

the lease by mortgage. *88 IC 224—47 A 589*. Mortgage by lessee—Liability of mortgagee for rent—Privity of estate—English doctrine of—Applicability to India. *58 B 327—37 Bom LR 197—1934 B. 134(FB)*. In the absence of covenant to the contrary, the lessee can sub-let. *33 PR 1914—23 IC 395*. When the lease is validly terminated, the sub-lessee becomes liable for mesne profits to the lessor *2 LW 946—31 IC 211 A* sub-lessee is affected with constructive notice of covenants of his lessor. *55 IC 113—1 PLT 84; 118 IC 682—24 MLJ 228; 1930 PC 59* Permanent leases for purposes of habitation created before the Act are not transferable. *29 CWN 428—84 IC 28—1924 C 1012*. Homestead land created before the Transfer of Property Act must be presumed to be non-transferable. *72 IC 662—1924; P 324; 20 CWN 322—33 IC 565; 23 IC 246; 54 C 333; 46 IC 656; 1 PLJ 253—20 CWN 1113.—36 IC 126*. Where the land in dispute or part of it is covered by a *kothi*, the presumption is that it was let for building purposes and the lessee of the land let for building purposes has a right of transfer.

Where no part of the land in dispute forms site of the *kothi* and is merely appurtenant to it as part of its compound and was let as such, the lessee should be deemed to possess a right of transfer of the nature described in section 108(j). *1932 ALJ 567*. A lease for a definite term for general purposes is heritable, and when the conduct of the parties shows it to be transferable, it must be treated as such *19 CLJ 448—25 IC 530*. Although the provisions of the Transfer of Property Act relating to lease do not apply to agricultural leases, yet, as a general rule, both in the cases of agricultural as well as

non-agricultural leases, if a tenant is expressly authorised by the terms of the lease to make a mortgage of his land and thus to transfer his interest in the tenancy to a third party, the interest so transferred should not be allowed to be extinguished, e.g. by the ejectment of the tenant, unless the person who has acquired that interest has had an opportunity to prevent that extinction. But the operation of this principle may be excluded by any statutory provision to the contrary. 47A, 589—88 IC 224.

When a landlord sues a person as a trespasser and that person sets up a transfer from a tenant, the latter must prove the tenancy and also the validity of the transfer. 20 CWN 1113—36 IC 126. Lessee assigning his lease with lessor's consent—Subsequent assignment by lessor of his reversion to trustee under wakf-deed—Acceptance of rent from assignee by lessor and then by the trustees—Right of trustees to sue lessee for rent. 60 B 394—161 IC 57—38 Bom LR 34—1936 B 88.

13. Section 108(1)

Clause (1) of section 108 makes it obligatory on the tenant to pay or tender at the proper time and place the rent due to the lessor or his agent. There is nothing in the section to require the lessor to make a demand. 111 IC 530. See also 23 SLR 29—1929 S 13. But tenant's liability for rent commences only from the date on which he is put in possession of the premises, and only in respect of the portion of which he has been put in possession : 5 CWN 816; 12 CWN 767. (See also 58 IC 186; 23 MLJ 119; 15 IC 711; 58 IC 186; 9 CLJ 595—4 IC 63; 34 M 108—

6 IC 727); and continues only for the period his possession is secured to him by the landlord. 23 MLJ 119; 19 MLJ 58. The liability of co-sharer tenants to pay rent is joint and several, and the onus of proving that the landlord agreed to receive proportionate rent from each lies on the person pleading it. 40 IC 590.

A tenant holding over is liable to pay for use and occupation. 30 MLJ 492—34 IC 6; 83 IC 757—1924 C 240. After termination of tenancy, the lessee is bound to pay rent at a fair rate by way of damages and not at the rate contracted for. 22 IC 7(A). Payment of premium and rent and possession are dependent on each other. 10 IC 392—9 MLT 510; 6 LBR 164—30 IC 675. A lessee who transfers his interest in a portion of the property leased, does not thereby escape liability to pay rent to the landlord under the terms and covenant contained in the lease. 1924 C 359(1); 40 M 1111—32 MLJ 442; 88 IC 79—1925 B 330. A lease provided that the tenant would pay rent whether he got a crop or not.

Held : that apart from the covenant, the contract to pay rent did not become void if owing to a failure of rain the tenant had no crop. (1910) 1 UBR 22—8 IC 471. On this sub-cl (1), see also 12 Bom LR 831—8 IC 411.

Drafted/

14. Section 108(m)

A general covenant to repair includes not merely buildings existing when the demise is made, but all those which may be created during the term. 32 CWN 154—46 CLJ 607. The Transfer of Property Act imposes no obligation on the landlord to repair. On the

other hand, a qualified obligation is imposed on the tenant by section 108(m) of that Act. *51 B 274—29 Bom LR 78*. Section 108 clearly contemplates that a lessee should not be responsible for the consequences of fire, unless he has definitely and expressly taken that burden on his shoulders by his covenant. *51 M 994—55 MLJ 663*. See also *43 IC 273; 43 IC 258*. The lessee is however liable for damage caused by the negligence of his servant. *39 MLJ 233—59 IC 252*.

15. Section 108 (m) and (o)

The liability of a lessee when the premises are destroyed or damaged by fire is to be determined with reference to section 108, Transfer of Property Act, Clauses (m) and (o). A lessee is not liable for damage caused to the leased property by fire while the property was in lessee's occupation unless negligence of the lessee was proved. The burden of proof is on the plaintiff to establish negligence of the defendant. Where a fire was proved to have started from a room used as a kitchen in the first floor (a pucca room) of a house and it was also definitely proved that the night of the occurrence was calm and the fire was not an act of God or an act of an incendiary, it is for the occupant of the house to establish how the fire got into the room and how it burnt the house and in the absence of an explanation on the occupant's part it should be presumed that there must have been some negligence on his part. *1941 ALJ 361—1941 A 327*. See also *114 IC 234*.

16. Section 108 (o)

The clause cannot be held to cut down the right to work a mineral expressly conveyed. *4 P 224—52 IA 109—48 MLJ 328—1925 PC*

42 (PC). As to right to fell timber, see *108 IC 242—32 CWN 366*. Where property is leased for cultivation and settling tenants thereon, the lessee is only entitled to a reasonable right of user in the soil, but is not entitled to dig or quarry stone or to collect and sell surface stones. A right to collect and sell surface stones can be established only by custom, which must be pleaded and proved. *20 P 96—22 PLT 100—1941 P 13*. Where the lessee of an oil-well uses gas set free by reason of the sinking of oil-well without detriment to the property leased there is nothing inconsistent with the terms of section. See *1929 PC 108—56 IA 140—7 R 157*.

17. Section 108 (p)

See *20 A 247; AWN (1881)144*. Where lease is granted merely for the purpose of laying out a flower garden the lessee is not entitled to erect buildings on the land leased. If the lessee does so, the lessor is entitled to sue for and obtain a mandatory injunction requiring the demolition of the buildings. *1940 M 32—(1939)2 MLJ 773*.

18. Section 108 (q)

The word "lessee" in section 108(q) includes joint lessees. All the lessees will be liable in damages for breach of the obligation to vacate. It is not necessary to make the lessees, who have vacated, liable, that the lessor should establish collusion between the lessee who holds over and those who have vacated or that they have assented to the holding over by the former. *30 SLR 135—1936 S. 213*.

The lessee must surrender possession on expiry of lease. Else he would be liable to damage or to eviction. *50 C 667—1924 C*

240. Possession surrendered by the lessee must be vacant possession. *22 B 348; 12 Bom LR 474*; and must also include lawful and proper accretions to the leased premises: *1925 C 1114—87 IC 680*. [See also under clause (d)] A lessor, whose right has been foreclosed has, on the expiry of the lease, no right to eject or redeem the lessee who has redeemed the mortgage for his own benefit. *59 IC 511—16 NLR 180*.

19. Renewal of Lease

Where a lease contains a condition that renewal of the lease would be dependent upon the performance of certain covenants

during the term of the lease, that condition is deemed to have been satisfied if there is no subsisting breach at the time renewal is applied for, although there may have been breaches of covenants during the term of the lease. *89 IC 273—23 NLR 26*. The covenant for renewal of lease of land being a covenant running with the land, the assignee of the lease-hold is competent to enforce its terms even against lessor's transferee with notice of the lease, though the transferee be a minor. *89 IC 273—1925 N 281*. See *19 CWN 1197—27 IC 397*. For limitation for suit on breach of duty declared by section, see *101 IC 707—1927 p 248*.

109. Rights of lessor's transferee—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason, only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee, may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they

disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

Case Law

Section 109—Attornment—contention that mere deposit of rent in the name of plaintiffs predecessor-in-interest did not *ipso facto* prove attornment by the defendant could not be considered as it is found that the question of attornment was not raised in the pleading or in the proceedings at any time. *Shambh Nath Saha vs Alfazuddin Ahmed* 41 DLR(AD) 27.

—Applicability in former Punjab—Principle of section applies.

The principles of this section must be held applicable as a rule of justice, equity and good conscience, even if the Transfer of Property Act is not in force in this province as a whole. *Ghulam Sarwar vs Rahmat Din*. PLD 1952 Lahore. 36—PLR 1952 Lah 21.

—Lessor transferring his right—Transferee has all the rights of the transferor—May demand rent from the tenant of lessor.

Section 109 of the Transfer of Property Act (IV of 1882) provides that if the lessor transfers the property leased, or any part thereof, or any part of his contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred, so long as he is the owner of it. The principle of this section must be held applicable as a rule of justice, equity and

good conscience, even if the Transfer of Property Act is not in force in this Province as a whole.

On principle, as well as on authority, there is no reason why the transferee of landlord should not have the right to demand rent from the tenant of his own alienor. *Ibid.*

—Partial transfer of interest of landlord—If possible

Section 109 of the Transfer of Property Act supports the proposition that there can be partial transferee if partial interest would become the landlord in respect of the tenancy. According to that section, if there be a transfer of any part of the interest of the landlord, the transferee shall possess all the rights of the landlord. *Agha M. Jaffri vs Yunus Ali Kirmani* PLD 1960(WP) Kar. 103.

—Lessor transfers the property leased; rights and liabilities of the lessor.

Section 109 of the Transfer of Property Act provides that if the lessor transfers the property leased, or any part thereof or any part of his interest therein the transferee in the absence of a contract to the contrary shall possess all the rights, and if the lessee so elects subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it. 1952 PLR(Lah)21.

—Section 109 assumes a valid transfer. 1922 A 45. The benefit of a contract can be

assigned by one party without the consent of the other, but the liability cannot be so assigned, 7 *Bur LT 51—22 IC 940*. Where there is a breach of the covenant for enjoyment and the lessee treats the transferee of the lessor as liable, he cannot turn round and charge the lessor in respect of the covenant. 40 *LW 545—1934 M 658*. Transferee of any interest includes lessee. 53 *IC 865*; 1 *L 241*; 6 *IC 817*. Where the lease is terminated it is open to the lessee to question the lessor's title to the leased property. 1923 *N 91(2)*. As to interpretation of section, see 60 *B 394—1936 B 88*. On an assignment of the reversion, the benefit of a personal covenant to pay rent does not pass to the assignee by operation of law. 1936 *B 88*.

If the lessor, the transferee, and the lessee have agreed as to the amount of rent payable to the transferee, there is no reason why the lessor or the transferee will not be entitled to sue for the rent payable to him without impleading the other. 1942 *p 120—196 IC 837*. A transfer of the reversion of a lease carries with it the right to enforce forfeiture, even if the right accrued before transfer. 43 *B 28—47 IC 198*. An assignee of reversion in a portion of the holding can for due cause eject the tenant from that portion, though the lessor cannot, but an assignee of a portion of the leased property cannot eject a tenant during the period of his tenancy. 42 *M 603—37 MLJ 47(FB)*. Where the evidence showed that the defendant was the tenant of the predecessor of the plaintiff and that he had been paying rent the plaintiff could not eject the defendant as a trespasser but only, under the terms of the lease. 130 *IC 14—1930 ALJ, 1409*. A fresh attornment by the lessee to the lessor's assignee is not necessary. 41 *PLR 346—1939*

Lah. 49. Mortgagee suing tenant of mortgagor for rent—Plea of no attornment set up as defence—validity. See 28 *Punj. LR 157*. A usufructuary mortgagee of the lessor's right would be entitled to enforce a forfeiture clause in lease for non-payment of rent. 43 *LW 518—1936 M 116*.

A suit for rent cannot be dismissed *in toto* on the ground that the defendant was not tenant of the plaintiff for the reason that the transfer of the property by defendant's lessor to the plaintiff was not notified to the defendant, as section 109 provided no penalty for want of notice, except the loss of rent paid by the lessee to the original lessor. 23 *PWR 1923 L 389(1)*; 17 *CLJ 372—19 IC 865*; 72 *IC 86*. Transferee is not entitled to arrears of rent accrued due before the date of the transfer. 19 *IC 865*.

Section 109—Attornment—Acts, as estoppel to prevent the tenant attorning, from denying the title of the one to whom he attorned. Law does not require the service of any written notice upon the tenant for effecting attornment. It may be sufficient if the tenant is informed of the change of ownership even verbally. *Solaiman (Md) vs. Sufia Akhtar Alam 49 DLR 288*.

Section 109—Attornment—It is not necessary for the defendant to attorn to the plaintiff for establishing such relationship. Attornment by the tenant is not necessary to confer validity of the landlord's right under the subsisting tenancy. The tenancy continues and the default of the defendant in payment of rent makes her liable for eviction. *Selina Begum vs Azizun Nessa 6 BLC (AD) 115*.

110. Exclusion of day on which term commences—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. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for year—Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease—Where the time so limited is expressed to be terminable, before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Case Law

Section 110—Computation of period of a lease—duration of the lease and its determination. The section provides for computation of period of a lease in order to find out duration of the lease and its determination. It nowhere refers to any lease which is to come into effect in a future date but only refers to a lease already in existence nor does it provide that in case of an agreement where date of commencement of a lease is not mentioned it will be assumed that the date would be the date of execution of the lease. 9 DLR 533.

—When there is no mention of the date of commencement of a lease.

An agreement for lease is not an instrument of lease but it is a contract to bring a lease into being in future. If there is no

mention of the date of commencement of a lease in the contract, either expressly or impliedly, section 110 would not fill up the gap. 9 DLR 533.

—The expression 'time limited' is not applicable to a monthly tenancy.

The words "time limited" in section 110 of the Transfer of Property Act indicate that this provision will apply only to a lease of immovable property where the lease is for a limited period and the period is expressed and in no other case.

A monthly tenancy is not for a limited period, but for an indefinite time subject to termination of the tenancy at the option of the lessee or the lessor.

Provisions of section 110 of the Transfer of Property Act has no application in

computing the period of a monthly tenancy—and in monthly tenancy date of commencement should not be excluded but be included. *M Salem vs Shaikh Abdul Latif*. 14 DLR 186.

—Applicability—Applies to oral leases—Does not apply where no time limit is stated.

Section 110 is not confined to written leases only but applies to oral leases also as the term expressed in that section can include both oral and written statements.

But the section has no application to a case of an oral lease by which no time is limited. *Kadar Nath vs Ramendra Nath AIR 1946 Cal 460*.

Section 110, para (1)

Unless otherwise stipulated, a lease takes effect from the execution of the instrument 50 IC 177—22 CWN 190. A lease may validly commence from a future date 1 MHCR 153; 18 IC 469—97 PLR 1913; 42 IC 372. Section applies not only for computing the duration of a lease, but also the time from which a notice to quit operates. 20 C 118. If a tenant

for a term of three years holds over, he does so as a monthly tenant, and each month of tenancy expires at midnight on the first day of the succeeding month. 38 CWN 782—1934 C 837. See also *ILR (1938) 2 C 134—42 CWN 443—1938 C 358*.

Section 110, para (2)

From the fact that the rent is payable before seventh of the next month while the term of the tenancy is to expire on the first, no agreement to exclude the operation of the section can be inferred. 37 CWN 1237—1932 PC 279—63 MLJ 685(PC). But see 19 IC 844.

Sections 110 and 106

If a lease is said to commence from a certain date, it means from the end of that date, and will have another day added on at the end. Where, a monthly tenancy is expressed to commence from the 1st of a month, the notice to quit should be so framed as to expire at the end of the 1st day of the succeeding month. In such a case a notice to quit expiring at the end of the month is invalid. 42 CWN 1115.

~~S. 111. Determination of lease—A lease of immovable property determines—~~

- (a) by efflux of the time limited thereby:
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event:
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same

extends only to, the happening of any event—by the happening of such event:

- (d) in case interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:
- (f) by implied surrender:
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter ¹* * *; or (2) in case the lessee renounces his character, as such, by setting up a title in a third person or by claiming title in himself; ²[or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in ³[any of these cases] the lessor or his transferee ⁴[gives notice in writing to the lessee of] his intention to determine the lease :
- (h) 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.

Illustration to clause(f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease is determined thereupon.

1. The words "or the lease shall become void" rep by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 57.

2. Inserted by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 57.

3. Substituted by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 57, for "either case".

4. Substituted by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 57, for "does some act showing".

Case Law

Section 111—Mortgagee's interest in the mortgage property subsists so long as the mortgagor has not been paid off—Any derivative title from the mortgagee ceases to exist with extinction of mortgagee's right in the property. *Hasina Begum vs Haji Md Ekramullah* 34 DLR 116.

—Act not applicable—Denial of title of landlord amounts to forfeiture.

In cases where the Transfer of Property Act does not apply clear and unambiguous denial of the landlord's title would be enough to work out a forfeiture and to support a suit in ejectment of the tenant and it is not necessary for the landlord to do something showing an intention to determine the lease as the result of the denial. It is not necessary to entail a forfeiture that the denial of the landlord's title should be embodied in a judicial proceeding. A denial of the landlord's title contained in the notice sent by the tenant in reply to the landlord's notice is sufficient to entail forfeiture of the tenancy. *Ramchandra Prabhu vs Mahadevi* AIR 1946 Mad 57.

—Merger, doctrine of—Applicable to leases created before the Act came into force.

The doctrine of merger contained in section 111 of the Transfer of Property Act is subject to section 2(c) which makes it inapplicable to leases created before the Act came into force. *Tajin Ali vs Sajuddin Khan*. 6 DLR 25.

Section 111—When there is lease by registered instrument coupled with delivery of possession there cannot be any cancellation of lease by implication.

Sudangshu Jaladash and others vs Shahabuddin and others 52 DLR (AD) 119

Section 111(c)—of Transfer of Property Act provides that a lease of immovable property determines where the interest of the lessor in the property terminates on or his power to dispose of the same extends only to the happening of any event by the happening of such event. *Hasina Begum vs Haji Md Ekramullah* 34 DLR 116.

Section 111(d)-Doctrine of merger

The doctrine of merger contained in section 111 is subject to section 2(c) which makes it applicable to leases created before the Act came into force. 6 DLR 25.

Merger of by operation of law and intention of parties.

But this does not mean that there cannot be any merger where the Act does not apply. If the Act does not apply there cannot be any merger by operation of law i.e., by the union of the subordinate and superior interest in the hands of the same person.

In such a case the question whether there was a merger or not depends upon the intention of the parties. It is open to the person in whose hands the two interests unite, to keep them apart or to sink the subordinate into the superior interest. *Ibid*.

Section 111(f)—Surrender—Implied surrender—Surrender of an under tenancy right need not be in writing. It may be inferred from act and conduct of parties as well. *Md Jashimuddin Kanchan vs Ali Ashraf* 42 DLR (AD) 289; 1991 BLD (AD) 101.

Section 111(g)—Unauthorised alteration

An unauthorised alteration of the leasehold premises by the lessee does not constitute forfeiture within the meaning of section 111(g) of the Transfer of Property Act. 2 *PLR (Dac)* 457.

Section 111(g)—Tenant's assertion of higher status of the tenanted premises when does not always operate as forfeiture of his tenancy right.

If a tenant does not deny his liability to pay rent but asserts a higher status as a lessee than what is admitted by the landlord, such an assertion does not amount to denial of the landlord's title, nor of the setting up of a title by the defendant in himself and therefore, that does not operate as forfeiture of his tenancy right, *Abdul Majid Mia vs Mvi Nabiruddin Pramanik*. 22 *DLR (DC)* 360.

Section 111(g)(2)—Penalty forfeiture is incurred only after the defendant has repudiated the relationship of the landlord and tenant which can possibly happen (in a suit where the landlord sought ejection of the defendant on the ground of the latter being a tenant under him) after, and not before, the defendant has filed his written statement denying the asserted relationship—As this stage of filing WS comes after the filing of the plaint, the plaintiff per force, is under legal obligation, if he wants to eject the tenant under section 106 of the Transfer of Property Act to serve notice as required by section 106 of the Act—Denial by the tenant in the WS may be availed of in a subsequent suit or other purpose. *Ahmed Hossain Chowdhury vs Musammat Zakia Khatun*. 20 *DLR* 578.

Section 111(g)—There is no provision of law in determining a tenancy on the ground of a tenant becoming "an undesirable tenant" unless the tenant comes within the mischief of forfeiture under section 111(g) of the Transfer of Property Act. *Maria Keshi D'Rozario vs Hasan Moises Ltd*. 41 *DLR (AD)* 135

Section 111(g)—In a case of forfeiture of tenancy for denial of title, written notice of lessor's intention to determine the lease is not compulsory as the cause of action is the denial of the landlord's title resulting in determination of the tenancy. *Ishaque (Md) vs Ekramul Haque Chowdhury and others* 54 *DLR (AD)* 26

Section 111(g)(2)—The denial of the title of the plaintiff landlord in the written statement will not be available as a ground for determination of tenancy by forfeiture. *Sher Mohammad vs Saroda Bala Sen* 45 *DLR* 527.

Section 111(g)(2)—Forfeiture of tenancy—When the defendant tried to make out a case of adverse possession denying the plaintiff's title, the defendant forfeits his right of tenancy by renouncing his character as a tenant and by setting up title in a third person and thereafter claiming his own title. *Haragram Trust Board vs Dr Golam Mortuza Hossain* 47 *DLR* 160.

Sections 111(g) & 114A—Determining lease invoking the aid of stipulation in the lease deed—In the instant case the lease was determined on the breach of condition by the lessee as embodied in the lease deed and issuing notice on him invoking the aid of clause 5 of the lease deed and section 111(g)

of the Transfer of Property Act. Therefore, the principle laid down in AIR 1970 (Cal) 452 is not applicable in the present case. The grounds for non-compliance of the terms and conditions of the lease deed which resulted in the forfeiture of the lease did not appear reasonable because of the long lapse of time. *Motiul Hoque vs DIT (RAJUK) 43 DLR 407.*

Section 111(g)—There is no provision for determining a tenancy on the ground of the tenant becoming undesirable unless he comes within the mischief of forfeiture under the Act. *Mrs Maria Keshi D Rozario vs Hasan Movies Ltd 1989 BLD (AD) 129.*

Section 111(h)—Death of the original tenant.

On the death of the original tenant the tenancy devolves on the heirs and can only be terminated by a notice to quit. *12 DLR 37.*

Abstract

1. General
2. Section 111, Clause(a)
3. Section 111, Clauses (d): Merger
4. Section 111, Clauses (e) and (f)
5. Section 111, Clause (g): Scope
6. Relief against forfeiture
7. Forfeiture caused by a breach of condition
8. Forfeiture for cessation of service
9. Forfeiture for non-payment of rent
10. Notice determining the lease on forfeiture
11. Section 111(h) : Notice to quit

Section 111—The amendment is not retrospective.

1. General

Applicability of section 111, Clause (2) to Sind. See *21 SLR 18*. Principle of forfeiture applies to Berar: *98 IC 16—1927 N 50; and to Sind, 1926 S 71; 21 SLR 185*; and also to Punjab: *70 IC 349*. Section does not apply to agricultural leases: *24 MLJ 472—19 IC 563*. See also *14 OC 204—11 IC 924; ILR (1937) IC 679—1937 C 669*. But the principle of the section can be applied even to agricultural leases: *42 M 654; 41 M 629*. But see also *50 B 405; 1926 B 304*. The doctrine that there can be no tenancy on sufferance as against the Crown has no application to the case of lands which are vested in a Municipality. *1937 AMLJ 12.*

A denial of the title of the assignee of the landlord, in cases of agricultural leases before the Transfer of Property Act, works as forfeiture, and no overt act is necessary for determination of the lease. *35 MLJ 129—46 IC 62*. Though the effect of granting a registered lease would be to determine the unregistered 'lease' unexpired at such date, it does not cause it to disappear as though it had never been rendering acts done under it unlawful, as though done by a trespasser. *ILR (1939) N 432—1938 N 377.*

2. Section 111 Clause(a)

The position of a *lessee for a fixed term holding over after the expiry of the term* cannot be considered to be that of a tenant. The fact that the question whether the lease had or had not terminated was in dispute does not improve his position. *34 PLR 262—146 IC 845—1933 L 509*. Where the tenancy had terminated and the defendants have been found to be in unlawful possession, they cannot rely on the terms of the tenancy. The

compensation for "use and occupation" in such a case must be assessed on the basis of the normal rent realisable. *1933 L 509*. A *suit for ejectment* by the landlord, before the expiry of the period for which the lease is granted, will not lie, would have to be dismissed even if the period expires during the pendency of the suit, since the determination of the rights of the parties must generally be as on the state of affairs existing at the time of commencement of the suit. *21 M 288*. But see *6 ALJ 177; 18 A 440*.

3. Section 111, Clause(d) : Merger

Where tenures are created before the passing of the Act, the acquisition of such tenures by holder of superior right cannot merge them in the superior right under the common law of this country. Section 111(d) therefore cannot be applied to such tenures. *1938 C. 128*. There must be the union of the entire interest of lessor and lessee to constitute merger, and the two interests must be co-extensive. *88 IC 495—1925 p 530; 1922 C 284*. See also *39 CWN 694; 28 C 314—19 CWN 435; 53 IC 16; 1926 C 373; 107 IC 819—1927 p 273; 58 IA 75—35 CWN 502—1931 PC 63 (PC)*. When the same person on the same day takes a lease and a mortgage, there is *no merger of the leasehold interest in the mortgage*. *12 IC 734—7 NLR 154; 24 A 487*.

A mortgage involves a transfer of interest in the mortgaged land, and as long as part of this interest remains with the mortgagees, it cannot be said that there has been a complete merger of the interests of the lessee and the lessor in the same person so as to attract the operation of section 111(d). Where the owners had notice of the mortgage effected

by the occupancy tenants, the mortgagees being in possession: as they could not extinguish the mortgage by the payment of a small sum of the equity of redemption. *1935 L 522*. When the owner purchases leasehold rights, the latter are merged in the ownership. *89 IC 780—1925 N 406*. But see also *23 CWN 830—51 IC 389; 48 IA 485—26 CWN 565*. Principle of section is applicable to Sind. *1926 S 71* the principle of merger will apply even in cases where merger is effected by operation of law(as) by an execution sale. *28 C 744*. As to the law previous to the Transfer of Property Act, see *88 IC 495—1925 p 530*.

4. Section 111, Clauses (e) and (f)

No writing is necessary for a surrender. But if the original lease is registered, the surrender can only be by a registered instrument. *63 IC 483; 14 C 109 at p 119*. But see *52 IC 17*. Nor is the surrender required in any particular form. *13 B 294*. The surrender of an unascertained, undefined portion of a holding by some of the tenants in favour of the landlord is valid and binding on the parties to it. *27 NLR. 116*. Abandonment is not kind of implied surrender which must be mutual. *33 IC 98; 54 C 948; 1928 C 99*. A lessee by accepting a new grant makes an implied surrender of his former lease. *18 P 370—1939 P 598*. But the new lease should be a valid one. *71 IC 976*. The grant of a lease to one of two joint tenants would not operate to divest the tenancy of the other. *3 UPLR (BR) 26*. Surrender may also be implied from conduct of parties. *1 Agra HCR 266; 24 WR 344*. (Mere non-payment of rent does not imply an abandonment of land by the tenant). *14 C 751*. The section does not

apply to a case where a surrender of the lease during the pendency of the period is prohibited by an express clause in the lease. 9 *CLJ* 632—2 *IC* 633. Where after a permanent lease had been granted the lessor mortgaged his interest in the property and the lessee subsequently surrendered the lease to the owner: the surrender is not valid without the concurrence of the mortgagee. 32 *Bom LR* 679—1930 *b* 329.

5. Section 111, Clause (g) : Scope

The only requirement of Clause (g) is that the lessor does some act showing his intention to determine the lease. There is no reason why the lessor's election must be made at some time prior to the institution of the suit. (42 *B* 195, *Foll*) 58 *C* 1359—35 *CWN* 823. In cases to which section 111(g) applies, forfeiture is incurred only by breach of an express condition entitling the lessor to re-enter or for denial of the lessor's title, and in either case the lessor should give notice of his intention to terminate the lease. 62 *MLJ* 496. Section 111(g) cannot be applied where the plaintiff does not set up that there had been any lease given by the plaintiff or his predecessors to the defendant or his predecessors, and the allegations in the plaint do not amount to more than that the defendant was a licensee of the building site who paid rent. 1936 *ALJ* 201—1936 *a* 385.

6. Relief against forfeiture

Principle which should guide the Court in giving relief against forfeiture, See 54 *C* 485; 50 *B* 440—28 *Bom LR* 527; 110 *IC* 872—1928 *A* 716. Courts lean against forfeiture. 54 *C* 948; 110 *IC* 872—1928 *A* 716; 31 *IC* 454. A co-lessor cannot determine the lease.

24 *IC* 624; 11 *IC* 695; 39 *M* 54. Although this section does not apply to agricultural lease, in a proper case Courts have power to relieve against forfeiture in the exercise of its equitable jurisdiction 50 *B* 450—1926 *B* 304,

7. Forfeiture caused by a Breach of Condition

A permanent lease also is liable to be forfeited. Covenant of forfeiture for involuntary sale is valid. Forfeiture for voluntary sale does not include by implication a covenant against involuntary sale. 34 *IC* 833—21 *CWN* 117. Forfeiture clause should be construed strictly. Alienation of portion or for part of term does not entail forfeiture under clause forbidding alienation. 1925 *M* 57—47 *MLJ* 307. Mere stipulation of a condition without the forfeiture penalty clause will not entitle the lessor to eject the tenant. 24 *IC* 354; 23 *IC* 395—33 *PR* 1914. Where a tenant, who is entitled to notice, denies the title of the landlord, no notice, is necessary to eject him. 34 *PLR* 884—1933 *L* 377. Where there is a *covenant against alienation* and a clause for re-entry, mere creation of an usufructuary mortgage will not entail forfeiture, if the lessee remains in possession. 31 *IC* 454. See also 114 *IC* 786; 1928 *C* 99; 36 *CWN* 819. A penal provision without consideration will be relieved against. 36 *M* 4—10 *IC* 68. See also 110 *IC* 420—1928 *N* 328; 47 *IC* 198—43 *B* 28.

As to whether the Act maintains the distinction between *nullity* and *forfeiture*, see 4 *PLJ* 292 1 *p* 363. A disclaimer of the landlord's title made before the suit for ejectment, occasions a forfeiture of the tenancy permanent or otherwise. 13 *L* 796—

1933 L 221. Nature of denial of title that will work forfeiture of tenancy. 1927 A 806; 32 CWN 391. There is no disclaimer of the title of the landlord when the lessee merely sets up higher rights under the lease than what the lessor accepts as granted to him. 14 Luck. 723—1939 OWN 825—1939 O 257. The principle of this clause is applicable to cases not governed by the Transfer of Property Act. 42 M 589—36 MLJ 543—50 IC 631(PC); 100 IC 771; 2 LW 483—29 IC 365; 42 B 195—43 IC 851. Forfeiture on account of denial of title does not apply and extend to a licensee. 39 A 621—40 IC 443. Denial of title by original lessee will not work a forfeiture against the assignee of the lessee's interest, 42 B 734—47 IC 635. Denial must be clear and unambiguous. 43 M 480—56 IC 13; 71 IC 270—41 MLJ 525; 58 IC 226—22 Bom LR 648; 101 IC 771; 35 A 145—18 IC 728; 13 NLR 11—39 IC 15. Denial must be unequivocal. See 98 IC 16—1927 N 50; 100 IC 646. Denial must be brought home to the knowledge of the landlord, and if the landlord had no knowledge, the conduct of the tenants will not bring about a forfeiture of the tenancy. 34 Bom LR 1287—1932 B 599.

A mere assertion not communicated to the landlord is not enough to work a forfeiture. 41 M 629—34 MLJ 170; 43 M 480—56 IC 13; 71 IC 270—41 MLJ 525. The mortgaging of premises by a tenant does not amount to an unequivocal and unambiguous denial of the landlord's title. 15 L 683—1934 L 282. Even a permanent lease is liable to forfeiture due to disclaimer of landlord's title. 42 IC 673; 26 CLJ 261; 43 M 480—56 IC 13; 51 IC 709—36 MLJ 532; 1930 ALJ 908—1930 A 479. The tenant cannot escape from such liability, merely because a former decree

for ejectment against him was allowed to lapse. 1930 ALJ 908—1930 A 479. Wholesale denial of title is necessary. Setting up a right of a third party as co-sharer is not denial 26 IC 619. Payment of rent to a third person would not amount to a denial of landlord's title by itself. 22 IC 796; 39 IC 15—13 NLR 11. Acceptance by a tenant of deed which described him as absolute owner does not operate as a denial of title. 43 M 480; 56 IC 13.

If a tenant honestly doubtful, puts a person, who has derivative title by acquiring the original landlord's interest, in proof of his title, such conduct does not amount to such disclaimer as to work forfeiture. 51 IC 709—36 MLJ 532; 1925 C 1212. A person having substantial rights in the land does not deny the landlord's title of an attenuated character if he asserts a title as owner. 31 IC 184—2 LW 941. A lessee describing his holding as independent and permanent at fixed rent incurs no forfeiture. 2 LW 483 [affirmed on appeal by 42 M 589(PC)] In a rent suit by the landlord, the tenant contended that the plaintiff was not his landlord and that he was nobody's tenant. This amounted to a disclaimer of landlord's title and the landlord is entitled to eject him. 149 IC 517—1934 A 103 Setting up *jus tertii* and disputing the extent of a landlord's interest in a suit in which the landlord is not a party will not work as a forfeiture. 25 IC 944—16 MLT 442; 32 CWN 391; 26 IC 619; 9 CWN 928. See also 1928 C 312; 113 IC 13.

Merely setting up title in third person in a suit is not renouncing character of lessee as such. 101 IC 771. It is settled law that defendant's denial of plaintiff's title in the course of pleading cannot furnish a cause of

action. 39 IC 15—13 NLR 11; 6 NLR 83—6 IC 927; 113 IC 84. Denial of lessor's title during suit is of no effect. 5 IC 336(A). The denial must be before suit. 113 IC 84; 42 M 580. In order to relieve against forfeiture, the tenant must prove that the disclaimer was due to fraud, mistake or accident and that he was not careless or negligent. In other cases there is no relief against forfeiture for denial of title. 41 M 629—34 MLJ 170. No forfeiture occurs by denial of title if landlord got derivative title from the person who introduced the tenant. 1925 C 1212.

8. Forfeiture for Cessation of Service

Forfeiture will not be produced merely by the unilateral act of ceasing to comply with conditions upon which the property is held, but must involve also some expression of intention to enforce the forfeiture on the part of the lessor. Accordingly, the mere cessation of services by the *parakkudi* tenants would not determine the tenancy, in the absence of any act on the part of the landlord showing his intention to determine it. 163 IC 36—1935 M 918.

9. Forfeiture for Non-Payment of Rent

In the absence of an express covenant to that effect, non-payment of rent will not work as forfeiture. 62 IC 850. Death of tenant, if causes forfeiture for non-payment of rent. 113 IC 543. As to relief against forfeiture for non-payment of rent, see section 114 and notes thereunder.

10. Notice determining the Lease on Forfeiture

Under the amended section, notice in writing is necessary to determine the lease by

forfeiture. See 35 CWN 823. There was some conflict of decisions under the old section as to whether filing of suit itself would be an overt act, within the meaning of the section [vide 60 IC 312 (C); 1924 L 281; 14 IC 747 (A); 21 SLR 185; 45 C 469; 24 CWN 1064; 16 IC 803; (M); 43 M 480; 39 IC 15(N); 1926 S. 71; 42 B 195; ILR (1937) IC 203—64 CLJ 208—1937 C 129]. The effect of the amendment is pointed out in the decision in 35 CWN 823. As to the state of the old law, see 1935 M 454. Under the section as it stands it is necessary that notice should be given before the right to institute a suit can arise. 1935 M 454.

The act of the lessee renouncing his character as such, makes the lease only voidable, but the lessor is not entitled to take possession until he actually avoids the lease by giving a notice as prescribed in the last portion of section 111(g). 15 Luck 92—1940 O 92. It was held that no overt act was necessary in cases where section did not apply. 34 IC 833—21 CWN 117; 51 IC 709—36 MLJ 532; 46 IC 62—35 MLJ 129; 38 M 445—25 MLJ 315; nor in respect of leases executed before the Transfer of Property Act: 34 M 161—20 MLJ 933; nor in case of *agricultural leases*. See 21 IC 405—25 MLJ 486. It was held that specific notice to quit was not necessary and that demand of possession was sufficient. 40 IC 348—25 CLJ 332. Where, on breach of a covenant by a lessee, the lessors granted a fresh lease, the lessors clearly showed their intention to terminate the first lease. 126 IC 284(2)—1930 M 272. Both an election to forfeiture and to waiver of forfeiture are irrevocable. 15 IC 445—24 MLJ 262. Lease once

forfeited cannot be revived by mere oral agreement. *126 IC 284(2)—1930 M 272.*

11. Section 111(h) : Notice to Quit

Section 111 does not render it obligatory upon the lessor to serve a notice to quit upon the lessee who has forfeited his tenancy; even a demand for possession is sufficient. (*33 C 339; 34 C 57*) *25 CLJ 32—40 IC 345; 23 IC 803.* Section has no application to lands held on *parakudi* service. *28 IC 915.* There must have been service of notice before the suit for ejectment is filed. *51 IC 336(A).* The validity of a notice to quit ought not to turn on the splitting of a straw. *1931 M 352—60 MLJ 293.* A suit by the landlord for eviction and its withdrawal with liberty to bring a fresh suit operates as a determination of the tenancy under section 111, *1910 MWN 484—6 IC 264.*

Tenant not entitled to notice as per terms of the lease—Notice is not necessary before ejectment. *1928 M 687; 34 C 57.* A tenancy under joint receivers can be determined by a notice given by them jointly. *34 IC 221—23 CLJ 453.* So also in the case of letting by

joint landlords. *39 CWN 246.* The owner of an undivided share in a house cannot alone evict a tenant of the house. *24 IC 624.* Where a *lease is for a fixed term* and the tenancy is terminable on notice thereafter, the notice cannot be given until after the expiry of the fixed term. *23 IC 572—26 MLJ 467.* A notice unequivocally expressing an intention to determine the lease for forfeiture determines the tenancy, though the notice might not be adequate under section 106. *66 IC 48—41 MLJ 265; 2 LW 946—31 IC 211.*

Even where no notice to quit is necessary, time to the lessee to remove buildings should be given. *23 IC 762—19 CWN 361.* See also *2 PLT 282—62 IC 421.* Where the lease for term originally fixed expired at midnight on the 1st April, 1921, thereafter the tenant held over as a monthly tenant, each month of the renewed tenancy expiring at midnight on the 1st day of the succeeding month; and consequently the notice to quit expiring with the last day of a month was a bad notice and insufficient to determine the tenancy. *38 CWN 782—1934 C 837.*

112. Waiver of forfeiture—A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

Case Law

Section 112—Forfeiture of tenancy—When waiver of right to forfeit may be inferred.

The breach of a covenant in a lease, upon which under the terms of the lease, the landlord is entitled to re-enter, makes the lease voidable at his option if and when it becomes known to him. But, if, after he has acquired the necessary knowledge, he affirms the tenancy, he cannot afterwards avoid it, and he affirms it, if with that knowledge he accepts rent in respect of a period subsequent to the breach or levies distress for such rent or by some other unequivocal act treats the lease as still subsisting. *Ngra Hotel Ltd vs Rajabally Kassam Suleman*. PLD 1952 PC 96.

—Forfeiture—Rent due prior to forfeiture accepted after it—No forfeiture.

In order to constitute waiver or forfeiture under section 112 the rent accepted must have accrued subsequent to the date of forfeiture. The acceptance of rent due prior to forfeiture, though made after notice to quit will not operate as waiver. *Habib Ahmed vs Keoti Kuer*. AIR 1946 All 328.

—Punjab—Principle of section applicable.

The principles laid down in section 112 of the Transfer of Property Act with regard to waiver forfeiture are applicable to the Punjab

and Delhi provinces as being in consonance with justice, equity and good conscience. *Mt Gindori vs Sham Lal* AIR 1946 Lah 330.

Section 112: Waiver of Forfeiture

A lessee by denying the title of the lessor incurs forfeiture; but it is at the option of the landlord to take advantage of the forfeiture, and if he elects not to do so, the forfeiture is waived. The election may be express or implied. 1936 M 252; 168 IC 1005. Both an election to forfeiture and waiver of forfeiture are irrevocable. 15 IC 445-24 MLJ 263.

(1) Acceptance of Rent

Acceptance of rent due after forfeiture, even if coupled with the condition that the lessor may insist upon his forfeiture operates as a waiver. 1923 C 663; 1935 M 454. See also 43 CLJ 272-1923 C 763; 20 B 439; 12 CWN 587; 28 C 532; 44 CWN 1103; even if it be under protest. 9 C 483; 59 IC 273. Acceptance of rent by one of the lessors might operate as a waiver of forfeiture. 31 IC 454. But if the co-lessors have subsequent to the lease become divided, anyone can enforce forfeiture though the other has waived it. 38 M 445—25 MLJ 315. Where in a suit for ejectment, it is proved that the lessor claimed rent for a period subsequent to default, non-payment of which gave him cause of action for ejectment, the suit must fail. 42 IC 614. When the landlord sues for rent, he will be deemed to have waived any cause of

forfeiture up to that time. *69 IC 282-41 MLJ 127.*

Acceptance of rent for a period prior to date of forfeiture does not amount to waiver. *33 IC 331-22 CLJ 546; 6 IC 447; 34 M 161; 26 IC 107-12 ALJ 1139.* But acceptance of rent after forfeiture will not necessarily amount to waiver *26 IC 107-12 ALJ 1139.* Acceptance of rent after institution of suit is no waiver of forfeiture. *2 BHC 66; 44 CWN 1109.* Calcutta Rent Act does not abrogate provisions of that section. *49 C 150-1922 C 394.* Where, in a suit for ejectment on the ground of forfeiture of tenancy, the plaintiff makes an alternative claim that the notice given by him should be treated as a notice terminating the tenancy in suit, he is estopped from relying upon the forfeiture, since the claim amounts to an assertion that the tenancy is still subsisting and is therefore a waiver of forfeiture. *48 B 541-26 Bom LR 672-1924 B 454.* See also *1938 C 589.*

(2) By Other Acts

Other acts from which waiver of forfeiture may be inferred are (a) allowing

the tenant to continue in possession even after forfeiture has been incurred and treating him as tenant; *8 MLT 238;* (b) allowing tenant to pay Government revenue out of rent due; *28 C 532;* (c) where there is a condition that assignment by tenant of the leasehold interest will entail forfeiture, landlords treating the assignee as tenant; *20 B 439;* (d) demanding rent for period subsequent to forfeiture; *42 IC 614; 14 C 176; 1928 C 663; 69 IC 282-41 MLJ 127.* Where the landlord definitely determines the lease for forfeiture a subsequent suit for rent does not operate as a waiver of forfeiture. *12 PLT 225.*

Onus

The onus is on the lessee to adduce some evidence of the lessor's knowledge of the act of the tenant constituting a breach of conditions of the lease and it is incumbent on him to prove positively that the lessor had knowledge of the breach and yet continued to recognise the tenancy. *36 CWN 819-1932 C 787.*

113. Waiver of notice to quit—A notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

Case Law

Section 113—Acceptance of rent after notice to quit, effect of. 43 CLJ 272—1926 C 763—94 IC 156; 1923 C 663; 2 PLJ 595.

Illustration (b) to section 113—shows that if the tenant remains in possession after the expiry of the notice and a second notice to quit is given, the first notice is waived, but the doctrine would not apply where the landlord treats the tenant as a tenant from year to year and the tenant asserts a permanent tenancy. Moreover, waiver is an act on the part of the person pleading the waiver, showing an intention to treat the tenancy as subsisting. When there is a denial of the notice, which is said to be waived, it cannot be said that he had the intention to treat a determined lease, as still subsisting. 8 PLT 633—1927 P 305. Acceptance by landlord of rent for period after the institution of the suit for ejectment, paid by the tenant under a consent order to Court, does not constitute waiver of notice to quit, although the payments are made out of Court, and cannot nullify the proceedings or prejudice the landlord's rights. 38 CWN 782—1934 C 837.

Section 113— Default in payment of rent by the tenant—payment of rent in lump such payment of rent in lump whether makes the tenant a defaulter—Whether there is waiver and acquiescence of the default on the part of the landlord by acceptance of rent for several months in lump—A tenant making payment of rent in lump, shall ordinarily be treated as defaulter unless there is a contract to the contrary or such payment is covered by waiver and acquiescence on the part of the landlord. There was an arrangement between the landlord and tenant that *Karmachari* of the landlord would come and collect the rent. This practice continued for 16 years—The consistent view of this Court is that waiver is a question of fact and is to be taken at the earliest opportunity and must be established on evidence—The defendant had made out a case of waiver and acquiescence and the judgment of the High Court Division is to be set aside. *Md Golam Hossain vs Asia Khatun Chowdhury* 40 DLR (AD) 1; BCR 1987 (AD) 420; 1988 BLD (AD) 36.

114. Relief against forfeiture for non-payment of rent —Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent

in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Case Law

Section 114—Payment or tender—How and when may be made.

Under section 114 there must be an actual payment or tender before the Court.

Mere readiness to pay is not sufficient. Moreover, this being a concession extended to the defaulting lessee its advantage should be availed of at the very first opportunity. It would be unfair to the lessor if the lessee is permitted to take advantage of it at the appellate stage when a decree has already been passed. *Habib Ahmed vs Keoti Kuer*, AIR 1946 All 328.

This section is intended to relieve the defaulting tenant from the extreme penalty of forfeiture to which he may be otherwise subjected. This section gives a discretion to the Court to be exercised in proper cases. 24 IC 79—12 ALJ. 650; 34 C 458; 58 C 311. It will not be given if the lessee has done something not to deserve any consideration in equity. 45 B 300—59 IC 769; 19 NLR 50—1923 N 193. The discretion exercised by the trial Court should not be lightly interfered with, unless such discretion has been exercised in capricious and whimsical manner. 1927 MWN 305. Section 114 may be taken as a correct statement of the law even in cases of forfeiture not governed by the Act. 8

MLT 250—7 IC 565. See also 98 IC 851—1927 M 239. (Principle of section applied to agricultural leases. 18 NLJ 159. But see also 50 B 450; 1926 B 304). The provision is a special one applicable to landlord and tenant and has no application to a maintenance deed alleged to contain a penal clause. 27 NLR 24—1931 N 60. The Calcutta Rent Act does not expressly exclude the operation of section 114 of the Transfer of Property Act and it cannot abrogate the provisions of the section. 49 C 150—1922 C 394. A sub-lessee is as much entitled to be relieved against forfeiture as the lessee. 25 IC 186—12 ALJ 1085. The Court cannot relieve against forfeiture for breach of a covenant against alienation 42 M 654—36 MLJ 367.

The fact that on a previous occasion the landlord condoned a breach of covenant on receipt of consideration or otherwise cannot take away his right to enforce the covenant on a later occasion. No question of estoppel or waiver can arise. 15 P 673—1936 P 493. A provision enabling the landlord to re-enter on non-payment of rent would be regarded as a penalty : 15 M 125; especially where a large premium was taken from the lessee : 1924 L 49—5 LLJ 99; 1928 L 937; 8 MLT 238—8 IC 309; 113 IC 543. Relief against forfeiture for non-payment of rent applies to a suit to

enforce a decree and to a proceeding in execution. *35 B 239—10 IC 746—13 Bom. LR 154; 13 RD 20; 4 PLJ 292—69 IC 886.* Relief should be given when the non-payment is due to fault of lessor. *85 IC 964—1925 M 919.* Where the tenant was bound by his lease to pay arrears of rent with interest with rent of the next year, and on default being made in that payment too, was bound to surrender the property, he cannot be relieved against forfeiture. *20 MLJ 785—6 IC 438.*

“Rent in arrear”

The expression includes all that is due to the lessor up to the date when the application for ejectment is heard and order for relief against forfeiture made on condition of the lessee paying the entire arrears of rent with interest and on payment of costs. *58 C 311.* The words are wide enough to cover rent which is not barred by limitation. “Lessors” in section 114 include the transferee of lessor. *43 LW 518—1936 M 116.*

Period of Grace allowed

If on account of non-payment of rent within the period of grace allowed by the

landlord, the tenancy is forfeited, such forfeiture will not generally be relieved against. *1912 MWN 1135—16 IC 803; 15 MLJ 210; 28 M 389—15 MLJ 208; 1923 N 193; 20 MLJ 944.*; But see *contra 22 Bom. LR 1439—59 IC 769—45 B 300; 39 M 834—30 IC 596; 32 IC 526.* See also *1927 MWN 305; 29 MLJ 381—39 M 834; 19 NLR 50.* But Courts have power to relieve against forfeiture, even when there is a period of grace allowed in the lease-deed. *39 M 834—29 MLJ 381.* See also *108 IC 273—1928 M 250.*

English and Indian Law

Under the Indian law unlike under the English Law, relief from forfeiture cannot be claimed after the order for ejectment had become made. *58 C 311.* Under English law the condition of forfeiture is distinct from a clause of nullity. In Transfer of Property Act, this distinction is not recognised and this has given effect to the existing law in the country. Still Courts have power to relieve against forfeiture. *1 P 363—1922 P 528.*

¹[114A. Relief against forfeiture in certain other cases—Where a lease of immovable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

1. Section 114A inserted by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 58.

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach;

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.]

Case Law

Section 114A—Before the amendment of 1929 the only case in which relief against forfeiture was available was in respect of non-payment of rent. The new section 114A provides for relief in other cases also by providing for a notice to remedy the breach within a reasonable time. For cases regarding relief against forfeiture, see under section 111, Clause(g). Technical provisions, like the one enacted in section 114A, do not apply to the Punjab. *41 PLR 895—1939 L 330*. The provisions have no retrospective effect. *1939 L 330*. Under sections 111(g) and 114A of the Transfer of Property Act only one written notice is required and not two. In cases where the breach is not capable of remedy, all that the law requires is that a written notice should be given by the landlord before suit, conveying his intention of forfeiting the tenancy. But if the breach is one capable of remedy, it is further necessary that he should require the lessee to remedy the breach and must give to the lessee reasonable time to do so from the date of service of notice. *ILR (1938) 2 C 434—42 CWN 761—1938 C 589*.

115. Effect of surrender and forfeiture on under-leases —The surrender, express or implied, of a lease of immovable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the

purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lease shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

Case Law

Section 115—An under-lease is extinguished on forfeiture of the primary lease, but not on its surrender. *24 CLJ 40—34 IC 833—21 CWN 117*. See also *ILR (1939) Bom. 144—41 Bom. LR 25—1939 B 98*. An implied surrender is more analogous to the case of a forfeiture than to the case of a surrender, and therefore extinguishes the rights of persons deriving title through the tenant. *46 IC 244—14 NLR 107*. See also *14 B 384*. A mere repudiation of the lessor's title by the lessee will not work a forfeiture against the assignee of the lessee's interest. *42 B 734—47 IC 635—20 Bom. LR 830*. Actions for possession based on forfeiture should be brought against all the parties interested in the premises. But the landlord, who obtained a decree against the head-lessee alone without making the sub-tenant a party, can obtain

possession of the premises by executing the decree against the tenant. *50 C 419—1923 C 691*. Mortgage by tenant—Subsequent fraudulent and collusive surrender—If binding on mortgagee. *1936 M 422*.

Crown Grants

It is doubtful whether the exception under section 115 would apply to a lease coming under the provisions of the Crown Grants Act, 1895. Therefore, under the ordinary law, it certainly seems that the right of re-entry which Government has under a lease is one which does prejudice the duration of an under-tenure. The under-tenant is liable to disturbance by Government, and even if he is not disturbed, to being called upon to pay enhanced assessment *25 Bom. LR 1192—1924 B 212*.

★ **116. Effect of holding over**—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or

otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of ¹[Tk.] 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year. ✓

Case Law

⊗ **Section 116**—The appellant is 'not holding over' within the meaning of section 116 of the Transfer of Property Act nor is he a tenant by sufferance. Appellant is a tenant under section 2(8) of the PRC. Ordinance—Appellant entitled to benefit of section 18(5) of the PRC Ordinance, subject to the fixation of rent and other conditions for a fresh tenancy. *Maria Keshi Rozario vs Hassan Moises Ltd 41 DLR (AD) 135.*

—'Holding over' and 'continuing tenant as a statutory right' *Maria Keshi Rozario vs Hassan Moises Ltd 41 DLR (AD) 135.*

—The renewal of lease in case of holding over is a new lease, not a continuation of the old lease. *Dr Suraiya Hossain vs Taherunnesa 41 DLR 441.*

⊗ **Section 116**—Lessee holding over after the period of lease becomes a tenant.

An agreement to lease immovable property from year-to-year or for any term

exceeding one year accompanied by delivery of possession, in the absence of a registered lease deed, is valid for one year and if the lessee continues in possession with the assent of the lessor, the lessee becomes a tenant by holding over under section 116 of the Transfer of Property Act. *SM Lalita Roy vs Rafiqullah Khan, 18 DLR 107.*

—Tenancy right by holding over.

The very fact that the tenant after expiry of the lease was allowed to remain in undisturbed possession of the land (non-agricultural land) for a long period (33 years in the present case) and that the holding comprising the suit land was allowed to stand in the municipal register in the name of the tenant without any protest from the landlord or the subsequent lessee who took lease of the land in tenure right clearly indicate that both the landlord and the subsequent lessee acquiesced in the holding over of the suit land by the tenant and after him by his heirs.

1. Substituted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and 2nd Schedule for "Rs". with effect from the 26th March 1971).

Therefore, the tenant's claim of tenancy right by holding over cannot be denied. *Mastakim Ali vs Shafique Uddin Chowdhury*. 22 DLR (SC) 395.

—Tenancy right—By open and actual possession for a long period in assertion of tenancy right the tenant acquires limited tenancy right.

Auction-purchaser, in a rent execution case stated by the landlord against the tenure-holder, acquires only the right, title and interest of the tenure-holder but the tenancy right of any person in the said land remains unaffected by such auction purchase. 22 DLR (SC) 395.

—Lessee holding over after the expiry of lease—Effect.

When a person is in possession of certain land on the basis of lease for a fixed term and continues, as such, in possession even after the expiry of the lease period the position of that person is not that of a trespasser but of a tenant holding over under section 116 of the Transfer of Property Act. *Banaras Co-operative Housing Society Ltd. Vs. The Chairman, Karachi Development Authority*. 22 DLR (SC) 431.

—Holding over

Tenancy claimed by right of holding over—Claimant to conclusively prove it—Till this is done Government not called upon to prove compliance with Chapter V of Acquisition Act (XXVIII of 1951). *Province of East Pakistan vs Nakuldas Mirdha* 20 DLR 769.

—Assent to continuing in possession of tenant—Presumed when landlord demands rent.

The landlord can be said to have otherwise assented to the tenant's continuing in possession if from time to time as the situation required, they had filed a suit for rent. A demand for rent or a suit for rent has been held as constituting circumstances from which assent can be inferred. *Muhammad Saeed vs Khushi Muhammad*. PLD 1954 Lah. 796—PLR 1954 Lah. 829 Reg. I QB 736; 27 Bom. 262.

—Holding over—Only possible with the consent of landlord—Ownership transferred by landlord—No consent by new landlord—No holding over.

In order that a person be a tenant holding over, it is necessary in accordance with section 116 of the Transfer of Property Act that there should be an express or implied consent of the landlord to his continuing as a lessee on the same terms.

A tenant under the Government claimed to be holding over, but the beneficial interest in the land leased had in the meantime been transferred by the Government to the Municipal Corporation.

Held: that the tenant could not possibly be said to be holding over if the Municipal Corporation was holding. *Abdullah vs Municipal Corporation of Karachi*, PLD 1959 (WP) Kar. 99.

—Tenant not surrendering possession on expiry of lease—Still a tenant—Liable to pay rent.

There is no law under which after the expiry of the lease, the tenant who continues to be in possession of the property without surrendering its possession to the person from

whom he took the property on lease ceases to be a tenant. Therefore, he is liable to pay rent for the period during which he continues to be in possession. *Abdul Ghaffar Khan vs Gullah Jan* PLD 1952 Pesh. 50.

—Holding over—Tenant remains in possession of the lease-hold property. The provisions of section 116 of the Transfer of Property Act are applicable where the tenant remains in possession of the lease-hold property after the determination of the lease granted to the tenant and his continuing in possession is assented to by the landlord. A tenant who surrenders does not come within the meaning of the words "remains in possession" of this section. 6 DLR 652.

—Defendants' lease of certain fisheries under the plaintiffs terminated in 1341 BS, but they continued their possession even thereafter. Plaintiff brought a suit for rent against the defendants for the year, 1342 which was decreed. In 1346 plaintiff granted a lease of the fisheries to a third party who failed to secure possession thereof from the defendants. Plaintiffs thereupon brought a suit for rent for the years 1346 to 1349 (with alternative prayer for damages for use and occupation during the period in suit.). The defence was the denial of plaintiff's title to the fisheries.

Held: Plaintiff is entitled to get a decree for rent as under section 116, defendants would be held to be tenants under plaintiff by holding over after the termination of the lease in 1341 under the same terms and conditions. 3 DLR 526.

—Lessor "otherwise assents to his continuing in possession"—Suing for rent

held to indicate assent on the part of landlord—Lease renewed from year to year or from month to month as the case may be. (1954) PLR (Lah) 829.

Section 116: Essentials of Section

It is for the lessor to do some act, receive rent or otherwise to give consent, and not for the lessee to do anything under section 116. 94 IC 308—1926 M 566. For difference in the English Law, see 32 C 123; 1923 C 524; 53 IC 180.

Scope and Applicability

The principles of this section have been held to be applicable to the Punjab. 112 IC 651. Section 116 is not applicable to the case of a lease governed by section 107 and not by section 106; where there has been neither an acceptance of rent by the lessor nor any agreement by him that the former lessee should remain in possession without the execution of a lease. 196 IC 237—1941 OWN 1065. Where a tenant holds over after the expiry of the lease on payment of rent to the landlord, he must be deemed to be a tenant from year-to-year or from month-to-month according to the object for which the property was leased, having regard to the provisions of section 116 of the Act. 38 CLJ. 177—1923 C 524. See also 1923 P 340; 11 PLT 444; 1923 P 201. The tenant continuing in occupation under a special agreement for a further lease is a different case from the tenant holding over merely by consent, but, if for any reason his agreement has to be disregarded, he can fall back on the landlord's mere consent and claim his right under section 116, 54 C 813—1927 C 725.

Where a tenant took a lease for 10 years from the mutawalli of a mosque with a

covenant for renewal, and it was found that the covenant for renewal was beyond the jurisdiction of the trustee, the lessee holding over must be deemed to be holding on a monthly tenancy. 27 CWN 159—1923 C 130; 155 IC 367—1935 P 271. The Act uses the word 'lease' not merely for interests which can be created only by registered instrument, but for all interests of the character defined in section 105 of the Act. 54 C 813—31 CWN 973. It is doubtful if tenancy by sufferance exists after the passing of the Act. 33 IC 705—39 M 54. See also 25 IC 109 (M). A tenant on sufferance is one who entered by a lawful demise or title, and, after that has ceased, wrongfully continues in possession without the assent or dissent of the person next entitled. 8 PLT 633—1927 P 305; 31 CWN 282; 48 B. 341.

A verbal lease for more than one year is valid for one year if it is accompanied by delivery of possession. Where after the expiry of the term, the lessee continues in possession, he may be held to hold over and is liable for rent. 144 IC 788—1933 P 482; 148 IC 684—1934 P 369. Where the tenant in a lease for one year continued in possession after the expiry of one year and the landlord sued only for arrears of rent some years afterwards and not in ejectment, it amounted to a consent on the part of the landlord to the tenant retaining possession, and the tenant became a tenant from month-to-month and was not a tenant on sufferance. 112 IC 651. See also 48 B, 341; 1 NLR 32; 31 CWN 282; 27 B 262; 4 P 139—84 IC 586—1925 P 216. Until ejectment, even a holding over tenant has right to remain in possession against the landlord 43 B 531—21 Bom. LR 261. Proper notice under section 106 is necessary to

terminate even a holding over tenancy. 43 C 359—61 IC 503—25 CWN 13; 38 CLJ 177—1923 C 524; 7 C 710; 26 IC 107—12 ALJ 1139; 27 CWN 159—36 CLJ 48; 1923 P 340—71 IC 1022—23 C 200; 10 MLJ. 201 are not now good law. Agreement to the contrary means one as to the terms of the holding over. 26 IC 962—19 CWN 489.

Where there was a term in a lease that the lessee would give up possession without notice and on the expiry of the lease, the lessee held over on payment of rent, the term as to notice is not carried over to the new lease and notice is necessary to terminate the later lease. 37 CWN 971. As to contracts for renewal of lease, see under sections 106 and 108 (q). "Legal representative" implies a person occupying the same position as lessor and does not include an intermediate lessee. 24 IC 183—19 CWN 525. Expiry of the lease term does not terminate the tenancy and the holding over lessee can eject a trespasser. 22 IC 789—37 M 281. Express or implied consent of the landlord to hold over is necessary; otherwise he is a trespasser. 4 PLT 696; 80 IC 568; 6 PLT 142. Mere assent to hold over is not sufficient to create yearly tenancy. 4 P 139—84 IC 586—1925 P 216. The position of a tenant after the determination of the tenancy is no better than of a trespasser, and he is bound to pay rent at a fair rate by way of damages and not at the rate contracted for during the subsistence of tenancy. 22 IC 7(A). A lessee holding over in defiance of the lessor is not entitled to notice. 13 IC 59—9 ALJ 574; 53 IC 180. The section does not apply to lessee's heirs or assigns. 6 PLT 98—88 IC 387. Affirmed in 55 IA 212—7 P 649—55 MLJ 882 (PC) Holding over homestead lands within municipal area—

Applicability of Bengal Tenancy Act. 31 CWN 282—1927 C 279.

Where the successive lease for one year each were given to a lessee who is already in possession under a prior valid lease, in view of the lessee continuing in possession with the lessor's assent, they became lessees from year-to-year under section 116, and a suit against raiyats for rents is maintainable. 18 CWN 858—23 IC 318. Where a tenancy for a term of years was created in favour of A before the Act, and after his death his heirs remained in possession and paid rent down to 1914, the legal relation between the landlord and heirs of A must be deemed to have come into operation after the passing of the Act, and as the tenancy was not an agricultural one within section 117 of the Act, Chapter V was applicable and therefore, on the expiry of the term, the heirs of A have a yearly tenancy capable of transfer, and notice is necessary to terminate the tenancy. 48 C. 359—61 IC 503—25 CWN 13.

Renewed Lease, Terms of and Holding Over

When lessees hold over after the expiry of the lease, they must be considered to hold on the terms stipulated for in the lease. 97 IC 412—1926 C 1939. See also 81 IC 592—1925 O 173(1); 33 IC 448—20 CWN 948; 1934 M 458—67 MLJ 455. Where there has been no agreement as regards the terms of the holding over, then no matter what the terms were, which governed the original lease, it must be regarded as renewed from year-to-year or from month-to-month according to the purpose for which the property is leased. 49 IC 974 (C), See also 12 OC 279.

When a tenant under a lease for a term of three years of premises in Calcutta holds over after expiry of the term, he does so as a monthly tenant, and each month of the tenancy lasts up to, and expires at, midnight on the first day of the succeeding month. 38 CWN 782—1934 C 387. The option of giving an assent which will convert the holding over into a tenancy is one that is conferred on the lessor and not on the lessee. Consequently, where a tenant after the expiry of his lease continues in possession of godown with the consent of his lessor but without giving notice of his intention to quit on a specified day, he is liable to pay a full month's rent as well as the rent due for the prescribed period of a notice to quit, even though his occupation of the premises was for a very short time. 48 B 341—26 Bom. LR 231—80 IC 507. See also 49 IC 974; 19 CWN 525; 19 CWN 489; 32 C 123; 18 CWN 858; 49 IC 974; 48 B. 38; 1926 C 1239.

Power of Court to Award Damages for Use and Occupation in a Suit for Rent

Where after the termination of a lease intimated to the landlord that he was no longer a tenant but continued in possession of the land, notice was waived by the lessee's conduct and though he was not liable to pay rent as such, he had to pay the landlord damages for use and occupation. Even though a suit is framed as one for rent, it is possible for the Court to pass, in the alternative, a decree for damages for use and occupation. 97 IC 933(2)—1926 M 1071.

Section 116—Holding-over—Tenant's continuous possession with landlord's assent creates an implied contract constituting a tenancy by holding-over. Such a tenancy

cannot be created by tenant's continuance of possession alone—there must also be the assent of the landlord, which may be expressed or implied. It may be evidenced by acceptance of rent or by other circumstances. Where the lessor dissents there cannot be any holding-over. Absence of dissent will not necessarily imply assent, but from the tenant's continuous possession for a long period, without contrary indication from the landlord may constitute an implied assent. Implied assent is a question of fact inferable from the length of possession and other circumstance excluding an inference of landlord's dissent. *Siddik Ali vs Nurun Nessa Khatun* 43 DLR (AD) 3.

Section 116—When there has been no dissent either by the tenant or by the landlord on the expiry of the written agreement, the tenancy continued by holding-over. *Mokbul Hossain Khondker vs Jaheda Khatun* 47 DLR 430.

Section 116—The tenant having continued in possession of the premises after expiry of lease agreement, he is bound to pay rent in terms thereof and not those under section 18(5) of the Ordinance. *Parimal Ranjan Das vs. Nasima Khatun* 49 DLR 286

Section 116—Non-payment of rent whether extinguished a tenancy—non-payment of rent is not proof of non-existence of the tenancy and the tenant cannot question landlord's title unless he discontinues tenancy and restore possession to the landlord—Once a tenancy is created, it will be presumed that it is continuing unless it is shown that it has ceased. *Haji Abdus Sattar vs Mohiuddin & others* 1984 BLD (AD) 224; BCR 1986 (AD) 71.

Section 116—Right of heirs of late tenant—a tenancy is not heritable on the death of a tenant his heirs are not under any obligation to continue the tenancy, in the same way, the landlord is not bound to keep the lease alive—if the heirs continue to stay on they have been rightly held to be tenants by "holding over". *Haji Abdus Sattar vs Mohiuddin and others* (Ibid), 1984 BLD (AD) 224; BCR 1986 (AD) 76.

Section 116—Application of the principle of "Holding-Over"—Suit land a non-agriculture Raiyati holding—This section does not make distinction between a lease by a registered document and one by an unregistered document for the purpose of "holding-over". Lease continued in possession with consent of the landlord who realised rent from him after expiry of one year and in this way he continued to be in possession till the acquisition of the wholesale State when he became a tenant directly under the Government—It is the possession of the lessee which is of fundamental importance in the case of "holding-over." *Khodeja Begum & another vs Sagarmal Agarwala & another* (bid) BCR 1987 (AD) 172.

Section 116—Holding-over—When and how constituted—After determination of a lease, tenant's continuous possession with landlord's assent creates an implied contract constituting a tenancy by holding over—Such a tenancy cannot be created by the tenant's continuance of possession alone—There must also be the assent of the landlord, which may be expressed or implied and it may be evidenced by acceptance of rent or by other circumstances—When the lessee dissents,

there cannot be any holding over—Absence of dissent will not necessarily imply assent, but from the tenant's continuous possession for a long period without contrary indication from the landlord it may constitute an implied assent—Implied assent is a question of fact inferable from length of possession and other circumstances excluding an interference of landlord's dissent. *Afia Rahman & others vs Nurun Nessa Khatun & others* 43 DLR (AD) 3; BCR 1990 (AD) 432.

Section 116—Entitlement to lease and restoration of possession—Plaintiff's suit relating to land in question was dismissed by both Courts below—Validity—Plaintiff's claim for entitlement to take benefit of section 116, Transfer of Property Act, 1882 was unwarranted—No lease was executed in favour of plaintiff—Temporary lease for construction of factory having not been availed by plaintiff within stipulated time, and terms of lease having not been complied by him, he was dispossessed from the land in question—No legitimate rights were created in favour of plaintiff entitling him in filing suit—Payment of dues to authorities, if any, would not confer title upon plaintiff—Plaintiff's suit was thus, rightly dismissed by Courts below as also his appeal. *Ahmed vs Karachi Metropolitan Corporation* 1997 CLC 1155.

Section 116—Holding over, effect of—Where, a lessor accepts rent or otherwise assents to the lessee's continuing in possession, he is obviously a lessee who is "holding over", *Nasreen vs Pakistan* 2001 CLC 1025.

Section 116—Holding over, principle of—Applicability—Revised rent rates—

Entitlement of the lessor—Lessor by receiving rent sent by the lessee had through her conduct established that there was some sort of permission from her side for the lessee to continue—Lessor had issued legal notice on 10-12-1985, whereas lease had expired on 31-7-1984 and the suit was filed on 13-1-1986—Effect—Tenant was "holding over" and the principle of the holding over as enunciated in section 116 of Transfer of Property Act, 1882, would be applicable as if the tenancy was on a month-to-month basis—Where the rates had been revised by the Government, such rates should be applicable to the lessor for the period the lessee was "holding over" in the premises—Trial Court had wrongly denied the revised rates to the lessor and there was no justification for withholding the revised rates to the premises in question—High Court allowed the revised rates to the lessor till the premises were vacated—Decree passed by the trial Court was modified accordingly. *Nasreen vs Pakistan* 2001 CLC 1025.

Section 116—"Tenancy in sufferance"—Connotation—Tenancy in sufferance is one where a tenant continues in possession without the consent of his lessor whereas tenant at sufferance is one who after rightfully being in possession of rented premises continues after his right has terminated—Such tenant has no estate nor title but only naked possession without right and wrongfully, and stands in no privity to landlord—Tenant at sufferance is not entitled to notice to quit, and is a bare licensee to whom landlord owes merely the duty not to wantonly or wilfully injure him. *Nasreen vs Pakistan* 2001 CLC 1025.

117. Exemption of leases for agricultural purposes—None of the provisions of this Chapter apply to leases for agricultural purposes, except insofar as the ¹[Government]²* * * may, by ³notification published in the ⁴[official Gazette], declare all or any of such provisions to be so applicable ⁵[in the case of all or any of such leases], together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

Case Law

Section 117 excludes only agricultural lease.

There is no indication in section 129 restricting its application only to a particular class of lands, that is, non-agricultural land as section 23 of the Non-Agricultural Tenancy Act, 1943 has provided. Section 117 of the Transfer of Property Act excludes from its operation only agricultural leases but no other dispositions. *Jabed Ali vs Abu Shaikh* 35 DLR (AD) 31.

—Under Muhammadan Law oral gift of immovable property, agricultural or non-agricultural, is valid. *Jabed Ali vs Abu Shaikh* 35 DLR (AD) 31.

Section 117—Lease by Zamindar to Zamindar—Not a lease for agricultural

purposes. Where there was contract between a Zamindar and a Zamindar regarding Zamindari rights and not a contract between Zamindar and a cultivator, or a cultivator and a cultivator for agricultural purposes, that is to say, for the purposes of actually cultivating the land, setting out the terms on which the cultivator was to cultivate and occupy the land not a lease for "agricultural purposes". *Noor Muhammad vs Dhira Singh*. PLD 1949 Sind 27—PLR 1948 Sind. 77.

—The object of the legislature in exempting agricultural leases appear to be to keep in full force the several provincial Rent Acts dealing with agricultural leases and the relations of such landlords and tenants. 1925 P 421—4 P 404; 1940 OA 801. Leases unless

1. Substituted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and 2nd Schedule, for "Provincial Government" (with effect from the 26th March, 1971).
2. The words "with the previous sanction of the GG- in C" repealed by the Devolution Act, 1920 (XXXVIII of 1920), section 2 and Schedule I.
3. For notification issued by Government of Bombay under this section, see Bombay Gazette 1910, pt 1, p 59 for notification as to Sind, see the Devolution Act, 1920 (XXXVIII of 1920), section 2 and Schedule I.
4. Substituted by AO, 1937, for "Local Official Gazette."
5. Inserted by the Transfer of Property (Amendment) Act, 1904 (VI of 1904) section 6.

exempted specifically are governed by the Act. An agricultural lease is that whose object is agriculture or allied to agriculture. See 98 *IC* 92—1927 A 78; 42 *CLJ* 520—1926 C 312; 24 *ALJ* 489. It is not the actual use of the land but the original purpose of the tenancy which determines the question of applicability of the Act. 46 *CWN* 277. Some plots were leased out to the lessee by a permanent lease. it was stated therein that the lessee was a tenant of the said plots and the lease was heritable. The lessee was also given the right of transfer whether by way of gift or sale or otherwise.

The lessee was also permitted under the lease to plant groves or to construct buildings on the leased land. The lessee did not however plant any grove on such land.

Held : that the land being agricultural land and not grove land under section 3, Agra Tenancy Act. Section 117, Transfer of Property Act, applied to the lease. The interest of the tenant of such land was therefore not transferable in execution of a decree of a Civil Court by virtue of section 23 of the Tenancy Act, 1937 *ALJ* 656—1937 A 561.

Lease of land permitting the lessee to gather *khar* or grass spontaneously growing on land is a lease for agricultural purposes and no registration necessary. Section 118 *IC* 841 1929 O 529. See also 48 A 385—95 *IC* 1048; 3 *LW* 485; 24 *ALJ* 489—1926 A 432; 45 M 710—43 *MLJ*. 191 (if agriculture includes horticulture); 1926 C 312; 24 M 421; 1932 C 715. Land let out for pasture, habitation of agriculturists for tying, ploughing cattle or storing manure, is for agricultural purpose. 34 *IC* 539—3 *LW* 319. A lease for planting casuarina trees is not one for an agricultural purpose. 3 *LW* 319. But see 45 M 710—43 *MLJ* 191. The act applies to lease for residential

purpose with right to take fruits from trees on the land and plant other fruit trees, it being not an agricultural lease. 92 *IC* 411—1926 C 312. Agricultural leases may be oral or even by conduct. 1923 C 433. If tenancy providing for collection of money rent, amounts to an agricultural lease. See 33 *CWN* 865 (*PC*). Cases not governed by Act are covered by general equitable rules or principles of English law. 53 *IC* 545.

The provisions of the Act do not, as such, govern agricultural leases. 39 M 834—29 *MLJ* 381. See also 53 *IC* 180; 5 *MLT* 222—4 *IC* 1124. Still most of the provisions contained therein are applied even to such leases as being in accordance with justice, equity and good conscience. 42 M 654; 8 *MLT* 250—7 *IC* 565; 98 *IC* 851—1927 M 239; 41 M 629; 25 *IC* 812; 43 *IC* 970. In a document of lease, no reference was made to cultivation. Neither was there any stipulation as to payment of cesses and the true purpose of the lease was preservation and rearing of fishes, grazing of cattle on the bank being only a subsidiary one.

Held : that the lease was for non-agricultural purposes governed by the provisions of Transfer of Property Act and not by those of Bengal Tenancy Act. 1935 C 638; 31 C 937.

A lease for bringing the leased land under cultivation and reclamation is an agricultural lease. 48 *IC* 354. A liberal interpretation of the words of the section should be given. 4 P 404—86 *IC* 597. A lease granted for the conversion of jungle and wild land into agricultural land is a lease for agricultural purpose. 13 *CLJ* 318—7 *IC* 864. Lease of right to receive the refuse collection of a village: 5 *OC* 122; 48 A 385—1926 A 43; and lease for building purposes: 29 C 489; are not leases for agricultural purposes.