1895. *Sept. 27.*

BUDDHARAKITA TERUNNANSE *v.* GUNASEKARA.

D. C., Colombo, letter B.

Joint lessors—action for rent by one lessor for his share of rent—subsequent action by joint lessors—Splitting of cause of action—Civil Procedure Code, s. 34—cancellation of Lease—rights of joint creditors.

A and B being joint lessors, A sued the lessee for his half share of the rent on the lease for a certain period, making B a party defendant to the action, and requiring them to show cause, if any, why judgment for half the rent should not go in favour of A. A recovered judgment. Subsequently both A and B sued the lessee for the other half share of the rent for the above period, and for the whole of the rent for a subsequent period, and for a cancellation of the lease.

Held, that this action was maintainable, and that it was not barred by section 34 of the Civil Procedure Code.

Held further, that in the case of joint lessors, each can sue the lessee separately for his moiety of the rent.

Held further, that when a lease contains the stipulation that, in default of payment of rent by the lessee, the lessor should be at liberty to sue the lessee for a cancellation of the lease, the lessor is under no liability to seek a cancellation at the default, but that he may sue for and recover the rent at each of several defaults and sue for a cancellation of the lease at any subsequent default.

Per WITHERS, J.—When creditors have joined in stipulating for the payment of a sum of money, each is entitled to his quota of that sum. When several debtors join in promising to pay a sum of money, each is liable to pay a quota of that sum of money, and no more. This happens even when a plurality of debtors or creditors intervene by the death of a single creditor or debtor leaving several heirs-at-law.

THIS was an appeal from an order of the Court below rejecting a plaint on the ground stated at length in the judgment of his Lordship the Chief Justice.

Pereira, for plaintiff appellant. The District Judge has held that the present action is barred by section 34 of the Civil Procedure Code. That section enacts that every action shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action, and it applies to the case of a single plaintiff suing for a part only of his claim in respect of one cause of action, and then suing for the remainder in a separate action. In the present case, however, there was no splitting of the cause of action. The first plaintiff could only have sued for a moiety, in the first action, of the rent for the period involved in that action, and now both the plaintiffs sue for the other moiety for that same period and for the whole of the rent for a subsequent period. Our law allows a joint creditor to sue the debtor for his share only of the debt. He cited *Van Leeuwen, bk. V., chapter 3, section 11, p. 524, of translation of 1820; Pothier on Obligations, vol. I., p. 144 (Evans's translation); Van der Linden, book I., p. 203 (Henry's translation).*

Cur. adv. vult.

27th September, 1895. BONSER, C.J.—

This is an appeal from an order rejecting a plaint by Mr. Templer, Acting District Judge of Colombo. The learned District Judge has not followed the procedure laid down by section 48 of the Civil Procedure Code, for he has not specified the date when the plaint was presented and rejected, or the name of the person by whom it was presented, and whether such person was plaintiff or proctor as required by that section.

The action was an action by two joint lessors of certain immovable property against the lessee, and it claimed on the part of one of the plaintiffs the half share of the rent for a certain period of time, and on behalf of both plaintiffs the whole rent for another later period, and the cancellation of the lease for a breach of covenant. The plaint was rejected on the ground that one of the plaintiffs had sued and obtained judgment for a moiety of the rent in respect of the period first mentioned.

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WITHERS, J.

The learned Acting District Judge said that that concluded the other plaintiff from suing for his share; that the first plaintiff had no right to sue for a moiety of rent; but that having done so, section 34 of the Civil Procedure Code barred the claim of his co-lessor for rent, and also the claim of both to have the lease cancelled. The Acting District Judge held that the lessors were jointly entitled to the rents, and therefore that both parties must join in suing for it.

If the law of England were in force here that would have been a correct decision, but the law of this Colony appears to be otherwise. The Roman-Dutch lawyers do not seem to have favoured joint obligations. They considered obligations as several, unless there were express words showing that the obligation was *in solidum*, or it so appeared from the nature of the case.

With regard to joint leases, I find it laid down by *Voet, book XIX., tit. 2, section 21*, "*Locati actio est personalis bonae fidei, "quæ locatori datur, ... si plures locaverint, singulis pro sua "parte; contra conductorem, et, si plures sint, contra singulos pro "rata; nisi aliud nominatim pacto actum sit, aut appareat, "locatorem singulorum personas in solidum respexisse et ita duos "pluresve in solidum fecisse reos locationis.*"

That seems sufficient to dispose of the objection to this plaint, and shows that the plaintiff was justified in suing alone for his own share of the rent. The other objection, that an action cannot be maintained for the cancellation of the lease, because an action had been brought for rent, is an objection which I cannot understand.

A lessor who has been driven to sue for his rent is quite at liberty after having borne with the lessee's default for a time to sue for a cancellation of the lease, and thus get rid of an undesirable tenant.

WITHERS, J.—

I think the District Judge has quite misconceived the provisions of section 34 of the Ordinance when he applied them to this case. As to the question of law, I understand the Roman-Dutch Law to be as follows:—

The payment of a sum of money is a divisible operation, and when creditors have joined in stipulating for it, each is entitled to his quota of that sum of money. When several debtors join in promising to pay a sum of money, each is liable to pay a quota of that money and no more. A plurality of debtors or creditors may have existed at the time that the stipulation or promise was made, or may supervene by the death of a single creditor or debtor leaving

several heirs-at-law. It makes no difference. It is only when the intention of the contracting parties is clearly expressed that a divisible obligation shall be treated as an indivisible one, that one of several creditors cannot sue for a quota, and one of several debtors cannot discharge his obligation by paying a quota.

The passage from *Voet* cited by the Chief Justice disposes of this case. To fortify my statement of the general law I will add a passage from the *Digest (Corpus Juris Civilis), lib. XLV., tit. 2, fr. 11, sections 1 and 2. De duobus reis constituendis.*

Section 1.—*Cum tabulis esset comprehensum, illum et illum centum aureos stipulatos, neque adjectum, ita ut duo rei stipulandi essent, virilem partem singuli stipulati videbantur.*

Section 2.—*Et e contrario cum ita cautum inveniretur, tot aureos recte dari stipulatus est Julius Carpus; spopondimus ego Antoninus Achilleus, et Cornelius Dius: partes viriles deberi: quia non fuerat adjectum singulos in solidum spopondisse, ita ut duo rei promittendi fierent.*

This is an ordinary contract of lease by two lessors stipulating for the payment of a certain sum by way of rent, and it comes under the ordinary law of stipulation by more than one creditor.