1930

Present : **Dalton J.**

RANASINGHE *v.* SILVA.

72—*C. R. Galle*, 8,013.

Court of Requests—Action for rent and ejectment—Judgment for rent—Appeal Courts Ordinance, s. 77.

Where an action was brought in the Court of Requests for rent and ejectment and the plaintiff got judgment for rent only,—

Held, that an appeal lay from the judgment without leave of Court.

A. E. Keuneman, for defendant, appellant.

C. V. Ranawake, for plaintiff, respondent.

July 24, 1930. DALTON J.—

The first point arising on this appeal is whether the appellant (defendant) has any right of appeal. In supporting his objection to the appeal counsel for respondent (plaintiff) urges that the action was for debt, damage, or demand within the meaning of section 13 (1) of Ordinance No. 12 of 1895 and the appeal was on a question of fact ; that no appeal could be taken without leave, and no leave being obtained, the appeal should be dismissed.

The claim was for rent alleged to be due from defendant to plaintiff, for the ejectment of defendant from the premises, and for recovery of possession by plaintiff. All these questions were raised in the issues and came before the Court for decision. The claim for rent was upheld, but the claim for ejectment and possession dismissed, as it was held that due and sufficient notice had not been given by plaintiff. This is not then an action for debt, damage, and demand alone but for something further. Counsel has argued, however, that Courts have held that what is to be looked at in deciding this matter is the real and material question that was raised at the trial in whatever form the action may have been brought. He has, in support of his contention, referred to *Babunhami v. Subehamy*[1] and *Ali Marikar v. Omardeen*.[2] If those cases decide that the character of the action is to be determined by the issues raised and tried, as counsel admits they do, then they are against him on the objection taken. As I have pointed out, the issues raised and tried went beyond the question of rent to the further question of ejectment and possession. I have no doubt that section 13 of Ordinance No. 12 of 1895 must be read with section 77 of the Courts Ordinance, 1889, and leave to appeal on questions of fact is only necessary in the first class of case mentioned in section 77. The action on appeal before me does not come within that class for the reason I have stated. Leave to appeal on a question of fact is therefore not required.

After dismissing the objection the appeal continued. After hearing the evidence I see no reason to interfere with the finding of the trial Judge upon the issue as to appellant's occupation of the premises. There is sufficient evidence to support his conclusion and I am quite unable to say he should not have acted upon that evidence. He has, however, it is admitted on both sides, made an error in the calculation of rent found to be due. According to the judgment plaintiff is entitled to rent from June, 1928, until the end of January, 1929, at the rate of Rs. 10 a month. This he calls twenty months, apparently adding on a year by mistake. It should be eight months. The Rs. 200 awarded must therefore be varied to Rs. 80. I find no reference to this error in the petition of appeal, appellant having apparently accepted, until the error was found out by his counsel in this Court, the correctness of the Commissioner's calculations.

I direct the necessary correction in the decree, the amount of Rs. 200 being changed to Rs. 80. Subject to this, the appeal must be dismissed and appellant must pay the costs of the appeal. The cross-objections are dismissed.

Appeal dismissed.

[1] 3 *Balasingham* 244. [2] 23 *N. L. R.* 65.