1962 *Present :* **Tambiah, J.**

G. E. PREMARATNE, Appellant, *and* E. SUPPIAH, Respondent

S. C. 45/1959—C. R. Gampaha, 7563/B

Landlord and tenant—Termination of tenancy by abandonment—Proof—Wrongful dispossession of rented premises by landlord—Tenant's action for recovery of possession—Jurisdiction of Court of Requests.

When a tenant temporarily departs from the rented premises with the intention of returning, such temporary departure does not constitute abandonment terminating the tenancy.

When a tenant who has been dispossessed by his landlord brings an action to be restored to possession of the rented premises, the jurisdiction of the Court to hear the case is determined by the monthly rental and damages claimed and not by the value of the premises. Such an action is based on a breach of contract of tenancy.

APPEAL from a judgment of the Court of Requests, Gampaha.

H. W. Jayewardene, Q.C., with *C. G. Weeramantry, Hannan Ismail* and *N. R. M. Daluwatte*, for the defendant-appellant.

A. W. W. Goonewardene, with *K. Charawanamuttu*, for the plaintiff-respondent.

Cur. adv. vult.

February 7, 1962. TAMBIAH, J.—

The plaintiff brought this action for the restoration of possession of premises No. 40 Bazaar Street, Gampaha, which he had taken at a rental of Rs. 20/- per mensem and for damages. He averred that the defendant, his landlord, had unlawfully dispossessed him from the said premises. The defendant admitted that the plaintiff was his tenant but stated that the plaintiff had abandoned the said premises towards the end of May 1958. It was also urged that the Court of Requests had no jurisdiction to try this case.

The plaintiff, in the course of his evidence, stated that prior to the communal disturbances of 1958 he was in occupation of the said premises as a tenant of the defendant and that he was compelled to leave the premises on the 27th of May 1958 as a result of communal disturbances in the Gampaha area, which was predominantly occupied by the Sinhalese. The plaintiff further stated that he returned to Gampaha on the 6th of June 1958 and found the said premises closed. Thereupon, on the 10th of June 1958, he asked the defendant to give back the premises, and although the defendant had assured him that he would hand over the possession of the premises after the communal disturbances, he did not keep his promise. The plaintiff thereafter sent Rs. 40/- as rent for the months of May and June 1958, but the defendant returned Rs. 26/50 out of it and refused to hand over the premises. The complaint of the plaintiff to the Village Headman proved to be of no avail. Thereafter, he brought this action. The defendant's contention is that the tenancy had terminated as a result of the abandonment of the premises by the plaintiff and he (the defendant) had rented the same to one Mr. Fernando.

The learned Commissioner has accepted the version given by the plaintiff and had disbelieved the defendant. He characterised the version of the defendant as " just an excuse adopted to deny restoration of possession of these premises to plaintiff ". The learned Commissioner, however, has erroneously taken the view that there had been a justifiable abandonment of the said premises by the plaintiff. In order that there might be abandonment not only should the tenant leave the premises but *his intention to abandon should also be clear*. A person cannot abandon a right without intending to do so (vide *Mouson v. Boehm*[1]; *Nagamani v. Vinayagamoorthy*[2]). A temporary departure, therefore, with the intention of returning to the premises, does not constitute abandonment.

In the instant case, at no time had the plaintiff showed any intention of abandoning the said premises. He no doubt left the premises under circumstances which compelled him to leave, but he has however expressed his wish to re-enter possession within a reasonable time when he was prevented from doing so by the defendant. He has, therefore, not abandoned the said premises.

[1] *26 Ch. D. 398.*

[2] *(1923) 24 N. L. R. 438.*

The argument of the counsel for the appellant is based on the misconception that there has been justifiable abandonment by the plaintiff and need not be examined any further in the light of the above conclusion. The counsel for the appellant also contended that the Court of Requests had no jurisdiction to hear this case and in support of this argument he cited the ruling in *Bastianappuhamy v. Haramanis Appuhamy* [1]. In that case, the Divisional Bench had to consider the test of jurisdiction when a possessory action was brought by a lessee against a person who has dispossessed him. The issues framed and adopted indicated that the title to the land would be investigated. No issues were, however, proposed to suggest that the value of the subject-matter of the action, namely, the right to possession of the land, uncomplicated by the lease, was less than the value of the land. The Divisional Bench, therefore, held that the possessory action instituted in that case could not be maintained in the Court of Requests. Soertsz A.C.J., discussed the two lines of authorities on the vexed question whether a lessee could bring a possessory action in a Court of Requests where his interest in the leasehold is less than Rs. 300/- but the value of the leased premises is over this amount.

In the instant case, it is unnecessary for me to go into this question. Suffice it for me to state that the present action is not a possessory action but an action based on a breach of contract of tenancy. In the language of the Roman-Dutch authorities, the action brought by the plaintiff is the *actio conducti* (Dig. 19.2.15; 19.2.19.8; Voet. 19.2.14., V.D.L. 1.5.12). The plaintiff had brought this action as tenant to enforce the terms of his contract and to be restored to possession, and the title to the premises in question is not in dispute. As Soertsz A.C.J., stated in *Bastianappuhamy's* case [2]: " In order to ascertain whether an action is within or beyond the pecuniary jurisdiction of a Court, the nature and extent of the subject-matter in dispute has to be ascertained, and for that purpose, it would be necessary to examine not only the plaintiff's claim, but also the defendant's answer to it". In *Perera v. Liyanagama* [3] it was held that where an owner of premises sues a trespasser for ejectment and damages and the defendant, without disputing the plaintiff's title to the property, contends that he is the lawful tenant of the plaintiff, the jurisdiction of the Court to try the case does *not* depend on the value of the premises.

If the test of jurisdiction, in an action by the landlord to recover possession of his premises, is the value of the land, then no landlord could bring an action for the recovery of possession of his land from his tenant in a Court of Requests where the land exceeds Rs. 300/- in value. The true test, in such cases, is not the value of the land but the monthly rental and damages claimed (vide *Mudiyanse v. Rahman* [4]). As regards continuing damages, it is to be noted that in an action for ejectment and for damages for over-holding, the amount of a month's rent need not be added to the damages claimed to ascertain

[1] *(1945) 46 N. L. R. 505 ; 31 C. L. W. 33.*
[2] *(1945) 46 N. L. R. 505 at 508 ; 31 C. L. W. 33 at 35.*
[3] *(1956) 58 N. L. R. 454.*
[4] *(1890) 2 N. L. R. 235.*

the value of the relief claimed (vide *Usoof v. Zainudeen*[1]). There is no reason why a different test should be applied when a tenant has been dispossessed by his landlord and he brings an action to be restored to possession.

For these reasons, I dismiss the appeal. The respondent is entitled to costs of appeal and costs in the lower Court.

Appeal dismissed.