1960 *Present :* **Pulle, J.**

H. EBHRAMJEE, Appellant, *and* S. SIMON SINGHO, Respondent

S. C. 148—C. R. Colombo, 67822

Rent Restriction Act, No. 29 of 1948—Section 13 (1) (a)—Tenant in arrears of rent—Action brought for recovery of rent only—Can an action for ejectment be maintained subsequently ?—Civil Procedure Code, s. 34 (1).

Where a tenant in arrears of rent for more than one month after it became due, as contemplated in section 13 (1) (a) of the Rent Restriction Act, is given notice to quit and sued for arrears of rent only but not for ejectment, he cannot be subsequently sued for ejectment in a separate action based on the same notice to quit. In such a case section 34 (1) of the Civil Procedure Code operates as a bar to the maintenance of the action for ejectment.

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

S. Sharvananda, for plantiff-appellant.

D. R. P. Goonetilleke, for defendant-respondent.

Cur. adv. vult.

June 10, 1960. PULLE, J.—

This is an appeal by a landlord from a decree dismissing an action instituted by him to have his tenant ejected from premises No. 146, Dam Street, Colombo, and to recover damages. The tenant resisted the claim on various grounds of which one was that in a previous action, D. C. Colombo case No. 42400 (M), for the recovery of rent the landlord had failed to include a claim for ejectment and that, therefore, section 34 (1) of the Civil Procedure Code operated as a bar to maintaining the action. The learned Commissioner of Requests tried two preliminary issues in regard to the effect of section 34 and, having answered them in favour of the tenant, he dismissed the action with costs.

In D. C. Colombo case No. 42400 (M) which was filed on 26th October, 1957, the landlord pleaded a contract of tenancy and the fact that the tenant had failed to pay Rs. 710 as rent for the eight months from 1st February to 30th September, 1957, and prayed for judgment for that amount. The tenant did not contest the claim and on 20th December, 1957, a decree was entered against him. The plaint in the present action was filed on 29th October, 1957. It stated that the tenant had failed " to pay the rent due for the month of February, 1957, and thereafter and is in arrears of rent for more than one month after the same had become due as contemplated in section 13 (1) (a) of the Rent Restriction Act, No. 29 of 1948". It further stated that D. C. Colombo case No. 42400 (M) had been filed for the recovery of Rs. 710 as rent for the period in question and that on 30th March, 1957, the

landlord gave notice to the tenant to quit the premises on 30th April next because he was in arrears of rent. The notice would have been of no effect in law had the tenant not been in arrears of rent.

The submission on behalf of the landlord is that section 34 (1) of the Code has no application because the claim for rent and the claim for ejectment were based on distinct causes of action. Reliance was placed on the case of *Subraya Chetti and another v. Rathnavelu Chetti*[1] in which on a tenancy agreement two actions were brought. The first was for possession of the house which was the subject-matter of the agreement. The landlord obtained a decree for possession. Thereafter he instituted a suit for rent and it was held that the section of the Indian code corresponding to section 34 did not bar this suit. The reason for the decision is expressed as follows :—

> "The cause of action for any portion of the rent is complete when that part of the rent is due and is unpaid ; the cause of action for recovery of the property does not arise until the tenancy is determined, —the one is founded on the obligation to pay for the occupation of the premises, the other on an obligation to withdraw from occupation. The whole claim which the plaintiff is entitled to make in respect of the latter cause of action seems to be a claim to be put in possession of the property. He is entitled, no doubt, to join in the same action for rent and damages (section 44 (*a*) and (*b*)), but those claims are parts of separate causes of action and are not parts of the claim in respect of the cause of action for recovery of possession. They are unconnected with the obligation to surrender."

With all respect I do not find myself able to adopt this interpretation. In each case the landlord had to plead a breach of the tenancy agreement and chose to file separate actions for separate breaches of the agreement. If this reasoning is correct I do not see why a landlord to whom rent is payable monthly should not be allowed, after arrears have accumulated, to file as many actions as there were months at the end of each of which the payment of rent fell due. Yet the case cited takes the view that that would not be permissible because the cause of action would be "non-payment of rent". On this point I prefer the reasoning in *Vanderpoorten v. Peiris*[2] in which the identity of causes of action in two separate suits was judged by the fact that the claims stemmed from breaches of covenants in a lease. It would indeed be oppressive to a party to a single contract, against whom breaches of its terms are alleged at any given time, to be vexed with a multiplicity of cases. Although learned counsel for the landlord cited in support of his argument the case of *Kasinath Ramachandra v. Nathoo Keshaw*[3] the judgment in that case appears to favour the view which I have formed.

[1] *I. L. R. 32 Madras 330.*

[2] *(1938) 39 N. L. R. 5.*

[3] *A. I. R. 1914 Bombay 130.*

Strong reliance was also placed on the case of *Brunsden v. Humphrey*[1] in which it was held that a single act of negligence causing damage to plaintiff's cab and injury to his person gave rise to two distinct causes of action. The judgment of the Court of Appeal reveals sharp differences of opinion on the point. The basis of the decision was that the plaintiff had suffered injury in respect of two absolute and independent rights, namely, absolute right for security for his person and an absolute right to the enjoyment of his goods and that " the same evidence would not have supported an action for trespass to the person and an action for the trespass to the goods". I am certainly not prepared on the authority of this case to hold that substantially different evidence was needed to support the respective claims made in the District Court and in the case under appeal. The provisions of the Rent Restriction Act, No. 29 of 1948, are applicable to the premises in question. It was essential to obtaining relief in either case for the landlord to prove that the tenant was in arrears of rent, with this difference that in one case the quantum had to be proved and in the other the period during which the tenant had failed to pay rent when it became due. On the averments in the plaint filed in the District Court, judgment for ejectment, had it been claimed, would have followed automatically on the claim for rent being established. Having intentionally relinquished his claim to ejectment, the landlord should not be allowed to pursue that in separate proceedings. In my opinion the appeal fails and should be dismissed with costs.

Appeal dismissed.