1952 *Present :* **Swan J.**

JUHAR *et al.*, Appellants, *and* RAMANATHAN, Respondent

S. C. 41—C. R. Trincomalee, 9,283

Landlord and tenant—Action for ejectment and damages—Joinder of tenant and sub-tenant—Propriety of such joinder—Civil Procedure Code, s. 14.

When a contract of monthly tenancy has been determined by due notice to quit, a sub-tenant may be joined with the tenant in an action instituted by the landlord for ejectment and damages.

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

H. W. Tambiah, for the defendant appellants.

E. R. S. R. Coomaraswamy, for the plaintiff respondent.

Cur. adv. vult.

June 5, 1952. SWAN J.—

The plaintiff brought this action against the two defendants to have them ejected from premises bearing assessment No. 304, Division No. 3, Trincomalee, and to recover from them, jointly and severally, damages at the rate of Rs. 22/39 per mensem from 1st August, 1951, and costs of action. It was averred in the plaint that the plaintiff had purchased the premises in question on May 18, 1951, for his own occupation, and that he had on May 26, 1951, duly informed the 1st defendant of his purchase, and that, in the same letter, he required the 1st defendant to pay rent to him as from June 1, 1951, and to vacate the premises on or before July 31, 1951. It was further stated in the plaint that the 1st defendant had acknowledged the plaintiff as his landlord and paid him rent till July 31, 1951, but had failed to vacate the premises as he was required to do by the notice dated May 26, 1951. It was also alleged in the plaint that the 1st defendant had sub-let the premises to the 2nd defendant who was in occupation of the premises, and that the 2nd defendant was made a party to the action because he was in such occupation.

[1] *(1932) 1 C. L. W. 343.*
[2] *(1936) 1 C. L. J Notes 49*
[3] *(1914) 2 C. A. R. 49.*
[4] *(1922) 1 Times 47.*
[5] *(1910) 3 S. C. D. 80.*

The defendants filed a joint answer in which they admitted that the plaintiff was the owner of the premises but stated that they could not admit or deny that he had purchased them for his own use and occupation. They put the plaintiff to the proof of the fact that he required the premises for his use and occupation, and also put him to the proof of the fact that the 1st defendant had sub-let the premises to the 2nd defendant. The 1st defendant alleged that he was not in arrears of rent and hence had not quitted the premises. The notice to quit was expressly denied.

The parties went to trial on the following issues:—

(1) Are the premises in question reasonably required by the plaintiff for his own use and occupation ?

(2) (*a*) Is the first defendant in occupation of the premises ? or
(*b*) has he sub-let the said premises to the 2nd defendant or any other person ?

(3) If either issue 2 (*a*) or 2 (*b*) is answered in favour of the plaintiff are the defendants liable to be ejected from the premises ?

(4) Is there a misjoinder of parties inasmuch as there is no privity of contract between the plaintiff and the 2nd defendant ?

The learned Commissioner answered all these issues in the plaintiff's favour and gave him judgment as prayed for with costs. The only point urged by Counsel for the appellant was the issue of misjoinder. Mr. Tambiah contends that there was a misjoinder of parties and causes of action, and that the entire action should have been dismissed. But the objection taken at the trial was only as to misjoinder of defendants. In the circumstances I am not prepared to agree to Counsel's submission that if, in point of fact, there was a misjoinder of parties and causes of action this Court must dismiss the plaintiff's action against both defendants. Where a plea of misjoinder of defendants and causes of action is taken it must be tried as a preliminary issue ; and the Court should, if it finds against the plaintiff, give him an opportunity of electing against which defendant or defendants he should proceed. But in this case I cannot see that there is a misjoinder of causes of action ; so that the only question I have to decide is whether the 2nd defendant could have been made a party to the action.

In the case of *Kudoos Bhai v. Visvalingam* [1] my brother Nagalingam, siting alone, held that the joinder of the sub-tenant in an action by the landlord against his tenant was improper but that the sub-tenant was bound by a decree in ejectment against the tenant, and that, if the sub-tenant refused to quit, the landlord could take proceedings against him under Section 325 of the Civil Procedure Code. This view of my learned brother, namely, that the sub-tenant was bound by the decree, was in conflict with the judgment of de Kretser J. (with whom Soertsz J. agreed) in the case of *Siripina v. Ekanaike* [2]. There it was held that where a lessor had obtained a decreee for possession against a lessee he was not entitled to invoke the provisions of Sections 325 and 326 of the Civil Procedure Code against a sub-lessee holding with the

[1] *(1948) 50 N. L. R. 59.* [2] *(1944) 45 N. L. R. 403.*

consent of the lessor or his representative. But my learned brother thought that the dictum of de Kretser J. on this point was obiter. This question was considered by Gratiaen and Gunasekara JJ. in the case of *Justin Fernando v. Abdul Rahaman* [1] and they held that a sub-tenant was not bound by the decree entered against the tenant unless he was joined as a party to the proceedings. Gratiaen J. at the end of his judgment, summarizing his conclusions, stated, *inter alia*, that after the tenant's rights had been extinguished to the knowledge of the sub-tenant the landlord, *qua* owner, was entitled to sue the overholding sub-tenant, *qua* trespasser, for ejectment. He added that in that particular case it was not necessary to decide whether in such an action the overholding sub-tenant and the tenant whose rights had been extinguished could properly be joined as co-defendants in the same proceedings. In the course of the judgment however, he stated, " As at present advised I am not satisfied that the landlord cannot obtain a decree for ejectment against the overholding sub-tenant in an action in which the tenant is also joined, in order to achieve finality in the litigation . . . . It is by no means clear that our Code of Civil Procedure regarding the joinder of defendants and causes of action prohibits an action so constituted, provided that a cause of action against only a single defendant is not combined with a cause of action against both. I refrain, however, from expressing any *obiter dictum* on this point which might cause embarrassment when the question is raised specifically."

In my opinion the cause of action against both the defendants in this case is one and the same. " *Cause of action* " is defined in the Code as " the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury." The plaintiff is in this action seeking to have the defendants ejected from the premises in question, the 1st defendant because he has no right to remain in occupation after his tenancy was determined by notice to quit, the 2nd defendant because he has no right to remain in occupation once he became aware that the 1st defendant's rights were extinguished. The relief which the plaintiff is claiming against the two defendants is identical—namely, to have them ejected and to claim damages jointly and severally from them as from the date of expiry of the notice to quit.

If the cause of action against both defendants is the same there can be no question that they can be sued together in the same action because Section 14 of the Civil Procedure Code provides that " all persons may be joined as defendants in whom the right to any relief is alleged to exist whether jointly, severally, or in the alternative in respect of the same cause of action."

I dismiss the appeal with costs.

Appeal dismissed.

[1] *(1951) 52 N. L. R. 462.*