1956 *Present :* Pulle, J., and Sansoni, J.

D. F. ABEYEWARDENA, Appellant, *and*
REV. SIRI NIVASA *et al.*, Respondents.

S. C. 301—D. C. Matara, 22,666/M

*Delict—Landlord and tenant—Wrongful dispossession of tenant by landlord—*Injuria—*Landlord's liability to pay damages.*

A landlord is not entitled to take possession of the rented premises unless the tenant has vacated them or surrendered possession of them. The fact that the tenant agreed to quit the premises is not material if the landlord knows that, in spite of the agreement, the tenant intends to remain in occupation of the premises.

Wrongful dispossession of the tenant by the landlord constitutes an *injuria* involving *contumelia*.

APPEAL from a judgment of the District Court, Matara.

Sir Lalita Rajapakse, Q.C., with *T. B. Dissanayake*, for the plaintiff appellant.

N. E. Weerasuria, Q.C., with *M L. S. Jayasekera*, for the 1st defendant respondent.

M. L. S. Jayasekera, for the 2nd defendant respondent.

Cur. adv. vult.

May 10, 1956. SANSONI, J.—

The plaintiff in this action was carrying on the business of a Forwarding Agent at premises Nos. 1011 and 1012, Kadevidiya, Matara. He was a tenant of those premises, first under one Wickremesinghe and later under the second defendant. He had admittedly been paying rent to the second defendant, and it is not in dispute that he was in occupation of the premises on 31st March, 1951. The first defendant is a Buddhist priest and the Principal of a Pirivena which stands on the adjoining premises. The second defendant, as one of the chief Dayakayas of the Pirivena, purchased Nos. 1011 and 1012 in trust for the Pirivena in August 1949. The plaintiff had also been residing in the premises in question but he ceased to reside there from early March, 1951. He claimed that he continued in occupation of the premises for the purposes of his business.

This action was filed in January, 1952 against both defendants on five causes of action. On the first cause of action, the plaintiff complained that on or about 1st April, 1951, while he was still a tenant and in occupation of the premises, the defendants entered the premises and unlawfully dispossessed him. He estimated his damages at Rs. 2,400 on this cause of action. On the second cause of action, he complained that the defendants after such entry removed and converted to their use motor accessories and spare parts belonging to him worth Rs. 5,000 ; he claimed this sum and a further sum of Rs. 1,000 as consequential damages. On the third cause of action, he complained that the defendants converted to their own use the engine and other valuable parts of a lorry No. CE 576 belonging to him, which was in the said premises ; on this cause of action he claimed the return of the lorry or its value, Rs. 15,000, and damages at the rate of Rs. 500 per mensem from 1st April, 1951. It is not necessary to refer to the other two causes of action because the matters arising under them were adjusted at the beginning of the trial.

The defendants filed separate answers, but their common defence was that they took possession of the premises on behalf of the Pirivena on 1st April, 1951, on the expiration of the plaintiff's tenancy and after the plaintiff had vacated these premises. They further stated in their answers that when the plaintiff vacated the premises he failed to remove lorry No. CE 576, although he was requested to do so ; and they denied that any damages were payable by them. The first defendant claimed in reconvention a sum of Rs. 15,000 as damages sustained by him by reason of the plaintiff having initiated a false and malicious prosecution against him in Case No. 22995 of the Magistrate's Court of Matara.

After trial, the learned District Judge dismissed the plaintiff's action save in respect of a sum of Rs. 67·50. This amount had been brought into Court by the defendants on the fifth cause of action, and the parties had agreed that it should be drawn out of Court by the plaintiff. The first defendant's claim in reconvention was also dismissed and the plaintiff was ordered to pay the defendants half their costs. The learned Judge took the view that the defendants lawfully took possession of the premises on 1st April, 1951, on the termination of the plaintiff's tenancy.

He appears to have taken the view that the plaintiff had agreed to quit the premises on 31st March, 1951. He does not, however, find that the plaintiff had vacated the premises or surrendered possession of them in any way to the defendants.

On the evidence placed before him I do not see how the learned Judge could have held in favour of the defendants on the first cause of action. It has been proved that on 1st April, 1951, one Wijenaike, a retired Postmaster who had also been associated with the plaintiff in business previously, went to the premises to have them cleaned. He was there till 1 p.m. supervising the cleaning, which was not completed. He then locked the doors of the building and went home to lunch, taking the door keys with him. About an hour later, on receiving certain information, Wijenaike went near those premises. He found the main gate locked, although he had not locked that gate when he left the premises at 1 p.m. He saw several priests on the verandah and two lorries belonging to the plaintiff in the garage. He went to the Police Station and complained to the Police at 3.15 p.m. The plaintiff had gone to Deniyaya that day. On his return that night Wijenaike informed him of what had happened, and both of them went to the Headman of Kadevidiya and the plaintiff complained to him.

Now, it is not disputed that the second defendant took possession of these premises on 1st April, 1951, through his nephew Dharmasena who went into occupation on that day. The first defendant admits that possession was taken on his own behalf also. Both defendants are therefore jointly liable for the entry. As I said earlier, they sought to justify their action in going into possession on the ground that the plaintiff had earlier agreed to quit the premises on 1st April, 1951, but such agreement, even if proved, does not justify their action. The learned judge seems to have been greatly influenced by the view he took that Wijenaike had cleaned these premises on behalf of the plaintiff for the benefit of the defendants. I think the opposite conclusion may as easily have been drawn from the fact that the defendants were admittedly anxious to move into these premises for the purpose of extending the Pirivena. With great respect, I am unable to take the same view as the learned judge. Is it of no significance that there were two lorries belonging to the plaintiff standing in the garage at the time the defendants took possession, one of these lorries being fully laden with vegetables which were to be transported to Colombo? Surely this circumstance must have satisfied any reasonable person that the plaintiff had not taken the necessary steps to give up possession, and had no intention of doing so on that day. The keys of the building were not surrendered either, nor does any request appear to have been made for them. The invasion seems to have been well-timed to coincide with Wijenaike's temporary absence from the premises. I would therefore reverse the finding of the learned judge in regard to the first cause of the action and hold that the defendants unlawfully dispossessed the plaintiff of these premises.

As to the damages which the plaintiff should be awarded on this cause of action, he has not proved that he suffered special damages Under

cross-examination on this point he stated that he was claiming Rs. 2,400 as damages for the discontinuance of his business, on the basis of the previous year's income from his lorry No. CE 576 which did not ply on the road after 1st April, 1951. Here the plaintiff seems to have been mixing up his claim on the first cause of action with his claim on the third cause of action, for the latter deals with the loss he incurred by having been deprived of the use of lorry No. CE 576. At the same time, there is no doubt that the plaintiff has suffered a wrong because he was illegally dispossessed of these premises by the defendants ; he is entitled to some damages on that account. The wrongful dispossession of the plaintiff by the defendants constituted an *injuria* involving *contumelia*, for I am satisfied that the defendants well knew that the plaintiff intended to remain in occupation of these premises, in spite of an alleged agreement to quit by 1st April, 1951. I would award the plaintiff a sum of Rs. 1,000.

On the second cause of action the plaintiff claimed the value of motor accessories and spare parts according to amounts which he said were entered in his account books. It was suggested to him, for the defence, that all accessories, spare parts and account books had been removed by him previously to other premises where he has already residing. He insisted, however, that all his account books were still on the premises in dispute on 1st April, 1951. If that were so, it is strange that when he made his complaint to the Headman he made no reference whatever to these books. The learned judge points out in his judgment that in the Magistrate's Court too the plaintiff made no reference to his books of account, and the first reference ever made to them was on 5th June, 1953, when a notice was sent to the defendants to produce the books at the trial of this action.

After a consideration of the evidence I find it clearly proved that the defendants were always willing, from the time they went into occupation of these premises, to allow the plaintiff to remove all articles belonging to him of whatever nature. The Headman made this quite plain in his evidence, for he said that when he spoke to the second defendant's nephew, Dharmasena, and asked that the lorries be released, Dharmasena was quite willing that they should be removed. He added that Dharmasena was prepared to allow the plaintiff to remove any goods that were in the garage. Although the lorry laden with goods was removed, the other lorry CE 576 was not. The Headman stated that he waited for somebody to come and remove that other lorry but nobody came for that purpose. The plaintiff suggested in evidence that lorry CE 576 could not be removed because the tyres had been taken off the wheels, but he did not claim to have seen that himself; he was speaking to some information which his driver is alleged to have conveyed to him, but that driver has not been called as a witness. He later added that it was only on 4th April, 1951, that he was informed that the tyres had been removed, and that until then he had not sent anybody to remove that lorry. It seems obvious that the claim made in regard to the spare parts and accessories is on as shaky a foundation as the claim in regard to the lorry CE 576.

The learned judge rejected the claim on the second and third causes of action because he was not satisfied that the defendants had converted either the lorry or the spare parts and accessories to their own use. I think the plaintiff has entirely failed to prove that the spare parts and accessories described in the schedule to the plaint were on these premises, and it also seems to me that, for reasons best known to himself, the plaintiff deliberately chose not to remove lorry CE 576, although he had every opportunity to do so.

In the result the plaintiff has failed on the major part of his claim. This action was brought to recover a total sum of Rs. 29,967·50 and continuing damages at Rs. 500 a month. The plaintiff has succeeded to the extent of only a sum of Rs. 1,000 and I therefore think that the order of the learned judge as to costs in the lower Court should stand. I would vary the decree under appeal and give judgment for the plaintiff in the sum of Rs. 1,000 plus Rs. 67·50, totalling Rs. 1,067·50, but the plaintiff will pay the defendants half their costs in the District Court. Each party will bear his own costs in this Court.

PULLE, J.—I agree.

Decree varied.