JAMAICA

IN THE COURT OF APPEAL

R.M. COURT CIVIL APPEAL NO. 18/78

BEFORE: THE HON. MR. JUSTICE ZACCA, J.A.
THE HON. MR. JUSTICE MELVILLE, J.A.
THE HON. MR. JUSTICE CARBERRY, J.A.

BETWEEN: VICTOR ROMANS - PLAINTIFF/APPELLANT

A N D : BRADLEY BARRETT - DEFENDANT/RESPONDENT

Mr. P.C. King for Plaintiff/Appellant
Dr. Lloyd Barnett for Defendant/Respondent.

May 24, 1978; April 27, 1979

CARBERRY, J.A.

On the 22nd of August, 1977, the Plaintiff/Appellant filed in the Resident Magistrate's Court for St. James, holden at Montego Bay, two plaints, Numbers 1099 and 1106 of 1977: in the first he claimed from the Defendant/Respondent three months' rent, for the months March, April and May 1977 at the rate of $160.00 per month, i.e. a total of $480.00; while in the second he claimed from the Defendant/Respondent two months' rent, for the months of June and July 1977 at the rate of $160.00 per month, i.e. a total of $320.00.

Both claims related to the same premises, a three bedroom house at Lot 314, Porto Bello, in the parish of St. James. The two claims together totalled $800.00, a sum in excess of the normal jurisdiction of the Resident Magistrate's Courts, which is fixed at $600.00 by Section 71 of the Judicature (Resident Magistrates) Act. This was not a case in which both parties had agreed to give jurisdiction to the Resident Magistrate's Court under Section 72 of the Act, nor was it a case in which the Plaintiff offered to abandon the excess of his claim over $600.00 under Section 73 of the Act.

On the two cases coming up for trial before His Honour Mr. D.O. Bingham, Resident Magistrate for St. James, sitting at Montego Bay on the 2nd. February, 1978, they were taken together, and the counsel for the Defendant/Tenant took the point that the Plaintiff/Landlord was dividing his cause of action for the purpose of bringing two suits in the said Court, and was in breach of Section 73 of the Act: he argued that the Magistrate had no jurisdiction. In reply counsel for the Plaintiff asserted that each month's rent represented a cause of action, and that provided that the rent due for the individual month did not exceed the jurisdiction of the Court, there was nothing wrong with what had been done, and that the Plaintiff was not in breach of Section 73.

The Plaintiff's counsel also observed that the Plaintiff could have brought an action for each month's rent, as it fell due and remained unpaid, and that there was no reason why the Plaintiff should not have joined three months' and two months' rental claims as he had done. Defendant's counsel replied that, assuming the Plaintiff's claims well founded - which was denied, - at the time the plaints were filed five months' rent was due, that this was one cause of action for arrears of rent which had been divided for the purpose of suing in the Resident Magistrate's Court, in breach of Section 73.

The point of jurisdiction was not decided at the first day's hearing: evidence was led on behalf of the Plaintiff on the 2nd February, and continued on the 14th February. At the end of the Plaintiff's case the Defendant/Tenant's counsel renewed his argument, the Plaintiff's counsel replied, and without calling upon the Defendant to elect whether he was standing on his submissions, or upon the Plaintiff to say whether he wished to abandon the excess,

the Learned Resident Magistrate decided that he had no jurisdiction in view of Section 73 of the Act, and struck out both claims, with costs to the Defendant to be agreed or taxed.

On neither day of trial did either counsel cite authority, save that counsel for the Defendant referred to Bertie Henry v Samuel Lee (1975) 13 J.L.R. 76 a case which, though on the section, was not relevant: it decided that a claim against an Insurance Company to recover from them damages that had been assessed against a Defendant in a negligence action enjoyed the extended jurisdiction given by Section 71 of the Statute to Negligence actions, viz. $1,000.00 instead of the general limit of $600.00.

The Learned Resident Magistrate in his reasons for judgment does not refer to any authority either. He was content to say:-

> "I was of opinion that the two plaints for rental due from March to July, 1977, being one continuous period gave rise to one cause of action for arrears of rent at the time when the Plaintiff elected to pursue his remedy, and not several causes of action for rental which could, as Mr. King comtends, be held in abeyance until the Plaintiff chose conveniently to split them up as he now has done. At the date of the filing of the plaints the amount due for arrears of rental was the sum total of $800.00 which was in excess of the jurisdiction for claims of that nature.
>
> I came to the conclusion that to allow a Plaintiff to split up what was in effect one cause of action into two or more plaints would result in a clear injustice to a Defendant in that the Defendant would if the claims succeeded be punished by having to pay two sets of costs. Section 73 seeks in effect to prevent this sort of practice taking place.* I therefore held that I had no jurisdiction and struck out the claims on that basis and awarded costs to the Defendant to be taxed or agreed."

Before commencing to deal with the judgment and the arguments advanced before us on appeal, one may be pardoned for noting that the efforts to avoid "a clear injustice to a Defendant" who might be "punished by having to pay two sets of costs" have resulted in: (a) the Plaintiff failing to recover any rent whatever, (though it is clearly due), and (b) having himself to pay two sets of costs to the Defendant, who has thus not only enjoyed a rent free period in the Plaintiff's house, but has made him pay for his temerity in bringing these two plaints in respects of the same. This would I think strike the lay man as being perhaps even more unjust, especially if he were told that the Court has a discretion as to costs, to be exercised judicially it is true. It should however be said at the outset that the point at issue is a difficult one, it has caused a division of judicial opinion, there are no local authorities on the point, and only the most prolonged and careful examination of the authorities in the United Kingdom have eventually resulted in a clear view on the merits of the argument: was this a case of one cause of action or of several?

Before turning to the law on that matter, something should be said of the facts that emerged from the evidence taken.

The Plaintiff/Landlord lives in Kingston. On the 15th June, 1976, he entered into a written "Tenancy Agreement" by which he rented the premises, a three bedroom house on Lot 314 Porto Bello to the Defendant/Tenant. It was a monthly tenancy, to commence on the 1st July, 1976, terminable by a month's notice on either side. The rental of $160.00 per month was payable on the first day of every month in advance, and the tenancy was to commence on the 1st day of July, 1976.

The landlord was to pay taxes, and rates and insurance, (tenant to pay the monthly water rates bill). The tenant covenanted to keep the premises in repair, and "to pay the rent at the times and in the manner herein before provided, and should the said rent be in arrear for fourteen (14) days after the time appointed for payment..... then the landlord (or) his agent shall have the right to cancel this agreement (and) to enter and retake possession without any notice or demand ....."

Up to November, 1976, the rent was duly paid. The tenant fell into arrear, and the only other payment made was $320.00 covering two months, paid in Fenruary, 1977. That amount would have covered the rent for December 1976 and January 1977 (or January and February?: the landlord has sued for rent due from March 1977).

Apparently the Plaintiff left the premises at the end of March 1977, but did not surrender them: he left a relative in possession. Plaintiff claimed he did not get the keys back till sometime in July 1977. When he taxed the Defendant about them he was told the keys had been kept to effect repairs and repainting, and tenant promised to pay the rent. He never did pay the rent, though it seems the repainting was done. The Plaintiff's agent confirmed the evidence above and denied a suggestion that the keys were handed back in May 1977, but returned later to enable the Defendant to do the painting. On the basis of the cross-examination it appears that the Defendant was at least admitting owing rent to May, and possibly June, as it was not suggested he gave a month's notice in May, and that as to the rest he was claining to paint the premises in terms of his covenant on the landlord's time and not his own. As noted before the tenant gave no evidence.

Section 73 of The Judicature (Resident Magistrates) Act, reads thus:-

> "73. It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts; but any plaintiff having a cause of action for more than six hundred dollars, for which a plaint might be lodged under this Act, if such cause of action had been for not more than six hundred dollars, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding six hundred dollars, and the judgment of the Court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly; and the plaintiff shall in all cases be held to have abandoned any remaining portion of any debt, demand, or penalty beyond the sum actually sued for in the plaint."

At first glance it does appear that the Plaintiff/Landlord has done exactly what the section is aimed at preventing, in that having a claim against the tenant for arrears of rent amounting to $800.00, he has divided it into two or more suits within the $600.00 limit so as to bring both actions in the Resident Magistrate's Court and so presumably to get a cheaper, quicker and easier remedy than was to be had by filing his action in the Supreme Court, even if he used Order 14 procedure.

However the section does not speak of dividing a claim, but dividing a cause of action, and it is to this concept that attention must be directed.

This section coupled with Section 71 in the Judicature (Resident Magistrates) Act has not only appeared in several successive local statutes, it has been a feature of the English statute law dealing with County Courts for at least a hundred years, and before that was to be found in several statutes setting up local courts of limited jurisdiction. The scheme is the same: a limited local jurisdiction is established, and there are provisions forbidding the "division of any cause of action for the purpose of bringing two or more actions in one or more of the

county courts": coupled with provisions allowing the Plaintiff to abandon any excess over the limit of the jurisdiction. While providing that the judgment so obtained is to be a bar to suing for that excess in the future: it is to be "in full discharge of all demands". See for example Sections 40, 42 and 67 of the County Courts Act, 1934: (Halsbury's Statutes, 2nd Edition Vol. 5, County Courts); Sections 39, 41, and 69 of the County Courts Act, 1959: (Vol. 39 Halsbury's Statutes, Continuation Volume 1959); (Vol. 7, 3rd Edition Halsbury's Statutes: County Courts). I have carefully studied all the cases that have been cited in the several volumes of Halsbury's Statutes dealing with these corresponding sections in the County Courts Acts, and reference can also be made to Halsbury's Laws of England, 3rd Edition Vol. 9: County Courts, pages 147 - 152 Jurisdiction in general and especially page 152 para. 299: Division of cause of action; Halsbury's Laws of England 4th Edition Vol. 10: County Courts, paragraphs 70 et seq (Ordinary Original jurisdiction), paragraphs 78 and 79 (Abandonment of part of claim to give jurisdiction) and paragraph 80 (Division of cause of action). See also the County Court Practice 1976 pages 33 et seq., and particularly at page 75 which deals with Section 69 of the County Courts Act, 1959.

To anticipate the review of the cases three things emerge:-

(a) That so far as landlord and tenant and the instant problem are concerned, not only is there no Jamaican case on the matter, but there are no English cases either, save for one that touches the fringes of the matter but does not decide it (Wickham v Lee (1848) 12 Q.B. 521; 18 L.J. Q.B. 21) and another on an analogous situation, but the report is not available in our library, (Rentit Ltd. v Oaten (1938) L.J. News. C.C.R 137).

(b) Of greater importance is that a study of these cases show that the principle at stake is far more fundamental and far more basic than the statutory provisions in the County Court Acts or the Resident Magistrate's Court Acts: the Acts merely

recognize and give effect to the principle in a particular context, that of a local court of limited jurisdiction. Simply and non technically put, the Plaintiff must bring forward all of his case at one time. This principle flows from the basic nature of the common law: that cases are conducted on a contest theory of litigation. The principle involved finds expression in a multiplicity of fields in the common law, for example in the field of damages, the field of evidence, the field of estoppel per res judicata, and the field of limitation of actions.

(c) Finally, a study of the law of landlord and tenant, shows that the reason why this principle has only a limited application in that field, is that it has been clear from the inception and the growth of the common law, that each period's rent, be it monthly, quarterly, or yearly, represents at common law a self contained cause of action, that may be sued for separately, and at will may be joined with other such periods; and further that the common law alternative to an action for rent, the ancient remedy of distress for rent, has also been always based on that principle: periods of rent that are in arrear may be distrained for separately, or jointly, at the will of the landlord. It is hardly surprising when these Landlord and Tenant cases are examined that one should find that so far as the County Courts and the dividing of causes of action in them is concerned, the problem we are here concerned with has never really surfaced, because each period's rent is a cause of action, and while landlords may wish to recover rent for more than one such period in a single peoceeding (as in this case), this is apparently the first case in which a tenant has ever challenged a landlord's action for arrears of rent on the score that he is "dividing his cause of action.

Dealing wirst with the general principle behind the rule that a Plaintiff must not "divide his cause of action" I look first at the great common law remedy, the action for damages. As Fleming observes in his book, "The Law of Torts" 4th Edition at page 201: -

> "The only form of compensation known to the common law is a lump sum award, in contrast for example to the German system of quarterly pensions (based on the theory of the equivalence of losses incurred from day to day) and our own social welfare schemes, including workmen's compensation, which provide periodical payments during the period of incapacity or need.* As a corollary, the plaintiff must sue in one action for all his loss: past, present and future. He may neither split his cause of action by suing separately for different heads of damage nor resist his damages being assessed once and for

> all. Thus no subsequent action may be brought either to increase or decrease the award, if the loss turns out to be greater or less than expected at the time of trial....."

Halsbury's Laws of England, expresses the same idea in words that remain identical in both the 3rd. Edition Vol. 11 Damages, at page 277 paragraph 395 and paragraph 396: "Damages assessed once and for all" and "Continuing damages"; and the 4th Edition Vol. 12, Damages, paragraphs 1134 and 1135 with the same headings. I quote from the 4th Ed.

> "1134. Damages assessed once and for all. The damages that result from one and the same cause of action must be assessed and recovered once and for all, and the Plaintiff must sue in one action for all his loss, past, present and future, certain and contingent.....
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> ..... A second action can be brought in respect of a separate cause of action, as for example where a person, owing to negligence, suffers loss to his property and also personal injuries. These are two separate causes of action and a separate action lies in respect of each....."
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> Paragraph 1135, "Continuing damages" goes on to distinguish from the general rule set out above cases of a continuing cause of action, "namely, a cause of action which arises from the repetition or continuance of acts or omissions of the same kind as that for which the action has been brought."

It is clear that the exception being made deals not only with "continuing" causes of action, but also with "recurrent" causes of action. In other words not only are cases where the wrong or cause of action continues from day to day exceptions to the general rule, (as in continuing trespass where an action lies not only for the original trespass, for example by wrongfully building on the Plaintiff's land, but for allowing it to remain thereon until it is finally removed: Holmes v Wilson (1839) 10 Ad & Ell 503; 113 E.R. 190) but so also are cases where the wrong or cause of action is re-current, as in the

well-known House of Lords case, Darley Main Colliery Co. v Mitchell (1886) 11 App. Case 127. In that case the House decided that subsidence cause by an excavation made by the Defendant under the Plaintiff's land was actionable on each subsequent occasion when subsidence occurred, and was an exception to the general rule that to prevent multiplicity of actions, damages resulting from one and the same cause of action must be assessed and recovered once and for all. This result was arrived at by finding that each subsidence was in itself a separate cause of action, though clearly each was due to the original act of the Defendant. See also Battishill v Reed (1856) 18 C.B. 696 (continuing nuisance) and Konskier v Goodman (1928) 1 K.B. 421 (continuing trespass by deposit of rubbish on Plaintiff's roof).

Attorney General v Arthur Ryan Automobiles Ltd. (1938) 2 K.B. 16 is an interesting example of a recurrent cause of action: there the Plaintiff, an employer who was liable to make periodic payments under the Workmen's Compensation law to an employee, was held entitled (subject to proof of the Defendant's negligence) to bring periodic actions to recover from the Defendant on a statutory indemnity amounts paid out from time to time to the employee. As Slesser L.J. remarked at page 21:-

> "But the actual claim arises only when the payment is made in fact; and each payment gives rise to a separate right of action, which will succeed or will not succeed according to whether the conditions laid down in the section are or are not satisfied....."

The Defendant who had satisfied the first claim for indemnity made against him had argued that no further claim could be made, and urged that the Plaintiff was barred by res judicata in the first action, he should have brought forward all of his claim on that occasion, and could not sue again later on what he contended was the same cause of action.

The Court of Appeal rejected the argument. Farwell J. in his judgment at page 24 observed:-

> "Once one comes to the conclusion to which I have come, that there is no cause of action in a case of this kind until a payment is made, it necessarily follows that on each payment being made a fresh cause of action arises."

It appears to me that the same reasoning applies to the case of the recurrent liability for rent No one can tell with certainty how long a tenancy will last, (though it may be for a fixed term it may be sooner determined), and in case of breach by non payment of rent the Plaintiff could not be asked to calculate his damages on a once and for all basis covering past, present and future. What the Plaintiff may do is to sue for his rent as and when it becomes due: and as we shall see, each payment as it falls due constitutes a separate cause of action.

The result then is that even in the field of damages, the basic common law remedy, the common law while insisting that Plaintiff must bring forward all of his case at one time, and that damages must be assessed on a once and for all basis, recognizes some clear exceptions, notably the case of the continuing or recurrent cause of action.

The principle that we are discussing also finds expression in the field of evidence. A party must bring forward all his evidence at once, and not wait to see how much is necessary and then apply to call additional evidence to meet his adversary's case: applications for leave to call further evidence are the subject of strict and stringent rules: See In re New York Stock Exchange: (1888) 39 Ch. D. 415 at 420; Leeder v Ellis (1952) 2 A.E.R. 814, and see generally the White Book, Order 59 Rule 10. But even here the justice of the case may demand the admission of further evidence.

The principle finds perhaps its most striking exemplification in the rules dealing with res judicata and also the limitation of actions. As regards the latter, time runs as from the time at which the cause of action accrues, i.e. the time at which the Plaintiff could first have sued on the cause of action: when the prescribed period has passed, then, subject to certain exceptions such as disability, concealed fraud and the like, the Plaintiff is barred from further proceeding with that cause of action. This makes it necessary to discover what is the cause of action, and when did it first accrue: once again, as we shall see in looking at the landlord and tenant cases, the basic rule is subject to exceptions or qualifications made in the case of recurrent obligations. As to the doctrine of res judicata, here too the principle applies, and is often expressed in two latin maxims: "interest reipublicae ut sit finis litium" (the community as a whole has an interest in seeing that litigation is brought to an end) and "nemo debet bis vexari pro una et eadem causa" (no one should be sued twice in respect of the same cause of action). Acting on the premise that a Plaintiff must bring forward all of his case at one time, once a decision has been taken on a particular "cause of action" then it may not be litigated again between the same parties. But the question will arise: "is it the same cause of action?" See for example Seddon v Tutop (1796) 6 T.R. 607; 101 E.R. 729, where the Plaintiff was able to show that the cause of action in his second suit was different to that on which he had recovered judgment in the first suit. That the principle of res judicata can apply to cases between landlord and tenant is clear from cases such as Howlett v Tarte (1861) 10 C.B. N.S. 813; 142 E.R. 673; Humphries v Hunphries (1910) 2 K.B. 531; Cooke v Rickman

(1911) 2 K.B. 1125; and our Dixon v Francis (1955) 7 J.L.R. 1, but when it does apply it applies almost always to the basis of the relationship, for example to determining whether or not the tenant can bring forward a particular defence to an action for rent or breach of obligation when he has already had a prior opportunity of advancing it in an earlier action for rent or breach of obligation and failed to do so, or had the matter determined against him by the court.

What is clear as a matter of both common sense and law is that a judgment in favour of the landlord for rent due for a given period could not possibly amount to res judicata and prevent him from bringing a fresh action in respect of a fresh period subsequent to that for which he has already recovered judgment. Obviously as time elapses during the continuance of the tenancy fresh liabilities are incurred as each period of the tenancy goes by.

But, it may be said, while that may be true of new periods of rent, why should not the landlord be forced to sue in one action for all the arrears of rent accrued due up to the time of filing of the suit? The answer is that while he may join all the arrears in one such suit, he is not compelled to do so. The periodic payments due to be made are each a separate cause of action. The rule aims at the splitting of causes of action. A Plaintiff injured in a motor car accident must bring forward all his claims for personal injury in one and the same action, giving evidence of past, present and future loss. But obviously a landlord is not similarly placed. Future loss could only be based on the continuance of the tenancy: no one knows how long it will last, further the rent due to be paid only becomes due from time to time in the future. Even the Plaintiff in the motor car accident may bring a

separate action for the injury to his property, as distinct from the injury to his person: they are separate causes of action: See Brunsden v Humphrey (1884) 14 Q.B.D. 141, C.A. over-ruling (1883) 11 Q.B.D. 712 (Divisional Court): a case approved even by Lord Blackburn's dissenting judgment in the House of Lord's decision in the Darley Main Colliery Coy case (1886) 11 App. Case 127 at 139 and see also Hartley v Ayurst (1848) Cox M & H 109, 12 J.P. Jo. 323, a case very similar to Brunsden v Humphrey, though not cited in it, in which the Court reached the same decision. The true answer to the question posed above is however to be found in one of the cases cited to us, and by the Respondent, namely Wickham v Lee (1848) 12 Q.B. 521, where Patteson J at page 526 remarked "I do not understand the of Exchequer to have said that wherever two causes of action can be joined it is a splitting to separate them".

I turn now to the cases on "splitting causes of action" which are cited in 4th Edition Halsbury, Vol. 10 "County Courts" and The County Court Practice, 1976, both of which I have already referred to above. Many of them were cited in argument before us. The earliest recorded statement on the matter is to be found in a case Girling v Alders (1670) 1 Ventris 73; 86 E.R. 51. The report is so short that it may be cited in full:-

> "73 Girling versus Alders
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> In a prohibition to the Court of the honour of Eye, the case was, One contracted with another for divers parcels of malt, the money to be paid for each parcel being under forty shillings; and he levied divers plaints thereupon in the said Court. Wherefore the Court here granted a prohibition; because tho' they be several contracts, yet forasmuch as the plaintiff might have joined them all in one action, he ought so to have done, and sued here, and not put the defendant to an unnecessary vexation no more than he can split an entire debt into divers, to give the Inferior Court jurisdiction in fraudem legis."

It will be observed that the principle so broadly stated in 1670 in effect said: wherever a Plaintiff might have joined several causes of action in one suit, he should be compelled to do so, so as to avoid putting a Defendant to unnecessary expense. This clearly echoes the views of the learned Resident Magistrate in the instant case, but the matter did not end there. The principle had been stated far too widely, and was to be corrected in The King v Sherriff of Herefordshire (1831) 1 B & Ad. 672; 109 E.R. 936 also reported as Dealey v Clarke (1831) 9 L.J. (O.S.) K.B. 102. In that case the Plaintiff had carried goods for the Defendant on one occasion, and in the ensuing month had again carried goods for him on a second occasion. In order to use the County Court, he brought two separate actions, one on each contract of carriage. Had he joined them, he would have been outside the County Court jurisdiction. The Defendant applied to the Court of King's Bench for prohibition, asserting that the Plaintiff had split his cause of action: the two sums constituted one entire debt or demand, and relied on Girling v Alders (above). The Court rejected the argument. Giving judgment, Lord Tenterden C.J. said:-

> "I am of opinion that this case does not come within the rule of law which prohibits the splitting of a cause of action into several portions for the purpose of commencing suits for each in an inferior Court; to be so, the cause of action must be one and entire. But, in this case, the two items of £1.4s each are perfectly distinct debts, the one having no connection with the other; when the defendant incurred the debt stated in the first item, the Plaintiff might have sued for it in the County Court, and his having incurred another and distinct debt with the Plaintiff afterwards should not, I think, have the effect of depriving the Plaintiff of his remedy in the County Court for the first debt. And if he may still have that remedy for the first debt, he has it of course for the second also."

It will be noted here that the two debts were of the same sort, between the same two parties, for the same transaction. In our present case, it can not be doubted that the Plaintiff might have sued for the first month's rent as and when it became due, and so on for the second and later months. His having joined them into units of three and two months respectively ought not, on the basis of Lord Tenterden's views above, to operate against him: in fact he may well have saved the Defendant some costs by uniting these actions in this way.

Neale v Ellis (1843) 1 Dowl & L 163 again saw the Defendant seeking to take advantage of the rule against "splitting causes of action". The Defendant owed money to the Plaintiff for the price of a horse, for rent, and for goods sold and delivered. The Plaintiff sued in the Brighton Court of Requests for the horse, and recovered judgment. He now sued in the High Court for the rent and for the goods sold and delivered, and the Defendant argued that he should not be allowed to do so: "It was the duty of the Plaintiff to have sued the Defendant for all he owed him at the time of the plaint being brought in the inferior Court:" and having chosen to sue there first he should be deemed to have waived all his right to the excess jurisdiction, i.e. the sums he now claimed for rent and goods sold and delivered. (The legislation setting up the Brighton Court of Requests had the familiar sections as to jurisdiction, abandoning the excess, and not splitting the cause of action). Coleridge J. dismissed this argument and found for the Plaintiff: "There were originally three distinct and entire causes of action; namely, one, for a horse, a second, for rent; which is as distinct from the first as can be; and a third, for goods sold and delivered. These are all distinct, and the Plaintiff has recovered only in respect of one of them." The learned Judge saw no reason why the

Plaintiff should not recover for the other two causes of action.

Re Aykroyd, Grimbly v Aykroyd (1848) 1 Exch. 479, 154 E.R. 204 saw the Court of Exchequer reviewing the cases cited above. In this case the Defendant, a sub contractor for the building of a railway, had arranged with a local grocer a "ticket system" by which he issued tickets to individual workers enabling them to draw groceries to the value of the ticket from the Plaintiff. Some 3,000 tickets had been issued. The Defendant apparently did not honour some of them, and the Plaintiff commenced a series of 258 actions by which he sued the Defendant on each ticket in the local County Court. The relevant act, the Small Debts Act, 9 & 10 Vict. c 95, contained the familiar injunction against splitting causes of action, and the Defendant applied to the Court of Exchequer for prohibition to issue against the Plaintiff to prevent him from suing on each ticket in that way. The writ was granted. Pollock C.B. giving the judgment of the Court reviewed the authorities to date, and observed that this was intended by the parties to be a running bill with a tradesman, in which the individual transactions were to be united into one bill and that the -

> "understanding is, undoubtedly that it shall be united with other items and form one entire demand..... the dealing is not intended to terminate with one contract, but to be continuous, so that one item, if not paid, shall be united with another, and form one entire demand....."

There are a number of such cases of "running accounts" with tradesmen which have followed Re Aykroyd (above). See for example Wood v Perry (1849) 3 Exch. 442; Dodd v Wigley (1849) 7 C.B. 106, 137 E.R. 43 (which has an excellent note by Sgt. Manning which rests the ratio of these cases on the intention of the parties as having been to constitute a situation in which one transaction was to be merged into the

succeeding one to eventually create one cause of action, or one account which should be the last et cetera); Bonsey v Wordsworth (1856) 18 C.B. 325, 139 E.R. 325; these cases rest on the implied agreement between the parties to treat the account as a running account, to be presented at regular intervals, and allowing for the carrying forward of balances to be paid at some time usually fixed by the creditor.

I do not think that it can ever be said that a landlord falls into this category of relationship; he expects, and it is usually expressly agreed (and was so here), to be paid on each rent day the amount of rent due for the relevant period. He is neither a tradesman nor a banker, expecting payment only at the end of series of transactions, whether by the month, or for a purpose like building a house et cetera.

For purposes of completeness, it may be noted that The King v Sheriff of Herefordshire (above) and Neale v Ellis (above) were followed in Wickham v Lee (1848) 12 Q.B.. 521; Brunskill v Powell (1850) 19 L.J. Ex. 362; Kimpton v Willey (1850) 9 C.B. 719, 137 E.R. 1075; Box v Green (1854) 9 Exch. 503, 156 E.R. 215; Richards v Marten (1874) 23 W.R. 93 and Rentit Ltd. v Oaten (1938) L.J.N. C.C.R. 137.

Wickham v Lee (supra) was relied on by Dr. Barnett for the tenant. So far as concerns us there were three claims and three actions: the first was rent for use and occupation, for a period of two years; the second was for rent for use and occupation of the same land for the next ensuing year; and the third was double value rent for use and occupation of the same premises (holding over after notice to quit). The Defendant/Tenant sought prohibition from the Court of Queen's Bench to prevent the cases being heard separately

claiming that this breached the statutory enactment forbidding the splitting of causes of action so as to bring more than one suit in the lower Court. All of these actions for rent might have been joined together claimed the Defendant, and in point of fact the first two had been so joined at trial, but not the third. The Defendant relied on Re Aykroyd (above). The Court did not uphold this objection. It decided that the claim for double value was a separate and distinct cause of action to the claim for rent. This is the case already referred to in which Patterson J said of Re Aykroyd "I do not understand the Court of Exchequer to have said that wherever two causes of action can be joined it is a splitting to separate them". The case is not authority for the proposition that claims for arrears of rent simpliciter must be joined together: they had in fact been joined together at the County Court trial so that point did not arise, and it is not an authority that supports the tenant in the present case.

Rentit Ltd. v Oaten (supra) was on the otherhand relied on by Mr. King for the Appellant/Landlord. Unfortunately the report is not available in our library. It is cited in the 3rd Edition Halsbury, Vol. 9, County Courts, p. 152 para. 299 "Division of cause of action" (4th Edition Vol. 10: para. 80) for the proposition: "where a contract for the hire of goods provides for the payment of periodic sums by way of rent, each sum constitutes a separate cause of action". The County Court Practice, 1976, at page 75 is slightly fuller. It states:-

> "It was held in a case where goods were hired out under an agreement providing for the payment of rent quarterly that, notwithstanding that two quarters' rent was owing, separate actions could be brought for each quarter's rent (Rentit, Ltd. v Oaten, (1938) L.J. N.C.C.R. 137)."

This does offer some support for the Landlord/Appellant, and it is consistent with the cases on Landlord and Tenant to which I now turn.

We have already noted that the rule of common law (enshrined in the statutory provisions) to the effect that a Plaintiff must bring forward all of his case at one time has implications in the law relating to the Limitation of Actions, for time runs against the Plaintiff as from the date on which he could first have brought forward his cause of action. If this applied as between landlord and tenant, it would mean that the tenant began to prescribe against the landlord so far as the recovery of the tenement by the landlord goes, as from the first time at which the tenant fell into arrears and failed to pay his rent on the due date. But this is not the case; so long as the lease continues a fresh right of entry accrues upon each failure to pay the rent on the due date. This is strikingly exemplified in the case of Archbold v Scully (1861) 9 H.L.C. 360; 11 E.R. 769 where the House of Lords held with respect to a lease for lives, renewable for ever, that despite a gap of 28 years of non payment of rent, the tenant had not prescribed against the landlord. Lord Cranworth at page 375 put the matter thus:-

> "It is now clearly established that so long as such relation subsists as a legal relation, the landlord's right to rent is not barred by non-payment for however long a time. The right to rent is an incident of the reversion. The Statute of Limitations does not apply, except, indeed, that by the 42nd section it prevents the recovery of arrears for more than six years;...."

and at p. 376:-

> "Courts of equity do not, it is true, encourage stale demands, but the right now insisted on is one which is, in substance, renewed as often as fresh rent is payable. The legal principle is, that the rent is incident to the reversion, and on every day on which rent becomes due, under the deed constituting the tenancy, whether it be made payable yearly, half-yearly, or oftener, a right of distress

> accrues. In such a case laches appears to me to be out of the question. Neglect to enforce payment of the rent deprives the lessor, by the statute, of all arrears beyond six years; but as to all accruing payments, the legal principle is, that the right is constantly renewed."

It should be added however that the case would have been different if the tenant instead of merely not paying the rent had paid it to some third person: in that event the third party would have been able to prescribe. See also dicta to like effect by Lord Campbell, L.Ch., Lord Wensleydale, and Lord Chelmsford.

The House of Lords decision followed and approved the Exchequer decision in Grant v Ellis (1841) 9 M & W 113, 152 E.R. 49, which decided, in the case of a lease for 99 years, that so long as the lease continued, the reversioner (Landlord) was entitled to distrain in respect of each unpaid instalment of rent, though for more than twenty years previously he had failed to collect rent.

Both these cases were followed as recently as 1930 by Wright J. (as he was then) in Barratt v Richardson and Creswell (1930) 1 K.B. 686, (1930) All E.R. Rep. 748. At p. 692-3 Wright J. said:-

> "It is clear that the right to rent continues as long as the relation of landlord and tenant exists: Archbold v Scully (supra), However long may be the period during which the reversioner has omitted to collect rent (assuming he has not been dispossessed), the right to rent at each stipulated period recurs, though arrears may cease to be recoverable, and the reversioner is entitled in respect of each unpaid instalment of rent to distrain, as was held in Grant v Ellis (supra) though for more than twenty years, as the period then was, previously he had failed to collect the rent."

It is also to be noted that as long ago as 1588, in the case of Hunt v Sone (1588) Cro. Eliz. 118, 78 E.R. 376, it was held that separate actions lay for each non payment of rent on the due date, while

in Welbie v Phillips (1690) 2 Ventris 129, 86 E.R. 349, it was laid down in the clearest terms:-

> "every quarter's rent is a several debt, and distinct actions may be brought for each quarter's rent."

To like effect is the case of Marle v Flake (1700) 3 Salk 118, 91 E.R. 727, where Holt C.J. observed:-

> "The lessor made a lease, reserving £20 per annum to be paid quarterly, debt may be brought for the last quarter's rent, without shewing the other three quarters were satisfied, for every quarter's rent is a distinct debt, and distinct actions lie for each quarter."

These cases thus established, contemporaneously with Girling v Alders (supra), that each period's rent could be the subject of its own separate action: the rule requring a Plaintiff to bring forward all his case at one time, did not require a landlord to sue for all current arrears of rent in one and the same action, or to express it slightly differently, each period's rent was a separate cause of action.

That this is so is even more strikingly illustrated when one examines the great common law remedy for rent, the landlord's right of distress for rent due.

Here the main common law rule which requires the Plaintiff to bring forward all his case at one time received one of its earliest manifestations in the rule that a landlord might not distrain twice for the same instalment of rent; at the same time that this rule was being laid down, the common law was laying down in equally clear terms that each instalment of rent was separately recoverable by distress, nor did it matter in what order the instalment was distrained for, provided it was not the same instalment being twice distrained for.

The cases on this subject are collected in the following Text Books:

Woodfall: Landlord and Tenant, 27th Edition (1968) (and Supp. 1976) Chap. 8: Distress, para. 969 et seq: legality of second distress, and para. 971: Successive distress for successive instalments all due at time of first distress.

Hill and Redman: Landlord and Tenant, 16th Edition (1976) Chap. 4 Distress, para. 337: General rule: (no second distress for the same rent) and (separate distress may be made for different instalments).

Halsbury's Laws of England, 3rd Edition Vol. 12: Distress, page 149, para. 277: No second distress for same rent; 4th Edition Vol. 13, page 175, para. 350 (no change).

The first reported case on the subject, Case No. 26, (1561-4) Sir F. Moore 7, 72 E.R. 402 established both points: it held a second distress for the same rent bad, but added:-

> "If a man be in arrears of his rent at several days, and takes a distress for one day at one time, and for another day at another time, he may: but it is otherwise in the case at bar".

The rule against second distress for the same rent re-appears in Case No. 8, (1583) Sir G. Cro. Eliz, p. 13, 78 E.R. 279, while Palmer v Stanage (1661) 1 Lev. 43, 83 E.R. 288, established that although a number of instalments of rent under the same demise may be in arrears, they may be separately distrained for, and it is immaterial in what order.

The rule against second distress for the same rent was thus explained by Lord Mansfield C.J. in Hutchins v Chambers (1758) 1 Burr 579, (1558-74) All E.R. 355, 97 E.R. 458:-

> "Now a man who has an entire duty, shall not split the entire sum; and distrain for part of it at one time, and for other part of it at another time; and so toties quoties for several times; for that is great oppression; and that is the case of Wallis v Savill ((1701) 2 Lut 1532, 125 E.R. 843) where the second distress was holden unjustifiable, because both distresses were taken for one and the same rent; and it was the lessor's folly that he had not taken a sufficient distress at first...."

The similarity between this expression of the rule and the rule against splitting a cause of action, is not accidental: both are expressions of the common law rule that the Plaintiff must bring forward all his case at one time; but as the cases show, both before and after, what is termed "an entire duty" or "an entire sum" is each separate instalment of rent: it is the instalment of rent that is not to be split. Separate distresses may be brought for separate instalments: Gambrell v Falmouth (Earl) 1835) 4 Ad & El 73, 111 E.R. 715, where it was held that the landlord having already distrained for a recent instalment of rent, could distrain again for a previous instalment of rent not the subject of the first distraint. Each instalment was a cause of action, or the subject of a separate distraint: the rule against second distraints for the same rent did not require a landlord to distrain for all the instalments then due in one distraint, nor does it require him to sue for all the arrears then due in one and the same action.

Counsel in the case before us did not refer to the cases discussed above, nor explore the law relating to the rights of Landlord and Tenant. I think it is clear from the authorities that have been reviewed, that while the basic rule against dividing or splitting causes of action (or entire sums) applies in the law of Landlord and Tenant as it does elsewhere, it is equally clear that each instalment

of rent represents a cause of action, and that separate actions may be brought for each instalments, just as separate distresses may be brought for each instalment, and that there is no rule that requires a landlord to join in one action all the instalments of rent that may be due at the time of suit. He may join them if he wishes, but he is not obliged to do so, and his election not to do so does not amount to "splitting his cause of action" either at common law, or within the meaning of Section 73 of The Judicature (Resident Magistrates) Act. When the Plaintiff/Landlord, the Appellant here, brought two actions, one for three months' rent, and the other for two months' rent, he was not "splitting his cause of action" but doing what he was entitled to do. He might have brought five separate actions for the five months' rent due, and what he did was convenient and also lawful. Section 73 of the Judicature (Resident Magistrates) Act did not apply, and the learned Resident Magistrate for St. James was wrong in holding that it did, and deprived him of jurisdiction. In my opinion this appeal must be allowed, and in as much as the evidence taken disclosed no answer to the plaints filed, judgment should be entered for the Appellant not only in this Court, but in the Court below, for the full sums sued for.

ZACCA, J.A.

I have had an opportunity of reading the Judgments of Carberry, J.A. and of Melville, J.A. I agree with the conclusions reached by Carberry, J.A. I would also allow this appeal.

MELVILLE, J.A. (DISSENTING)

Briefly the facts in this matter are that the appellant had let to the defendant premises at Porto Bello in the parish of St. James under a written agreement as from the 1st of July 1976 at $160 monthly, payable in advance; the first payment to be on the 1st July 1976 and thereafter on the first day of each and every month. These payments were made up to November 1976 and then the only other payment was of $320.00 in February 1977. That amount would have been the rental for December 1976 and January 1977. No other payment was made up to July 1977 when the defendant vacated the premises.

On the 22nd of August 1977, the appellant filed two plaints in the Resident Magistrate's Court for the parish of St. James against the respondent. P. 1099/77 was for $480.00 rental for the months of March, April and May 1977. P. 1106/77 was for $320.00 rental for the months of June and July 1977.

The learned Resident Magistrate struck out both plaints which were heard together on the ground that the rental being for a continuous period, gave rise to one cause of action so that the appellant could not divide his cause of action into two suits to bring the plaints within the jurisdiction of the Resident Magistrate's Court.

Before us, Mr. King contended that the learned Resident Magistrate was wrong in holding that he had no jurisdiction in the matter. As each month's rental accrued so said Mr. King, the appellant had a cause of action and so he was entitled to bring a different plaint in respect of each of the months for which the rental remained unpaid. He relied on the case of Rentit Ltd. v Oaten (1938) L.J.N.C.C.R. 137 mentioned in the County Court Practice (1977) p. 75, para. 69 and in Halsbury's Laws of England 3rd Ed. Vol. 9, p. 152, para. 299. The full report of this case was unavailable but it is put in para. 299 of Halsbury's thus:-

> "What is a single cause of action for this purpose is a question of fact. Where one item in a tradesman's bill is connected with another, in the sense that the dealing is not intended to terminate with one contract but to be continuous, so that one item, if not paid, shall be united with another, the whole bill forms one entire demand and consequently one cause of action (c), but where a contract for the hire of goods provides for the payment of periodic sums by way of rent, each sum constitutes a separate cause of action (d)".

Rentit Ltd. v Oaten is the authority cited at (d). The note in the County Court Practice (1977) is more expansive in that it states that the rental was payable quarterly and that it was two quarters' rental that was owing.

The jurisdiction of the Resident Magistrate's Court in Common Law matters is set out in Section 71 of the Judicature (Resident Magistrates) Act thus:-

> "Every Court shall, within the parish for which the same is appointed, have jurisdiction in all actions at law, whether arising from tort or from contract, or from both, when the debt or damage claimed does not exceed six hundred dollars, whether on balance of account or otherwise."

Section 73 reads:-

> "It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said Courts; but any

> plaintiff having a cause of action for more than six hundred dollars, for which a plaint might be lodged under this Act, if such cause of action had been for not more than six hundred dollars, may abandon the excess,....."

These sections are similar to Sections 58 and 63 of the English Small Debts Act, 9 and 10 Vict. C. 95. The meaning of "cause of actions" was considered in re Grimbly v Aykroyd (1848) 17 L.J. Exch. 157. The plaintiff brought 228 actions in the County Court against the defendant for goods supplied upon claims none of which exceeded £5, but the whole amounting to some £303.19, the jurisdiction of the Court being then £20.00.

HELD, that the term "cause of action" meant cause of one action, and was not limited to an action on one separate contract; that that definition, however, did not embrace all contracts executed, however unconnected and dissimilar in character, which could be included in one indebitatus count, but applied certainly to the cases of tradesmen's bills, in which one item was connected with another, in the sense that the dealing was not intended to terminate with one contract, but to be continuous, so that one item, if not paid, should be united with another, and form an entire demand.

In the course of his judgment Pollock C.B. said at p. 162:-

> ....."and the probability is that the legislature in enacting that a cause of action should not be divided, meant a cause of action which but for the enactment would be divisible; and when it is considered to what abuses the narrower construction of this term would lead (which is strongly exemplified in the present case, in which 228 actions have been commenced, and 3,000 might have been brought), we think we may safely conclude that the term "cause of action", ought to be interpreted cause of one action, and not be limited to an action on one separate contract."

A somewhat similar situation as happened in this case occurred in Wickham v Lee (1851) 12 Q.B. 521 where the County Court judge expressed doubt as to whether the rent could be divided into two plaints.

I quite agree, as was said in argument, that had the plaintiff filed his plaint after each month's rent become due, the matter would have been within the jurisdiction of the Resident Magistrate but does the same argument applies where he has waited until the total sum due exceeds the jurisdiction of the Resident Magistrate? What if the plaintiff instead of five months had waited until five years' rental was due, could he then file sixty plaints - one for each month's rental - in the Resident Magistrate's Court all at the same time? The consequences would be, if the landlord succeeded on each plaint, that the tenant would be liable to pay sixty set of costs for stamp duty, bailiff's fees and attorney's costs; (subject of course to the Court's discretion as to costs) not to mention the time that would be spent on such litigation. Can anything be more oppressive and an abuse of the process of the Court? Surely to permit such a course would seem to be putting the defendant to an unnecessary vexation and would be in 'fraudem legis' as was said in Girling v Alders 1 Ventr. 73; 86 E.R. 51.

What was the substance of the matter that the learned Resident Magistrate had to consider? For as Bowen L.J. reminds us it is the substance and 'not any technical consideration of the identity of the form of action' that has to be considered (See Brunsden v Humphrey (1884) 14 Q.B.D. 141, 148. The reality of the situation

was that at the time the plaintiff filed these two plaints five consecutive months rental had become due in a tenancy that had already been determined. In those circumstances it was open to the plaintiff either to have brought his action in the Supreme Court in which case he could recover the whole sum that was due, or he if he wished to use the poor man's Court - the Resident Magistrate's Court - he would have to abandon the amount in excess of $600 so as to ground jurisdiction in that Court. To permit the plaintiff to proceed as he purported to do in the particular circumstances that existed here, would in any view, be allowing him to drive a horse and carriage through the provisions of the Judicature (Resident Magistrates) Act. I am content with the reasoning of Pollock C.B. as to what is a 'cause of action' in the present circumstances and would accordingly dismiss this appeal.

ZACCA, J.A.

By a majority, the appeal will be allowed, the order of the Resident Magistrate will be set aside and Judgment entered for the Appellant in both suits for the sums sued for. Appellant to have the costs of this appeal fixed in the sum of $50.00, together with costs below - to be taxed or agreed.