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value to the importer here. On this question Mr. Hedstrom's evidence, which is uncontradicted, is very definite; he says "We have not been able to sell the drums; I have tried; we have never sold an empty drum; and again "we shipped about 130 to San Francisco; we could not realise anything on them; we lost the freight. They cannot be refilled on account of the rust." Mr. Horne, who has had large experience as sub-manager of a firm of shipping agents in Vancouver, says: "A drum such as these would not be returned for a refill." The drums are therefore not of commercial value here.

I have given careful consideration to the argument of the Attorney-General founded on the Ordinance of 1907 as indicating the opinion of the legislature at that time, but in view of the above considerations and of the principle that in doubtful cases (assuming this to be a doubtful case) the Court should lean against the construction which imposes a burden on the subject, I hold that these drums are exempt from duty being packages within the meaning of the exemption clause above quoted.

I give judgment for plaintiffs with costs.

[CIVIL JURISDICTION.]

1917.
June 5.

[ACTION NO. 37, 1916.]

ERNEST ENSOR *v.* MORRIS, HEDSTROM LIMITED.

Demolition of buildings—right of entry to prevent when rent thereon due—authority of agent acting without distress warrant,—presence of police officer held to be irregular—nominal damages awarded.

Sir CHARLES DAVSON, C.J. Plaintiff claims damages for trespass by defendant on his premises.

The defendant company asserts that it had a right to enter on the premises and prevent the demolition of the buildings thereon in respect of rent due by plaintiff to the company.

An attempt was made by the plaintiff's counsel to argue that plaintiff was not the lessee of the defendant, there being no lease as required by section 49 of the Real Property Ordinance, but the pleadings on both sides speak of plaintiff as the tenant and lessee of the defendant and I must deal with the case on this basis; if plaintiff had wished to contend that the relation of landlord and tenant did not exist he should have raised the point on the pleadings.

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Plaintiff, then, was lessee of defendant and on the day of the alleged trespass his rent was admittedly in arrear. Defendant, therefore, had a right to distrain, for " distress is incident of common right to every rent service " (Woodfall p. 480).

Mr. Greening, a director of defendant company and their manager in Levuka, found, on the 19th October, that the buildings on the premises for which rent was in arrear were in course of demolition; he saw the plaintiff and told him this must be stopped, but plaintiff said he would do as he liked. Greening is positive as to this conversation. Ensor has no recollection of it, but I think his memory must have played him false. Greening then rang up the company's head office in Suva for instructions and, as he tells us in cross-examination, was ordered to distrain.

He then entered on the premises, accompanied by Sub-Inspector Hills of the Constabulary, and ordered the workmen who were taking down the buildings to knock off, which they did. Later in the day plaintiff paid the overdue rent, and next day the work of demolition proceeded without interference.

The question is whether Greening's action, which has been adopted and ratified by the defendant company, was a trespass. It may be said that Greening did not distrain, but merely ordered the men off the premises, but it would not have been of much use for him to enter the premises if he had allowed the demolition to continue, and when Ensor paid his rent there was no necessity for further action.

But had Greening a right to act as he did without a distress warrant or some such authorisation.

A distress may be made by the landlord himself or by his authorised agent or bailiff; but a company, from the nature of things, cannot distrain in person and must act through an agent: must that agent be armed with express authority ? I had not the advantage of hearing any argument on this point, but it is laid down in Woodfall, p. 535, and Halsbury's Laws, Vol. XI, p. 160, that—

> Unless evidence of authority is required by the tenant, it is not even necessary that a bailiff should have an express antecedent authority before making a distress, for a distress made without previous authority may be afterwards recognised and adopted by the landlord, and the adoption relates back to the time of taking the distress and will be as effectual as a previous authority would have been.

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Adopting this statement of the law I find that Greening was acting lawfully, for it is clear that defendants have recognised and adopted his action. At the same time I do not think the practice of dispensing with a distress warrant is one to be encouraged.

There is one other point, however—Greening, when he entered the premises took with him a Constabulary officer. This, in my opinion was unnecessary and irregular. It would have been perfectly proper for the officer, if violence was apprehended, to be prepared to intervene for the preservation of the peace, but he should not in the first instance have accompanied Greening onto the premises and thus, as it were, identified the police with the proceedings. In saying this I accept his statement that he did not speak to any of the men or, apart from being present, take any active part in what was done.

There was, to this extent, an irregularity for which defendants are responsible.

There may be cases in which the unnecessary presence of the police would call for substantial damages, but this is not one of them. The whole affair was carried out quietly and so as to attract little or no public attention, and such inconvenience as plaintiff may have suffered would have been avoided if he had met Greening in a reasonable manner when spoken to before the entry on the premises. It is, therefore, a case for nominal damages.

I award plaintiff ten shillings (10s.) damages. Each party to pay its own costs.

[APPELLATE JURISDICTION.]

[ACTION NO. 25, 1917.]

1917.
Sept. 20.

PETITION OF ADAM ADAIR COUBROUGH.

Election Petition under Letters Patent of 31st January, 1914—income arising from lands in the division—meaning of.

Held, rental reserved fictitious—election declared void.

Sir CHARLES DAVSON, C.J. This is a petition presented under Part 7 of regulations made under clause 21 of the Letters Patent of 31st January, 1914, praying that it may be determined that Mr. Joseph Alexander MacKay, who was returned in July last as being duly elected as the representative of the Vanualevu and Taveuni Division in the Legislative Council of