

1951

*Present: Gratiaen J. and Gunasekara J.*STANDARD-VACUUM OIL COMPANY, Appellant, and
JAYASURIYA, Respondent*S. C. 272—D. C. Colombo, 21,562 M**Rent Restriction Act, No. 29 of 1948—Sections 2 (5) and 27—Distinction between " business premises " and " residential premises "—" Excepted premises ".*

Where certain premises situated in the Municipality of Colombo were occupied wholly or mainly for the purposes of a Company's business, but at the same time mainly for the purposes of residence for the Company's Manager who lived there with his wife—

Held, that the premises were " residential premises " within the meaning of section 27 of the Rent Restriction Act. As the annual value of the premises exceeded Rs. 2,000 they were " excepted premises " within the meaning of section 2 (5) read with paragraph 2 of the Schedule of the Act.

A PPEAL from a judgment of the District Court, Colombo.

H. V. Perera, K.C., with *J. R. V. Ferdinands* and *E. La Brooy*, for the defendant appellant.

E. B. Wickramanayake, K.C., with *A. M. Charavanamuttu*, for the plaintiff-respondent.

Cur. adv. vult.

September 20, 1951. GUNASEKARA J.—

This is an appeal against a decree for damages and for ejection of the defendant appellant from certain premises as an overholding tenant. The only question for decision is whether the premises, consisting of a house standing on 2½ roods of land in Horton Place, Colombo, were " excepted premises " within the meaning of section 2 (5) of the Rent Restriction Act, No. 29 of 1948, as the plaintiff respondent claims they were. Apparently what now turns on that question is whether the costs should be paid by the plaintiff or the defendant ; for we were informed at the argument that the defendant had yielded up possession of the premises to the plaintiff and paid her an amount equivalent to the amount decreed as damages.

It is common ground that the annual value of the premises exceeded Rs. 2,000 and did not exceed Rs. 6,000. Therefore, in terms of section 2 (5) of the Act read with paragraph 2 of the Schedule, they were excepted premises if they were " residential premises " but not if they were " business premises ". Section 27 defines residential premises as " any premises for the time being occupied wholly or mainly for the purposes of residence ", and business premises as " any premises other than residential premises ". The question thus resolves itself into a question as to whether the premises were " residential premises ".

The defendant appellant is a limited Company. The premises were used by it as a residence for its manager, who lived there with his wife. According to the case for the appellant Company the premises were furnished as a residence and provided with a staff of domestic servants, all at its expense, and the Company also paid the electricity and telephone bills; two motor cars belonging to the Company were garaged there, one of which was intended for the manager's use and both of which were used by him on the Company's business; the manager was required to entertain from time to time, as the Company's guests, various persons with whom it had business, and he would entertain in this way, possibly twice a month, about 15 to 60 persons at a time; he was also required to accommodate in these premises, as the Company's guests, visiting executives from overseas, and he would put up such visitors on about 15 occasions in the course of a year; the house was also used for business conferences held after office hours, for receiving telephone messages or telegrams relating to the Company's business that were received after office hours, and for the custody of the Company's confidential papers, which were stored in the cupboard of a writing table.

The learned District Judge holds that the business that is transacted in the premises "is the sort of business any business man would conduct in his house after business hours"; and that "it appears to be quite evident that although certain business transactions are effected in the premises it is used mainly for the residence of the manager and his wife and on some occasions for the residence of guests of the Company." I do not think there can be any doubt that this is the correct view of the use to which the premises were put. It is contended for the appellant Company, however, that it was for the purposes of the Company's business that they were used in this way, and that the purpose that is material to the present question is the purpose for which the Company occupied the premises through its manager who resided there. The manager was provided with a residence, it is argued, for the purposes of the Company's business, and the premises being thus occupied by the Company wholly or mainly for the purposes of its business were "business premises".

I shall assume that the occupation that is contemplated in the definition of "residential premises" in section 27 is not limited to actual personal occupation and also that the purpose that is material is the tenant's purpose. I agree with Mr. Perera's contention that in this view of the matter the premises were occupied wholly or mainly for the purposes of the Company's business. That circumstance, however, cannot conclude the question. Although by definition "business premises" and "residential premises" exclude each other, "purposes of business" and "purposes of residence" do not; and in a given case the one may well include the other, as for example in the case of a tenant who takes in paying guests. The premises were occupied wholly or mainly for the purposes of the Company's business by their being occupied mainly for the purposes of residence; just as other premises may have been occupied for the purposes of the Company's business by their being occupied for the storage or the sale of petrol or for the purposes of office accommodation, as the case may be. The fact that in each of these cases the premises

were occupied wholly or mainly for the purposes of the Company's business can make no difference to the fact that they were occupied more particularly for the purposes of residence or of storage or sale of petrol or for the purposes of an office. In the present case the premises in question were occupied wholly or mainly for the purposes of the Company's business, but at the same time mainly for the purposes of residence. Being occupied mainly for the purposes of residence they were "residential premises". The Act does not provide that premises occupied wholly or mainly for the purposes of business are "business premises".

I would dismiss the appeal with costs.

GRATIEN J.—I agree.

Appeal dismissed