1960 *Present:* **Basnayake, C.J., and H. N. G. Fernando, J.**

THE CHETTINAD CORPORATION LTD., Appellant, *and* GAMAGE and another, Respondents

S. C. 107—C. R. Colombo, 60478

Rent Restriction Act, No. 29 of 1948—Sub-letting—Condonation by landlord—Landlord's right to eject tenant—Standard rent—Computation when rented premises are subsequently consolidated with adjoining premises—Sections 5 (1), 9 (1), 9 (2), 13.

(i) When premises are sub-let without the prior written consent of the landlord, in contravention of section 9 (1) of the Rent Restriction Act, the landlord's failure or omission to institute legal proceedings forthwith for the ejectment of the offending tenant does not deprive him of his statutory right to eject the tenant despite his condonation of the sub-letting.

Robert v. Rashad (1954) 55 N. L. R. 517, not followed.

(ii) Tenement No. 273/2 was assessed in November 1948 at an annual value of Rs. 850. In 1951 the same tenement and the adjoining tenement No. 275 were consolidated and assessed together at the annual value of Rs. 425.

Held, that, under section 5 (1) of the Rent Restriction Act, whatever may have been the result of the consolidated assessment and the alteration of the number of the premises, the annual value of premises No. 273/2 for the purposes of the Rent Restriction Act remained at Rs. 850 inasmuch as it was fixed at that figure when the assessment was made for the first time in 1948.

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

H. V. Perera, Q.C., with *W. D. Gunasekera*, for Plaintiff-Appellant.

H. W. Jayewardene, Q.C., with *D. R. P. Goonetilleke* and *L. C. Seneviratne*, for 1st Defendant-Respondent.

March 4, 1960. BASNAYAKE, C.J.—

This is an action for ejectment from premises No. 56 Nawala Road, Nugegoda, let to the 1st defendant by the plaintiff. It is alleged that the 2nd defendant is a sub-tenant of the 1st defendant, and ejectment is sought on the ground that the 1st defendant had sub-let the premises without the prior consent in writing of the landlord as required by section 9 (1) of the Rent Restriction Act, No. 29 of 1948. That provision reads :

> "Notwithstanding anything in any other law, but subject to any provision to the contrary in any written contract or agreement, the tenant of any premises to which this Act applies shall not, without the prior consent in writing of the landlord, sub-let the premises or any part thereof to any other person."

The 1st defendant denied that he sub-let the premises or that the 2nd defendant is his sub-tenant. In reconvention he pleaded that a sum of Rs. 1,683/28 has been paid by him in excess of the authorised rent of the premises but he confined his claim to a sum of Rs. 300/- reserving the right to recover the balance in an appropriate action as this is an action in the Court of Requests. The learned Commissioner of Requests has found on the facts that the 1st defendant had sub-let a portion of the house to the 2nd defendant. As a matter of law he has held that the sub-letting has been condoned by the plaintiff and that he is therefore not entitled to a decree against the 1st defendant. He has further held that the plaintiff has recovered a sum of Rs. 1,279/80 from the 1st defendant in excess of the authorised rent of the premises for the three years immediately prior to the institution of the action.

In appeal it is submitted that the learned Commissioner of Requests is wrong in law in holding that there has been a condonation by the plaintiff of the sub-letting. This submission is entitled to succeed. A landlord has a right to institute an action for the ejectment of his tenant where the premises are sub-let in contravention of section 9 (1) of the Act which forbids the tenant to sub-let the premises without the prior consent in writing of the landlord. His failure or omission to institute legal proceedings against the offending tenant no sooner than he becomes aware of the breach of section 9 (1) by him does not deprive him of that statutory right. The right conferred by section 9 (2) is unqualified and it would be wrong to restrict that right by judicial decision. In the

instant case the landlord was entitled, notwithstanding the provisions contained in section 13 of the Rent Restriction Act, to institute an action for the ejectment of the 1st defendant from the premises.

The only other question for decision is whether the case of *D. T. Robert v. Mrs. P. Rashad*[1] which has been cited both in the lower court and before us is correct. It is submitted by counsel for the appellant that that decision is wrong. The submission of counsel is in our view sound. We find ourselves unable to subscribe to it. The principles which have been set out therein are derived from the English case of *Hyde v. Pimley*[2] which is a decision on an enactment that is different from ours. The English enactment does not require written prior consent of the landlord as in the case of our enactment which requires "prior consent in writing". The material portion of the English enactment (Rent & Mortgage Interest Restrictions (Amendment) Act 1933—Schedule 1) reads—

> "A court shall, for the purpose of section three of this Act, have power to make or give an order or judgment for the recovery of possession of any dwelling house to which the principal Acts apply or for the ejectment of a tenant therefrom without proof of suitable alternative accommodation (where the court considers it reasonable so to do) if—
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> (*a*) ....
>
> (*b*) ....
>
> (*c*) ....
>
> (*d*) the tenant without the consent of the landlord has at any time after the thirty-first day of July, nineteen hundred and twenty-three, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let."

The words "without the consent of the landlord" have been construed to cover a case of implied consent. Acceptance of rent without objection for four and half months after knowledge of the sub-letting was held to amount to implied consent. Our enactment does not admit of such a construction. It is not necessary that, where the landlord becomes aware of the contravention of section 9, he must elect whether or not to treat the contract of tenancy as terminated. The moment there is a contravention of section 9 (1) his right to bring an action comes into existence and there is nothing in the enactment which fetters the exercise of that right thereafter.

[1] *(1954) 55 N. L. R. 517.*

[2] *(1952) 2 All E. R. 102 at 104, 105.*

Now in regard to the claim in reconvention it is submitted that premises No. 273/2 which is the house which was let to the 1st defendant in 1948 was a twin cottage. It was assessed in November 1948 at an annual value of Rs. 850/-. There was another tenement adjoining No. 273 which was for the purpose of assessment numbered as No. 275. In 1951, under the powers given to the local authority a consolidation of the two premises was made for the purpose of assessing the rates, and premises No. 273/2 and 275 were consolidated and assessed together at the annual value of Rs. 425/-. It is contended on behalf of the defendant that premises No. 273/2 thereafter ceased to bear the annual value of Rs. 850/-. With that contention we are unable to agree. Section 5 (1) of the Rent Restriction Act provides that "in the case of any premises the annual value of which was or is assessed for the purposes of any rates levied by any local authority under any written law, the standard rent of the premises means the amount of the annual value of such premises as specified in the assessment in force under such written law during the month of November 1941 or if the assessment of the annual value of such premises is made for the first time afer that month, the amount of such annual value as specified in such first assessment." Whatever may have been the result of the consolidated assessment and the alteration of the number of the premises, the annual value of the premises for the purposes of the Rent Restriction Act remained at Rs. 850/- as the annual value of the premises in question was fixed at that figure when the assessment was made for the first time in 1948. We are of opinion that the learned Commissioner of Requests is wrong in holding that there had been a payment by the defendant to the plaintiff in excess of the authorised rent of the premises. We accordingly set aside the judgment of the learned Commissioner of Requests dismissing the plaintiff's action and holding that he should pay to the 1st defendant a sum Rs. 300/-.

In view of our findings on the question of law the plaintiff is entitled to judgment for the ejectment of the defendant as prayed for in the plaint, and we accordingly direct that the 1st and 2nd defendants and all persons holding under them be ejected from premises No. 273/2 described in the plaint as No. 56, Nawala Road, Nugegoda. We also direct that the 1st defendant be ordered to pay the authorised rent of the premises to the plaintiff until he is ejected and the plaintiff is placed and quieted in possession thereof. The plaintiff is entitled to the costs of the trial and of this appeal.

H. N. G. FERNANDO, J.—I agree.

Appeal allowed.