1951 *Present :* **Nagalingam S.P.J.**

MALLIKAPILLAI, Appellant, *and* AHAMADU MARIKAR, Respondent

S. C. 138—C. R. Colombo, 30,381

Rent Restriction Act, No. 29 of 1948—Section 13 (1) (d)—" Nuisance ".

Plaintiff let the front portion of certain premises to the defendant as a monthly tenant and occupied the rear portion himself. Although the entire premises were served by only one bath and lavatory, the defendant permitted a large number of persons who were not members of his household to make use of the bath and lavatory and thus greatly inconvenienced the members of the plaintiff's household.

Held, that the defendant, by his conduct, committed a nuisance within the meaning of section 13 (1) (*d*) of the Rent Restriction Act and was, therefore, liable to be ejected.

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

H. V. Perera, K.C., with *E. R. S. R. Coomaraswamy*, for the defendant appellant.

C. Thiagalingam, K.C., with *H. W. Tambiah*, for the plaintiff respondent.

Cur. adv. vult.

November 6, 1951. NAGALINGAM S.P.J.—

This is an appeal from an order of the learned Commissioner of Requests of Colombo entering judgment against the defendant directing his ejectment from premises occupied by him as a monthly tenant of the plaintiff.

The ground upon which the learned Commissioner has made his order is that the defendant is guilty of conduct which constitutes a nuisance to the plaintiff who occupies a part of the same premises within the meaning of section 13 (1) (*d*) of the Rent Restriction Act. The nuisance

complained of is said to have been brought about by the defendant permitting or inviting or letting a number of people—no less than, on the defendant's own showing, about twenty-nine—to make use of the one and only bath and lavatory that is in the premises. These twenty-nine persons are stated by the defendant himself to be not members of his household but either his countrymen, meaning thereby people from India, or people without any permanent abode and that they too use his portion of the premises to sleep in at night. The defendant also admits, to use his own expression, that " as a result of these people joining in using the bare conveniences provided in his house, the plaintiff's people are put to some discomfort and there is congestion in the premises."

The plaintiff occupies the rear portion of the premises while the portion rented by him to the defendant constitutes the front portion and abuts Old Moor Street. The entire premises is served by only one bath and lavatory. According to the plaintiff, it was in 1950 that this influx of persons commenced and since then the members of the plaintiff's household are greatly inconvenienced and incommoded, so much so, that according to the plaintiff it is difficult for them to take even one bath a week.

It has been urged that the user by a person of a bathroom or lavatory cannot amount to a nuisance. In fact it is only the misuse of a bathroom or lavatory that can amount to a nuisance. I do not think the learned Commissioner himself has held that the user of a bathroom or lavatory *per se* composes the nuisance. The point made by the Commissioner and which has to be met by the defendant if he is to succeed in establishing that the judgment of the lower Court is wrong is whether the admittance by the defendant of such a large number of persons into his premises so as to impede and interfere with the commodious use of the bathroom and lavatory by the plaintiff and the members of his household amounts to a nuisance. It is easy to see that where a single bathroom and lavatory has to be used by about fifty persons a great deal of inconvenience and discomfort, if not agony, must be caused to everyone of those persons, not by the bare use of the bath and lavatory but by the non-availability of the conveniences at the times and occasions when their use is desired. If a bath and lavatory cannot be made use of when needed the resulting situation cannot but be regarded as a forcible deprivation of the amenities, so far as the occupants who are legitimately entitled to use them are concerned. If the question is approached from this standpoint I do not think it is possible to take any other view of the dispute between the parties than that the defendant definitely has brought into existence a state of affairs which cannot but be regarded as amounting to a nuisance to the plaintiff and the members of his household. I am therefore of opinion that the learned Commissioner's view is right and that his judgment should be affirmed.

Mr. Perera, however, made a further submission that as the defendant is engaged in the manufacture of calendars and that as this is the season of the year when his business activities are at their peak it would cause great loss and damage to the defendant if he were ejected immediately.

There are conflicting decisions of this Court on the question whether the Court has power to delay execution of an order of ejectment which the Court has decreed in favour of the landlord—see *Yoosoof v. Suwaris* [1] and *Weerasinghe v. Candappa* [2]. I have not heard full argument on this question and I do not therefore propose to express any view on it, but I am satisfied that in this case no sufficient grounds exist for time being allowed to the defendant to vacate the premises. This is not a case of premises used as a dwelling house by a man and family consisting of wife and children who, unless they found some suitable accommodation, would find themselves out in the streets. But this is a case of a defendant who has other premises which could, it may be with some inconvenience, be used by him and those who could properly be regarded as members of his household. The night lodgers of the defendant are not entitled to any special consideration. In these circumstances I do not think that there should be a stay of the writ of ejectment.

I therefore affirm the judgment of the learned Commissioner and dismiss the appeal with costs.

Appeal dismissed.