1968 *Present :* **Weeramantry, J.**

U. ABRAHAM SINGHO, Appellant, *and* R. ARIYADASA, Respondent

S. C. 126 of 1967—C. R. Colombo, 91889/R. E.

Rent Restriction Act (Cap. 274), as amended by Act No. 12 of 1966—Sections 12 A and 13 (1) (d)—Meaning and effect of words " has been convicted of using the premises for an illegal purpose ".

Section 13 (1) (*d*) of the Rent Restriction Act (Cap. 274) is as follows :—

"Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises to which this Act applies shall be instituted in or entertained by any court, unless the board, on the application of the landlord, has in writing authorized the institution of such action or proceedings :

Provided, however, that the authorization of the board shall not be necessary and no application for such authorization may be entertained by the board, in any case where the tenant or any person residing or lodging with him or being his sub-tenant has, in the opinion of the court, been guilty of conduct which is a nuisance to adjoining occupiers, or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person. "

This provision was altered by Act No. 12 of 1966 in terms of which the requisite was that the premises should be used by the tenant or by any person residing or lodging with him for an illegal or immoral purpose.

Held, (i) that an illegal sale of arrack in the premises in contravention of the provisions of the Excise Ordinance is a use of the premises for an illegal purpose ; (ii) that consequently it makes no difference whether the law applicable be the original Statute or the amending Act No. 12 of 1966 : (iii) that a sale on a single occasion is sufficient to constitute such use.

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

D. R. P. Goonetilleke, with *Nalin Abeysekera*, for Defendant-Applicant

B. B. D. Fernando, for Plaintiff-Respondent.

Cur. adv. vult.

June 20, 1968. WEERAMANTRY, J.—

The Plaintiff in this case claims the ejectment of the Defendant from premises No. 58, Sri Kadiregam Street, Pettah, on the ground that a person residing or lodging with the defendant has been convicted of using these premises for an illegal purpose. The premises are governed by the provisions of the Rent Restriction Act, Cap. 274, and the standard rent is below Rs. 100.

The case proceeded to trial on the basis of the following among other admissions :—

(*a*) that in case No. 26188 of the Magistrate's Court, Colombo, one Kulatunga Aratchige Agnes was convicted of selling on 8th July, 1964, an excisable article to wit arrack, without a licence from the Government Agent, an offence punishable under Section 18 of the Excise Ordinance ;

(*b*) that the sale for which Agnes was convicted took place in the premises in suit ;

(*c*) that the said Agnes was permanently residing and lodging with the defendant in the said premises.

In view of these admissions the main issue before the learned Commissioner was whether the plaintiff was entitled to a decree in ejectment in terms of Section 13 (1) (*d*) of the Rent Restriction Act, as amended by Act No. 12 of 1966, for having used the premises for an illegal purpose.

The learned Commissioner answered this issue in the affirmative and on this basis entered decree of ejectment against the defendant.

The tenant appeals against this order on the ground that the mere fact of conviction for the single offence referred to does not entitle the plaintiff to decree based on the use of these premises for an illegal purpose.

It is necessary to note that the Act as it stood prior to the amendment required a conviction as a prerequisite to the operation of Section 13 (1) (*d*). This provision was altered by Act No. 12 of 1966, in terms of which the requisite was merely that the premises should be used by the tenant or by any person residing or lodging with him for an immoral or illegal purpose. The plaintiff came into court however on 2nd October, 1965, and the law applicable to the plaintiff's claim was therefore the law as it stood prior to the amendment brought about by Act No. 12 of 1966.

It is urged on behalf of the appellant that there has been no conviction for the *use* of premises for an immoral purpose, and that the premises have not in fact been *used* for the commission of the offence. It is submitted also that " use " connotes something more than a single act, and that notions of continuity or repeated user are implicit in the term.

The matter has received consideration from our Courts in two cases, the first being a case of possession, in violation of the Protection of Produce Ordinance, of gunny bags containing manufactured tea dust and tea sweepings, and the second a case of unlawful possession of some bottles of cocaine.

In the first of these cases, *Saris Appuhamy v. Ceylon Tea Plantations Co. Ltd.*,[1] Rose C.J. took the view that the offence of possession of the gunny bags involved the use of the premises for the purpose of storing

[1] (1953) 55 N. L. R. 447.

them, as distinct from the premises merely being the scene of commission of the offence.

Rose C.J. relied on the decision of the Court of Appeal in *Schneider & Sons Ltd. v. Abrahams*,[1] a case in which under the similar terms of Section 4 of the Rent and Mortgage Interest Restrictions Act, 1923, a single instance of user of premises for the receipt of stolen property was deemed sufficient to satisfy the language of the Statute. The property alleged to have been received in that case was a roll of Italian cloth. In that case the argument that a conviction for using the premises requires the user of the premises as an essential element of the crime was rejected and the Court also rejected the argument that " using " the premises requires something more than a single act of user and means a continuous, frequent or repeated use. Of the latter argument Bankes L.J. observed that although the mere fact of a crime being committed on the premises may not constitute a user of them for an illegal purpose, still even a single act may in certain cases be quite sufficient to satisfy the language of the Statute. As an instance of a crime, the commission of which did not constitute use for an illegal purpose, reference was made to an assault committed upon the premises and as an instance of an offence the commission of which on a single occasion did satisfy the requirements of the statute, use as a coiners den or as a deposit for stolen goods was cited.

It will be appreciated that in the former type of case the premises are merely the scene at which the offence is committed, whereas in the latter case the premises are in fact used for the criminal purpose.

The second of the Ceylon cases referred to was that of *Asiya Umma v. Kachi Mohideen*[2] where Sinnetamby J. proceeded on the basis that what the statute contemplates is a conviction for *using* the premises let for an illegal purpose and not the conviction of an occupant for an illegal act. Sinnetamby J. there took the view that a conviction for possession of three bottles of cocaine was not a conviction in respect of the use or the purpose for which the premises were kept, and drew a distinction between such a case and cases where the use of the premises is itself an offence, as where a house is used for unlawful gaming or kept as a brothel.

It seems to me that the ground on which the landlord in that case was held not entitled to a decree of ejectment rests on a view which in *Schneider v. Abrahams* was expressly ruled against by the Court of Appeal, for as already observed, Bankes L.J. rejected the argument that the section includes only offences in which user of the premises is an essential element.

The more satisfactory test in my view would be not whether the user of the premises constitutes an essential element in the offence for which the occupier or his licensee has been convicted, but rather as Bankes L.J. proceeded to observe in the same case, whether the tenant has taken

[1] *(1925) 132 L. T. 721.* [2] *(1959) 61 N. L. R. 330.*

advantage of the premises and the opportunity they afforded for committing the offence.

It may also be observed that Scrutton L.J. and Atkin L.J., the two other judges who were associated with Bankes L.J. in *Schneider & Sons Ltd. v. Abrahams*, also lent their very high authority to the view of Bankes L.J. that a conviction of using the premises does not require user as an element of the offence for which the occupier is convicted. Indeed the use by the legislature of the expression " has been convicted of using " was in that case criticised by Scrutton L.J.[1] as raising difficulties by reason of its defective drafting inasmuch as if the section means conviction for using the premises there could be very few crimes indeed that could be properly so described and brought within its scope.[2]

The same remarks would be apposite to our Ordinance as it stood prior to the amendment, and that is what concerns us here.

There is high authority therefore against both contentions urged by learned counsel for the appellant.

It is of interest to refer briefly to an English case in which the sale of liquor was the offence in question. In *Waller & Son v. Thomas*[3] an isolated breach of regulations relating to sale within prohibited hours was found insufficient to base a finding that the house was used for an illegal purpose. In that case however the premises were licensed premises, the user was a lawful user, and the judgment makes it clear that it was only by what is described as a slip in the user that the offence was committed through a single sale being effected outside permitted hours. In other words, in that case the sale of liquor in the premises was held to be a user of those premises for such sale, but the user in question was a lawful user except during the prohibited hours.

If any guidance is to be had from this latter case, it would be to point in the direction of such a sale being considered to be a user of the premises.

Consequently, I have little difficulty in holding in this case that the conviction for the sale of arrack is a conviction of using the premises for an illegal purpose inasmuch as advantage has been taken of the tenancy of the premises and of the opportunity they afforded for committing the offence. Such a case cannot be likened to a case of assault where the premises merely afforded the venue or the scene for the commission of the offence. An illegal sale of arrack requires a measure of cover, and there is no doubt that the building has in this sense been taken advantage of. I may add that in this view of the matter it would make no difference to the decision in this case whether the law applicable be the original statute

[1] *132 L. T. at 733.*

[2] *Vide also Megarry The Rent Acts, 10th ed., p 272.*

[3] *(1921) 1 K. B. 541.*

or the amending Act No. 12 of 1966, for the premises have been used in the sense of being taken advantage of and are not merely the fortuitous scene of commission of a crime.

I must observe that there is no warrant in the material before the learned Commissioner for his observation that the premises would have been used for the storage of a quantity of arrack. There was no such material placed before Court and such a finding cannot be based on surmise or conjecture.

This latter observation does not however result in any difference to the main conclusion I have formed, and the appeal is therefore dismissed with costs.

Appeal dismissed.