England contain excellent examples of cases stated under the Income Tax Acts on which cases stated under the Motor Car Ordinance, No 45 of 1938, and the Omnibus Service Licensing Ordinance can with advantage be modelled.

I wish to add that evidence adduced before quasi-judicial tribunals like the Commissioner or the Tribunal of Appeal should consist of oral statements or documents in writing which are made in the presence of or communicated to both parties before the Tribunal reaches its decision [1].

In the instant case the form in which the case has been sent up prevents me from expressing my opinion on the specific questions raised. The result is that the applicant finds himself stated "out of court"[2]. I regret I can do nothing for him.

This is a case in which each party should bear his own costs.

Case stated rejected.

1950 *Present* : **Gratiaen J.**

BRITO MUTUNAYAGAM, Appellant, *and* HEWAVITARNE, Respondent

S. C. 145—C. R. Colombo, 15,787

Rent Restriction Ordinance—Premises reasonably required for landlord's son or daughter over eighteen years of age—Can tenant be ejected?—Ordinance No. 60 of 1942, proviso to s. 8.

The words "dependent on him" in the proviso to section 8 of the Rent Restriction Ordinance qualify "son or daughter over eighteen years of age" as well as those classes of relatives described in the later part of the sentence. A landlord, therefore, is not entitled to claim the premises on the ground that they are reasonably required for occupation as a residence for his son or daughter who is over eighteen years of age, unless the latter is also proved to be dependent on him.

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

H. V. Perera, K.C., with *S. J. Kadirgamar*, for defendant appellant.

F. A. Hayley, K.C., with *W. D. Gunasekera*, for plaintiff respondent.

Cur. adv. vult.

February 16, 1950. GRATIAEN J.—

This has been a difficult case to determine, and I am very conscious of the fact, as the learned Commissioner has been, that a decision favourable to either party necessarily involves some measure of hardship to the other.

[1] *In Re Moxon (1945) 2 All E. R. 124 at 130.*
[2] *The American Thread Co. v. Joyce, 6 Tax Cases 21.*

The plaintiff Mrs. Hewavitarne is the owner of premises No. 445, Galle Road, Kollupitiya, which the defendant, who is a Dental Surgeon, has occupied as her tenant since 1931. The ground floor is constructed for use as a Dental Surgery, and it is common ground that the defendant has in the course of years established there a large and lucrative professional practice. On the floor above is a self-contained residential flat which the defendant occupied at an earlier period of his tenancy. Later, he sublet this flat and moved to another residence, retaining the surgery below for his professional work. This action is concerned with the premises on the ground floor from which the plaintiff seeks to have the defendant ejected in the circumstances which I shall now relate. The monthly rent for this portion is Rs. 95.

In October, 1947, one of the plaintiff's daughters married Mr. R. T. Ratnatunga who is a member of the Public Service. He was at that time engaged in official duties at Anuradhapura, but very shortly afterwards he was transferred to the Ministry of Agriculture in Colombo. He was unable to find a suitable residence for himself and his wife in Colombo, and the defendant agreed to place the residential flat, together with the garage, at their disposal. The tenancy of this part of the premises accordingly terminated, and Mr. and Mrs. Ratnatunga have been in residence there since January, 1948. A child was born in August, 1948, and in anticipation of this happy event the plaintiff gave the defendant notice to quit the surgery, stating that it was required to provide her married daughter with additional residential accommodation. Mr. and Mrs. Ratnatunga would naturally prefer to occupy a more spacious residence if it were available.

Mr. Ratnatunga has stated in evidence, and it is not denied, that the defendant had previously agreed that "when the family increases he would think of finding out another place to go to". The defendant's position is that he has been unable to obtain any other place suitable for his surgery, and he accordingly claimed the protection of the Rent Restriction Ordinance of 1942 which was applicable to the premises at the relevant date.

The plaintiff cannot succeed in the present action unless she can satisfy the Court that, taking into account among other factors, the hardship and inconvenience which would be caused to the defendant if a writ of ejectment were to be enforced against him, the premises are "reasonably required" for occupation as a residence *for a member of her family* (as defined in the proviso to section 8 of the Ordinance).

It must first be decided whether Mrs. Ratnatunga is a "member of the family" of the plaintiff within the meaning of the Ordinance. This phrase is defined in the Ordinance as meaning "the wife (of the landlord) or any son or daughter of his over eighteen years of age, or any parent, brother or sister dependent on him". The circumstance that the landlord is a lady presents no problem in the case, because words importing the masculine gender must for purposes of interpretation be taken to include females. The difficulty which does arise, however, is whether the words "*dependent on him*" qualify "son or daughter over eighteen years of age" as well as those classes of relative described

in a later part of the sentence. If one were permitted to pay due regard to the commas appearing in the official reprint of a statutory enactment, I should be inclined to the view that the doubtful privilege of dependence is not a pre-requisite to the status of a son or daughter on whose account the landlord may ask for a judicial decree to eject his tenant. It is, however, a well-established canon of construction that marks of punctuation are not to be taken as part of a statute—*Maxwell on Interpretation of Statutes (9th. Ed.) p. 45.* If therefore the commas in the sentence which I am called upon to interpret be ignored, I think, though not without hesitation, that the contention submitted by Mr. H. V. Perera is correct. In that view, the bonds of relationship do not by themselves entitle the claims of a landlord's son or daughter over eighteen years of age to be recognised unless he or she is also proved to be dependent on him in the sense in which that term is popularly understood. The language in the section is at least ambiguous, and should, I think, be construed in favour of the tenant for whose protection the Rent Restriction Acts have been specially enacted during a period when housing accommodation is notoriously scarce. I see no special reason why, if Parliament does not say so in unequivocal terms, the right of a tenant to remain in occupation should be surrendered in favour of an emancipated child of a landlord on whom that child does not depend for shelter or subsistence. The pattern of the corresponding provision in the English Act to which I have been referred is different, and would serve as an unreliable guide to a solution of the present problem. The interpretation which I prefer seems to me to safeguard tenants without unduly penalising landlords. (*Vide* in this connection the observations of Lord Greene, then Master of the Rolls, in *Cumming v. Danson* [1]).

In the view which I have taken, it follows that the plaintiff's action fails at the outset. It is not suggested that Mrs. Ratnatunga, who is married to a Government official, is any longer dependent on her mother, and she does not therefore fall within the class of persons to one of whom the defendant can be called upon to hand over the premises which are not required by the plaintiff for her own use. Indeed, the alternative interpretation would, from a practical standpoint, result in adding "sons-in-law" to the statutory group comprising the members of a landlord's family. The premises are in reality required *by Mr. Ranatunga* for the use of himself and the family unit of which he is the head.

As the interpretation of the section which I adopt has been reached with some diffidence, I shall proceed to express my opinion on the merits of the case upon the assumption that the premises could, in law, have been claimed for Mrs. Ratnatunga's use.

The parties to the action have, as one would expect from persons in their position, explained their respective difficulties with refreshing frankness. The learned Commissioner, in describing the position of Mr. and Mrs. Ratnatunga, holds that "considering the status of the plaintiff's son-in-law, who is a member of the Ceylon Civil Service, the portion occupied by him is *not quite sufficient* for their occupation, there being only one bedroom, and they have a child". The available

[1] *(1943) L. J. K. B. 145.*

accommodation consists of one large bedroom, a large dining-room-and-sitting-room combined, a kitchen, a bathroom and a lavatory. There are also two small cubicles, and a suitable garage has been provided by the defendant. I do not doubt that a little extra accommodation would make for greater comfort, but it seems to me that many married couples with an infant child would under the difficult conditions of to-day regard the inconveniences to which this young couple is subjected as comparatively insignificant.

The learned Commissioner is satisfied that the defendant has made a genuine attempt to find suitable alternative accommodation for his surgery, but without success. It was suggested that the defendant could attend to his patients in the house at Bambalapitiya where he now resides, but he considers that arrangement to be unsuitable ; he points out that his surgical instruments would be corroded owing to the sea air, and that his practice would be affected by the suggested change of establishment. The learned Commissioner holds in his favour that " the place (No. 445, Galle Road) has been his dental surgery for over seventeen years, fitted up with all the necessary instruments ", and that " a transfer from this place to Glenaber Place would result in a loss in his practice as a Dental Surgeon, in addition to damage to his instruments by corrosion ". The defendant's evidence, which has not been challenged on the point, is to the effect that the expenditure immediately involved in removing his surgery elsewhere, and in dismantling his various surgical implements which are fitted into the floor of the present establishment would amount to approximately Rs. 4,000. This sum alone represents three and a half years value of the rental which he now pays to the plaintiff.

The learned Commissioner has taken the view that the hardships which the defendant would suffer " do not outweigh the owner's need for the house for occupation as a residence for Mr. and Mrs. Ratnatunga ". With great respect, I cannot agree. On the one hand, it must be remembered that Mr. Ratnatunga's terms of employment in the Public Service do not exclude the possibility of transfer to some other station, whereas the defendant has practised his profession in the premises for eighteen years, and desires to enjoy without interruption the advantages of an established goodwill in the locality. Mr. Ratnatunga and his wife and infant child now reside in a flat which is admittedly small but which many other families of equal status would, I fancy, greatly envy. He had applied for a Government bungalow in February, 1948, but the claims of other officers were considered more urgent by the allocating Committee after an inspection of the accommodation which he now enjoys. This circumstance is a pointer to the difficulties which other public servants undergo at the present time. I think that, on a balance of convenience, it would unquestionably cause greater hardship to the defendant if he were ordered irrevocably to vacate his surgery than if the present arrangements were to continue, with some inconvenience to Mr. and Mrs. Ratnatunga, for what might prove to be a period of limited duration.

I set aside the order appealed from, and enter decree dismissing the plaintiff's action with costs in both Courts.

Appeal allowed.