1953 *Present :* **Gunasekara J.**

R. L. GUNASEKERA, Appellant, *and* M. A. S. MATHEW, Respondent

S. C. 84—C. R. Colombo, 34,058

Rent Restriction Act, No. 29 of 1948—Section 13 (1)—Premises required for landlord's son over 18 years of age—Right to eject tenant—" Member of the family "—" Immediate and present " need of landlord.

A landlord instituted action for ejectment against his tenant on the ground that the premises in question were required as a residence for his son, who was about 28 years of age. The son was not dependent on the father, but he was engaged to be married, and the premises were alleged to be required as a residence for him after his marriage.

Held, that the words " dependent on him " in the definition of " member of the family " in section 13 (1) of the Rent Restriction Act did not qualify " son or daughter over eighteen years of age ". The landlord was, therefore, entitled to claim the premises on the ground that they were reasonably required for his son, although the latter was not dependent on him.

Colombage v. Gomes [1], followed.

Brito Mutunayagam v. Hewavitarne,[2] not followed.

Held further, that in order to show that the premises were required for occupation as a residence for the landlord's son and the latter's wife it was not necessary for the landlord to prove that the son was already married at the time of the trial.

[1] *S. C. 74 : C. R. Colombo 15,187, decided on 27th September, 1949.*
[2] *(1950) 51 N. L. R. 237.*

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

V. Wijetunga, for the plaintiff appellant.

K. Rajaratnam, for the defendant respondent.

Cur. adv. vult.

January 27, 1953. GUNASEKARA J.—

This is an appeal against an order by the additional commissioner of requests of Colombo dismissing an action for the ejectment of the respondent from a house that the appellant had let to him and for the recovery of damages for overholding. The question in the case is whether it has been proved that the premises are, in terms of section 13 (1) of the Rent Restriction Act, No. 29 of 1948, reasonably required for occupation as a residence for any member of the family of the landlord.

The appellant, who is about 71 years of age, is a retired interpreter of the district court of Colombo and the person for whom he alleges that the house is required as a residence is a son of his named A. P. Gunasekera, who is about 28 years of age and is a clerk in the Government audit department. The son is not dependent on the father, and it is contended for the respondent that therefore he is not a " member of the family " of the latter within the meaning of that expression as defined in the enactment. The definition is in these terms :

> " member of the family " of any person means the wife of that person, or any son or daughter of his over eighteen years of age, or any parent, brother or sister dependent on him.

I am unable to accept the contention that the words " dependent on him " qualify " son or daughter ". As I read the definition it sets out three categories of persons who can be members of the family of any person, and it is only the third that consists of dependent relatives. The categories are—

(1) " the wife of that person ",

(2) " any son or daughter of his over eighteen years of age ",

(3) " any parent, brother or sister dependent on him ".

The same definition appeared in the corresponding provision of the repealed Rent Restriction Ordinance, No. 60 of 1942, and I have been referred to two cases in which its meaning was considered by this court. The first of these is an unreported case, *Colombage v. Gomes*,[1] decided on the 27th September, 1949, in which Canekeratne J. held that " dependent on him " did not qualify " son or daughter ", and therefore rejected a contention that a son of the plaintiff in that case being a person who was not dependent on the plaintiff was for that reason not a " member of the family " of the latter. In the other case, *Brito Mutunayagam v. Hewavitarne*[2], which was decided on the 16th February, 1950, my brother

[1] *S. C. 74 : C. R. Colombo 15,187.* [2] *(1950) 51 N. L. R. 237 at 239.*

Gratiaen, who was not aware of the earlier unreported decision, took a contrary view—" though not without hesitation " and, as he also puts it, " with diffidence ",—and held that a married daughter of the plaintiff in that case who was not dependent on the plaintiff was therefore not a member of the plaintiff's family. It seems to me, however, that this opinion was *obiter ;* for although the notice to quit had stated that the premises were required for the purpose of providing the plaintiff's daughter with additional residential accommodation it was held that they were in reality required by the plaintiff's son-in-law " for the use of himself and the family unit of which he is the head ". In any event, I venture to think that if Gratiaen J. had been aware of the case of *Colombage v. Gomes* [1] he might well have been content to follow it as a precedent. For these reasons I prefer to follow the decision in that case and I hold that A. P. Gunasekera is a " member of the family " of the appellant.

At present this gentleman is living with his parents and a brother of the age of 26 and a sister of 19 in another house belonging to the appellant. He is engaged to be married, and the premises in question are alleged to be required as a residence for him after his marriage. The learned commissioner holds that they are not reasonably required for this purpose. This finding is based on the grounds that the necessary accommodation can be found in the house occupied by the appellant, that the need is not an immediate and present need, and that the respondent will suffer greater hardship if he is ejected than the appellant's son if he is not.

The learned commissioner's view as to how the new couple can be accommodated is that the appellant can vacate his bedroom and share with his wife and his daughter the adjoining one that is now occupied by them. He holds that such an arrangement would benefit the appellant ; for the reason that a ground plan that has been produced indicates that the only bath-room in the house adjoins this second bedroom and communicates with it, and the appellant stated in his evidence that he wakes up frequently in the night " to go to the bath-room ". The commissioner says in his judgment :

> " The bath-room and lavatory are adjacent to room No. (2) which is occupied by the wife and daughter. It therefore appears that the pltff has to go from room No. (1) through room No. (2) in order to go to the bathroom and this is the easiest way of reaching it. It is my view that it would be more convenient and more safe for the pltff in his present condition to occupy room No. (2) with his wife and daughter who could be expected as it is also their duty to look after the pltff in his feeble condition. "

I am unable to agree with a submission made by Mr. Wijetunga that when the appellant spoke of " going to the bath-room " he was only employing a euphemism for " answering a call of nature " and that the evidence has been misapprehended by the commissioner when he takes it to mean that the appellant actually visited the bath-room or the water-closet adjoining it. It is clear, however, that the finding that the appellant " has to go from room No. (1) through room No. (2) in order

[1] *S. C. 74 : C. R. Colombo 15,187.*

to go to the bath-room " is based on a misapprehension of the evidence, for the plan shows that both bedrooms open into the living-room and from it there is access through a verandah to the bath-room and the water-closet. The appellant himself was not questioned as to whether it was through the adjoining bedroom that he was accustomed to go to the bath-room, and there is no other evidence on the point. The only evidence about his health is the following statement made by him : " The state of my health is not quite satisfactory because I have to wake up several times during the nights to go to the bath-room ". While I do not lose sight of the fact that the learned commissioner has seen the appellant I find no evidence to justify a view that the appellant needs to have a nurse in attendance on him. The finding that the arrangement in question would benefit the appellant is unsupported by the evidence. I have little doubt that but for this erroneous finding the learned commissioner could not have failed to regard this to be an impracticable arrangement, being one that would deny to the appellant and to his daughter a reasonable minimum of privacy.

The appellant and his son stated in evidence at the trial, on the 14th November, 1951, that the latter had been engaged to be married since April but that it had not been possible to fix a date for the marriage because he had no place to live in with his wife. The learned commissioner has accepted the evidence about the engagement, but he holds that the need of a residence is not an immediate and present need. " The plaintiff's son is not married yet ", he says. " This action is brought in order to provide a house for his son after he gets married. Therefore the need of the landlord is not immediate and present. The pltff's evidence is that the marriage is not solemnised yet as they cannot be provided with an accommodation. I refuse to believe this. " I am unable to agree that in order to show that the premises are required for occupation as a residence for the landlord's son and the latter's wife the landlord must prove that the son is already married. If it had been arranged that he was to be married on, say, the 15th November, 1951, it could surely not be said that because the marriage had not yet taken place the need of a house was not an " immediate and present " need at the time of the trial. Apparently the ground on which the commissioner rejects the reason given for the marriage not having taken place is the erroneous finding that the necessary accommodation can be found in the appellant's house. No other ground is stated in the judgment, and there is no evidence of any facts that show the existence of any other reason for the marriage not having taken place. It seems to me, therefore, that there was no sufficient ground for the rejection of the appellant and his son's evidence on this point, and that the appellant has established that the premises are required for occupation as a residence for a member of his family.

One of the matters that are relevant to the question whether they are reasonably required for this purpose is the extent of any hardship that the respondent is likely to suffer if he is evicted. The house is situated in Ratmalana, where the respondent is employed as a minor supervisor in the mechanical engineer's department of the Ceylon Government Railway. It contains two bedrooms, and the authorised rent is Rs. 17/93

a month. The respondent has been in occupation of it from 1946. He is a married man, 34 years of age, and at the time of the trial he was living there with his wife and two children aged 3 years and 1½ years respectively, and his wife was expecting a third child. This last mentioned fact, which is no longer relevant, is one of the matters that the learned commissioner has taken into account in his assessment of the hardship that ejectment could cause to the respondent. Another circumstance is that the respondent's hours of work are 7 a.m. to 4 p.m. The commissioner holds that this makes it necessary that the respondent should live close to his place of work. It appears from the respondent's own evidence, however, that even a house in Negombo would be close enough, for he says that he asked his father to find him a house in that town. On the question whether there is alternative accommodation available to the respondent the commissioner says :

> " This defendant has made efforts to get at some other house in Ratmalana. He had also asked his friends and his father also to look out for any suitable house. So far he has not been able to find another house. "

The respondent was the only witness called in support of his case, and there is no evidence that the persons whose help he sought made any effort to find him a house, or that his own efforts went beyond asking his friends to look for a house for him. There can be no doubt that if such evidence had been available it would have been placed before the court. It is manifest that the respondent made no serious effort to find other accommodation. In my opinion the learned commissioner's finding on the question of relative hardship is clearly erroneous, and he ought upon the evidence before him to have answered in the appellant's favour the issue whether the premises were reasonably required for occupation as a residence for a member of the appellant's family.

In the lower court the respondent successfully claimed in reconvention a total sum of Rs. 267/80 which he had paid the appellant in excess of the rent payable up to the 30th June, 1951, and there is no appeal against so much of the decree as relates to this claim. It was admitted at the trial that the rent due up to the 31st October, 1951, had been paid. I set aside so much of the order of the court below as dismisses the appellant's action and directs him to pay the respondent's costs, and I substitute an order for the ejectment of the respondent as prayed for in the plaint, and for the payment of damages by him to the appellant at the rate of Rs. 17/93 a month from the 1st November, 1951, until he is ejected from the premises. I also direct that no person other than the appellant's son A. P. Gunasekera shall enter into occupation of the premises upon vacation thereof by the respondent or upon his ejectment therefrom. Each party will bear his own costs in respect of the proceedings in the court of requests and the respondent will pay the appellant his costs of appeal.

Appeal allowed.