1955 *Present :* **Sansoni J.**

PERERA & SONS, LTD., Appellant, *and* MRS. F. PATE, Respondent

S. C. 52—C. R. Colombo, 46,488

Rent Restriction Act, No. 29 of 1948—Section 13 (1) (d)—Nuisance—Nature of responsibility of tenant—"Adjoining" occupiers—Must landlord himself give evidence ?

Defendant, a limited liability Company carrying on the business of bakers, was a tenant of certain rented premises. One of the rented rooms was being used as a rest room by the Company's workmen. There was evidence that the occupants of the room used to urinate in and pollute the drains on both sides of the road just outside that room. A neighbouring occupier who lived opposite the premises repeatedly complained about the objectionable behaviour of the occupants of the room, but the defendant permitted the nuisance to continue.

Held, that the defendant was guilty of conduct which was a nuisance to adjoining occupiers within the meaning of section 13 (1) (*d*) of the Rent Restriction Act and was therefore liable to be ejected from the premises.

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

H. W. Jayewardene, Q.C., with *P. Ranasinghe*, for the defendant appellant.

E. A. G. de Silva, for the plaintiff respondent.

Cur. adv. vult.

February 15, 1955. SANSONI J.—

In this action the landlord relying on section 13 (1) (*d*) of the Rent Restriction Act, No. 29 of 1948, has sued to eject a tenant from the rented premises on the ground that the tenant has been guilty of conduct which is a nuisance to the landlord and other adjoining occupiers. The tenant is a limited liability Company carrying on the business of bakers. Its main bakery, to which are attached lavatories and bathrooms, is about 50 yards away from the rented premises. The evidence has conclusively proved that one of the rented rooms has for a long time prior to this action been used as a rest room by the Company's workmen. Although the Managing Director denied this, he admitted that his workmen change in that room and leave their clothes there before they go to work. But the evidence of independent witnesses, whom the learned Commissioner has believed, has established much more. It has proved that the room in question was being habitually occupied at all times of the day and night even for the purpose of sleeping.

The particular nuisance complained of is that the occupants of the room used to urinate in and pollute the drains on both sides of the road just outside that room. A neighbouring occupier, Mr. Ebert, who lives opposite these premises repeatedly complained to the Police, to the defendant, and to the Municipal authorities about the objectionable behaviour of the occupants of the room, but the defendant permitted the nuisance to continue. The learned Commissioner held in favour of the landlord and in this appeal it was argued that the case does not fall within section 13 (1) (*d*) because (1) the tenant has not been guilty of the conduct complained of and the Act does not provide that the tenant may be held responsible for the conduct of other persons who use the premises; (2) the conduct must be conduct on the rented premises and not outside them ; (3) Mr. Ebert was not an " adjoining occupier " ; (4) the plaintiff has not given evidence that she considered the conduct of those persons a nuisance. I shall consider these submissions in the above order.

(1) Although the Company which is the tenant of the premises has not directly committed this nuisance, I am satisfied that it has indirectly committed it and is therefore penalised by the Act, for it must be held liable for the nuisance committed by those who occupied the room in question. The Managing Director was repeatedly informed that the occupants of the room were behaving in an objectionable manner, and this was obviously due to the absence of lavatory accommodation ; if he was unable to provide such accommodation or otherwise abate the nuisance, he should not have permitted the room to be used as a rest room. I do not think this is a matter which turns on the liability of a master for the acts of his servants but rather on the responsibility of an occupier of premises to see that a nuisance is not created by anybody who comes on those premises with his permission. I think such a liability exists because the nuisance may be said to have been committed under his implied authority. The following passage in " The Rents Act in South Africa " (2nd Edition) p. 106 by Rosenow and Diemont seems relevant :

" The onus is on the lessor to satisfy the Court that the lessee is responsible for the nuisance. So, for example, an ejectment order was refused in a case where a nuisance in the form of brawling and drinking was alleged, and it appeared that *chance intruders* might be responsible for the nuisance ".

(2) The sub-section does not require that the nuisance should exist on the rented premises and I am not prepared to limit it in the way suggested. Mr. Megarry in " The Rent Acts" (7th Edition) p. 245 cites a case where an order was made on account of a married tenant's acts of undue familiarity with the landlord's adolescent daughter who lived in a flat in the same house, even though those acts took place not in the house but in an alley some distance away ; for on a claim based on annoyance (which is an additional ground in the English Statute) to adjoining occupiers, " what arises from their being adjoining may properly be considered in the light of an event which took place outside the premises ".

(3) On page 246 Mr. Megarry refers to a case where the word " adjoining " seems to have been construed as meaning " contiguous " but he comments : " This seems too strict a construction, for one meaning of the word is ' neighbouring ' and all that the context seems to require is that the premises of the adjoining occupiers should be near enough to be affected by the tenant's conduct on the demised premises ". My own view of the meaning of the word accords with this comment.

(4) There is no question that the plaintiff herself is an adjoining occupier even in the most limited sense of the term and that the plaint alleges a nuisance to her as well. I do not think it was necessary that evidence should have been given by the plaintiff herself that she considered the conduct complained of a nuisance. Upon proof of conduct capable of having this effect the Court is entitled to infer that it had that effect even if there is no positive evidence that it did. The Court is entitled to presume that the adjoining occupiers are reasonable people to whom the conduct in question would be a nuisance. See *Frederick Platts Co., Ltd. v. Grigor* [1].

I would therefore dismiss this appeal with costs in both Courts.

Appeal dismissed.

[1] *(1950) 66 T. L. R. 859.*