1954 *Present :* **Gratiaen J.**

K. P. M. SURIYA, Appellant, *and* BOARD OF TRUSTEES OF MARADANA MOSQUE, Respondent

S. C. 144—C. R. Colombo, 36,196 R/E

Rent Restriction Act, No. 29 of 1948—" Non-occupying tenant "—Meaning of expression—Forfeiture of statutory protection.

The theory of forfeiture of the rights of a " statutory tenant " by " non-occupation " is not applicable in a case where the tenant has lawfully sub-let the premises without violating either the terms of his contract of tenancy or the provisions of any statute.

Sabapathy v. Kularatne (1951) 52 N. L. R. 425, explained.

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

H. W. Jayewardene, with *D. R. P. Goonetilleke,* for the defendant appellant.

M. H. A. Aziz, for the plaintiff respondent.

Cur. adv. vult.

[1] *(1900) 1 K. B. 803.* [2] *(1936) 37 N. L. R. 439 ; 6 C. L. W. 1.*

February 9, 1954. GRATIAEN J.—

In this case the plaintiff (which is an incorporated Board of Trustees) sued its tenant the defendant, after due notice, to have him ejected from certain premises in Maradana. The premises are protected by the provisions of the Rent Restriction Act, No. 29 of 1948. At the trial, the plaintiff's claim was based only on two allegations—(1) that the defendant had sub-let the premises to A. J. M. Juffer in breach of section 9 (1) of the Act, and (2) that she was a "non-occupying tenant" and had therefore forfeited her status as a statutory tenant entitled to the protection of the Act.

On the first ground, the learned Commissioner held in favour of the defendant. The evidence established that the sub-tenancy complained of had been created before the prohibition contained in section 9 (1) of the Act passed into law. In the result, the lawful exercise by the tenant of her common law right to sub-let the premises did not give rise to a cause of action for ejectment.

Mr. Aziz argued, on the second ground, that the judgment under appeal is supported by certain observations I had made in *Sabapathy v. Kularatne* [1]. My decision in that case, however, related to an entirely different set of circumstances. The landlord had there sought to recover certain protected premises in Matale from his tenant who, after the commencement of the tenancy, had taken up residence permanently in Colombo. The landlord genuinely required the premises for his own use, but the tenant contended the claim was "unreasonable" because he (the tenant) himself "required the premises for the purpose of allowing his brother Ratnapala to carry on business there". It was proved, however, that the tenant had no proprietary interest in Ratnapala's business, and that Ratnapala was not his "dependant". In these circumstances I held that the landlord's claim clearly prevailed *on the issue relating to the "reasonableness" of his requirement.* It was in that context that I pointed out that, in such a situation, the claims of the landlord must necessarily be preferred to those of a "non-occupying tenant" who merely wished to continue his tenancy for the benefit of someone who "was in no sense privy to the contract of tenancy".

The present case is entirely different. To begin with, the plaintiff did not suggest that it required the premises for its own use. Moreover, the defendant, though not in personal occupation, had lawfully sub-let the premises without violating either the terms of her contract of tenancy or the provisions of any statute. The theory of forfeiture by "non-occupation" in the sense in which that term was explained in *Brown v. Brash* [2] has therefore no relevancy to the circumstances of the case.

Brown v. Brash (*supra*) which declared that "a non-occupying tenant *prima facie* forfeits his status as a statutory tenant under the Rent Restriction Acts" must not be misunderstood. In *Sabapathy v. Kularatne* (*supra*) I intended only to accept the *dictum* that questions of relative

[1] *(1951) 52 N. L. R. 425.* [2] *(1948) 2 K. B. 247.*

hardship cannot arise where the tenant has completely abandoned possession of the premises and thereby, to use the words of Asquith L.J., " completely removed himself from the protective orbit of the Acts ". But a tenant who lawfully sub-lets the premises can in no sense be equated to one who defeats the very object of rent restriction legislation by renting a house and then, by completely abandoning it, " withdraws it from circulation " although it is urgently required for occupation by others—*per* Scrutton L.J. in *Skinner v. Geary* [1]. See also *Wabe v. Taylor* [2]. Such instances, as far as I am aware, have not arisen in any action instituted in Ceylon, and I do not doubt that, if they do, the Courts would refuse to interpret the local Act so as to permit the tenant to claim protection. But in the normal cases with which we are only too familiar, the landlord can only obtain an order for ejectment by one or other of the conditions specified in the Act.

The judgment under appeal is based on a misdirection, and must be set aside. I allow the appeal and direct that the plaintiff's action be dismissed with costs both here and in the Court below.

Appeal allowed.