1951 *Present :* **Gratiaen J.**

SABAPATHY *et al.*, Appellants, *and* KULARATNE, Respondent

S. C. 9—C. R. Matale, 10,770

Rent Restriction Ordinance—" Non-occupying tenant "—Forfeits statutory protection.

Plaintiffs had let certain premises to the defendant on the basis of a monthly tenancy. It was established that the premises were being used no longer for the tenant's occupation but for the purpose of a business carried on by the tenant's brother who was in no sense privy to the contract of tenancy.

Held, that a " non-occupying tenant " should be regarded as having forfeited the special statutory protection afforded by the provisions of the Rent Restriction Ordinance.

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

L. G. Weeramantry, for the plaintiffs appellants.

J. W. Subasinghe, for the defendant respondent.

Cur. adv. vult.

March 16, 1951. GRATIAEN J.—

The appellants, who are the owners of premises No. 381, Trincomalee Street, Matale, had let the premises to the respondent on the basis of a monthly tenancy. They gave notice to the respondent terminating the tenancy as from April 1, 1950, but the respondent, relying on the provisions of the Rent Restriction Ordinance, refused to vacate the premises.

At the trial in the court below the only issue which was seriously contested was whether the premises were " reasonably required for the use of the landlord " within the meaning of the Ordinance. The learned Commissioner answered this issue in favour of the tenant, and dismissed the action with costs. The present appeal is from this judgment.

In my opinion the plaintiff's appeal is entitled to succeed. It is common ground that the respondent was, at the date of institution of this action and at all relevant times thereafter, an officer in the Income Tax Department residing in Colombo, and that he did not require the premises either for his own use or for the use of any member of his family who was dependent on him. He nevertheless claimed in his pleadings that he required the premises " for the purpose of allowing his brother Ratnapala to carry on business in coir goods and sundries, and that Ratnapala, who was still carrying on business there, had no alternative accommodation ".

The view taken by the learned Commissioner seems to have been that Ratnapala's need for the premises was more urgent than that of the plaintiff's and that in these circumstances the premises were not *reasonably* required for the plaintiff's use. With great respect, I do not see how the

test of the reasonableness of a landlord's claim can be applied *with reference to the claims of some person other than the tenant or some member of his family who is dependent on him.* In the present case Ratnapala was admittedly not dependent on the respondent and was in fact and in law the sole owner of the business carried on in the leased premises, subject to some nebulous contractual obligation to pay a share of his profits to the respondent.

The scheme of the Rent Restriction Ordinance already curtails to a large extent the common law rights of a landlord, and experience has no doubt shown that these limitations are necessitated by the conditions of the present housing shortage. It would however place a landlord in an intolerable position if the Ordinance were to be so construed that his interests should subserve not only those of his tenant and of his tenant's family but also the commercial interests of persons who are in no sense privy to the contract of tenancy. In my opinion, a " non-occupying tenant " in the sense in which that term has been explained in *Brown v. Brash* [1] should be regarded as having forfeited the special statutory protection afforded by the provisions of the Rent Restriction Ordinance.

I set aside the judgment appealed from, and direct that decree be entered in favour of the appellants as prayed for with costs (less the aggregate amount of any sums paid as rental by the respondent up to the date of decree). The appellants are also entitled to the costs of this appeal.

Appeal allowed.