1951 *Present :* **Jayetileke C.J., Nagalingam J. and Gratiaen J.**

DE ALWIS, Appellant, *and* PERERA, Respondent

S. C. 7 C. R. Colombo, 27,027

Rent Restriction Act, No. 29 of 1948—Landlord not owner of premises let—His right to avail himself of provisions of section 13 (1) (c)—Meaning of " landlord "—Is jus *in* re *a necessary ingredient ?—Sections 13 1 (c), 26, 27—Evidence Ordinance (Cap. 11), s. 116.*

Plaintiff let certain premises to defendant on the basis of a monthly tenancy and placed the latter in possession thereof. The premises belonged, in fact, to the plaintiff's wife and were let on her behalf, but the defendant was not aware of that fact and the contract of tenancy was, according to the evidence, one entered into by the plaintiff in his personal capacity as the landlord and the defendant as the tenant.

In action brought by the plaintiff under section 13 (1) (*c*) of the Rent Restriction Act to eject the defendant on the ground that he " reasonably required " the premises in order to carry on a trade or business—

Held, that the plaintiff was entitled to maintain the action although he was not the owner of the premises.

Quaere, whether a person who obtains a notarial lease, for a term of years, of premises which are already in the occupation of the lessor's monthly tenant can avail himself of the provisions of section 13 (1) (*c*) of the Rent Restriction Act in order to eject the tenant, when possession has not been delivered by the lessor to the lessee but the tenant has been paying his monthly rents to the lessee subsequent to the lease.

Hameed v. Anamalay (1946) 47 N. L. R. 558 discussed.

Per JAYETILEKE C.J.—" I am of opinion that the plaintiff is entitled to maintain the action although he does not have a real right in the property ".

Per NAGALINGAM J.—" I am therefore of opinion that in section 13 (1) proviso (*c*) of the Act the term ' landlord ' must be interpreted as meaning one who in addition to receiving the rent has a *jus in re* in respect of the demised premises ". Vide *Hameed v. Anamalay.*

Per GRATIAEN J.—" In my opinion the extended definition given to the term " landlord " in *Hameed's case* was not legitimate ".

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

This appeal was reserved for adjudication by a Divisional Bench on a reference made by Gratiaen J.

H.W. Jayewardene, with *D.R.P.Gunetilleke*, for the plaintiff appellant.—The plaintiff sought to eject defendant on the ground that he reasonably required the premises for his occupation for the purpose of carrying on his business. The trial judge followed the decision in *Hameed v. Anamalay*,[1] and dismissed the action as plaintiff was not the owner of the premises. Defendant admitted the tenancy and the parties went to trial on five issues. There was no issue on the right of the plaintiff to bring this action. Section 27 of the Rent Restriction Act, No. 29 of 1948, defines the term " landlord ". Plaintiff comes under the definition of section 27 and he is suing under section 13 (*c*). The judgment in *Hameed v. Anamalay* should be limited to the facts of that

[1] *(1946) 47 N. L. R. 558.*

particular case. Rights under the common law are not affected by the Rent Restriction Act—*Maroof v. Leaff* [1]. As to what a real right is see *Wille: Landlord and Tenant, 3rd ed., pp. 14, 126.*

E. B. Wikramanayake, K.C., with *A. M. Charavanamuttu*, for the defendant respondent.—*Hameed v. Anamalay* [2] cannot be limited to the facts of that particular case. The decision must be either approved or over-ruled. A " landlord " for the purpose of section 13 (1) must not only be a person who is entitled to recover rent but also one who has a " jus in re " in regard to the premises. There is no evidence in the present case that plaintiff had possession. He had no " jus in re ". As to what a " jus in re " is see *Bell's Legal Dictionary, p. 303.*

[NAGALINGAM J.—Are you not estopped under section 116 of the Evidence Ordinance ?]

No. Section 116 does not come into effect in view of the statutory provisions in the Rent Restriction Act. Section 26 of the Rent Restriction Act is applicable to the facts of this case. That section limits the definition of " landlord " in section 27.

H. W. Jayewardene, in reply.—Section 26 of the Rent Restriction Act was never intended to take away the rights of the real landlord under the common law—*Maroof v. Leaff* [1].

Cur. adv. vult.

July 4, 1951. JAYETILEKE C.J.—

The plaintiff sued the defendant in this action to have him ejected from a house bearing assessment No. 70, Havelock Road, Colombo, on the ground that he " reasonably required " it in order to carry on a trade or business. In the course of his evidence he said that the house belonged to his wife and that he let it to the defendant on behalf of his wife but he did not say that he informed the defendant of that fact or that the defendant was aware of it. The rent receipts D2 and D3, which were issued by him in 1946 and 1947, and which were not signed by him in a representative capacity, indicate that he did not inform the defendant that he was acting as the agent of his wife. That the defendant did not recognise anyone but the plaintiff as his landlord is supported by the fact that the plaintiff's wife withdrew an earlier action which she had instituted against the defendant for ejectment. On the evidence the contract of tenancy must, in my opinion, be taken to have been entered into by the plaintiff in his personal capacity as the landlord and the defendant as the tenant.

The parties went to trial on five issues of which those relevant to the decision of the appeal are—

(1) Are the premises in suit reasonably required by the plaintiff for use and occupation for the purposes of his business within the meaning of s. 13 (1) (c) of the Rent Restriction Act ?

(5) Can the plaintiff maintain this action under s. 13 (1) (*c*) inasmuch as he is not the owner of the premises in suit?

[1] *(1944) 46 N. L. R. 25.* [2] *(1946) 47 N. L. R. 558.*

After trial the learned Commissioner held in favour of the plaintiff on issue 1 and the correctness of that finding was not challenged at the argument before us. On issue 5 he followed the judgment of this Court in *Hameed v. Anamalay* [1] and held that plaintiff could not maintain the action as he did not have a *jus in re* in the premises. He accordingly dismissed the action with costs. The present appeal is against that part of the judgment. The appeal came up for hearing before my brother Gratiaen and, at his request, I directed it to be listed for argument before a Bench of three Judges.

The result of the appeal turns on the simple question as to what is meant by the word " landlord " in s. 13 (1) of the Rent Restriction Act, No. 29 of 1948. The sub-section reads—

" Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises to which this Act applies shall be instituted in or entertained by any Court, unless the Board, on the application of the landlord, has in writing authorised the institution of such action or proceedings:

Provided, however, that the authorisation of the Board shall not be necessary, and no application for such authorisation may be entertained by the Board, in any case where—

(*a*) rent has been in arrear for one month after it has become due; or

(*b*) the tenant has given notice to quit; or

(*c*) the premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord, or for the purposes of the trade, business, profession, vocation or employment of the landlord; or

(*d*) the tenant or any person residing or lodging with him or being his sub-tenant has, in the opinion of the Court, been guilty of conduct which is a nuisance to adjoining occupiers, or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the Court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person.

For the purposes of paragraph (*c*) of the foregoing proviso—

(1) " 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;

(2) any premises of which the landlord is a religious body or association shall be deemed to be required for the purposes of the business of the landlord, if they are, in the opinion of the Court, reasonably required for any of the objects or purposes for which the body or association is constituted ".

[1] *(1946) 47 N. L. R. 558.*

The word " landlord " is defined in s. 27, the relevant portion of which reads—

> " In this Act unless the context otherwise requires ' landlord ', in relation to any premises, means the person for the time being entitled to receive the rent of such premises, and includes any tenant who lets the premises or any part thereof to any sub-tenant."

In *Gough v. Gough* [1] Lord Esher, M. R., said that where the word " means " is used in a statutory definition it is not permissible to give any other meaning to the word which is defined than that which is stated in the definition.

Under the common law all things may be the subject of the contract of letting and hiring whether they belong to the lessor or are the property of a third party since lease does not affect the ownership of the thing let (Voet 19.2.34); and if the tenant receives the undisturbed enjoyment of the premises he is liable for his corresponding obligations, and he is not allowed, when sued by his landlord, to set up the defence that the latter had no right to let the property to him (Voet 19.2.32); *Clarke v. Nourse Mines.*[2] Section 116 of the Evidence Ordinance (Cap. 11) is based on this rule. It follows therefore that under the common law the plaintiff is, in relation to the defendant, the landlord of the premises as defined in s. 27, and the defendant is not entitled to deny the plaintiff's title as a ground for refusing to pay the rent or to give up possession. The question then is whether there is anything in s. 13 (1) or in any other section of the Act to alter the plaintiff's position as landlord or to prevent him from instituting this action. In this connection it is relevant to point out that where the Act does intend to interfere with the operation of the common law it does so in express terms. In sections 9 (1), 10, 13 and 18 we find the expression " notwithstanding anything in any other law ". There is no such provision in s. 13 (1). The first sentence of s. 13 (1) requires the authorisation of the Board for the institution of an action for ejectment. The proviso preserves intact the common law rights of ejectment in the four cases mentioned in paragraphs (*a*) to (*d*). The proviso does not state who is to institute the action, nor does it in any way designate as the person who may institute the action anyone other than the person who would be entitled to institute it under the common law. Hence in any case which comes within one of the paragraphs (*a*) to (*d*), the common law remains unaffected.

Counsel for the respondent invited our attention to s. 26 of the Act which provides that in certain cases the owner is deemed to be the landlord. It is no doubt correct that in a case to which that section applies the Act recognises as landlord a person different from the person who under the common law, as followed in the definition in s. 27, would be the person entitled to institute the action. But it would be unsafe to infer an intention on the part of the legislature to abolish a right of action under the common law unless such an intention is either expressed in the law or arises by necessary implication. The terms of

[1] *(1891) 2 Q. B. at 665.*

[2] *(1910) T. S. at 521.*

s. 26 do not justify such an inference on either of the grounds I have mentioned. It is possible that s. 26 was enacted to prevent an evasion of the penal provisions of the statute.

Counsel for the respondent contended that if a person who does not have a real right in a property is given the right to institute an action for ejectment under s. 13 (1) it will be open to a dishonest landlord to execute a lease in favour of a nominee and to get the latter to institute the action. If that is a correct statement of the law, the matter may well be one for the legislature in order to remedy the inconvenience. But we cannot be affected by it. All we can do is to construe the Act. For the reasons given above I am of opinion that the plaintiff is entitled to maintain the action although he does not have a real right in the property. I would, accordingly, set aside the judgment appealed from and send the case back for trial on issues 2, 3 and 4. The plaintiff is entitled to costs here and of the trial in the Court below.

NAGALINGAM J.—

The right of a landlord who is not the owner of the premises let to avail himself of the provisions contained in proviso (*c*) to sub-section 1 of section 13 of the Rent Restriction Act, No. 29 of 1948, arises on this appeal, and in view of the judgment in the case of *Hameed v. Anamalay*,[1] the case has been reserved for adjudication by a Divisional Bench by my Lord the Chief Justice on a reference made by my brother Gratiaen J. before whom the appeal came up for hearing in the first instance.

The facts as found by the learned Commissioner are not in dispute and so far as they are material may be shortly stated as follows: The plaintiff-appellant let the premises in question to the defendant-respondent and placed the latter in possession thereof. The defendant continued to pay rent to the plaintiff for a number of years. Though the plaintiff let the premises he had no title to them and in reality it was his wife who was the owner thereof. The capacity in which the plaintiff let the premises is said to be as agent of his wife but so far as the defendant is concerned the wife was an undisclosed principal; the plaintiff when he entered into the contract of letting with the defendant did not expressly contract as agent of his wife. On the basis that the premises were reasonably required for his occupation for the purpose of carrying on a trade the plaintiff gave notice to the defendant terminating the tenancy and instituted this action. The learned Commissioner found in favour of the plaintiff on all these questions of fact but dismissed his action on the ground that the plaintiff was not a landlord within the meaning of that term as interpreted by this Court in the case of *Hameed v. Anamalay* [1].

In that case I had occasion to point out that the term " landlord " in proviso (*c*) to section 8 of the Rent Restriction Ordinance, No. 60 of 1942, " must be defined as not only one who is entitled to receive the rent but also as one who has a *jus in re* in regard to the premises ". Addressing his mind to this added qualification that the landlord must also be one who has a *jus in re* the learned Commissioner held that the plaintiff had no *jus in re* and found himself unable to grant the plaintiff the relief he claimed.

[1] *(1946) 47 N. L. R. 558.*

In this state of the record, two questions were argued at the hearing before us, firstly whether the decision in the case of *Hameed v. Anamalay* [1] is right, and secondly whether the plaintiff is one who has a *jus in re*.

The case of *Hameed v. Anamalay* [1] was decided under the earlier Rent Restriction Ordinance, No. 60 of 1942, and if the case had to be decided again under the new Act No. 29 of 1948, the result would be identical, for the objects of both enactments are the same and the relevant provisions of the two enactments are materially not different. Nothing was said at the argument to show that the case should have been decided otherwise. Learned Counsel for the appellant contented himself with the observation that the judgment in that case should be limited to its own facts and if so limited no exception could be taken to it. Counsel for the respondent, however, said he fully supported the judgment. I have given my reasons at some length for the view I expressed in that case. Not one of the reasons has been assailed. I therefore do not propose to recapitulate them.

There is, however, an aspect of the matter not adverted to in that judgment but to which attention may profitably be drawn. The proposition formulated in that case was that where, after an owner lets the property to a tenant on the terms of a monthly tenancy and puts him in possession, he subsequently executes a notarial lease in respect of the same premises for a term of years in favour of a lessee to whom possession is, however, not *delivered*, but to whom the monthly tenant pays the rent accruing subsequent to the lease, the lessee in those circumstances is not one who is entitled to terminate the tenancy and claim possession of the property on the ground that the premises are reasonably required by him for his own purposes. Proviso (*c*) of subsection (1) of section 13 of the new enactment corresponding to section 8 (*c*) of the old Ordinance enables only two categories of persons to claim possession of the premises on the ground set out therein: (1) the landlord himself, (2) a member of the family of the landlord. The contrary of the proposition set out in *Hameed v. Anamalay* [1], if upheld, would lead to create a third class of persons not contemplated by the enactment who would be entitled to recover possession of the premises on the ground that the premises were reasonably required for their own purposes.

If the Legislature intended this third class of persons should be benefited by virtue of this proviso, it could very well have expressly said so, but little reflection would show that had the Legislature such an intention and in order to give effect to such an intention added some such words as " a lessee or a subsequent lessee from the landlord " immediately after the words " any member of the family of the landlord ", the Legislature would then have defeated the very purpose which it had in view in enacting these provisions, for then a landlord need only relet the premises to a third party who may be in need of the premises for his own occupation. There would therefore be no curb on the activities of a landlord in regard to his letting the premises and reletting

[1] *(1946) 47 N. L. R. 558.*

them any number of times he chooses to, for the only test to be applied in turning out a tenant who is already in occupation would be whether there was anyone in the wide world who could show that he reasonably required the premises for his own occupation either as a residence or as a place of business. The solicitude plainly evinced by the Legislature in the Act itself to protect the tenant from eviction at the mere will and pleasure of the landlord would be rendered ineffectual and would continue to have habitation only in the realm of unrealized pious wishes.

I am therefore of opinion that in section 13 (1) proviso (*c*) of the Act too the term " landlord " must be interpreted as meaning one who in addition to receiving the rent has a *jus in re in* respect of the demised premises.

A supposed difficulty that would flow from this interpretation was pointed to by postulating the question whether a lessee who had been recovering rents from the monthly tenant as in the case of *Hameed v. Anamalay*,[1] that is, a lessee who had no *jus in re* could sue for recovery of rent and for ejectment where the tenant admittedly had fallen into arrears with his rent and laid himself open to an action by virtue of proviso (*a*) to sub-section (1) of section 13. To my mind there is not the slightest difficulty in answering that question emphatically in the affirmative; for there is nothing in the context of proviso (*a*) which would require that the meaning given to the term " landlord " by section 27 of the Act should be qualified in any manner in order to prevent a resulting absurdity or to avoid the enactment being reduced to a nullity. In fact in the case of *Hameed v. Anamalay* [1] I have indicated by a pointed reference to two of the sections, namely, sections 3 and 7 that the term " landlord " need only be given the meaning which the Legislature has given to it in section 27 and nothing beyond that, so that where a tenant in occupation falls into arrears with his rent and becomes liable in terms of proviso (*a*) to be effected, a lessee without possession to whom the tenant had paid rent would be entitled to maintain an action in ejectment against him.

An objection may be raised to this view on the ground that the term " landlord " is being given different meanings in different parts of the same statute and indeed in the different parts of the same section. It is true that " it is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act of Parliament or other document." See *Coustald v. Legh* [2]. But this is not an inflexible rule, for " many instances occur of a departure from the cardinal rule that the same word should always be employed to mean the same thing " —*per* Chitty L. J. in *Thames Conservators v. Smeed Dean & Co.*[3]. We have several other enactments of our own where this cardinal rule is not followed.

I am satisfied, having regard to the entire framework of the Act and the objects of the Legislature as deducible from the provisions enacted that in proviso (*c*) the term " landlord " should receive a more restricted meaning than that it bears in other parts of the Act.

[1] *(1946) 47 N. L. R. 558.*
[2] *(1869) L. R. 4 Exch. 126.*
[3] *(1897) 2 Q. B. 334.*

I next proceed to consider the second question debated, whether the plaintiff is a person who has a *jus in re*. The answer to this question depends upon a proper appreciation of the term as used in Roman Dutch Law. Vanderlinden [1] defines it thus:

> " The right *in* a thing (*jus in re*) is that right whereby the thing itself is bound to me so that I may pursue this right in the thing against any possessor whatsoever "

and in section 2 he sets out the different kinds of right in a thing (*jura in re*) and follows with the observation that " some writers have also added to this enumeration though not with strict accuracy the right of possession ". Having made this observation, he embarks [2] upon a discussion of the right of possession as a species of real rights or *jura in re*. Next he proceeds to explain the meaning of the word " possession " which he says " is the actual retention of a thing with the purpose of keeping it for oneself 55. Wille says [3]:

> " A real right is usually defined as a right available against the world. This is a vague statement but elaborated it means that it is a right in property; it may be ownership in the property or something less than ownership.....If less than ownership, the right, to be a real right, must persist in the property and must be enforceable by its holder notwithstanding any change in the ownership of the property, that is, whether the owner of the property transfers his ownership voluntarily, for example, in consequence of a sale or donation or whether he is deprived of the ownership involuntarily, for example, by death or insolvency or by a sale or execution."

It would be manifest from a consideration of the passages cited that a person in possession of immovable property who claims to hold it for himself as against everybody else would be a person who would have a *jus in re;* so that even a person with no title whatsoever in himself, in other words a trespasser, who is in actual possession of property defying the claims even of the true owner would be a person who would have a *jus in re* in respect of that property.

Applying this principle it would be seen that the plaintiff in this case, if he were holding the property for himself, though without any shadow of title, would be a person who would have a *jus in re;* but it is said that the evidence of the plaintiff himself discloses the fact that he is not holding the property for himself, in other words, that he is not even a trespasser, but that he is merely holding it as agent of his wife, who is the lawful owner of it.

The question then arises whether the plaintiff in these circumstances can be said to have a *jus in re*. There can be little doubt that the answer must be in the negative, for he does not hold it for himself. But this does not necessarily conclude the question whether the plaintiff is entitled to maintain the action, for there is another salutary principle in law which must be considered before the rights of the plaintiff can finally be determined.

[1] *Bk 1 Ch. 6 sec. 1 p. 112 Henry's translation 1828.*
[2] *Bk. 1 Ch. 12.*
[3] *Landlord and Tenant of South Africa, 3rd ed. pp. 126–7.*

It is well settled law that a person who is not the owner of property may let it and such letting would be a valid one—Voet [1]. And Wille [2] expatiates on this topic:

> " A person may let to another immovable property without having *any right or title in it* or any authority from the true owner . . . As between the parties the lease is binding and they acquire the rights and become subject to the obligations of a landlord and a tenant respectively."

and in regard to the obligations of the tenant he continues:

> " If the tenant receives the undisturbed enjoyment of the premises he is liable for his corresponding obligations and he *is not allowed when sued by his landlord to set up the defence that the latter had no right to let the property to him. It would be against good faith in these circumstances for the tenant to raise such a defence and in an action for rent it might under the Roman Law have been met by the* exceptio doli mali. This rule or maxim which is generally stated in the form ' a tenant may not dispute his landlord's title ' has been fully developed in the English Law where it is based on estoppel. The rule is briefly referred to by Voet who says that a tenant may not plead the *exceptio domini.*"

This principle underlying the Roman, Roman Dutch and English Law has been fully adopted by us in section 116 of the Evidence Ordinance, the first part of which runs as follows:

> " No tenant of immovable property or person claiming through such tenant shall during the continuance of the tenancy be permitted to deny that the landlord of such tenant had at the beginning of the tenancy a title to such property."

This rule has been applied in a variety of cases. Where a person had been let into possession as tenant by a plaintiff he was held by virtue of the provision to be estopped from denying the plaintiff's title without first surrendering possession [3], [4]. In *Tadman v. Henman* [5] it was held:

> " the estoppel will also enure for the benefit of a lessor who has no title whatever and the person let into possession will not be permitted to set up this want of title. The question of the *landlord's title is foreign to an action for rent or ejectment against the tenant.* "

And

> " So strict is the rule that even if a landlord while proving his own case for an action against the tenant for use or occupation disclosed the fact that he himself had only an equitable or a joint estate in the premises, the tenant cannot avail himself of that circumstance as a defence to the action." (*Dolby v. Iles* [6].)

Having, therefore, regard to the doctrine of estoppel, the plaintiff having let the defendant into possession of the premises, the defendant cannot be permitted to deny that the plaintiff had a sufficient title to let the premises to him or even raise the question of what that title was, for such a question, as already observed, is entirely foreign to the

[1] *19.2.3.*
[2] *Landlord and Tenant of South Africa, 3rd ed. p. 19.*
[3] *(1905) 28 Madras 526.*
[4] *P. C. 1915, 37 Allahabad 557.*
[5] *(1893) L. R. 2 Q. B. 168.*
[6] *(1840) 9 L. J. Q. B. 51.*

action by the landlord against the tenant whom he had placed in possession—and this though the plaintiff, as stated earlier, himself may have given evidence of the fact that he had no title. In fact the Court would not go and should not have gone into the question as to what the title was, once it was satisfied that the plaintiff had let, and placed the defendant in possession of, the premises as his tenant. There is also another rule of law which must not be lost sight of in this connection and that is that a person who is in possession of property is presumed to be the owner thereof. The plaintiff who had possession of the property before he let them to the defendant thereupon having successfully clothed himself in the mantle of an owner and which cannot be rent asunder by the defendant would therefore be one who has a *jus in re* in respect of property let by him. The plaintiff consequently is a landlord within the meaning of that term as used in proviso (*c*) to sub-section (1) of section 13 of the Act and as interpreted in *Hameed v. Anamalay* [1] and is thus entitled to the benefit of this proviso. These observations serve to dispose of the claim of the plaintiff, and the judgment of the lower Court is set aside.

I should, however, wish to make a few general remarks in regard to the various classes of persons who could be said to have a *jus in re* in view of the statement of Counsel that difficulties have been experienced in determining them in the several cases that come up before the Courts. Without attempting to be exhaustive, I should for purposes of section 13 (1) proviso (*c*) enumerate the following as landlords having a *jus in re:* (1) An owner of property; (2) a purchaser or donee from an owner; (3) an heir or legatee of an owner; (4) a trespasser; (5) a tenant or lessee *in possession;* where a tenant or a lessee who has been granted possession by the lessor lets the premises to a sub-tenant or a sub-lessee whom he, the tenant or lessee, places in possession, the tenant or lessee would himself be one who would have a *jus in re* and as such entitled to maintain an action against the sub-tenant or sub-lessee in ejectment; (6) a trustee; (7) an agent who without disclosing the existence of his principal lets property, acting as the principal himself (by the combined application of the doctrine of estoppel).

For the reasons given, I answer issue 5 in the affirmative. Issue 1 has already been answered in favour of the plaintiff. No findings have been recorded in respect of issues 2, 3 and 4, and for this purpose the case will go back to the lower Court and for a decree to be entered in the light of findings on these issues and in conformity with the answers recorded in respect of issues 1 and 5.

The plaintiff will be entitled to the costs of appeal and of the lower Court.

GRATIAEN J.—

This is an action for ejectment in respect of premises to which the provisions of the Rent Restriction Act, No. 29 of 1948, are admittedly applicable. For the purposes of the present appeal, Counsel were agreed that the following facts may be assumed to be correct:—

The premises belong to the plaintiff's wife to whom they had been donated by her parents on the occasion of her marriage with the plaintiff.

[1] *(1946) 47 N. L. R. 558.*

The premises were let to the defendant on the basis of a monthly tenancy some years prior to the institution of this action. The contract of tenancy with the defendant was, however, entered into *not by the wife who was in law the owner of the premises*, but by her husband. In other words, the principal parties to the contract were the plaintiff, as *landlord*, and the defendant, as *tenant*. It therefore follows that, as far as the tenant was concerned, the principal with whom he exclusively dealt with was the plaintiff. Indeed, an earlier action for ejectment had been instituted against the defendant in the name of the plaintiff's wife, but this action was withdrawn at an early stage because she was not privy to the contract of tenancy and was therefore assumed not to have an enforceable cause of action on the contract. It is conceded that the plaintiff was at all relevant times " the person . . . . . entitled to receive the rent " of the premises within the definition of the term " landlord " in section 27 of the Act.

The action was contested in the Court below on the issue as to whether the premises were " *reasonably required* " *by the plaintiff* for the purpose of his business, and this issue was answered in favour of the plaintiff. Nevertheless, the plaintiff's action was dismissed by the learned Commissioner on the ground that, on the authority of the decision of this Court in *Hameed v. Anamalay* [1] the plaintiff was not a " landlord " within the true meaning of the Ordinance, because " although entitled to receive the rent, he did not have a *jus in re* in the premises ".

The appeal came up for hearing before me in the first instance, and learned Counsel informed me on that occasion that certain difficulties have in recent years arisen in tenancy actions owing to the interpretation placed by Courts and litigants on the ruling in *Hameed's case*. As it is very desirable that the rights of parties in tenancy actions should not be left in doubt, I consider that an authoritative ruling of a fuller Bench of this Court should be obtained on the point. On the directions of my Lord the Chief Justice, this appeal was accordingly argued before a Divisional Bench of three Judges on June 8, 1951.

The earlier Rent Restriction Ordinance of 1942 declares that, " unless the context otherwise requires " the term " landlord " in relation to any premises " means " (this word is important) " the person for the time being entitled to receive the rent of such premises ". The later Act of 1948, which governs the present case, adopts the same definition but proceeds to " include " within the term " landlord " *a tenant who lets the premises to any sub-tenant*. The additional words seem to have been introduced by the Legislature out of an abundance of caution, and have no bearing on the problem now under consideration.

Lord Esher points out in *Gough v. Gough* [2] that the use of the word " means " as opposed to " includes " in statutory definitions indicates a clear intention by Parliament to adopt " a hard and fast definition, and the result is that you cannot give any other meaning to the word " landlord " in the Act than that which is stated in the definition ". *Vide* also *The British Trams and Carriage Co. v. The Mayor of Bristol* [3]. The

[1] *(1946) 47 N. L. R. 558.*

[2] *(1891) 2 Q. B. 665.*

[3] *59 L. J. Q. B. 441 at p. 449.*

question arises, therefore, whether the " context " of the act necessarily requires that in applying the provisions of section 13, a meaning different from that which is specified in the " hard and fast definition " of the term " landlord " should be invoked so as to give efficacy to the scheme of the enactment.

It is important to bear in mind in considering this question that section 8 of the Rent Restriction Ordinance of 1942 and section 13 of the Act of 1948 which superseded it were not designed to vest in Courts of Law some new jurisdiction affecting the rights and obligations of landlords and tenants in actions for ejectment. *Maroof v. Leaff* [1]. On the contrary, as Keuneman J. points out, they " *merely impose a curb or fetter on the existing jurisdiction* " to grant relief to a landlord who seeks, in the enforcement of his contractual rights under the common law, a decree for the ejectment of his tenant from the premises in the latter's occupation. The sections must therefore be regarded as pre-supposing that a cause of action would have accrued *under the common law* entitling the landlord to claim a decree for ejectment. If, therefore, no such cause of action exists either by reason of a termination of the tenancy by notice or effluxion of time, or for any other grounds which normally justify proceedings by a landlord for ejectment, the Court would possess no jurisdiction to grant the landlord relief. In that event, no occasion arises for applying any fetters on a jurisdiction which already does not exist. If, therefore, the question be approached in relation to the rights of landlords under the common law, it seems to me, with great respect, that certain difficulties visualised in the judgment in *Hameed v. Annamalay* [2] would be found to disappear.

I would state, with great respect, that it is neither legitimate nor necessary to decide that " for the purpose of section 8, proviso (*c*) of the Ordinance of 1942 (or, of section 13 of the Act of 1948) a landlord must be *defined* as not only one who is entitled to receive his rent but as one who has a *jus in re* in regard to the premises ". If a landlord, in the sense in which that term is commonly understood, can establish that he has a right under the common law to claim ejectment, the definition adopted in the enactments seems to be perfectly adequate. If, on the other hand, no such right is established in any particular case, an enlargement of the definition, even if permissible, would not carry the proceedings, which must fail *ab initio*, any further.

It would be convenient at this stage to examine the status which every landlord must necessarily enjoy before the common law can recognise his right to claim ejectment in proceedings against a tenant in occupation. The essential prerequisite to his cause of action, *qua* landlord, is that *privity of contract* exists between himself and the tenant in occupation, and if that relationship exists the tenant is precluded by the principles of the common law and by the provisions of section 116 of the Evidence Ordinance from denying that his landlord had title to the premises at the commencement of the tenancy—i.e., at the time when privity of contract between them was established.

[1] *(1944) 46 N. L. R. 25.* [2] *(1946) 47 N. L. R. 558.*

Where, as has happened in the present case, the plaintiff is the person who placed the tenant in occupation of the premises under the original *contract of tenancy*, he would be entitled to a decree to have the tenant ejected provided that (1) events have occurred which under the common law would give rise to an action for ejectment, (2) he also satisfies the Court that, *if the Rent Restriction Act applied to the premises*, the jurisdiction of the Court to order ejectment is not fettered by the provisions of the statute. It is apparent, I think, that in every case of this nature the plaintiff is necessarily the person " entitled to receive the rent " of the premises within the meaning of the Act.

I shall next consider the position of a person to whom the original landlord has sold the premises which are, at the date of the sale, in the occupation of a monthly tenant. In such a case the purchaser can elect with notice to the tenant, and " provided that the tenant is willing to pay him rent ", *Voet, 19.2.19*, " to step into the landlord's shoes and receive all his rights and become subject to all his obligations, so that he is bound to the tenant and the tenant is bound to him, in the relationship of landlord and tenant ". *Allis v. Sigera* [1]; *Silva v. Silva* [2]. If there is a mutual acknowledgment by the purchaser, and by the person in occupation, of each other's rights and obligations as landlord and tenant, there is a complete and effectual attornment, and *privity of contract* is established between the parties as from that date. If, on the other hand, the purchaser does not elect to take the property with his vendor's tenant remaining in occupation, the original contract of tenancy as between the vendor and the tenant subsists. In that event, only the original landlord would be the person competent to terminate the contract. *Wijesinghe v. Charles* [3]; *Fernando v. Appuhamy* [4]. In the earlier of these decisions, Sampayo J. with whom Wood Renton C. J. agreed, points out, on the authority of a passage from *Bayne's Landlord and Tenant* that the tenant himself has " the privilege either to remain the tenant of the new landlord or to cancel the lease ". If the tenant exercises the former privilege, and the purchaser has also agreed to recognise him as the tenant, privity of contract is established between the purchaser and the tenant in occupation, and the rights and obligations of the parties in an action for ejectment would be governed by the common law subject to the fetters imposed on the jurisdiction of the Court by the provisions, if applicable to the premises of the Rent Restriction Act of 1948. The purchaser in such a case is the " person for the time being entitled to receive the rent " and therefore comes strictly within the definition of section 27 of the Act. Finally, there is the position arising where the purchaser elects to recognise the tenant but the tenant does not specifically attorn to him. Sampayo J. took the view, " but not without some hesitation " *16 N. L. R. at page 317* that in such a case the purchaser would enjoy the right not only to claim rent but also to sue for damages and ejectment. In *18 N. L. R. 168*, the earlier ruling was re-affirmed. It would therefore seem that a tenant who remains in occupation with notice of the purchaser's election to recognise him as a tenant may legitimately be regarded as having attorned to the purchaser so as to establish *privity of contract* between them.

[1] *(1897) 3 N. L. R. 5.*
[2] *(1913) 16 N. L. R. 315.*
[3] *(1915) 18 N. L. R. 168.*
[4] *(1921) 23 N. L. R. 476.*

The rights under the common law of a person who obtains from the original landlord a notarial lease, for a term of years, of premises in the occupation of the lessor's monthly tenant have also been considered in earlier decisions of this Court. In *Wijeratne v. Hendrick* [1], the plaintiff, who obtained a lease of certain premises for a term of years, sued his lessor's monthly tenant for *rent* only but not for ejectment. Withers J. held that the action must be dismissed on the ground that the plaintiff could not maintain his action for rent purely on the strength of his lease, as he had not proved either an attornment by the tenant or an *assignment with notice to the tenant*, by the lessor (i.e., the original landlord) of his rights under the contract of tenancy. In *Rajapakse v. Cooray* [2], a person who had obtained a notarial lease of premises sued his lessor's monthly tenant for *ejectment*. Ennis J. held that the action could not be maintained because the tenant had " never attorned to the plaintiff " and there was therefore " *no privity of contract between the parties* ". In *Arnolis v. Mohideen Pitche* [3] (see also the South African case of *Flax v. Vanderlind* [4]) Middleton J. for similar reasons, made order dismissing an action for *rent and ejectment* instituted by a subsequent lessor against the original monthly tenant. These rulings were followed by a Bench of two Judges in *Ukkuwa v. Fernando* [5]. It was there held by Soertsz J. and Abrahams C.J. that, in the absence of privity of contract between the person in a position equivalent to that of a monthly tenant and a person who had a subsequent notarial lease from the original landlord, the tenant could not be ejected *except upon a notice to quit issuing from the original landlord*. The Court held, however, that once the lawful holding by the monthly tenant (who had not attorned to the subsequent lessee) had in such a case been determined by due notice from the original landlord, his occupation became unlawful, and he was therefore liable to be ejected *as a trespasser* in proceedings instituted by the *lessee*. Such an action is not based on rights flowing to the plaintiff under the contract of tenancy but on his proprietary right as *pro tanto* alienee to eject anyone in unlawful possession of the leased premises. We are not called upon in the present context to decide whether and to what extent the jurisdiction of a Court to grant relief to a subsequent lessee in an action of this nature would now be regulated by the provisions of the Rent Restriction Act of 1948. It is sufficiently clear, I think, that the status of a landlord is not enjoyed by a subsequent lessee unless privity of contract has been established between him and the tenant in occupation. Payment of rent by the tenant to the lessee after notice of the execution of the lease would afford *prima facie* evidence of attornment so as to justify the inference that all the parties (i.e., the original landlord, the new lessee and the monthly tenant) have mutually agreed that the rights and obligations of the original landlord under the contract of tenancy should pass to the new lessee. Privity of contract is then established between the lessee and the tenant, and the former is empowered in that event, *qua* landlord, to eject the tenant on any ground recognised by the common law. This right is, of course, curtailed at the present time by the provisions of section 13 of the Rent Restriction Act of 1948 whenever they apply to the premises.

[1] *(1895) 3 N. L. R. 158.*
[2] *2 Times C. L. R. 209.*
[3] *(1907) 3 Bal. 159.*
[4] *(1928) C. P. D. 495 at page 498.*
[5] *(1936) 38 N. L. R. 125.*

In *Hameed v. Anamalay* [1], a person who had taken a notarial sub-lease of certain premises for a term of years sought to eject from the premises a person who was a monthly tenant under the lessor. The plaintiff had for some months received rental from the monthly tenant and had then given him notice to quit. It seems to me that his right to this remedy would depend upon whether, since the date of his sub-lease, the monthly tenant had effectually attorned to him and acknowledged him as his new landlord. Vide *Wille's Principles of the South African Law, pages 277-279.* If in the circumstances of that particular case, it was legitimate to hold that the lessee was merely the cessionary of a bare right to receive rents (as opposed to an assignee of all the rights and obligations of the original landlord), it would in my opinion follow that this limited right was by itself insufficient upon which to base an action for *ejectment.* If, on the other hand, the correct position was that there had been a complete attornment by the tenant to the lessee (*as the payment of rent would very strongly indicate*), I would say, with great respect, that *Hameed's case* was wrongly decided. The plaintiff was in either event the tenant's " landlord " within the plain meaning of the Ordinance, and *subject to its provisions*, his cause of action depended solely on whether he had a common law right to enforce the contract of tenancy.

I would summarise the general conclusions at which I have arrived as follows: —

(1) that, for the purposes of the Rent Restriction Ordinance of 1942 and of the Rent Restriction Act of 1948, the term " landlord " must always be given the meaning attributed to it in the enactments; and that in this respect *Hameed's case* was wrongly decided;

(2) that whether the plaintiff who claims *qua* landlord to eject the tenant in occupation be the tenant's original landlord or a subsequent purchaser or lessee of the premises, his right to a decree for ejectment is in first instance regulated by the principles of the common law affecting the relationship of landlord and tenant, and in accordance with those principles; he must in every case establish that privity of contract between himself and the tenant exists at the relevant date;

(3) that if privity of contract does exist between the plaintiff and the tenant, the latter is precluded by the provisions of section 116 of the Evidence Ordinance from disputing the plaintiff's title to the premises;

(4) that, if the provisions of the Rent Restriction Ordinance of 1942 or of the Rent Restriction Act of 1948 are found to apply to the premises, the plaintiff's common law right, *qua* landlord, to claim a decree for ejectment would be restricted by the conditions imposed by section 8 of the earlier Ordinance or by section 13 of the later Act (whichever is applicable).

Turning now to the facts of the present case, I would say that the plaintiff is clearly entitled to a decree ejecting the defendant. He was the original landlord under the contract of tenancy, and his right

[1] *(1946) 47 N. L. R. 558.*

under the common law to claim ejectment has been clearly established. The fact that he was not the owner of the premises is irrelevant because his rights are *founded on contract and not on ownership*. The premises were admittedly subject to the provisions of the Rent Restriction Act, 1948, but he was " the person entitled to receive rent " and was therefore the defendant's " landlord " within the meaning of the Act. As he proved to the satisfaction of the learned Commissioner that the premises were " reasonably required for the purposes of his business ", it follows that section 13 does not fetter the jurisdiction of the Court to grant him the relief to which he is entitled under the common law and in terms of his contract of tenancy.

Since preparing this judgment I have had the advantage of reading the judgments of my Lord the Chief Justice and of my brother Nagalingam J. My purpose in referring this appeal to a Divisional Bench was to obtain an authoritative decision for the guidance of Judges of first instance, and I desire respectfully to state that I am in agreement with my Lord the Chief Justice on every point on which his views differ from those expressed by my brother Nagalingam.

I reaffirm as a fundamental proposition that under the Roman Dutch Law, as under the English Law, " *the question of the landlord's title is foreign to an action for rent and ejectment against the tenant* ". The relationship of landlord and tenant is created by contract, and the action for ejectment is essentially an action for the enforcement of the tenant's *contractual* obligation to return the property at the expiration of the tenancy. If that be so, I suggest with very great respect that no necessity arises in this context for attempting to fathom the mysteries of what the jurists describe as a *jus in re*, which term is distinguished from a *jus in rem* or a *jus ad rem*. (Vide *Lee's South African Law (3rd edition) page 127; Bell's South African Legal Dictionary, pages 303-304.*) My brother Nagalingam has referred to *Vanderlinden (Henry's Translation) page 113* where four different kinds of *jus in re* are enumerated. It must be borne in mind, however, that Vanderlinden (page 114) proceeds immediately afterwards to discuss an entirely different category of rights which are personal rights varying according to the extent of the cause or origin of the *obligation* from which they arise. It is in this group of rights that he places *rights which arise from contracts*, including contracts of *letting and hiring* (*pages 236-241*) with which we are now concerned. Under the common law, therefore, a person suing for the enforcement of the tenant's contractual obligation to quit the premises must affirmatively prove *either* that he is the original landlord under the contract of tenancy *or* that he has subsequently become a party to the contract by assignment. In either of these events it is neither necessary nor relevant to investigate whether the plaintiff also possesses a *jus in re*, whatever precisely that Latin idiom may connote.

In my opinion the extended definition given to the term " landlord " in *Hameed's case* was not legitimate.

I would allow the plaintiff's appeal, and I agree to the order proposed by my Lord the Chief Justice.

Judgment set aside.