1959 *Present :* **Sinnetamby, J.**

JAMES FERNANDO, Appellant, *and* M. W. WIJESIRI *et al.*, Respondents

S. C. 240—C. R. Colombo, 62,220/RE

Rent Restriction Act, No. 29 of 1948—Section 13 (1) (c)—" Reasonable requirement " of landlord—Should sub-tenant's needs also be considered ?

The needs of the sub-tenant need not be taken into account in determining whether premises are reasonably required by the landlord for his use within the meaning of section 13 (1) (c) of te Rent Restriction Act.

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

H. W. Jayewardene, Q.C., with *R. L. de Zoysa*, for the 2nd defendant-appellant.

S. D. Jayasundera, for the plaintiff-respondent.

Cur. adv. vult.

February 26, 1959. SINNETAMBY, J.—

In this case the plaintiff sued the first defendant for ejectment from the premises set out in the schedule to the plaint and later added the second defendant who was the sub-tenant of the first defendant in order to obtain an effective decree against the persons in possession. The premises are subject to the Rent Restriction Act.

In his answer the first defendant took up the defence that he was only the agent of the second and that the *de facto* tenant was the second defendant. At the trial, however, this defence was abandoned and the parties went to trial on only one issue, namely, whether the premises in suit were reasonably required by the plaintiff for his occupation as a residence and for the purpose of his profession within the meaning of section 13 (1) (*c*) of the Act. The learned trial Judge held that the premises were so required taking into consideration only the relative hardship that the granting of an order for possession would have on the first defendant and the refusal to grant it would have on the plaintiff. He specifically stated that as the second defendant was only a sub-tenant any hardship caused to him need not be taken into account and in fact did not take it into account. He came to the conclusion that the premises were reasonably required by the plaintiff for his use and entered judgment as prayed for. The appeal is against that decision.

Learned Counsel who appeared for the sub-tenant argued that the learned trial Judge had misdirected himself on this question and should have taken into account the hardship that an order for possession would

have on the sub-tenant. For this proposition he relied on the observations of Sansoni, J. in *Suppiah v. Samarakoon* [1]. In that case, without deciding the question, the learned Judge stated that he was inclined to adopt the principle laid down by Asquith, L.J. in *Harte v. Frampton* [2] wherein the learned Lord Justice expressed himself as follows :

> " The true view, we think, is that the county court judge should take into account hardship to all who may be affected by the grant or refusal of an order for possession—relatives, dependants, lodgers, guests, and the stranger within the gates—but should weigh such hardship with due regard to the status of the persons affected and their ' proximity ' to the tenant or landlord, and the extent to which, consequently, hardship to them would be hardship to him."

For the purpose of the case which Sansoni, J. was dealing with it was not necessary to decide the question. I may mention that *Harte v. Frampton* (supra) was a case in which the Court took into consideration the hardship caused to not the tenant but his married daughter, her husband and their child none of whom was dependent on the tenant but all of whom were living with him.

Under the English Act of 1933 there are two distinct provisions in regard to recovery of possession by a landlord. In the first place section 3 (1) (*a*) of the English Act deals with cases where there is no alternative accommodation available or offered. Section 3 (1) (*b*) deals with cases where alternative accommodation is offered. Where alternative accommodation is not offered the landlord can succeed only if he shows that the dwelling house is reasonably required by him for his occupation, if he is seeking to avail himself of that particular provision in schedule 1 of the Act—there are other sets of circumstances enumerated in the schedule the existence of any one of which would also entitle the landlord to an order without proof of alternative accommodation. In all cases which come under section 3 (1) (*a*), that is, where no alternative accommodation is available and it is sought to eject the tenant on the ground of the reasonable requirement of the landlord, there is a proviso which precludes the Court from granting an order if greater hardship is caused by so doing than by refusing to do so. In deciding this question the Court is required to take into consideration all the circumstances of the case including the question of whether other accommodation is available for the landlord or the tenant.

Where alternative accommodation is offered or is available section 3 (1) (*b*) applies and all that the Court has to consider is whether it is reasonable to make such an order and the Court is not restricted to the set of circumstances enumerated in the schedule : for instance, the Court may consider the requirements of persons who are not the landlord himself, his son or daughter over 18 years of age, or his father or mother. (These are the persons enumerated in paragraph (*h*) of schedule 1.)

[1] *(1954) 56 N. L. R. 161.*

[2] *(1947) 2 A. E. R. 604.*

It will be seen that under the English Act the Court must first be satisfied that it is reasonable to make an order and then further be satisfied that the premises are reasonably required by the landlord for his occupation. There are thus two stages where the question of reasonableness has to be considered ; the matters to be taken into consideration in deciding the question differ and depend on whether the reasonableness is being considered in respect of the landlord's requirement or in respect of the Court's order. Even if the Court finds that the premises are reasonably required by the landlord, it will still not make an order for ejectment unless it considers it reasonable in all the circumstances of the case to make it. The law in regard to orders made under the Act of 1933 in England has been set out fully in the case of *Cumming v. Danson* [1]. Lord Greene, Master of Rolls, therein expressed the view that the Rent Restriction Acts are intended for the protection of tenants and not for the penalisation of landlords. Dealing with the appellant's case the Master of Rolls stated as follows :

> " The appellant, therefore, in order to succeed in her application had to satisfy the Court that it was reasonable to make an order for the recovery of possession, and to satisfy the Court that suitable alternative accommodation was available. At the outset it is necessary to point out the difference between paras (*a*) and (*b*) of that sub-section. The necessity of satisfying the Court that it is reasonable to make an order applies to both, but under para (*a*) and the schedule to which it refers, the Court, if so satisfied, can make an order notwithstanding that there is no proof of suitable alternative accommodation."

It follows that where a dwelling house is reasonably required by the landlord for his occupation, in considering the question of reasonable requirement the absence of alternative accommodation is of no importance under the English law, and is relevant only in considering the question of hardship under the proviso to sub-paragraph (*h*) of schedule 1 whereas under our law it is a question of major importance in deciding the reasonable requirement of the landlord. I would therefore be very cautious in adopting for the purposes of our Act the meaning assigned by the English Courts to the words " reasonably required " under the English Act.

The English Act expressly protects sub-tenants to whom the tenant has lawfully sublet—vide section 5 (5) and section 15 (3) of the Act of 1920. Where the subletting is not lawful these provisions do not apply and the general rule laid down by the decisions of the English Courts is that a non-occupying tenant who is not in occupation of at least a portion of the premises let is not entitled to the protection of the Acts—Megarry (8th Ed. p. 182). Furthermore at common law a sub-tenant's interest is extinguished automatically on the expiration of the tenancy out of which it was carved and he becomes a trespasser—*Knightsbridge Estates Trust Ltd. v. Deeley* [2].

[1] *(1942) 2 A. E. R. 653.*

[2] *(1950) 2 K. B. 228 at 232.*

The question that now arises is whether the principle laid down in *Harte v. Frampton* (supra) should be followed in cases governed by our Rent Restriction Act. It is always dangerous to place too much reliance on cases decided under the provisions of one Act to interpret similar terms used in another Act which may be, and in this case, is vitally different in many respects. Under our Act in the absence of the authority by the Rent Restriction Board, a landlord may sue the tenant to obtain recovery of the premises let if he establishes under section 13 (1) (*c*) that they are reasonably required for his use. In construing these provisions our Courts have held in *Gunasena v. Sangaralingampillai* [1] that the Court should take into account not only the requirements of the landlord but also that of the tenant together with any other factor that may be directly relevant to the acquisition of the premises by the landlord. In that particular case the Appeal Court took the view that the absence of alternative accommodation was one of the factors which should be taken into account to determine the question of hardship in considering whether the premises were reasonably required for the landlord. Under the law in England, however, in deciding the question of whether premises are reasonably required by the landlord the position of the tenant, e.g., any hardship to him, is irrelevant (Megarry-8th Ed. p. 264) : but even if the premises are reasonably required by the landlord the Court is, under the proviso to paragraph (*h*) of schedule 1 of the English Act, precluded from making an order if more hardship is caused to the tenant than to the landlord and in determining the question of hardship the availability of alternative accommodation for the landlord or the tenant is relevant. Our Act in this respect is silent : it makes no express reference to the existence or absence of alternative accommodation and makes no specific reference to hardship, but the effect of the decision in *Gunasena v. Sangaralingampillai* (supra) is to make it relevant in deciding the question of whether the requirement of the landlord is reasonable. Learned Counsel for the appellant invites this Court to follow the English decisions in regard to hardship. In my view having regard to the differences in the provisions of the respective Acts it would be improper or at least imprudent to adopt the interpretation placed upon words which are specifically referred to in the English Act but find no place in our enactment. We have to interpret the provisions of our Act as they stand. There are differences in other respects as well, e.g., under the English Acts the requirements of the landlord have to be considered at the time the order is made and the availability of suitable alternative accommodation has to be established when the order takes effect : there are no similar provisions in our Act.

Quite apart from a consideration of the English authorities, there have been cases decided by our Courts where it has been held that in deciding the question of reasonable requirement it is not necessary to consider the needs of a sub-tenant. In *Noorbhoy v. Sellappa Chettiar* [2] H. N. G. Fernando, J. without discussing the question took the view that the needs of the sub-tenant need not be taken into account in determining

[1] *(1948) 49 N. L. R. 473.* [2] *(1957) 58 N. L. R. 389.*

whether as against the landlord the premises are reasonably required by the tenant. There is also an expression of opinion in support of this view contained in a judgment of a Bench of five Judges in *Ibrahim Saibo v. Mansoor* [1]. That case dealt with the question of whether in a decree against a tenant alone it was possible to dispossess in execution proceedings a sub-tenant who was not a party to the suit. In deciding that question the Court considered whether the Rent Restriction Act protects sub-tenants and in the judgment of the Court the following passage occurs :

> " This Act contains provisions regulating the rights and liabilities of a landlord and his tenant *inter se* and has no direct application to a sub-tenant *vis-a-vis* the head landlord. It was held by Lord Greene, M. R., in delivering the judgment of the Court of Appeal in the case of *Brown v. Draper* (1944 1 K.B. 309) which dealt with the case of a licensee of a tenant that the licensee ' cannot in her own right claim the protection of the Acts '. That proposition is equally true of our Rent Restriction Act and what is stated about a licensee is equally applicable to a sub-tenant. But a sub-tenant can shelter behind the protection afforded to the tenant (his immediate landlord) if that protection has not ceased to exist. Now where a decree for eviction has been entered against the tenant that protection would normally have ceased to exist. A sub-tenant can plead its continued existence only on the basis that the decree was entered by a Court which had no jurisdiction to enter it."

The observations of Asquith, L.J. in *Harte v. Frampton* (supra) must be considered only in the light of the facts established in that case. The original tenant in that case was in occupation of the premises let and he took in to reside with him certain relatives. Had the tenant also not been in occupation the decision would well have been otherwise. In the case under consideration the tenant is not in occupation. In *Harte v. Frampton* (supra) therefore the facts were entirely different and observations made in connection with those facts, in my view, are irrelevant. Even if the tenant in the present case had been in occupation of a part of the premises I would hesitate to apply the principle enunciated in *Harte v. Frampton* in view of the fact that our Act differs, as I have endeavoured to show, in many respects from the English Acts.

I would, therefore, dismiss the appeal with costs.

Appeal dismissed.

[1] *(1953) 54 N. L. R. 217 at 224.*