therefore hold that the power of seizure conferred by section 123 includes the power, for the purposes of examination, to detain *for a reasonable period* any goods which a Customs officer suspects to be liable to be seized as forfeited goods. Any other construction would only lead to precipitate action in respect of goods where no offence against the Customs laws may have been committed.

The meaning of the word "seizure" with reference to action by Customs officers was considered by the House of Lords in *Cory v. Burr*[1]. It was there held that goods must be regarded as seized when they are "taken forcible possession of, and that *not for a temporary purpose*" (per Lord Selborne) but with the intention that "ultimate loss" by forfeiture and condemnation would result from the seizure (per Lord Bramwell). In the present case there was no seizure intended to cause "ultimate loss" to the petitioners until August 1. The action taken on May 20 fell short of seizure. It was only detention for the temporary purpose of further examination pending a decision as to whether "seizure" would ultimately be justified.

For the reasons which I have given I direct that a *mandamus* do issue to the Principal Collector of Customs as prayed for in the petition. When the security bond has been duly perfected, the goods must be returned to the petitioners, and they will be entitled to institute proceedings in the appropriate Court within thirty days from that date for the purpose of challenging the validity of the seizure of their goods.

The respondent will pay to the petitioners their costs of this application as taxed by the Registrar of this Court.

Application allowed.

1950 *Present :* **Basnayake J.**

FERNANDO, Appellant, *and* PAIVA, Respondent

S. C. 9—C. R. Colombo, 18,917

Rent Restriction Act—Claim that premises are required for occupation by a member of landlord's family—Should that person give evidence ?—Act No. 29 of 1948—Section 13 (c).

When a landlord seeks to eject a tenant under section 13 (c) of the Rent Restriction Act on the ground that the premises are required for the occupation of a member of his family there is no requirement in law that the member of the family for whom the house is required should give evidence.

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

E. B. Wikramanayake, K.C., with *C. E. Jayewardene*, for plaintiff appellant.

E R. S. R. Coomaraswamy, for defendant respondent.

Cur. adv. vult.

[1] *(1883) 52 L.J.Q.B. 657.*

March 23, 1950. BASNAYAKE J.—

This is an appeal by the plaintiff in an action wherein he seeks to have his tenant ejected from premises No. 17, Dickman's Lane, Bambalapitiya. According to the amended plaint, the premises " are reasonably required for the use and occupation as a residence of a member of the plaintiff's family within the meaning of section 13 (*c*) of the Rent Restriction Act, No. 29 of 1948, viz., his son John Victor Fernando, who is above 18 years of age and is also dependent on the plaintiff ". The defendant denies that allegation. At the trial the following issues were raised :—

(1) Is the defendant a tenant under the plaintiff ?

(2) Did the plaintiff on or about the 13th December 1948, give the defendant notice to quit on or before 31st January, 1949 ?

(3) Are the premises in question reasonably required for occupation as a residence for the plaintiff's son John Victor Fernando ?

(4) If issues (1), (2), and (3) are answered in the affirmative, is the plaintiff entitled to a decree in ejectment against the defendant ?

It is not clear why in view of the pleadings no issue has been framed on the question whether the plaintiff's son is a member of his family for the purposes of the Rent Restriction Act.

The plaintiff gave evidence in support of his case and the defendant gave evidence on his own behalf. The learned Commissioner gave judgment against the plaintiff. In the course of his judgment the learned Commissioner observes :

" It is very likely and highly probable that it is inconvenient for the young married couple to live in the parents' house when there are several others living there ; but the son John Victor for whom this house is required has not given evidence. It may be that he would not wish to live in the house his father wants him to move into. He is the person who should decide about wanting this house for his occupation as a residence. In view of this conclusion I have arrived at, I do not think it necessary to consider the position of the defendant."

The learned Commissioner does not appear to have addressed his mind to the issues in the case although he has answered the first and second in the affirmative and the third in the negative. A landlord who seeks to eject a tenant on the ground that the premises are reasonably required for the occupation of any member of the family of the landlord must establish by evidence that the person for whom the house is required is a member of his family as defined by section 13 (1) (*d*) of the Rent Restriction Act, No. 29 of 1948, and that the requirement is reasonable. There is no requirement in law that the member of the family for whom the house is required should give evidence. As it is not necessary in law to call any particular witness in order to establish the reasonableness of the plaintiff's claim, the learned Commissioner should have examined the evidence for the plaintiff and the defendant and decided upon that evidence whether the plaintiff's request was reasonable or not. It has been laid down by this Court that the circumstances of the defendant are relevant to a consideration of the reasonableness of the landlord's request.

As the learned Commissioner has refrained from considering the position of the defendant, I cannot sitting in appeal dispose of this action. I set aside the judgment of the learned Commissioner and send the case back for trial before another judge on proper issues.

Sent back for re-trial.

1949 *Present :* **Dias J. and Windham J.**

NAVARATNAM, Appellant, *and* COMMISSIONER OF INCOME TAX, Respondent

S. C. 221—Income Tax, Case Stated 52/701A/BRA 209

Income Tax Ordinance—Case stated—Not permitted when there is no tax in dispute—Cap. 188—Section 74.

Where it is decided that an assessee is not liable to pay any income tax, it is not open to the Board of Review to state a case on a question of law for the opinion of the Supreme Court under section 74 of the Income Tax Ordinance.

CASE stated under section 74 of the Income Tax Ordinance.

E. B. Wikramanayake, K.C., with *C. T. Olegasegarem*, for the assessee appellant.

H. W. R. Weerasooriya, Crown Counsel, for the Commissioner of Income Tax.

November 18, 1949. DIAS J.—

We do not think that the assessee has a right of appeal in this case, nor does it appear to us that this is a case which the Board of Review should have stated in the form of "a case" for the consideration of the Supreme Court.

The assessee preferred an appeal to the Board of Review against his assessment. The Board of Review heard the case, decided a point of law which the assessee raised, but held that the assessee was not liable to pay any income tax because his assessable income was less than the taxable limit.

Section 74 (2) of the Income Tax Ordinance provides: "The stated case shall set forth the facts, the decision of the Board and the amount of the tax in dispute". There is no tax in dispute. Therefore it seems to us that the question of law which we are asked to consider is one of pure academic interest and does not arise in regard to any state of facts which merit consideration. We, therefore, think that this appeal should be dismissed, but with liberty to the assessee when his income reaches the assessable limit, if the Income Tax Department still persist in their alleged wrong interpretation of the law, to bring the case up before the Supreme Court. Learned Crown Counsel, Mr. Weerasooriya, does not press for costs.

WINDHAM J.—I agree.

Appeal dismissed.