1953 *Present :* **Gratiaen J.**

A. SUPPIAH PILLAI *et al.*, Appellants, *and*
A. S. MUTTUKARUPPA PILLAI *et al.*,
Respondents

S. C. 235—C. R. Colombo, 31,191

Landlord and tenant—Sub-letting—Incidence of sub-letting—Rent Restriction Act, No. 29 of 1948, s. 9 (1) and (2).

In an action for ejectment on the ground that the tenant had sub-let portions of the leased premises in breach of section 9 (1) of the Rent Restriction Act, the essential test is whether there is evidence from which one can infer that there is at least some part of the premises over which the tenant has, by agreement, placed the alleged sub-tenant in exclusive occupation. The portion sub-let should be capable of ascertainment as an identifiable entity occupied by the sub-tenant to the exclusion of the tenant.

" A tenant who, while continuing to occupy and to retain his general control of the leased premises, merely permits another person, by agreement, to share his use and enjoyment of the whole or a part of the premises does not thereby create between himself and that other person the relationship of tenant and sub-tenant.

" In such a situation, the tenant remains tenant of the entirety of the premises and continues in exclusive ' occupation ' thereof subject only to the personal rights of user granted to the licensee. "

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

H. V. Perera, Q.C., with *E. R. S. R. Coomaraswamy* and *E. B. Vannitamby*, for the defendants appellants.

N. K. Choksy, Q.C., with *A. M. Charavanamuttu*, for the plaintiffs respondents.

Cur. adv. vult.

August 5, 1953. GRATIAEN J.—

The first defendant was at all material times a tenant under the plaintiffs of certain business premises in the city of Colombo. The plaintiffs sued him for ejectment on the grounds *inter alia* (*a*) that he was in arrears of rent within the meaning of the Rent Restriction Act, No. 29 of 1948, (*b*) that the premises were reasonably required for their own business within the meaning of the Act, and (*c*) that, since the passing of the Act, he had without their consent and in breach of section 9 (1) " sublet portions of the premises to the 2nd and 3rd defendants ".

The learned Commissioner of Requests, in a very careful judgment, rejected the allegation that the tenant was in arrears of rent as well as the allegation that the premises were reasonably required by the plaintiffs for their own use. He held, however, that there had taken place a sub-letting as alleged in the plaint, and therefore granted the plaintiffs a decree for the ejectment of all three defendants.

It is not in dispute that the 2nd and 3rd defendants had originally been employees of the 1st defendant and that this relationship represented at that time their only connection with the business carried on by the 1st defendant in the premises. At a later date, however, each of them registered himself as the sole proprietor of a separate business alleged to be carried on in the same premises. In the result, the premises became the business address of all three defendants. This took place after the Act came into operation.

The position taken up by the 1st defendant was that the businesses registered in the names of his former employees were in reality his own, and that their apparent distinctiveness was merely a convenient device by which he could secure to himself the advantage of obtaining a larger quota of certain " controlled " commodities than he was entitled to receive as the proprietor of a single business.

This explanation was rejected by the learned Commissioner, but Mr. Perera argued that, even upon the findings of fact recorded in the judgment under appeal, there was no proof that the 1st defendant had " sublet the premises or a part of the premises " in breach of sec. 9 (1) of the Act. Having given my best consideration to the arguments upon this question of law, I am satisfied that Mr. Perera's contention must prevail.

It is necessary, for the purposes of my judgment, to summarise the learned Commissioner's findings of fact upon the issue of subletting. He has held in effect :

(1) that each of the defendants was carrying on in the same premises a separate (but similar) business of which he was sole proprietor ;

(2) that the 2nd defendant and the 3rd defendant each paid to the 1st defendant as consideration for this contractual arrangement a sum of money representing a proportion of the amount of rental paid by the 1st defendant to the plaintiff in respect of the entire premises.

The learned Commissioner held that this constituted a " subletting " of portions of the premises to the 2nd and 3rd defendants

respectively. Mr. Perera has pointed out, however, that there is no finding that the 2nd and 3rd defendants occupied either jointly or severally any identifiable portion " carved out ", so to speak, of the leased premises. On the contrary, the plaintiff's own evidence indicates that the 1st defendant, *qua* tenant, and the other defendants, *qua* contractual licensees, indiscriminately shared the use of the entire building for the purposes of their respective businesses. This state of things, it is argued, negatives the view that the relationship of the 1st defendant *vis a vis* either the 2nd or 3rd defendant is that of tenant and sub-tenant under the common law or the Rent Restriction Act.

There is nothing in the provisions of the Act from which one may legitimately infer that the concept of " sub-letting " prohibited by sec. 9 is different to that in which the term is properly understood under the Roman-Dutch Law which governs transactions of this kind in Ceylon. It is essential to the formation of a contract of tenancy (or of sub-tenancy) that the " thing hired " is capable of ascertainment as an identifiable entity occupied by the tenant (or sub-tenant as the case may be) to the exclusion not only of trespassers but of the landlord (or tenant) himself. As Wille puts it, " The parties must definitely agree upon the same property as being the subject-matter of the contract, and (in the case of a written lease) the subject-matter must be defined or described with a degree of precision which will enable it to be identified without recourse to the evidence of the parties concerned, otherwise no lease is formed "—*Landlord and Tenant in S. Africa* (3rd Ed.) p. 24. It follows that no breach of sec. 9 (1) of the Act is committed if a tenant, while himself remaining in occupation of the leased premises, merely permits someone else to share their use and enjoyment with him.

A consideration of the pronouncements of the English Courts as to the effect of the provisions of the corresponding statutes in that country, in relation to the consequences of " sharing arrangements " affecting " separate dwelling-houses ", would merely add to the difficulties of Judges who are called upon to administer the Rent Restriction Act in Ceylon. There is one reported decision, however, *Baker v. Turner* [1], which does assist one, because in that case the House of Lords has laid down, *inter alia*, certain general principles concerning the true incidence of sub-letting under the English common law. The following rules will be found to be equally applicable to the Roman-Dutch Law of landlord, tenant and sub-tenant :—

(1) A tenant who, while continuing to occupy and to retain his general control of the leased premises, merely permits another person, by agreement, to share his use and enjoyment of the whole or a part of the premises does not thereby create between himself and that other person the relationship of tenant and sub-tenant.

(2) In such a situation, the tenant remains tenant of the entirety of the premises and continues in exclusive " occupation " thereof subject only to the personal rights of user granted to the licensee.

[1] *(1950) A. C. 401.*

Applying these rules to the present case, I hold that a "sub-letting" of any portion of the premises by the 1st defendant to either the 2nd or the 3rd defendant has not been established by the evidence. I agree with Mr. Choksy that a valid sub-letting can effectively take place without any *structural* demarcation of the portion sub-let from the rest of the premises; but the essential test in every case is whether there is evidence from which one can infer that there is at least some part of the premises over which the tenant has, by agreement, placed the sub-tenant in exclusive occupation. No such evidence is to be found in the present case, and the plaintiffs have not established that, since the date of his agreement with the 2nd and 3rd defendants, the 1st defendant, *qua* tenant, ceased to occupy, or to exercise his general control over, any portion of the premises. I therefore allow the appeal and dismiss the plaintiff's action with costs in both Courts.

Appeal allowed.