1973 *Present :* **Pathirana, J., and Sirimane, J.**

D. E. EDIRISINGHE, Appellant

and

I. A. PATEL and 2 others, Respondents

S.C. 406/70 (F)—D. C. Colombo, 286/R.E.

Landlord and tenant—Rent-controlled premises—Action in ejectment—Repudiation of tenancy by the tenant groundlessly—Maintainability of action—Sub-letting—Exclusive possession of rented premises by a party other than the tenant—When is it conclusive evidence of sub-letting—Rent Restriction Act (Cap. 274), sections 2 (4), 9, 13.

Where a tenant of rent-controlled premises denies that he is a tenant when he is sued in ejectment by his landlord, such denial does not *per se* debar him from claiming the benefits of the Rent Restriction Act if the Court finds that he is in fact a tenant.

Although proof by a landlord that someone other than his tenant is in exclusive possession of the rented premises would generally lead to the inference of sub-letting, no such inference of sub-letting can be drawn if the tenant explains satisfactorily the occupation of the premises by the third party on some footing other than a sub-letting. Accordingly, where there is an agreement between the landlord and another person that the latter is the tenant of certain premises and a further agreement between the landlord and a third party that the third party is to carry on a business in the same premises under the name of the tenant and to pay rent, it cannot be inferred that the tenant sub-let the premises to the third party.

Cases referred to :

Muthu Natchia v. Pathuma Natchia, 1 N.L.R. 21.
Sundra Ammal v. Jusey Appu, 36 N.L.R. 400.
Pedrick v. Mendis, 26 N.L.R. 47.
Hassan v. Nagaria, 75 N.L.R. 335.
Cassim Hadjiar v. Umamlevve, 67 N.L.R. 22.
Chettinad Corporation Ltd., v. Gamage, 62 N.L.R. 86.
Seyed Mohamed v. Meera Pillai, 70 N.L.R. 237.

APPEAL from a judgement of the District Court, Colombo.

C. Ranganathan, Q.C. with *D. R. P. Goonetilleke, S. Mathenthiran* and *S. Ruthiramoorthy,* for the defendant-appellant.

H. W. Jayewardene, Q.C. with *M. S. M. Nazeem,* for the plaintiffs-respondents.

Cur. adv. vult.

December 13, 1973. PATHIRANA, J.

The three plaintiffs-respondents, who carried on a business under the name of ' Akbarally & Company ', sued the defendant-appellant for arrears of rent, damages and for ejectment from premises No. 161, 4th Cross Street, Pettah, Colombo, on the ground that the defendant had been in arrears of rent and had also sub-let the premises without the written consent of the landlord. The premises are subject to the Rent Restriction Act.

The defendant filed answer in which he took up the position that he was not in arrears of rent or that he sub-let the premises in question. He also took up the position that the landlord had recovered rents over and above the authorised rent, as such he was entitled to a set off against any arrears of rent in respect of the amounts he had paid in excess of the authorised rent. In his original answer, the defendant had not denied that he was a tenant of the premises. The plaintiffs, however, had not joined the sub-tenant as a party nor had they mentioned the name of the sub-tenant in the plaint.

The case was fixed for trial on 26.1.1965. In the meantime on 19.1.1965, the plaintiffs filed petition and affidavit moving that Sockalingam Pillai, whom they alleged was the sub-tenant of the premises be added as a party-defendant. On 26.1.1965 this application was allowed, and thereafter the defendant and Sockalingam Pillai filed joint answers in which they took up the position that the plaintiffs were fully aware that the defendant and Sockalingam took the premises from the plaintiffs for and on behalf of the 2nd defendant and that the 2nd defendant was carrying on business in the said premises in the name of the 1st defendant. In short, that they were both joint tenants of the plaintiffs till December 1960 when the defendant ceased to be a tenant and by agreement between the plaintiffs, the defendant and Sockalingam Pillai, Sockalingam Pillai thereafter became the sole tenant from 1.1.1961, and carried on the business in his own name from that date.

When the case came up for trial on 21.1.1966, objections were taken to the procedure by which Sockalingam Pillai was added as a party defendant and by his order of 15.12.1966 the learned District Judge held that Sockalingam Pillai was not properly added and his name was consequently struck off as a party. On 8.5.1968, the defendant filed amended answer in which he took up the same position as in the joint answer filed by him and Sockalingam, namely, that the plaintiffs were fully aware that the defendant and the said Sockalingam Pillai took the premises from the plaintiffs for and on behalf of Sockalingam Pillai and that the said Sockalingam Pillai was carrying on business in the said premises in the name of the defendant; that from January, 1961, the defendant, Sockalingam Pillai and the plaintiffs came to an agreement whereby the defendant ceased to be a joint tenant in respect of the said premises as from 1.1.1961 and that Sockalingam Pillai became the sole tenant under the plaintiffs at a rental of Rs. 500 per month till 31.3.1961. In April 1961 the rent was reduced by the plaintiffs to Rs. 400 and the said Sockalingam Pillai paid the plaintiff rent at Rs. 400 from 1.4.1961 to 31.5.1963. The defendant, therefore, denied that he was the tenant of the said premises from 1.1.1961.

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The learned District Judge rejected the contention of the defendant that Sockalingam Pillai was the tenant of the premises and held that it was the defendant who was the tenant of the said premises. He also held that the defendant had not sub-let the premises to Sockalingam Pillai and also that the defendant was not in arrears of rent. He, however, held that the plaintiff is entitled to eject the defendant as the defendant was not entitled to claim the protection of the Rent Restriction Act for the reason that the defendant had repudiated the tenancy in respect of the premises from 1.1.1961. The reason the learned District Judge gave for coming to this conclusion was that, once the tenant disclaims to hold of his landlord, he is not entitled to a notice to quit. This was the principle enunciated in the series of cases beginning with *Muthu Natchia v. Pathuma Natchia,* 1 N.L.R. 21 ; followed in *Sundrammal v. Jusey Appu,* 36 N.L.R. 40 ; *Pedrick v. Mendis,* 26 N.L.R. 47 ; *Hassan v. Nagaria,* 75 N.L.R. 335, which held, that a tenant who disclaims to hold of his landlord and puts him at defiance was not entitled to have the action dismissed for want of a valid notice to quit. Extending this principle he held that a tenant in respect of premises governed by the Rent Restriction Act who denied tenancy was not entitled to the protection of the Act.

The learned District Judge also relied on *Cassim Hadjiar v. Umma Levve,* 67 N.L.R. 22, where L. B. de Silva, J., at page 23 observes :—

> "The defendants are not entitled to take up the position and refuse to acknowledge the transferee of their landlord as their own landlord, but in such an event the defendants are not entitled to claim any rights of tenancy or even the rights of a statutory tenant as against the plaintiff."

I shall first deal with the question whether the principle enunciated in *Muthu Natchia v. Pathuma Natchia* can be extended to a case of a tenant who is entitled to the protection of the Rent Restriction Act. In cases where there is the relationship of landlord and tenant under the common law, and where the Rent Restriction Act does not apply, a landlord can terminate the tenancy and institute an action to have his tenant ejected in a court of law. When he terminates the tenancy, there is a termination of the contract of landlord and tenant, and the landlord comes to court alleging that his tenant is in wrongful or unlawful occupation of the premises from the date of termination of tenancy. Likewise, when a tenant disclaims his contract of tenancy with his landlord and puts him at defiance, from the point of view of his landlord his tenant is in wrongful and unlawful occupation of the premises from that date. A

termination of tenancy, therefore, will not be necessary, because the tenant disclaims tenancy. The landlord who thereafter institutes an action to have such a person ejected from the premises makes an allegation in his plaint that the defendant by reason of his repudiating the tenancy, is in unlawful and wrongful occupation of the premises. The cause of action in both these cases is that the defendant no longer occupies the premises as tenant of the landlord, but that either by virtue of the notice of the termination of the tenancy or by a reason of the repudiation of the tenancy, the tenant is in unlawful and wrongful occupation of the premises.

Can this principle be extended to apply to a person who according to the landlord is a tenant governed by the Rent Restriction Act, although such a person denies tenancy ?

Under the Rent Restriction Act the common law right of the landlord to institute an action for the ejectment of the tenant of any premises to which the Act applies is fettered. He cannot institute any action nor will such an action be entertained by a Court unless he obtains the written authorization of the Rent Control Board. The authorization of the Board is, however, not necessary on the grounds stated in section 13 (1) (*a*) (*b*) (*c*) and (*d*) in which cases the landlord can, however, alleging any one of the grounds set out in (*a*), (*b*) (c) and (*d*) of section 13 (1) institute an action. Likewise under section 9 (1) where a tenant without the prior consent in writing of the landlord sub-lets the premises or any part thereof to any other person, the landlord can institute an action for ejectment. Arrears of rent for a certain period is one of the grounds permitted for instituting an action under section 13 (1). The resulting position, therefore, is that when a landlord institutes an action against a tenant to have him ejected from the premises on any one or more of the grounds set out above, in my view, once the landlord comes to Court on the averment that the person in occupation of the premises is his tenant and establishes this fact, then such a person cannot be ejected from the premises unless the landlord satisfies the requirements of any one of the grounds set out in section 13 or on the ground of sub-letting under section 9 of the Act. A tenant may deny tenancy for a number of reasons. He may do so in order to avoid payment of rent. But once it is proved that he is tenant *ipso facto* he is entitled to the protection of the Rent Restriction Act as he is a protected tenant. A reading of section 13 of the Act makes it also clear that the denial or repudiation of a tenancy is not one of the grounds on which the landlord can institute an action in Court. It may be a ground which he could urge before the Rent Control Board in order to obtain the authorization of the Board to institute an action.

Section 13 (1) gives as a ground for instituting an action in Court the case where the tenant gives notice to quit. The Rent Restriction Act by virtue of section 2 (4), applies to all premises in any area not being excepted premises. A person proved to be a tenant of any such premises is entitled to the benefits, privileges, rights and immunities provided by the Rent Restriction Act.

Mr. Jayewardene also relied on the passage which I have quoted from the judgment of L. B. de Silva, J., in the case of *Cassim Hadjiar v. Umma Levve.* In this case the plaintiff ,a transferee from the original landlord, gave a month's notice to quit to the defendants informing them of the execution of the deed of gift in his favour by the defendants' original landlord. The defendants in their reply by letter stated that they accepted the position that the defendants were in occupation of the premises in question but alleged that the premises did not belong to the plaintiff. The defendants therefore, while denying the right of the plaintiff, have refused to accept the plaintiff as their new landlord. L. B. de Silva, J., therefore, held that the defendants are not entitled to claim any rights of tenancy from the plaintiff or even to claim rights of a statutory tenant as against the plaintiff. However, in the concluding part of his judgement L. B. de Silva, J., at page 24 states :—

> "There is no provision under the common law that a landlord cannot terminate a monthly tenancy by notice if the tenants were not in arrears of rent, nor is there any provision in the Rent Restriction Act which prevents a landlord from terminating a tenancy by notice on that ground. The only provision in the Rent Restriction Act applicable to this case was that a landlord is not entitled to sue the defendants in ejectment unless the defendants were in arrears of rent for a period of one month after the rent became due before the action was filed. In this case the defendants have paid no rent at all to the plaintiff and they were in arrears of rent for a period of over one month after the rent became due when the plaintiff filed this action. The defendants were thus not entitled to the protection of the Rent Restriction Act, even if they are considered to be statutory tenants of the plaintiffs."

The conclusion arrived at by the learned District Judge that despite proof that a person is a tenant under a landlord, the denial or repudiation of tenancy by such a person has the consequence that he is not entitled to the protection, benefits or rights under the Rent Restriction Act, in my view, will lead to situations never intended by the Legislature. For example, if a landlord who had been recovering rent in excess of the authorized rent from his tenant, sues him for ejectment on the

ground of arrears of rent and also for recovery of arrears of rent, if the tenant, however, chooses to deny tenancy and adduces evidence as to what the authorised rent of the premises is, does it follow as a necessary consequence of his denial of tenancy that a Court will deprive such a person of the benefit he is entitled to under the Rent Restriction Act and recover from him rent over and above the authorised rent ? Another example comes to my mind. If a landlord who finds that his tenant has sub-let the premises without his written consent files an action to have him ejected on this ground and the tenant denies tenancy, but it is proved that he is a tenant, could it therefore be argued that the landlord is not entitled to his right under the Rent Restriction Act to have such a person ejected if he had sub-let the premises to another ? The absurdities that will arise from such situations are such that it may not be possible for a landlord to eject a tenant on the ground of sub-letting every time the tenant denies tenancy.As a matter of fact, the learned District Judge in the instant case has come to the conclusion that the reason why the defendant denied tenancy was because he probably thought he could avoid the consequences of it being held that he had sub-let the premises to Sockalingam Pillai. Under the Rent Restriction Act both the landlord and the tenant have rights arising by operation of law the moment the relationship of landlord and tenant is established. A landlord is not entitled to say that the Act only inflicts on the tenant who denies tenancy the disabilities prescribed in the Act and that he is not entitled to the benefits of the Act.

I am, therefore, of the view that despite the denial of the tenancy by the defendant, the fact that he has been proved to be the tenant, entitles him to the protection of the Rent Restriction Act. The learned District Judge has held on the two grounds of arrears of rent and sub-letting in favour of the defendant. In the result the plaintiffs' action for ejectment should have been dismissed.

Mr. Jayewardene, however, strenously contended that he could support the judgement of the learned District Judge for ejectment of the defendant from the premises on the ground that the evidence establishes that the defendant had sub-let the premises to Sockalingam Pillai, and that the learned District Judge had come to an erroneous conclusion both in law and on the facts in holding that there was no sub-letting of the premises by the defendant to Sockalingam Pillai.

Before I deal with Mr. Jayewardene's submission, I would set out the findings of fact in relation to the issue of sub-letting by the learned District Judge. He has held that from 1958, it was Sockalingam Pillai who was carrying on the business in the premises in suit in the name of the defendant till 1960 and

thereafter in his own name from 1961. All correspondence, telephone licences and other matters clearly showed that it was Sockalingam Pillai who carried on the business in these premises. The learned District Judge was also satisfied that the plaintiffs were fully aware and acquiesced in this position, and that it was a fact well known to the plaintiffs themselves. The learned District Judge has held that Sockalingam Pillai paid the plaintiffs rent at Rs. 400 per month from 1.4.1961 to 31.5.1963, which is borne out by documentary evidence and also by letter D1 sent by the plaintiffs to the defendant in the post-script of which the plaintiffs stated that—

"Our friend (meaning Sockalingam) is again in arrears of rent and is becoming a nuisance to us. Please see that he settles this promptly. Otherwise the best thing for you is to hand over the possession of same and avoid further trouble."

In the body of the letter, however, the plaintiffs informed the defendant that he was in arrears of rent from 1.1.1963 and that if the full settlement was not received by return, they would be compelled to take steps as advised. The learned District Judge further held that the defendant was at all times the tenant of the plaintiffs in respect of the premises in suit although Sockalingam Pillai was to carry on the business in the premises and to pay rent. There was, therefore no question of sub-letting.

Mr. Jayewardene has put forward the following arguments in support of his contention that even on the findings of the learned District Judge, the 1st defendant has sub-let the premises to Sockalingam Pillai.

His submissions may be summarised as follows :—

(1) that although Sockalingam Pillai paid rent, he did so under the limited capacity of an agent to pay rent ;

(2) that the plaintiffs have established sub-letting by proving the sole and exclusive possession of the premises by Sockalingam Pillai to the exclusion of the defendant and in the absence of any satisfactory explanation the presumption of sub-letting has not been rebutted ;

(3) that on the facts of the case, there arises a presumption that Sockalingam Pillai paid rent to the defendant for his occupation ;

(4) that the acquiescence on the part of the plaintiffs of the occupation of the premises by Sockalingam Pillai was no bar to the plaintiff exercising his statutory rights under Section 9 of the Rent Restriction Act to have the defendant ejected from the premises for sub-letting the premises without the written

consent of the landlord. He relied for this purpose on the judgement in *Chettinad Corporation Ltd., v. Gamage,* 62 N.L.R. 86.

I do not propose to disturb the findings of fact upon which the learned District Judge has based his conclusions. No doubt, in view of the inconsistent position taken up by the defendant in his several answers, it was a difficult task for the trial Judge to find his way to come to a determination on the facts. Nevertheless I am of the view that his findings on the facts are supported by the evidence in this case.

Mr. Ranganathan for the appellant while trying to explain the relationship between the defendant and Sockalingam Pillai on a basis other than sub-tenancy, sought to put it under the following basis :—

(*a*) A joint tenancy ; or
(*b*) Agency ; or
(*c*) Trustee ; or
(*d*) Beneficiary

At any event he submitted that the plaintiff has failed to prove that Sockalingam Pillai was a sub-tenant of the defendant. At this stage it is relevant to quote a relevant finding of the learned District Judge. He said " I am satisfied on a consideration of the evidence, the documents, and the probabilities of the case that the defendant was at all times the tenant of the plaintiff in respect of the premises in suit although Sockalingam Pillai was to carry on the business in the premises and to pay rent ". This conclusion pre-supposes the following premises :—

(*a*) that there was an agreement between the plaintiff and the defendant that the defendant was the tenant in respect of the premises in suit ;

(*b*) there was also an agreement between the plaintiff and Sockalingam Pillai that Sockalingam Pillai was to carry on the business in the premises and to pay rent.

The learned District Judge has found in fact that Sockalingam Pillai had paid the rent directly to the plaintiff from 1.4.1961 to 31.5.1963. The trial Judge also gives the reason why he thought that the defendant, Sockalingam Pillai and the plaintiff came to this arrangement in respect of the premises in suit. Sockalingam Pillai had been carrying on business in the Pettah and had crashed. He owed money to two or three private individuals and also the Mercantile Bank. Sockalingam Pillai had admitted that it was well known in the Pettah and to the plaintiffs, who are business men in the Pettah, that he had crashed in his business. He also admitted that he could not carry on the business under his own name, and that was why he carried on

business under the name of the defendant. He even admitted that the plaintiff who knew all these facts would not have been willing to let the premises to him and that was why he took the defendant to obtain the premises.

Mr. Jayawardena relied strongly on the case of *Seyed Mohamed v. Meera Pillai,* 70 N.L.R. 237, in which it was held that where a person was in sole and exclusive occupation of the premises and carried on business therein, in the absence of any acceptable evidence to explain the occupation of such person, the only inference was that such a person was in occupation of as a sub-tenant paying rent to the defendant. In this case before me there is an explanation of the occupation of the premises by Sockalingam Pillai because the documentary evidence in the case and also the finding of the learned District Judge conclusively explain the nature of Socklingam's occupation. In the normal case of sub-letting, the landlord although he may be aware of the fact that his tenant has sub-let the premises to another person, does not acquiesce in the sub-letting by accepting rent from the sub-tenant. The unusual features in this case is that there is a finding of the learned District Judge that the plaintiff has accepted rent from the person whom he alleges is the sub-tenant, namely, Sockalingam Pillai from 1.4.1961 to 31. 5. 1963.

The argument put forward that Sockalingam Pillai was only a limited agent for the purpose of payment of rent to the plaintiff on behalf of the defendant is untenable as it is irreconcible with the plaintiffs' case that Sockalingam Pillai was in sole and exclusive occupation of the premises. There was no satisfactory answer forthcoming from the plaintiffs as to why without protest tney had acquiesced in a situation whereby Sockalingam Pillai was in occupation of the premises while at the same time they accepted rent from him from 1..4.1961 to 31.5.1963.

Likewise, it is not possible on the evidence in the case to draw the inference that Sockalingam Pillai paid rent to the defendant.

I hold that whatever may be the relationship between the defendant and Sockalingam Pillai, it is certainly not one of subletting by the defendant to Sockalingam Pillai. It is not necessary for the purpose of the decision of this case to affix a label to this relationship as suggested by Mr. Ranganathan, viz., that Sockalingam Pillai was a joint tenant or agent or trustee or beneficiary. I hold that the plaintiffs have failed to prove that Sockalingam Pillai was a sub-tenant of the defendant.

I set aside the judgment and decree of the learned District Judge ordering the ejectment of the defendant and others from the the promises in suit. The judgment and decree of the learned

District Judge in respect of arrears of rent and damages from 1.6.1963 less the sum of Rs. 2,000 paid as deposit, the sum of Rs. 3,765.82 paid by way of rates and taxes and sums paid in excess of Rs. 218 monthly from 1.6.1960 to 31.5.1963 will not be affected by my order.

Subject to this, the appeal is allowed and plaintiffs-respondents' action is dismissed. The defendent-appellant will be entitled to his costs both here and below.

SIRIMANE, J.

I have had the advantage of reading the judgement of my brother Pathirana, J., in which he has dealt fully with the facts and the arguments addressed to us at the hearing of this appeal and am in agreement with the order proposed by him. I wish however to add my own observations.

The plaintiffs had come to Court seeking ejectment of the defendant from premises, which were admittedly rent controlled without an authorisation from the Rent Control Board on two ground, viz., arrears of rent and sub-letting. The main ground on which learned counsel for the respondent relied to justify the order of ejectment made against the defendant was that on the conclusions of fact arrived at by the learned trial judge the plaintiffs had in fact proved a sub-letting and the learned trial judge therefore erred when he answered the issue on sub-letting against the plaintiff. He based his argument on the fact that the plaintiffs had established that the defendant (in spite of his denial) was the tenant of the plaintiffs and that a third party, one Sockalingam, was in exclusive occupation and running his own business in the rented premises. He submitted that this is as much as a plaintiff can prove in most cases of sub-letting as it would be almost impossible to prove an actual payment of rent by a sub-tenant to a tenant. This is undoubtedly so and the proof by a plaintiff that someone other than his tenant is in exclusive possession of the rented premises, would in the absence of an acceptable explanation lead to the necessary inference of a sub-letting. This is what has been held in the case relied on by learned counsel for the respondent reported in 70 N.L.R. 237. It must be remembered however that the burden of proving a sub-letting rests with the plaintiffs and that the inference of sub-letting above referred to can be drawn only where there is no explanation of the third party's possession or where an explanation is given which is found to be unsatisfactory or rejected as being false. If the defendant (as in this case) gives an explanation which is accepted by the Court as it explains the occupation of the rented premises by a third party on some footing other than a sub-letting, then no inference of sub-letting can be drawn and in such circumstances it means

that the plaintiffs have failed to discharge the burden of proving a sub-letting. The learned trial judge after considering all the circumstances accepted the explanation of Sockalingam's occupation of the rented premises on a footing other than sub-letting and came to the conclusion that " there is, therefore, no question of sub-letting ". We see no adequate reason to disturb that finding.

The other ground on which learned counsel for the respondent relies to justify the order of ejectment was that the defendant having denied the tenancy was not entitled to protection and benefits under the Rent Restriction Act. He submitted that the defendant having in his final answer denied that he was the tenant cannot also (as pleaded therein) claim the benefit of the Rent Restriction Act. I see no reason why a defendant should not be permitted to make such a plea. In such a case what the defendant really pleads is that, quite apart from what he may say in defence, the plaintiff is not entitled in law to the relief he claims, or as in this case even if he is held to be the tenant (in spite of his denial) the plaintiff is still precluded by law from obtaining the relief he claims. A defendant is always entitled to plead, in addition to any defence he may set out on the facts, that as a matter of law the plaintiff cannot in any case maintain his action. This precisely is what the defendent has pleaded in this case.

The plaintiffs came to Court on the allegation that the defendant was their tenant and he was in arrears of rent and had sub-let the premises. The plaintiffs, in order to succeed, had therefore to prove—

(*a*) that the defendant was their tenant,

(*b*) that he was in arrears of rent and/or had sub-let the premises to Sockalingam.

The learned trial judge answered (*a*) in favour of the plaintiffs and (*b*) against the plaintiffs both on the question of arrears of rent and sub-letting. The plaintiffs' action should therefore have been dismissed but the learned trial judge made an order for the ejectment of the defendant and gave his reason for this as follows: " The defendant therefore having repudiated the tenancy as from 1.1.1961 the plaintiff is entitled to eject him and the defendant is also not entitled to claim the protection of the Rent Acts which only protect the rights of tenants ". He overlooked the fact that he himself had held that the defendant was the tenant of the plaintiff.

Since the plaintiffs came to Court without an authorisation from the Rent Control Board it was incumbent on them, quite apart from what the defendant may have pleaded, to prove that the defendant was in arrears of rent and/or that the defendant

had sub-let the premises, in terms of sections 13 (1) and 9 (1) of the Rent Act. If they failed to prove either of these grounds (as in the present case) then their action must fail in terms of the Rent Act itself as there being no arrears and no sub-letting the plaintiffs never had the right to institute an action for ejectment either under section 13 (1) or 9 (1) of the Rent Act. This position remains unaffected whatever be the plea of the defendant.

Learned counsel for the respondent cited some cases where it has been held that a tenant who denies the tenancy is not entitled to notice to quit. The reason why such notice is not necessary and why a defendant who denies a tenancy cannot take such a plea is because by his denial he repudiates the contract of tenancy and thus terminates it. It is therefore not open to the defendant, who has himself terminated the contract to say that the plaintiff has not terminated it by a valid notice. A contract of tenancy can be terminated not only by a valid notice but also by a repudiation of that contract, I do not think therefore that the cases cited are authority for the proposition that a tenant who denies a tenancy is not entitled to the benefits of the Rent Act merely on the ground that he falsely denied the tenancy. It must be stated in fairness to the defendant in this case that he admitted that he was a joint tenant up to a certain date and thereafter he ceased to be that as his co-tenant became the sole tenant.

Once a trial judge comes to a finding on the facts the rights and liabilities of the parties must be decided in accordance with such finding. The fact that a defendant took up a false position in his defence would not alter the rights and liabilities of the parties on the true facts as found by learned trial judge. If the learned trial judge disapproved of the defendant's conduct and false denial in this action and wanted to penalise him, he may perhaps have done so on the question of costs. The judgement however must be entered in accordance with the facts found by the learned trial judge.

In the instant case therefore when the learned trial judge came to the conclusion that the defendant was the tenant of the plaintiffs but that the plaintiffs had failed to prove either arrears of rent or a sub-letting, he should have dismissed the plaintiffs' action. His order that the defendant should be ejected from the premises cannot therefore be permitted to stand and must be set aside. The other orders as regards rent and payments will however stand. The defendant-appellant's appeal is allowed subject to the above and the plaintiffs' action is dismissed with costs both here and below.

Appeal allowed.