1970 *Present :* **de Kretser, J.**

D. U. PARANAVITHANE, Appellant, *and* K. THEMANIS, Respondent

S. C. 16/68—C. R. Colombo, 91943/R. E.

Rent-controlled premises—Sub-letting—Subsequent change of landlord and continued sub-letting—Right of the new landlord to eject the tenant—Whether notice to quit is necessary—Carrying on an unlicensed eating house in rented premises—Whether it amounts to use for an illegal purpose—Rent Restriction Act (Cap. 274), as amended in 1961 and 1966, ss. 9, 12 A (1) (b).

Where an unauthorised sub-letting is continued after there is a change of the landlord by attornment, there is a continued breach by the tenant of the statutory provision against sub-letting, and it is open to the new landlord who takes exception to it to take the remedy provided by the law and have the tenant ejected.

Obiter : (i) Where a tenant sub-lets the leased premises in contravention of the Rent Restriction Act, the landlord is entitled to institute proceedings in ejectment without notice terminating the tenancy.

(ii) Where a tenant carries on an eating house in the rented premises without a licence from the Municipal Commissioner, the house is being put to a purpose forbidden by the law.

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

H. Rodrigo, with *Asoka Abeysinghe,* for the defendant-appellant.

S. Sharvananda, with *P. Thuraiappa,* for the plaintiff-respondent.

Cur. adv. vult.

March 24, 1970. DE KRETSER, J.—

The Plaintiff Respondent instituted this action seeking to eject the Defendant Appellant from the premises bearing Assessment No. 98 Pamankade Road, Wellawatte, which premises are governed by the Rent Restriction Act as amended in 1961 and 1966.

At the trial the Plaintiff raised the following issues :—

(1) Has the Defendant sub-let the premises to one Karunadasa Edirisinghe without the written consent of the Landlord ?

(2) Has the Defendant used the premises in suit for an illegal purpose, to wit : to keep an eating house without a licence ?

(3) If Issues 1 and 2 are answered in the affirmative, is the Plaintiff entitled to a decree for ejectment ?

(4) Damages.

The learned Trial Judge answered Issue I in the affirmative and Issue 2 in the negative. He entered decree for ejectment on 30.9.67 with damages at Rs. 43.45 as from 1.7.66 and the Defendant has appealed.

I am satisfied after a scrutiny of the evidence in the light of the submissions of Counsel, that the Trial Judge was correct in his finding of fact that the Defendant had sub-let the premises to Edirisinghe without the consent of Plaintiff, his landlord, to whom he had attorned when the Plaintiff bought the premises on P1, Deed No. 1648 of 20.1.65.

The receipts produced to show the subletting establish that the subletting had taken place at a time prior to the purchase of these premises by the Plaintiff and had continued thereafter. It is Plaintiff's case that when he found out that there had been a sub-letting by the Defendant, he filed this action.

Counsel for the Appellant relied on the judgment dated 17th January 1968 of Sirimane, J. sitting alone in the case of *Bertha Walles v. D. V. Hector Silva*[1] reported in 70 N. L. R. 308 which held that " where a tenant sublets a rent controlled premises without the permission of the landlord a person who subsequently purchases the premises from the landlord is not entitled to eject the tenant on the ground of sub-letting which had been done when he was not the landlord ". In this judgment Sirimane J. referred to the judgment of Basnayake C.J. with whom K. D. de Silva J. agreed in *Ratnasingham v. Kathirasamy*[2] decided in December 1956 and reported in 58 N. L. R. at Page 476 in which they held the contrary view. Sirimane J. did not follow that view for he was of opinion that the right to sue accrued to the landlord at the time of the sub-letting and did not pass to the Purchaser who stepped into the shoes of the Seller in the absence of an assignment of the right to sue for the breach of contract which had accrued to the Seller.

[1] *(1968) 70 N.L.R. 308.* [2] *(1956) 58 N.L.R. 476.*

The point was argued once again in *Thaha v. Sadeen* [1] 72 N.L.R. 142 before Panditha Gunawardene J. who preferred to follow the decision in *Ratnasingham v. Kathirasamy.* "It is correct" said he "that the act of sub-letting it is that gives rise to the cause of action, but to hold that if a sub-letting is done on a particular day therefore the cause of action can only arise to the Landlord who on that particular day was the Landlord of the premises is, I think, not in accord with a common sense approach to the situation.....my interpretation of this section is that at whatever time it is discovered that the premises have been sub-let, then on that the cause of action arises. What the section implies is that at the time of commencing action the subletting should subsist; there should be in existence a subtenant in the premises."

A consideration of these decisions and the relevant provisions of the Act make me come to the conclusion that where a subletting is continued after there is a change of the landlord, there is a continued breach by the tenant of the statutory provision against sub-letting and that it is open to the landlord who takes exception to it to take the remedy provided by the law and have the tenant ejected.

Counsel for the Appellant also submitted that notice was necessary to terminate the tenancy and that the notice given in this case was bad in law. No issue in regard to notice was raised in the lower Court nor was the point taken in the petition of appeal.

In the case of *Wimalasuriya v. Ponniah* [2] 52 N. L. R. 191 Basnayake, J. held that where a tenant sub-lets the leased premises in contravention of Section 9 of the Rent Restriction Act, No. 29 of 1948, the Landlord is entitled to institute proceedings in ejectment without terminating the tenancy by notice. This decision has been followed in *John Singho v. Marion Beebee* [3] 73 C.L.W. 107 by Wijayatilake J. In my view the submission of Counsel at the hearing of the appeal which he did not enlarge on, that in view of the amendment No. 12 of 66 to the Rent Restriction Act, notice would be necessary in view of the provisions of Section 12 A (1) (*b*) of that Act, is without merit for that section does not do more than provide that the fact that the standard rent of a premises does not exceed Rs. 100.00 a month is no bar to a Landlord to file action where the premises have been sub-let without the written sanction of the landlord. In my view therefore the Plaintiff in this case would have been entitled to file action on the ground of sub-letting without notice terminating the tenancy but the Plaintiff has in fact given notice —*vide* P11—on 29.7.65 to the tenant to deliver possession on 1st

[1] *(1968) 72 N.L.R. 142.* [2] *(1951) 52 N.L.R. 191.*

[3] *73 C.L.W. 107.*

October 1965, and in my opinion if notice was necessary the notice given was good in law for I agree with the reasoning in *Haniffa v. Sellamuttu*[1] decided by T. S. Fernando, J. and Siva Supramaniam, J. and reported in 70 N. L. R. page 200.

It appears to me also that the learned Trial Judge should have answered Issue 2 in favour of the Plaintiff for the evidence clearly establishes that the Defendant had pleaded guilty to carrying on an eating house in these premises without a licence from the Municipal Commissioner in breach of a by-law of the Municipal Council and had been fined Rs. 25.00. To have an eating house in a premises a licence is necessary and if there is no licence it appears to me that the house is being put to a purpose forbidden by the law. In the case of *Abraham Singho v. Ariyadasa*[2] *Weeramantry,* J. held that a sale of arrack in a premises in contravention of the provisions of the Excise Ordinance is the use of premises for an illegal purpose which would entitle the landlord to file action to eject the tenant.

I dismiss the appeal in this case with costs payable by the Defendant to the Plaintiff.

Appeal dismissed.