

1946

Present : Canekeeratne J.

THAMOTHERAMPILLAI, Appellant, and GOVINDASAMY,
Respondent.

307—C. R. Trincomalee, 7,395.

Landlord and tenant—Tenant's conduct which is a nuisance to adjoining occupiers—Ground for ejectment—Rent Restriction Ordinance, No. 60 of 1942, s. 8 (d).

A tenant can, under proviso (d) of section 8 of the Rent Restriction Ordinance, be ejected from the premises let to him if he causes a substantial interference with the enjoyment of the adjoining room by the landlord.

A PPEAL from a judgment of the Commissioner of Requests, Trincomalee.

S. J. V. Chelvanayagam for the plaintiff, appellant.

No appearance for the defendant-respondent.

Cur. adv. vult.

April 4, 1946. CANEKERATNE J.—

This is an appeal from the order of the Commissioner dismissing with costs the action of the plaintiff, the landlord of certain premises, the northern room in the tiled house on the land situate in No. 3 Division. The claim of the plaintiff was for an order of possession of the premises which were and are in the occupation of the defendant and for consequential relief. The basis of the claim was that the defendant had caused damage to the house and premises of the plaintiff and annoyance to him. The premises were and are within the protection of the Rent Restriction Ordinance. The house consists of two rooms, the other room being occupied by the plaintiff and his wife, a sickly woman who has some trouble in her eye.

Plaintiff testified that as the defendant was causing trouble, he asked him on May 25, 1945, to vacate the room: that night the defendant caused great damage to the premises. Next day, fearing that the plaintiff might prosecute him, the defendant sent for one Jubar and one Hussein, requested them to dissuade the plaintiff from taking any steps against him and promised to vacate the room by the end of June. These two persons saw plaintiff and communicated the defendant's promise to him.

The defendant is a radio mechanic and brings home radio sets for repair. Since the end of May the defendant was creating trouble and was using a radio set till late in the night, so plaintiff gave him notice on July 28 to leave the premises by the end of August: as defendant failed to comply with the notice this action was instituted on October 11.

The learned Commissioner appears to take the view that the defendant has caused annoyance to the plaintiff but that is not conduct which is a nuisance to adjoining occupiers—no other occupier had made a complaint against the defendant. Complaint, in his view, should be made by more than one person; as defendant is a repairer of radio sets "he must do the repairing only when he is off-duty, so putting the radio on late at nights is not a nuisance."

Proceedings for ejection can be taken against a statutory tenant by the landlord if he can satisfy the Court that the tenant had been guilty of conduct which is a nuisance to adjoining occupiers. (Sec. 8, proviso C of Ordinance No. 60 of 1942.)

The conduct of a person may be a nuisance to one person or to a number of persons: it depends on the nature of the act done by the wrongdoer: if a tenant grossly misuses the premises let to him it is clear that the landlord can complain that the conduct of the tenant is a nuisance within the meaning of the section. (See *Ferguson v. Butler* ¹.)

In the case of a nuisance by smell or noise, the fact that only one person complains is a circumstance to be taken into consideration by the tribunal, it may not infrequently turn the scales against the landlord: it is, however, not decisive of his rights. (See section 2 (x) of Chapter 2 of the Legislative Enactments.)

The defendant has turned the premises let to him to a workshop where he attends to repairs of radio sets at night. Any substantial interference with the comfort or convenience of persons occupying or using the premises is a sufficient interference with the beneficial use of premises.

Persons living in a locality may have to bear with patience the noise ordinarily found there but the addition of a fresh noise caused by a person working every night may be so substantial as to create a nuisance. The plaintiff complains of the noise made practically every night by the defendant in the course of effecting repairs to radio sets; he complains of the noise made by tuning-in the wireless-sets till late in the night. The existence of the noise in this case is clear; such noise does cause a

¹ *Blundell's Cases*, p. 71.

substantial interference with the enjoyment of the adjoining room by the plaintiff during the night: it would be injurious to the physical comfort of the plaintiff and his wife. (See *Forrest v. Leefe* ¹).

The appeal is allowed with costs in both Courts.

Appeal allowed.
