

It is improbable that the accused, who had just committed a serious offence on an unwilling girl, would actually open the shutter and come out to be seen by people on the road. The Magistrate, however, has failed to address his mind to the question of corroboration at all. The failure of the prosecution to call Lily or to explain her absence is a circumstance which tells strongly against the prosecution. In my opinion, this is a case in which the Magistrate would have had a reasonable doubt, had he properly addressed his mind to the ingredients which have to be proved in cases like this. I quash the conviction and acquit the appellant.

*Appeal allowed.*

1950

*Present: Basnayake J.*

RODRIGO, Appellant, and PARANGU, Respondent

*S.C. 119—C.R. Colombo, 15,683*

*Rent Restriction Act, No. 29 of 1948—Section 13—Death of landlord—Right of administrator to maintain action—Civil Procedure Code, section 472.*

The administrator of the estate of a deceased landlord is entitled, by virtue of section 472 of the Civil Procedure Code, to maintain an action under the Rent Restriction Act for the purpose of ejecting a tenant of the deceased and putting into possession the deceased's widow and children if the premises in question are reasonably required for their occupation.

**A**PPEAL from a judgment of the Court of Requests, Colombo.

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

*H. W. Tambiah, with S. Sharvananda, for defendant respondent.*

*Cur. adv. vult.*

June 2, 1950. BASNAYAKE J.—

The plaintiff-appellant is the administrator of the estate of one D. C. Karunaratne deceased. He seeks to have the defendant-respondent ejected from premises Nos. 414/1 and 414/2 in Baseline Road, Colombo. He claims that he is entitled to maintain the action *qua* administrator as the premises are reasonably required for the occupation of the widow and children of the deceased.

The learned Commissioner holds that the premises are reasonably required for the occupation of the widow and children of the deceased, and that, having regard to the defendant's requirements, the claim of the deceased's heirs to the occupation of the premises is entitled to prevail. But he gives judgment against the plaintiff on the ground that he is not entitled to maintain the action *qua* administrator.

I find myself unable to share the opinion of the learned Commissioner that the plaintiff cannot maintain the action *qua* administrator. There is nothing in section 13 of the Rent Restriction Act, No. 29 of 1948, or in any other provision of that Act, that supports his decision. Section 13 so far as is material reads :

“(1) Notwithstanding anything in any other law, no action or proceedings for the ejection of the tenant of any premises to which this Act applies shall be instituted in or entertained by any Court, unless the Board, on the application of the landlord, has in writing authorised the institution of such action or proceedings :

Provided, however, that the authorisation of the Board shall not be necessary, and no application for such authorisation may be entertained by the Board, in any case where—

- (a) rent has been in arrear for one month after it has become due ; or
- (b) the tenant has given notice to quit ; or
- (c) the premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord, or for the purposes of the trade, business, profession, vocation or employment of the landlord.”

In view of the learned Commissioner's findings of fact, the only question that remains for consideration is whether the plaintiff *qua* administrator can maintain the action. I am of the opinion that section 472 of the Civil Procedure Code affords sufficient authority for the plaintiff to maintain this action. That section reads :

“In all actions concerning property vested in a trustee, executor, or administrator when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent persons so interested ; and it shall not ordinarily be necessary to make them parties to the action. But the court may, if it think fit, order them, or any of them, to be made such parties.”

Under our law the estate of a deceased person vests<sup>1</sup> in the administrator and the plaintiff is, by virtue of the section I have quoted above, entitled to maintain the action he has brought.

I therefore allow the plaintiff's appeal with costs and direct that decree be entered as prayed for in the plaint.

*Appeal allowed.*

<sup>1</sup> *Perera v. Silva*, (1893) 2 C.L. Rep. 150.  
*Fernando v. Rosa Maris et al.* (1926) 28 N.L.R. 231.  
*The Public Trustee v. Karunaratne*, (1938) 40 N.L.R. 429.  
*De Silva v. Rambukpota*, (1939) 41 N.L.R. 37 at 42.