proceedings, they may not be evicted under a warrant issued in such proceedings.

However, the non-joinder of a subtenant is not available as an objection to the proceeding.[106] A subtenant is a proper party, but not a necessary party. In other words, although the statute contemplates the joinder, as parties, of the tenant and all who derive title through him; yet, a landlord need not necessarily remove subtenants if he does not wish to do so.[107] As the Appellate Term said,[108] the statute "does not require the undertenants to be joined. All that it requires is that the petition shall name or describe the persons against whom the special proceeding is instituted. Undertenants are proper parties to a summary proceeding, but they are not necessary parties. If a failure to name them as parties would defeat the landlord's right to evict them, the objection may be taken advantage of by the undertenants, and not by the tenant. The tenant cannot shelter himself behind his subtenants."[109]

§ 38:31. Children, Wife, Guests of Tenant

It has traditionally been held that the wife of a tenant, as well as his children, servants, boarders, and guests can

106. Teachers College v. Wolterding, 77 Misc. 2d 81, 351 N.Y.S.2d 587 (App. Term 1974) (citing text); Atterbury v. Edwa, 61 Misc. 234, 113 N.Y.S. 614 (Sup. Ct. 1908).

In Triborough Bridge and Tunnel Authority v. Wimpfheimer, 163 Misc. 2d 412, 620 N.Y.S.2d 914 (City Civ. Ct. 1994), reh'g in banc granted, opinion vacated, 165 Misc. 2d 584, 633 N.Y.S.2d 695 (App. Term 1995), the civil court upheld the principle that postcommencement joinder of a subtenant is appropriate where there is no indication that the subtenants were known to the petitioner when the proceeding was commenced. However, where petitioner knows the correct name of a subtenant before the commencement of the action it may not use the pseudonyms "John or Jane Doe" or "XYZ Corporation" in the petition and notice of petition, and failure to use the correct name of subtenant in the proceeding is grounds for dismissal. In reversing this decision, the Appellate Term stated that while the subtenants were proper parties they were not "necessary" parties whose presence was indispensable to the according of complete relief as between landlord and tenant and the petition should not have been dismissed against the tenants. However, the court held that landlord may apply for joinder of the subtenants as additional parties so that any warrant obtained may be effective against them.

107. Atterbury v. Edwa, 61 Misc. 234, 113 N.Y.S. 614 (Sup. Ct. 1908); Kennedy v. Meehan, 189 Misc. 513, 74 N.Y.S.2d 393 (City Ct. 1947); Croft v. King, 8 Daly 265, 1 N.Y. City Ct. Rep. 157 (N.Y.C.P. 1879).

Where the actual tenant or occupant of an apartment had never been served with copy of the petition and notice of petition, and was not even named a party, his eviction under the warrant in the proceeding was unlawful. Marluted Realty Corp. v. Decker, 46 Misc. 2d 736, 260 N.Y.S.2d 988 (City Civ. Ct. 1965).

108. Atterbury v. Edwa, 61 Misc. 234, 113 N.Y.S. 614 (Sup. Ct. 1908).

109. As to the rights of a subtenant, see §§ 9:55, et seq, supra.

all be removed under a warrant of dispossession, though none of them is made a party to the summary proceeding brought against the tenant. Under such a rule, none of these occupants is either a necessary or a proper party to the proceeding.[110] This traditional rule has been criticized as being "born of an era in which women's independent interests in real property went unrecognized, and which assumes, based on a single citation to antiquated authority, that it is the husband who is always the tenant."[111]

§ 38:32. Person Hiring Desk Space

It has been held that a person who hires desk room from a tenant of an office is neither a necessary nor a proper party to a summary proceeding brought against the office tenant. He therefore can be removed under a warrant of dispossession, even though he was not made a party to the proceeding. The party who hires desk space in an office, said the Court, in so holding,[112] has no estate or interest in the real estate. His position is no better than that of one with a room in a boarding or lodginghouse. He has to go out with the office tenant.

110. Croft v. King, 8 Daly 265, 1 N.Y. City Ct. Rep. 157 (N.Y.C.P. 1879).

Loira v. Anagnastopolous, 204 A.D.2d 608, 612 N.Y.S.2d 189 (2d Dep't 1994) (citing text). The court denied plaintiff's action to recover damages for wrongful eviction on her contention that she should have been made a party to the holdover proceeding. Stating that she was merely the daughter of the tenant, the court held that she could be removed from the premises even though not a party to the proceeding.

111. Stanford Realty Assoc. v. Rollins, 161 Misc. 2d 754, 615 N.Y.S.2d 229 (City Civ. Ct. 1994). Holding that the wife of the tenant-respondent is a necessary party in an eviction proceeding to recover possession of a rent-controlled apartment based on nonprimary residence, the court dismissed the proceeding without prejudice to commencing a summary proceeding which included respondent's wife. The court went on to say that a close reading of cases reveal that the traditional rule will be invoked as the basis for denial of necessary party status only where the family member has not asserted independent possessory rights. Thus, concluded the court, "these appellate cases in fact take into account the current sociological and legal reality that a wife (or other family member), even if not named as a tenant in the original written lease, may acquire possessory or tenancy rights to an apartment which is subject to modern rent regulation, and may thereby become a necessary party."

112. Eaton v. Hall, 43 Misc. 153, 88 N.Y.S. 260 (Sup. Ct. 1904).