

1945

Present: Rose J.

MOHAMED, Appellant, and SALAHUDEEN, Respondent.

99—C. K. Kandy, 33,791.

*Rent restriction—Premises required by landlord—Duty of court to consider the relative position of the parties—Ordinance No. 60 of 1942, s. 8 (c).*

In an action for ejection under the Rent Restriction Ordinance, where the question is whether the premises are reasonably required for occupation by the landlord, it is the duty of the court to consider the relative position of the parties.

**A** PPEAL from a judgment of the Commissionuer of Requests, Kandy.

N. Nadarajah, K.C. (with him H. W. Thambiah), for the defendant, appellant.

L. A. Rajapakse, K.C. (with him C. E. S. Perera), for the plaintiff, respondent.

Cur. adv. vult. .

February 13, 1945. Rose J.—

This appeal concerns the interpretation to be given to section 8 (c) of the Rent Restriction Ordinance of 1942. Counsel for the appellant argued that the learned Judge, as would seem to be apparent from his judgment, only considered the matter from the point of view of the requirements of the plaintiff, the landlord.

Now Counsel for the plaintiff says that having regard to the wording of this particular sub-section, which it is to be noted, is different from the English Act of 1920 from which most of these Colonial Ordinances derive, the only element that the Court need take into consideration is the landlord's aspect of the matter. There is much to be said for that contention as a legal argument but it seems to me that as far as this question is concerned the matter is covered by authority. In the case of *Abeyewardene v. Nicolle*<sup>1</sup> Soertsz J. appears to have considered this very point and to have come to the conclusion that owing to the presence of the words "in the opinion of the court" appearing before the words "reasonably required" it is the duty of this court to have regard to the relative position of the parties; and that decision would appear to be in accord with certain *obiter dicta* delivered in the case of *Raheem v. Jayawardene* reported at page 313 of the same volume of the law reports.

That being so it seems to me that the learned Judge in this case should have an opportunity of considering the relative position of the parties.

Counsel at the Bar now informs me that the Judge who tried this case is no longer available at that station. It is therefore perhaps desirable that the case should be remitted for retrial *de novo*. In all the circumstances I consider that the fair order is that the costs of this appeal will be in the cause.

Sent back for retrial.