1944 *Present:* **Howard C.J.**

RAHEEM, Appellant, *and* JAYAWARDENE, Respondent.

184—C. R. Colombo, 90,848.

Rent restriction—Premises are reasonably required for occupation by landlord—Burden of Proof—Duty of Court—Ordinance No. 60 of 1942, s. 8, Prov. (c).

In an action for ejectment under the Rent Restriction Ordinance the burden is cast upon the landlord of proving that the premises are reasonably required for his occupation.

Proviso (*c*) to section 8 does not cast on the landlord the burden of merely establishing a good reason.

The Court has to be satisfied, after taking into consideration other matters such as alternative accommodation at the disposal of the landlord and the position of the tenant, that the requirement is a reasonable one.

THIS was an action brought by the plaintiff to eject the defendant from premises No. 45, Silversmith street, which he had given on rent to the defendant.

It was maintained on behalf of the plaintiff that he required the premises for his own residence and also for purposes of his business. The Commissioner of Requests held that the request for the premises was *bona fide* and reasonable and gave judgment for the plaintiff.

H. V. Perera, K.C. (with him *E. B. Wikremanayake* and *H. W. Jayewardene*), for the defendant, appellant.—The plaintiff's request for the premises in question was not made *bona fide*. It was, in reality, a consequence of the defendant's refusal to consent to the forfeiture clause in D 1. Sections 3 and 8 of the Rent Restriction Ordinance, No. 60 of 1942, were intended to protect the tenant. In considering the reasonableness of the landlord's need, under section 8 (*c*), the Court must take into account the conditions of the present time. The reasonableness of the landlord's requirement should be judged not from the point of view of the landlord but according to the opinion of the Court. See *Shrimpton v. Rabbits*[1] and *Cumming v. Danson*[2]. The corresponding English enactment is 10 & 11 Geo. V., c. 17, section 5 as amended by 23 & 24 Geo. V., c. 32, section 3.

L. A. Rajapakse, for the plaintiff, respondent.—The English Act is substantially different from our Ordinance. *Nevile v. Hardy*[3] brings out the difference. In England three ingredients have to be established by the landlord. The rule of alternative accommodation is not part of our law. In Ceylon the only determining factor is the opinion of the Court. The trial Judge in the present case was satisfied that the plaintiff's request was *bona fide* and reasonable.

Cur. adv. vult.

[1] *(1924) 131 L. T. 478.* [2] *(1942) 2 A. E R. 653.*

[3] *(1920) 124 L. T. 327.*

June 7, 1944. HOWARD C.J.—

This is an appeal by the defendant from a decree by the Commissioner of Requests, Colombo, ordering that he be ejected from premises No. 45, Silversmith street, Colombo, and that the plaintiff be placed in possession thereof. The learned Commissioner further ordered that the defendant pay damages at Rs. 50 per mensem from July 1, 1943, till the defendant is ejected, and the costs of the suit. The only question for decision is whether the plaintiff, having regard to the terms of section 8 of the Rent Restriction Ordinance, No. 60 of 1942, was entitled to terminate the defendant's contract of tenancy and eject him. Section 8 is worded as follows:—

" Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises to which this Ordinance applies shall be instituted in or entertained by any Court, unless the Assessment 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 in any case where—

(*a*) rent has been in arrears 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 his trade, business, profession, vocation or employment; or
(*d*) the tenant or any person residing or lodging with him or being his sub-tenant has, in the opinion of the Court, been guilty of conduct which is a nuisance to adjoining occupiers, or has been convicted of using the premises for an immoral or illegal purpose or the condition of the premises has, in the opinion of the Court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person.

For the purpose of paragraph (*c*) of the foregoing proviso, ' member of the family ' of any person means the wife of that person, or any son or daughter of his over eighteen years of age, or any parent, brother or sister dependent on him. "

The plaintiff contended that he requires the premises in question for purposes of his own residence and also for the purposes of his business and that in these circumstances by virtue of paragraph (*c*) his action is maintainable. The learned Commissioner, in the course of his judgment, states that the plaintiff's evidence impressed him as frank and truthful and that, if the facts spoken to by him are true, he is inclined to think that his request for the premises in question is *bona fide* and reasonable. If " reasonably required " in section 8 (*c*) of the Ordinance is interpreted as required for good reasons, the reasons spoken to by the plaintiff for requiring the premises in question for himself seem to be good enough. In these circumstances the action was held by the Commissioner to be maintainable.

The Commissioner in holding that the request of the plaintiff for the premises is *bona fide* no doubt intends to imply that the reasons he gives for requiring the premises are real and not manufactured merely for the purpose of obtaining possession of the premises. In these circumstances it is necessary to explore the position as it existed prior to the plaintiff giving the defendant notice to quit. The property in question was transferred to the plaintiff by way of dowry in December, 1942. He got married in March, 1942, and then took up his residence in his father-in-law's house No. 496, Galle road. He had previously lived with his brother at No. 193, New Moor street, where they carry on business in partnership. In April, 1943, the plaintiff sent a form of tenancy agreement, D 1, for signature by the defendant. In D 1 there was a clause that, in case of default in the payment of rent, the rent payable in advance should be forfeited. The defendant struck out the forfeiture clause and on April 22, 1943, returned the tenancy agreement signed by him in the form D 2. On April 28, 1943, the plaintiff's Proctors sent the defendant a notice to quit and at the same time informed the defendant that the plaintiff desires to enter into occupation of the premises as he had recently got married and had been trying, but without success, to secure a house for his occupation. In giving evidence the plaintiff states that his father-in-law's other daughter is being married on October 17, 1943, and in accordance with custom he expects this daughter and her husband to go and live in his father-in-law's house. Can it be said that the reasons given by the plaintiff for requiring the house for occupation are *bona fide*? The plaintiff in sending D 1 to the defendant makes no mention of his recent marriage and the probability of his requiring the house for his own occupation. It is only when the forfeiture clause is struck out by the defendant that the plaintiff discovers that, owing to his recent marriage, he requires the house for his own occupation. But reliance is not placed on this reason when the plaintiff gets into the witness-box. He then pleads that there will be no room for him in his father-in-law's house in October, 1943, when the other daughter is married and the new son-in-law according to custom takes up his residence. But if the custom is that the son-in-law and his bride take up residence with the father-in-law, the plaintiff should continue to live at 496, Galle road. No reason has been given why the plaintiff should leave his father-in-law's house to make room for the new son-in-law. The plaintiff also maintained that because of business reasons it was necessary for him to live at 45, Silversmith street. The business carried on by the plaintiff in partnership with his brother seems to be of a vague and shadowy character. The partnership makes one shipment a month. The learned Commissioner in his judgment made no mention of the documents D 1 and D 2 and in arriving at the conclusion he did was unmindful of their implications. Having regard to all the circumstances of the case it cannot be said that the reasons put forward by the plaintiff are *bona fide*. In these circumstances he has not discharged the burden of proof cast upon him by law of showing that the premises are reasonably required for his occupation.

Although it is not necessary to do so, I think I should add a few words on the interpretation which should be given to the words " the premises

are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord, &c., " which occur in passage (*c*) of section 8 of the Ordinance. The learned Commissioner seems to think that the landlord discharges the burden of proof imposed on him by proving that he has a good reason for requiring the premises. In the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, (10 & 11 Geo. V., c. 17) s. 5 (1) (*d*) the wording is " the dwelling house is reasonably required by the landlord for occupation as a residence for himself. " The Courts in *Nevile v. Hardy*[1] and *Shrimpton v. Rabbits*[2] have held that this clause merely required the landlord to show that his wish was a reasonable one. Before, however, he could obtain an order for ejectment, the English law required that he should prove that alternative accommodation for the tenant was available and also the Court should be satisfied that it was reasonable that an order for possession should be made. Having regard to the words " in the opinion of the Court " which occur in section 8 (*c*) of the local Ordinance, I do not think that the words " reasonably required " cast on the landlord the burden of merely establishing a good reason, so far as he himself is concerned, for requiring the premises as in the first part of section 5 (1) (*d*) of the English Act. The Court has to be satisfied, after taking into consideration other matters such as alternative accommodation at the disposal of the landlord and the position of the tenant, that the requirement is a reasonable one and hence section 8 (*c*) seems to combine the first part of section 5 (1) (*d*) of the English section together with the words " and, in any such case as aforesaid, the Court considers it reasonable to make such an order or give such judgment " which appear after paragraph (*g*) of section 5 (1).

For the reasons I have given, the order of the Commissioner is set aside and judgment entered for the defendant with costs in this Court and the Court below.

Appeal allowed.