1944 *Present:* **Soertsz J.**

ABEYEWARDENE, Appellant, *and* NICOLLE, Respondent.

86—C. R. Colombo, 93,851.

Rent restriction—Premises reasonably required for occupation by landlord—Alternative accommodation—Relevant fact—Ordinance No. 60 of 1942, s. 8, proviso (c).

In an action for ejectment under the Rent Restriction Ordinance, where the question is whether the premises are reasonably required for occupation by the landlord, the matter of alternative accommodation is a relevant fact to be taken into account along with other facts in considering the question of reasonableness:

Semble,—No appeal lies from a judgment of the Court of Requests in the exercise of its jurisdiction under the Ordinance.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

N. K. Choksy (with him *R. A. Kannangara*), for plaintiff, appellant.

H. W. Thambiah (with him *Vaitalingam*), for defendant, respondent.

Cur. adv. vult.

July 17, 1944. SOERTSZ J.—

The appellant who had let to the respondent the premises bearing assessment No. 295, Thimbirigasyaya road, about eleven years ago,

[1] *(1928) 30 N L. R. 56.*

gave notice on November 1, 1943, determining the tenancy at the end of December, 1943. The respondent failed to quit the premises and the appellant instituted this action for ejectment.

In the normal operation of the law, the action was bound to succeed. But section 8 of the Ordinance No. 60 of 1942 has altered the law by enacting that an action for ejectment such as this may not be instituted unless the Assessment Board has in writing authorised its institution and that a Court may not entertain an action instituted without such authorisation unless " 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 " . . . .

In this instance, the authority of the Assessment Board had not been obtained and therefore, occasion arose for the Court to answer the preliminary question whether the plaintiff reasonably required the premises for one of the indicated purposes. On the answer filed by the defendant no other question arose.

The Commissioner found, and that finding is supported by evidence that the plaintiff who had let the premises to the defendant was seeking to eject him in order to enable the plaintiff's married daughter, who had become the owner of these premises in 1942, to take up her residence in it. The Commissioner was satisfied that the plaintiff was not actuated by any other motive than that he wanted to enable his married daughter to keep a separate house ", but nevertheless he found that the premises were not reasonably required in view of " the relative position of the parties concerned ". The plaintiff's daughter had been living with her father ever since her marriage. The husband was mobilised and lived in barracks. The inconvenience caused to the plaintiff from having to share this house with his daughter and her family was very little when compared with the inconvenience the defendant and his family would have to face if they were to be ejected from the premises which they have occupied for 11 years when it is very difficult to find a house.

Accordingly the Commissioner dismissed the plaintiff's case.

The two contentions advanced, on appeal, for the appellant were (*a*) that there was logical inconsistency in the finding that the plaintiff's action was in good faith and yet unreasonable; (*b*) that the Commissioner misdirected himself in taking into account the matter of suitable alternative accommodation.

In regard to the first contention, surely, there is no logical inconsistency, even ordinarily, in stating that something has been done in good faith or with the best of motives but yet unreasonably. Everyday experience will suggest numerous instances. Much less is there such inconsistency in a case in which we were concerned not with reasonableness, at large, but with what may be described as relative reasonableness. As Justice Acton observed in *Shrimpton v. Rabbits*[1] " because the landlord's wish for possession was reasonable, it does not follow that it was reasonable for the Court to gratify it ".

The second contention is based on Counsel's interpretation of the passage in the judgment I have already quoted as meaning that the Commissioner held that alternative equivalent accommodation must be

[1] *40 T. L. R. 541.*

shown to be available before a landlord could eject his tenant. If the judgment meant that it would, no doubt. amount to a serious misdirection for while under the English Act alternative accommodation is, generally, a peremptory condition, it is not under our Ordinances. But that does not mean that in our law, this matter of alternative accommodation *is taboo*, that it may not even be uttered. It is a relevant fact to be taken into account along with other facts in considering the question of reasonableness. That is what is laid down in *Shrimpton v. Rabbits* (*supra*)—to make an order the Judge must consider the circumstances of the tenant as well as those of the landlord. In regard to the case of *Raheem v. Jayewardene*[1] I do not read that judgment as having laid down that alternative accommodation is *sine qua non* for an order of ejectment. All it says is that alternative accommodation is a relevant fact in relation to reasonableness. There may be cases in which the fact that alternative accommodation is not available would militate against an application for ejectment and other cases in which it would not. That would be a question for the Tribunal. I see no misdirection whatever in the way the Commissioner considered this matter of alternative accommodation in this case.

There is one other point on which I think I ought to say a few words, although it was not referred to at all during the argument and that is that, in my view, there is no right of appeal from an order of this kind.

It is well established that a right of appeal does not exist unless it has been given expressly or by necessary, that is to say inevitable, implication (*Attorney-General v. Sillam* [2]; *The King v. Hanson* [3]; *Queen v. Stock* [4]; *Sangarapillai v. Municipal Council, Colombo* [5]). Ordinance No. 60 of 1942 gives no right of appeal in express terms and as far as one can gather from the implication of the Ordinance, section 12 (12) appears to negative such a right.

The appeal fails. The respondent is entitled to costs.

Appeal dismissed.