1953 *Present :* **Gratiaen J.**

F. X. LEON, Appellant, *and* E. SUBBIAH PILLAI, Respondent

S. C. 70—C. R. Colombo, 31,936

Rent Restriction Act, No. 29 of 1948—Section 13—Dismissal of landlord's claim to premises—His right to bring second action on same issue.

A landlord who unsuccessfully pleaded in a previous suit the provisions of section 13 of the Rent Restriction Act in regard to his reasonable requirement of the premises in question for his own occupation cannot re-agitate the same issue on substantially the same considerations in a second action unless he can point to supervening circumstances which have materially altered the situation.

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

H. W. Jayewardene, with *D. R. P. Goonetilleke*, for the defendant appellant.

H. V. Perera, Q.C., with *C. Chellappah*, for the plaintiff respondent.

Cur. adv. vult.

February 18, 1953. GRATIAEN J.—

This is an appeal from a judgment ordering the ejectment of a tenant from certain premises in Sea Street, Colombo, on the ground that they were " reasonably required for his landlord's occupation as a place of business and also as a residence " within the meaning of sec. 13 of the Rent Restriction Act.

Proceedings of this kind invariably involve disputes of great moment to the parties concerned, and the machinery of the Act breaks down unless the trial and any appeal arising from it can be concluded reasonably soon after the dispute arose. The present action was instituted on 5th February, 1951, and judgment was entered in favour of the plaintiff on 5th October, 1951. The typewritten briefs did not reach the Registrar of

the Supreme Court until 8th May, 1952. The appeal came up for hearing before me on 13th February, 1953, which is more than two years after the action commenced. This simple catalogue of dates is a cynical commentary on the law's delays of the present time. How the situation of the parties has developed during this long interval I do not know and (being only a Judge of appeal) am not permitted to inquire.

The defendant complains that the learned Commissioner was not justified upon the evidence in holding that the plaintiff " reasonably " required the premises for his own use. In such cases the proper function of this Court is to consider whether or not the trial Judge's decision was bad for misdirection. *Coplans v. King* [1]. It is not enough, as Somerville J. pointed out in *Cresswell v. Hodgson* [2], that the learned Commissioner " has given more weight than he should give, or more weight than another judge may give, to some matters. But that is not the question here. *The question is whether he has so plainly gone wrong in law that this court should interfere* ". It is on these lines that I proceed to examine the judgment under appeal.

The defendant had continuously occupied the premises as a place of business since 1944—originally as a tenant under a previous owner, and since February, 1948, under the plaintiff to whom he attorned when the latter became the purchaser. The plaintiff had admittedly bought the premises knowing that there was no early prospect of obtaining vacant possession. In other words, his purchase in the first instance represented an investment.

It is important to bear in mind that there had been a previous litigation between the parties. On 6th July, 1948, the plaintiff sued the defendant for ejectment *on the same grounds on which he now relies*, namely, that " the premises were reasonably required by him for his own use and occupation as a place of business and as a residence ". On that occasion his action was dismissed with costs in terms of a judgment of Wijeyewardene C.J. dated 24th June, 1949. Thereafter the plaintiff, to use his own words, " lost heart and attempted to sell the premises ". He did not receive a satisfactory offer for them, however, and the defendant continued to occupy the premises as his tenant for the purpose of carrying on the business managed by him for the benefit of himself and his family. (I agree with the learned Commissioner that the question whether his connection with the business was that of sole owner or a partner or merely that of a managing attorney has little relevancy, if any, to the present dispute.)

The present action, as I have said, was instituted on 5th February, 1950. The plaintiff once again claimed to re-possess the premises on precisely the same grounds as in the earlier action, except that he also alleged on this occasion that the defendant had "sub-let the property without his authority ". On that issue he failed, so that the main question for determination was whether any additional circumstances had arisen *since the earlier action was instituted* to introduce an element of " reasonableness" (which was previously held to be lacking) to his claim to eject the defendant.

[1] *(1947) 2 A. E. R. 393.*

[2] *(1951) 2 K. B. 92.*

The learned Commissioner considered the evidence with great care, and, *if the case had not been complicated by the result of the earlier litigation*, I would have found it quite impossible to disturb his decision. But it seems to me that the judgment is bad for misdirection because the learned Commissioner approached the vital issue of "reasonableness" as if it had arisen for the first time between the parties—whereas, in truth, there was already a concluded decision that the events which preceded 6th July, 1948, taken by themselves, were insufficient to deprive the tenant of the statutory protection of the Rent Restriction Act. If the matter had been approached from this angle in the lower Court the learned Commissioner would himself, I think, have taken the view that since that crucial date there had been no substantial change in the position of either party so as to turn the scales in favour of the plaintiff. Indeed, he has in effect "re-tried" the earlier dispute.

The plaintiff's evidence fully sets out his reasons for requiring the premises for his own use. That he genuinely desires to re-possess the property, I do not doubt. That he could carry on his own business more conveniently in the protected premises and perhaps derive some additional pecuniary advantage if those wishes were gratified, I do not doubt either. But that is not enough. For, as he frankly admitted at the trial, "*I am in the same difficulty today as I had been in July, 1948*". The same difficulty, no greater and no less, apart from some variations of emphasis in his description of it in the witness box. His volume of business has, if anything, increased since then, but sometimes his profits declined owing to keener competition; at other times, the market would improve, and his profits would go up. These seem to be the normal fluctuations which, as I understand his evidence, are the result of considerations extraneous to the suitability or otherwise of his present place of business. As against that, the disadvantages which would result to the defendant if he were compelled, under existing conditions, to look for some other place of business for his own activities are obvious.

It would be contrary to the spirit of the Rent Restriction Act if a landlord, having unsuccessfully pleaded the provisions of sec. 13 of the Act on one occasion, were permitted to re-agitate the same issue on substantially the same consideration shortly afterwards. The *status quo* must remain until he can point to supervening circumstances which have materially altered the situation. There was no evidence to establish that the plaintiff's requirement which was not "reasonable" in July, 1948, had become any more reasonable in February, 1951. The judgment under appeal proceeds, by and large, on a consideration of the identical consequences which would result from a decision for or against the landlord. Nothing has since occurred to deprive the tenant of the statutory protection which was judicially recognised in the earlier case. In other words, the balance of convenience has not been appreciably disturbed during the interval between the first and second actions. I would therefore allow the appeal and dismiss the plaintiff's action with costs in both courts.

Appeal allowed.