1956 *Present :* H. N. G. Fernando, J.

SARIS SILVA, Appellant, *and* L. G. SUMATHIPALA, Respondent

S. C. 156—C. R. Badulla-Haldumulla, 3,382

Rent Restriction Act—"Alternative accommodation"—Burden of proof.

Where a landlord seeks ejectment of his tenant on the ground that the premises let are reasonably required for occupation by him, the tenant need not prove that he tried to look for alternative accommodation for himself if there is already sufficient proof that the landlord has at his disposal suitable premises which he can without difficulty appropriate for his own use.

APPEAL from a judgment of the Court of Requets, Badulla-Haldumulla.

Sir Lalita Rajapakse, Q.C., with *V. C. Gunatilaka*, for the plaintiff-appellant.

C. G. Weeramantry, for the defendant-respondent.

Cur. adv. vult.

October 22, 1956. H. N. G. FERNANDO, J.—

This was an action for ejectment of the defendant from a small boutique in Koslanda on the ground that the boutique is reasonably required for occupation as a place of residence by the plaintiff. The learned Commissioner has dismissed the plaintiff's action on the ground that the notice to quit was insufficient in law. It is conceded by the defendant's counsel that the notice was sufficient and the judgment cannot be supported on that ground. I have however to deal with the facts of the case.

It would appear that of a row of four contiguous boutiques the plaintiff was a tenant of one and the defendant of another, both occupied for the purposes of business. The defendant's boutique was No. 98 (now No. 43) and was used by him as a store and for some few months prior to the date of action also as a garage for his car.

In April 1955 the plaintiff's wife bought the row of four boutiques and within a short time the defendant was given notice to quit No. 98. The plaintiff had apparently been ejected from his former place of residence and he commenced to use one of the remaining boutiques as a kitchen and also as a store ; he and his two sons who assist him in his business sleep either in the boutique he had all the time or in the second one which he appropriated for his own use after the purchase. The plaintiff's claim is that his wife resides partly at Koslanda and partly at Kateluwa where the plaintiff's daughters stay in order to attend school. He alleges that he requires the use of No. 98 mainly because his wife has no place to occupy on her periodical visits to Koslanda.

It is in evidence that the plaintiff owns three other boutiques which are situated on another road but are yet within thirty feet from No. 98. According to his evidence all the three boutiques were at the time of the trial rented out to three different persons one of whom is a person called Simon. The plaintiff's own witness, the Village Headman, however stated in evidence that the boutique alleged to have been rented out to Simon was vacant.

Upon this evidence the learned Commissioner was strongly of the view that the plaintiff would not require premises in Koslanda for his wife and other children and also that the " plaintiff will not be prejudiced as he still has a room in his own premises thirty feet away ", referring obviously to the boutique stated by the Headman to be vacant. Despite this strong opinion in favour of the defendant however, the Commissioner felt bound, in view of certain authorities to which he had been referred, to hold against the defendant on the ground that there was no evidence that he had tried to look for alternative accommodation. With regard to this matter counsel for the appellant relied on the decision in *50 N. L. R. 43*. It is clear, however, that that decision is one based on the facts and not on a question of law. In brief it is to the effect that once a plaintiff landlord has shown that he reasonably requires premises for his own occupation, the failure of the tenant to search for alternative accommodation will or may negative the plea that the tenant also reasonably requires the premises for himself. That decision, however, does not, nor do I imagine, any of the earlier decisions, establish that in a competition between the landlord and tenant the latter must necessarily prove the lack of alternative accommodation. A landlord who seeks to resume occupation has the burden of proving that he reasonably requires the premises. That burden may be prima facie discharged by evidence of his needs whether for purposes of residence or of business. But so soon as it is shown that the landlord has at his disposal suitable premises which he can without difficulty appropriate for his own use, then, in my opinion, his requirement that the tenant should vacate the premises for his benefit ceases to be reasonable. In the present case the position at the close of the evidence tendered by the plaintiff was that there was available to him thirty feet away from No. 98 a boutique about the same area as No. 98 consisting, as did No. 98, of a verandah and inner room and a kitchen. It was for the plaintiff to show then affirmatively that this alternative accommodation was either not available in fact or else was far less suitable for his purposes than No. 98. Having failed to furnish evidence on either of these matters the plaintiff, in my opinion, failed to discharge the burden of proving that he reasonably required No. 98 for purposes of residence or business.

I was strongly pressed to send the case back for a fresh trial. It is manifest, however, from the evidence and the judgment that the Commissioner was prevented from giving judgment for the defendant on the facts solely because he took an erroneous view as to the duty of the defendant to prove a lack of an alternative accommodation.

For the reasons I have set out I would affirm the decree of dismissal entered by the learned Commissioner and dismiss this appeal with costs.

Appeal dismissed.