1953 *Present :* **Swan J.**

A. VISUVASAM, Appellant, *and* S. ARUNASALAM, Respondent

S. C. 117—C. R. Colombo, 34,818

Rent Restriction Act, No. 29 of 1948—Bathing well—" Business premises "—Section 27—Arrears of rent—Computation.

A bathing well and its appurtenances may come within the definition of " business premises " in section 27 of the Rent Restriction Act.

Where the date of payment of the monthly rent was fixed by agreement between the parties, the question whether the tenant is in arrears of rent has to be decided on the evidence and not according to the common law.

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

H. V. Perera, Q.C., with *M. I. M. Haniffa* and *M. Markhani*, for the plaintiff appellant.

K. Charavanamuttu, with *T. Velupillai*, for the defendant respondent.

Cur. adv. vult.

March 2, 1953. SWAN J.—

The plaintiff-appellant brought this action against the defendant-respondent for ejectment from premises No. 136, Dias Place. The contractual tenancy had admittedly been determined by notice to quit. The appellant claimed the right to eject the respondent on two grounds, namely :—

(1) that the respondent was in arrears of rent ;
(2) that the appellant required the premises for his own business.

It was also contended at the trial that the Rent Restriction Act did not apply as the premises in suit were a bathing well. These three points were the matters in issue, and the learned Commissioner held against the appellant on every one of them and the action was dismissed with costs.

As regards the applicability of the Rent Restriction Act it would depend on whether or not this bathing well would come within the definition of " business premises " as set out in Section 27 of the Act. Before commenting on that phrase I should like to refer to the view taken by Basnayake J. in *Pakiadasan v. Marshall Appu* [1] that a grassfield and vegetable enclosure could not be said to be " premises ". The learned Commissioner considered this judgment and came to the conclusion that the bathing well and its appurtenances came within the ambit of the term " premises " to which the Rent Restriction Act applied. With this finding of fact I am unable to disagree. Accepting that this bathing well does come within the meaning of the word " premises " as used in the Act I have no hesitation in holding that it would be a " business

[1] *(1951) 52 N. L. R. 335 ; 44 C. L. W. 12.*

premises " as contemplated in Section 27. In that section we are told that " *residential premises* " are those which are occupied wholly or mainly for the purposes of residence, and that all other premises are " *business premises* ". I agree with the finding of the learned Commissioner that this bathing well is a " business premises " and that the Rent Restriction Act does apply.

On the question of reasonable requirement I am unable to say that the view taken by the learned Commissioner was wrong. He has given the matter careful consideration and come to the conclusion that to eject the respondent would be a greater hardship than to restore the appellant to possession.

There remains the last question, namely, whether the respondent was in arrears of rent. On this matter I think that the learned Commissioner has misdirected himself. Each month's rent according to the appellant was payable on the 1st of that month—according to the respondent on the 20th of the following month. Instead of deciding this question one way or the other the learned Commissioner has adopted a strange attitude. He states in his judgment that although the respondent's version that rent was payable on the 20th of the following month was " unusual " it would be unsafe to hold against him on that ground. If he had also taken into consideration that the respondent had not paid anything by way of deposit or advance he would, I am sure, have said that the respondent's version was not only unusual but also improbable and difficult to believe. The learned Commissioner goes on to say :— " In the absence of reliable evidence I wish to fall back on the common law and say that it must be deemed in the circumstances of this case that the rent became due at the end of each month. " It is here that he has misdirected himself. He should have decided on the evidence and the probabilities whether the rent was payable on the 1st of each month or on the 20th of the following month.

To send the case back for an answer to this issue would mean unnecessary delay. There is sufficient material before me to justify my deciding this point. The respondent was shown to be an untrustworthy witness in another matter. On this particular point, namely, the date of payment of rent his evidence was equally unreliable. Although in his answer he had taken up the definite position that rent was payable on the 20th of the following month, he said at first in his evidence that there was no agreement as to the date of payment, but subsequently had to revert to the other position. I would hold on the evidence that rent was payable on the 1st of each month. Rent for August 1951 was not tendered till 1.10.1951 on which date it was clearly overdue. The respondent was in arrears of rent within the meaning of Section 13 (1) (*a*) of the Act and the plaintiff was therefore entitled to succeed.

The judgment of the learned Commissioner is set aside. Decree will be entered for the plaintiff as prayed for in the plaint. The respondent will pay the appellant the costs of this appeal.

Appeal allowed.