1967 *Present :* **H. N. G. Fernando, C.J., Tambiah, J., and Siva Supramaniam, J.**

M. H. M. HUSSAIN, Appellant, *and* MRS. L. RATNAYAKE, Respondent

S. C. 175/65—D. C. Colombo, 43/RE

Rent Restriction Act (Cap. 274)—Section 27—Boarding house—Is it " residential premises " or " business premises " ?

Premises taken to be run mainly as a boarding house are " residential premises " within the meaning of section 27 of the Rent Restriction Act.

Hepponstall v. Corea (54 N. L. R. 214) overruled.

APPEAL from a judgment of the District Court, Colombo.

C. Ranganathan, Q.C., with *G. K. C. Sunderampillai* and *K. Thevarajah*, for the plaintiff-appellant.

W. D. Gunasekera, with *D. R. P. Goonetilleke*, for the defendant-respondent.

Cur. adv. vult.

May 18, 1967. TAMBIAH, J.—

This case was referred to a Bench of three Judges in view of the conflict of authorities on the point of law raised in appeal. The question for determination is whether premises taken to be run mainly as a boarding house in this case are " residential premises " or " business premises " within the meaning of section 27 of the Rent Restriction Act, (Cap. 274), hereinafter referred to as the Rent Act.

The learned District Judge held that since the premises were used as a boarding house by the respondent, the premises are business premises.

The finding of fact by the learned District Judge that the plaintiff agreed to rent out the premises, which is the subject matter of this suit, to the defendant in order that she may run it as a boarding establishment has not been challenged in appeal. Counsel for the appellant contended that in determining whether any premises are residential premises or business premises the character of the physical occupation of the premises must be looked into and if it is used mainly as a residence, even though the tenant may carry on a business of a boarding house, yet the premises will fall under the category of residential premises. Counsel for the respondent contended that since the respondent was running a boarding house, the premises are business premises.

The Rent Act defines residential premises as " any premises for the time being occupied wholly or mainly for the purpose of residence " (vide section 27 of the Rent Act). Business premises are defined as " any premises other than residential premises ". It is clear from this definition that the Legislature distinguished between buildings occupied wholly or mainly for purposes of residence and other types of premises. The phrase " for the time being occupied wholly or mainly for the purpose of residence " qualifies the words " any premises ". On a plain reading of the definition, it is clear that any premises which are for the time being occupied wholly or mainly for the purpose of residence of persons should be regarded as residential premises. As Lord Tenterden stated " The words of an Act of Parliament which are not applied to any particular science or art are to be construed as they are understood in common language " (vide *Attorney General v. Winstonly*).[1] If the contention of Counsel for the respondent is to prevail, the Legislature would have defined residential premises as premises for the time being let wholly or mainly for the purpose of the residence of the tenant and his family.

Our Rent Act differs substantially from the English and South African Rent Acts (vide the Rent Acts by R. E. Megarry, 7th Edition, p. 78 *et seq* : The Rent Acts in South Africa by Rosenow and Diemont, 2nd Edition, p. 26 *et seq*). In these countries the words " dwelling house ", " let ", and other expressions used in the definition of residential premises have led to a spate of decisions, some of which are difficult to reconcile. In South Africa special provisions have been made by legislation to control

[1] *(1831) 2 D. & C. L. 302 at 31?.*

premises used as boarding houses. Any dwelling house which has more than ten boarders has been specifically defined as a business premises. The definition of residential premises in our Rent Act is simple and unambiguous and would have created no difficulty if not for the conflicting decisions.

In *Hepponstall v. Corea*[1], a Bench of two Judges held that premises taken on rent for the purpose of keeping a boarding house and used in fact mainly for that purpose and also to serve as a residence for the tenant are " business premises " within the meaning of section 27 of the Rent Act. But in formulating the criterion to be applied L. M. D. de Silva, J. said (vide at page 215) :

> " Consequently it is the duty of a Court first to decide whether the premises come within the definition ' residential premises '. If they do not, then they are ' business premises '. In our opinion in order to do this the character of the physical occupation of the premises judged by the use to which they are put by the tenant must be examined. If the character of the occupation so judged is ' wholly or mainly for residential purposes ' then the premises are ' residential premises '.

Judged by this criterion the premises which were the subject matter of the suit in that case should have been regarded as residential premises, because the tenant used the premises mainly for the purpose of human occupation. L. M. D. de Silva, J., having stated this proposition, later said :

> " There can be no doubt that the main use to which they were put was the running of a hostel. It is clear therefore that the premises were not occupied ' wholly or mainly for residential purposes ' and therefore they are not ' residential premises ' within the meaning of the Ordinance. "

In *Standard Vacuum Oil Company v. Jayasuriya*[2], the facts disclosed that the residence in question was taken on rent by the Standard Vacuum Oil Company to be used as a residence by one of the managers of the Oil Company. Since the chief use to which these premises were put to was as the residence of the manager, it was held that they were residential premises, although they were rented by the Company for a wholly business purpose. In *Hepponstall's* case, L. M. D. de Silva J. took the view that the ruling in *Standard Vacuum Oil Company v. Jayasuriya* (supra) was distinguishable from the facts of that case. With respect I am unable to find any distinction.

In *Gunatilleke v. Fernando*[3] the rulings in *Hepponstall's case* and *Standard Vacuum Oil Company* case were reconsidered. In that case it was held that the premises, taken on rent by the proprietor of a

[1] *(1952) 54 N. L. R. 214.* [2] *(1951) 53 N. L. R. 22.*
[3] *(1954) 56 N. L. R. 105.*

school and used by him as a hostel for the students and as a place of residence for the warden of the hostel and some of the teachers, (the business of the school itself being carried on in another place), were residential premises within the meaning of section 27 of the Rent Act. In the course of his judgment Gunasekara J. said (at page 109) :

> " It seems to me that in the present case the whole purpose of the occupation of Knowsley in November, 1941, was residence, although it was for the purposes of the tenant's business at Duff House that he provided this place of residence for some of the students and the staff, and no part of the tenant's business was carried on at Knowsley. In my opinion, therefore, judged by the test laid down in *Hepponstall v. Corea* (supra) the premises in question were residential premises in November 1941."

H. N. G. Fernando A.J., as he was then, also expressed his opinion as follows (vide at page 110) :

> " The Legislature has not in reality differentiated between residential purposes and business purposes ; the relevant definitions pose only the question whether the premises are occupied for the purposes of the residence and if not they are to be regarded as business premises whether or not they are actually business premises. Nor is the Legislature concerned with the character of the tenant's occupation. In my view therefore, the only issue to be determined is whether in fact persons actually ' reside ' (in the ordinary connotation of the word) in the premises or in the majority of the rooms which it comprises. If such is the case, the premises are residential within the meaning of the Act, and the circumstances in which the residents come to reside in the premises and their contractual relations, if any, with the tenant do not alter the character which the premises acquired by reason that persons reside there."

I respectfully agree with the views expressed in *Gunatilleke v. Fernando* (supra). I am of the view that although the correct principle of law was stated by L. M. D. de Silva J. in *Hepponstall's case*, that case was wrongly decided.

For these reasons I set aside the order of the learned District Judge and enter judgment for the plaintiff for ejectment of the defendant from premises No. 297, Galle Road, Colombo 3. The plaintiff claimed damages at Rs. 500 per month, on the footing that he could rent these premises at this rent. There is no evidence to contradict his evidence. Therefore the plaintiff is entitled to damages at the rate of Rs. 500 per month from 1st June 1963 till he obtains possession of the premises. I order that writ should not issue till 31st August 1967. The appellant is also entitled to costs in both courts.

SIVA SUPRAMANIAM, J.—

The only question that arises for determination on this appeal is whether the premises which form the subject matter of this action are " residential premises " within the meaning of the Rent Restriction Act No. 29 of 1948 as amended by Act No. 6 of 1953 (hereinafter referred to as the Act). It is conceded that if they are " residential premises ", they are not governed by the Act and the plaintiff is entitled to succeed in his action. The premises are situated at Kollupitiya and consist, *inter alia*, of five rooms. The defendant occupies one room and the remaining rooms are occupied by boarders.

The findings of the learned District Judge that the defendant " informed the plaintiff at the time she took this building on rent that she was renting it out in order to run a boarding establishment " and that she did in fact use the premises for that purpose were not contested in appeal.

The trial Judge has held, on the authority of *Hepponstall v. Corea* [1], that the premises are " business premises " within the meaning of the Act and are consequently governed by the provisions of the Act and has dismissed the plaintiff's action.

Under the Act, " residential premises " means " any premises for the time being occupied wholly or mainly for the purpose of residence ". All other premises fall under the category of " business premises ".

In the case of *Standard Vacuum Oil Co. v. Jayasuriya* [2], where certain premises were taken on rent by a Company for the purpose of its business and were occupied by the Manager mainly for the purpose of residence in connection with the company's business, it was held that the premises were " residential premises " within the meaning of the Act. In the course of his judgment, Gunasekara J. stated : " Although by definition ' business premises ' and ' residential premises ' exclude each other, ' purposes of business ' and ' purposes of residence ' do not ; and in a given case one may well include the other, as for example in the case of a tenant who takes in paying guests. "

The principles underlying the decision in the above case were approved by this Court in *Goonetilleke v. Fernando* [3]. In that case premises taken on rent by the proprietor of a school and used by him as a hostel for the students and a place of residence for the warden of the hostel and some of the teachers were held to be " residential premises " within the meaning of the Act.

In *Hepponstall's case* (vide supra), " the respondent took the premises on rent for the purpose of running a boarding, and in fact used the premises for that purpose ". L. M. D. de Silva J., who delivered the judgment (Swan J. agreeing), after holding that, in order to decide whether the premises come within the definition of " residential premises ", " the

[1] *(1952) 54 N. L. R. 214.* [2] *(1951) 53 N. L. R. 22.*
[3] *(1954) 56 N. L. R. 105.*

character of the physical occupation of the premises judged by the use to which they are put by the tenant must be examined ", proceeded to state as follows :—" There can be no doubt that the main use to which they (the premises) were put was the running of a hostel. It is clear therefore that the premises were not occupied ' wholly or mainly for residential purposes ' and therefore they are not ' residential premises ' within the meaning of the Ordinance. Consequently they are ' business premises '."

With the greatest respect to that very eminent Judge, I find myself unable to agree with his conclusion. He sought to distinguish the *Standard Vacuum Oil Company case* (vide supra) on the ground that in that case " only a very small amount of business was conducted on the premises and the main purpose of occupation was residence."

Under the Act, the character of the premises, " residential " or " business " depends not on the purpose for which the premises are taken on rent by the tenant or let by the landlord but on the nature of the physical occupation. The only test for " residential premises " is whether the premises are occupied (by the occupier or occupiers) wholly or mainly for the purpose of residence. There can be no doubt that in a boarding every boarder occupies the premises wholly or mainly for the purpose of residence. The fact that the tenant supplies meals to the boarders or makes a profit through the occupation of the premises by the boarders can make no difference to the nature of the occupation by the boarders.

It was argued that the Act is intended to protect the rights of tenants and therefore the occupation referred to in the definition of " residential premises " is occupation only by the tenant, and if the tenant occupies the premises mainly to carry on a business, the premises will not fall under the category of " residential premises ", even though the business carried on necessitates the occupation of the premises wholly or mainly as a residence by the occupiers. This argument, however, ignores the express terms of the Statute and would necessitate the interpolation of the words " by the tenant " after the word " occupied " in section 27 of the Act. " It is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do." —per Lord Mersey in *Thompson v. Goold* [1].

For the foregoing reasons, I am of opinion that *Hepponstall v. Corea* (vide supra) was wrongly decided and should be overruled.

I hold that the premises in question are " residential premises " within the meaning of the Act. I allow the appeal and enter judgment for the plaintiff as prayed for with costs in both Courts. The defendant will be entitled to credit in any sum of money she may have paid to the plaintiff as rent or damages after the date of the institution of this action. I direct that writ of ejectment be not issued till 31st August, 1967.

H. N. G. Fernando, C.J.—I agree.

Appeal allowed

[1] *(1910) A. C. 409 at p. 420.*