1948 *Present :* **Basnayake J.**

ATUKORALE, Appellant, *and* NAVARATNAM, Respondent.

S. C. 37—C. R. Colombo, 6,499.

Rent Restriction Ordinance—Action by landlord—Premises reasonably required for his occupation—Difficulties of tenant—Should they be considered ?—Duty of Court—Section 8 (c)—Ordinance No. 60 of 1942.

Section 8 (c) of the Rent Restriction Ordinance requires the Court to form an opinion whether the premises are reasonably required for the occupation of the landlord. The tenant's difficulties do not come into the matter at all. The only thing that matters is the reasonableness of the landlord's requirement.

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

M. M. Kumarakulasingham, for the plaintiff, appellant.

H. W. Thambiah, for the defendent, respondent.

Cur. adv. vult.

July 20, 1948. BASNAYAKE J.—

The plaintiff-appellant, one A. Atukorale (hereinafter referred to as the plaintiff), and the defendant-respondent, one A. T. Navaratnam (hereinafter referred to as the defendant), are landlord and tenant. On February 27, 1947, the plaintiff gave the defendant notice terminating his tenancy and requiring him to quit premises No. 101 A6, situated at De Alwis Place, Dehiwela, at the end of March, 1947. The defendant is in occupation of the premises notwithstanding the termination of his tenancy. The plaintiff therefore brings this suit praying for an order of ejectment against the defendant and for damages at the rate of Rs. 60 per mensem commencing on April 1, 1947. The plaintiff alleges that the premises are reasonably required by him for his occupation as a residence. The defendant while admitting the receipt of the notice terminating his tenancy denies that the premises are reasonably required for the occupation of the plaintiff as a residence. He also alleges that the plaintiff has recovered from him certain sums in excess of the authorised rent.

The following issues were tried :

(1) Are the premises in question reasonably required by plaintiff for his occupation as a residence for himself and his family ?

(2) What is the standard rent of the premises from January, 1946 ?

(3) What amount has the plaintiff recovered from the defendant in excess of the authorised rent ?

(4) What amount, if any, is due from the plaintiff to the defendant ?

The learned Commissioner finds that the premises are not reasonably required by the plaintiff for his occupation as a residence and has therefore dismissed his action. In regard to the other issues he says :

" (2), (3) and (4) do not arise in view of the defendant's agreement to pay Rs. 65 a month and rent has been paid up to the end of September, 1947."

The present appeal by the plaintiff is from the order dismissing his action.

The plaintiff and the defendant are both employees of the Government. The former is attached to the Customs Department, while the latter is employed in the Food Control Department. The plaintiff is married and has four sons and two daughters while the defendant is a bachelor, with whom live his mother, his elder brother, a nephew and a niece.

The plaintiff owns five houses at De Alwis Place, Dehiwela. They are Nos. 101 A5, A6, A9, A 10 and A11. Of these A5 and A6 are larger than A9, A10, and A11. The rent of each of the small houses is Rs. 50 per mensem while the rent of each of the large houses is Rs. 65. In 1942 the plaintiff, who was occupying one of these houses, A5, went to live at Kadawata because St. Peter's College, where his sons were being educated, moved to Minuwangoda. Later, as he found it inconvenient to travel daily to work from Kadawata to Colombo, he gave notice to the tenant who occupied A10, one R. D. P. Ekanayake, and on May 3, 1943, instituted an action for ejectment (D1), as Ekanayake did not quit. He obtained judgment against that tenant on July 1, 1943, but did not execute the decree. His explanation for not proceeding to execution is that meanwhile St. Peter's College had returned to Colombo, and his sons, who were boarders had come to live with him and that house A10 was too small for his entire family.

Therefore, the plaintiff, on October 11, 1943, gave notice to quit to one Mrs. A. P. Siriwardena, the tenant of A5, the house in which he lived in 1942 when he moved to Kadawata. As I mentioned earlier, it is one of the two large houses. As she did not quit, on March 7, 1944, he filed action (D2). On July 13, 1944, the learned Commissioner dismissed the plaintiff's action on the ground that he was not satisfied with the reasonableness of the plaintiff's request. Owing to a change in his circumstances, on May 27, 1946, the plaintiff again gave Mrs. Siriwardene notice to quit on June 30, 1946, and instituted an action against her on July 9, 1946. This action too was dismissed on December 12, 1946. In the concluding paragraph of the learned Commissioner's judgment in the second action against Mrs. Siriwardene, he says :

" The premises occupied by Mr. Navaratnam in the same place belongs to the same plaintiff. That house is of the same size as the premises in question. Why cannot the plaintiff eject Navaratnam and get into possession of those premises ?"

While the second action against the tenant of A5 was pending, the plaintiff, on September 11, 1946, received notice from one Dr. Dabrera,

whose house, 209, Malwatta Road, he was occupying, to quit and deliver possession thereof on December 31, 1946. After the dismissal of the second action against Mrs. Siriwardena the plaintiff instituted the present action, perhaps encouraged by the observations of the learned Commissioner. He explains that one of the small houses will not suit his requirements as he must have accommodation for his six children. Besides, he says, his wife is ill and he wants a house close to the sea. His present house is damp and has no ceiling, and no lights. He had to sell his car because it has no garage. His own house A6 which the defendant now occupies has ceiling, lights, and garage, and answers to all his needs.

Learned counsel for the appellant on the authority of *Fernando v. David*[1], questioned the correctness of the learned Commissioner's finding, as he has proceeded on considerations which may not properly be taken into account in determining whether premises are reasonably required for occupation as a residence for the landlord under section 8 (*c*) of the Rent Restriction Ordinance, No. 60 of 1942.

Learned counsel for the respondent maintained that the learned Commissioner's finding is correct and cited a number of decisions[2] both of this Court and of the High Court in England. He relied particularly on the case of *Wijemanne & Co. Ltd. v. Fernando*[3], which he said was binding on me as it is a decision of two judges. The observations of Soertsz J. in that case form no part of the *ratio decidendi* and are clearly made in regard to the finding of the learned District Judge, which Soertsz J. himself says is *obiter*.

The decisions of this Court cited by learned counsel for the respondent proceed on the basis of the decision in *Raheem v. Jayawardene*[4]. That decision follows the English cases of *Nevile v. Hurdy*[5] and *Shrimpton v. Rabbits*[6]. The former is a decision under section 5 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and the latter is a decision under section 5 (1) of that Act, as re-enacted by section 4 of the Rent and Mortgage Interest Restrictions Act, 1923. I append to this judgment for convenience of reference the full text of section 5 both before and after its amendment in 1923.*

It is clear from both the earlier and the later provisions of law that the English statute has imposed on the Court the obligation of satisfying itself that alternative accommodation is available to the tenant. For

[1] *(1948) 49 N. L. R. 210.*

[2] *Abeyewardene v. Nicolle (1944) 45 N. L. R. 350.*
Raheem v. Jayawardene (1944) 45 N. L. R. 313.
Wijemanne & Co., Ltd. v. Fernando (1946) 47 N. L. R. 62.
Ramen v. Perera (1944) 46 N. L. R. 133.
Mohamed v. Salahudeen (1945) 46 N. L. R. 166.
Maharoof v. Isadeen (1946) 48 N. L. R. 14.
Williamson v. Pallant (1924) 2 K. B. 173.
Shrimpton v. Rabbits, 40 T. L. R. 541.

[3] *(1946) 47 N. L. R. 62.*

[4] *(1944) 45 N. L. R. 313.*

[5] *124 Law Times 327.*

[6] *40 T. L. R. 541.*

* *Vide* Page 470.

convenience of comparison I set out below in parallel columns the relevant provisions of section 5 (1) (*d*) of the two Acts. The works common to both are underlined.

Section 5 (1) (*d*) of the 1920 Act.

" 5. (1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

(*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any person bona fide residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and (except as otherwise provided by this sub-section) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available ;

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

Section (5) (1) (*d*) of the 1923 Act.

" 5. (1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies or for the ejectment of a tenant therefrom, shall be made or given unless—

(*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any son or daughter of his over eighteen years of age, or for any person bona fide residing with him, or for some person engaged in his whole time employment or in the whole time employment of some tenant from him or with whom, conditional on housing accommodation being provided a contract for such employment has been entered into, and (except as otherwise provided by this sub-section) the court is satisfied that alternative accommodation is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and him family as regards extent, character, and proximity to place of work and which consists either of a dwelling-house to which this Act applies, or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies ; and, in any such case as aforsaid, the court considers it reasonable to make such an order or give such judgment.

Having set out the relevant provisions of the English statute, I shall examine the cases.

In the case of *Nevile v. Hardy* (*supra*), Peterson J. says :

" That leaves clause (*d*) of section 5 (1), which supplies the plaintiff with an alternative claim, and in certain circumstances enables an order or judgment to be made or given for the recovery of possession of any

dwelling-house to which the Act applies. The first point which arises is on the question whether the dwelling-house is reasonably required. So far as it is necessary for me to hold, I think, that the dwelling-house must be reasonably required when the order for recovery of possession is asked for, namely, at the hearing and that then the judge must be satisfied that the dwelling-house is reasonably required by the landlord for occupation, as a residence for himself or other persons specified in clause (*d*). In the present case, the plaintiff required the upper floors as a residence for herself, and finding that she could not get them she had taken other premises for her residence, but I do not think that the fact that she is living elsewhere is any reason for holding that the dwelling-house is not reasonably required by her as a residence for herself or for persons in her whole time employment. The evidence is that if she could obtain possession of these upper floors she would use them for the occupation of herself and her staff, and, in those circumstances, I cannot say that they are not reasonably required by her. The defendant, therefore, cannot rely upon the earlier part of clause (*d*). But the conditions of the latter part of the clause must also be satisfied by the landlord before he can obtain an order for possession, and under them the court must be 'satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available'."

It appears from the above quotation that if the words "satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available" had not been present in the English section, the decision would have been in favour of the landlord. For, after citing the circumstances in which the premises were required by the landlord, the learned Judge observes: "I cannot say that they are not reasonably required by her . . . . But the conditions of the latter part of the clause must also be satisfied by the landlord before he can obtain an order for possession."

In the later case, viz., *Shrimpton v. Rabbits* (*supra*), Swift J. says:

"In considering whether it was reasonable to make an order for possession, the County Court Judge must consider all the circumstances affecting the tenancy—those of the tenant as well as those of the landlord. A good deal of confusion seemed to have crept in through no clear distinction having been made between a landlord's "reasonably requiring" the premises within the meaning of paragraph (*d*) of section 5 (1) and the Court's thinking it reasonable to give effect to the landlord's requirement. The fact, however, that a landlord satisfied the County Court Judge, that he was entitled to possession on any of the grounds specified in section 5, sub-section 1 (*a*) to (*i*), did not absolve him from the further necessity of persuading the County Court Judge that it was reasonable that an order for possession should be made."

Swift J. speaks of "the further necessity of persuading the County Court Judge that it was reasonable that an order for possession should be made" because of the words "and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment" in sub-section (1). Those words are applicable to the paragraphs

(*a*) to (*i*) of section 5 (1). That is why Swift J. says that the fact that a landlord satisfied the County Court Judge that he was entitled to possession on any of the grounds specified in section 5, sub-section (1) (*a*) to (*i*), did not absolve him from the *further necessity* of persuading the Judge that it was reasonable that an order for possession should be made.

Now I come to the case of *Williamson v. Pallant*[1] cited by learned counsel for the respondent. An examination of that case reveals that that decision too proceeds on the final words in section 5 (1), viz., " and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment ". To read into the words " in the opinion of the Court, reasonably required " of section 8 (*c*) of the Rent Restriction Ordinance the words of the English section, would in my view be a transgression of the limits of judicial interpretation and an encroachment on the functions of the legislature. In the case of *Thompson v. Goold & Co., Ltd* [2], Lord Mersey said : " 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. " I see no clear necessity to read into Section 8 (*c*) of our Ordinance any words whatsoever. As I observed in my judgment in *David v. Poulier* [3], the scope of the Rent Restriction Ordinance which is designed to restrict the increase of rent and to provide for matters incidental to such restriction, should not be enlarged by the importation of considerations not contemplated by the Ordinance. In this connexion one is reminded of the words of Tindal C.J. : " We must not import into an act a condition or qualification which we do not find there. " [4]

The Rent Restriction Ordinance is described in the long title as an Ordinance to restrict the increase of rent and to provide for matters incidental to such restriction. Although in early English legislation the title was not regarded as part of the statute, in modern legislation, both here and in England, the title is an important part of the statute and it is proper to refer to it in ascertaining the general scope of an enactment, and seek assistance from it in construing the enactment, bearing in mind the fact that the title cannot prevail over the clear words of the statute. It is hardly necessary to cite authority for the above rule of interpretation. I wish, however, to mention the cases of *Jeremiah Ambler & Sons Ltd. v. Bradford Corporation* [5] and *Fenton v. Thorley & Co. Ltd.*[6].

There is nothing in the section I am called upon to construe in this case that is repugnant to the long title. If a landlord were free to eject his tenant at his whim and fancy he would thereby be able to thwart the object of the Rent Restriction Ordinance by ejecting a tenant who refuses to submit to a demand of more than the authorised rent. To prevent such an abuse of the Ordinance, as an incidental matter, section 8 (*c*) is enacted. The interpolation of specific provisions of foreign legislation in that section would in my view amount to an extension of its scope beyond the limits contemplated by the legislature. It

[1] *(1924) 2 K. B. 173.*
[2] *(1910) 79 L. J. K. B. 905 at 911.*
[3] *S. C. Minutes of June 8, 1948—S. C. 72/C. R., Colombo, 8,022.*
[4] *Everett v. Mills, 4 Scott, N. C. 531 (Dawarris on Statutes, p. 579.)*
[5] *(1902) 2 Ch. (C. A.) 585 at 594.*
[6] *(1903) A. C. 443.*

must be assumed that the introduction of provisions relating to alternative accommodation from the corresponding legislation in England was advisedly avoided.

While interpreting the law so as to give full effect to the intention of the legislature, one must guard against introducing one's own views as to what the law should be in the light of similar legislation elsewhere. In England the Rent Acts have been on the statute book for over twenty-five years and during that time have attained almost the stature of a Code. In the English legislation the question of alternative accommodation is hedged in by safeguards. The introduction of the concept of alternative accommodation without them would result in injustice to the landlord as in the instant case, where a man with a family of six children who owns five houses has been battling manfully for well nigh five years to get one of them for his own residence. The story of his trials and tribulations has been unfolded to two successive Commissioners but he has not succeeded in persuading them that his requirement is reasonable.

In construing our legislation in regard to matters for which there is similar legislation in England, it is unsafe to institute a textual comparison of the English and local legislation on the subject and to conjecture as to the intention of the draftsman. The words of caution expressed by the Privy Council against such a course should not in my opinion be ignored [1].

The words "in the opinion of" are not unfamiliar in our legislation. The Estate Duty Ordinance and the Income Tax Ordinance provide many instances of the use of that phrase. These words in this context have no special or technical meaning. They mean according to the judgment of the Court [2] or Tribunal or person who has to form the opinion. In this connexion it will not be out of place to remind oneself of the word of Lord Bramwell in the case of *Allcroft v. Lord Bishop of London* [3]: "If a man is to form an opinion and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him."

In my view it would have made little or no difference if, in this context, the words "in the opinion of the Court" had been omitted. Even without them, the burden of satisfying the Court that the premises are reasonably required for his occupation would be on the landlord. The word "reasonably" makes the court the arbiter and not the landlord. His *ipse dixit* that the premises are reasonably required for his residence would have little value unless his request is supported by evidence sufficient to persuade the Court of its reasonableness. It seems to me that the words "in the opinion of the Court" have been inserted "*ex abundanti cautela*". Section 8 (*c*) requires the court to form an opinion whether the premises are reasonably required for the occupation as a residence for the landlord. The tenant's difficulties do not come into the matter at all. The only thing that matters is the reasonableness of the landlord's requirement. I have so held in the cases of *Fernando v. David* (*supra*), *Kannangara v. David* [4], and *David v. Poulier* (*supra*).

[1] *Commissioner of Stamps, Straits Settlements v. Oei Tjong Swan and others (1933) A. C. 378 at 389.*
[2] *Ormerod v. The Todmorden Joint Stock Mill Co. (Lim.), (1882) 51 L. J. Q. B. 348.*
[3] *(1891) A. C. 666.*
[4] *(1948) 49 N. L. R. 348.*

I think it will not be unprofitable to examine the decisions of South Africa, where the nearest parallel to our section 8 (c) is to be found. Section 14 (1) (c) of the Rents Act, 1942, reads :

> " that the premises are reasonably required by the lessor for his personal occupation or for that of his major or married child or children or any person in his employ : "

It is of interest to note that the Courts in that country have construed the corresponding section* of the earlier Act, 13 of 1920, in the sense I have interpreted our section 8 (c). The landlord in the case of *Gonsalves v. Thompson*[1], which is the case I have in mind, was in exactly the same predicament as the landlord in the instant case. He had several houses some large, some small. He had been away from his country for some time. When he returned he selected one of his houses in which there happened to be a tenant with a fairly large family and terminated his tenancy, and when he failed to quit instituted action. The tenant's answer was that the landlord should have selected one of the smaller houses because he had a small family—wife and two children. In any event the tenant said that although he had advertised in the papers for a house he had not been able to obtain one. He also urged that he was an old man of 75 and that it would be a great hardship if he was ejected from the house because he had nowhere to go. The judge of first instance decided in favour of the tenant. But Van Zyl J. allowed the landlord's appeal from that decision. In doing so he says :

> " I think it is sufficient for a man to show that he is not living in his own house ; that all his houses are occupied now ; and that he wants one of them. It is enough for him to say, ' I want one of these and I want this particular one.' It cannot be said, as the magistrate indicates in his reasons for judgment, that the owner should rather have given notice to Rodrigues, who lives in a smaller house. After all, if Rodrigues was given notice, it might be as difficult for him to secure fresh accommodation as it has been for defendant. No ; I do not think it can be dictated to the owner which house he should take of the several he owns. As long as he satisfies the Court that he ' reasonably ' requires a house to live in it must be left to him to say which of his houses he desires to occupy."

The view taken by Van Zyl J. in the above case has been followed in the recent case of *Johannesburg Board of Executors & Trust Co. Ltd. v. Gordon* [2], wherein Millin J. observes at page 96 :

> " The question is not, who will suffer the greater hardship, the applicant if the respondent is not ejected, or the respondent if he is ejected ; the question is simply whether the applicant has shown that it reasonably requires the leased premises for its own use."

In the later case of *Paterson v. Koonin*[3], Searle A.J. while citing with approval the words of Millin J. says at pages 342 and 343 :

> " The Court here has to decide whether in all the circumstances this requirement is ' reasonable ' from the point of view of the lessor and it is her needs and circumstances and not those of the lessee

[1] *(1922) C. P. D. 477.* [2] *(1947) (1) S. A. L. R. 92 at 96.*
[3] *(1947) (2) S. A. L. R. 337.*

* *Vide* page 472.

which are relevant to this inquiry. . . . The applicant needs rooms and as suitable ones exist in her own premises, *prima facie* it is reasonable that she should claim to occupy them."

The extent of the onus resting on the landlord appears from the words of Pittman J., in *Newman v. Biggs* [1] quoted with approval by Searle A.J. in the case of *Paterson v. Koonin* (*supra*) :

"It is difficult", says Pittman J., "to see what more can ordinarily be required of a claimant than that he should assert his good faith and bring some small measure of evidence to demonstrate the genuineness of his assertion. He can normally scarcely do more and it rests with the lessee resisting ejectment to bring forward circumstances casting doubt upon the genuineness of his claim."

On the question of reasonableness I should not omit to repeat the following words of Dove-Wilson J.P. in *Rudder v. Wright* [2] quoted by Searle A.J., in the case referred to earlier :

"I do not think it can be said that it is unreasonable for a person who is the owner of suitable premises to prefer to occupy them and not go elsewhere."

The dicta of the South African Courts I have quoted at length indicate that, in the interpretation of the rent legislation of that country, care has been taken to avoid the introduction of ideas from foreign legislation. Although in the case of *Henshilwood v. Buske* [3] an attempt was made to introduce concepts gained from English legislation that case has not been approved or even followed.

It is not without interest to note that South African Rent legislation has since 1947 been altered in certain respects and that section 2 (*i*) of Act 53 of 1947 makes provision for the Court being satisfied before an order for ejectment is made that suitable alternative accommodation has been offered to the lessee and has been refused. The material portion of the section as quoted in the case of *Groenewald v. Watt* [4] reads :

"It shall be lawful for a Court to make an order for the recovery of possession of a dwelling . . . . . or for the ejectment of a lessee therefrom based on the fact of the lease having expired either by effluxion of time or in consequence of notice duly given if the Court is satisfied :

(i.) that suitable alternative accommodation has been offered to the lessee since the date of commencement of this Act and has been refused by him for reasons which to the Court seem inadequate :

(ii.) that the lessor reasonably requires the said dwelling for his personal occupation . . . ."

[1] *(1945) E. D. L. 51 at 54.*
[2] *(1928) N. P. D. 303 at 305.*
[3] *(1922) C. P. D. 85.*
[4] *(1948) (1) S. A. L. R. 1238.*

I think the landlord's claim in the present case is irresistible. The onus rests on him to persuade the Court that the premises are reasonably required for his occupation as a residence[1]. He has discharged that onus, and his appeal is allowed with costs. He is entitled to judgment as prayed for with costs, and I order accordingly.

Appeal allowed.

APPENDIX.

*Section 5 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. Section 5 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as re-enacted by section 4 of the Rent and Mortgage Interest Restrictions Act, 1923.

Section 5 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

(Further Restrictions and Obligations on Landlords and Mortgagees)

Restriction on right to possession.

5.—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

(*a*) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed ; or

(*b*) the tenant or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person ; or

(*c*) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession ; or

(*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any person *bona fide* residing or to reside with him, or for some person in his whole time employment or in the whole time employment of some tenant from him, and (except as otherwise provided by this subsection) the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available ; or

(*e*) the landlord is a local authority or a statutory undertaking and the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of the authority or undertaking, and the court is satisfied as aforesaid as respects alternative accommodation ; or

(*f*) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances ; or

(*g*) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war ;

and, in any such case as aforesaid, the court considers it reasonable to make such an order or give such judgment.

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (*d*) of this subsection—

(i) Where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment ; or

(ii) Where the court is satisfied by a certificate of the county agricultural committee or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necessary for the proper working of an agricultural holding ; or

(iii) Where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war ; or

(iv) where the landlord became the landlord before the thirtieth day of September nineteen hundred and seventeen, or, in the case of a dwelling-house to which section four of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1919, applied, became the landlord before the fifth day of March nineteen hundred and nineteen, or in the case of a dwelling-house to which this Act applies but the enactments repealed by this Act did not apply, became the landlord before the twentieth day of May nineteen hundred and tewnty, and in the opinion of the court greater hardship would be caused by refusing an order for possession than by granting it.

8 & 9 Geo. 5.

(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been

[1] *Horvitch v. Fleischmann (1947) (1) S. A. L. R. 46.*

made or given, whether before or after the passing of this Act, and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with the court may, if it thinks fit, discharge or rescind any such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act, but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

51 & 52 Vict. c. 43. 1 & 2 Vict. c. 74.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, or in section one of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sublet before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenant.

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

Section 5 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as re-enacted by section 4 of the Rent and Mortgage Interest Restrictions Act, 1923.

Restriction on right to possession.

5—(1) No order or judgment for the recovery of possession of any dwelling-house to which this Act applies, or for the ejectment of a tenant therefrom, shall be made or given unless—

(*a*) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under this Act) so far as the same is consistent with the provisions of this Act has been broken or not performed; or

(*b*) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling-house has, in the opinion of the court, deteriorated owing to acts of waste by or the neglect or default of the tenant or any such person, and, where such person is a lodger or sub-tenant, the court is satisfied that the tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant; or

(*c*) the tenant has given notice to quit, and in consequence of that notice the landlord has contracted to sell or let the dwelling-house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession; or

(*d*) the dwelling-house is reasonably required by the landlord for occupation as a residence for himself, or for any son or daughter of his over eighteen years of age, or for any person *bona fide* residing with him, or for some person engaged in his whole time employment or in the whole time employment of some tenant from him or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, and (except as otherwise provided by this sub-section) the court is satisfied that alternative accommodation is available which is reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent, character, and proximity to place of work and which consists either of a dwelling-house to which this Act applies, or of premises to be let as a separate dwelling on terms which will afford to the tenant security of tenure reasonably equivalent to the security afforded by this Act in the case of a dwelling-house to which this Act applies; or

(*e*) the dwelling-house is reasonably required for the purpose of the execution of the statutory duties or powers of a local authority, or statutory undertaking, or for any purpose which, in the opinion of the court, is in the public interest, and the court in either case is satisfied as aforesaid as respects alternative accommodation; or

(*f*) the landlord became the landlord after service in any of His Majesty's forces during the war and requires the house for his personal occupation and offers the tenant accommodation on reasonable terms in the same dwelling-house, such accommodation being considered by the court as reasonably sufficient in the circumstances; or

(*g*) the dwelling-house is required for occupation as a residence by a former tenant thereof who gave up occupation in consequence of his service in any of His Majesty's forces during the war; or

(*h*) the tenant without the consent of the landlord has at any time after the thirty-first day of July, nineteen hundred and twenty-three, assigned or sub-let the whole of the dwelling-house or sub-let part of the dwelling-house, the remainder being already sub-let; or

(i) the dwelling-house consists of or includes premises licensed for the sale of intoxicating liquor, and the tenant has committed an offence as holder of the licence or has not conducted the business to the satisfaction of the licensing justices or the police authority, or has carried it on in a manner detrimental to the public interest, or the renewal of the licence has for any reason been refused ;

and, in any such case as aforesaid, the court considers it reasonable to make such a order or give such judgment.

The existence of alternative accommodation shall not be a condition of an order or judgment on any of the grounds specified in paragraph (*d*) of this subsection—

(i) Where the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment ; or

(ii) where the court is satisfied by a certificate of the county agricultural committee, or of the Minister of Agriculture and Fisheries pending the formation of such committee, that the dwelling-house is required by the landlord for the occupation of a person engaged on work necesssary for the proper working of an agricultural holding, or with whom conditional on housing accommodation being provided, a contract for employment on such work has been entered into ; or

(iii) where the landlord gave up the occupation of the dwelling-house in consequence of his service in any of His Majesty's forces during the war ; or

(iv) where the landlord or the husband or wife of the landlord became the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age ; or

(v) Where the landlord or the husband or wife of the landlord did not become the landlord before the thirtieth day of June, nineteen hundred and twenty-two, and the dwelling-house is reasonably required by him for occupation as a residence for himself or for any son or daughter of his over eighteen years of age, and the court is satisfied that greater hardship would be caused by refusing to grant an order or judgment for possession than by granting it.

(2) At the time of the application for or the making or giving of any order or judgment for the recovery of possession of any such dwelling-house, or for the ejectment of a tenant therefrom, or in the case of any such order or judgment which has been made or given, whether before or after the passing of this Act, and not executed at any subsequent time, the court may adjourn the application, or stay or suspend execution on any such order or judgment, or postpone the date of possession for such period or periods as it thinks fit, and subject to such conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

(3) Where any order or judgment has been made or given before the passing of this Act but not executed, and, in the opinion of the court, the order or judgment would not have been made or given if this Act had been in force at the time when such order or judgment was made or given, the court may, on application by the tenant, rescind or vary such order or judgment in such manner as the court may think fit for the purpose of giving effect to this Act.

51 & 52 Vict. c. 43. 1 & 2 Vict. c. 74.

(4) Notwithstanding anything in section one hundred and forty-three of the County Courts Act, 1888, or in section one of the Small Tenements Recovery Act, 1838, every warrant for delivery of possession of, or to enter and give possession of, any dwelling-house to which this Act applies, shall remain in force for three months from the day next after the last day named in the judgment or order for delivery of possession or ejectment, or, in the case of a warrant under the Small Tenements Recovery Act, 1838, from the date of the issue of the warrant, and in either case for such further period or periods, if any, as the court shall from time to time, whether before or after the expiration of such three months, direct.

(5) An order or judgment against a tenant for the recovery of possession of any dwelling-house or ejectment therefrom under this section shall not affect the right of any sub-tenant to whom the premises or any part thereof have been lawfully sub-let before proceedings for recovery of possession or ejectment were commenced, to retain possession under this section, or be in any way operative against any such sub-tenants.

(6) Where a landlord has obtained an order or judgment for possession or ejectment under this section on the ground that he requires a dwelling-house for his own occupation and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay to the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

(7) The provisions of the last preceding subsection shall apply in any case where the landlord has, after the thirty-first day of July, nineteen hundred and twenty-three obtained an order or judgment for possession or ejectment on any of the grounds specified in paragraph (*d*) of subsection (1) of this section, and it is subsequently made to appear to the court that the order or judgment was obtained by misrepresentation or concealment of material facts, and in any such case the court may, if it thinks fit, in addition to making an order for payment of compensation by the landlord to the former tenant, direct that the dwelling-house shall not be excluded from this Act by reason of the landlord having come into possession thereof under the said order or judgment, and, if such a direction is given, this Act shall apply and be deemed to have applied to the dwelling-house as from the date mentioned in such direction.

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* Section 11 of Act 13 of 1920 (South Africa) :

No order for the recovery of possession of a dwelling-house or for the ejectment of a lessee therefrom based on the fact of the lease having expired either by effluxion of time or in consequence of notice duly given shall be made by any court so long as the lessee continues to duly pay, in respect of the dwelling, a reasonable rent therefor and performs the other conditions of the tenancy, except on the additional ground . . . (*c*) that the premises are reasonably required by the lessor for the personal occupation of himself or of some other person in his employ, or on some other ground which, regard being had to all the circumstances, is deemed sufficient by such court.