

LABRADOR v MONTEGRIFFO

Supreme Court (Summary Jurisdiction)

Flaxman, C.J.

22 February 1957.

Landlord and tenant — protected tenancy — suitable alternative accommodation — Rent Restriction Ordinance, s. 12.

The landlord sought an order for possession, offering alternative accommodation. The court found, as a matter of fact, that the accommodation offered was not reasonably suited to the needs of the tenant.

Per curiam. Alternative premises are not necessarily unsuitable because they are less convenient than the existing accommodation or not in every respect so desirable.

Note. The Rent Restriction Ordinance was repealed and replaced by the Landlord and Tenant (Miscellaneous Provisions) Ordinance (No. 3 of 1959, Cap. 83, 1965-69 Ed.).

Action

This was a claim for possession of a dwelling house, to which Part II of the Rent Restriction Ordinance applied.

J.E. Alcantara for the plaintiff.

J.A. Hassan for the defendant.

7 March 1957: The following judgment was read—

This is a claim by the landlord for possession of a dwelling house in Main Street. He acquired the ownership of the premises after the coming into force of the Rent Restriction Ordinance, and is therefore bound to satisfy the court that he can make suitable alternative accommodation available to the tenant, or to shew that it will be available when any order for possession takes effect.

In this case the plaintiff, who served a notice to quit expiring on 31 December 1956, on the defendant, does not claim immediate possession, and states that he is prepared to wait for some months and will make the alternative accommodation available to the defendant when any order of this court becomes effective. The accommodation offered is at 13, Lynch's Lane, and accompanied by learned counsel, I have visited the premises and also those at present occupied by the defendant.

Two issues arise: (i) is the alternative accommodation which can be made available by plaintiff "suitable alternative accommodation", and (ii) if so, is it reasonable to make an order for possession.

As regards (i) the relevant part of s. 12 of the Rent Restriction Ordinance provides that such accommodation must be "reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent and character."

The rental at present paid by the defendant for the Main Street premises is £6. 9. 0. monthly, and the alternative premises are offered at £3. 2. 8. The latter are thus well within the means of the tenant, but the point is also of interest as an indication of the difference between the characters of the two properties. In Main Street the defendant, with his wife and daughter, occupy a well situated, self-contained house with good sized rooms and a reasonable aspect. The alternative is a flat in a tenement building in a much poorer locality, only to be reached after a tedious climb up the steps of a narrow lane and a common stairway. Without going into the matter in more detail it is, in my opinion, idle to suggest that these Lynch's Lane premises, even after the proposed alterations, will be "reasonably suitable" in character to the needs of the defendant and his family.

Alternative premises are, of course, not necessarily unsuitable because they are less convenient than the existing accommodation, or because they are not in every respect so desirable, but in this case the discrepancy is so marked that I have no hesitation in finding against the plaintiff. The alternative offered is quite inappropriate.

In view of this decision the second issue of "reasonability" does not require consideration.

I think it is clear from the evidence, oral and written, that the plaintiff, who quite reasonably wishes to occupy his own house, has done his best to find something more suitable to offer, and it is not through his fault that his efforts have so far been unsuccessful. But the duty is his, and he has not discharged his obligation.