1986 January 24

[A. LOIZOU, LORIS AND STYLIANIDES, JJ.]

A.C.T. TEXTILES LTD.,

Appellants,

v.

GEORGHIOS ZODHIATIS,

Respondent.

(Case Stated No. 207).

The Rent Control Law 23/83, s. 4(1)—The Rent Control Rules 1983, Rule 5, providing that the judgment of the Rent Control Court should be issued within 60 days from the conclusion of the hearing—Non compliance with said rule —Effect of non compliance—Remedy available to a party in the event of such non compliance—The Civil Procedure Rules, Order 35, r.2 (Civil Procedure (Amendment) Rule 1965).

The Rent Control Law 23/83, s. 5—Evidence—Rent Control Court not bound by the rules of evidence.

The Rent Control Law 23/83 s. 11(1)(g)—Ejectment—Application for, based on said subsection—Landlord should establish that he was unable to secure other analogous and with reasonable rent accommodation for his business—Landlord's failure to establish that he exerted endeavours to secure such other accommodation—Said requirement not satisfied.

The Rent Control Law 23/83, s. 7—Appeal by way of case stated—Such appeal is only permissible on matters of Law —Evidence—Evaluation of, and findings of fact based on such evaluation—Not matters of Law.

Constitutional Law—Constitution Art. 30.1.

The European Convention on Human Rights, Law 39/62, Article 6.2.

Justice—Interest Reipublicae ut sit finis litium—Delay in justice is a denial of justice.

Words and Phrases: "Was not able" or "could not" (δεν ήδυνήθη) *in s. 11(1)(g) of the Rent Control Law 23/83.*

The appellants, who are the landlords of a shop at Arsinoe No. 8 street in Nicosia which is in the possession of the respondent as a statutory tenant as from 1957, being aggrieved by the judgment of the Rent Control Court, whereby, their application for an order ejecting the respondent from the said shop on the ground of reasonable requirement to house in the said shop and adjoining premises their business of drapery, had been dismissed, applied for the statement of the case to the Supreme Court (Law 23/83 s. 7 and The Rent Control Rules 1983, rule 12). As a result the following questions were referred to this Court for determination in this appeal.

"1. Delay of over 6 months in the issue of a judgment renders such judgment void and/or impeachable and/or unjust?

2. If the Court is not satisfied that the landlord exerted endeavours to be enabled to secure other analogous premises for his business, does the availability of suitable premises for the tenants or the inaction of the tenant to secure premises for his business justify the issue of an ejectment order?

3. Are the findings of the Court in this case conjectures or real? In case some of them are conjectures, does this have a substantial bearing on the judgment of the Court?

4. The Rent Control Court has no power to admit evidence of the respondent on facts for which the witnesses of the applicant were not cross-examined, and if such evidence is not admissible, does this have a substantial bearing on the judgment of the Court?.

Held, dismissing the appeal:

(A) *As to question (1) above:* It is in the public interest

that there should be an end to litigation. Article 30.2 of the Constitution and Article 6(c) of the European Convention of Human Rights guarantee the right of the citizen to have his civil rights and obligations determined by a competent Court established by Law within a reasonable time. *Delay of justice is denial of justice.*

Rule 5 of the Rent Control Rules 1983 provides that the judgment of the Rent Control Court should be issued within 60 days from the conclusion of the hearing before the Court. This provision is of an imperative nature.

Failure on the part of the Rent Control Court to comply with this mandatory provision does not render either the judgment delivered after the expiration of the said period or the proceedings before the Rent Control Court void. If that were otherwise, it would cause general inconvenience and injustice.

The remedy of a party in case of such non compliance with the said provision is provided in the rules, namely a party may apply to the Supreme Court for the issue of directions or any order that might be justified in the circumstances; including an order for rehearing of the case by another competent Court, as the Supreme Court may deem fit. (Order 35 Rule 2 of the Civil Procedure Rules). The Supreme Court may in such a case issue directions to a Judge or a Court to deliver judgment within a new specified period.

(B) *As to question (2):* Appellant's claim was based on s. 11(1)(g) of the Rent Control Law 23/83. Unlike previous enactments in the same branch of the Law, Law No. 23/83 imposed on the landlord the onus of establishing another requirement before the Court may consider the reasonableness of the issue of the order of ejectment or the judgment for possession: the Court must be satisfied that the person, who reasonably requires the shop for his *occupation, could not secure* (δεν ηδυνήθη να εξασφαλίση) other analogous and with reasonable rent accommodation for his business. The word "δεν ηδυνήθη" (in English, "was not able" or "could not") imports the notion of exerting endeavours to find other accommodation, to look for another shop, but without success. If the landlord does

not give evidence of any endeavours made by him to find other analogous and with reasonable rent accommodation, this is an unsurmountable obstacle for the Court to proceed to the third step—the consideration of reasonableness of the issue of the order or judgment—and to the ultimate step in the judicial process, i.e. the balance of hardship. The balance of hardship under the 1983 Law has to be determined by the Court on the totality of the evidence before it, as the burden does not lie any more on the tenant.

As the appellants did not satisfy the Rent Control Court that they exerted any endeavours to find other analogous accommodation, they did not establish that they were not able to secure such other accommodation. Therefore, their application was rightly dismissed.

(C) *As to question (3):* Under s. 7 of the Rent Control Law only appeal by way of case stated on question of Law is permissible. The evaluation of the evidence and the findings based on such evaluation are questions of fact, whereas acting on no evidence or on evidence which ought to have been rejected or failing to consider evidence which ought to have been considered are matters of Law.

The rejection of appellants' evidence and the finding that if any serious effort were made by them, they would have found and secured the premises of Kermia, are not conjectures or matters of Law.

(D) *As to question (4):* Irrespective of what the rule of evidence may be, there is a clear statutory provision in s. 5 of Law 23/83 that the Rent Control Court is not bound by the Law of Evidence in operation. Rule 4 of the Rent Control Rules provides that the Court has power at any stage of the proceedings to call or recall witnesses. The appellants might recall their witnesses or call other witnesses or they might apply to the Court for the calling of any such witnesses. But they remained idle and inactive in this respect for unknown reasons.

Appeal dismissed with costs.

Cases referred to:

Athanassiou v. *Attorney-General* (1969) 1 C.L.R. 439;

Edwards v. *Edwards* [1968] 1 W.L.R. 149;

Tsiarta and Another v. *Yiapana and Another*, 1962 C.L.R. 198;

Nicola v. *Christofi and Another* (1965) 1 C.L.R. 324;

Hji-Nicolaou v. *Gavriel and Another* (1965) 1 C.L.R. 421;

Antoniou v. *Elmaz and Another* (1966) 1 C.L.R. 210;

Charalambous v. *Kazanou and Another* (1982) 1 C.L.R. 326;

MM Zimmermann and Steiner, (European Court of Human Rights, Series A, No. 66);

Andorfer Tonwerke, Walter Hannah and Co. i.L. v. *Austria*, *Yearbook* 23, 491; D.R. 18; (report of the European Commission on Human Rights);

Browne v. *Dunn* [1893] 6 R. 67;

R. v. *Hart* [1932] 23 Cr. App. Rep. 202;

O'Connel v. *Adams* [1973] R.T.R. 150;

Practice Note [1958] L.R. 1 R.P. 114.

Case stated.

Case stated by the Chairman of the Rent Control Court of Nicosia relative to his decision of the 7th November, 1984 in proceedings under section 11(1)(a) of the Rent Control Law, 1975 (Law No. 36/75) instituted by A.C.T. Textiles Ltd against Georghios Zodhiatis whereby the landlords' application for an order of possession and/or ejectment of a shop situated at No. 8 Arsinoe Street, Nicosia was dismissed.

L. Papaphilippou, for the appellants.

C. Velaris, for the respondent.

Cur. adv. vult.

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Stylianides.

STYLIANIDES J.: This is an appeal by way of case stated from the Rent Control Court of Nicosia.

The applicants are the owners of a number of shops situated in Nicosia, at Arsinoe Street, which they purchased between 1979-1982. One of the said shops—Arsinoe No. 8—is in the possession of the respondent as a statutory tenant since 1957. He houses therein his small grocery shop.

The appellants by letter of their advocate in July, 1983, informed the respondent that they reasonably required the said shop for occupation by the landlords.

On 16.9.83 application was filed at the Rent Control Court whereby the appellants prayed for an order ordering the respondent to deliver vacant possession of the said shop and/or for an ejectment order. The application was based on the ground of reasonable requirement by the landlords to house in the said shop and the adjoining premises their business of drapery. The respondent contested the application. The hearing commenced on 12.3.84 and was concluded on 18.4.84. Judgment was reserved by the Court. It was delivered on 7.11.84. The Court dismissed the application on the ground that the appellants failed to satisfy the Court that they did make effort to secure analogous premises with reasonable rent for their business.

The appellants, being aggrieved, made application for the statement of the case to the Supreme Court under s. 7 of the Rent Control Law, 1983 (Law No. 23 of 1983), and r. 12 of the Rent Control Rules, 1983.

Only questions of law material for the determination of the case may be subject of an appeal by way of case stated.

The Court, out of the said memorandum, formulated and referred to this Court the following questions which fall for determination in this appeal:-

"1. Delay of over 6 months in the issue of a judgment renders such judgment void and/or impeachable and/or unjust;

2. If the Court is not satisfied that the landlord exerted endeavours to be enabled to secure other analogous premises for his business, does the availability of suitable premises for the tenant or the inaction of the tenant to secure premises for his business justify the issue of an ejectment order?

3. Are the findings of the Court in this case conjectures or real? In case some of them are conjectures, does this have a substantial bearing on the judgment of the Court?

4. The Rent Control Court has no power to admit evidence of the respondent on facts for which the witnesses of the applicant were not cross-examined, and if such evidence is not admissible, does this have a substantial bearing on the judgment of the Court?"

POINT NO. 1:

It was submitted by Mr. Papaphilippou that, as s. 4(1) of the Rent Control Law, 1983 (Law No. 23 of 1983) provides that the Rent Control Court was established to determine the disputes arising in the application of the said Law with *"reasonable speed"* and as under r. 5(1) of the Rent Control Rules, 1983, the judgment of the Court "is issued the latest 60 days from the conclusion of the proceedings before the Court", in this case both the judgment delivered on 7.11.84 and the proceedings before the first instance Court are abortive and void.

Mr. Velaris, on the other hand, said that the Law and the relevant rule are simply directory and the delay in the pronouncement of the judgment does not vitiate the judgment or the proceedings.

It was a principle of the Roman Law and it is in the public interest that there should be an end to litigation—Interest reipublicae ut sit litis finium. This salutary principle was cherished through the centuries. Article 30.2 of our Constitution and Article 6(1) of the European Convention on Human Rights, that has the force of superior law by its ratification by Law No. 39/62, guarantee the right of the

citizen to have his civil rights and obligations determined by a competent Court established by law within a reasonable time. Delay of justice is denial of justice.

The Supreme Court of this country in a number of decisions stressed the need for speedy determination of cases and its disapproval for the delays in the hearing of cases and the delivery of judgments reserved by Courts.

In *Athanassiou* v. *The Attorney-General of the Republic*, (1969) 1 C.L.R. 439, the following passage from *Edwards* v. *Edwards*, [1968] 1 W.L.R. 149, at p. 150. was cited with approval:-

> "It is desirable that disputes within society should be brought to an end as soon as reasonably practical and should not be allowed to drag festeringly on for an indefinite period. That last principle finds expression in a maxim which English Law took over from the Roman Law: it is in the public interest that there should be some end to litigation.... As long ago as Magna Carta, King John was made to promise not only that justice should not be denied but also that it should not be delayed; and there have been times in our history when various Courts have come under severe criticism for their procedural delays".

(See, also, *Christodoulos St. Tsiarta and Another* v. *Kodros Kyriacou Yiapana and Another*, 1962 C.L.R. 198; *Nicola* v. *Christofi and Another*, (1965) 1 C.L.R. 324; *Hji-Nicolaou* v. *Gavriel and Another*, (1965) 1 C.L.R. 421; *Petros Antoniou* v. *Yashar Elmaz and Another*, (1966) 1 C.L.R. 210; *Nicodemos Charalambous* v. *Loukia Kazanou and Another*, (1982) 1 C.L.R. 326).

The European Court of Human Rights in the case brought by *MM Zimmermann and Steiner*, E.C.H.R., Series A, No. 66, where the applicants claimed that the length of proceedings ending by a decision of the Swiss Federal Court had exceeded the "reasonable time" stipulated by Article 6(1) of the Convention, observed that the reasonableness of the length of proceedings must be assessed in each case according to the particular circumstances, including the complexity of the case, the conduct of the ap-

plicants and the competent authorities, and what was at stake for the former; in addition, only delays attributable to the State were relevant. The Court pointed out in the first place that the Convention placed a duty on the Contracting States to organise their legal systems so as to allow the Courts to comply with the requiremens of Aricle 6.1, including that of trial within a "reasonable time". In this connection, a temporary backlog of business did not involve liability on the part of the States provided that they took, with the requisite promptness, suitable measures to deal with it. However, if a state of affairs of that kind was prolonged and became a matter of structural organization, those measures would no longer be sufficient.

Useful reference may be made also to other cases of the supervisory organs of the Convention, including the report of the Commission in *Andorfer Tonwerke, Walter Hannah and Co. i. L.* v. *Austria,* Yearbook 23, 491; D. R. 18, 31.

This principle found its way in the statutory provisions pertaining to this case.

Section 4(1) of the Law reads as follows:-

«4. - (1) Καθιδρύονται Δικαστήρια Ελέγχου Ενοικιάσεων ο αριθμός των οποίων δεν θα υπερβαίνη τα τρία επί σκοπώ επιλύσεως, μεθ' όλης της λογικής ταχύτητος, των εις αυτά αναφερομένων διαφορών των αναφυομένων επί οιουδήποτε θέματος εγειρομένου κατά την εφαρμογήν του παρόντος Νόμου συμπεριλαμβανομένου παντός παρεμπίπτοντος ή συμπληρωματικού θέματος».

("4.(1) There shall be established Rent Control Courts, the number of which shall not be more than three, for the purpose of determining with all reasonable speed the disputes referred to them arising with regard to any matter raised in the application of this Law including any incidental or supplementary matter").

The relevant parts of r. 5 are:-

5. (α) Η απόφαση του Δικαστηρίου εκδίδεται από τον Πρόεδρο αφού λάβει τις απόψεις των παρέδρων,

Η γνώμη των παρέδρων έχει συμβουλευτικό και όχι δεσμευτικό χαρακτήρα. Η απόφαση του Δικαστηρίου πρέπει να είναι δεόντως αιτιολογημένη και εκδίδεται το αργότερο σε διάστημα 60 ημερών από τη λήξη της διαδικασίας ενώπιον του Δικαστηρίου. Στην απόφαση του Δικαστηρίου αναφέρεται τυχόν διαφωνία παρέδρου.

(β) Αντίγραφο της αποφάσεως δίδεται στους διαδίκους χωρίς πληρωμή τέλους. Το διατακτικό της αποφάσεως καταχωρείται στο σχετικό μητρώο του Δικαστηρίου.

(γ) Όπου το Δικαστήριο παραλείπει να εκδόσει την απόφασή του μέσα στην προθεσμία που ορίζεται από τους Κανονισμούς, οι διάδικοι ή οποιοσδήποτε από αυτούς μπορεί να ζητήσει από το Ανώτατο Δικαστήριο να επιληφθεί του θέματος σύμφωνα με τις σχετικές πρόνοιες των Θεσμών».

("5(a) The judgment of the Court is issued by the President after taking the views of the lay members of the Court. The opinion of the lay members is of an advisory nature, not binding on the President. The Judgment of the Court should be duly reasoned and shall be issued not later than 60 days from the conclusion of the hearing before the Court. Reference to any dissenting opinion of a lay member of the Court shall be made in the judgment of the Court.

(b) Copy of the judgment shall be given to the parties free of charge. The order of the Court is registered in the relevant register of the Court.

(c) Whenever the Court omits to issue its judgment within the time limited by the Regulations, the parties or anyone of them may apply to the Supreme Court to determine the matter in accordance with the Rules of Court").

"Rules" («Θεσμοί») means the Civil Procedure Rules.

By the Civil Procedure (Amendment) Rule, 1965, the following proviso was added to 0.35, r. 2:-

«Νοείται ότι οσάκις το Δικαστήριον ή ο Δικαστής

δεν θα έχωσιν εκδώσει την ητιολογημένην απόφασίν των εντός εξ μηνών μετά την υπό του τοιούτου Δικαστηρίου ή Δικαστού επιφύλαξιν της τοιαύτης αποφάσεως, οιοσδήποτε ενδιαφερόμενος διάδικος θα δύναται να αποταθή εις το Ανώτατον Δικαστήριον δι' έκδοσιν οδηγιών ή οιουδήποτε διατάγματος το οποίον θα εδικαιολογείτο υπό των περιστάσεων, συμπεριλαμβανομένου και διατάγματος περί επανακροάσεως της υποθέσεως υπό άλλου αρμοδίου Δικαστηρίου ή Δικαστού, ως το Ανώτατον Δικαστήριον ήθελε θεωρήσει εύλογον».

("Provided that when a Court or a Judge shall not have issued their reasoned decision within a period of six months after such Court or Judge shall have reserved such decision, any interested party to the proceedings may apply to the Supreme Court for the issue of directions or any order that might be justified in the circumstances, including an order for the rehearing of the case by another competent Court or Judge, as the Supreme Court may deem fit").

Enactments regulating the procedure in courts are usually construed as imperative, even where the observance of the formalities in question is not a condition exacted from the party seeking the benefit of the statute, but a duty imposed on a Court or public officer when no general inconvenience or injustice seems to call for different construction— *(Maxwell on Interpretation of Statutes,* 12th Edition, p. 320).

The wording of r. 5(a) is that the judgment is issued the latest within 60 days. No general inconvenience or injustice is caused by this provision. On the contrary, the interests of the litigants and the society at large are served by this provision. It is imperative and not simply directory.

What is the consequence of the failure of the Rent Control Court to comply with this mandadory provision? The Rules provide the remedy: Any party in case of such failure *may apply to the Supreme Court for the issue of directions* or any order that might be justified under the circumstances, including an order for rehearing of the case by another competent Court; as the Supreme Court may deem fit. The *Supreme Court may issue directions to a Judge or*

a Court to deliver judgment within a new specified period. It is within its discretionary power to do so if the circumstances of the case point out that it is convenient and just to do so. As the legislator made provision for the default of the delivery of the judgment within the time appointed in the rule, the remedy of any party is to avail of the procedure of the proviso to 0.35(2). It would cause general inconvenience and injustice if by the non-issue of a judgment within 60 days, the proceedings before the trial Court were automatically void. Rule 5(a) read in conjunction with r. 5(c) and the necessity to determine the cases with reasonable speed, does not allow us to share the view of counsel for the appellants. Our opinion on point No. 1 is as follows:-

The provisions of r. 5(a) are imperative for the Rent Control Court but if the judgment is not delivered within 60 days, then neither the judgment given later nor the proceedings are void. A party may apply, before the delivery of judgment, to the Supreme Court, under the proviso to 0.35, r. 2, of the Civil Procedure Rules for directions or any order that the Supreme Court may deem fit.

POINT No. 2:

The claim of the appellants was based on s. 11(1)(g) of the Rent Control Law, 1983 (Law No. 23 of 1983). The provisions of this paragraph with the material differences to which we shall presently refer is found in the Rent Control Law, Cap. 86, as amended by Law No. 8/'68, s. 16(g), the Rent Control (Business Premises) Law, 1961 (Law No. 17 of 1961), s. 10(1)(g), and s. 16(1)(g) of the Rent Control Law, 1975 (Law No. 36 of 1975).

This ground of ejectment in the previous statutes was identical. Section 16(1)(g) of the Rent Control Law, 1975 (Law No. 36 of 1975) read:-

> "16.-(1) No judgment or order for the recovery of possession of any dwelling house or business premises to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:
>
> . . . . . .

(g) Where the dwelling house or business premises are reasonably required for occupation by the landlord, his spouse, son, daughter, son-in-law, daughter-in-law, brother or sister, who are over eighteen years of age, and in any such case the Court considers it reasonable to give such a judgment or make such an order:

Provided that no judgment or order shall be given or made under this paragraph if the tenant satisfies the Court that, having regard to all the circumstances of the case, greater hardship would be caused by granting the order or judgment than by refusing to grant it.

For the purposes of this paragraph the expression 'circumstances of the case' shall include the question whether other accommodation is available for the landlord or the tenant, and the question whether the landlord purchased the premises after the date of the coming into operation of this Law for the purpose of gaining possession under the provisions of this paragraph".

Section 11(1)(g) of Law No. 23/83 runs as follows:-

«11.-(1) Ουδεμία απόφασις και ουδέν διάταγμα εκδίδεται δια την ανάκτησιν της κατοχής οιασδήποτε κατοικίας ή καταστήματος, δια το οποίον ισχύει ο παρών Νόμος, ή δια την εκ τούτου έξωσιν θεσμίου ενοικιαστού, πλην των ακολούθων περιπτώσεων:

. . . . . .

(ζ) Εις περίπτωσιν καθ' ην το κατάστημα απαιτείται λογικώς προς κατοχήν υπό του ιδιοκτήτου, της συζύγου ή των τέκνων του και όπου οιοσδήποτε εξ αυτών δεν ηδυνήθη να εξασφαλίση ετέραν ανάλογον και με λογικόν ενοίκιον στέγην δια την επιχείρησίν του ή δια σκοπούς επιχειρήσεως και το Δικαστήριον θεωρεί λογικήν την έκδοσιν τοιαύτης αποφάσεως ή τοιούτου διατάγματος.

Νοείται ότι ουδεμία απόφασις και ουδέν διάταγμα

θα εκδίδωνται δυνάμει της παραγράφου αυτής, εάν το Δικαστήριον πεισθή ότι, λαμβανομένων υπ' όψιν όλων των περιστάσεων της υποθέσεως, θα επροξενείτο μεγαλυτέρα ταλαιπωρία διά της εκδόσεως του διατάγματος ή της αποφάσεως παρά διά της αρνήσεως εκδόσεως τούτου».

("11.-(1) No judgment or order for the recovery of possession of any dwelling house or business premises, to which this Law applies, or for the ejectment of a statutory tenant therefrom shall be given or made except in the following cases:-

(g) Where the shop is reasonably required for occupation by the landlord, his spouse or his children, and where anyone of them could not secure other analogous and with reasonable rent accommodation for his business or for purposes of business and the Court considers it reasonable to give such a judgment or make such an order:

Provided that no judgment or order shall be given or made under this paragraph, if the Court is satisfied that, having regard to all the circumstances of the case, greater hardship would be caused by granting the order or judgment than by refusing to grant it").

The legislator in 1983 made a radical departure from the provisions of the previous legislation by the addition of the following words: «και όπου οιοσδήποτε εξ αυτών δεν ηδυνήθη να εξασφαλίση ετέραν ανάλογον και με λογικόν ενοίκιον στέγην δια την επιχείρησίν του ή δια σκοπούς επιχειρήσεως», ("and where anyone of them could not secure other analogous and with reasonable rent accommodation for his business or for purposes of business"). Under the old Law if the landlord established to the satisfaction of the Court that the premises were reasonably required for his occupation, that is, that he had a genuine present need of the premises, the Court had to determine whether the making of the order was reasonable, and the requirement of reasonableness for making the order was not a mere surplusage, and then the last step in the judicial process was

to consider the balance of hardship. The burden of proof that greater hardship would be caused if the order of possession was granted than if it was refused was cast on the tenant.

Unlike previous enactments in the same branch of the Law, Law No. 23/83 imposed on the landlord the onus of establishing another requirement before the Court may consider the reasonableness of the issue of the order of ejectment or the judgment for possession: the Court must be satisfied that the person, who reasonably requires the shop for his occupation, could not secure (δεν ηδυνήθη να εξασφαλίση) other analogous and with reasonable rent accommodation for his business. The words "δεν ηδυνήθη" (in English, "was not able" or "could not") imports the notion of exerting endeavours to find other accommodation, to look for another shop, but without success. If the landlord does not give evidence of any endeavours made by him to find other analogous and with reasonable rent accommodation, this is an unsurrountable obstacle for the Court to proceed to the third step—the consideration of reasonableness of the issue of the order or judgment—and to the ultimate step in the judicial process, i.e. the balance of hardship. The balance of hardship under the 1983 Law has to be determined by the Court on the totality of the evidence before it, as the burden does not lie any more on the tenant.

The judicial decisions to which we were referred by learned counsel for the appellants interpreted and applied the Law before the enactment of the new Law—the Rent Control Law of 1983. The legislature knew the Law and purposely made the additions and amendments. We shall not lose sight of the fact, in interpreting the rent legislation, that its object is to safeguard the possession of the statutory tenant at reasonable rent.

The Law further limited the persons the reasonable requirement of whom may be taken into consideration to the landlord, his spouse or his children, and excluded the son-in-law, the daughter-in-law, the brother and the sister who were included in all previous statutes. This clearly indicates and manifests the intention of the legislature to re-

strict further the range for the issue of orders for ejectment.

The Rent Control Court on the evidence before it reached the conclusion that the appellants did not establish that they were not able to secure other analogous accommodation with reasonable rent for their business as they did not satisfy the Court that they exerted endeavours to find other accommodation. The Court rightly dismissed the application for recovery of possession as this requirement was not satisfied.

POINT No. 3:

Learned counsel for the appellants submitted that the findings of the trial Court that the appellants exerted no endeavour to secure other analogous accommodation was based on conjecture and/or hypothetical inferences, as the Court, after stating the substance of the evidence for the appellants on this issue, rejected it—one of the grounds for such rejection being that if any serious endeavour were made, they would find and secure the premises of Kermia, which another person, namely, witness No. 2 for the respondent, rented.

Under s. 7 of the Rent Control Law only appeal by way of case stated on questions of law is permissible. Acting on no evidence or acting on evidence which ought to have been rejected or failing to take into consideration evidence which ought to have been considered are matters of law. The evaluation, however, of the evidence, where there is evidence before the Court, and the findings of the Court on such evaluation are questions of fact and no appeal can be entertained.

We fail to understand how in this case the rejection of the evidence of, the appellants and the finding of the trial Court even on the additional ground that if any serious effort were made, they would have found and secured the premises of Kermia, which were rented by another tenant, could be a conjecture or a matter of law.

POINT No. 4:

In the present case the appellants complain that evidence was given by witnesses for the respondent on a matter

which was not put in cross-examination to the witness for the appellants. It was submitted that this is contrary to the Law of Evidence.

Failure to cross-examine a witness on some material part of his evidence may be treated as an acceptance of the truth of that part or the whole of his evidence. This is a rule of evidence which is strictly observed in criminal cases—*(Browne* v. *Dunn,* [1893] 6 R.67, H.L.; *R.* v. *Hart,* [1932] 23 Cr. App. Rep. 202). It is not even strictly applied where the parties or their repesentatives do not always appreciate the need to cross-examine—*(O'Connel* v. *Adams,* [1973] R.T.R. 150, D. C., and Practice Note, [1958] L. R. 1 R. P. 114).

Irrespective of what the rule of evidence may be, there is clear statutory provision in s. 5 of the Rent Control Law which is a replica of s. 4(2) of the Rent Control Law, 1975 (Law No. 36 of 1975) that the Court at the hearing of any case under this Law, subject to any rules of Court, is not bound by the Law of Evidence in operation. This statutory provision is clear, unambiguous and unqualified. The relevant provisions of the Rent Control Rules, 1983, are that the proceedings before the Court are of summary nature with the object of speedy and effective administration of justice—(Rule 3(f)); the order of calling of witnesses is as provided in the Civil Procedure Rules; the Court has power to put questions to the witnesses for the carrying out of the necessary inquiry for the solution of the dispute; the Court further has the power at any stage of the proceedings to call or recall witnesses for the purpose of the inquiry—(Rule 4).

The appellants, if they so wished, might recall their witness or call other witness or they might apply to the Court for the calling of any such witness. They did nothing; they remained idle and inactive for unknown reasons.

It was submitted on their behalf that the rules of evidence applying in civil cases have to be followed by the Rent Control Court, otherwise this would be contrary to the Constitution.

As no question of constitutionality was raised in the

case stated and was never properly formulated, we consider it unnecessary to deal at any length with the argument canvassed in the course of the hearing of this appeal that the statutory provision of s. 5 is repugnant to Articles 6 and 30 of the Constitution. At any rate we find no merit in this submission.

In view, therefore, of the aforesaid answers to the points of Law referred to us, this appeal should and is hereby dismissed with costs.

Appeal dismissed with costs.