1950 *Present:* **Jayetileke C.J. and Swan J.**

DIAS, Appellant, *and* PERIES, Respondent

S. C. 537—D. C. Mannar, 10,457

Rent Restriction Act, No. 29 of 1948—Sections 1 and 8—Prohibition of excessive advance of rent—Scope of such prohibition.

Rent Restriction Ordinance, No. 60 of 1942—Authorised rent—Section 3—Meaning of " any period ".

(i) The provision in section 8 of the Rent Restriction Act, No. 29 of 1948, that a landlord cannot retain in his hands, as an advance of rent, any amount exceeding the authorised rent for a period of three months is not applicable to an advance of rent received under a contract of tenancy entered into prior to the date of commencement of the operation of the Act, viz., January 1, 1949.

(ii) Where an indenture of lease, which was entered into a few months before the Rent Restriction Ordinance, No. 60 of 1942, came into operation, provided that the yearly rental should be paid in monthly instalments—

Held, that the provisions of section 3 would be applicable in respect of the period of the lease subsequent to the date when the Ordinance came into operation and the lessor, therefore, was not entitled to recover any rent in excess of the authorised rent from that date.

APPEAL from a judgment of the District Court, Mannar.

H. V. Perera, K.C., with *J. M. Jayamanne*, for plaintiff appellant.

E. B. Wikramanayake, K.C., with *V. K. Kandaswamy*, for defendant respondent.

Cur. adv. vult.

August 4, 1950. JAYETILEKE C.J.—

On March 30, 1947, the plaintiff sold by public auction the lease of a tiled boutique for a period of four years commencing from July 1, 1947, and the defendant purchased it at Rs. 2,150 a year. Thereafter the plaintiff and the defendant entered into an indenture of lease bearing No. 360 dated April 7, 1947 (P1). At the execution of P1 the defendant paid to the plaintiff a sum of Rs. 1,433.33 in advance. P1 provides that the yearly rental of Rs. 2,150 should be paid in monthly instalments of Rs. 179.16 and that the 1st instalment should be paid on or before June 30, 1947, and the other instalments on or before the last day of each month. In view of this provision in the lease the advance must be treated as a deposit made to secure the payment of the rent. The defendant paid the instalment that fell due on June 30, 1947, but failed to pay the instalments that fell due thereafter. On June 2, 1948, the plaintiff instituted this action for the recovery of a sum of Rs. 370.76 as balance rent after giving the defendant credit for the deposit, for ejectment and damages.

The defendant resisted the plaintiff's claim for ejectment on the ground (1) that under the Rent Restriction Ordinance, No. 60 of 1942, he was not entitled to recover Rs. 179.16 as rent and (2) that under the Rent Restriction Act, No. 29 of 1948, he was not entitled to retain in his hands more than three months' rent as an advance.

The Rent Restriction Ordinance came into operation in the District of Mannar on July 10, 1947. It is admitted that the authorised rent of the premises is Rs. 50 a month. The learned District Judge held that the plaintiff could not recover more than the authorised rent from July 10, 1947. He held further that under s. 8 of the Rent Restriction Act, No. 29 of 1948, the plaintiff could not retain in his hands as an advance of rent any amount exceeding the authorised rent for a period of three months, and that the defendant was entitled to set off the balance sum of Rs. 1,220 against the rent that accrued between July 30, 1947, and the date of the institution of the action. Giving the plaintiff credit for Rs. 660 being the rent, he was entitled to recover from July 1, 1947, up to the date of action he held that there was an excess amount in the plaintiff's hands. He dismissed the plaintiff's action and entered judgment for the defendant in reconvention for a sum of Rs. 788.33. At the argument before us two points were raised by Counsel for the appellant:—

1. that the Rent Restriction Act, No. 29 of 1948, came into operation after the institution of this action and therefore it did not apply to this case.

2. S. 3 of the Rent Restriction Ordinance does not apply to a period which has already commenced to run.

S. 1 of the Rent Restriction Act provides that it will come into operation on such date as may be appointed by the Minister by order published in the *Gazette*. The appointed date is January 1, 1949, and it appears in *Gazette* No. 9,932 dated December 23, 1948. S. 8 reads:

"No person shall, as a condition of the grant, renewal or continuance of the tenancy of any premises to which this Act applies, demand or receive or pay or offer to pay—

(*a*) as an advance of rent any amount exceeding the authorised rent for a period of three months or"

There is no section in the Rent Restriction Ordinance which corresponds with s. 8. The words "no person, shall ..... demand or receive" contemplate an act done when the Act is in operation. Mr. Wickremanayake stated frankly that he could not rely on that part of the judgment.

The second point taken by Mr. Perera turns on the interpretation of s. 3 of the Rent Restriction Ordinance. It reads:

"(1) It shall not be lawful for the landlord of any premises to which this Ordinance applies—

(*a*) to demand, receive or recover as the rent of such premises, in respect of any period commencing on or after the appointed date, any amount in excess of the authorised rent of such premises as defined for the purposes of this Ordinance in section 4; or

(*b*) to increase the rent of such premises in respect of any such period to an amount in excess of such authorised rent."

Mr. Perera argued that according to P1 the unit period of occupation is a year and that as such period had commenced to run when the Ordinance came into operation s. 3 does not apply.

Some light is thrown upon the construction of s. 3 by the preamble. It is as follows:—

"An Ordinance to restrict the increase of rent and to provide for matters incidental to such restriction".

The scheme of the Ordinance is as the name suggests to benefit a tenant by tying a landlord's hands in cases to which the Ordinance applies by forbidding him to demand, receive or recover as rent any amount in excess of the authorised rent where under the common law he had the opportunity of doing so. The Legislature has undoubtedly been economical of words but the words used must be read according to the subject to which they refer. The contention put forward by Mr. Perera does not seem to be in accordance with the ordinary meaning of the language used. The ordinary meaning of the words "any period" would be "any portion of time". According to Mr. Perera's argument if before the Rent Restriction Ordinance came into operation A had leased to B a house for a period of 99 years for Rs. 100,000 and the indenture provided

that the rent for the whole period should be paid in 1,188 equal monthly instalments section 3 would not apply. I can find nothing either in the language or in the policy of the legislation that it was so intended. This view is supported by the proviso to section 5 (1) which is the only exception to the standard arbitrarily laid down in the Ordinance. It provides that in the case of any premises let at a progressive rent payable under the terms of a lease executed prior to the 1st day of November, 1941, the standard rent of the premises in respect of any period shall be the rent payable in respect of that period under the terms of the lease.

We are of opinion that the plaintiff is not entitled to recover any rent in excess of the authorised rent from July 10, 1947. We would send the case back for inquiry as to the exact amount due to the plaintiff as rent up to the date of decree, after giving the defendant credit for the deposit and the rent paid by him on June 30, 1947. After such inquiry the District Judge will enter judgment in favour of the plaintiff for such amount, for ejectment and for damages which we fix at Rs. 100 a month. The plaintiff will be entitled to costs here and in the Court below.

SWAN J.—I agree.

Appeal allowed.