1963 *Present :* **H. N. G. Fernando, J.**

P. T. H. ABDUL RAHUMAN, Appellant, *and* M. P. M. S. ABDUL CADER and another, Respondents

S. C. 238/61—C. R. Colombo, 79616

Rent Restriction (Amendment) Act No. 10 of 1961—Section 13—Action instituted thereunder—Period of notice to quit—Inapplicability of section 13 (1A) of the principal Act (Cap. 274).

In an action instituted on 16th May 1961 in terms of section 13 of the Rent Restriction (Amendment) Act No. 10 of 1961—

Held, that section 13 (1A) of the principal Rent Restriction Act (Cap. 274), as amended by Act No. 10 of 1961, did not apply in the case of an action governed by section 13 of the Amending Act of 1961. Accordingly, three months' notice of termination of the tenancy was not necessary.

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

C. Ranganathan, for the Plaintiff-Appellant.

S. Sharvananda, with *J. V. C. Nathaniel*, for the Defendants-Respondents.

Cur. adv. vult.

October 1, 1963. H. N. G. FERNANDO, J.—

In order to discuss the point arising in this appeal, it is necessary to refer to the relevant provisions of the Rent Restriction Acts in some detail.

Under section 13 of the Rent Restriction Act (Cap. 274), a landlord had the right to institute an action for ejectment if (*inter alia*) *rent has been in arrears for one month after it has become due.* The section contained no special provision regarding the need to give notice of termination of the tenancy, and accordingly, the matter of notice continued to be governed by the common law.

Section 13 of the Amending Act No. 10 of 1961 has the effect that an action for ejectment on the ground of arrears of rent cannot be instituted unless *the rent has been in arrears for three months.* The provision in the Principal Act (Cap. 274) was thereby superseded, but only temporarily, for the later section has operation (vide sub-section 2) only during the period July 20, 1960 to July 20, 1962.

The case before me is one to which the later section applies, the plaint having been filed on 16th May, 1961. Hence the first issue, the proof of which will be on the plaintiff, raises the question whether rent has been in arrears for 3 months before the filing of the action.

Section 6 of the Amending Act of 1961 effects an amendment of section 13 of the Principal Act by inserting therein a new sub-section (1A) in the following terms :—

> " The landlord of any premises to which this Act applies shall not be entitled to institute any action or proceedings for the ejectment of the tenant of such premises on the ground that the rent of such premises has been in arrear for one month after it has become due,—
>
> (*a*) if the landlord has not given the tenant three months' notice of the termination of the tenancy, or
>
> (*b*) if the tenant has, before such date of termination of the tenancy as is specified in the landlord's notice of such termination, tendered to the landlord all arrears of rent. "

The point successfully taken by the Defendant in the lower Court, as a preliminary issue, is that this *new requirement* of a three months' notice of termination applies not only when the permanent law (section 13 of the Principal Act) is invoked by a landlord, but also when, as in the present case, the landlord brings his action in terms of the temporary law (section 13 of the Amending Act). But I reach without difficulty the conclusion that the Legislature has manifested an intention contrary to that contended for by the Defendant.

Let me examine first section 13 of the Principal Act, including the new sub-section (1A) added to it in 1961. The section gives the landlord a right to bring his action if the rent has been in arrear for one month. But

the new sub-section (1A) imposes an additional condition, namely that the landlord must have given three months' notice of termination of the tenancy. This new requirement could have been imposed in more ways than one :—

(*a*) Sub-section (1A) could have stated that an action cannot be instituted " upon the ground specified in paragraph (*a*) of sub-section (1) of this section " unless there has been a three months' notice of termination ; or

(*b*) Sub-section (1A) could merely have imposed the new conditions " in the case of any action instituted on the ground that rent is in arrear ".

The use of either such formula would have rendered all the provisions of sub-section (1A) fully effective, and there was no necessity for the precise repetition of all the words from sub-section (1), that is " on the ground that rent has been in arrear *for one month* after it has become due ". The only necessity I can see for this repetition is the precautionary need to avoid the very construction for which the Defendant has here contended, namely that sub-sction (1A) applies also as part of the temporary law.

Examination of section 13 of the Amending Act makes it clear that while it is in operation nothing contained in the permanent section 13 as originally enacted will apply to a tenancy action. There is nothing in sub-sections (1), (2), (3), (4), (5), (6), (7), or (8) of the permanent section in favour either of a tenant or of a landlord which has any relevancy to an action to which the temporary law applies. If then the Legislature did intend that nevertheless the provisions of the new sub-section (1A) should apply under the temporary law, one would expect that intention to have been clearly expressed. Far from that being the case, the Legislature has in the new sub-section (1A) employed terms indicating that the sub-section will apply only where the ground for ejectment is that the rent has been in arrear for ONE month.

I hold that the new sub-section (1A) does not apply in the case of an action governed by section 13 of the Amending Act of 1961, and I answer issue No. 6 in the affirmative.

The decree dismissing the Plaintiff's action is set aside with costs of appeal to the Plaintiff. The action will proceed on the other issues.

Decree set aside.