1954 *Present :* **Gunasekara J. and Fernando A.J.**

S. D. S. GUNATILLEKE *et al.*, Appellants, *and* J. P. FERNANDO *et al.*, Respondents

S. C. 201–202—D. C. Colombo, 21,595

Rent Restriction Act, No. 29 of 1948—"Excepted premises".—Significance of date of assessment of annual value—Distinction between "residential premises" and "business premises"—Sections 2 (4) and (5), 13, 27—Regulations 1 and 2 of Schedule (prior to amendment).

(i) The annual value of certain residential premises situated within the Municipality of Colombo was assessed in November, 1941, at Rs. 2,750. The premises were, therefore, excepted premises within the meaning of Regulation 2 of the Schedule to the Rent Restriction Act. When the premises were let in May, 1949, and at the time of the institution of the present action to eject the overholding tenant, they were used as business premises.

Held, that the tenant was not entitled to claim the protection of the Rent Restriction Act on the plea that the annual value of the premises, regarded as business premises, did not exceed Rs. 6,000. The character of the premises that was material for the purpose of applying Regulation 2 was their character at the time of the assessment.

(ii) Premises were taken on rent by the proprietor of a school and used by him as a hostel for the students and a place of residence for the warden of the hostel and some of the teachers. The business of the school itself was carried on at another place.

Held, that the premises were "residential premises" within the meaning of section 27 of the Rent Restriction Act.

Hepponstall v. Corea (1952) 54 N. L. R. 214 and *Standard Vacuum Oil Co. v. Jayasuriya* (1951) 53 N. L. R. 22, considered.

APPEAL from a judgment of the District Court, Colombo.

H. W. Tambiah, with *O. S. M. Seneviratne* and *John de Saram*, for the 2nd defendant-appellant in 201 and the 2nd defendant-respondent in 202.

H. V. Perera, Q.C., with *N. M. de Silva, K. Herat, G. T. Samarawickreme, H. L. de Silva* and *K. Shinya*, for the plaintiff-respondent in 201 and the plaintiff-appellant in 202.

M. M. K. Subramaniam, for the 1st defendant-respondent in both appeals.

Cur. adv. vult.

October 8, 1954. GUNASEKARA J.—

These appeals arise out of an action in the District Court of Colombo in which the plaintiff sued for the ejectment of the defendants from premises known as Knowsley, Bagatelle Road, Kollupitiya, upon the footing that the first defendant was an overholding tenant and the second and third were in occupation of the premises on behalf of the first, and for the recovery of damages from the first defendant at the rate of Rs. 750 a month, which was the agreed rent. The premises are situated within the Municipality of Colombo, where the Rent Restriction Act, No. 29 of 1948, is in operation. The defendants alleged that the premises had been let by the plaintiff to the second defendant and not to the first, that they were business premises to which the Act applied, and that the authorised rent was Rs. 287·25 a month. They also claimed in reconvention a sum of Rs. 8,668·10, made up of two sums alleged respectively to have been spent on necessary repairs to the premises and to have been paid on the plaintiff's behalf to his landlord's son so that the latter might be provided with a house without the plaintiff being ejected from the one of which he was the tenant. The learned district judge held that the premises had been let to the first defendant and not to the second, but that they were business premises to which the Rent Restriction Act applied and the plaintiff was not entitled to a decree for ejectment of the defendants and also that he was entitled to recover a monthly rent of only Rs. 302·50 as the authorised rent and not the agreed rent of Rs. 750. He rejected the claim in reconvention.

At the conclusion of Mr. Tambiah's argument in support of the second defendant's appeal, No. 201, we intimated to counsel that we saw no reason to interfere with the findings against which the 2nd defendant has appealed and we did not call upon counsel for the respondents in that appeal. Appeal No. 201 must be dismissed and the 2nd defendant must pay to the plaintiff respondent his costs of appeal.

No. 202 is an appeal by the plaintiff against the finding that the Rent Restriction Act applies to the premises and that the plaintiff is therefore entitled to recover only Rs. 302·50 a month as the authorised rent, and against the learned judge's refusal of the plaintiff's prayer for ejectment of the defendants.

The main contention advanced in support of this appeal is that upon the facts accepted by the learned judge the premises in question are excepted premises and the Act does not apply to them. It is provided by subsection (4) of section 2 that so long as the Act is in operation in any area its provisions shall apply to all premises in that area, not being excepted premises, and by subsection (5) that the regulations in the Schedule shall have effect for the purpose of determining the premises which shall be excepted premises. Regulation 2 of these regulations provides that any premises situated within the municipality of Colombo shall be excepted premises if the annual value of the premises, being residential premises, exceeds Rs. 2,000, or, being business premises, exceeds Rs. 6,000; and "annual value" is defined in regulation 1 as "the annual value of the premises as assessed for the purposes of any rates levied by any local authority under any written law during the

month of November, 1941, or, in the case of premises first assessed or first separately assessed thereafter, such annual value as so first assessed or first separately assessed". In November, 1941, the annual value of the premises in question was Rs. 2,750, and the district judge has answered in the affirmative an issue as to whether at that time they were " residential premises within the meaning of the Rent Restriction Act, No. 29 of 1948 ". It is contended for the plaintiff appellant that the learned district judge having arrived at this finding should have held that the premises were excepted premises, for the reason that in November, 1941, they were residential premises the annual value of which exceeded Rs. 2,000.

The view taken by the district judge is that the character of the premises that is material is their character either at " the time of filing the action or it may be the time when the Court is required to make the ejectment order " ; and he holds that at the time of the institution of the action, and indeed even at the time of the letting (which was the 1st May, 1949), they were business premises, and consequently, as their annual value in November, 1941, did not exceed Rs. 6,000, that they are not excepted premises. He reaches this view upon a consideration of the provisions of sections 13 and 27 of the Act and the absence of any express provision for determining the character of any premises as " residential " or " business " premises by reference to their character in November, 1941.

Section 27 provides that, unless the context otherwise requires, " 'residential premises' means any premises for the time being occupied wholly or mainly for the purposes of residence ", and " 'business premises' means any premises other than residential premises ". The learned judge, rightly if I may say so, holds that " the phrase 'for the time being' . . . . is used to suggest the idea that the character of any particular premises must be considered with reference to different points of time depending on the circumstances of each particular case ", and that their character may change from time to time. A question that arises for decision then is at what time the premises must be residential premises so that they may be excepted premises as defined by regulation 2. The learned district judge takes the view that the answer is to be found in section 13 which, he points out, " provides that an action may be brought for the ejectment of a tenant of any premises to which the Act applies if the premises are in the opinion of the Court reasonably required for occupation as a residence for the landlord or for the purpose of his trade, business, etc. " ; and in which " there is nothing to prevent a landlord seeking to eject a tenant of business premises on the ground that he required such premises for occupation as his residence and *vice versa* ". He proceeds to hold " that one has to consider whether any particular premises are residential or business premises with reference to their use 'for the time being', and so far as this action is concerned that section 13 provides that the material time is either the time of filing the action or it may be the time when the Court is required to make the ejectment order ".

The argument appears to be that the expression " for the time being " must, in the context of an action for the ejectment of the tenant, be taken to refer to the time at which it is sought to have him ejected, whether

that time is the time of the bringing of the action or " the time when the court is required to make the ejectment order ". There would have been force in this argument if the question regarding the premises which the court had to decide in the present case had been merely whether they were residential premises. But the question was whether the annual value of the premies, being residential premises, exceeded Rs. 2,000; that is to say, whether the annual value of the premises as assessed during the month of November, 1941, being premises for the time being occupied wholly or mainly for the purposes of residence, exceeded Rs. 2,000. It seems to me that in the context of regulation 2 the expression " for the time being " in the definition of " residential premises " refers to the time of the assessment of the annual value. It appears also to be a reasonable view that the character of the premises that is contemplated in the regulation is its character at that time. In this view of the meaning of the regulation the same premises cannot be brought within or excepted from the operation of the Act from time to time by a mere change in the purpose for which they are occupied. It seems unlikely that the legislature intended the effect of enabling landlords or tenants of any class of premises to subject them to or exclude them from the operation of the Act at will; but this effect has been achieved in respect of some premises if the learned district judge's construction of the enactment is its true construction. In my opinion the premises in question are excepted premises if they were residential premises in November, 1941.

It is contended for the 1st and 2nd defendants respondent that the evidence does not support the finding that the premises were residential premises in November, 1941. The evidence is that they had been let in 1940 to the proprietor of a school known as the Pembroke Academy, who used them from that time until the time of the air raid in April, 1942, as a hostel for the students and a place of residence for the warden of the hostel and some of the teachers. The business of the Academy itself was carried on at another place, known as Duff House, until those premises were requisitioned for military purposes at the end of 1941, and it was then moved to Knowsley in January, 1942. It is contended that according to this evidence the main use to which the premises were put in November, 1941, was the running of a hostel, and that therefore they were not occupied " wholly or mainly for the purposes of residence " and were not " residential premises ". The case of *Hepponstall v. Corea* [1], decided by Swan J. and L. M. D. de Silva J., was cited as supporting this contention. It was laid down in that case that in order to decide whether premises are residential premises " the character of the physical occupation of the premises judged by the use to which they are put by the tenant must be examined ", and that " if the character of the occupation so judged is ' wholly or mainly for residential purposes ' then the premises are ' residential premises ' ". It was held that judged by this test premises taken on rent for the purpose of running a boarding house and used by the tenant for that purpose and also to serve as a residence for herself were business premises. " There can be no doubt that the main use to which they were put was the running of a hostel. It is clear therefore that the premises were not occupied ' wholly or mainly

[1] *(1952) 54 N. L. R. 214.*

for residential purposes' and therefore they are not 'residential premises' within the meaning of the ordinance. Consequently they are 'business premises'."

In an earlier case, *Standard Vacuum Oil Co. v. Jayasuriya* [1], decided by Gratiaen J. and myself, we held that certain premises taken on rent by the Standard Vacuum Oil Company and used by it mainly as a residence for its manager, although some portion of its business was transacted there, were residential premises, notwithstanding that it was for the purposes of the company's business that it provided the manager with a residence. This case was distinguished in *Hepponstall v. Corea* [2] on the ground that in the latter case "business was conducted on the premises, and was the main purpose of its occupation by the respondent" (the tenant), while in the former "only a very small amount of business was conducted on the premises and the main purpose of occupation was residence". It seems to me that in the present case the whole purpose of the occupation of Knowsley in November, 1941, was residence, although it was for the purposes of the tenant's business at Duff House that he provided this place of residence for some of the students and the staff, and no part of the tenant's business was carried on at Knowsley. In my opinion, therefore, judged by the test laid down in *Hepponstall v. Corea* [2], the premises in question were residential premises in November, 1941.

For these reasons I hold that the premises are excepted premises. The appeal must be allowed and judgment entered for the plaintiff as prayed for in the plaint. The three defendants must pay the plaintiff's costs in the district court, and the 1st and 2nd defendants his costs of appeal. I would, direct, however, that writ of ejectment shall not be issued until the lapse of three months.

FERNANDO A.J.—

Having had the advantage of reading the judgment of my brother Gunasekara, I agree with the conclusions he has reached upon both appeals.

The Rent Restriction Act imposes various prohibitions and restrictions; for example, the amount of rent chargeable is regulated (Sections 3, 4, 5 & 6), the right of ejectment is controlled (Section 13), sub-letting without consent is prohibited (Section 9), advances and premia are forbidden (Section 8), the family of a deceased tenant is given the option to continue the tenancy (Section 18). But each of these different protective provisions only applies to "*premises to which the Act applies*", an expression the meaning of which the Legislature has taken care to explain at the very commencement of the Act because the question whether any particular premises are governed by the Act is a fundamental one. The effect of sub-section (4) of Section 2 is that all premises in Colombo are premises to which the Act applies unless they are excepted premises, and sub-section (5) directs us to the Regulations in the Schedule, *which shall apply* for the purpose of determining whether any premises are excepted.

[1] *(1951) 53 N. L. R. 22.* [2] *(1952) 54 N. L. R. 214.*

In the relevant regulation 2 in the Schedule, there occur two expressions, " annual value " and " residential premises ", which are assigned their meanings by regulation 1 and by Section 27 respectively, and when regulation 2 comes to be interpreted, those two expressions have to be given the meanings so assigned. Regulation 2 therefore (when considered in relation to premises in Colombo which existed in 1941) in effect provides that *any premises shall be excepted premises if the annual value thereof as assessed in November, 1941, in the case of premises for the time being occupied for the purposes of residence, exceeds Rs. 2,000.* In this context, there is no period of time mentioned, other than the period " November, 1941 ", to which the words " for the time being " can with reason be related ; and if any premises were at that time " residential " (as the learned Judge has found in this case), and if their annual value at that time exceeded Rs. 2,000, they are excepted premises and cannot be said to be premises to which the Act applies, whether for the purpose of Section 13 or of any other provision of the Act. This mode of construction is not merely the natural and logical one in a statute where the Legislature has assigned a meaning to an expression ; it has also the advantage that the important question whether the Act applies to any particular premises is determined with certainty by regulation 2, and does not receive different answers according as a Court or a landlord or a tenant is considering different sections of the Act. If the question is affirmatively answered by regulation 2, then the whole of the control is prima facie applicable ; if negatively, then the " control " is altogether inapplicable. As to this matter, I wish only to add that my opinion does not take account of the amendment of the Schedule to the Act which was passed at a time subsequent to the date of the institution of the present action.

The other question which we have to decide is whether premises which were occupied as a hostel or residence for persons in the employment of the tenant were premises for the time being " occupied wholly or mainly for the purposes of residence ". I agree with my brother that the test is the physical character of the occupation.

The Legislature has not in reality differentiated between *residential purposes* and *business purposes* ; the relevant definitions pose only the question whether the premises are occupied for the purposes of residence, and if not they are to be regarded as business premises whether or not they are actually business premises. Nor is the Legislature concerned with the character of the tenant's occupation. In my view therefore, the only issue to be determined is whether in fact persons actually " reside " (in the ordinary connotation of the word) in the premises or in the majority of the rooms which it comprises. If such is the case, the premises are residential within the meaning of the Act, and the circumstances in which the residents come to reside in the premises and their contractual relationships, if any, with the tenant, do not alter the character which the premises acquire by reason that persons reside there.

Appeal No. 201 dismissed.

Appeal No. 202 allowed.