1958 *Present:* **Sansoni, J., and H. N. G. Fernando, J.**

D. A. SENANAYAKE, Appellant, *and* THE URBAN COUNCIL, GAMPAHA, Respondent

S. C. 818—D. C. Gampaha, 5,039

Rent Restriction Act, No. 29 of 1948—Section 6 (1) (b)—Permitted increases of rent—Distinction between improvements and repairs.

A test by which an improvement may be distinguished from a repair within the meaning of section 6 (1) (*b*) of the Rent Restriction Act is: "If the work which is done is the provision of something new for the benefit of the occupier, that is properly speaking an improvement; but if it is only the replacement of something already there, which has become dilapidated or worn-out, then albeit that it is a replacement by its modern equivalent, it comes within the category of repairs and not improvements".

APPEAL from a judgment of the District Court, Gampaha.

Colvin R. de Silva, with *C. G. Weeramantry*, *M. L. de Silva*, *E. B. Vannitamby* and *H. Ismail*, for the defendant-appellant.

H. Wanigatunga, with *R. D. B. Jayasekera*, for the plaintiff-respondent.

Cur. adv. vult.

October 27, 1958. SANSONI, J.—

The plaintiff Council took on rent certain premises from the defendant to serve as its office at an agreed rent of Rs. 75 a month. It now sues the defendant to recover a sum of Rs. 842/88 being the difference between the agreed rent which was paid to the defendant and what it claims to

have been the authorised rent of Rs. 38/88. The defendant in his answer pleaded, among other defences, that he had not received from the plaintiff anything in excess of what he was entitled to recover, and that the plaintiff has failed, when computing the authorised rent, to take into account the value of the improvements effected to the premises since 1941.

The substantial question we have to determine is whether any increase of the authorised rent was permitted in terms of section 6 (1) (*b*) of the Rent Restriction Act, No. 29 of 1948, which reads : " Where the landlord of any premises has, since the date by reference to which the standard rent of the premises is determined for the purposes of this Act, incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the premises (not including expenditure on decoration or repairs), the standard rent per annum may be increased by an amount calculated at a rate not exceeding six per centum of the amount so expended ". The case for the defendant was that a sum of Rs. 15,000 approximately had been spent by him in 1943 in improving the premises. The work done on the house is said to have consisted of replacing rafters and rafters on the roof and tiling it where it was thatched ; fixing gutters, because the thatched roof needed no gutters unlike a tiled roof ; fixing a ceiling where there was no ceiling ; and cementing the floor which was not cemented except for the floor of the hall. The garden which was unfenced before was also said to have been improved by the erection of a barbed-wire fence on wooden posts, and the erection of a gate. Finally, the level of the garden was raised with gravel in order to prevent it getting water-logged. There are certain other items of work such as new doors and windows, and the plastering and whitewashing of the walls, but these items are so clearly in the nature of repairs that I need not refer to them again. According to the writing D3 which contains various items of work and their cost, these particular repairs would not have accounted for more than a sum of Rs. 1,500.

It would have been better if the learned District Judge had found on the facts what items had been done or not done, and what he would have allowed in respect of those items which had been done. I gather from a reading of his judgment that he was prepared to hold that approximately Rs. 15,000 had been expended, and since he does not reject any particular item it seems to me that he has accepted the defendant's case to the extent of holding that work costing about Rs. 15,000 was done. The only question for decision is how much of that work is " improvements " and how much " repairs ". Rejecting as I do the items relating to the doors and windows, plastering and white-washing which totalled about Rs. 1,500 I have to consider whether any of the remaining items can be considered to be an improvement.

The question of the distinction to be drawn between improvements and repairs has been considered by the Court of Appeal in England and the most recent authority to which we have been referred is *Morcam v. Campbell-Johnson* [1]. The statutory provision considered in that case

[1] *(1956) 1 Q. B. 106.*

was section 2 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act of 1920 which reads: "The amount by which the increased rent of a dwelling-house to which this Act applies may exceed the standard rent shall, subject to the provisions of this Act, be as follows, that is to say: (*a*) Where the landlord has since September 2nd, 1939, incurred, or hereafter incurs, expenditure on the improvement or structural alteration of the dwelling-house (not including expenditure on decoration or repairs) an amount calculated at a rate per annum not exceeding eight per cent. of the amount so expended".

Three items of work had been done on a block of flats and the question was whether they came within the description of improvements or repairs. The first item was the drainage system. In place of a 60-year old two-pipe system which had come to the end of its life, the landlord installed a modern one-pipe system. The second item concerned the cold water supply. In place of six worn-out water tanks, one large new water tank was installed. The third item was the lowering of the area which had been made higher than the damp course when the flats were built. This resulted in water collecting in the area and percolating into the walls, and in order to avoid this trouble the area was lowered. In considering these matters the Court attempted to lay down a test by which an improvement may be distinguished from a repair and Denning L.J. said: "It seems to me that the test, so far as one can give any test in these matters, is this: If the work which is done is the provision of something new for the benefit of the occupier, that is properly speaking an improvement; but if it is only the replacement of something already there, which has become dilapidated or worn-out, then albeit that it is a replacement by its modern equivalent, it comes within the category of repairs and not improvements". The Court held that all three items fell within the category of repairs. There was no difficulty with regard to the drainage system and the cold water supply. The more modern substitute merely took the place of what had stood there for many years and needed replacement. The lowering of the area was a more difficult question, and as I understand the judgments of Denning L.J. and Hodson L.J. this item was also disallowed because, under the section, the expenditure has to be on the improvement or structural alteration *of the dwelling-house*, and the area was outside the body of the flats. In other respects I think the judges took the view that the work was an improvement. Such a view would be in accord with an earlier judgment of the Court of Appeal in *Wates v. Rowland*[1] where a new concrete bed put into a house before a new floor was laid on it was held to be an improvement.

Applying the same test and reasoning I would say that the erection of a new barbed-wire fence on wooden posts and a new gate with concrete posts, where there was no fence or gate before, is clearly an improvement. Again, putting in a new ceiling and cementing floors, where there was no ceiling or cemented floors before, also amounts to an improvement. With regard to the raising of the level of the ground also I do not consider that a repair, and it may be equated to the lowering of the area in the case

[1] *(1952) 2 Q. B. 12.*

cited. It is not a case of something dilapidated or worn-out being replaced ; instead of a compound which got water-logged the tenant had the benefit of one which was free from that defect. Lastly, in place of the roof which was previously a cadjan roof a new tiled roof with new timbers was built. It is not that the roof was defective or needed repairs ; nor can it be said that the tiled roof is the modern equivalent of a cadjan roof, for they have co-existed for many years.

I think therefore that the learned Judge was in error in characterising these items of work as repairs. Since an expenditure of Rs. 7,500 would have sufficed to justify the increase of rent from Rs. 39/88 to Rs. 75 the defendant has proved that the increase was permitted by the Act.

I would therefore set aside the judgment appealed from and dismiss the plaintiff's action with costs in both Courts.

H. N. G. FERNANDO, J.—I agree.

Appeal allowed.