1956 *Present :* T. S. Fernando, J.

K. N. MEERA, Appellant, *and* C. D. P. W. JAYAWARDENE, Respondent

S. C. 243—C. R. Colombo, 54,839

Landlord and tenant—Advance rent received by landlord—Right of tenant to set off unpaid rent—" Receipt " of money—Rent Restriction Act, No. 29 of 1948, ss. 8, 13 (1).

Where a landlord accepts from his tenant a sum of money in advance to be accounted as and for rent, the tenant is entitled to set off unpaid rent against the sum so held by the landlord.

David Appuhamy v. Subramaniam (1953) 55 N. L. R. 397, distinguished.

A settlement in account may be equivalent to a receipt of a sum of money, although no money may pass.

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

C. Ranganathan, with *S. C. Crossette-Thambiah,* for the defendant-appellant.

H. W. Jayewardene, Q. C., with *D. R. P. Goonetilleke,* for the plaintiff-respondent.

Cur. adv. vult.

[1] *(1955) 56 N. L. R. 514 at 517–518.*

September 25, 1956. T. S. FERNANDO, J.—

The facts giving rise to this appeal may be stated as follows :—

The plaintiff and her husband (since deceased) leased to the defendant the premises, the subject of this action, for a period of five years commencing from 1st April 1946 at a monthly rental of Rs. 125, each month's rent to be payable before the 10th day of the month following. On the day of the execution of the lease the defendant paid to his lessors a sum of Rs. 750 and it was a term of the lease that this sum was " to be taken and accounted as and for the rent of the last six months of the term " of the lease, i.e. 1st October 1950 to 31st March 1951. In spite of this term of the lease the sum of Rs. 750 referred to above was not accounted for as rent for the last six months of the lease, and the defendant paid and the lessors accepted rent for each month during the entire period of the lease so that on 31st March 1951 there remained in the hands of the lessors the sum of Rs. 750 which had been accepted by them to be accounted as rent.

No fresh lease was drawn up after the end of March 1951, but the defendant continued in occupation of the premises paying for each month the same rent of Rs. 125 before the 10th day of the month following. The learned Commissioner of Requests has inferred from the evidence—and this inference is not canvassed by the plaintiff—that there was an understanding between the parties that the sum of Rs. 750 should continue to remain as an advance to be set off against the last six months of occupation of the premises by the plaintiff. In August 1951 one of the lessors, the husband of the plaintiff, died but the defendant continued to pay to the plaintiff each month's rent as usual until he had paid the rent for April 1954. The sums payable as rental in respect of the months of May, June and July not having been received by the plaintiff, she caused to be sent to the defendant a letter of demand dated 4th August 1954 demanding the payment of rent for May to July 1954 and also requesting the defendant to quit the premises on or before 30th September 1954. The defendant thereupon sent a cheque for Rs. 375 which was accepted without prejudice to any rights of the plaintiff to pursue her legal remedy to obtain the ejectment of the defendant. This action was instituted in October 1954 on the allegation that the defendant was in arrears of rent for May, June and July 1954. The defendant pleaded in his answer that he was not in arrears within the meaning of section 13 (1) of the Rent Restriction Act, No. 29 of 1948 as at the time he became the tenant of the plaintiff the latter held in her hands a sum of Rs. 750 as six months' rent in advance, and that out of this sum he was in any event entitled to set off at least a sum of Rs. 375 against rent payable by him. The learned Commissioner held that the defendant was in arrears of rent for the month of May 1954 and that the plaintiff was therefore entitled to a decree ordering the ejectment of the defendant.

In reaching this finding the learned Commissioner has purported to apply to this case the decision of this Court in the case of *David Appuhamy v. Subramaniam*[1] in which it was held that, where a monthly tenant *deposits* a sum of money with the landlord on the agreement that it is to be held by the landlord and paid back to the tenant when the premises

[1] *(1953) 55 N. L. R. 397.*

are handed over to him, it is not open to the tenant to set off the rent, as it fell due each month, against the deposit held by the landlord. If he does so set off, he is liable to be held in arrears of rent. This decision is clearly inapplicable to the facts in the case now under appeal as we are not here concerned with a sum of money *agreed to be received as a deposit* but with a sum of money accepted to be accounted as and for rent. An examination of the judgment of Pulle J. in *David Appuhamy v. Subramaniam* (*supra*) will reveal that there were two sums of money which the tenant claimed could be used for setting off the rent, viz.—(i) a sum of money being two months' rent in advance, and (ii) a sum of Rs. 500 being a deposit to be returned on the vacation of the premises, and that the learned Judge only stated that the rent could not be set off against the sum agreed on as a deposit which was to be returned to the tenant when the premises were handed back by the tenant and that he refrained from saying anything which could be interpreted as meaning that the rent could not be set off against the sum received as advance rent.

Even if the legal position at the date of the death of the plaintiff's husband in August 1951 was that a half of the sum of Rs. 750 which up to that date was in the hands of the lessors had to be treated as a debt owing from the estate of the plaintiff's husband to the defendant, it is undeniable that the plaintiff continued to hold the other half, viz., a sum of Rs. 375, on the same terms as were set out in the lease of 1946. Mr. Jayewardene argued that on the expiry of the lease there was no money of the defendant with the plaintiff, and all that existed was a debt owing from the plaintiff to the defendant which could have been recovered by action. This argument is not entitled to weight in the face of the finding of the learned Commissioner that on the 1st of April 1951 and again in August 1951 the parties had agreed that the sum of Rs. 750 should continue to remain as advance rent to be applied as stated in the written lease which had expired.

In support of an argument that there could be no set-off as the sum of Rs. 750 or Rs. 375 (whichever may be the sum considered) was never received by the plaintiff within the meaning of section 8 of the Rent Restriction Act, Mr. Jayewardene next contended that, there being no physical passing of money in April or August 1951, an agreement between the plaintiff and the defendant that money in the hands of the plaintiff should continue in her hands does not constitute a receipt of the money by the plaintiff. I am unable to agree that I should take such a narrow and technical view as that which Mr. Jayewardene invites me to take. If I were to accede to his argument I would be transforming the true nature of the agreement reached between the parties. On the other hand, applying some of the tests indicated in the following observations of Lord Lindley in *Gresham Life Assurance Society, Ltd. v. Bishop*[1] to determine whether there has been a *receipt* of a particular sum of money, I find no difficulty in agreeing with Mr. Ranganathan that a sum of Rs. 375 was "received" by the plaintiff from the defendant:—

> "First, let us consider what is meant by the receipt of a sum of money. My Lords, I agree with the Court of Appeal that a sum of

[1] *L. R.* (1902) *A. C.* 296.

money may be received in more ways than one, e.g. by the transfer of a coin or a negotiable instrument or other document which represents and produces coin, and is treated as such by business men. Even a settlement in account may be equivalent to a receipt of a sum of money, although no money may pass; and I am not myself prepared to say that what amongst business men is equivalent to a receipt of a sum of money is not a receipt within the meaning of the statute which Your Lordships have to interpret."

As a final argument, Mr. Jayewardene contended that the defendant, not having pleaded a set-off is not entitled to defeat the plaintiff's claim. In regard to this, it must be observed that the plea of set-off has been taken in the answer, although not specifically raised as an issue, and it seems to me is embraced in Issue No. 1 which raised the question whether rent was in arrear for May 1954. But even if no plea of set-off had been taken, as the finding of the learned Commissioner is that the sum of Rs. 750 was accepted " as and for rent ", the defendant can invoke in his aid the judgment of this Court in *Wijemanne & Co., Ltd. v. Fernando*[1] in the course of which Soertsz S. P. J. dealing with an argument that the tenant had not pleaded a set-off or a counter claim and was, consequently, debarred from asking that the overpaid amount be applied in payment of the rent alleged to be still due, said that the answer to that argument is that the overpaid amount in the hands of the respondent overpaid as *rent*, and not for any other purpose, extinguished *pro tanto* by operation of law, the rent as it fell due. In other words, the law secured for the appellant what, in other circumstances, the appellant would have had to achieve for himself. The principle so enunciated by Soertsz S. P. J. has been followed recently by De Silva J. in the case of *Munidasa v. Richard Appuhamy*[2]. This argument also therefore fails.

For the reasons set out above, I am of opinion that the defendant was not in arrears of rent and, therefore, the appeal must be allowed and the plaintiff's action dismissed with costs in both courts.

Appeal allowed.