1970 *Present :* Samerawickrame, J.

A. M. YAHIYA, Appellant, *and* G. K. LIONEL PERERA, Respondent

S. C. 132/67—C. R. Colombo, 92662/R. E.

Action—Claim of plaintiff rendered void by subsequent legislation before date of trial—Claim in reconvention—Power of Court to adjudicate upon the claim in reconvention—Civil Procedure Code, ss. 75 (c), 817—Rent Restriction (Amendment) Act, No. 12 of 1966, s. 4 (1) (a)—Whether it has the effect of nullifying claims in reconvention also.

Where an action in a Court of Requests involves a valid claim by the plaintiff and also a claim in reconvention by the defendant but, between the date of institution of the action and the date of trial, the claim of the plaintiff is rendered null and void retrospectively by Parliamentary legislation, the Court may nevertheless proceed to adjudicate upon the claim in reconvention. In such a case it cannot be contended that " where there is no convention there can be no reconvention ".

Accordingly, the provision in the Rent Restriction (Amendment) Act No. 12 of 1966 declaring actions for ejectment null and void retrospectively does not have the effect of nullifying a claim in reconvention for the recovery of a sum of money paid by the defendant in excess of the rent due.

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

B. A. R. Candappa, for the defendant-appellant.

W. S. Weerasooria, for the plaintiff-respondent.

Cur. adv. vult.

July 22, 1970. SAMERAWICKRAME, J.—

On 15th January, 1966, the plaintiff-respondent filed this action for the ejectment of the defendant-appellant from premises which are subject to rent control and for consequential damages. On 10th March, 1966, the defendant filed answer in which he made a claim in reconvention for a sum of Rs. 624/77 being rent in excess of the authorised rent recovered by the plaintiff.

At the trial counsel for the plaintiff stated that in view of the provisions of the Rent Restriction (Amendment) Act, No. 12 of 1966, he was unable to proceed with the action. Counsel for the defendant invited the court to proceed with the claim in reconvention. It was contended on behalf of the plaintiff that as the action was void the claim in reconvention could not be adjudicated upon. The learned Commissioner of Requests rejected this contention. He further held with the defendant on the facts but stated, " I am satisfied on the evidence that the rent agreed on between the parties from December, 1963 was Rs. 35 a month, and that there is no evidence placed before Court that there has been a determination of the authorised rent of the premises at Rs. 16·35, although it was agreed at the trial that the authorised rent of the premises was Rs. 16·35. In the absence of the date of determination of the authorised rent I hold that the plaintiff was entitled to recover a sum of Rs. 35 per month which was the rent agreed upon between the parties. "

The defendant has appealed against the dismissal of his claim in reconvention and learned counsel for the defendant-appellant submitted that the learned Commissioner had erred in thinking that there had been a determination of the authorised rental of these premises. There was some evidence that the authorised rental of the adjoining premises which are comparable had been determined and that as a result of that the defendant realised that he had been charged rent in excess of the authorised rent. It is only in special cases that the authorised rental depends upon a determination by the Rent Control Board and in the case of other premises the authorised rental exists quite apart from any determination. There is no evidence to suggest that these premises were of such a kind that a determination by the Rent Control Board was necessary to fix the authorised rent. Moreover, counsel had agreed at the time of raising issues that the authorised rent was Rs. 16·35.

Learned counsel for the plaintiff-respondent was not in a position to support the reasons given by the learned Commissioner for dismissing the claim in reconvention. He sought to support his order on the ground that had been decided against the respondent by the learned Commissioner. He submitted that as the action had been declared void by the legislature, no further proceedings could have been had in it and that accordingly, the claim in reconvention did not arise for determination.

He submitted that where there was no valid claim by the plaintiff, there could, by the very nature of things, be no claim in reconvention. He relied on a dictum in *Veeravaku v. Supramaniam* [1] :—

> "It would appear from a passage in Voet's Commentaries on the Pandects (5, 1.86) that there are some applications to which a claim in reconvention cannot be put forward by the defendant. He is of opinion that these are probably cases in which something is required which is not properly the subject of an action, where, as he puts it, *imploratio non est actionis loco*, where the petition is not in the nature of an action ; and he adds precision to this opinion by saying *cum reconventio precedentem requirat conventionem, conventio autem judicialis non sit, ubi nihil ab adversario petitum est, nullave actio instituta*, i.e., where there is no convention there can be no reconvention."

He submitted further that if the Court had no jurisdiction to hear the action, it had no jurisdiction to hear a part of it.

In terms of the law as it stood at the time the plaint and the answer containing the claim in reconvention were filed there was a valid action and a valid claim in reconvention. Section 75 (*e*) of the Civil Procedure Code states, *inter alia* :—

> " A claim in reconvention duly set up in the answer shall have the same effect as a plaint in a cross action so as to enable the court to pronounce a final judgment in the same action both on the original and on the cross claim. "

There is a special provision in respect of the consequence of neglect to plead a claim in reconvention in the Court of Requests. Section 817 provides :—

> " Where the defendant in an action for breach of contract neglects to interpose a claim in reconvention consisting of a cause of action in his favour for a like cause, which might have been allowed to him at the trial of the action, he and every person deriving title thereto through or from him are for ever thereafter precluded from maintaining an action to recover the same. "

Parties-defendants who have put forward claims in reconvention are therefore entitled to look for redress in the determination of such claims and would obviously not have filed other actions in respect of the same claim. If the provision in Act 12 of 1966, nullifying actions for ejectment have the effect of nullifying claims in reconvention also, such parties defendants will find that their claims could no longer be prosecuted because in very many cases they would be barred by prescription. It would be an unfortunate result and one not intended by the legislature if tenants who have filed claims in reconvention are deprived of all relief in respect of their lawful claims by reason of the provision declaring actions for ejectment null and void.

[1] *(1902) 6 N. L. R. 52 at 53.*

Section 4 (1) (*a*) of Act 12 of 1966 reads :—

"The provisions of sections 2 and 3 of this Act shall be deemed to have come into operation on the twentieth day of July, 1962, and accordingly—

(*a*) any action which was instituted on or after that date and before the date of commencement of this Act for the ejectment of a tenant from any premises to which the principal Act as amended by this Act applies shall, if such action is pending on the date of commencement of this Act, be deemed at all times to have been and to be null and void, "

Where an action is *deemed* to have been null and void, it means tha though the action was not in fact void, it is to be taken as null and void. It is therefore necessary to decide to what extent and for what purpose the action is to be deemed to have been null and void. It is significant that the provision does not say that it is to be deemed "for all purposes" to have been null and void.

In construing a provision which is retrospective in operation it is necessary to bear in mind that it must not be given greater retrospective operation than is necessary. Maxwell on the Interpretation of Statutes, 10th Edition, at page 214 states :—

"A statute is not to be construed to have a greater retrospective operation than its language renders necessary. Even in construing a section which is to a certain extent retrospective, the maxim ought to be borne in mind as applicable whenever the line is reached at which the words of the section cease to be plain. "

The provision in s. 4 (1) (*a*) of Act 12 of 1966 plainly provides that an action for ejectment is to be taken to have been null and void. Had the plaintiff claimed in addition to ejectment and consequential relief, a further claim, e.g., for rent due, his action for the rent would not be rendered null and void by this provision. *A fortiorari*, it appears to me that a claim in reconvention duly and validly made by a defendant at the time his answer was filed is not retrospectively made null and void by reason of this provision for this provision does not make it plain and clear that such a claim in reconvention is to be deemed to be void. I am therefore of the view that the learned Commissioner correctly rejected the contention that there could be no proceedings in respect of the claim in reconvention.

The reasons given by the learned Commissioner for dismissing the claim in reconvention cannot be supported. In his petition of appeal the defendant-appellant has restricted his claim to Rs. 400·97. I set aside the order of the learned Commissioner of Requests dismissing the claim in reconvention and direct that judgment be entered for the defendant-appellant in a sum of Rs. 400·97. He will also be entitled to costs in both Courts as in action for recovery of that sum.

Appeal allowed.