1951 *Present:* **Nagalingam J.**

PERERA, Appellant, *and* PERERA, Respondent.

S. C. 155—C. R. Colombo, 29,684

Rent Restriction Act—Authorised rent—Inference from plaintiff's evidence.

The authorised rent of premises under the Rent Restriction Act is presumed to be the rent at which the plaintiff himself avers the premises had been let.

[1] *(1923) 5 Rec.170.* [2] *(1945) 46 N. L. R. 273.*

[3] *(1946) 47 N. L. R. 107.*

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

H. W. Jayewardene, for the plaintiff appellant.

D. S. Jayawickreme, for the defendant respondent.

October 24, 1951. NAGALINGAM J.—

The plaintiff, a landlord, sued the defendant for rent and ejectment, the latter relief being based on the footing that the defendant had been in arrears of rent for more than one month after it had fallen due. The plaintiff in paragraph 5 of his plaint expressly stated that he was referring to the arrears of the defendant in regard to his rent as the arrears fell within the meaning of section 13 (1) (*a*) of the Rent Restriction Ordinance, No. 29 of 1948. It must therefore, in view of the plaintiff's own averment, follow that the premises were one to which the Rent Restriction Ordinance applied. The defendant, on the other hand, asserted that the true rent at which the premises had been let to him was not at Rs. 12.50 as alleged by the plaintiff but at Rs. 22.50. The learned Commissioner after hearing evidence came to the conclusion, and I see no reason to differ from him, that the plaintiff had charged and recovered rent at Rs. 22.50 a month and later at Rs. 25 during a certain period as more fully set out in his judgment. There was no specific evidence before the learned Commissioner as to what the authorised rent of these premises was. In that difficulty which he experienced the learned Commissioner gave relief to the defendant by applying a principle of the Roman-Dutch Law based upon the doctrine of *condictio indebiti*. But it may be rather difficult to say that that doctrine applies in full or can be made to apply in full to the facts of the present case. Mr. Jayewickreme for the respondent, however, has cited the case of *Keane v. Clarke*[1] a judgment of the Court of Appeal, where under similar circumstances the Court drew the inference that the evidence given of the terms of letting at a date subsequent to the coming into operation of the statute could very well be regarded as the standard rent in that case and on that basis the Court gave relief to the tenant. I see no reason why a similar principle should not be applied in our Courts and, applying a similar principle, I would hold that the authorised rent, in view of the plaintiff's own allegation, must be presumed to be Rs. 12.50 a month. If it was anything higher than Rs. 12.50, it certainly was up to the plaintiff to have led evidence to prove that that was so. In the absence of any such evidence one has to proceed on the basis that Rs. 12.50 was the authorised rent. If one takes that view, then the Commissioner's finding can be sustained, though not put on the same ground as he has put it. I would therefore affirm the judgment of the learned Commissioner but rest it on the basis that the authorised rental of the premises was Rs. 12.50 a month.

The appeal fails and it is dismissed with costs.

Appeal dismissed.

[1] *(1951) A. E. R. 187.*