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

THANGADORAI NADAR *et al.*, Appellants, *and*
G. H. **ESMAILJEE** *et al.*, Respondents

S. C. 393—D. C. Colombo, 22,990M

Rent Restriction Act—Payment of rent by cheque—Return of cheque after it becomes "stale"—Effect on question of rent being "in arrear"—Tender of rent.

When a landlord accepts payment of rent by cheque but does not present the cheque at the bank and returns it to the tenant after it becomes "stale", the failure of the tenant to make a fresh payment within a reasonable time after the stale cheque is returned does not have the effect of a forfeiture of the tenant's statutory protection. Rent for any particular month is not "in arrear" within the meaning of the Rent Restriction if it was paid *or tendered* by the tenant within the stipulated period.

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *H. W. Tambiah* and *S. Sharvananda*, for the defendants appellants.

N. E. Weerasooria, Q.C., with *V. A. Kandiah* and *V. Arulambalam*, for the plaintiffs respondents.

Cur. adv. vult.

July 20, 1954. GRATIAEN J.—

This is an appeal against a decree for the ejectment of two statutory tenants (who are partners) from business premises protected by the Rent Restriction Act, No. 29 of 1948. The grounds for ejectment upheld by the learned District Judge were :

(*a*) that their rent had been "in arrears for one month after it became due", and

(*b*) that the premises were "reasonably required" by the landlords for the purposes of their own business.

In my opinion, neither of these allegations was established at the trial.

The practice during the relevant period was for the tenants to pay rent by cheque at the end of each quarter. Accordingly on 4th July, 1949 they forwarded a cheque to the landlords' proctor in payment of rent for April, May and June. Similar cheques were forwarded on 28th September, 1949 (for July, August and September) and on 24th January, 1950 (for October, November and December).

Throughout this period, an earlier tenancy action was pending between the landlords and one of the tenants. For that reason, the cheques referred to were accepted "without prejudice to the rights of the plaintiffs in these proceedings". This was no doubt a wise precaution to take but, instead of presenting the cheques for payment without unreasonable delay as they should have done, the landlords retained them in their proctor's custody without reference to the tenants until the conclusion of the trial.

The earlier action was dismissed early in February, 1950 owing to an irregularity resulting from non-joinder of a necessary party. Immediately thereafter, the cheques dated 28th September, 1949 and 24th January, 1950 were belatedly presented for payment and were realised. The earlier cheque dated 4th July, 1949 was however not presented to the bank because the landlords' proctor assumed (perhaps correctly) that it had become "stale" during the long period when it had been retained in his hands. This cheque was returned to the tenants on 23rd February, 1950 without any request that a fresh cheque should be forwarded in place of it. Four days later, a formal notice was sent to the tenants terminating the contractual tenancy with effect from 31st March 1950. The landlords no doubt hoped that the tenants (whose ability and anxiety to avoid the statutory consequences of falling into arrears of rent cannot be disputed) would make some tactical blunder and thereby lose the protection of the Act. This (it is now submitted) is precisely what did occur. No further payments were made until the present action was instituted in May, 1950.

The tenants are admittedly also entitled to credit in a sum of Rs. 269·51 representing rent previously paid in excess of the authorised rate, and a further sum of Rs. 400 paid by way of advance at the commencement of the contract of tenancy in 1945. These sums were more than sufficient to discharge the tenants' liability in respect of rent for the months of January, February and March, 1950. The learned judge therefore correctly took the view that the tenants could only have lost their statutory protection "*if they are not to be given credit for the sum of Rs. 600 which was the amount of the cheque dated 4th July, 1949 sent to the landlords for the months of April, May and June, 1949*". This vital issue was answered in favour of the landlords in the Court below. For the reasons which I shall now set out, it should clearly have been decided the other way.

Apart from their stipulation that its acceptance should not be regarded as a waiver of any rights in the pending action, the receipt of the cheque dated 4th July, 1949 against rent for April, May and June, 1949 was unconditional. The payees' decision not to present this cheque for payment before it became stale could not therefore retrospectively convert the tenants into defaulters within the meaning of the Act, as it is not suggested that the cheque would have been dishonoured if presented for payment within a reasonable time. It would indeed be a remarkable result if a landlord, by resorting to the simple device of postponing presentation of his tenant's cheque until the bank refused to honour it (for no reason than that it had become stale), could deprive the tenant of his statutory protection.

Mr. Weerasooria invited us to hold that the tenants at least became defaulters when they failed to make a fresh payment within a reasonable time after the stale cheque was returned to them in February, 1950. I agree that the debt was perhaps revived. But the revival of indebtedness must not be confused with the totally independent issue as to the alleged forfeiture of statutory protection. Rent for any particular month is not "in arrear" within the meaning of the Act if it was paid or *tendered*

by the tenant within the stipulated period. Let us take the hypothetical case where a valid tender of rent had without justification been rejected by the landlord. In such a situation, the debt remains unsatisfied, but the tenant's statutory protection is not thereby forfeited.

If the tenants were not "in arrears of rent" for April, May or June, 1949 within the meaning of the Act, they could not be held to have fallen into arrears in respect of any subsequent months. The landlords had no right to appropriate any payment (specifically accepted to cover a later period) towards satisfaction of a revived debt in respect of an earlier period.

There remains the question whether the premises were "reasonably required" by the landlords for their own business. The documentary and oral evidence convincingly established that, if they succeeded in this action, it was not their intention to occupy the premises in their present condition but to demolish the buildings and embark upon a more ambitious building programme in accordance with plans previously approved by the local authority. The third proviso to section 13 (1) of the Act precludes the Court from sanctioning such a proposal. *Deerasooriya v. Masilamany* [1].

For these reasons, I take the view that the landlords have not established their claim to eject their tenants. The judgment under appeal must therefore be set aside, and, in place of the decree passed in the lower Court, a fresh decree must be entered ordering the defendants to pay to the plaintiffs a sum of Rs. 594·78 which is admittedly due as rent up to 31st May, 1950. With regard to rents payable after that date, the defendants are entitled to credit in all sums subsequently deposited to the credit of the action. Subject to this, the plaintiffs' action must be dismissed with costs in both courts.

FERNANDO A.J.—I agree.

Judgment set aside.