1954 *Present :* **Nagalingam A.C.J., Pulle J. and Swan J.**

M. M. DIAS, Appellant, *and* P. VINCENT GOMES, Respondent

S. C. 28—C. R. Colombo, 39,638

Rent Restriction Act, No. 29 of 1948—Section 13 (1) (a)—Rent in arrears—Tender of it before institution of action—Landlord's right to eject tenant.

By section 13 (1) of the Rent Restriction Act :—

" Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises to which this Act applies shall be instituted in or entertained by any Court, unless the Board, on the application of the landlord, has in writing authorised the institution of such action or proceedings :

Provided, however, that the authorisation of the Board shall not be necessary, and no application for such authorisation may be entertained by the Board, in any case where—

(*a*) rent has been in arrear for one month after it has become due ; or
(*b*) . . . . "

Held, that once a tenant has been in arrear of rent for one month after it has become due he forfeits the protection given to him by the Act against being ejected. He cannot regain the protection by the mere act of tendering the arrears before the institution of the action.

George v. Richard (1948) 50 N. L. R. 128, overruled.

APPEAL from a judgment of the Court of Requests, Colombo. This appeal was referred to a Bench of three Judges in view of certain conflicting decisions.

H. W. Tambiah, with *V. Ratnasabapathy*, for the plaintiff appellant.—This appeal raises the question as to the interpretation of section 13 (1) (*a*) of the Rent Restriction Act of 1948. The phrase " has been in arrear for one month after it became due " denotes a period of time when the rent has been in arrear. The two termini of this period are (1) the time when rent became due and (2) one month after it became due. Once the tenant is in arrear for the period there is a vested right in the landlord to bring an action which can only be taken away by waiver. The sub-section does not state that the tenant has been in arrear till action is brought.

George v. Richard [1] purported to follow *Bird v. Hildage* [2]. Section 13 (1) (*a*) of our Act is entirely different from the corresponding English statute. Under the English Act a discretion is given to the Judge to dismiss the action of the landlord or to stay proceedings against a tenant even where the tenant has been in arrear up to the date of action. See *Gill v. Luck* [3], *Crate v. Miller* [4], *Dellenty v. Pellow* [5]. Under our statute no discretion is given to Court when tenant is in arrears. Further, according to the wording in the English statute no action shall be brought

[1] *(1948) 50 N. L. R. 128.*
[2] *(1947) 2 A. E. R. 7.*
[3] *(1924) 93 L. J. K. B. 60.*
[4] *(1947) 2 A. E. R. 47.*
[5] *(1951) 2 A. E. R. 716.*

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when the tenant has been in arrears. *Bird v. Hildage* correctly interpreted the English statute, but it cannot be relied upon when the wording of our statute is different from that of the English statute.

Section 7 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 and 11 Geo. 5, c. 17) states, " It shall not be lawful for any mortgagee under a mortgage to which the Act applies so long as interest at the rate permitted under the Act is paid and is not more than 21 days in arrear . . . . to call in his mortgage or to take any steps for exercising any right of foreclosure ". Where the mortgagor was in arrear it was held that he was not entitled to any relief—*Evans v. Horner* [1]; *Nichols et al. v. Walters* [2]. By analogy a right vests in the landlord to bring an action when the tenant has been in arrear for one month after it became due. When the conditions set out in the proviso to section 13 of the Rent Act of 1948 are satisfied the authorisation of the Board is no more necessary to bring the action. The procedural bar to bring an action is taken away. The paraphrase given in *George v. Richards* (*supra*) will be contrary to the rule of interpretation that when the words of a statute are plain the Courts should not add to or paraphrase a statute. The words in a proviso cannot be taken into account to alter the operative part of the main section. See *Craies on Statute Law*. In interpreting a statute there is a presumption against tautology. Every word must be given a meaning. The phrase " after it became due " must be given a meaning. It denotes the period of time the tenant has to be in arrear. The interpretation given in *Fernando v. Samaraweera* [3] and *Suyambulingam Chettiar v. Pechchi Muttu Chettiar* [4] is correct.

It is not necessary to terminate the contract by notice at the time the authorisation of the Board is asked for. After getting the authorisation of the Board one can terminate the contract by notice and then bring the action. This meets the argument that a landlord can only have a vested right to bring the action after termination of the contract of notice.

Walter Jayawardena, Crown Counsel, with *G. F. Sethukavaler, Crown Counsel,* as *amicus curiae.*—The questions for decision are :—

(*a*) whether the phrase " has been in arrear " in paragraph (*a*) of the proviso to Section 13 means " has been and is in arrear " ; and

(*b*) if the phrase has this meaning, whether the condition of being in arrears must be satisfied as at the date of filing the plaint.

Ex Parte Kinning [5] and *Re Storie* [6], referred to in *George v. Richard* [7], merely show that the words " has been " are *capable,* in certain contexts, of denoting a fact continuing to subsist up to the occurrence of a certain event or the performance of some act. Whether they do bear this meaning or not, in a particular context, is a matter to be decided by examining the language of the relevant statute.

[1] *(1925) 1 Ch. 177.*
[2] *(1953) 2 A. E. R. 1517.*
[3] *(1951) 52 N. L. R. 278.*
[4] *(1952) 53 N. L. R. 382.*
[5] *16 L. J. Q. B. 257.*
[6] *2 D. G. F. and J. 529.*
[7] *(1948) 50 N. L. R. 128.*

Assuming that in paragraph (*a*) of the proviso to Section 13 the words " has been in arrear " bear the meaning referred to, the *event*, up to the occurrence of which the condition of being in arrears must subsist, is not the institution of the action. The words " after it has become due " (also taken as denoting a continuous fact) are inappropriate if the event contemplated is the institution of the action. If the " event " is, however, taken to be the accrual of the right for the landlord to sue or the incidence of the corresponding disability of the tenant, each word in the paragraph can be given its natural and appropriate meaning. Had the paragraph been in the form of the paraphrase set out in *George v. Richard*, the " event " naturally suggested by the words would have been the institution of the action. This paraphrase, however, is misleading since the proviso, in form, deals with circumstances in which the authorisation of the Board is unnecessary for instituting an action. The idea of instituting an action, though vital, is only implied, so far as the form of the proviso is concerned ; and the form of language employed is important when questions of interpretation arise. *Bird v. Hildage* cited in *George v. Richard* might have been an authority if paragraph (*c*) of the proviso was to be considered ; but it is not relevant to a consideration of paragraph (*a*).

Assuming it is correct in law that a landlord must terminate the tenancy by due notice before taking advantage of paragraph (*a*), that matter does not displace the view of this paragraph adopted in *Fernando v. Samaraweera* [1], viz., that a right accrues to the landlord to evict his tenant when the conditions in paragraph (*a*) of the proviso are fulfilled. The right can be regarded as accruing subject to the implied condition that the requirements of the general law are complied with.

The cases cited by Counsel for the appellant may not be authorities on the point to be considered but they furnish examples of statutory provisions similar in form being regarded by Courts as imposing disabilities.

Cur. adv. vult.

March 26, 1954. NAGALINGAM A.C.J.—

The question that has been referred to a Bench of three Judges is one of great public importance involving, as it does, the determination of the question whether tenancy terminates by reason of the non-payment by a tenant of the rent for a period of over one month after the date on which it fell due. On a question of such importance that affects the community at large it is far more essential that the law should be settled with clarity and precision rather than even that what may be regarded, according to one school of thought, as the proper view should be permitted to gain currency and foster a spirit of uncertainty and doubt.

I have had the advantage of reading the judgment of my brother Pulle J., with which I understand my brother Swan J. agrees, and I am

[1] *(1951) 52 N. L. R. 278.*

prepared to adopt the reasoning and the conclusion set out therein with a view to set at rest once and for all the controversy in respect of the point of law raised on this appeal.

I agree to the order proposed by my brother.

PULLE J.—

This appeal has been referred to a Bench of three Judges in view of conflicting interpretations of the proviso to section 13 (1) of the Rent Restriction Act, No. 29 of 1948,—corresponding to section 8 (*a*) of the Rent Restriction Ordinance, No. 60 of 1942,—which provides that the authorisation of a Rent Control Board is not necessary for the institution of an action in ejectment where " rent has been in arrear for one month after it has become due ".

In the case of *George v. Richard*[1] my Lord, the Acting Chief Justice, held on the following facts that where the arrears of rent were tendered before the commencement of the action in ejectment the landlord was not entitled to maintain it in view of section 8 (*a*) of Ordinance No. 60 of 1942. The tenant was in arrears for the months of January to April, 1947, and a letter dated 24th April, 1947, was sent to him by the landlord claiming the arrears of rent and terminating the tenancy with effect from 31st May, 1947. In response to the letter the tenant sent a money order to the landlord who declined to accept it. Another money order was sent on the 10th June, 1947. This too was not accepted and the action in ejectment was filed on the 19th June, 1947. It was assumed for the purpose of deciding the case that rent should be paid at the beginning of each month. Therefore, at the date of institution the landlord had refused to accept rent for five months in respect of the contractual tenancy and for one month of the statutory tenancy.

In *Fernando v. Samaraweera*[2] Basnayake J. said,

" Once the tenant commits a breach of any one of his statutory obligations the bar against the institution of proceedings in ejectment imposed by section 13 of the Act is removed and there is nothing the ' statutory tenant ' can do to regain his immunity from eviction. His rights and obligations are governed by the statute and immediately he violates its provisions the consequences of such violation begin to flow. For instance if he is in arrear of rent for one month after it has become due the landlord becomes free to institute proceedings in ejectment. He cannot prevent his eviction by process of law by tendering the rent out of time either before or after the institution of legal proceedings. The consequences of the failure to observe the obligations imposed by the statute cannot be avoided by doing late what should have been done in time. "

In *Suyambulingam et al. v. Pechchi Muttu Chettyar*[3] H. A. de Silva J. held that, where the tenant is in arrear of rent for one month after it has become due and the tenancy is thereafter duly terminated, the

[1] *(1948) 50 N. L. R. 128.* [2] *(1950) 52 N. L. R. 278.*

[3] *(1951) 53 N. L. R. 382.*

landlord's right to eject the tenant is not taken away by tender of the arrears before the action is instituted. The learned Judge preferred the view expressed in *Fernando v. Samaraweera* [1].

In the present case which was filed on 1st July, 1952, it was alleged that the tenant was in arrears from 1st September, 1951. A previous case, C. R. Colombo, No. 37469, had been filed to recover rent due for the months of September, 1951, to January, 1952, but ejectment was not asked for. Pending that suit the tenant was given notice on the 8th May, 1952, to quit and deliver possession on the 30th June, 1952. In case No. 37469 the tenant filed his answer on the 3rd June, 1952, and along with the answer he deposited in Court Rs. 80·11 being the arrears of rent up to 31st May, 1952. As stated earlier the present action was filed on the 1st July, 1952. The rent for June was payable on or before the 10th July, 1952.

Learned Counsel for the landlord sought to argue that the deposit in case No. 37469 of the arrears up to the end of May, 1952, did not constitute a valid tender but, as the point was not raised in the petition of appeal, he had to confine himself solely to the submission that once a tenant has been in arrear of rent for one month after it has become due he forfeits the protection given to him by the Act against being ejected. The problems raised by this submission are by no means easy of solution and although the tenant was not represented by counsel we have had the assistance of Mr. Walter Jayawardena, Senior Crown Counsel, to whom we are indebted for appearing as *amicus curiae*.

The decision in *George v. Richard* [2] was partly based on the case of *Bird v. Hildage* [3] in which it was held that where rent had been tendered before the commencement of an action in ejectment it could not be said that " rent lawfully due from the tenant has not been paid " within the meaning of paragraph (*a*) of the First Schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, (23 & 24 Geo. 5, c. 32). The view was expressed in *George v. Richard* [2] that although the words " lawfully due " do not occur in the section of the Ordinance of 1942 corresponding to proviso (*a*) to section 13 (1) of the Rent Restriction Act yet the notion underlying these words is implicit in proviso (*a*). On this premise the learned Judge went on to develop the argument as follows :

" Now a landlord under our law cannot institute an action for recovery of rent unless it remains unpaid at date of institution of action. If rent is in arrear, a cause of action accrues to the landlord to sue for it but if, before he files or can file action, rent is tendered or paid to him the cause of action is extinguished, and with it the right to sue. Hence at the date of institution of action the plaintiff must be in a position to show that not only had a cause of action accrued to him prior to institution of action but that the cause of action continued to subsist even at the date of institution. "

With all respect I am unable to agree—and here I speak naturally with some difference—that the notion underlying the words in the English

[1] *(1950) 52 N. L. R. 278.*

[2] *(1948) 50 N. L. R. 128.*

[3] *(1947) 2 All E. R. 7.*

Act is implicit in proviso (*a*). I venture to say that basically they are different. The expression " lawfully due " when spoken of rent due at any given point of time is inextricably associated with the idea of an action being instituted to recover the same because nothing could be said to be lawfully due unless enforceable by action. While, undoubtedly, it is true that " if rent is in arrear, a cause of action accrues to the landlord to sue for it, but if before he files or can file action, rent is tendered or paid to him, the cause of action is extinguished and with it the right to sue " I cannot assent to the proposition that any disability to maintain an action for *rent* by reason of a valid tender before action has necessarily the effect of restoring the tenant to the status of irremovability—which is the protection afforded by the Act—if in fact he lost that protection the moment he was in arrears of rent beyond one month after it became due. There may be circumstances attending the acceptance of rent before action from which it may be inferred that a new contract of tenancy came into existence which would confer on the tenant *de novo* all the benefits of the Act. In that event an action for ejectment will have to be determined on the basis of the new tenancy and the fact that during an earlier period of a contractual or statutory tenancy the tenant was in arrears beyond a month would become irrelevant.

This brings me to the final question whether the protection conferred on a tenant by the Act is taken away, if he allows himself to be in arrears for over a month. It seems to me that being in arrears is a condition or state in which the tenant finds himself by his own lapse and upon that condition or state supervening the tenant places himself outside the limits of the protection and it is for him to show how thereafter he regained that protection. I fail to see how he regains the protection only by the act of tendering the arrears before the institution of the action. The Rent Restriction Act has made heavy inroads into the common law rights of the landlord and I do not see anything oppressive in interpreting proviso (*a*) to mean that, having regard to the new and extensive rights conferred on a tenant, it is a condition precedent to the continued protection of the Act against eviction that the tenant shall pay the rent not necessarily as it falls due but at least within a month thereafter. The opinion that I have just expressed is supported by the case of *Evans v. Horner*[1] relied on by the appellant. That case arose out of an originating summons to have a mortgage security enforced by foreclosure or sale on the ground that interest at the rate permitted by the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. v, c. 17) had not been paid and was in arrear for more than twenty-one days. Under section 7 of the Act if rent was paid within the specified time of twenty-one days it was not lawful for the mortgagee to call in his mortgage or to take any steps for exercising any right of foreclosure or sale or for otherwise enforcing his security or for recovering the principal money thereby secured. Interest was due on 19th May, 1924, and more than twenty-one days later, namely, on the 11th June the originating summons was issued. On 14th June the mortgagor sent a cheque for the interest, which was accepted by the

[1] *(1925) 1 Ch. 177.*

mortgagee " on account generally ". While I do not overlook the fact that the interest was paid after the originating summons was issued and served, the judgment of Russell J. is in terms wide. At page 178 he states,

" In my opinion the section only suspends the rights of the mortgagee during one continuous period, which lasts so long as conditions (*a*), (*b*) and (*c*) are complied with, and that when once these conditions are broken a subsequent compliance with them does not revive the protection given by the section. "

I do not think it is necessary to make reference to a number of subsidiary topics argued in the course of the appeal. For the reasons which I have given I would set aside the decree under appeal and enter judgment for plaintiff for the rent due at the date of action, damages and ejectment. The appellant will be entitled to his costs in both courts.

SWAN J.—I agree.

Appeal allowed.