

**1945***Present: Jayatileke J.*

EDMUND, Appellant, and JAYAWARDENE, Respondent.

*34—C. R. Gampola, 6,437.**Rent restriction—Increase of rent—Crucial date—Ordinance No. 60 of 1942, s. 3 (2).*

The words of section 3 (2) of the Rent Restriction Ordinance, No. 60 of 1942, with regard to an increase of rent after the day the Ordinance came into operation are to be construed with reference to the date when the increase comes into effect and not the date when an agreement for the increase was made.

**A** PPEAL from a judgment of the Commissioner of Requests, Gampola.

S. Nadesan for the defendant, appellant.

H. W. Jayawardene for the plaintiff, respondent.

*Cur. adv. vult.*

June 29, 1945. JAYETILEKE J.—

The plaintiff was the landlord and the defendant the tenant of the premises No. 88, Ambagamuwa road, Gampola. These premises had been held by the defendant from the plaintiff on an agreement of tenancy (P 1) dated December 15, 1942, at a rental of Rs. 23 a month commencing from January 1, 1943. The plaintiff alleged that the defendant paid no rent in respect of the premises from July to October, 1943, and that he vacated the same without giving a month's notice. He claimed a sum of Rs. 92 as rent in respect thereof giving the defendant credit for a sum of Rs. 23 which he had received in advance. In his defence, the defendant alleged that the standard rent of the premises was Rs. 15, and that the plaintiff had, in contravention of the provisions of section 3 of the Rent Restriction Ordinance, No. 60 of 1942, unlawfully recovered from him rent at Rs. 23 a month. He claimed in reconvention a sum of Rs. 12 which he had overpaid to the plaintiff. Five issues were framed at the trial. The learned Commissioner decided to try issue No. 5 as a preliminary issue. The words of the issue are:—

5. "Can this court inquire into the question as to what is the 'standard rent' of the premises."

He decided that issue against the defendant on the ground that the question was one for the Assessment Board and not for the Court, and entered judgment for the plaintiff as prayed for with costs. Counsel for the plaintiff very frankly admitted that he could not support the judgment on that ground but he urged that the plaintiff had a vested cause of action and that the Rent Restriction Ordinance should not be given a retrospective operation so as to take it away. There can be no question that an Ordinance is not to be interpreted so as to have a retrospective operation unless it contains clear and express words to that effect, or the object, subject-matter, or context shows that such was its object. (*Beale's Cardinal Rules of Legal Interpretation*, 3rd Edition, page 468.) But it seems to me that the question whether the legislature contemplated to legislate *ex post facto* and to give the Rent Restriction Ordinance, No. 60 of 1942, the effect of depriving a landlord of a right which he had at the time it was passed does not arise in this case, because in my view, the plaintiff did not increase the rent before the ordinance came into operation. Whether the material date to be considered in deciding the question as to when an increase of rent is made is the date when the increase is agreed upon, or the date when the increase becomes effective, has been considered in several cases under section 4 (1) of the Rent Restriction Act of England of 1919, and section 1 of the Act of 1920, which correspond with section 3 of our Ordinance. Section 4 (1) reads:—

"Where the rent of a dwelling-house to which this Act applies . . . has been since December 25, 1918, or is hereafter

increased, and such increase would, apart from this Act have been recoverable, then, if the increased rent exceeded by more than 10 per centum the standard rent . . . . the amount of such excess above the said 10 per centum . . . . shall notwithstanding any agreement to the contrary, be irrecoverable from the tenant."

In *Goldsmith v. Orr*<sup>1</sup> the tenant agreed in October, 1918, to pay £65 per annum for the year ending March 25, 1920. The landlord claimed rent at that rate for the June and September quarters, 1919. The tenant, however, said that the landlord was only entitled to rent at £55 per annum—namely 10 per cent. above the standard rent of £50. In the course of his judgment Bailhache J. said:—

"The whole question was whether the standard rent of £50 had been increased to £65 since December 25, 1918. That depended upon, whether one had to regard the date of the agreement in October, 1918, or the date when the increase of rent came into effect—namely March 25, 1919. The Act spoke of rent increased subsequently to December 25, 1918, and not of an agreement to increase the rent. In my opinion this rent has been increased since December, 1918, and one had to take that date and not the date of the agreement."

This judgment was followed in *Raikes v. Ogle and another*<sup>2</sup> and *W. H. Brakspear and Sons Ltd. v. Barton*<sup>3</sup>.

Section 3 (2) of our Ordinance provides that it shall not be lawful for the landlord of any premises to which the Ordinance applies to increase the rent of such premises in respect of any period commencing on or after the appointed date to an amount in excess of the authorised rent. The language of this section appears to be much stronger than that of the corresponding section of the English Act. The section prohibits the increase of rent from the day the Ordinance came into operation, namely, December 26, 1942. There is a further provision in section 14 that a person who contravenes any provision of the Ordinance shall be guilty of an offence. According to the authorities I have referred to the material date in this case is January 1, 1943, when the increase became effective and not December 15, 1942, when the increase was agreed upon. The plaintiff was not, in my opinion, entitled to recover from the defendant anything more than the standard rent under section 3 (1) of the Ordinance. I would accordingly set aside the judgment appealed from and send the case back for the trial of the issues that have not been decided. The parties will be at liberty to adduce further evidence on those issues if they desire to do so. The appellant is entitled to the costs of appeal. All other costs will be in the discretion of the trial judge.

*Appeal allowed.*

<sup>1</sup> 36 T. L. R. 286.

<sup>2</sup> (1921) 1 K. B. D. 576.

<sup>3</sup> (1924) 2 K. B. D. 88.