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

MRS. C. PREMARATNE, Appellant, *and* M. K. OLIVER DE SILVA, Respondent

S. C. 204—C. R. Galle, 29,123

Rent Restriction Act—Authorised rent—Mode of proof.

Defendant, who was sued for ejectment under the Rent Restriction Act on the ground that rent was in arrear, pleaded that rent was not in arrear considering the fact that he had been paying rent at a higher rate than the authorised rent. He stated that he had paid rent at the rate of Rs. 18 and even Rs. 20 per month when, in fact, the authorised rent of the premises (which were situated within the Municipality of Galle) was only Rs. 12.50. The plaintiff stated that the agreed rent was Rs. 20.

Held, that the burden was on the defendant to prove the amount of the authorised rent by the production of the Municipal assessment register, and secondary evidence could only have been admitted if the best evidence was for some reason not available.

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

H. W. Jayewardene, with *D. R. P. Goonetilleke*, for the plaintiff appellant.

M. C. Abeywardene, for the defendant respondent.

Cur. adv. vult.

June 1, 1954. FERNANDO A.J.—

In this case the landlord of certain premises gave notice to his tenant on 23rd November, 1951, terminating the tenancy of the premises on the ground that rent was in arrear from August, 1951. There was evidence that the defendant had in January, 1952, paid the arrears of rent, and on the question whether the acceptance of this payment precluded the landlord from subsequently instituting an action for ejectment

the learned Commissioner held with the plaintiff. The recent decision of three judges of this Court in *Dias v. Vincent Gomes* [1] makes it clear that the learned Commissioner decided that question correctly.

At the trial the defendant also took up the position that in fact the rent had not been in arrear as alleged by the landlord. The defendant's position was that, although he had paid rent from 1947 onwards at the rate of Rs. 18 and even Rs. 20 per month, in fact the authorised rent of the premises was only Rs. 12·50 per month. The plaintiff stated in evidence that the agreed rent was Rs. 20 per month, but made no attempt to prove the actual authorised rent, and in fact neither the plaintiff nor her son who was apparently in charge of the rent collections from his mother's tenants could make any definite statement as to the amount of the authorised rent of the premises in question. Although the plaintiff had issued summons on the Municipality to produce the assessment register, the plaintiff's case was closed without a Municipal Officer being called at all.

The defendant also made no attempt to prove the authorised rent. His evidence was that the authorised rent in 1946 was Rs. 12·50 per month, but that he did not know the current authorised rent. The learned Commissioner held that on that evidence the authorised rent should be presumed to be Rs. 12·50 per month. He relied on the case of *Perera v. Perera* [2]. That case was one where the plaintiff had filed his action on the basis that the rent was Rs. 12·50 per month, whereas the defendant alleged that he had been asked to pay an excessive rent namely Rs. 22·50 per month. In effect this Court there decided that, in the absence of specific evidence as to what was the authorised rent, the Court would presume that the amount averred by the plaintiff himself to be the rent, i.e., Rs. 12·50, was in fact the authorised rent.

In that case as well as in the judgment of the learned Commissioner in the present case, reference was made to the case of *Keane v. Clark* [3], as a justification for thus acting upon the statement of the plaintiff himself. In fact however the decision in *Keane v. Clark* does not appear to be strictly applicable because of an important difference between the relevant provisions of the English law and of the Ceylon law respectively. Under the English law the "standard rent" as it is there described does not mean an amount calculated by reference to a rating assessment; the standard rent is either—

(*a*) the rent actually paid at the time of the coming into operation of the relevant rent statute, if the premises were let at that time, or

(*b*) if the premises were not let at the time aforesaid then the rent at which they were most recently let prior to that time, or

(*c*) if they were not shown to be let at or prior to the time of the coming into operation of the statute, then the rent at which they were first let after the coming into operation.

[1] (*1954*) *55 N. L. R. 337.* [2] (*1951*) *53 N. L. R. 359.*
[3] (*1951*) *2 A. E. R. 187.*

In *Keane v. Clark* the premises were not shown to have been let at or before the time when the relevant statute came into operation; and upon a statement of the plaintiff himself that when he bought the premises the rent was 22*s*. 6*d*. the Court accepted the position that the letting of which the plaintiff spoke was the proper letting by reference to which the standard rent had to be determined. Since under the English law the rating assessment is not the determining factor for calculation of the standard rent, no question arose in the English case as to the need for producing the assessment register as the best evidence of the matters required to be proved, but in view of the definition of " standard rent " in the Ceylon Act, the assessment register would in the case of premises situated in a Municipality or Urban area be the best evidence.

In the present case therefore the amount of the authorised rent of the premises which are situated within the Municipality of Galle should have been proved by production of the Municipal assessment register, and secondary evidence could only have been admitted if the best evidence was for some reason not available; but no such reason has been put forward.

In any event the present case is distinguishable from the case of *Perera v. Perera* (*supra*) because there the Court construed the plaintiff's averment as to the amount of the rent to be an admission that that amount was the authorised rent. In the present case the plaintiff never averred nor admitted the rent to be Rs. 12·50, and on the contrary his position both in the plaint and in his evidence is that the rent was Rs. 20.

In my opinion therefore the learned Commissioner was mistaken in thinking that on a bare assertion by the defendant that the authorised rent in 1946 was Rs. 12·50 per month, it could be presumed that the authorised rent at the end of 1951 was still Rs. 12·50 per month.

One of the issues framed at the trial in this case was as follows :—

> " Is the defendant in arrears of rent within the meaning of the Rent Restriction Act ? "

Counsel for the respondent in appeal attempted to argue that the plaintiff by raising this issue took upon himself the burden not only of proving that rent had not been paid but also of proving that the rent which he demanded was the proper authorised rent. I regret that I see no substance in this argument; it is obvious that the object of framing that issue was to raise the question whether the defendant was in arrear despite his subsequent payment.

For these reasons I would allow the appeal and remit the case to the learned Commissioner for decree to be entered against the defendant for ejectment and for payment by him to the plaintiff of the amount of the rent now in arrear. For the purpose of determining this amount the rent per month must be taken to be Rs. 20. The plaintiff is entitled to the costs of this appeal as well as of the proceedings before the Commissioner.

Appeal allowed.