1946 *Present :* Dias J.

DE SILVA, Appellant, *and* SIRIWARDENE, Respondent.

162—C. R. Colombo, 99,325.

Contract of tenancy—Rent recoverable—Retrospective effect of Rent Restriction Ordinance—Computation of standard rent—Proclamation in Gazette*—Court can take judicial notice of it—Rent Restriction Ordinance, No. 60 of 1942, ss. 3, 4, 5, 17.*

Section 3 of the Rent Restriction Ordinance makes it unlawful for a landlord to recover rent in excess of the authorised rent although the contract of tenancy was entered into before the Rent Restriction Ordinance became law and a higher rent was agreed upon. Section 17 of the Ordinance affords no relief to the landlord in such a case.

Where the tenancy is one in which the landlord pays the rates the "standard rent" is determined by adding the annual value of the premises and the amount of rates leviable for the year and dividing the result by twelve.

A Court can take judicial notice of the date on which the Rent Restriction Ordinance was made applicable to a particular locality by Proclamation.

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

H. W. Jayewardene, for the plaintiff, appellant.

P. Navaratnarajah, for the defendant, respondent.

Cur. adv. vult.

November 1, 1946. DIAS J.—

The appellant sued the respondent to recover rent for part of May and for the months of June to August, 1945, aggregating Rs. 58·00, in respect of premises bearing No. 71, Robert's road, Kalubovila, which he had let to the respondent on a contract of monthly tenancy since September, 1939. He also asked for ejectment and damages on the ground that the respondent was overholding after the tenancy had been determined by notice.

The appellant stated that the rent agreed on from the very commencement of the tenancy was Rs. 15·00 per mensem.

The respondent, in his answer, pleaded that the rent for the period in question had been duly tendered to the plaintiff's proctor who refused to accept the same. He further stated that the Rent Restriction

[1] *(1908) 11 N. L. R. 289.*

Ordinance, No. 60 of 1942, having been proclaimed for this area on February 15, 1943, the "standard rent" for the premises was only Rs. 5·00 per mensem, and not Rs. 15·00. He had overpaid the appellant from February, 1943, to May, 1945, a sum of Rs. 405·00 instead of the sum of Rs. 135·00, thereby paying a sum of Rs. 270·00 in excess of what he was by law bound to pay. Giving the appellant credit for a sum of Rs. 20·00 for the months of June to September, 1945, he claimed in reconvention a refund of Rs. 250·00.

The first question which arises is whether the respondent has proved the date on which the Rent Restriction Ordinance was applied to this locality. Section 2 (1) of the Ordinance provides that the Governor may, from time to time, by Proclamation published in the *Gazette*, declare that the Ordinance shall be in force in any area specified in the Proclamation, and appoint the day on and after which the Ordinance shall be in force in such area.

No evidence of this has been led at the trial, and the relevant *Gazette* has not been produced. It was held in *Jayakodi v. Silva* [1] that a Court is bound to take judicial notice of the date on which an Ordinance has been brought into operation. In *Edirisinghe v. Cassim* [2] it was laid down that a Court could take judicial notice of the date on which a Defence Regulation came into operation. In an old case reported in *Ramanathan (1877) page 10*, it was held that a Proclamation issued by the Governor can be taken judicial notice of without proof. No doubt, this case was decided before the Evidence Ordinance became law, but I fail to see why a Court cannot take judicial notice of a Proclamation issued by the Governor, if it can do so in the case of a Regulation.

I, therefore, allowed the respondent's Counsel to produce the *Gazette* No. 9,084 of February 12, 1943, which shows that the Ordinance was applied to the Mount Lavinia District on February 15, 1946.

The Rent Restriction Ordinance, therefore, began to operate in this area on February 15, 1943.

The next question is whether the respondent has, under sections 4 and 5 of the Ordinance, established what is the "standard rent" for these premises ? This is arrived at by adding the annual value of the premises and the amount of rates leviable for the year and dividing the result by 12—*Wijemanne & Co. v. Fernando* [3].

The respondent has called a clerk of the Dehiwala-Mount Lavinia Urban District Council who produced a certified copy of the assessment register—D2. This shows that the annual value during the relevant period is Rs. 55·00. The rates are not specifically stated, but D2 states that the "monthly rent" is Rs. 5·00. The witness stated that in 1945 the assessor had assessed the premises at Rs. 5·00 a month..

Dealing with this point the Commissioner says in his judgment :—"On reference to D2 . . . . I find that in 1941 the monthly rental is Rs. 4·50 and the annual value Rs. 50·00 and for the years 1942, 1943, and 1944 the monthly rental is assessed at Rs. 5·00 and the annual value Rs. 55·00. Therefore, I find that the plaintiff had recovered from the defendant Rs. 10·00 in excess of the standard rent."

[1] *(1943) 44 N. L. R. 379.* [2] *(1945) 46 N. L. R. 334.*
[3] *(1946) 47 N. L. R. at p. 64.*

The appellant criticises this finding. He submits that in order to ascertain the " standard rent " one must add the annual value and the rates. D2 does not show what the rates leviable are and, in the absence of that factor, the " standard rent " cannot be calculated. The appellant was asked whether he paid the rates, but he was not asked what the amount he paid was. I, therefore, agree with the appellant's contention that the respondent has failed to establish what the standard rent is.

On the question of tender, the Commissioner has held against the appellant who, in his evidence, admitted that although the respondent's proctor remitted money on behalf of the respondent from June, 1945, appellant's proctor refused to accept those rents.

The main question for decision arises on the respondent's claim in reconvention. It is submitted for the appellant that this monthly tenancy began in September, 1939, long before the Rent Restriction Ordinance became law. At that date it was lawful for a landlord and tenant to agree upon a rental of Rs. 15·00 per mensem. An agreement by the parties as to the duration of a tenancy may be for a definite time, or it may continue until a certain event takes place, or run from period to period. In the case of a monthly tenancy it runs from month to month until determined by proper notice to quit [1].

It is therefore urged that anterior to the date when the Rent Restriction Ordinance was proclaimed in this area, there was in existence a *lawful* agreement between the parties under which the respondent had to pay a monthly rental of Rs. 15·00.

It is submitted that even assuming that the " standard rent " for these premises after February, 1943, was Rs. 5·00 per mensem, the Rent Restriction Ordinance cannot retrospectively affect vested lawful rights which had come into existence prior to the Proclamation of the Ordinance in that locality. Even if the Ordinance has a retrospective effect, it is argued that by virtue of section 17 of the enactment the increase of Rs. 10·00 over the standard rent of Rs. 5·00 is saved, because it is in accordance with the terms of a " lawful agreement relating to the tenancy ".

This question arose in a different form in *Edmund v. Jayawardene* [2]. In that case the parties on December 15, 1942, entered into an agreement that the tenant should pay a rental of Rs. 23·00 per mensem commencing from January 1, 1943. The Rent Restriction Ordinance became law on December 26, 1942, so that when the agreement became operative, the Ordinance was in force. At that date the standard rent for the premises in question was only Rs. 15·00 per mensem. It was held that the question whether the Ordinance could affect vested rights did not arise, because on the day the agreement began to operate, the Ordinance was already in force. Jayetileke J. said :—" The section (3 (2)) prohibits the increase of rent from the day the Ordinance came into operation, namely, December 26, 1942 . . . . 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 on ".

[1] *Wille on Landlord & Tenant, pp. 36, 37 ; Tambiah on Landlord & Tenant pp. 31, 32.*

[2] *(1945) 46 N. L. R. 306.*

The plaintiff, in that case, therefore, was held disentitled to recover from the defendant anything more than the standard rent under section 3 (1). The question which arises here did not, therefore, come up for decision in that case.

In the present case, the rental of Rs. 15·00 per mensem was agreed upon and had become effective nearly three years before the Ordinance became law and four years before it was applied to this area

It is a cardinal rule of construction that a statute must be construed strictly and not be extended to interfere with ordinary or vested rights [1] A retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards a matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. Every statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or consideration already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective effect—*Paramasothy v. Suppramanian* [2].

It is another rule of construction that one may consult the preamble of the Statute to find out its meaning and keep its effect within its real scope. *Hull Blyth & Co. v. Valiappa Chettiar* [3]. Nevertheless, where the meaning of the section is plain, it is not possible for the preamble in any wise to qualify the enacting sections of the statute—*Sellathurai v. Kandiah* [4].

The preamble to the Rent Restriction Ordinance says that it is an Ordinance to restrict the increase of rent and to provide for matters incidental to such restriction. "To increase" means to amplify, augment, enlarge or swell. The object of the Legislature, therefore, was to restrict landlords who, by taking advantage of the existing shortage of living accommodation, made inequitable demands for rents from tenants who, by force of necessity, had to accede to such exorbitant demands. Section 3 (1) (*b*) expressly provides for that by enacting that it shall not be lawful for the landlord "to increase the rent of such premises in respect of any such period to an amount in excess of such authorised rent" Clearly this appellant has not done that. There is, however, the effect of section 3 (1) (*a*) to be considered. That subsection in clear and unequivocal language provides that "*it shall not be lawful*" for the landlord "*to demand, receive*, or *recover* as the rent of such premises in respect of any period commencing on or after the appointed date, any amount in excess of the authorised rent of such premises as defined for the purposes of this Ordinance in section 4".

[1] *See Chairman, Municipal Council v. Silva (1917) 4 C. W. R. at p. 152; Marikar v. Marikar (1920) 22 N. L. R. at p. 142.*

[2] *(1938) 39 N. L. R. at p. 532.*

[3] *(1937) 39 N. L. R. at p. 100. See also Natchiappa Chettiar v. Pesonahamy (1937) 39 N. L. R. 377 (Objects and Reasons of statute may be considered), Chow v. de Alwis (1946) 47 N. L. R. at p. 44 (The grounds and cause for making of the statute can be considered). Kuma v. Banda (1920) 21 N. L. R. 294 (Div. Court) (History of statute can be inquired into to ascertain its meaning).*

[4] *(1923) 1 T. L. R. 212.*

The meaning of those words is that where at the date this Ordinance applies, the rent payable under the pre-existing law is in excess of the authorised rent, the landlord was debarred from *demanding*, *receiving*, or *recovering* any amount in excess of the authorised rent. The language of the section being clear, there is no justification to give it a restricted meaning. I, therefore, hold that the contention of the appellant on this point fails.

The next question is whether section 17 permits any escape from this situation ? This question was recently considered in *Wijemanne & Co. v. Fernando* (*supra*). Soertsz J. said :—" The reasoning by which the trial Judge reached his conclusion is clearly fallacious, inasmuch as it ignores the fact that it is not merely a *voluntary* agreement to pay an increased rent that justifies the payment of such a rent by one party and the receipt of it by the other, but a *voluntary* as well as *lawful* agreement "

Section 3 makes it unlawful for the landlord to recover the old rent, and section 14 penalises a breach of that requirement. *Wijemanne & Co. v. Fernando* (*supra*) is binding on me. I therefore hold that section 17 affords no relief to the appellant.

The position then is this : The plaintiff's claim fails and his action must be dismissed. On the claim in reconvention the respondent has failed to prove what the standard rent is. If the aggregate of this sum is in excess of what the respondent has paid the appellant, the latter must refund such excess to the respondent.

I, therefore, affirm the findings of the Commissioner in dismissing the plaintiff's claim. I set aside the order of the Court below in regard to the claim in reconvention, and send the case back for proper proof in terms of the Ordinance as to what is the standard rent for these premises and for adjudication as to what amount, if any, on such computation is due from the appellant to the respondent. There will be no costs of this appeal. All other costs shall be in the discretion of the Commissioner of Requests.

Plaintiff's claim dismissed. Claim in reconvention sent back for further inquiry.