INCREASE OF RENT - SERVICE OF THE JUDGMENT

TWO TECHNICAL OBJECTIONS (AND SEE BELOW) - GENERAL DESCRIPTION OF WORK ALLEGED THAT DECLARATION FALSE AND FRAUDULENT - DATE DECLARATION NOT COMMUNICATED TO DEFENDANT WITHIN 28 DAYS - POWER IN COURT TO EXTEND TIME - PROOF OF FRAUD

HOUSING REPAIRS AND RENTS ACT 1954 - "SATISFACTORY EVIDENCE" DECLARATION WOULD BE A NULLITY -

1 & 5 PERTURY ACT 1911 -

LAZARUS ESTATES LIMITED

1955 2 W.L.R. 102

APPEAL ALLOWED: MORRIS L.J. DISSENTING

NEW TRIAL -

LEAVE TO APPEAL TO H.L. REFUSED

REASONS

TENANT'S NAME INCORRECTLY STATED -

ALLEGED 4/0 WEEKS NOTICE NOT GIVEN -

SIGNATURE: (PRINTED NAME OF COMPANY AFFIXED WITH A RUBBER STAMP -

DECLARATION NOT SPECIFYING ANY OF THE WORKS OF REPAIR WHICH HAD BEEN DONE -

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL.

Royal Courts of Justice,
Tuesday, 24th January, 1956

A

Before
LORD JUSTICE DENNING,
LORD JUSTICE MORRIS and
LORD JUSTICE PARKER.

B

LAZARUS ESTATES LIMITED

-v-

B E A S L E Y.

C

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(Transcript of the Shorthand Notes of The Association of Official Shorthandwriters, Ltd., Room 392, Royal Courts of Justice, and 2, New Square, Lincoln's Inn, London, W.C.2.)

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D MR R. GAVIN FREEMAN (instructed by Mr Robert K. George) appeared on behalf of the Appellant (Defendant).

MR H. HEATHCOTE-WILLIAMS, Q.C. and MR GEORGE DOBRY (instructed by Messrs Chandler & Creeke) appeared on behalf of the Respondents (Plaintiffs).

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J U D G M E N T.

E LORD JUSTICE DENNING: Lazarus Estates Limited own a block of flats called The Palatinate in the New Kent Road. Some years ago they let flat No. 13 to Mr S.C.Beasley. He died and his widow, Mrs Violet Beasley, remained in the flat as statutory tenant at a rent of 18s. 8d. a week. In October, 1954, the landlords

F desired to increase the rent under the new Housing Repairs and Rents Act, 1954. They served three documents each dated 9th October, 1954. The first was a notice of election under section 30(3) of the Act by which they disclaimed any

responsibility for keeping the interior of the premises in good decorative repair. The second was a declaration in which they declared (i) that the conditions justifying an increase were fulfilled (namely, that the premises were in good repair and reasonably fit for occupation), and (ii) that they had done work of repair so as to qualify them for an increase. The third was
A a notice of repairs increase by which they said that the existing rent of 18s. 8d. a week would be increased by 4s. 1d. a week as from the 20th November, 1954. Mrs Beasley has not paid the 4s. 1d. increase of rent. The landlords seek in this action to
B recover it from her.

Two technical objections were taken to the validity of the documents. The first objection was that the documents did not give the correct name of the tenant. They were addressed to "Mr E.G.Brasley, tenant of 13, The Palatinate, S.E.1", whereas they should have been addressed to "Mrs Violet Beasley". This
C misnomer was an obvious mistake which does not affect the validity of the documents. The documents were addressed to "the tenant". Mrs Beasley knew that she was the tenant, and she was not misled in any way. Indeed she admitted in her defence that she was served with the documents. In these circumstances
D she cannot complain of the misdescription.

The second objection was that the prescribed six weeks notice was not given for the increase to operate. The documents were served by post. They bore date the 9th October, 1954, a
E Saturday. If they were posted on that day they would not reach the tenant till 11th October (a Monday), and the increase was to operate from 20th November, 1954, (a Saturday), and would thus be two days short of six weeks. The landlord's agent said, however, that the documents were posted on Wednesday, the 6th.
F October, 1954, not the 9th, and his evidence was not challenged. If this is correct the documents would be delivered on 7th October, 1954, which would give the necessary six weeks. That objection therefore also failed.

No other objections were taken in the County Court to the documents, but I do not wish it to be assumed that this Court approves of them. The statutory forms require the documents to be "signed" by the landlord, but the only signature on these documents (if such it can be called) was a rubber stamp "Lazarus Estates Ltd" without anything to verify it. There was no signature of a secretary or of any person at all on behalf of the company. There was nothing to indicate who affixed the rubber stamp. It has been held in this Court that a private person can sign a document by impressing a rubber stamp with his own facsimile signature on it: see Goodman v. Eban, 1954, 2 Weekly Law Reporter, page 581; but it has not yet been held that a company can sign by its printedname affixed with a rubber stamp. Another point which is very material is that the declaration failed to specify any of the works of repair which had been done. The statutory form requires that a schedule to the declaration should contain a general description of the work done under each heading. The schedule in this case gave no such description. The headings "External Decorative Repairs" and "Internal Decorative Repairs" were bracketed together and put at £266.6s.2d. with nothing to say what was done. The heading "Other repairs wholly for the benefit of dwelling-houses comprised in the building" was put at £300 without a word to say what those repairs were. No objection was taken in the County Court that the declaration was invalid on this ground. We cannot therefore go into it and must approach the case on the footing that that declaration in matters of form complied with the statutory requirements.

I turn, therefore, to the substance of the case. The tenant seeks to say that the declaration was false and fraudulent. She says that it was quite untrue for the landlords to say that they had spent £300 on "other repairs wholly for the benefit of dwelling-houses comprised in the building". She alleges that no such works were carried out at all. The Judge has held,

however, that she cannot go into that matter at all. She had 28 days, he says, in which to do it after the notice was served. As she did not challenge the declaration within that time, he says she cannot now challenge it at all. The tenant appeals to this Court.

In order to justify an increase, the Act requires the landlord to produce "satisfactory evidence" that he has done work of repair to the required value during the appropriate period; see section 23(1)(b); and he must produce it "in accordance with the Second Schedule". Inasmuch as the tenant is the person who is to pay the increase, the landlord must, I think, produce the evidence to the tenant. Apart from the Second Schedule (which I will consider in a moment) the evidence, in order to be satisfactory, ought, I think, to be such as to satisfy the tenant that the required work has been done; or if he takes unreasonable objection to it it ought to be such as would satisfy a reasonable tenant. I do not think it would be satisfactory for the landlord to rely simply on his own word, uncorroborated and not on oath, as evidence that he had done the required work. The tenant could reasonably require the landlord to produce his contemporaneous records, builders' accounts, duly receipted, and so forth.

This brings me to the Second Schedule. This shows that the tenant can insist on satisfactory evidence, at any rate, if he acts within 28 days. Paragraph 4 provides that within 28 days the tenant can apply to the Court to determine whether the required work of repair has been carried out. The landlord must then produce evidence to satisfy the County Court that work of repair was done so as to justify the increase, and unless he does so the notice of increase will be of no effect. The County Court would, I imagine, in most cases insist on the production of records, receipts, and so forth before it was satisfied. Suppose, however, that the tenant lets the 28 days slip by without applying to the County Court. That is what happened in

this case. Mrs Beasley did not comply within the 28 days. The Second Schedule (paragraph 5) then provides that in that case the service of the declaration is itself to be treated as the production of satisfactory evidence that the work specified in it has been done. This means that the landlord can rely on his own
A word (as contained in the declaration) as satisfactory evidence without supporting it with any records, receipts, or so forth. But does it mean that his word cannot be challenged at all, and that it is conclusive for all purposes? I do not think so. Paragraph 5 goes on to state one particular ground on which the
B declaration cannot be challenged, namely, that the value of the work stated in it was insufficient to justify the increase. That seems to import that it is open to the tenant to challenge the declaration on any other ground.

We are in this case concerned only with this point: Can
C the declaration be challenged on the ground that it was false and fraudulent? It can clearly be challenged in the Criminal Courts. The landlord can be taken before the Magistrate and fined £30: see Second Schedule (paragraph 6), or he can be prosecuted on indictment, and (if he is an individual) sent to
D prison: see section 5 of the Perjury Act, 1911. But the landlords argued before us that the declaration cannot be challenged in the Civil Courts at all even though it was false and fraudulent; and that the landlords can recover and keep the increased rent even though it was obtained by fraud. If this argument is
E correct, the landlords would profit greatly from their fraud. The increase in rent would pay the fine many times over. I cannot accede to this argument for a moment. No Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no Order of a Minister,
F can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions

whatsoever: See as to deeds Collins v. Blantern (1767) 1 Smith's Leading Cases, page 406, as to judgments, The Duchess of Kingston's case (1776) 2 Smith's Leading Cases, pages 646, 651, and as to contracts Master v. Miller (1791) 1 Smith's Leading Cases, pages 780, 799. So here I am of opinion that if this
A declaration is proved to have been false and fraudulent it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it.

I would therefore allow this appeal and permit the tenant to raise the defence of fraud. I would just add this. We were
B told that 55 of the tenants in these blocks of flats applied within 28 days to the County Court, and, although there was no hearing in Court, the landlords have not insisted on the increase in those cases; but they seek to insist on the increase as against the other tenants who did not apply within 28 days.
C This failure on the part of the tenants may have been due to ignorance or mistake or some other reasonable excuse. The landlords say that whatever the reason may be once the 28 days have expired the tenants are without remedy, and that there is no power in the Court to extend the time. It is easy to think of
D cases where strict insistence on the 28 days may work hardship and injustice to tenants. If it be correct that there is no power in the Court to extend the time, the sooner the attention of the Legislature is directed to it the better.

LORD JUSTICE MORRIS: A notice, which purported to be a notice in
E the prescribed form, of the intention of the landlords to increase the rent pursuant to the provisions of the Housing Repairs and Rents Act, 1954, was served upon the tenant. The notice was addressed to Mr E.C. Beasley as the tenant of No. 13 The Palatinate. The tenant was, however, Mrs Violet Beasley. She
F had become the tenant after the death of her husband, Mr E.C. Beasley, by the operation of section 12(1)(g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The facts were fully known to her, and the fact that the notice referred to

the "tenant" as being Mr E.C.Beasley, whereas she was the tenant as the successor to her late husband, Mr E.C.Beasley, did not in any way mislead her. She appreciated that a name had been wrongly inserted and wrongly spelt, and she must have understood that notice was being given to her as the tenant of No. 13 The Palatinate that the rent was being increased. Accompanying the notice of increase were (a) a declaration that the conditions justifying an increase of rent were fulfilled, and (b) a declaration in the prescribed form such as is mentioned in the Second Schedule of the Housing Repairs and Rents Act, 1954. There was also a notice of election relating to internal decorative repairs made pursuant to section 30(3) of the Housing Repairs and Rents Act, 1954.

Under the Second Schedule the "relevant date" is the date of service of the notice of increase accompanying the declaration mentioned in section 25(1)(b) of the Act., It is provided by paragraph 4 of the Second Schedule as follows: "Within twenty-eight days after the relevant date the tenant may apply to the county court to determine whether work of repair has been carried out on the dwelling-house during the period specified in the declaration to a value not less than that so specified and whether that value is at least the value required by the foregoing provisions of this Schedule; and if on such an application the court is not satisfied that work of repair has been carried out as aforesaid and that the value specified in the declaration is at least the value required as aforesaid, the court shall certify accordingly and thereupon the notice of increase shall be, and be deemed always to have been, of no effect. (2) Where, on such an application as aforesaid, it is necessary for the court to determine the extent to which the landlord is or was responsible for the repair of the dwelling-house (a) section 32 of this Act shall apply to that determination, and (b) notwithstanding anything in subsection (5) of section 23 of this Act, the determination shall have effect (so far as relevant) for

the purposes of that section". There may therefore, within 28 days, be an application to the County Court (a) to determine whether work of repair has been carried out on the dwelling-house during the period specified in the declaration to a value not less than that so specified, and (b) to determine whether that value is at least the value required by the provisions in paragraphs 1 and 2 of the Schedule (as reduced in consequence of the service of the notice under section 30(3). If on such an application by the tenant the Court is not satisfied both (a) that work of repair has been carried out on the dwelling-house during the period specified in the declaration to a value not less than that so specified, and also (b) that the value specified in the declaration is at least the value required by the provisions of paragraphs 1 and 2 of the Second Schedule, then the Court must certify accordingly. The consequential result of so certifying is that the notice of increase is of no effect and is deemed always to have been of no effect.

In the present case the landlords elected (pursuant to paragraph 7(3) of the Second Schedule) that the value of the work carried out on each of the dwellings contained in a building, which is a block of flats, should be determined by reference to the aggregate value of the work of repair carried out either on the building as a whole or so as to enure solely for the benefit of premises comprised in the building. The declaration of the landlords which bore date the 9th October, 1954, contained the following: "During the period of three years ending on the 30th day of September, 1953, being a period falling within the four years ending with the date of service of the notice of increase, work of repair of the general description specified in the Schedule to this declaration has been carried out on the building comprising the premises or solely for the benefit of the premises or of other dwelling-houses comprised in the building to the value of £566. 6s. 2d. being a value not less than four times the aggregate of the amounts of the statutory repairs deductions

for all the dwelling-houses comprised in the building, namely, £324".

In the Schedule it was shown that the £566. 6s. 2d. was made up by "External Decorative Repairs, £266. 6s. 2d.", and "Other repairs wholly for the benefit of dwelling-houses comprised in the building, £300". The way in which the value of the work carried out on a particular dwelling-house comprised in the block of flats was to be determined from these figures was the way laid down by paragraph 7 (3) (b) of the Second Schedule, which is in these terms: "the value of the work of repair carried out during that period on any of the dwelling-houses comprised in the building shall be taken to be an amount which bears to the amount of the statutory repairs deduction for that dwelling-house the same proportion as the aggregate value mentioned in the last foregoing sub-paragraph bears to the aggregate of the amounts of the statutory repairs deductions for all the dwelling-houses comprised in the building". When Mrs Beasley received the declaration it was open to her, as the notes on the declaration stated, to make application within 28 days to the County Court. She could have challenged the assertion that work of repair had been carried out on the building comprising the premises or solely for the benefit of the premises or of other dwelling-houses comprised in the building. She could have challenged that the work was carried out during the period specified. She could have challenged that the value of the work was £566. 6s. 2d. She could have challenged that the sum of £324 was four times the aggregate of the amounts of the statutory repairs deductions for all the dwelling-houses comprised in the building.

Where there has been service of a notice of increase and of a declaration in the form prescribed in the Second Schedule the provisions of paragraph 5 of the Second Schedule become applicable. They are as follows: "Subject to the provisions of the last foregoing paragraph, the service with a notice of

increase of such a declaration as is required by this Schedule shall be treated for the purposes of subsection (1) of section 23 of this Act as the production of satisfactory evidence that work has been carried out as mentioned in paragraph (b) of that subsection; and subject as aforesaid the validity of a declaration shall not be questioned on the ground that the value of the work of repair stated in the declaration to have been carried out on the dwelling-house is less than that required by the foregoing provisions of this Schedule". Where, therefore, there has been service with a notice of increase of a declaration as required by the Second Schedule, and where there has been no application to the County Court by the tenant within 28 days which has made the notice of increase to be of no effect, two consequences follow:-

1. Such service shall be treated for the purposes of sub-section 1 of section 23 as the production of satisfactory evidence that work has been carried out as mentioned in paragraph (b) of that subsection, and (2) the validity of the declaration is not to be questioned on the ground that the value of the work of repair stated in the declaration is less than is made requisite by the Schedule.

In order to see the effect of these provisions reference must be made to section 23(1) and to section 25(1). Section 23, subsection 1, is as follows: "Where a dwelling-house is let under a controlled tenancy or occupied by a statutory tenant, and the landlord is responsible, wholly or in part, for the repair of the dwelling-house, then, subject to the provisions of this Part of this Act (a) if and so long as the following conditions (hereinafter referred to as 'the conditions justifying an increase of rent') are fulfilled, that is to say (i) that the dwelling-house is in good repair; and (ii) that it is reasonably suitable for occupation having regard to the matters specified in paragraphs (b) to (h) of subsection (1) of section

of this Act; and (b) if in accordance with the Second Schedule to this Act the landlord has produced satisfactory evidence that work of repair to the value specified in that Schedule has been carried out on the dwelling-house during the period so specified, the rent recoverable from the tenant shall be increased by virtue of this subsection so as to exceed by the amount hereinafter mentioned the rent which apart from this subsection would be recoverable from the tenant under the terms of the tenancy or statutory tenancy and having regard to the provisions of any enactment". Section 25, subsection 1, provides: "No sum shall be recoverable by way of repairs increase unless the landlord has served on the tenant or a former tenant of the dwelling-house a notice in the prescribed form of his intention to increase the rent (hereinafter referred to as a 'notice of increase'), accompanied by (a) a declaration in the prescribed form that at the date of service of the notice the conditions justifying an increase of rent were fulfilled; and (b) a declaration in the prescribed form such as is mentioned in the Second Schedule to this Act; and no such sum shall be recoverable before, or in respect of any period before, such date as may be specified in the notice".

In the present case there was a service of a notice of increase. It was accompanied by two declarations purporting to comply respectively with (a) and (b) of section 25, subsection 1. No question has been raised as to the adequacy and correctness of the declaration that at the date of service of the notice the conditions justifying an increase of rent were fulfilled. Neither has it been questioned that there was a declaration in the prescribed form as required by the Second Schedule. It is possible that it might have been. It may be that the sufficiency, of the general description of the work of repair could have been challenged in the action. It may be that the sufficiency as a signature, of having the mere name of a limited company imposed by a rubber stamp might have been challenged in the action. But

as these questions were not raised I express no opinion in regard to them. The only objection that was raised in regard to the form of the notice of increase and the declarations was that which I have mentioned, namely, that the name of Mrs Beasley's late husband, misspelt, was on the notice. That objection I consider
A in the circumstances to be insubstantial and not to invalidate. A point was raised in the action (under section 25(2) of the Act) that the date specified in the notice of increase was earlier than six weeks after the service of the notice; but the finding of fact of the learned Judge as to the date of service disposed
B of this point.

There being no availing point as to the service of the notice and declarations, and no availing point as to the form of the notice and declarations, and there having been no application to the County Court within paragraph 4 of the Second Schedule,
C the result is that "satisfactory evidence" was produced that work of repair to the value specified in the Second Schedule was carried out on the dwelling-house during the specified period. The phrase "satisfactory evidence" is one that by itself might merely denote admissible evidence from which a conclusion might
D be drawn but which might be rebutted or out-balanced by some other evidence. But section 23(1) lays it down that upon the production of the "satisfactory evidence" stipulated the result is to be that "the rent recoverable from the tenant shall be increased". The wording is compelling just as is the wording of
E paragraph 5 of the Second Schedule which provides that, unless the procedure of paragraph 4 is put into operation successfully, the service with the notice of increase of a declaration as required "shall" be treated as the production of "satisfactory evidence".

F The wording of the second part of paragraph 5 is complementary to that in the first part; and both follow the provisions of paragraph 4. As I have mentioned, paragraph 4 provides for an application to the County Court on two matters. The first is

as to whether work of repair has been carried out on the dwelling-house during the period specified in the declaration to a value not less than that so specified. The first part of paragraph 5 then deals with the position when there has been no application. The position is that the service with the notice of
A increase of a declaration as required "shall be treated for the purposes of section 23(1) of this Act as the production of satisfactory evidence that work has been carried out as mentioned in paragraph (b) of that subsection". The other matter that may be the subject of an application to the County Court under para-
B graph 4 is as to whether the value of the work carried out is at least the value required by the provisions in paragraphs 1 and 2 of the Schedule. The second part of paragraph 5 deals with the position where there has been no such application and the provision is that "the validity of a declaration shall not be
C questioned on the ground that the value of the work of repair stated in the declaration to have been carried out on the dwelling-house is less than that required by the foregoing provisions of this Schedule".

In the present case Mrs Beasley by her defence does not
D assert that no work of repair was done; she says that the sum of £566 is wrong: she does not challenge one of the two items which compose that figure, the item of £266, but she challenges the other, the item of £300. She asserts that the work which that figure is said to represent was never done, and she further asserts
E that the landlords knew this and fraudulently presented a figure and an item for which they knew there was no warrant at all. Accordingly she asserts that the notice of increase was not valid because the declaration was false and fraudulent. But Mrs Beasley's remedy was to have applied to the County Court within
F 28 days of the service of the documents upon her. If she had the pithy case that one out of two items of suggested work was not only erroneous but was erroneous for the reason that the item had never existed and had been fraudulently invented, her task

might have been simpler than that ordinarily undertaken by tenants. But whether she would have had an easy task or not, it seems to me that it is just as much too late for her now to attack one figure in the declaration, even though she alleges that the figure was fraudulently inserted, as it would be for her to attack a figure on the ground that it was excessive or was erroneously or mistakenly or carelessly overstated. The matter depends entirely, in my judgment, upon the language of the Act. There was a declaration which in form is not impeached. It cannot, in my view, be said that the declaration is a nullity because one part of its content is assailed. What is said is that one of two items was fraudulently added, and that without the tainted item the remaining figure would be insufficient. But by statute the service of the declaration must, unless the tenant avails himself of his statutory opportunities of putting his landlord to proof, be treated as the production of satisfactory evidence; the words are "shall be treated". Upon such production of satisfactory evidence the rent recoverable from the tenant "shall" be increased. The language appears to me to be compelling. No reason has been given why Mrs Beasley did not make application to the County Court within the prescribed time, and there is no suggestion that she could not have done so, or could not have made any enquiry that she wished. It seems to me that Parliament has imposed a time limit and has not made exceptions to cover any special cases.

We were referred to the provision contained in paragraph 16 of Schedule 1 of the Acquisition of Land (Authorisation Procedure) Act, 1946, and to the decisions in Woollett v. Ministry of Agriculture and Fisheries, (1955, 1 Queen's Bench, page 103), and in Smith v. East Kilbo Rural District Council (1955, 2 All England Reports, page 19). The language of the provisions now under consideration is, however, different, and, in my judgment, the decision in the present case depends solely upon the construction of the language used in the 1954 Act.

For these reasons I agree with the conclusions of the learned Judge and I would dismiss the appeal.

LORD JUSTICE PARKER: By section 23(1) of the Housing Repairs and Rents Act, 1954, where a dwelling-house is occupied by a statutory tenant and the landlord is responsible, wholly or in part, for repairs, then, subject to the provisions of Part II of the Act and to the existence of certain conditions (which are immaterial for the purposes of this case) the rent recoverable from the tenant shall be increased "if in accordance with the Second Schedule to this Act the landlord has produced satisfactory evidence that work of repair to the value specified in that Schedule has been carried out on the dwelling-house during the period so specified".

By section 25(1) it is provided as follows: "No sum shall be recoverable by way of repairs increase unless the landlord has served on the tenant or a former tenant of the dwelling-house a notice in the prescribed form of his intention to increase the rent (hereinafter referred to as a 'notice of increase'), accompanied by (a) a declaration in the prescribed form that at the date of service of the notice the conditions justifying an increase of rent were fulfilled; and (b) a declaration in the prescribed form such as is mentioned in the Second Schedule to this Act; and no such sum shall be recoverable before, or in respect of any period before, such date as may be specified in the notice".

Paragraphs 1 and 2 of the Second Schedule lay down the value of the repairs and the period during which they were carried out which the declaration must show if an increase in rent is to be obtained; and by paragraph 4 (1) it is provided that: "Within twenty-eight days after the relevant date the tenant may apply to the county court to determine whether work of repair has been carried out on the dwelling-house during the period specified in the declaration to a value not less than that so specified and whether that value is at least the value required

by the foregoing provisions of this Schedule; and if on such an application the court is not satisfied that work of repair has been carried out as aforesaid and that the value specified in the declaration is at least the value required as aforesaid, the court shall certify accordingly and thereupon the notice of increase shall be, and be deemed always to have been, of no effect".

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Finally, paragraph 5 provides that: "Subject to the provisions of the last foregoing paragraph, the service with a notice of increase of such a declaration as is required by this Schedule shall be treated for the purposes of subsection (1) of section 23 of this Act as the production of satisfactory evidence that work has been carried out as mentioned in paragraph (b) of that subsection; and subject as aforesaid the validity of a declaration shall not be questioned on the ground that the value of the work of repair stated in the declaration to have been carried out on the dwelling-house is less than that required by the foregoing provisions of this Schedule".

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In the present case a notice of increase and a declaration were served in October, 1954. The latter declared that during the three years ending on the 30th September, 1953, being within four years ending with the date of service of the notice of increase, work of repair had been carried out to the value of £566. 6s. 2d. being as to £266. 6s. 2d. decorative repairs, and as to £300 repairs wholly for the benefit of the dwelling-houses comprised in the building. Since £324 was the aggregate of the amounts of the statutory repairs deductions, an increase of rent was recoverable assuming repairs to that value had been done. The tenant, however, did not within 28 days apply to the County Court to determine whether such work of repair had been carried out. She did nothing, but when sued in these proceedings for the increase of rent she sought to dispute the declaration on the ground that the alleged repairs to the value of £300 had never been executed, and that the declaration to that extent was false, and false to the landlord's knowledge. The answer put forward

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by the landlords was that by reason of paragraph 5 of the Second Schedule a declaration unchallenged within the 28 days becomes 'satisfactory evidence' that the work of repair to the value specified in the declaration has been carried out, and that, accordingly, the increase of rent under section 23(1) automatically followed and could not be disputed.

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For my part I am unable to accept this contention at any rate in its widest form. The declaration to be valid does not merely have to show that the work of repair has been done within the specified period, and that its value is at least the value

B required in order that the increase in rent should operate. The declaration must also be in the prescribed form; and it must be served on the tenant; and the date specified in the notice of increase must not be earlier than six clear weeks after the service of the notice: c.f. section 25, subsections (1), (2)

C and (3). Quite clearly the tenant must be entitled to challenge the validity of the declaration on the ground that one or more of these conditions have not been fulfilled. He cannot do this on an application to the County Court under paragraph 4 of the Second Schedule, and it seems to me that the time to raise such

D a challenge to validity is when sued for the increase in rent.

Accordingly, the question here is whether the tenant is seeking to challenge the validity on some ground other than that repairs had not been carried out during the period specified to a value not less than that specified. That the tenant is seeking

E to challenge the validity on that ground is clear, but is she also seeking to challenge it on another ground? The contention on her behalf is that should she succeed in proving fraud on the part of the landlords the declaration would be a nullity, whereas mere proof that repairs had not been done to the value specified

F would not make the declaration a nullity but would merely make it cease to have effect. Therefore, it is said, the tenant is seeking to do something more than challenge the validity of the declaration on the ground that repairs had not been done to the

value specified. I think that this contention is correct. No doubt it can be said that the real question in any case is whether repairs to the value specified have in fact been done, and that proof of fraud in the making of the declaration is merely proof of the quality of the act or its motive. Nevertheless that quality, if proved, vitiates all transactions known to the law of however high a degree of solemnity. Suppose that on an application under paragraph 4 of the Second Schedule the landlord by fraud persuades the County Court to uphold a declaration and that months later the tenant discovers this and is in a position to prove that fraud. Surely the tenant could refuse to pay the increase in rent, and when sued could allege that the decision of the County Court was obtained by fraud. If that be the true position, why cannot a tenant who has not adopted the procedure of paragraph 4 equally claim that on proof of fraud the declaration is not satisfactory evidence for the purposes of section 23?

Reference was made on behalf of the landlords to the cases of Woollett v. Minister of Agriculture and Fisheries (1955, 1 Queen's Bench, page 103), and Smith v. East Elloe Rural District Council & Others (1955, 2 All England Reports, page 19) in support of the view that the words in paragraph 5 of the Second Schedule were sufficient to exclude a challenge of the declaration on the ground of fraud. It is enough to say that the provisions excluding challenge in those cases were in much wider language, and I do not think that those cases assist in the determination of this case.

Finally, the tenant asserted that the declaration was invalid in that it was sent by post addressed to Mr E.C.Beasley and not to the Appellant Mrs Violet Beasley. It, however, reached the Appellant, and was understood by her to be intended for her. Indeed, she applied for/and obtained a Certificate of Disrepair. I am satisfied that the misdescription in no way affects the validity of the declaration in this case.

On the first ground, however, I would allow the appeal.

(Appeal allowed. Judgment below to be set aside; new trial ordered. Appellant to have costs in Court of Appeal. Costs in Court below to abide result of new trial. Taxation of Appellant's costs under Legal Aid and Advice Act. Leave to appeal to House of Lords refused).

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