of the opinion that it would not be in the interests of justice to give such a technical interpretation to the words "used in carrying" in section 54 (2). I find support for this view in the decision of the House of Lords in *Renton and Co Ltd.* vs. *Palmyrah Trading Co. of Panama* 1987 A.C. 149 where a ship was held "to carry" goods from the moment they are loaded on board. Their Lordships in this case rejected the contention that there must be some evidence of transportation of motion, for a Court to arrive at a finding that the goods were being carried (Vide per Lord Morton at page 171).

Having regard to the provisions of the Excise Ordinance, and the mischief this Statute sought to prevent, I am of the opinion that the words "used in carrying" must necessarily be given a wider interpretation. In the instant case the vehicle in question was stacked with 1,200 bottles containing illicit liquor at the time of detection, and it would be inappropriate to give such a restricted meaning to the phrase "used in carrying" as contended for by Counsel in interpreting the provisions of section 54 (2) of the Excise Ordinance.

I therefore affirm the order of the learned Magistrate, dated 10th March 1989, confiscating lorry bearing Registered No.41 Sri 1113, and hold that such order was validly made under the provisions of section 54 (2) of the Excise Ordinance. The application of the petitioner is accordingly dismissed.

ISMAIL, J - I agree

Application dismissed.

SENDIRIS
V.
ASSISTANT COMMISSIONER OF AGRARIAN SERVICES AND ANOTHER

COURT OF APPEAL,
S.N. SILVA, J.
C.A. APPLICATION NO. 1081/83
JULY 6, SEPTEMBER 26, AND DECEMBER 12, 1990.

Writ of Certiorari - Agrarian Services Act No. 58 of 1979, Section 18(1) - Arrears of rent- Prescription - Prescription Ordinance, Section 7 - Estoppel - Presumption against retrospective operation.

The landlord (2nd respondent) of a paddy land complained to the Assistant Commissioner of Agrarian Services (1st respondent) that his tenant cultivator (the petitioner) had failed to pay rents for 14 seasons amounting to 240 bushels of paddy. After inquiry, the 1st respondent decided that the petitioner should pay 216 bushels as arrears of rent for 14 seasons to the 2nd respondent. It was argued that:

1. the complaint made to the Assistant Commissioner is null and void as it was not addressed to the Commissioner;

2. the claim for arrears was prescribed;

3. since the 2nd respondent accepted 18 bushels of paddy, he was estopped in law from making a claim for the balance;

4. the amounts ordered to be paid by the 1st respondent are in excess of the amounts stipulated by law and are arbitrary and the rents have been increased without notice to the petitioner.

5. the procedure in section 18 of the Agrarian Services Act could not be invoked retrospectively in relation to arrears of rent that accrued under the Agricultural Lands law and the consequences of failure to pay rent are punitive.

Held:

(1) Under Section 29(4) of the Agrarian Services Act every Assistant Commissioner may exercise all or any of the powers of the Commissioner within the areas to which he is appointed. The Assistant Commissioner had been duly appointed by the Judicial Service Commission. The 1st respondent was therefore empowered to exercise the powers of the Commissioner in respect of the complaint made by the 2nd respondent. The complaint containing the information has been addressed to the person who had jurisdiction to entertain it and hence valid.

(2) The Prescription Ordinance regulates the prescription of actions before a civil court and does not apply to proceedings under the Agrarian Services Act.

(3) Since the rent payable is fixed by law, the 2nd respondent has no legal duty to speak or act with regard to the quantum of rent and his lack of protest can in no way give rise to an estoppel.

(4) The failure to issue receipts would have been material only if there was a dispute with regard to the amount given by the petitioner as rent.

(5) The presumption against retrospective operation has no application to enactments which effect only the procedure and practice of the Commissioner. There is no presumption that a change in procedure is intended to be prospective and not retrospective,. Alterations in the form of procedure are always retrospective unless there is some good reason why they should not be. A tenant cultivator has no vested right in any particular form of procedure. Arrears are not restricted to arrears that occured after the Act came into force.

Cases referred to:

1. *Maclaine* vs. *Gatty* (1921) 1 AC 376, 386 (H.L.)
2. *Gunatilake* vs. *Walker Sons & Co. Ltd* 1979(2) NLR 563, 571
3. *Hadjiar* vs. *Marzook & Co. Ltd.* 1979(2) N.LR 253, 256

APPLICATION for writ of certiorari to quash the decision of the Assistant Commissioner of Agrarian Services.

Sanath Jayatilleke for petitioner.

N.R.M. Daluwatta, P.C. for 2nd respondent

Cur. adv. vult.

January 11, 1991

S. N. SILVA, J.

The Petitioner has filed this appplication for Writs of Certiorari and Prohibition with regard to the proceedings had against him in terms of section 18(1) of the Agrarian Services Act No. 58 of 1979. A certified copy of the proceedings and the decision made by the 1st Respondent have been produced marked "A". The facts relevant to this application are briefly as follows:

The 2nd Respondent is the owner of the paddy land called "Tangalle Kumbura" situated at Miniekiliya, in extent about 3 acres. The Petitioner who is a close relative of the 2nd Respondent has been for a long time the tenant cultivator of this paddy land. On 2-6-1982 the 2nd Respondent made a complaint to the Assistant Commissioner of Agrarian Services, Hambantota, that the Petitioner has failed to pay certain amounts as rent in respect of the paddy land. The complaint relates to 14 seasons from 1974 Yala to 1981/82 Maha. The total claimed is 240 bushels of paddy. On receipt of the said complaint, the 1st Respondent being the Assistant Commissioner of Agrarian Services (Inquiries) issued notice on the parties and held an inquiry. The Petitioner and the 2nd Respondent were represented at the said inquiry and they gave evidence in the source of which they were subject to cross examination. No other witnesses were called by the parties and the 1st Respondent made the decision dated 11.10.1982 notifying the Petitioner that he should pay the value of 216 bushels of paddy that was found to be in arrears in respect of the 14 seasons. The value of this quantity of paddy was computed at Rs. 8,220/-. The notice directs the Petitioner to pay the arrears in four instalments.

The 1st Respondent made the said decision on an estimate that the yield of the paddy land is 40 bushels per acre. On that basis it was

computed that 30 bushels of paddy should be given as rent for each season. The amounts that the Petitioner had admittedly given were set off from this figure and the arrears were computed in a tabulated form in the decision. The value of the paddy has been computed at Rs. 50/- per bushel.

Counsel appearing for the Petitioner urged several grounds in support of the application. His submission was that the order of the 1st Respondent is ultra vires and null and void on the basis of the grounds urged by him. After oral submissions were made by Counsel, written submissions were tendered on the several grounds that arose from the submissions of Counsel for the Petitioner. I will now consider each ground raised by Counsel for the Petitioner separately.

The first ground urged by Counsel for the Petitioner is that the complaint is ab initio void since it has been made to the Assistant Commissioner of Agrarian Services, Hambantota. It is the submission of Counsel that the complaint should be made to the Commissioner of Agrarian Services. Learned President's Counsel appearing for the 2nd Respondent submitted that the 1st Respondent being the Assistant Commissioner of Agrarian Services (Inquiries) appointed by the Judicial Service Commission had jurisdiction to entertain the complaint and make an order thereon.

It has not been disputed that the 1st Respondent has been duly appointed an Assistant Commissioner of Agrarian Services (Inquiries) by the Judicial Service Commission for the area within which the paddy land referred to above is situated. No objection has been raised before the 1st Respondent as to his jurisdiction to entertain the complaint and to make the decision that has been challenged. It appears that the objection of Counsel for the Petitioner relates to the manner in which the complaint is addressed. Section 18 of the Agrarian Services Act empowers the Commissioner to inquire into any information given by a landlord with regard to arrears of rent in respect of a paddy land. Although, the section vests this power in the Commissioner, in terms of section 29(4) of the Act every Assistant Commissioner may exercise all or any of the powers of the Commissioner under the Act, within the area to which such Assistant Commissioner is appointed. Therefore the 1st Respondent being the Assistant Commissioner for the area within which the paddy land is situated, by the appointment of the Judicial Service

Commission, was empowered to exercise the powers of the Commissioner in respect of the information given by the 2nd Respondent. Section 18 does not provide for information to be given in any prescribed form. In these circumstances the submission of learned Counsel for the Petitioner that it should necessarily be addressed to the Commissioner is without any basis. The complaint containing the information has been addressed to the person who had jurisdiction to entertain it and I am of the view that it is in order.

The second submission of learned Counsel for the Petitioner is that the claim for arrears of rent is prescribed. In support of this ground Counsel relied on section 7 of the Prescription Ordinance which provides no action shall be maintainable for the recovery of rent unless it is commenced within three years from the time the cause of action arose. Learned President's Counsel for the 2nd Respondent submitted that the plea of time bar provided for in the Prescription Ordinance could be urged only before a civil court or a tribunal which is trying a cause of action. It was submitted that this provision cannot be invoked in a proceeding under section 18 of the Agrarian Services Act.

It is clear from the long title of the Prescription Ordinance that the provision contained in the Ordinance regulates "the Prescription of Actions". The words used in section 7 relied upon by Counsel for the Petitioner clearly show that they are intended to bar the maintainability of an action for rent after the lapes of three years from the time the cause of action arose. The words "action" and "cause of action" appearing in section 7 and in other sections of the Ordinance are a clear indication that the provisions are intended to regulate any action before a Civil Court based upon a cause of action as defined in the law relating to civil proceedings. The Agrarian Services Act is a special enactment which is intended inter alia, to provide for the tenure of tenant cultivators of paddy land and for the maximum productivity of paddy and other agricultural land. The Commissioner of Agrarian Services is empowered to make determinations of tenural and other disputes relating to paddy and agricultural land. The provisions of another enactment such as the Prescription Ordinance could be considered as being an enactment applicable to proceedings under the Agrarian Services Act only if there is specific provision to that effect or the application of such other enactment is necessarily implied by the provisions of the Agrarian Services Act. Section 5(4) of the Agrarian Services Act

provides a specific limit of time within which a tenant cultivator who claims to be evicted from a paddy land that he has been cultivating, should notify his complaint. Thus it is seen that the legislature has not intended to make the provisions of the Prescription Ordinance apply to proceedings under the Agrarian Services' Act. Where necessary, as evidenced by section 5(4), the legislature has introduced specific provisions with regard to time bar in the Act itself. Therefore I hold that the provisions of the Prescription Ordinance are not applicable to proceedings under the Agrarian Services Act.

The third and fourth grounds urged by learned Counsel for the Petitioner relate to the doctrine of estoppel and the conduct of the 2nd Respondent in not issuing receipts for the paddy that had been admittedly given by the Petitioner as payment of rent. It was the case of the 2nd Respondent that except for the three seasons from the Yala 1973 to Yala 1976 certain amounts of paddy were given to him by the Petitioner as rent in respect of the paddy land. In evidence the Petitioner stated that he gave three Amunas (the equivalent of 18 bushels) in respect of each season. Counsel for the Petitioner submitted that since the 2nd Respondent accepted the 18 bushels of paddy he was estopped in law from making a claim for the balance. It was also submitted that since the 2nd Respondent failed to issue receipts which is a requirement under section 24 of the Agrarian Services Act and section 26 of the Agricultural Lands Law he could not complain of a shortage in the rent that was paid.

The 2nd Respondent in evidence stated that he accepted the amount of paddy that was given to him by the Petitioner. It was further stated that no receipts were given since the parties are related.

Learned President's Counsel for the 2nd Respondent submitted that there is no basis to invoke the doctrine of estoppel in regard to proceedings under the Agrarian Services Act.

It appears that learned Counsel for the Petitioner is relying on the doctrine of estoppel by representation which forms a part of the common law of England. In the case of *Maclaine* vs. *Catty* (1), Lord Birkenhead succinctly stated the essentials of the doctrine as follows: where 'A' has by his acts or conduct justified 'B' in believing that a certain state of facts exists, and 'B' has acted upon on such belief to his prejudice, 'A' is not permitted to affirm against 'B' that a different state of facts existed at the same time". This definition of

the doctrine has been cited in the book titled *Estoppel by Representation by Spencer, Bower and Turner (3rd Edition page 5).* It is clear from this definition that the person invoking the doctrine should establish that there has been some words or conduct of the other party which led him to take some action to his prejudice. If this definition is related to the facts of the application, the Petitioner should establish that there has been some words or conduct of the 2nd Respondent which led him to give the equivalent of 18 bushels of paddy each season as rent. It has also to be established that the said payment caused prejudice to the Petitioner.

The doctrine basically forms part of the Law of Evidence although it may be contended that it contains elements of substantive law as well. Therefore, I have examined the evidence that has been given by both parties at the inquiry, to ascertain whether there is any basis for the Petitioner to invoke this doctrine.

According to the evidence the Petitioner gave 18 bushels of paddy not pursuant to any demand made for such amount by the 2nd Respondent, but on the basis of his own computation as to what was due. Evidence is that the 2nd Respondent merely accepted what was given by the Petitioner without protest. It is common ground that there was no representation by the 2nd Respondent that only 18 bushels were due as rent for any particular season. The amount due as rent is fixed by law, as will be seen from the examination of the relevant provisions done later in this judgment. Therefore the question of any party making a representation as to the amount payable as rent does not arise at all. Certainly the silence on the part of the 2nd Respondent in accepting what was given without protest does not constitute a representation by him. In *Estoppel by Representation by Spencer Bower and Turner (Supra) at page 61* it is stated as follows: "it is firmly established that reticence and passivity in relation to matter which give rise to no legal duty to speak or act, whether censurable *in foro conscientiae* or not, is not a representation of anything, and accordingly creates no estoppel". Since the rent payable is fixed by law the 2nd Respondent had no legal duty to speak or act with regard to the quantum of rent and his lack of protest could in no way give rise to an estoppel. In fact it is the Petitioner who made the representation that the rent payable was 18 bushels and he is now seeking the benefit of his own representation made to his advantage as against the other party.

Therefore I am of the view that the recourse to the doctrine of estoppel by the Petitioner is misconceived.

The failure to issue receipts would have been material only if there was a dispute with regard to the amount given by the Petitioner as rent. Here, I note that the Petitioner himself claimed that he gave only 18 bushels. The 1st Respondent has made his decision on the basis of this evidence of the Petitioner. Therefore the fact that no receipts were given by the 2nd Respondent does not in any way preclude him from invoking the procedure under section 18 of the Act to recover the amounts that are in arrears. In the circumstances I am of the view that the third and fourth grounds urged by Counsel for the Petitioner are without basis.

The fifth and sixth grounds urged by Counsel for the Petitioner are that the amounts ordered to be paid by the 1st Respondent are in excess of the amounts stipulated by law and are arbitrary and that the rents have been increased without notice to the Petitioner.

In terms of the Agrarian Services Act power is vested in the Commissioner to determine the rent that is payable by a tenant cultivator of any extent of paddy land. This power is vested in the Commissioner by section 17(1) of the Act. Section 17(2) empowers the Comissioner to specify an amount not exceeding 15 bushels per acre or a portion not exceeding 1/4 of the total yield, whichever is greater as rent payable in respect of any region. The corresponding provision of the Agricultural Lands Law, being section 20, empowered the Minister to make such determination. There appear to be a significant difference in the two provisions although the same criteria is stated in both sections. Whereas under the Agrarian Services Act the amount payable is whichever is greater of the amounts as computed according to the determination, under the Agricultural Lands Law the amount payable was whichever is the least from such computation. The 1st Respondent in his decision fixed the rent payable at 70 bushels per acre on the basis that the yield per acre is 40 bushels. Learned President's Counsel for the 2nd Respondent submitted with reference to the relevant notifications published in the gazette that during the period the Agricultural Lands Law was operative the amount fixed by the Minister, as rent, was 12 bushels per acre or 1/4 of the total yield. During the period that the Agrarian Sevices Act is operative the amount fixed by the Commissioner is

15 bushels per acre or 1/4 of the total yield. It was submitted by learned President's Counsel that the 1st Respondent erred in law in considering the rent payable as 10 bushels per acre for the period that the Agrarian Services Act is operative. *On the principle that the amount payable is "whichever is greater", the rent had to be fixed at 15 bushels per acre and not at 10 bushels as determined by the 1st Respondent, Therefore the illegality, if any, is to the benefit of the Petitioner.*

As regards the estimated yield of 40 bushels per acre it has to noted that there was no evidence adduced by the Petitioner that the actual yield of this paddy land was less than this figure. The 1st Respondent who is the Assistant Commissioner of Agrarian Services of the relevant area was competent to make an estimate of the yield based on the information available to him. In fact, for the Maha season of 1981/82 the Petitioner himself gave 30 bushels as rent which is in accord with a yield of 40 bushels per acre. Therefore the yield estimated by the 1st Respondent could not be considered as being unreasonable. In these circumstance I do not see any merit in the fifth and sixth grounds urged by learned Counsel for the Petitioner.

The last ground urged by learned Counsel for the Petitioner is that the procedure in section 18 of the Agrarian Services Act could not be invoked retrospectively in relation to the arrears of rent that accrued under the Agricultural Lands Law. It was submitted that in terms of section 18 unlike the corresponding provision in the Agricultural Lands Law, tenancy rights could be forfeited if a tenant failed to pay the arrears of rent that was notified by the Commissioner and consequently be evicted from the paddy land. It was further submitted, that these consequences are "punitive" and could not attach restrospectively to arrears that accrued under the former law. Learned President's Counsel for the 2nd Respondent submitted that the Petitioner was obliged to pay the rent. It was submitted that the failure to pay the rent as provided for by law resulted in the tenant being in arrears and that the provisions in section 18 are procedural and that they could be applied retrospectively in relation to arrears that have accrued.

The basis of the submission of learned Counsel for the Petitioner is that the provisions in section 18 are adverse to the interests of the

tenant cultivator and that his rights have therefore been impaired. Under section 28 of the Agricultural Lands Law arrears of rent could be recovered as decree entered by a Civil Court. Therefore Counsel is correct when he submits that the procedure provided for in section 18 of the Agrarian Services Act is adverse to the tenant. However, the question to be decided is whether a tenant cultivator has a vested right with regard to any particular form of procedure. In this regard learned President's Counsel relied on the judgment of Sharvananda, J (as he then was) in the case of *Gunatillake* vs. *Walker Sons & Com. Ltd.* (2) His Lordship observed as follows: "The presumption against retrospective operation has no application to enactments which affect only the procedure and practice of the Courts. There is no presumption that a change in procedure is intended to be prospective and not retrospective. Alterations in the form of procedure are always retrospective unless there is some good reason why they should not be, *Gardner* vs. *Lucas Blackburn.* No person has a vested right in any course of procedure, and he is bound to follow such modes of seeking redress as the law may enjoin from time to time. When a new remedy is granted or a defective remedy is rectified . . .it cannot be said that the rights of any one are injuriously affected by the reforms . . .". Therefore the mere fact that the provisions of the Agricultural Lands Law were not favourable to a tenant cultivator does not mean that he has a vested right in the continuance of the former procedure. Indeed, the Agricultural Lands Law and even the Paddy Lands Act No. 1 of 1958, which was previously in force, imposed as a requirement on every tenant cultivator the obligation to pay rent to the landlord as provided for by law. Hence, a tenant cultivator who fails to pay the rent as provided for by law is in the category of a person who has violated a duty cast upon him by law and he could not be heard to say that he has a vested right to continue with his tenancy. The provisions of section 28 of the Agricultural Lands Law and section 18 of the Agrarian Services Act are procedural in nature. They provide the means for the recovery and enforcement of the requirement imposed by law on a tenant cultivator to pay rent to the landlord. The provisions of section 18 should thus be applicable wherever a tenant cultivator is in arrears of rent irrespective of the time when such arrears accrued. In the case of *Hadjiar* vs *Marsook and Co. Ltd* (3) the Supreme Court dealt with the question whether a tenant could be ejected from a house he was occupying which was subject to the Rent Restriction Act, on the basis of arrears of

rent that accrued prior to the house being subject to the Act. It was observed by *Walpita, J (at page 256) as follows:* "The obligation on the part of the tenant was to pay the rent in time. Failure to meet that obligation would make him be in arrears of rent and therefore liable to ejectment". It is significant that in this case the Supreme Court held that the tenant could be ejected on the basis of the arrears which accrued prior to the house coming under the provisions of the Rent Restriction Act. The word "arrears" as appearing in section 13(1)(a) of the Rent Restriction Act as amended by Act No. 10 of 1961 was interpreted as including arrears which accrued prior to the section becoming applicable to the house. An examination of the provisions of section 18 of the Agrarian Services Act reveals that there is no provision in that section which suggests that arrears of rent referred to in subsection (1) are restricted to arrears that secured after the Act came into force. If such an interpretation is given there would be no provision to recover the rent that was due under the Agricultural Lands Law which had not been recovered at the time of the repeal of that law. It is for this reason that a basic principle of interpretation has evolved that provisions that deal with procedure will ordinarily be considered as being of retrospective operation. In the circumstances I hold that a landlord is entitled to invoke the procedure under Section 18(1) of the Agrarian Services Act in respect of arrears of rent that accrued at any time prior to the coming into force of the Act. For the reasons stated above I do not see merit in any of the grounds urged by learned Counsel for the Petitioner. I accordingly dismiss the application with costs fixed at Rs. 1050/-.

Application dismissed.