defendant recover judgment against the plaintiffs for £31,577.44 damages, being the unpaid balance of a sum of £62,266.75 damages which had been agreed by the parties.]

Solicitors for the defendant: *Kent, Carty & Co.*

Solicitors for the plaintiffs: *Taylor & Buchalter.*

D.B.C.

In the matter of Article 26 of the Constitution and in the Matter of **The Housing (Private Rented Dwellings) Bill, 1981.**

Supreme Court 19th February, 1982

Constitution – Bill – Validity – Landlord and tenant – Rent restrictions – Former legislation declared invalid – Bill passed by Oireachtas to replace former legislation – Reference of bill to Supreme Court – Bill imposing similar rent restriction – Particular provision repugnant to the Constitution – Property rights – Housing (Private Rented Dwellings) Bill, 1981 – Constitution of Ireland, 1937, Articles 26, 40, 45.

In *Blake* v. *The Attorney General* [1982] I.R. 117 the Supreme Court held (inter alia) that Part 2 of the Rent Restrictions Act, 1960, which restricted the amounts of the rents payable to their landlords by tenants of controlled dwellings, was invalid having regard to the provisions of the Constitution of Ireland, 1937, in that those provisions constituted an unjust attack on the property rights of certain landlords contrary to Article 40, s. 3, sub-s. 2, of the Constitution since those provisions restricted the exercise of the property rights of one group of citizens for the benefit of another group in a manner which failed to provide compensation for the first group and which disregarded the financial capacity or needs of the members of the groups. Five months later, both Houses of the National Parliament passed the Housing (Private Rented Dwellings) Bill, 1981. The provisions of the bill were expressed to apply to every dwelling which was a controlled dwelling under the Act of 1960. The bill provided that the rent of a dwelling to which the bill applied was to be the agreed rent or the rent fixed by the District Court. Section 6 of the bill stated that, when fixed by the District Court, the rent of such dwelling was to be the rent which, in the opinion of that court, a willing lessee who was not in occupation would give, and a willing lessor would take, for such dwelling on the basis of vacant possession being given to the tenant, and having regard to the other terms of the tenancy and to the letting values of dwellings of a similar character to the dwelling and situate in a comparable area.

Section 9 of the bill stated that, where the rent of such dwelling was fixed by the District Court, the rent payable by the tenant of the dwelling was to be the amount of his former rent plus, in the year 1982, 40% of any increase awarded by the District Court, in the year 1983 55% of any increase, in the year 1984 70% of any increase, in the year 1985 85% of any increase, and in the year 1986 and subsequent years the entire amount of the increase.

Pursuant to Article 26, s. 1, sub-s. 1, of the Constitution, the President of Ireland referred the bill of 1981 to the Supreme Court for a decision on the question whether the bill, or any provision or provisions of the bill was or were repugnant to the Constitution or to any provision thereof. In pronouncing its decision on the question so referred, it was

Held by the Supreme Court, 1, that there was a rebuttable presumption that the provisions of the bill were not repugnant to the Constitution.

2. That, in the absence of any justification permitted by the Constitution, the provisions of s. 9 of the bill, depriving the persons affected thereby of substantial portions of their proper rents, constituted an unjust attack on their property rights contrary to Article 40, s. 3, sub-s. 2, of the Constitution.

Blake v. *The Attorney General* [1982] I.R. 117 considered.

3. That, accordingly, the provisions of s. 9, sub-s. 1, of the bill were repugnant to the Constitution.

4. That it was not necessary for the Court to pronounce upon any other provision of the bill.

Cases mentioned in this report: –

[1]*O'Brien* v. *Keogh* [1972] I.R. 144.
[2]*Ryan* v. *The Attorney General* [1965] I.R. 294.
[3]*Blake* v. *The Attorney General* [1982] I.R. 117.
[4]*Central Dublin Development Association* v. *The Attorney General* (1969) 109 I.L.T.R. 69.
[5]*Byrne* v. *Loftus* [1978] I.R. 211.
[6]*Attorney General* v. *Southern Industrial Trust Ltd.* (1957) 94 I.L.T.R. 161.
[7]*Buckley & Others (Sinn Féin)* v. *The Attorney General* [1950] I.R. 67.
[8]*Byrne* v. *Ireland* [1972] I.R. 241.
[9]*McGee* v. *The Attorney General* [1974] I.R. 284.
[10]*The State (Healy)* v. *Donoghue* [1976] I.R. 325.
[11]*Moynihan* v. *Greensmyth* [1977] I.R. 55.
[12]*East Donegal Co-Operative* v. *The Attorney General* [1970] I.R. 317.
[13]*Munn* v. *Illinois* (1877) 94 U.S. 113.
[14]*Block* v. *Hirsch* (1921) 256 U.S. 135.
[15]*Marcus Brown Co.* v. *Feldman* (1921) 256 U.S. 170.
[16]*Nebbia* v. *New York* (1934) 291 U.S. 502.
[17]*Murphy* v. *The Attorney General* [1982] I.R. 241.
[18]*Offences Against the State (Amendment) Bill, 1940* [1940] I.R. 470.
[19]*School Attendance Bill, 1942* [1943] I.R. 334.
[20]*Criminal Law (Jurisdiction) Bill, 1975* [1977] I.R. 129.
[21]*Pigs Marketing Board* v. *Donnelly* [1939] I.R. 413.
[22]*McDonald* v. *Bord na gCon* [1965] I.R. 217.
[23]*Hill* v. *Hasler* [1921] 3 K.B. 643.
[24]*United States of America* v. *Dollfus Mieg et Cie. S.A.* [1952] A.C. 582.
[25]*Luke* v. *Inland Revenue Commissioners* [1963] A.C. 557.
[26]*Bradlaugh* v. *Clarke* (1883) 8 App. Cas. 354.
[27]*Nestor* v. *Murphy* [1979] I.R. 326.
[28]*Mullane* v. *Brosnan* [1974] I.R. 222.
[29]*Mouser* v. *Major* [1941] 1 K.B. 477.
[30]*Murtagh Properties* v. *Cleary* [1972] I.R. 330.
[31]*McCombe* v. *Sheehan* [1954] I.R. 183.
[32]*Morrison* v. *Jacobs* [1945] K.B. 577.
[33]*Downes* v. *McCourt* (1926) 60 I.L.T.R. 66.

Reference of bill passed by the Oireachtas.

The Housing (Private Rented Dwellings) Bill, 1981, was passed by both Houses of the Oireachtas on the 17th December, 1981. On the 24th December, 1981, the President of Ireland referred the bill to the Supreme Court pursuant to the provisions of Article 26, s. 1, sub-s. 1, of the Constitution of Ireland, 1937, for a decision "on the question as to whether the said Bill or any provision or provisions thereof is or are repugnant to the Constitution or to any provision thereof." The Supreme Court assigned solicitor and counsel to oppose the constitutionality of the bill. Sections 6–10 of the bill were the sections primarily impugned.

Article 26, ss. 1–3, of the Constitution of Ireland, 1937, which is expressed to be applicable to all bills passed or deemed to have been passed by both Houses of the Oireachtas (with certain limited exceptions, none of which are relevant to the reference) provides as follows: –

"1. 1° The President may, after consultation with the Council of State, refer any Bill to which this Article applies to the Supreme Court for a decision on the question as to whether such Bill or any specified provision or provisions of such Bill is or are repugnant to this Constitution or to any provision thereof.

2° Every such reference shall be made not later than the seventh day after the date on which such Bill shall have been presented by the Taoiseach to the President for his signature.

3° The President shall not sign any Bill the subject of a reference to the Supreme Court under this Article pending the pronouncement of the decision of the Court.

2. 1° The Supreme Court consisting of not less than five judges shall consider every question referred to it by the President under this Article for a decision, and, having heard arguments by or on behalf of the Attorney General and by counsel assigned by the Court, shall pronounce its decision on such question in open court as soon as may be, and in any case not later than sixty days after the date of such reference.

2° The decision of the majority of the judges of the Supreme Court shall, for the purposes of this Article, be the decision of the Court and shall be pronounced by such one of those judges as the Court shall direct, and no other opinion, whether assenting or dissenting, shall be pronounced nor shall the existence of any such other opinion be disclosed.

3. 1° In every case in which the Supreme Court decides that any provision of a Bill the subject of a reference to the Supreme Court under this Article is repugnant to this Constitution or to any provision thereof, the President shall decline to sign such Bill . . .

3° In every other case the President shall sign the Bill as soon as may be after the date on which the decision of the Supreme Court shall have been pronounced."

Article 40, s. 3, of the Constitution provides: –

"1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen."

Article 13, s. 3, sub-s. 1, of the Constitution states: – "Every Bill passed or deemed to have been passed by both Houses of the Oireachtas shall require the signature of the President for its enactment into law."

Article 45 of the Constitution provides: – "The principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any Court under any of the provisions of this Constitution."

Pursuant to Article 26, s. 2, sub-s. 1, of the Constitution the Supreme Court on the 19th–22nd January, 1982, the Supreme Court (O'Higgins C.J., Walsh, Henchy, Griffin and Hederman JJ.) heard arguments by the Attorney General and by counsel assigned by the Court to oppose the constitutionality of the bill.

T. J. Conolly S.C. and *N. Fennelly S.C.* (with them *R. P. Humphries*), of counsel assigned by the Court, referred to *O'Brien* v. *Keogh*[1]; *Ryan* v. *The Attorney General*[2]; *Blake* v. *The Attorney General*[3]; *Central Dublin Development Association* v. *The Attorney General*[4]; *Byrne* v. *Loftus.*[5]

The Attorney General (*P. D. W. Sutherland S.C.*) and *F. D. Murphy S.C.* (with them *P. A. Kelly*) referred to *Blake* v. *The Attorney General*[3]; *Ryan* v. *The Attorney General*[2]; *Attorney General* v. *Southern Industrial Trust Ltd.*[6]; *Buckley & Others (Sinn Féin)* v. *The Attorney General*[7]; *Byrne* v. *Ireland*[8]; *McGee* v. *The Attorney General*[9]; *The State (Healy)* v. *Donoghue*[10]; *Moynihan* v. *Greensmyth*[11]; *East Donegal Co-Operative* v. *The Attorney General*[12]; *Munn* v. *Illinois*[13]; *Block* v. *Hirsch*[14]; *Marcus Brown Co.* v. *Feldman*[15]; *Nebbia* v. *New York*[16]; *Murphy* v. *The Attorney General*[17]; *Offences Against the State (Amendment) Bill, 1940*[18]; *School Attendance Bill, 1942*[19]; *Criminal Law (Jurisdiction) Bill, 1975*[20]; *Pigs Marketing Board* v. *Donnelly*[21]; *McDonald* v. *Bord na gCon*[22]; *Hill* v. *Hasler*[23]; *United States of America* v. *Dollfus Mieg et Cie. S.A.*[24]; *Luke* v. *Inland Revenue Commissioners*[25]; *Bradlaugh* v. *Clarke*[26]; *Nestor* v. *Murphy*[27]; *Mullane* v. *Brosnan*[28]; *Mouser* v. *Major.*[29]

N. Fennelly S.C., in reply, referred to *Murtagh Properties* v. *Cleary*[30]; *McGee* v. *The Attorney General*[9]; *McCombe* v. *Sheehan*[31]; *Morrison* v. *Jacobs*[32]; *Downes* v. *McCourt.*[33]

Cur. adv. vult.

The decision of the Supreme Court was pronounced by one of the judges of that court in accordance with the provisions of s. 2, sub-s. 2, of Article 26 of the Constitution.

O'Higgins C.J. 19th February, 1982

This is a reference of the Housing (Private Rented Dwellings) Bill, 1981, made by the President of Ireland on the 24th December, 1981, pursuant to Article 26, s. 1, of the Constitution. Pursuant to s. 2, sub-s. 1, of that Article, the Court assigned counsel to contend that the Bill is repugnant to the Constitution. In the course of their submissions to the Court, they have argued that the Bill is repugnant in several of its provisions. The Attorney General and counsel on his behalf have argued that there is no repugnancy.

The whole Bill comes before the Court pursuant to the reference thus made. The relevant constitutional provisions stipulate that, when a bill such as this is passed or deemed to have been passed by both Houses of the Oireachtas, the President may, after consultation with the Council of State, refer it to the Supreme Court for a decision on the question as to whether the bill, or any provision or provisions of it, is or are repugnant to the Constitution or to any provision thereof.

The Supreme Court, consisting of not less than five judges, is required to consider every question referred to it by the President under Article 26. Before pronouncing its decision, the Court must hear arguments by, or on behalf of, the Attorney General and by counsel assigned by the Court. Its decision must be pronounced in open court as soon as may be and, in any case, not later than 60 days after the date of the reference. If the Court decides that *any* provision of the referred bill is repugnant to the Constitution or to any of its provisions, the President shall decline to sign the bill. Otherwise, the President shall sign the bill as soon as may be after the decision of the Court has been pronounced.

As is provided by Article 34, s. 3, sub-s. 3, of the Constitution, no court whatever shall have jurisdiction to question the validity of a law, or any provision of a law, the bill for which shall have been referred to the Supreme Court by the President under Article 26, or to question the validity of a provision of a law, where the corresponding provision in the bill for

such law shall have been referred to the Supreme Court by the President under Article 26.

It is to be noted that the Court's function under Article 26 is to ascertain and declare repugnancy (if such there be) to the Constitution in a referred bill or in the specified provision or provisions thereof. It is not the function of the Court to impress any part of a referred bill with a stamp of constitutionality. If the Court finds that *any* provision of a referred bill or of the referred provisions is repugnant, then the whole bill fails for the President is then debarred from signing it – thus preventing it from becoming an Act. There thus may be areas of a referred bill or of referred provisions of a bill which may be left untouched by the Court's decision. The authors of a bill may therefore find the Court's decision less illuminating than they would wish it to be.

Article 26, s. 2, sub-s. 1, says that the Court's decision is to be reached after hearing *arguments* by, or on behalf of, the Attorney General and by counsel assigned by the Court. That article makes no reference to the hearing of evidence. In fact, in none of the references that have come to the Court so far has evidence been heard. The difficulties that could confront a court of at least five judges in reaching a unitary decision on the basis of conflicting evidence is too obvious to need elaboration. It is not necessary in this case to decide whether evidence may, or should be, heard when considering a reference under Article 26. In this, as in all earlier references, the matters argued have had, in the absence of evidence, to be dealt with as abstract problems, to the extent that, unlike practically all other cases that come before the Court, there is an absence or shortage of concrete facts proven, admitted, or projected as a matter of probability. The Court, therefore, in a case such as this, has to act on abstract materials in order to cope with the social, economic, fiscal and other features that may be crucial to an understanding of the working and the consequences of a referred bill. Whether the constitutionality of a legislative measure of that nature which has been passed, or is deemed to have been passed, by both Houses of the Oireachtas is better determined within a fixed and immutable period of time by means of reference under Article 26 (in which case, if no repugnancy is found, the decision may never be questioned again in any court), rather than by means of an action in which specific imputations of unconstitutionality would fall to be determined primarily on proven or admitted facts, is a question on which we refrain from expressing an opinion.

Ryan v. *The Attorney General*[2] is a good illustration of the procedural difficulties and differences already mentioned. In that case the plaintiff questioned the validity of an Act of the Oireachtas. The result depended on findings of fact based on lengthy oral evidence which was largely scientific in nature and complex in character. This Court upheld the High Court decision (that the Act was not invalid) on the basis of that court's findings of fact;

but the Court made it clear that, if in the future the scientific evidence available should be such as to warrant a different conclusion on the facts, the question of the validity of the Act could be reopened. If the bill for that Act had been referred to the Court under Article 26 of the Constitution, the case for invalidity would have broadly been the same, yet it is doubtful in the extreme if it would have been possible for the Court, not later than 60 days after such reference, to have heard and determined all the matters which necessarily fell to be determined in that case. Furthermore, the Court's decision on such a reference would have been subject to the provisions of Article 34, s. 3, sub-s. 3, of the Constitution.

The Court has entered on the foregoing exposition of the essential features of a decision on a reference under Article 26 (and of some of the ways in which such a decision is unique in the manner in which it is reached and in its consequences) in order to dispel what sometimes appears to be a misapprehension of the nature and extent of the Court's jurisdiction in a matter such as this. With those incidents of jurisdiction in mind, the Court now addresses itself to the particular problems inherent in the instant reference.

The bill in question is the Housing (Private Rented Dwellings) Bill, 1981. It comprises a long title, 23 sections and a schedule. In considering the question raised in the reference, the Court extends to this Bill the presumption of constitutionality which is ordinarily enjoyed by Acts of the Oireachtas.

The Bill was passed by both Houses of the Oireachtas in order to deal with the situation resulting from this Court's decision in *Blake* v. *The Attorney General*.[3] In its judgment in that case this Court declared Parts II and IV of the Rent Restrictions Act, 1960 (as amended), to be invalid having regard to the provisions of the Constitution. The Court's conclusion was that the rent control and certain other provisions contained in that Act were so restrictive, intrusive and unfair as to constitute an unjust attack on landlords' property rights. The Court found (p. 138) that the legislation then impugned "applied only to some houses and dwellings and not to others; that the basis for the selection is not related to the needs of the tenants, to the financial or economic resources of the landlords, or to any established social necessity; and that, since the legislation is now not limited in duration, it is not associated with any particular temporary or emergency situation." The Court concluded its judgment in relation to the provisions of Part II of the Rent Restrictions Act, 1960 (as amended), by expressing the opinion (p. 139) that those provisions "restrict the property rights of one group of citizens for the benefit of another group. This is done, without compensation and without regard to the financial capacity or the financial needs of either group, in legislation which provides no limitation on the period of restriction, gives no opportunity for review and allows no modification of the

operation of the restriction. It is, therefore, both unfair and arbitrary. These provisions constitute an unjust attack on the property rights of landlords of controlled dwellings and are, therefore, contrary to the provisions of Article 40, s. 3, sub-s. 2, of the Constitution."

As indicated, the present Bill is intended to deal with the situation which arose following the declarations of invalidity in the *Blake Case*.[3] In examining its provisions this Court must have regard not only to the effect of these provisions on the property rights of those affected (being both tenants and landlords) but also, where appropriate, to the views expressed by this Court in the *Blake Case*.[3]

The Bill is described in its long title as "An Act to provide, in accordance with the exigencies of the common good, for a measure of security of tenure for the tenants of certain dwellings, for a reasonable return for landlords on their rented dwellings and for the eventual cesser of the entitlement of such tenants to retain possession of such dwellings, to provide for the registration of rented dwellings and for standards for rented dwellings and to provide for other matters connected with the matters aforesaid."

By s. 2 of the Bill the reference in the long title to "certain dwellings" is defined by the application of the Bill to "every dwelling which, immediately before the commencement of this Act, was a controlled dwelling within the meaning of the Rent Restrictions Acts, 1960 and 1967." It is, therefore, clear that the Bill is intended to apply only to some rented dwellings. The new legislative provisions affect the amount of the rent payable and the conditions and terms upon which tenants hold their dwellings, and restrict the recovery of possession by landlords. The dwellings intended to be affected are of the same category of dwellings in respect of which this Court in its judgment in the *Blake Case*[3] stated (p. 138) that "the basis for the selection is not related to the needs of the tenants, to the financial or economic resources of the landlords, or to any established social necessity." The Attorney General has submitted that the basis for the selection of the same category of dwellings to be covered by the Bill derives from this Court's judgment in the *Blake Case*[3] and that the necessary rectifying legislation need not go beyond that category. The Court notes this submission and is prepared to accept that it supplies a valid reason for the application of the Bill to this category of rented dwellings and not to others.

The Court has considered the long title of the Bill, as indicating its purpose and intent, and finds nothing therein which could be regarded as being repugnant to the Constitution. The question is whether any of the particular legislative provisions in the body of the Bill are in themselves free from repugnancy, regardless of any legislative or administrative measures which may be taken in order to achieve the objectives set out in the long title. In considering this question, the Court proposes to examine in the first

instance the broad scheme of the Bill and then to consider in more detail certain important provisions.

For the purpose of achieving the objective of security of tenure set out in the long title, the Bill proposes to substitute, for such rights as "a tenant" may have, a statutory entitlement to retain possession of the dwelling during (a) the "tenant's" life, (b) on the "tenant's" death, during the life of his or her spouse, and (c) on the death of the survivor, in respect of a qualified member of the family during the unexpired period, if any, of 20 years from the enactment of the Bill as on Act. At the end of that period, the proposed statutory protection of possession ceases and the dwelling reverts to the exclusive control of the landlord. This statutory entitlement to remain in possession, for at least the lifetime of the tenant and of the spouse, has particular benefits for the tenant where the pre-existing entitlement to possession is based on a periodic contractual tenancy of a weekly, monthly or yearly nature, or, indeed, on no tenancy at all. However, the benefit is not so clear, and may not exist, where the pre-existing tenancy is based, as it could be under s. 3, sub-s. 6, of the Rent Restrictions Act, 1960 (as amended), on a term of years not exceeding 21 years. As a consequence of the creation of this new form of tenure (which is to be personal to the tenant, spouse, and members of the family, and which is to be of limited duration), the Bill provides that the new tenancy will not be assignable and that the tenant will no longer enjoy the rights he or she formerly had to rely on his or her protected occupancy for the purpose of qualifying for a new tenancy under the Landlord and Tenant Act, 1980.

Provision is made for the determination of the terms of the new tenancy either by agreement between the tenant and the landlord or, in default thereof, by the District Court. In so far as the landlord is concerned, the Bill prevents the recovery of possession of the dwellinghouse during the tenancy, unless he or she can establish one or more of the grounds set out in section 12. These grounds are broadly the same as those which could have been raised under s. 29 of the Rent Restrictions Act, 1960 (as amended). There is, however, one important change under the Bill; if the landlord recovers possession for occupation as a residence for himself or herself, or for a person in his or her whole-time employment, or in the interests of good estate management, he must pay such sum as the District Court may determine in respect of the tenant's expenses of quitting the dwelling, together with up to two years rent of alternative accommodation.

This being the broad scheme of the Bill, it is clear that it varies pre-existing rights (where such exist) of both the tenant and the landlord in respect of controlled dwellings. It has been urged on the Court that in some respects this interference, under the guise of control, amounts to an unjust attack on the property rights of both tenants and landlords. However, the

Court notes that the major criticism of the Bill's provisions is directed at those which determine the rent that is to be paid by the particular tenant and accepted by the landlord in respect of each dwelling.

The Court now proposes to examine those particular provisions in the Bill. The provisions which provide for the fixing of the rent, the determination of the amount to be paid, the review thereof and other ancillary provisions, are ss. 6, 7, 8, 9 and 10 of the Bill. Under s. 6 the District Court is obliged to determine the gross rent of a dwelling when application is made under the rent-fixing provisions. This gross rent is defined as "the rent which, in the opinion of the Court, a willing lessee not already in occupation would give and a willing lessor would take for the dwelling, in each case on the basis of vacant possession being given, and having regard to the other terms of the tenancy and to the letting values of dwellings of a similar character to the dwelling and situate in a comparable area." The rent to be fixed by the District Court is this gross rent "reduced by an allowance for any improvements, and any such allowance shall be such proportion of the gross rent as is, in the opinion of the Court, attributable to the improvements." Provision is made under s. 7 for a review of the rent, on the application of either the landlord or the tenant, at any time after the expiration of five years from the date on which the rent was last fixed by the District Court. Notwithstanding that the rent may have been fixed by agreement between the landlord and the tenant, the District Court is given power by s. 8, on the application of either landlord or tenant made not earlier than one year from the date of the agreement, to fix a new rent.

Section 9, sub-s. 1, determines, in respect of the years 1982 to 1986, the actual rents which will be payable in each of these years by the tenant. It provides as follows: –

"9. – (1) Where the rent of a dwelling to which this Act applies is fixed by the Court –

(*a*) the rent payable by the tenant shall be an amount equal to the rent payable by him at the commencement of this Act together with –

(i) in the year 1982, 40 per cent. of the difference between that rent and the rent fixed by the Court,

(ii) in the year 1983, 55 per cent. of that difference,

(iii) in the year 1984, 70 per cent. of that difference, and

(iv) in the year 1985, 85 per cent. of that difference.

(*b*) in the year 1986 and in subsequent years, the rent payable by the tenant shall be the rent fixed by the Court."

Under sub-s. 2 of s. 9 provision is made whereby the District Court may, on the application of the landlord, increase those percentages having regard to the circumstances of the landlord and tenant. However, this application is not permitted to be made by a landlord who purchased the

dwelling on or after the 31st December, 1960 (the date of the coming into operation of the Rent Restrictions Act, 1960), or by his successor in title. Section 10 enables the District Court to backdate the payment of a rent so fixed to the date of the institution of the proceedings to fix the rent, and to order the tenant to pay to the landlord (in respect of the period from such institution to the date of hearing) an amount not exceeding the difference between the new rent payable by the tenant and his existing rent.

Having carefully considered the submissions of counsel on both sides of the case, the Court is of the opinion that the intent of the Bill is that the gross rent to be determined by the District Court under s. 6, in accordance with the criteria therein set out, is to be regarded as the just and proper rent.

The effect of the rebates permitted by s. 9 is that, for a period of five years after the enactment of the Bill as law, landlords are to receive an amount which will be substantially less than the just and proper rent payable in respect of their property. In the absence of any constitutionally permitted justification, this clearly constitutes an unjust attack upon their property rights. The Bill offers no such justification for depriving the landlord of part of his or her just rent for the period specified in the Bill. This Court has already held that the pre-existing rent control constituted an unjust attack upon property rights. In such circumstances, to impose different but no less unjust deprivations upon landlords cannot but be unjust having regard to the provisions of the Constitution.

Having come to the foregoing conclusion with regard to the provisions of s. 9 of the Bill, in so far as it affects the rights of landlords of controlled dwellings, the Court would normally conclude its judgment. However, the Court has regard to the fact that the legislation proposed in this Bill also affects the rights of tenants, and counsel arguing against the Bill have propounded specific arguments that the Bill is unconstitutional because it infringes the constitutional rights of the tenants affected thereby. Accordingly, the Court proposes to make some brief observations with regard to such arguments.

The Court recognises that hardship may be caused to some tenants required to pay even the abated rents provided for in s. 9 of the Bill. As the financial means of tenants may vary considerably, it is not possible for the Court, nor is it the function of the Court in this case, to determine in which particular instances the ensuing hardship could or would amount to an injustice of the type to which Article 40, ss. 1 and 3, of the Constitution applies. On the assumption that undue hardship is likely to be caused in some instances, a question may arise whether such hardship would amount to an unjust attack upon the property rights of a tenant contrary to Article 40, s. 3, of the Constitution, or would amount to an unjustifiable treatment of such tenant in contravention of Article 40, s. 1, of the Constitution.

Because of the decision the Court has already reached, it is unnecessary to consider this matter further. However, having regard to the obligation imposed on the State by the Constitution to act in accordance with the principles of social justice, the Court recognises the presumption that any such hardship will be provided for adequately by the State.

It is not, therefore, necessary to pronounce upon any other provisions of the Bill, some of which are surprisingly unclear. It is also to be pointed out that the whole of Part II of the Rent Restrictions Act, 1960 (as amended), was declared by this Court to be invalid having regard to the provisions of the Constitution. Therefore, every section thereof had been void *ab initio*. The schedule to the Bill appears to indicate that either it was not intended to re-enact provisions similar to those formerly contained in ss. 33, 34, 35 and 36 of the Act of 1960, or that it was wrongly assumed that they are still in force.

The decision of the Court, as contained in this judgment, will be conveyed to the President.

Solicitor instructing counsel assigned by the court: *Seán Ó hUadhaigh & Co.*

Solicitor for the Attorney General: *Chief State Solicitor.*

D.H.W.