1944 *Present:* **Keuneman, Cannon and Jayetilleke JJ.**

MAROOF, Appellant, *and* **LEAFF**, Respondent.

171—C. R. Colombo, 94,683.

Rent Restriction Ordinance—No new jurisdiction created—Right of appeal from Court of Requests—Ordinance No. 60 of 1942, s. 8 proviso (a) to (d).

No new jurisdiction is conferred on the Court of Requests in respect of the cases (a) to (d) contained in the proviso to section 8 of the Rent Restriction Ordinance and the right of appeal from a judgment or final order of the Court remains unaffected.

There is nothing in the section which makes a preliminary inquiry into the matters contained in the proviso imperative or prevents the Court from allowing those matters to be proved at the trial. Even if a new jurisdiction is created by section 8 of the Rent Restriction Ordinance that jurisdiction is conferred upon the Court of Requests and the District Court and the right of appeal from those Courts is not taken away.

CASE referred by Wijeyewardene J. to a Bench of three Judges. The question referred was whether the right of appeal from a judgment or final order of the Court of Requests in an action in ejectment instituted under section 8 of the Rent Restriction Ordinance was affected by the Ordinance.

G. P. J. Kurukulasuriya (with him *V. Joseph*), for the defendant-respondent, raised a preliminary objection.—There is no right of appeal to the Supreme Court from a decision given by a Commissioner of Requests in a case arising under section 8 of the Rent Restriction Ordinance (Ordinance No. 60 of 1942). There are conflicting decisions on this point—*Abeyewardene v. Nicolle* [1]; *Weerasinghe v. Azeez* [2]; *Gunapala v. Mohideen* [3]. The present action is one for the ejectment of a tenant brought by the landlord on the ground that the premises in question are reasonably required for occupation by the landlord. It is a special ground of action provided for by a special emergency enactment. The Rent Restriction Ordinance applies, according to section 2, only in certain specified areas and is not applicable in all Courts of Requests and District Courts. By this Ordinance the ordinary jurisdiction of the Court of Requests under section 75 of the Courts Ordinance is ousted and a new jurisdiction is conferred on it to entertain tenancy cases only under certain conditions. A preliminary inquiry as to whether such conditions are present is necessary before the plaint is accepted—*Rosaline Nona v. Jan Singho* [4]. The words " no action shall be entertained " in section 8 would qualify the proviso too—*Madras and Southern Mahratta Railway Co., Ltd., v. Bezwada Municipality* [5]. The Court of Requests or District Court, for the purpose of the Rent Restriction Ordinance, is thus a special tribunal and, in the absence of any section in the Ordinance enabling appeals,

[1] *(1944) 45 N. L. R. 350.*
[2] *(1944) 45 N. L. R. 381.*
[3] *(1944) 45 N. L. R. 371.*
[4] *(1944) 45 N. L. R. 461.*
[5] *A. I. R. 1944 P. C. 71.*

no appeal lies to the Supreme Court from its decisions—*Abeyewardene v. Nicolle* (*supra*); *Gunapala v. Mohideen* (*supra*); *Sangarapillai v. Chairman, Municipal Council, Colombo* [1]; *Soertsz v. Colombo Municipal Council* [2]; *Kanagasunderam v. Podihamine* [3]; *Vanderpoorten v. The Settlement Officer* [4]. The conclusive nature of the decision of the Court of Requests or District Court is similar to that of the Assessment Board under section 12.

H. W. Jayawardene (with him *G. T. Samarawickreme*), for the plaintiff, appellant.—Section 8 of the Rent Restriction Ordinance does not confer any new jurisdiction on the Court of Requests. It merely limits the jurisdiction which the Court of Requests exercised previously under section 75 of the Courts Ordinance. As regards grounds (*c*) and (*d*) of the proviso a separate preliminary inquiry as to jurisdiction is not necessary in order to entertain the plaint—*The King v. Nat Bell Liquors, Ltd.* [5]. In view of the fact that the jurisdiction which the Court of Requests possesses under the Rent Restriction Ordinance is the one conferred by the Courts Ordinance the usual right of appeal provided by section 78 of the Courts Ordinance is available as long as it is not expressly stated as inapplicable.

Even if a proceeding under the Rent Restriction Ordinance is to be regarded as a special proceeding, appeal would lie even though there is no special section enabling it. *Attorney-General v. Sillem* [6] to which and *The King v. Hanson* [7] and *The Queen v. Stock* [8] reference is made in *Abeywardene v. Nicolle* (*supra*) turns on its own facts and was decided prior to the time when the High Court in England was given a general right to entertain appeals from an established inferior Court provided it was not expressly excluded by special enactment. The position now is that " when a question is stated to be referred to an established court without more, it . . . . imports that the ordinary incidents of the procedure of the court are to attach, and also that any general right of appeal from its decision likewise attaches—*National Telephone Co., Ltd. v. Postmaster-General* [9] which is followed in *Secretary of State for India v. Chellikani Rama Rao* [10]; *Maung Ba Thaw v. Ma Pin* [11] and *Hem Singh v. Mahant Basant Das* [12]. See also the Full Bench decision in *The Hon. the Government Agent, Central Province v. Mrs. James Ryan and Saunders* [13]. In the circumstances, however section 8 of the Rent Restriction Ordinance may be interpreted, a right of appeal to the Supreme Court does exist because the action in the present case is one which is referred to an established court.

G. P. J. Kurukulasuriya replied.

Cur. adv. vult.

December 5, 1944. KEUNEMAN J.—

The plaintiff brought this action alleging that the defendant took the premises No. 158, Temple Road, on a monthly tenancy at a rental of

[1] *(1930) 32 N. L. R. 92.*
[2] *(1930) 32 N. L. R. 62.*
[3] *(1940) 42 N. L. R. 97.*
[4] *(1942) 43 N. L. R. 230.*
[5] *L. R. (1922) 2 A. C. 128 at 158.*
[6] *(1864) 10 L. T. (N. S.) 434.*
[7] *(1821) 4 B and Ald. 519.*
[8] *(1838) 8 Ad. and El. 405.*
[9] *L. R. (1913) A. C. 546 at 552.*
[10] *A. I. R. (1916) P. C. 22.*
[11] *A. I. R. (1934) P. C. 81.*
[12] *(1936) 1 A. E. R. 356.*
[13] *(1881) 4 S. C. C. 151.*

Rs. 40 a month, having deposited a sum of Rs. 40 as one month's rent in advance. She further stated that the defendant had not paid the rent due for March, 1944, and that she had by notice of February 25, 1944, requested the defendant to quit the said premises. Plaintiff also averred that the said premises were reasonably required for occupation as her residence, and prayed for ejectment of the defendant.

The defendant pleaded that the notice served was contrary to the provisions of the Rent Restriction Ordinance of 1942, and denied that the premises were required for the occupation of the plaintiff. The defendant brought into court Rs. 80 as rent for March and April, 1944.

After trial the Commissioner found that " the plaintiff's need for the premises in question cannot be said to be reasonable or genuine for certain ", and dismissed plaintiff's action with costs. Plaintiff appealed from that judgment, and at the hearing of the appeal a preliminary objection was taken on the part of the defendant that there was no right of appeal from this order. Wijeyewardene J. acting under section 48 of the Courts Ordinance reserved this question for the decision of three Judges in view of the fact that there were three conflicting decisions of this Court on the point.

In *Abeywardene v. Nicolle* [1] Soertsz J. said that there was no right of appeal from an order relating to section 8, provisos (*a*) to (*d*) of the Ordinance. The appeal had however been disposed of on other points.

A similar objection was taken in *Weerasinghe v. Azeez* [2] before de Kretser J. who pointed out that the earlier decision was made *obiter*, and added—" When we turn to section 8, that section does not give the right to the landlord to sue the tenant for ejectment. That is a right he has independent of the Ordinance. " What that section does is to curb his right and to limit it to certain circumstances. In my opinion, therefore, the right of appeal which existed previously is not affected by the Ordinance."

In *Gunapala v. Mohideen* [3] a similar matter came up before Soertsz J. who pointed out that Ordinance No. 60 of 1942 introduced a material change in the law " by debarring landlords in certain areas from instituting such actions without the written authorisation of an Assessment Board, and also by prohibiting courts of law in those areas from entertaining such actions, were they instituted, unless in the opinion of the Court the rent was in arrear, or the tenant had given notice, or the landlord required the premises reasonably, or the premises were being used in an immoral, illegal, neglectful, or pestiferous manner ". Soertsz J. added—" The right of action and of appeal which existed previously is the right of the common law action and the common law appeal from a final judgment or order having the effect of a final judgment ". But in the case where " the preliminary matters in section 8 (*a*) to (*d*) " have to be considered, " there is then an action for ejectment but only *in posse*. Till the court has held the preliminary inquiry in accordance with the fundamental rule of procedure that requires that the party to be affected shall be heard, there is in reality no action for ejectment over which the

[1] *(1944) 45 N. L. R. 350.* [2] *(1944) 45 N. L. R. 381.*
[3] *(1944) 45 N. L. R. 371.*

court has any power. If the court is of opinion that the landlord has not made out a case under section 8 (*a*) to (*d*) and makes order accordingly, that surely is not an order in an ejectment action. An ejectment action has not yet come into being for the purpose of trial."

A further point made by Soertsz J. was that in an action for ejectment without authorisation by a Board, "a new jurisdiction has been conferred on certain courts to consider some preliminary questions that do not arise as preliminary questions in the ordinary tenancy case". Soertsz J. held that a jurisdiction conferred on a court is not subject to a right of appeal unless such a right has been given by clear words or inevitable implication. He followed the decision of Lord Westbury in *Attorney-General v. Sillen* [1] and a number of cases decided in England and in Ceylon which followed that decision. Soertsz J. also made one reservation, viz., that what he had said applied to matters arising in the Court of Requests, and pointed to the difference between section 73 and section 78 of the Courts Ordinance.

In view of these conflicting decisions we have given this matter our careful consideration. Section 8 of the Rent Restriction Ordinance No. 60 of 1942, runs as follows:—

"Notwithstanding anything in any other law, no action or proceedings for the ejectment of the tenant of any premises to which this Ordinance applies shall be instituted in or entertained by any Court, unless the Assessment Board, on the application of the landlord, has in writing authorised the institution of such action or proceedings: Provided, however, that the authorisation of the Board shall not be necessary in any case where—

(*a*) rent has been in arrear for one month after it has become due; or

(*b*) the tenant has given notice to quit; or

(*c*) the premises are, in the opinion of the Court, reasonably required for occupation as a residence for the landlord or any member of the family of the landlord or for the purposes of his trade, business, profession, vocation or employment; or

(*d*) the tenant or any person residing or lodging with him or being his sub-tenant has, in the opinion of the court, been guilty of conduct which is a nuisance to adjoining occupiers, or has been convicted of using the premises for an immoral or illegal purpose, or the condition of the premises has, in the opinion of the Court, deteriorated owing to acts committed by or to the neglect or default of the tenant or any such person.

For the purpose of paragraph (*c*) of the foregoing Proviso, "member of the family" of any person means "the wife of that person, or any son or daughter of his over eighteen years of age, or any parent, brother or sister dependent on him".

The first part of this section is in imperative terms, and forbids the "institution" of proceedings for the ejectment of a tenant except on a written authorisation of the Assessment Board, "notwithstanding anything in any other law". I do not think it is profitable to consider

[1] *11 E. R. 1200.*

whether this part of the section creates a new jurisdiction or merely imposes a curb or fetter on an existing jurisdiction. In either case the plaintiff is effectively debarred from bringing the action without this authorisation. The real problem we have to solve is the effect of the proviso to the section. I think it is essential to consider the wording of the proviso. The language is that " the authorisation of the Board shall not be necessary " in the cases given, viz. (*a*) to (*d*). If the authorisation of the Board is not " *necessary* " in those cases, I find it difficult to resist the argument that in those cases the jurisdiction of the court in tenancy cases remains unaffected and in its pristine force. In this appeal counsel supporting the preliminary objection went so far as to suggest that before the plaint was filed the plaintiff was bound to satisfy the court that one of the grounds (*a*) to (*d*) had been established, and that in reality the plaintiff had to obtain the leave or sanction of the court to bring the action. I do not think the words of the section can be stretched to that length, and certainly this suggestion has not been made in any of the judgments referred to.

It is also interesting to consider the cases (*a*) to (*d*). It is worthy of note that cases (*a*) and (*b*) depend upon questions of fact and that the " opinion of the court " is not involved. Indeed grounds (*a*) and (*b*) would have been good grounds for bringing an action for ejectment against a tenant before the Ordinance, and would have been material matters for determination in a tenancy case. In cases (*c*) and (*d*) " the opinion of the court " is involved. Case (*c*) brings in matters which before the Ordinance were irrelevant to the tenancy action, and possibly case (*d*) also does so in some respects. Had case (*c*) and possibly case (*d*) been the only cases contained in the proviso, these may have provided some support to counsel's argument. But in this case they do not stand alone but are conjoined with cases (*a*) and (*b*) and all these grounds (*a*) to (*d*) are grounds whereby under the proviso the authorisation of the Board " shall not be necessary ". In my opinion, therefore, where the conditions in cases (*a*), (*b*), (*c*) or (*d*) have been established the imparative words of the earlier part of section 8 have no application whatsoever.

I have considered the question whether section 8 requires a preliminary inquiry by the court as to whether grounds (*a*) to (*d*) or any of them exist. No doubt in view of this section it is now necessary for a plaintiff who has not obtained the authorisation of the Board to allege that he comes in under one of these cases, and it is within the power of the court to try any of these matters as preliminary issues. I do not however find anything in the section that makes such a preliminary inquiry imperative, or prevents the court from allowing these matters to be proved at the trial itself.

I have therefore come to the conclusion that in the cases (*a*) to (*d*) the jurisdiction of the court to try tenancy cases remains unaffected, and that the written authorisation of the Board is not necessary. In all other cases the authorisation of the Board is necessary before action is brought.

It is interesting to note that under section 12 a procedure has been laid down for proceedings before the Board, although the grounds on

which the Board may grant or refuse authorisation have not been set out. No procedure, however, has been laid down for any application to the court for leave or sanction to bring the action or for the trial of any matters under section 8 (*a*) to (*d*) as preliminary questions for determination.

As regards the question of law raised by Soertsz J., I think it will be sufficient to mention the Divisional Bench case of *Kanagasunderam v. Podihamine* [1] which followed earlier decisions in England and Ceylon. The effect of those decisions may be summed up in the words of Lord Westbury in *Attorney-General v. Sillem* (*supra*)—" The creation of a new right of appeal is plainly an act which requires legislative authority. The Court from which the appeal is given and the Court to which it is given must both be bound, and that must be the act of some higher power. It is not competent to either tribunal, or to both collectively, to create any such right. Suppose the legislature to have given to either tribunal the fullest power of regulating its own practice or procedure, such power would not avail for the creation of a new right of appeal which is in effect a limitation of the jurisdiction of one court and an extension of the jurisdiction of another. A power to regulate the practice of a court does not involve or imply any power to alter the extent or nature of its jurisdiction." This principle was accepted and applied in our Divisional Bench case.

The application of this principle to the present case is dependent upon the question whether in fact a new jurisdiction was conferred upon the court by section 8 of the Rent Restriction Ordinance and no right of appeal was expressly given. I have already discussed the question whether a new jurisdiction was conferred in respect of cases (*a*) to (*d*) contained in the proviso, and have come to the conclusion that in respect of those cases no new jurisdiction is conferred but the former jurisdiction is recognized. In my opinion the principle laid down in these cases is not applicable to the present case.

It has been contended for the appellant that another principle, adopted by the House of Lords and the Privy Council, is also applicable in the present case: see *National Telephone Co., Ltd. v. Postmaster-General* [2]. Here the point taken was that no appeal lay from the determination of the Railway and Canal Commission under the Telegraph (Arbitration) Act, 1909, because the reference contemplated is to the arbitration of a specified tribunal and is not a reference to the Commission as a Court of Record. In respect of this argument Viscount Haldane, Lord Chancellor, said—" It is contended by the appellants that in a reference under this Act the Commission is not in the same position as in a reference under the general Acts establishing it, and that as no right of appeal is expressly given none can be presumed.

" My Lords, if the reference is one on the same footing as a reference under the general Acts, that is, a reference to the Commission as a Court of Record, with a right of appeal provided, this is decisive against the points raised in the argument for the appellants. And I find nothing in the Act of 1909 to cut down the effect of the words at the end of

[1] *(1940) 42 N. L. R. 97.*

[2] *(1913) A. C. 546.*

section 1, which appear to me to provide for a reference to the Commission in its usual capacity. When a question is stated to be referred to an established court without more, it, in my opinion, imports that the ordinary incidents of the procedure of the court are to attach, and also that any general right of appeal from the decision likewise attaches."

This case has been followed by the Privy Council in *Secretary of State for India v. Chellikani Rama Rao and others* [1]; in *Maung Ba Thaw v. Ma Pin* [2] and in *Hem Singh v. Mahant Basant Das* [3]. In this last case it was held that jurisdiction conferred on the High Court was intended to include the new subject matter as part of the ordinary appellate jurisdiction of the High Court and that the case was within the principle laid down by Viscount Haldane (see above). The right of appeal to the Privy Council was upheld and the preliminary objection dismissed.

On the footing of these cases it is argued that, even if a new jurisdiction was created by section 8 of the Rent Restriction Ordinance, that jurisdiction was conferred upon the ordinary courts, viz., the Courts of Requests and District Courts—and that the rights of appeal from judgments of those courts were not taken away. This is a forcible argument and I think it is correct.

In the present case the Commissioner has decided that the plaintiff has not brought herself within any of the cases (*a*) to (*d*) and has dismissed her action. This is a final judgment or at any rate an order having the effect of a final judgment. This is a tenancy case, and does not come under section 833A of the Civil Procedure Code. The appellant is therefore entitled to appeal on matters both of fact and of law under section 78 of the Courts Ordinance.

The preliminary objection is dismissed with costs. This is the only matter that has been referred to us. The appeal will be listed for argument in the ordinary course before a single Judge.

CANNON J.—I agree.

JAYETILEKE J.—I agree.

Preliminary objection over-ruled.