1949 *Present*: **Gratiaen J.**

NUGERA, Appellant, *and* RICHARDSON, Respondent

S. C. 155—C. R. Colombo, 10,948

Rent Restriction Ordinance—Suit for ejectment—Consent decree—Validity of compromise—Civil Procedure Code, section 408.

The limitations placed on the jurisdiction of a Court by the provisions of the Rent Restriction Ordinance in an action against a tenant who is unwilling to vacate the premises do not in any way fetter the right or the duty of the Court to give effect to lawful compromises willingly entered into in a pending action between a landlord and his tenant.

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

S. Canagarayar, with *M. A. M. Hussain*, for defendant appellant.

Ivor Misso, with *H. B. White*, for plaintiff respondent.

Cur. adv. vult.

December 7, 1949. GRATIAEN J.—

The appellant was the tenant of a bungalow in Wellawatte to which the provisions of the Rent Restriction Ordinance, No. 60 of 1942, admittedly applied. In May, 1947, the landlord died, and the respondent, to whom probate was duly issued, administered the estate as executor.

On February 6, 1948, the respondent sued the appellant in the Court of Requests of Colombo for rent and ejectment. The appellant filed answer setting up various defences under the Ordinance, and the case came up for trial on June 15, 1948. There can be little doubt that in the normal course of events the Court would have had no jurisdiction to enter judgment in favour of the respondent at the trial except upon proof to its satisfaction of one or other of the relevant facts set out in the provisions of Section 8 of the Ordinance of 1942. When a tenant is in possession *and unwilling to give it up*, possession can only be restored to the landlord by order of the appropriate Court, and such an order can only be made after certain facts specified in the Ordinance are proved or admitted to exist. Section 8 restricts to this extent the jurisdiction of the Courts to make orders in the cases of premises to which the Ordinance applies—vide *Burton v. Fincham* [1] where the Court of Appeal decided that, notwithstanding the fact that a tenant had *prior to the institution of action* agreed to vacate the premises on a future date, the Court was not absolved from the duty of calling for proof of the relevant facts prescribed by the analogous legislation in England if the tenant subsequently refused to implement his agreement. An order for ejectment *in invitum* cannot otherwise be made because, as Atkin L.J. pointed out, " parties cannot by agreement give the Courts jurisdiction which the Legislature has enacted they are not to have ". Indeed, if the law were otherwise, the very object of the Rent Restriction Ordinance would be defeated.

[1] *(1921) 2 K. B. 291.*

In the present action, the case did not proceed to trial on June 15, 1948, because the parties effected a compromise in terms of Section 408 of the Civil Procedure Code. The terms of the compromise were embodied in a decree in the following terms :—

> " It is ordered and decreed of consent that the defendant be ejected from premises No. 3 situated at St. Lawrence Road, Wellawatte, Colombo, bounded on the North by premises No. 307, Colombo-Galle Road, South by St. Lawrence Road, East by premises No. 5, St. Lawrence Road, Wellawatte, and West by Galle Road.
>
> It is further ordered and decreed of consent that the defendant do pay to the plaintiff damages at Rs. 53·83 per mensem from June 1, 1948, till defendant is ejected from the premises. If defendant pays each month's damages by the 15th of the following month as from July 15, 1948, writs do not issue till July 31, 1949. In default both writs to issue. "

The resulting position was that the appellant did not put the respondent to the proof of the various facts which would otherwise have to be established before the Court could enter a decree for ejectment against an unwilling tenant, and in effect the Court was relieved of its duty to call for such proof. The appellant preferred instead to obtain from the respondent the concession of remaining in occupation of the premises for a further period of 13½ months provided that he made regular monthly payments of Rs. 53·83 to the respondent.

This eminently satisfactory arrangement was implemented by both parties until July 25, 1949. On that date the appellant, having now enjoyed on his part the full benefit of the terms of the compromise, looked for some means whereby he might deprive the respondent of the corresponding advantage which the latter was entitled to claim under the settlement arrived at in Court. Accordingly, barely a week before " D Day ", the petitioner applied to the Court to set aside the consent decree of the previous year, alleging that notwithstanding the solemn agreement which had been entered into by them and sanctioned by the Court as a lawful compromise, that decree was *ultra vires* and made without jurisdiction. This very startling proposition was rejected by the learned Commissioner of Requests, who held that he was bound by the decision of Rose J. in *Thomas v. Bawa* [1].

The appellant now invites this Court to set aside the learned Commissioner's order refusing his application to vacate the decree. I decline to do so, and only regret that it has been possible for the appellant, by resorting to the simple device of filing what I regard as a frivolous appeal, to obtain a further extension of time to remain in possession of the premises which he was bound to vacate not later than July 31, 1949.

It is not suggested that the compromise effected on June 15, 1948, was tainted with fraud, duress or any other circumstance which would vitiate an agreement of parties in accordance with the principles of the Roman-Dutch Law (*Sabapathy v. Dunlop* [2]). The appellant does not suggest that the terms of the compromise were not very acceptable to him when he agreed to them, although the relentless approach of the date

[1] *(1945) 46 N. L. R. 215.* [2] *(1935) 38 N. L. R. 113.*

fixed for him to implement his part of the settlement must of course have caused him many misgivings. It is, however, contended, on the authority of *Barton v. Fincham*[1], that the Court which sanctioned the consent decree in 1948 acted without jurisdiction because no evidence had been led before it at the relevant date to prove that the respondent was in fact and in law entitled to eject the appellant. This argument is without merit. *Barton's case* dealt only with the case of a tenant who was unwilling at the date of trial to give up possession. Scrutton L.J. saw " no reason, however, why the Judge, on being satisfied that the tenant was *then* ready to go out (not that he was once willing but had changed his mind) should not make an order for possession ". Atkin L.J. also took the view that " if the parties admit that one of the events had happened which gave the Court jurisdiction, and if there was no reason to doubt the bona fides of the admission, the Court was under no obligation to make further inquiry as to the question of fact ". Rose J. came to the same conclusion in *Thomas v. Bawa* (*Supra*).

In my opinion the limitations placed on the jurisdiction of a Court by the provisions of the Rent Restriction Ordinance of 1942 (and the subsequent Act of 1948) in actions between a landlord and a tenant who is unwilling to vacate the premises do not in any way fetter the right or the duty of the Court to give effect to lawful compromises willingly entered into in a pending action between a landlord and his tenant. The provisions of Section 408 of the Civil Procedure Code still remain intact. It is monstrous to contend that a defendant who, in a tenancy action, has entered into an unobjectionable bargain to give up an advantage in consideration of obtaining some other benefit should be relieved from his bargain *after he has received in full measure the benefit accruing from the compromise*. If a tenant is to be placed in a specially privileged position in such cases, the Legislature should say so in unambiguous terms. I dismiss the appeal with costs.

Appeal dismissed.

1949 *Present :* **Gratiaen J.**

W. H. BUS CO., LTD., Petitioner, *and* COMMISSIONER OF MOTOR TRANSPORT *et al.*, Respondents

S. C. 480—APPLICATION FOR A WRIT OF CERTIORARI ON THE COMMISSIONER OF MOTOR TRANSPORT

Writ of certiorari—Omnibus—Application for renewal of route licence—Privilege of operating on old licence pending determination—In what circumstances available—Omnibus Service Licensing Ordinance, No. 47 of 1942—Proviso to section 10.

The statutory privilege conferred by the proviso to section 10 of the Omnibus Service Licensing Ordinance is not available to the holder of a licence which has already expired at the time its " renewal " is applied for.

[1] *(1921) 2 K. B. 291.*