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.*

THIS was an application for a writ of *certiorari* on the Commissioner of Motor Transport. The petitioner sought in this application to annul the decision of the Commissioner of Motor Transport to grant to the second respondent certain licences for the various routes on which the petitioner's omnibuses had previously operated.

N. E. Weerasooria, K.C., with *C. E. S. Perera* and *M. P. Spencer*, for the petitioner.

M. Tiruchelvam, Crown Counsel, for the 1st respondent.

F. A. Hayley, K.C., with *H. W. Tambiah*, for the 2nd respondent.

Cur. adv. vult.

November 30, 1949. GRATIAEN J.—

The petitioner is the W. H. Bus Company, Ltd., of Kandy. The Company had up to August 31, 1948, operated twelve omnibus services along defined routes from Kandy to various parts of the Central Province by virtue of licences issued in its favour by the Commissioner of Motor Transport. On that date one of the licences expired, and ten others were due to expire a month later. The twelfth licence would, unless duly revoked by the licensing authority, have remained in operation until October 31, 1949.

In terms of section 10 of the Omnibus Service Licensing Ordinance, No. 47 of 1942, the authority of a licensee to operate an omnibus service terminates on the date of expiry of the licence subject to the privilege of continuing to operate on the prescribed route for a limited period *provided that an application for renewal is made before the expiration of the licence.*

The petitioner Company did not avail itself of the privilege conferred by the provisions of section 10. It is common ground that at the relevant time there had been much internal strife among the persons charged with the management of its affairs, and the inevitable consequence was that its efficiency as a business organisation considerably deteriorated. No application for a so-called "renewal" of the eleven licences which had already expired was made until October 26, 1948. In the meantime the omnibuses continued, but without legal sanction, to operate along the routes. I cannot see, however, how official condonation of this irregularity can be construed as conferring upon the Company any additional rights. The Commissioner's powers in this respect are necessarily restricted by the provisions of the Ordinance under which he is authorised to function.

If the Company was dilatory in its business affairs, it can hardly be said that the Commissioner's office was any less lethargic in its attention to official correspondence. The application for a "renewal" of the expired route licences was received on October 26, 1948. No reply seems to have been sent to the Company for nine months. On July 26, 1949, the Commissioner wrote to state that although he was vested

with a discretion by the regulations passed under the Ordinance to accept and deal with an application for renewal received after the time limit prescribed by the regulations (namely, eight weeks before expiration of the existing licence), he did not propose to do so in the present case because the petitioner's omnibus service had proved unsatisfactory in the past. He decided instead to treat the application as an application for *new* licences, and to consider it on its merits in competition with the claims of other candidates (including the second respondent).

In due course the Commissioner adjudicated upon the respective claims of the petitioner, the second respondent and other applicants. By his order dated October 1, 1949, he decided to reject the application of the petitioner and to grant licences to the second respondent for the various routes on which the petitioner's omnibuses had previously operated.

This Court has, of course, no power to review the correctness of the Commissioner's decision. The petitioner contends, however, that the order of October 1, 1949, was made in excess of the Commissioner's jurisdiction under the Ordinance. If that be established, I am undoubtedly entitled to quash the order by the issue of a mandate in the nature of a writ of *certiorari*.

As I understand Mr. Weerasooria's argument, the Commissioner's jurisdiction is challenged by the petitioner on the ground that the Commissioner, having permitted the petitioner's buses to operate on the relevant routes after the existing licences had expired, must be deemed to have already granted the application for renewal—and that he therefore had no right at a later date to treat the application as an application for fresh licences to be considered in competition with other claimants. I cannot accept this submission. There is no evidence of any kind which justifies the inference that the Commissioner had on any date prior to October 1, 1949, made an order granting the petitioner's application for a renewal of its route licences. Indeed, if it were necessary to give a ruling on the point, I would be inclined to hold that although the Commissioner had a discretion under the regulation to treat as valid an application for a "renewal" received less than eight weeks before a licence had expired, he had no such power if the licence had *already* expired before he received the application. The regulation cannot in my opinion be interpreted so as to over-ride the substantive provisions of the Ordinance itself. The only benefit conferred on an applicant for *renewal* as opposed to an applicant for a licence which he had not enjoyed before seems to be the privilege granted by the proviso to section 10—namely, the privilege of operating on the terms of the old licence until the pending application for renewal has been finally determined by the appropriate tribunal. As I have already pointed out, this statutory privilege is not available where (as has happened in the present case) the licences had already expired at the time when their so-called "renewal" was applied for.

I dismiss the petitioner's application with costs in favour of both respondents.

Application dismissed.