1967 *Present :* **T. S. Fernando, J., and Siva Supramaniam, J.**

A. SAMARASINGHE and another, Appellants, *and* W. SAMARASINGHE, Respondent

S. C. 222 (Inty.) of 1966—D. C. Galle, 7106/L

Conciliation Boards Act, No. 10 of 1958, as amended by Act No. 12 of 1963—Sections 6, 14 (1) (a), 18—Dispute relating to a contract of tenancy—Jurisdiction of a civil court to hear it—Requirement of certificate from Chairman of Panel of Conciliators—Inability to serve summons on the party complained against—Effect.

Where a Panel of Conciliators has been constituted for a Conciliation Board area, an action instituted in that area concerning a dispute as to whether or not there has been a breach of a contract of tenancy between the parties falls within the ambit of section 6 of the Conciliation Boards Act, No. 10 of 1958, as amended by Act No. 12 of 1963. The action cannot therefore be instituted in, or be entertained by, a civil court without the production of a certificate from the Chairman of the Panel of Conciliators in compliance with the requirements of section 14 (1) (*a*) of the Act.

Where a dispute is referred to a Conciliation Board, there is no legal requirement of the presence at the inquiry of the party against whom the complaint is made. If the Board is satisfied that, despite reasonable effort, it is not possible to serve summons or otherwise secure the attendance of the party complained against, there is no legal bar to an *ex parte* inquiry and the issue of a certificate thereafter that it is not possible to effect a settlement.

APPEAL from an order of the District Court, Galle.

M. C. Abeyewardene, for the defendants-appellants.

C. Ranganathan, Q.C., with *S. W. L. Bandara*, for the plaintiff-respondent.

Cur. adv. vult.

December 21, 1967. T. S. FERNANDO, J.—

This action was instituted on 19th March 1965 in the District Court of Galle by the plaintiff who averred in his plaint that he was at all material times a monthly tenant of his elder brother, the 1st defendant, in respect of certain premises with all buildings thereon. It was further averred that his landlord, the said 1st defendant, had forcibly ejected him from a specified part of the said premises. The 2nd defendant was made a party to the case on the allegation that he had acted in concert with the 1st defendant in the said unlawful ejectment. What was prayed for in the plaint was an ejectment of the defendants and a restoration of the plaintiff to quiet possession.

The 1st defendant filed answer denying that the plaintiff was his tenant. It seems to me that there lay the real dispute between the parties. The 1st defendant further denied unlawful entry and averred that the plaintiff was only his rent collector and manager of the buildings and of the business carried on therein. He alleged that the plaintiff was dismissed from service on account of misappropriation of certain monies, and that the 2nd defendant was the person employed to succeed to the duties performed by the dismissed plaintiff.

The 1st defendant, in his answer, took up also the plea that this action could not have been instituted by the plaintiff or entertained by the court without the production of a certificate from the Chairman of the Panel of Conciliators constituted for the area in which the premises from which the plaintiff claimed he was ejected are situated. The point so pleaded was tried by way of a preliminary issue and decided by the learned District Judge against the defendants. This appeal raises solely the correctness of that decision of the District Judge.

Section 14 (1) (*a*) of the Conciliation Boards Act, No. 10 of 1958, as amended by Act No. 12 of 1963, enacted as follows :—

> " Where a Panel of Conciliators has been constituted for any Conciliation Board area—
>
> no proceedings in respect of any dispute referred to in paragraphs (*a*), (*b*) and (*c*) of section 6 shall be instituted in, or be entertained by, a civil court unless the person instituting such proceedings produces a certificate from the Chairman of such Panel that such dispute has been inquired into by a Conciliation Board and it has not been possible to effect a settlement of such dispute by the

Board, or that a settlement of such dispute made by a Conciliation Board has been repudiated by all or any of the parties to such settlement in accordance with the provisions of section 13 ; "

It did appear in the proceedings held in the District Court on the preliminary issue that a dispute between the plaintiff and the 1st defendant had been referred as contemplated in section 6 of the Act for inquiry to a Conciliation Board. D4, a certificate dated 25th August 1965, has been issued by the Chairman of the relevant Panel. By that time the answers of the defendants had been filed in the District Court. This certificate recites that a complaint was made by the plaintiff against the 1st defendant " for having entered unlawfully the service station " (which is the important part of the premises we are concerned with in this case), that it was inquired into by a Conciliation Board and that a settlement could not be effected. The learned District Judge has construed the complaint made to be one relating to a criminal offence of trespass, but we are satisfied that he was in error in so doing. He appears to have been influenced by the fact that the matter was referred to the Panel of Conciliators by the Police, but the evidence of the Police Inspector is clear enough that he treated the plaintiff's complaint to him correctly as one relating to a land dispute—a dispute of a civil nature, in respect of which the Police could necessarily make no useful decision.

It would appear that service of summons could not be effected on the 1st defendant so that a Conciliation Board may proceed to make an inquiry *inter partes*, but, as we apprehend the position, there is no legal *requirement* of the presence at the inquiry of the party against whom the complaint is made. If, after reasonable effort to serve summons the Board is satisfied that it is not possible to serve summons or otherwise secure the attendance of the party complained against, there is no legal bar to an *ex-parte* inquiry and the issue of a certificate thereafter that it is not possible to effect a settlement. That the Chairman was aware of his power to issue a certificate in circumstances such as those I have above set out is evident from the very existence of certificate D4.

The learned District Judge, after referring to the *obiter dictum* of Basnayake, C.J., in *Asiz v. Thondaman*[1] that the right of a citizen to invoke the aid of the courts is one that " is so fundamental that it cannot, in my view, be taken away by our legislature itself ", has gone on to say that the plaintiff's right to sue cannot be taken away unless a statute in express and unambiguous language so states. We do not think that the Conciliation Boards Act makes any pretensions of depriving the citizen of his right of access to the established Courts. What it seeks to do is to place a bar against the entertainment by Court in certain stated circumstances of civil or criminal actions unless there is evidence of an attempt first made to reach a settlement of the dispute over which the parties appear set on embarking on litigation which is often expensive to the parties as well

[1] *(1939) 61 N. L. R. at p. 222.*

as to the State and which almost always finishes up in bitterness. Indeed, section 18 of the Act is eloquent in regard to the mood of the legislature when it passed the law relative to conciliation, for it enacted that " the provisions of this Act shall have effect notwithstanding anything to the contrary in any written law ".

I do not find it possible to agree with the learned judge in his finding that there was no dispute between the plaintiff and the 1st defendant such as is referred to in section 6 of the Act. I have already indicated above that the main dispute was that over the allegation of the existence of a tenancy. Indeed, the plaint itself, and certainly the pleadings taken together, establish that there was a dispute falling within one or more or all of the classes (*a*), (*b*) and (*c*) described in the said section 6. Moreover, the very conduct of the plaintiff in obtaining the certificate after the institution of the action when the pinch of the plea was being felt and the making of no effort to produce it in Court, leaving such production to be done by the 1st defendant, goes to prove that he himself realised the weakness of his position in law. The issue referred to above in this judgment had, on the facts before him, to be answered by the learned judge in the negative.

I would allow the appeal, set aside the order of 20th July 1966 appealed from, and direct that the plaintiff's action be dismissed on the ground that it could not have been instituted or entertained in view of section 14 (1) (*a*) of Act No. 10 of 1958.

The 1st defendant is entitled to the costs in the court below and to the costs of this appeal.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.