1959 *Present :* **Sansoni, J.**

T. H. SIRIWARDENA, Appellant, *and* MRS. M. G. KARUNARATNE, Respondent

S. C. 8—C. R. Panadura, 15,480

Rent Restriction Act, No. 29 of 1948—Section 13 (1)—Consent decree—Undertaking by tenant to quit premises on a certain date—Enforceability—Right of tenant to recall a promise to quit.

Where, in an action for rent and ejectment in respect of premises to which the Rent Restriction Act applies, the parties enter into a compromise a term of which is that the defendant can continue to be tenant but should vacate the premises on or before a certain date, and there is no provision for the issue of a writ of ejectment in case of default, the undertaking to quit cannot be enforced subsequently in another action for ejectment without proof of the facts necessary to confer jurisdiction on the Court in terms of section 13 (1) of the Rent Restriction Act. In such a case, it cannot be contended that the undertaking amounts to a notice to quit given by the tenant within the meaning of section 13 (1) (*b*) of the Rent Restriction Act.

APPEAL from a judgment of the Court of Requests, Panadura.

Walter Jayawardene, with *Nimal Senanayake*, for Defendant-Appellant.

H. W. Jayewardene, Q.C., with *W. D. Gunasekera*, for Plaintiff-Respondent.

Cur. adv. vult.

June 9, 1959. SANSONI, J.—

The plaintiff and the defendant are landlord and tenant respectively of certain premises to which the Rent Restriction Act No. 29 of 1948 admittedly applies.

In an earlier action No. 3456 of the District Court of Panadura, the plaintiff sued the defendant for rent and ejectment on the ground that the defendant was in arrears of rent for more than one month. That action was settled on 12th October 1953, it being agreed :

(*a*) that a sum of Rs. 243 is due from the defendant to the plaintiff as rent up to the end of October 1953, that the defendant will pay the same before the end of the month, that thereafter each month's rent will be paid on or before the 10th of the following month, that the plaintiff will be entitled to add on to the rent any increases permitted by law,

(*b*) that the plaintiff shall effect all necessary repairs,

(*c*) that the plaintiff will thereafter pay all assessment rates in respect of the premises,

(*d*) that the defendant undertakes to vacate the premises on or before 31st December 1956.

Notwithstanding his undertaking to vacate the premises on or before 31st December 1956 the defendant continued to occupy them, and the plaintiff sued him in this action on 16th July 1957.

In her plaint she pleads the undertaking given by the defendant, and also that she gave the defendant notice to quit the premises on 31st December 1956. The plaint does not explain why the written authorisation of the Rent Control Board was unnecessary, nor does it contain any plea which would bring the case within the proviso to section 13 (1) of the Act. The answer filed by the defendant, rightly in my opinion, raised the defences that the written authorisation of the Board was necessary and that the plaint discloses no cause of action. The issues raised at the trial covered these matters.

The learned Commissioner gave judgment for the plaintiff, holding that the undertaking given by the defendant was not a notice to quit as contemplated by proviso (*b*) to section 13 (1), but also holding that the Rent Restriction Act did not apply to the cause of action in this case. He appears to have reached this latter conclusion because the undertaking was contained in an agreement between the parties entered into in the earlier action and embodied in a decree of Court. With respect, I am unable to agree with this finding. The case of *Barton v. Fincham* [1] which the learned Commissioner relies on undoubtedly contains expressions of opinion by the judges to the effect that agreements between the parties entered into in Court when the action comes up for hearing can be enforced. Scrutton L.J. said: " It was urged that the effect of our decision would be to prevent agreements in Court . . . . I do not see any reason why the judge on being satisfied that the tenant is then

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

ready to go out (not that he was once willing but has changed his mind) should not make an order for possession ". Atkin L.J. said: " If the parties before the Court admit that one of the events has happened which give the Court jurisdiction, and there is no reason to doubt the bona fides of the admission, the Court is under no obligation to make further inquiry as to the question of fact; but apart from such an admission the Court cannot give effect to an agreement, whether by way of compromise or otherwise, inconsistent with the provisions of the Act. " The learned Judges were drawing a distinction between a compromise entered into in an action, upon which the Court can make an order *in that action*, and an agreement which it is sought to enforce subsequently *in another action* without proof of the facts necessary to confer jurisdiction on the Court. It is the latter case which they had to deal with and which I have to deal with on the present appeal. An instance of the former type of case will be found in *Nugera v. Richardson* [1], where the terms of settlement provided that a writ of ejectment should issue on a certain date—a provision which is absent from the terms agreed in this case.

One must bear in mind that the Act has placed a fetter upon the powers of the Court, and has restricted its jurisdictions to order ejectment of a tenant. Under section 13 no action for the ejectment of a tenant shall be instituted in or entertained in any Court unless the conditions therein mentioned are satisfied, yet the plaintiff made no allegation in his plaint that any such condition had been satisfied.

But as the case was fought out in the lower Court on the question whether the defendant's undertaking to vacate the premises amounted to a notice to quit, I shall consider this question also. Clearly the earlier settlement arrived at was on the basis that the defendant should continue to be the tenant of the plaintiff paying rent regularly on or before the 10th of the following month. The present action was also brought on that basis. It was submitted for the plaintiff that the defendant's undertaking to vacate amounted to a notice to quit. I am unable to agree. If such an argument were to be accepted, every contract of tenancy, notarial or non-notarial, which contained an agreement by the tenant that he would deliver possession to the landlord by a certain date would have to be interpreted as containing a notice to quit given by the tenant. Nothing would then be easier than for the landlord to sue the tenant in ejectment, pleading that the case fell within proviso (*b*) to Section 13; the Act would cease to afford any protection to a tenant in such cases, and its primary object would be defeated.

I therefore think that a clear distinction must be drawn between a notice to quit and an agreement to surrender possession. That distinction was drawn by Salter J. in *de Vries v. Sparks* [2]. He said: " A notice to quit and an agreement to surrender or determine a tenancy were essentially different in their nature. An agreement depended on the common consent of the parties, while a notice to quit was a notice given by one party to the other of an intention to exercise a right given by the contract, whether the other party liked it or not ". A similar view was

[1] *(1949) 51 N. L. R. 116.*

[2] *(1927) 43 T. L. R. 448.*

taken by Wijeyewardene S.P.J. in *Alikanu v. Marikkar*[1]. That case was even stronger than this, because the agreement provided that the notice given by the tenant, that he would quit on a certain date, was to be deemed a notice under the Act.

The undertaking which the plaintiff is seeking to enforce offends against the principle that a tenant can never contract out of the protection afforded by the Act, and can at any moment recall a promise to surrender possession—see *Ibrahim Saibo v. Mansoor*[2]. The most that can be said for the undertaking given by the tenant when the earlier action was settled was that it was a promise to surrender possession, but there was nothing to prevent him from recalling it.

I vary the decree entered in this case, by setting aside the order for ejectment. The defendant appellant is entitled to his costs in both Courts.

Decree varied.

[1] *(1948) 38 C. L. W. 90.*

[2] *(1953) 54 N. L. R. 217.*