1954 *Present :* **Gratiaen J.**

D. T. ROBERT, Appellant, *and* MRS. P. RASHAD, Respondent

S. C. 150—C. R. Colombo, 37,045

Rent Restriction Act, No. 29 of 1948—Sub-letting by tenant—Condonation by landlord— Landlord's right to claim cancellation of tenancy—Sections 9 and 13.

A tenant wrongfully sub-let a portion of the premises without the landlord's prior written consent, but the landlord, although he was aware of that fact, made no protest of any kind and continued to demand, and to accept from the tenant, rent for each subsequent month.

In an action brought subsequently by the landlord claiming cancellation of the tenancy on the ground that the tenant had sub-let the premises in contravention of the provisions of Section 9 of the Rent Restriction Act—

Held, that the landlord's conduct after he became aware of the sub-tenancy disentitled him to have recourse to his statutory remedy under Section 9. When a landlord becomes aware of the contravention of Section 9, he must forthwith elect whether or not to treat the contract of tenancy as terminated ; if he does not so elect, the contravention is condoned, and the contractual tenancy continues.

Wimalasuriya v. Ponniah (1951) 52 N. L. R. 191, distinguished.

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

H. V. Perera, Q.C., with *S. Sharvananda* and *Joseph St. George*, for the defendant appellant.

M. I. M. Haniffa, with *M. H. M. Naina Marikar*, for the plaintiff respondent.

Cur. adv. vult.

July 26, 1954. GRATIAEN J.—

This is an appeal by a monthly tenant from an order for his ejectment from premises to which the Rent Restriction Act, No. 29 of 1948, applies. The basis of the learned Commissioner's decision was that the tenant had, in contravention of Section 9 of the Act, sub-let a portion of the premises, without his landlord's prior written consent, on 12th September, 1951. The alleged sub-lessee has since vacated the premises, and the tenant is now in sole occupation.

I shall assume for the purposes of my judgment that the tenant had in fact contravened the provisions of Section 9.

The action for ejectment was instituted by the landlord on 8th February, 1952. It is common ground that he had not given the tenant prior notice of his election to treat the contravention of Section 9 as a breach of the contract of tenancy. The learned Commissioner considered, however, that no such notice was necessary in view of the ruling of Basnayake J., sitting alone, in *Wimalasuriya v. Ponniah* [1].

[1] *(1951) 52 N. L. R. 191.*

Before I examine the judgment of this Court in *Wimalasuriya v. Ponniah* (*supra*) it is necessary to refer to one distinguishing feature of the present case. According to the landlord's version, the fact that the tenant had wrongfully sub-let a portion of the premises was brought to his notice very shortly after the sub-tenancy commenced. Nevertheless, he made no protest of any kind, and he continued to demand, and to accept from the tenant, rent for each subsequent month including the month of January, 1952. His letters D1, D2, D3 and D4 to the tenant gave no indication that he objected to the presence of the sub-tenant on a portion of the premises although he was well aware of it. Nevertheless, he peremptorily filed this action in *February, 1952*, basing his claim for ejectment solely on the contravention of Section 9 (1) *in September, 1951*. In my opinion his subsequent conduct since he became aware of the sub-tenancy disentitles him to have recourse to his statutory remedy under Section 9 (1).

The Rent Restriction Act passed into law on 20th December, 1948. After that date, the effect of Section 9 (1) and 9 (2) was to read into every contract of tenancy in respect of protected premises (*a*) a prohibition against sub-letting without the landlord's prior written consent (*b*) a statutory provision (equivalent to an express contractual stipulation) entitling the landlord, in the event of a contravention of Section 9 (1), to claim a cancellation of the tenancy and a consequential decree for ejectment notwithstanding the provisions of Section 13 which would have otherwise now been applicable.

I agree with the judgment in *Wimalasuriya's case* in so far as it rejects the argument that a tenant who has contravened Section 9 is nevertheless entitled to resist a decree for ejectment on that ground unlesss he has also received " reasonable notice (terminating the tenancy) according to the contract ". But I do not accept the further proposition (if that was intended to be suggested by Basnayake J.—I do not say that it was) that a contravention of Section 9 *ipso jure* brings the contract of tenancy to an end. The correct view is that, *when the landlord becomes aware of the contravention*, he must forthwith elect whether or not to treat the contract as terminated. If he elects to enforce this statutory remedy, the tenant's statutory protection under Section 13 is automatically forfeited. But if he does not so elect, the contravention is condoned, and the contractual tenancy continues. " The conduct of the landlord in accepting rent (for subsequent periods) with clear knowledge of the sub-letting amounts to a waiver of his statutory right (under Section 9) and must inevitably amount also to a ' consent ' to the sub-letting in the sense of being a negation thereto "—*per* Evershed M. R. in *Hyde v. Pimley* [1]. In other words, he " has by implication so acted as to bar himself from alleging that he has not consented "—*per* Lord Watson in *Elphinstone v. Monkland Iron & Coal Co.*[2]. This is precisely what has occurred to the present case. I therefore allow the appeal and dismiss the plaintiff's action with costs in both courts.

Appeal allowed.

[1] *(1952) 2 Q. B. 506 at 512.*

[2] *(1886) 11 A. C. 332 at 337.*