[BOURKE, C.J. and ZANNETIDES, J.]

DIONYSSIOS LAMBRIANIDES, OF NICOSIA
Appellant (Respondent),

v.

ALEXANDROS MAVRIDES, OF NICOSIA
Respondent (Applicant).

(Civil Appeal No. 4239)

1958
Jan. 8, 10
Feb. 24

DIONYSSIOS LAMBRIANIDES
v.
ALEXANDROS MAVRIDES

Protected premises—Rent Restriction—Order for Ejectment or for recovery of possession—The Rent (Control Law), 1954, Section 18—Consent order for the recovery of possession of protected premises—Jurisdiction—Consent order by way of compromise—Want of jurisdiction.

Prohibition.—Order of prohibition. Want or excess of jurisdiction—Prohibition lies notwithstanding that: (1) there are alternative remedies or appeal, (2) the inferior Court has jurisdiction on the subject matter, but there has been excess of that jurisdiction or the Court assumes powers which it has not. Order of prohibition—Discretion—Lapse of time—Laches—Acquiescence—Where the want or excess of jurisdiction is apparent on the face of the record: (1) the order will be granted as of right; (2) Lapse of time, laches or acquiescence are immaterial.

In May 1955, the Appellant brought an action in the District Court of Nicosia seeking an order for the recovery of possession of certain premises to which the Rent (Control) Law, 1954, applied and of which the Respondent was the statutory tenant. The grounds upon which the relief was sought lay within the restrictive provisions of section 18 (1) (g) and (i) of that Law and were (a) that the premises were reasonably required for the occupation of the landlord ; and (b) alternatively, the premises were required for substantial alterations. By his statement of defence the respondent expressly denied the existence of these grounds relied upon by his landlord. When the case came to trial in December, 1955, in pursuance of what was said by the Advocates for the parties, the following was entered upon the record as the judgment of the Court :

" By consent judgment for plaintiff for delivery of vacant possession of the premises with stay of execution till the 30.6.1957. No costs.

Provided that for every day by which possession is delivered earlier plaintiff shall pay defendant 667 mils compensation up to a maximum of £240.

It has been further agreed that no compensation shall be claimed by defendant if no alterations are carried out by plaintiff nor compensation under s. 19, nor shall a new lease be claimed under s. 21 ; the compensation agreed upon being in lieu of and in satisfaction of all such claims.

It is understood that so long as he is in possession defendant shall continue paying rent at £8 p.m.".

The respondent remained in possession of the premises as tenant but in March, 1956, he filed an application in the Supreme Court for an order of prohibition to prevent the District Court proceeding to execution by eviction and to have its judgment set aside. The grounds of this application were that the Court had given judgment in excess of jurisdiction as conferred under section 18 of the Rent (Control) Law, 1954, and such lack of jurisdiction was apparent on the face of the record which disclosed an order for recovery of possession by an agreed date made by consent as a result of arrangement between the parties. Steps to have the matter brought to hearing do not appear to have been taken for a considerable time but the order of prohibition as sought was issued by Zekia, J. in 1957 and it is now called into question in this appeal by the appellant landlord.

It was contended by the Appellant.:

(1) Prohibition does not lie or, as it is put in the notice of appeal, the Court had no jurisdiction to issue the writ of prohibition. Reliance has been placed upon the following passage from Short and Mellor, Crown Office Practice, 1908, at p. 264 to the effect that a prohibition will only be granted after judgment where the want or excess of jurisdiction is apparent on the face of the proceedings and certainly not where an inferior Court has jurisdiction over the subject matter and there is an appeal.

Reference has also been made to *Barker* v. *Palmer* (1881) 8 Q.B.D. 9. Quite shortly the argument is that the District Judge, seized of the ejectment proceedings, had jurisdiction over the subject-matter, he had power to try such a case and if he failed to comply with the Law and enquire into the question whether it was reasonable to make the order, that was a matter of appeal and, consequently, there could be no resort to prohibition. It was further submitted on behalf of the Appellant that the order of prohibition appealed against was wrong : (a) in that, on the authority of *Thorne* v. *Smith* (1947) 1 All E.R. 39, the respondent must be regarded as having in fact and in effect admitted that the Appellant had a good claim to an order for recovery of possession under the Rent (Control) Law, 1954, and, having submitted to the reasonableness of the order for recovery of possession, the trial judge had jurisdiction to make the order without further inquiry ; (b) and in that the objection to the jurisdiction was not apparent and therefore there was discretion which should properly have been exercised in favour of the Appellant by the refusal of the prohibition because the respondent had had the benefit of 18 months stay of execution and only at the last

moment, when eviction in due course of execution was imminent, took serious or active steps to move for the relief.

Held: (1) The Courts have no jurisdiction to issue an order of ejectment or for recovery of possession in respect of protected premises except on the grounds provided by the Rent (Control) Law, 1954, Section 18. The parties cannot confer jurisdiction upon the Court by agreement; nor the tenant can waive his statutory protection by agreement. Before making such order the courts must be satisfied by evidence or admission that the statutory grounds upon which the action is founded have been established; Principles laid down in *Barton* v. *Fincham,* 90 L.J. K.B. 451, p. 455 and in *Middleton* v. *Baldock* (1950) 1 All E.R. 708, p. 710 per Evershed M.R., and at p. 715 per Jenkins L.J., *followed.*

Mavronichis v. *Michaelides* (Civil Application in the Supreme Court No. 5/1954, unreported), *approved.*

(2) In the instant case it is evident from the words appearing on the record that the Court was asked to make the order for recovery of possession in pursuance of an agreement or compromise between the parties. There is nothing either express or in effect amounting to an admission by the Respondent of any of the statutory grounds upon which the action was founded or to an agreement by the Respondent that the Appellant had a good claim under the Rent (Control) Law. Consequently the Court had no jurisdiction to make the order for possession.

Thorne v. *Smith* (1947) 1 All E.R. 39, *distinguished;*

Kythreotis v. *Kolakides,* 20 C.L.R. 95, *distinguished;*

Barton v. *Fincham* (*supra*) and *Middleton* v. *Baldock* (*supra*),

followed: *Mavronichis* v. *Michaelides* (*supra*), *approved.*

(3) It is plain that while there was jurisdiction over the subject-matter, the D. Court exceeded its jurisdiction in that it made an order for the recovery of possession of protected premises on grounds other than those provided by the Statute. Consequently, its order is subject to correction by prohibition.

Cases referred to: *see post p.p. 57—58*

(4) The lack or excess of jurisdiction being apparent upon the face of the record: (a) the order of prohibition goes as of right and is not a matter of discretion; (b) prohibition lies in spite of any lapse of time, laches or acquiescence and can go to prohibit steps being taken in execution to enforce anything that had been done in transgression of the limits of jurisdiction.

Cases referred to: *see post p. 64*

(5) Irrespective of whether the Respondent could have proceeded or not by way of appeal against the order for recovery of possession given

against him—and in this case he could not, because the order was made by consent—, in deciding whether or not to grant an order of prohibition, the Court will not be fettered by the fact than an alternative remedy exists to correct the absence or excess of jurisdiction, or that an appeal lies on the ground of absence or excess of jurisdiction.

See : *Channel Coaling Co.* v. *Ross* (1907) 1.K.B. 145;

R. v. *Comptroller—General of Patents,* (1953) 1 All E.R. 862, p. 865.

Appeal dismissed.

Cases referred to :

Barton v. *Fincham,* 90 L.J.K.B. 451; (1921) 2 K.B. 291.

Middleton v. *Baldock,* (1950) 1 All E.R. 708.

Farquharson v. *Morgan,* 63 L.J.Q.B. 474; (1894) 1 Q.B. 552.

Estate Trust Agencies v. *Singapore Improvement Trust,* (1937) A.C. 898.

Barker v. *Palmer,* (1881) 8 Q.B.D. 9.

Channel Coaling Co. v. *Ross,* (1907) 1 K.B. 145.

R. v. *Comptroller—General of Patents,* (1953) 1 All E.R. 862.

Brown v. *Cocking,* 37 L.J.Q.B. 250.

In re Elstone and Rose, 38 L.J.Q.B. 6.

James v. *London and South-Western Ry Co.,* 41 L.J.Ex. 186.

In re London Scottish Permanent Building Society, 63 L.J.Q.B. 112.

R. v. *Bloomsbury Income Tax Commissioners,* 85 L.J.K.B. 129.

R. v. *Hamstead Rent Tribunal,* (1947) 2 All E.R. 12.

R. v. *Willesden Justices,* (1947) 2 All E.R. 838.

R. v. *Judge of County Court of Lincolnshire,* 57 L.J.Q.B.D. 136.

R. v. *Fulham Rent Tribunal,* (1951) 1 All E.R. 482.

Thorne v. *Smith* (1947) 1 All E.R. 39.

Westminster Bank Ltd. v. *Edwards,* (1942) 1 All E.R. 470.

R. v. *North,* 96 L.J.K.B. 77.

R. v. *St. Edmundsbury and others,* (1947) 2 All E.R. 170.

Marsden v. *Wardle,* 97 R.R. 711.

Alderson v. *Palliser,* 70 L.J.K.B. 935.

Ward v. *Nield,* 87 L.J.K.B. 54.

R. v. *Northumberland Compensation Tribunal,* (1952) 1 All E.R. 122.

Kythreotis v. *Kolakides,* 20 C.L.R. 95.

Mavronikis v. *Michaelides,* Civil Application No. 5 of 1954 in the Supreme court (*unreported*).

Appeal.

Appeal against the order of ZEKIA, J. dated the 2nd

October 1957 in Civil Application No. 10 of 1956 to the Supreme Court, made by A.M. (the Respondent), whereby prohibition issued prohibiting the District Court of Nicosia from further proceeding in the matter of an action No. 1527/55 in the D.C. of Nicosia between D.L. (the present Appellant) as Plaintiff and A.M. (the present Respondent) as Defendant, and from ordering execution in any way of the judgment for recovery of possession given by the said Court in that action on the 19th December 1955 against the Def. The Respondent in the aforementioned Civil Application No. 10/56 (Plaintiff in the Action) appeals against the aforesaid order of ZEKIA J.

Lefcos Clerides for the Appellant (Respondent).

Mich. A. Triantaphyllides for the Respondent (Applicant).

Cur. Adv. Vult.

The facts sufficiently appear in the judgment of the Court which was read by :

BOURKE, C.J. : This appeal has been argued at length by both sides and this Court has had the benefit of an exhaustive review of the cases; but I do not think that any particular difficulty is involved because the points raised appear to be well-covered by authority. In May, 1955, the appellant brought an action in the District Court of Nicosia seeking an order of ejectment in respect of certain business premises to which the Rent (Control) Law, 1954, applied and of which the respondent was the statutory tenant. The grounds upon which the relief was sought lay within the restrictive provisions of section 18 (1) (g) and (i) of that Law and were (a) that the premises were reasonably required for the occupation of the landlord; and (b) alternatively, the premises were required for substantial alterations. By his statement of defence the respondent expressly denied the existence of these grounds relied upon by his landlord. When the case came to trial in December, 1955, in pursuance of what was said by the Advocates for the parties, the following was entered upon the record as the judgment of the Court :-

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It has been further agreed that no compensation shall be claimed by defendant if no alterations are carried out by plaintiff nor compensation under s. 19, nor shall a new lease be claimed under s. 21; the compensation agreed upon being in lieu of and in satisfaction of all such claims.

It is understood that so long as he is in possession defendant shall continue paying rent at £8 p.m.".

The respondent remained in possession of the premises as tenant but in March, 1956, he filed an application in the Supreme Court for an order of prohibition to prevent the District Court proceeding to execution by eviction and to have its judgment set aside. The grounds of this application were that the Court had given judgment in excess of jurisdiction as conferred under section 18 of the Rent (Control) Law, 1954, and such lack of jurisdiction was apparent on the face of the record which disclosed an order for recovery of possession by an agreed date made by consent as a result of arrangement between the parties.

Steps to have the matter brought to hearing do not appear to have been taken for a considerable time but the order of prohibition as sought was issued by Zekia J. in 1957 and it is now called into question in this appeal by the appellant landlord.

Having referred in his judgment to the two grounds under section 18 (1) (g) and (i) upon which the appellant had founded his claim for recovery of possession, the learned Judge went on to say:-

"A Judge before issuing an order or judgment for the recovery of possession of any controlled premises under the said two grounds has to find, in respect of ground 1, that the premises are reasonably required by the landlord and that he considers it reasonable to be given such a judgment or order. In respect of ground 2 he has to find that the premises are required by the landlord for substantial alterations or reconstruction which necessitate the demolition of the premises and also the Court should

satisfy itself that the landlord has obtained the necessary permit and has given three months' notice to vacate.

The Court did not go into the grounds at all and apparently on the date of hearing a compromise was reached, without hearing evidence or any admission by the defendant - tenant relating to either of the grounds on which the action was based. The settlement recorded is indeed in the nature of a compromise and by no means indicates that the tenant accepted this settlement because expressly or by implication he recognised that the landlord had a right to obtain an order for the recovery of possession on either of the grounds stated."

He found that the case in effect was not distinguishable from *Mavronihis* v. *Michaelides* (C. Appln. No. 5 of 1954) in which the learned Judge had issued an order of prohibition in not dissimilar circumstances. In that case the landlord based his claim for ejectment on allegations coming within section 8 (1) and 8 (1) (a) of the Increase of Rent (Restriction) Law, (Cap. 108), which for present purposes differs in no material respect from section 18 of the Rent (Control) Law, 1954. The statutory tenant by his defence denied these allegations. At the trial a settlement was recorded and judgment was entered by consent in favour of the landlord for recovery of possession of the premises by a certain date. To prevent his eviction in due course of execution the tenant successfully moved for an order of prohibition by which the District Court was prohibited from proceeding further under its judgment and the order of ejectment was set aside. In that case, and as was held in the instant matter, there was no admission by the tenant of the existence of any legal ground affording jurisdiction to make an ejectment order or any enquiry or evidence going to establish the existence of any circumstances amounting to such valid ground for eviction by judgment of the Court.

The decision of the learned Judge of the Supreme Court was based upon the well-known case of *Barton* v. *Fincham,* 90 L.J. K.B. 451 (1), from which the following passage on p. 455 was quoted—

"I agree with the other members of the Court in think-

(1) v. also (1921) 2 K.B. 291.

ing that the express provisions of section 5 of the Rent Restrictions Act, 1920, make it impossible to uphold the decision of the learned County Court Judge. The section appears to me to limit definitely the jurisdiction of the Courts in making ejectment orders in the case of premises to which the Act applies. Parties cannot by agreement give the Court jurisdiction which the Legislature has enacted they are not to have. 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 enquiry 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."

In *Mavronihis* v. *Michaelides* the submission was examined, which also arises upon this appeal, that in the circumstances and in having regard to the time elapsing since the making of the order of ejectment, prohibition did not lie. After reference to *Farquharson* v. *Morgan*, 63 L.J.Q.B. 474, 477 and *Estate Trust Agencies* v. *Singapore Improvement Trust* (1937) A.C. 898, 918, the learned Judge rejected this contention for the reasons that the want of jurisdiction was apparent on the face of the proceedings, and since the order for recovery of possession had not been enforced—because the landlord could not in accordance with the terms of settlement levy execution before the end of the current year—the tenant's right to remedy by way of prohibition was not lost.

In the first place it is a ground of appeal that prohibition does not lie in the circumstances under consideration or, as it is put in the notice of appeal, the Court had no power to issue the writ of prohibition in the present case. Reliance has been placed upon the following passage from Short & Mellor's Crown Office Practice, 1908 edn. at p. 264—

> "As a general rule, a prohibition will only be granted after judgment where the want or excess of jurisdiction is apparent on the face of the proceedings, and certainly not where an inferior Court has jurisdiction over the subject - matter and there is an appeal."

And at p. 256 of the same work :

"Prohibition deals with jurisdiction, and questions which are the proper subjects of an appeal cannot be dealt with in prohibition."

Reference has also been made to *Barker* v. *Palmer* (1881) 8 Q.B.D. 9. Quite shortly the argument is that the District Judge seized of the ejectment proceedings has jurisdiction over the subject-matter—he had power to try such a case and if he failed to comply with the law and enquire into the question whether it was reasonable to make the order, that was a matter of appeal and there could be no resort to prohibition. There were, however, several circumstances besides reasonableness falling to be established having regard to the grounds upon which the claim was based under section 18 (1) (g) and (i). But I fail to see how the respondent could have proceeded by way of appeal because here there was an order made by consent of the parties. In any case I take the law to be that the Court, in deciding whether or not to grant an order of prohibition, will not be fettered by the fact that an alternative remedy exists to correct the absence or excess of jurisdiction, or that an appeal lies against the absence or excess, 11 Halsbury 3rd edn. p. 115; *Channel Coaling Co.* v *Ross,* (1907) 1 K.B. 145: *R.* v. *Comptroller—General of Patents,* (1953) 1 All E.R. 862, p. 865. As to the other limb of the argument, surely it is plain that while there may be jurisdiction over the subject-matter, there may be an exceeding of jurisdiction in the course of the determination of a cause or an erroneous assumption of an authority which does not exist, which is open to correction by prohibition. That was the case made by the respondent before the learned Judge—that there was an order for the recovery of possession of protected premises which in the circumstances did not lie within the authority of the trial Court to make and such excess of jurisdiction was apparent upon the record. I do not think that it is necessary to quote from authority; but out of regard for the diligence and research shown by learned Counsel for the respondent in his review of the cases, I will refer to them by title—*Brown* v. *Cocking,* 37 L.J. Q.B. 250; In re *Elstone and Rose,* 38 L.J. Q.B. 6; *James* v. *London & South-Western Ry Co.,* 41 L.J. Ex. 186; In re *London Scottish Permanent Building Society,* 63 L.J. Q.B. 112; *R.* v. *Bloomsbury Income Tax Commissioners,* 85 L.J. K.B. 129; *R.* v. *Hamstead Rent Tribunal,* (1947) 2 All E.R. 12:

R. v. *Willesden Justices,* (1947) 2 All E.R. 838 ; *The Queen* v. *Judge of County Court of Lincolnshire,* 57 L.J. Q.B.D. 136 ; *R.* v. *Fulham Rent Tribunal,* (1951) 1 All E.R. 482.

I think there can be no doubt that there was the power to issue prohibition and that the real question between the parties is whether in all the circumstances the Court was justified in making the order to prohibit further steps in the proceedings. It is submitted by the appellant that the order was wrong—(a) because on the authority of *Thorne* v. *Smith.* (1947) 1 All E.R. 39, which, it is contended, is rendered all the stronger through the existence in England of rule 18 of the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, (see Megarry on Rent Restriction, 8th edn. 720), the respondent must be regarded as having in effect admitted that the appellant had a good claim to an order for recovery of possession under the Rent (Control) Law, and having submitted to the reasonableness of the order for recovery of possession, the trial Judge had jurisdiction to make the order without further enquiry; it is said that the authority under reference is on all fours with the instant case; and (b) that the objection to the jurisdiction was not apparent and therefore there was a discretion which should properly have been exercised in favour of the appellant by refusal to issue prohibition because the respondent had had the benefit of 18 months stay of execution and only at the last moment, when eviction in due course of execution was imminent, took serious or active steps to move for the relief.

I may say at once that I cannot see how the existence of the procedural rule 18 occurring in subsidiary legislation in England goes to strengthen the appellant's argument. No such rule exists in Cyprus. It is applicable to proceedings in the County Court and provides, *inter alia,* that before making an order for recovery of possession or ejectment the Court shall satisfy itself that such order may be made having regard to the provisions of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. To appreciate the working of the rule reference may be made to *Salter* v. *Lask.* 92 L.J. K.B. 851 and 93 L.J. K.B. 685 C.A. As I understand it the contention is that despite the rule it was held in the circumstances of *Thorne* v. *Smith* (supra) that the order for possession was validly made and the case is therefore

rendered all the more potent as authority in the appellant's favour. But in that case the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, was relied upon through issues raised by the tenant's defence and, as was said in the judgment of Somervell L.J.—"Nothing in the decision that we are giving in any way, as it seems to me, diminishes the scope of that rule (rule 18). We are deciding that on what happened in this case, the tenant being, as he was, legally represented, the County Court judge was rightly 'satisfied' that the order could properly be made." The real question for decision may be stated thus: Do the facts in this case lie within the rule in *Barton* v. *Fincham*, (*supra*) as to the limitation put upon the jurisdiction of the Courts in making ejectment orders in the case of premises to which Rent Restriction legislation applies, or are they such as to bring the matter into line with *Thorne* v. *Smith* (*supra*) and the principle as more fully expounded in *Middleton* v. *Baldock*. (1950) 1 All E.R. 708? In other words was there merely a consent to the order which could not confer jurisdiction or did the respondent tenant agree that his landlord's claim under the Rent (Control) Law was good so as to absolve the trial Court from further enquiry, *i.e.*, that there was something amounting to an admission that some specific ground existed upon which the Court had power to make an order for possession (Megarry on the Rent Acts, 8th edn., 230)? In short, was there a consent order suggesting some compromise or arrangement inconsistent with the provisions of the Law or is it apparent that the respondent submitted to judgment because he was satisfied that the appellant could establish his right to an order under the Law? In *Thorne* v. *Smith* (*supra*) the fact was that the landlord had convinced the tenant of the truth of his statement that he did want possession for himself. The tenant being thus convinced by his landlord's representations came to the conclusion (and he was acting under legal advice) that it was useless to fight the case and he consented to judgment for possession. The parties were legally represented and it was endorsed on counsel's brief, the endorsement being signed by the legal representative of each party, that possession was to be given by a stated date and there was to be no order for costs. The County Court judge being informed that this order had been agreed between the parties, made the following order, which

was duly filed : "It is adjudged that the plaintiff do recover against the defendant, etc." It was held that there was jurisdiction to make the order and I quote from the judgment of Bucknill L.J. (*loc. cit.* p. 44)—

> "But in the present case it is, I think, reasonably clear that the tenant, in effect, agreed to the order because at the time when the landlord asked the court to make the order the landlord by his own statements had satisfied the tenant that he intended to occupy the house himself and he, the tenant, could not hope successfully to resist the claim. If the tenant had stated this expressly in court the judge would surely have had jurisdistion to make the order on that ground. I think in the events which happened here, the tenant being legally represented, the judge was entitled to proceed on the view that this was the true position. Before making an order for possession the judge is under a duty to satisfy himself as to the truth if there be a dispute between landlord and tenant, but if the tenant in effect agrees that the landlord has a good claim to an order under the Acts, I think the judge has jurisdiction to make the order for possession under the Acts, without further inquiry."

Middleton v. Baldock (*supra*) puts the matter more clearly. It is not necessary to go into the full details of that case in which the landlord claimed possession simply alleging that she was the owner, that the contractual tenancy had come to an end, and that the occupant was a trespasser. The tenant signed a document in the following terms :

> "I admit the plantiff's title and her right to immediate possession and offer to give possession forthwith. I admit the claim for £5.7.3."

The landlord proved this document and the Judge thereupon came to the conclusion that the tenant should be treated as admitting the right of the landlord to possession and he made an order for possession. The following is taken from the judgment of Evershed M.R. (*loc. cit.* at p. 710):

> "The question now is: Was the order made against the husband rightly made? I have indicated my view that it was not, and I will now proceed to state my reasons. In the first place, it is clearly established that a landlord

seeking possession in the courts against a tenant must, if he is to obtain an order, establish that there is under the Rent Restrictions Acts jurisdiction to make the order for one or other of the grounds stated in the Acts. Those grounds are numerous and they may depend on the proof of matters of fact—for example, that the tenant is in breach of some covenant. If the tenant, when sued for possession on some such ground as I have indicated, chooses to admit the truth of the allegation on which the landlord's claim is based, I think it is also established (and was so stated by SCRUTTON, L.J., in *Barton* v. *Fincham*) that the judge can accept the admission as sufficient to found his jurisdiction and is not bound himself to investigate the matters of fact alleged. He has jurisdiction to make an order. If it afterwards turns out that the admission by the tenant was procured by the landlord by some impropriety, other remedies would become available for the deceived tenant. That did happen in *Thorne* v. *Smith* where BUCKNILL, L.J. observed that, if matters of fact on proof found the jurisdiction, the admission of the tenant of those matters of fact will give the court the requisite jurisdiction to make an order."

The passage that follows comes from the judgment of Jenkins L.J. in the same case (at p. 715):

"Was that an order which the county court judge ought to have made or had jurisdiction to make under the Rent Acts? In my judgment, it is reasonably plain that the judge ought not to have made that order and had no jurisdiction to make it. This matter was also discussed in *Barton* v. *Fincham* and *Thorne* v. *Smith*. I think the principles deducible from those cases are that under the Acts the court only has jurisdiction to order possession on one or other of the specified statutory grounds. The court, however, is not always obliged to hear a case out, because, if the tenant appears and admits that the plaintiff is entitled to possession on one of the statutory grounds, the court may act on that admission and make the appropriate order. Again—and this, I think, is an extension of what I have just said—if there is a representation made by the plaintiff landlord to the defendant tenant to the effect, for instance, that the landlord wants the premises for his

own occupation—which is one of the ingredients of a ground on which possession may be ordered—and the tenant accepts that representation and on that footing submits to an order, the order can validly be made, subject to the possibility that in the event of the representation turning out to have been false the efficacy of the order may be destroyed. In my judgment, the court cannot go further than that and exercise a general jurisdiction to make a consent order without inquiry or investigation simply because the tenant appears in court and says: "I consent to an order," or goes into the witness box and says he does not contest the plaintiff's right. I think that necessarily follows from the principle that possession can only be ordered on one or other of the statutory grounds and that the tenant cannot waive the statutory protection by agreement."

The relevant quotation from *Barton* v. *Fincham* has already been observed. In *Kythreotis* v. *Kolakides,* 20 C.L.R. 95, the tenant fell into arrears of rent and by consent it was ordered that possession should be given to the landlord. But it was clear that the tenant not only admitted the landlord's right to recover possession but that the grounds for the order were arrears of rent. It was held by this Court, following *Middleton* v. *Baldock. (supra)* that the order was valid.

Turning to the present case, one will search in vain for any admission that one of the events has happened which give the Court jurisdiction and which were pleaded by the appellant as grounds for an order of possession. There is nothing to indicate that the appellant landlord had (as in *Thorne* v. *Smith, supra*) made repeated representations to his tenant that he wanted possession on the grounds that the premises were reasonably required for his own occupation or that they were required to effect substantial alterations; and there is nothing to show that the respondent at any time accepted any of the ingredients of a ground on which possession may be ordered and on that footing submitted to the order. It is not enough in itself that the parties were legally represented when the order was made. The record speaks for itself. There is the entry thereon "Parties and Counsel present. Settled as follows," and then follows the "consent judgment" that has been quoted. It seems to me

apparent that the legal representatives of the parties announced to the Court that a settlement or compromise had been reached and the consent order was made in terms of the agreement so reached. Sommervell L.J. in *Thorne v. Smith* (p. 44) drew attention to the use of the word "consent" as possibly suggesting some compromise or arrangement which might be inconsistent with the provisions of the Rent Restriction Acts; but in this case it is surely evident from the words appearing upon the record that the Court was asked to make the order in pursuance of an arrangement between the parties. I see nothing either express or in effect amounting to an admission giving jurisdiction or any agreement by the respondent that the appellant had a good claim under the Rent (Control) Law so that it was useless to fight the case. It has never even been suggested that the entry just quoted upon the record indicating that terms of a settlement had been agreed upon was incorrectly made or that there was any express and pertinent admission made on behalf of the respondent which was not taken upon the record. It seems to me, moreover, that the very terms of the "consent judgment" point to a compromise between the parties: there is, for instance, the fixing of an 18 months stay of execution whereas the period limited by section 18 (2) of the Rent (Control) Law is one year. In my opinion the learned Judge was perfectly right in his conclusion that the District Court had no jurisdiction to make the order for possession.

There remains the point referred to under (b) above, namely, that prohibition should not have been allowed to issue as a matter of the exercise of the discretion because of the delay in moving for the remedy. I think the answer may be given shortly. The excess of jurisdiction appears clearly upon the face of the record. Where the defect of jurisdiction is apparent on the face of the proceedings and the application is made by a party, the order goes as of right and is not a matter of discretion. Prohibition in such case lies at any time, even after judgment or sentence in spite of laches or acquiescence of the applicant, and can go to prohibit steps being taken in execution to enforce anything that had been done in transgression of the limits of jurisdiction. see: Halsbury's Laws of England Vol. 11, 3rd

edn. paras. 214 and 220; *Farquharson* v. *Morgan,* (1894) 1 Q.B. 552 ; *Westminster Bank Ltd.* v. *Edwards,* (1942) 1 All E.R. 470, 474 ; *R.* v. *North,* 96 L.J. K.B. 77, 85 ; *R.* v. *St. Edmundsbury,* etc., (1947) 2 All E.R. 170, 173 ; *Marsden* v. *Wardle,* 97 R.R. 711 ; *Alderson* v. *Palliser,* 70 L.J. K.B. 935 ; *Ward* v. *Nield,* 87 L.J. K.B. 54 ; *R.* v. *Northumberland Compensation Tribunal,* (1952) 1 All E.R. 122, 130.

I find no merit in this appeal which I would dismiss with costs.

ZANNETIDES, J.: I agree.

Appeal dismissed with costs.