

accused and also to consider whether the mode of retaliation bore a reasonable relation to the provocation ; in doing so, the Court must take into account the nature of the weapon used by the accused person.

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As regards the last question, the Court is not prepared to say that, in the circumstances stated in the question, the provocation is, as a matter of law, insufficient to reduce murder to manslaughter. The question therefore remains one of fact, namely, would the provocation which this accused received have deprived a reasonable man of his self-control so as to kill as the accused killed ?

[HALLINAN, -C.J., AND GRIFFITH WILLIAMS, J.]

(December 1, 1952)

PANAYIOTIS METOCHIS, *Appellant,*

v.

YIANNIS CH. SCHIZA OF LIMASSOL,
Respondent.

(Civil Appeal No. 3933.)

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CH. SCHIZA.

*Contract of guarantee—Rent of contractual tenancy guaranteed—
Contract not applicable to statutory tenancy.*

In a contract of lease made between the landlord and his tenant, the appellant guaranteed the payment of rent by the tenant. After the contractual tenancy expired the tenant continued in occupation as a statutory tenant and failed to pay the rent. The landlord sued the tenant and also the appellant as guarantor. The trial Court gave judgment for the landlord against both the defendants. The guarantor appealed.

Held: The guarantor was not liable under the contract of guarantee for the tenant's failure to pay rent during the statutory tenancy which is not a continuation of the contractual tenancy but merely gives a statutory right of occupation.

Appeal allowed.

Appeal by the plaintiff from the judgment of the District Court of Limassol (Action No. 892/49) in favour of the defendant.

J. Eliades for the appellant.

Chr. P. Mitsides with *G. J. Pelagias* for the respondent.

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The facts of the case are set out in the judgment of the Court which was delivered by :

HALLINAN, C.J. : In this appeal the plaintiff-respondent brought an action for the recovery of rent amounting to £29 in the following circumstances :

The respondent, as a landlord, had entered into a contract of lease with the first defendant who is not a party to the appeal for a lease of one year and, in the absence of any other agreement, for another year from the 12th March, 1947, and this express contractual tenancy terminated on the 12th March, 1949. The rent was for £5 a month. The first defendant continued in occupation until the following September as a statutory tenant at the same rent. He only paid £1 in June and therefore for the six months from March to September there was an amount of £29 due. The appellant was the guarantor of the first defendant, the tenant, as regards the contract of lease. He guaranteed regular payments of the rent and fulfilment by the tenant of the terms contained in the contract.

The short point for decision in this case is whether the contract for guarantee covered the statutory tenancy. The learned trial Judge appears to have accepted the submission of the respondent's counsel made on this appeal that this statutory tenancy was a mere continuation of the contractual tenancy and that the guarantor when he made this agreement or guarantee knew that the Rent Restriction Law (Cap. 108) was in force and probably the tenant would continue on in possession after the expiration of the contractual tenancy and therefore he impliedly agreed that the contract and guarantee should continue during the statutory tenancy.

We are unable to accept the submission of counsel for the respondent that the contract of guarantee continued and applied to the statutory tenancy. It is quite clear that such guarantee would not apply to a statutory tenancy under the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. In the commentary on section 15 of that Act contained in Megary Rent Acts (6th Edition, page 165) the learned author states :—

“ Again the statutory tenancy is a different tenancy from the contractual tenancy whence it sprang, so that a guarantor of the rent under the contractual term is not liable for rent accruing during the statutory tenancy ”.

Two Irish cases are cited in respect of that proposition.

Counsel for the respondent has sought to distinguish the provisions of section 15 of the English Act from section 8 (3) of the Cyprus Chapter 108. He argued that in England a statutory tenancy is nothing more than right of occupation which incorporates such terms of the contractual

tenancy as are not inconsistent with the Acts relating to rent restriction; whereas in Cyprus the original contractual relations between the landlord and tenant continue under the statutory tenancy. We are unable to accept this submission. It is clear from the wording of section 8 (3) of our law that the legislative authority merely intended to confer a right of occupation on the tenant who becomes statutory tenant and he is, as in England, obliged to observe the conditions and is entitled to the rights under the original contract of tenancy in so far as they may be applicable; subject to the provisions of this law, as in England, the statutory tenancy is a different tenancy from the contractual tenancy.

In our opinion, a statutory tenancy which arose after the 12th March, 1949, was a different tenancy and the contract of guarantee did not apply thereto. For these reasons we consider that the learned trial Judge was wrong in holding that the appellant was liable for the arrears of rent accrued during the period of statutory tenancy.

The order of the Court below so far as it affects the appellant must therefore be set aside. And also the order of the Court below as to costs affecting the appellant must be discharged. The appellant is entitled to his costs here and in the Court below.

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