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We are further of opinion that it would be very difficult to distinguish what repair is essential within the purpose and scope of the legislation, and any attempt to define what is essential and what is not would throw the law into confusion and result in grave inconvenience to the public. It is conceivable that certain luxury fittings in a motor car might not come within the word " repair " as used in the schedule, but we are certainly of opinion that a cushion is not in this category; the word " cushion " in a motor car means a seat and is not a luxury fitting.

In our opinion the learned Magistrate was correct in his determination of the law. *For these reasons we consider that the respondent was rightly acquitted.*

1953
February 6

AGNI
KONTOU
v.
MARIA V.
PAROUTI.

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

(February 6, 1953)

AGNI KONTOU OF NICOSIA, *Appellant,*

v.

MARIA V. PAROUTI OF NICOSIA, *Respondent.*

(*Civil Appeal No.* 3976.)

Contract—Uncertainty of duration—" Up to death of lessee " not uncertain—Destruction of premises by lessor—Repudiation of the Agreement—Damages must be lump sum.

In 1947 P. sold her house to K. at less than the market value. The parties made an agreement headed " Document of Lease " whereby K. " transferred " the house to P. " from to-day up to the death of the lessee " at 1s. a month rent, K. " to make all necessary repairs for supporting the premises." The Municipal Authority ordered demolition of a certain part of the premises and K. by excessive demolition caused such destruction of the premises that P. had on 1st November, 1953, to find accommodation elsewhere.

The trial Court held that K. had broken the agreement and awarded damages of £18 per month as from 1st November, 1950, till the plaintiff's death. K. appealed.

Held: (1) The agreement was not void for uncertainty even if it is expressed to be " from to-day up to the death of the lessee ". Man is mortal and the date of his death easily ascertained.

(2) The destruction caused by K's excessive demolition was a repudiation of the whole agreement.

(3) Damages must be assessed as a lump sum ; the measure of damages was the total value of the premises to P. from breach up to judgment and in future.

Appeal by defendant from the judgment of the District Court, Nicosia (Action No. 2238/50).

P. N. Paschalis with *C. Severis* for the appellant.

Stelios Pavlides, Q.C., with *A. Tsiros* for the respondent.

The judgment of the Court was delivered by :

HALLINAN, C.J. : The plaintiff-respondent in this appeal was the owner of a house in the Tripiotis quarter of Nicosia. This house consisted of seven rooms. In 1947 she decided, as she was then 77 years old and not well off, to sell her house to the defendant-appellant. By a contract in writing dated the 3rd September, 1947, the respondent sold the house at less than the market value because she had been given a verbal undertaking by the appellant that the respondent might remain in the house for the rest of her life. On the 17th September this agreement was varied and amplified by two further transactions. The appellant had deposited £300, part of the purchase price, leaving £2,300 due. On the 17th September, instead of paying the balance, the respondent took a mortgage on the house from the appellant for £2,300 and the appellant undertook to pay 4% on this sum. Furthermore, the parties entered into an agreement (Exhibit No. 1) which was headed : " Document of Lease " whereby the appellant " transferred " the house and yard at Tripiotis quarter to the respondent " from to-day up to the death of the lessee." The rent was to be 1*s*. a month, and the appellant undertook " to make all necessary repairs for supporting the premises and will repair the roof, walls, floors and doors ". The respondent under this agreement was also entitled to permit her servants to reside in the house and to let one room to a female single person.

Between 1947 and 1950 the appellant on several occasions visited and inspected the premises and did some repairs. In September, 1950, an architect who was working on the adjoining house noticed that the northern wall of the appellant's house was in a dangerous condition. The premises were inspected by the municipal engineer and as a result the Mayor of Nicosia on the 5th October sent the respondent a letter (Exhibit No. 5) calling on the respondent to demolish a certain part of the premises mentioned in the letter. The respondent promptly notified the appellant who thereupon caused a certain part of the premises to be demolished. However, the demolition effected by the appellant was in excess of that required by the Mayor's letter of the 5th October, and it is probable that, as a result of this excessive demolition, the whole fabric became unsafe.

On the 11th October the respondent obtained an interim injunction to prevent further demolition and on the 30th October the Court made this interim order absolute with regard to all parts of the premises other than such parts as were certified by the Municipal Authority to be in a dangerous state.

As a result of the demolition carried out by the appellant before the interim injunction was obtained, the state of the premises became unfit for occupation by the respondent who, as a result, had to move out on the 1st November to a house for which she has since been paying a monthly rent of £18.

The points raised on this appeal which we consider it necessary to discuss are three: First, the validity of the "Document of Lease" dated the 17th September, 1947; secondly, whether the appellant had committed a breach of this "Document of Lease"; and, thirdly, assuming that the appellant is liable, how should damages be assessed.

Counsel for the appellant submitted that since the duration of the tenancy in the agreement of lease is expressed to be for the life of the respondent, this is a term so uncertain as to invalidate the agreement. He relies on the case of *Lace* v. *Chandler*, (1944), 1 A.E.R., 305, where it was held that a lease in which the term was "for the duration of the war", was invalid as the duration of the term was not sufficiently certain. In the judgment of Lord Greene, M.R., at page 306, a passage from Foa's Landlord and Tenant, 6th Edition, page 115, is cited with approval:

> "The habendum in a lease must point out the period during which the enjoyment of the premises is to be had; so that the duration as well as the commencement of the term must be stated. The certainty of a lease as to its continuance must be ascertainable either by the express limitation of the parties at the time the lease is made, or by reference to some collateral act which may, with equal certainty, measure the continuance of it, otherwise it is void .... Consequently, a lease to endure for 'as many years as A. shall live' or 'as the coverture between B. and C. shall continue', would not be good as a lease for years."

Undoubtedly such an expression as "for the duration of the war" is uncertain for it is not an event which, when it happens, can be easily ascertained. Where however the term is not expressed in years but is to end on the happening of an event which can easily be ascertained, the term is certain and the lease is good. In the case of *Ecker* v. *Becker* (1946) 2 A.E.R., 721, where the term of a lease was expressed to continue "until the cessation of the present hostilities between Great Britain and Germany, meaning

thereby the actual day of the cease fire order and not the day whereon peace terms were signed ", it was held that the term was sufficiently certain and the lease was valid. With great respect to Lord Greene and the learned author of the text-book he cites, there is nothing uncertain about a lease for life, for man is mortal and the date of his death easily ascertained. The reason why a lease for life is not a valid lease for a term of years is because a lease for life creates a freehold interest: it would be absurd if the same form of words were held to create two quite different interests in land at the same time. It is, we think, unfortunate that the passage from Foa cited by Lord Greene should suggest that a lease for life is not a lease for a term of years because the term is uncertain; the truth of the matter surely must be that since a lease for life creates a freehold estate it cannot at the same time create a chattel real interest. In Lace's case, the parties intended to create a chattel real interest and their agreement was for that and nothing else. Since their agreement was too uncertain as to its duration to create a chattel real interest, it failed altogether. But in the present case the parties made an agreement which may be an agreement to create a freehold estate and which undoubtedly was an enforceable contract in no way void for uncertainty.

The trial Court after stating that both leaseholds and freeholds were in England at common law considered to be estates, continues: " In Cyprus contracts of lease do not create such estates; they are similar to any other contract and governed by the same rules as any other contract as far as their validity or invalidity is concerned." This raises a difficult question of law which has not been fully argued before us. Were we called on to decide this question it is very doubtful that we should have taken the same view as the trial Court has done concerning the creation in Cyprus of estates in land: The Immovable Property (Tenure, Registration and Valuation) Law. (Cap. 231) abolished the categories of immovable property contained in the Ottoman Land Code. Section 28 (1) (*c*) of the Courts of Justice Law (Cap. 11) provides that the common law of England shall apply in the Colony save in so far as other provisions have been or shall be made by any Law. The combined effect of the Immovable Property Law and the Courts of Justice Law might well be that, since the law of the Ottoman Land Code has ceased to apply, and as no other provision has been made, the path is clear for the application of the common law. At common law, any person holding an absolute interest in land is entitled to carve out and transfer to another limited estates such as a leasehold chattel interest or an estate for life. However, it is not necessary in the present case to decide whether the document of the 17th September was an agreement to create a freehold estate. The trial Court in the exercise

of its discretion refused to grant specific performance, but awarded damages for breach of the agreement; the respondent has made no cross-appeal and has presumably accepted the trial Court's award of damages and does not seek to recover the premises. Whether the respondent's rights amount to an estate in land or whether they are merely contractual, she undoubtedly has a right to claim damages if she has been wrongfully deprived of her right to occupy the premises for the rest of her life.

Since then we consider the agreement of the 17th September as valid, the next question is whether the appellant has committed a breach of that agreement. We consider it unnecessary to go into the learning on covenants to repair, for the facts found by the trial Court (which were fully justified by the evidence) amount to this: the appellant by an excessive demolition before starting to repair imperilled the whole structure of the building. There was considerable evidence that the appellant was acting *mala fide*, and it is probable that she would have demolished the whole building if she had not been stopped by an interim injunction. Eventually, because of the excessive demolition the respondent was driven out and the whole building had to come down. Here we are not merely dealing with a breach of a covenant to repair: the appellant unlawfully and in bad faith caused the destruction of the premises. Having undertaken to allow the respondent to remain in the house for life she brought down the whole structure and refused to restore it because the old lady had lived too long. This was no mere breach of a covenant to repair, but a repudiation of the whole agreement. These being the facts, the respondent was clearly entitled to damages.

Since, therefore, we are of opinion that the "document of lease" was a valid agreement and that the appellant has broken the conditions thereof, the only remaining question is whether the assessment of damages by the trial Court was correct. The plaintiff was allowed "by way of damages or compensation, £18 per month as from the 1st November, 1950, till plaintiff's death". The Court had no power to make such an award. Damages must be assessed as a lump sum.

The measure of damages for breach of the agreement is in this case the total value of the premises to the respondent. Since the respondent has been put out of possession permanently, the Court, in assessing damages, must endeavour to estimate the respondent's loss not only up to the present time but in the future, and the total amount to be awarded must be assessed once and for all as a lump sum.

A great deal of evidence was led concerning the alternative accommodation offered by the appellant and there has been much discussion on these matters. In our view,

this part of the evidence is only relevant to the question of damages in so far as it gives some indication of what the value of the premises was in terms of a monthly rental. We have come to the conclusion, having regard to the accommodation which the respondent leased when the premises were totally demolished, that the monthly rental of the premises should be estimated at £13. 10*s*. a month. The respondent was about 80 years of age when she had to leave the premises on the 1st November, 1950; and allowing an expectation of life of five years, we reach the conclusion that the damages awarded in this case should be £810.

The judgment of the trial Court must therefore be varied by substituting this sum for the amount of damages awarded by that Court.

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

(February 10, 1953)

CHRISTODOULOS RODOSTHENOUS OF ARMINOU,

Appellant,

v.

HARALAMBOS J. POLEMITES OF LIMASSOL,

AND

ELPINIKI CH. POLEMITES OF LIMASSOL,

Respondents.

(*Civil Appeal No.* 3921.)

Obstruction of ancient light in party wall—Test of what constitutes nuisance—When injunction rather than damages granted.

In 1928 the predecessor in title of plaintiff-respondent erected a two-storey building putting windows in party wall. The predecessor-in-title of the defendant-appellant was co-owner of the party wall. In 1948 the appellant erected a building within "a matter of inches" from the respondents' windows on the party wall.

Held: (1) There appears to be no legal principle or authority to prevent a co-owner of a party wall from acquiring an easement of light through the wall.

(2) The interference with the respondents' right to light amounted to a nuisance and was therefore actionable; test laid down *Colls* v. *Home and Colonial Stores Ltd.* (23 L.J. Ch. D. 484) and *Sheffield Masonic Hall Co.* v. *Sheffield Corporation* (101 L.J. Ch. D. 328) applied.