[BELCHER, C.J. AND DICKINSON, J.]

June 6.

NAJEM HOURY AND SONS

v.

EX-KING HUSSEIN.

CONTRACT OF LEASE—CLAIM FOR DAMAGES FOR BREACH—VALIDITY—PERIOD OF LEASE—UNCERTAINTY AS TO DATE OF TERMINATION: "UNTIL LESSEE LEAVES CYPRUS OR DIES"—MEJELLE, ARTICLES 404-611—ARTICLES 1-100—QANOUNNAME—NIZAMNAME—REGULATIONS OF 10 REBI-UL-EVVEL 1291—LEGAL FORCE IN CYPRUS.

Mejellé, Article 452.

"*The object of a contract of hire is sufficiently determined by the fixing of the duration of the hiring.*"

Example, the hiring of a wetnurse as long as the child is suckling.

Article 484.

"The owner may lawfully let a thing either for a short term like a day or for a long term like years, provided that the duration of the letting is fixed."

HELD: These two articles read together cannot mean that the duration of a lease must be fixed at so many days or years, but that provided a definite termination is fixed the lease is good.

Municipalité.

Nouveau Reglement sur la Location des biens—immeubles, dated 10 Rebi-ul-Evvel 1291, Article 7.

"The term of leases of Mevkoufe lands for ordinary farming purposes may not exceed three years: that of any other immovable must be for at most nine years."

The Mejellé received Imperial Sanction and is described as a Qanounname. The "Reglement" of 10 Rebi-ul-Evvel 1291, did not so receive Imperial Sanction and is described as a Nizamname. Further this "Reglement" was never applied to Cyprus, and there never existed the machinery necessary to its enforcement.

HELD: That in so far as the provisions of the Reglement of 10 Rebi-ul-Evvel 1291, appear to put a restriction on the powers of landowners and tenants conferred by Articles 452 and 484 of the Mejellé, these provisions have not the force of law in Cyprus.

The plaintiff let premises to the defendant as a dwelling house and a written agreement was made between them, fixing a rental £50 a month and as the duration "Whilst His Majesty shall live, or reside in Cyprus."

HELD: That the lease was good.

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G.N.R. Co. v. *Arnold*, Times L.R., Vol. 33, p. 114 (1916) followed.

Other cases cited:—

Tritoftides v. *Nicola*, C.L.R., Vol. V., p. 31 (1900).
Koukoulli v. *Hamid Bey*, C.L.R., Vol. VII., p. 85 (1907).
Anastassi v. *Hussein*, C.L.R., Vol. XII., p. 16 (1924).
Queen's Advocate v. *Van Milligan*, C.L.R., Vol. III., p. 211.
Karayeorghiades v. *Hj. Pavlo*, C.L.R., Vol. V., p. 39.

Appeal by plaintiffs from the judgment of a President, District Court, sitting in a foreign action. Cross-appeal by the defendant.

Triantafyllides, *M. Houry* and *G. Houry* for Najem Houry and Sons.

Amirayan for the Ex-King Hussein.

THE CHIEF JUSTICE: The plaintiffs Houry and Sons and Najem Houry claimed in the District Court of Nicosia from the Hashamite Ex-King Hussein various sums under six principal heads of which the first three are in effect, if not in form, alternative statements of rent due under a lease or damages for breach of the lease; the fourth is a claim for damage done to the leased premises and the fifth and sixth are for services rendered and money paid respectively. The Court below gave judgment for the defendant on the first three heads, judgment for plaintiffs for £17 on the fourth head, and for the plaintiff for £100 on the fifth head, and judgment for the defendant on the sixth head; the general result being that plaintiff had judgment for £117 and costs on a reduced scale. There are cross appeals.

The facts are unusual but not involved. Early in the year 1925 the King, who was an old man, had been invited by the British Government to take up his residence in Cyprus, and in June he arrived at Larnaca. Shortly before his arrival, and at the request of the Cyprus Government, the plaintiff Houry transformed the Palace Hotel at Nicosia of which plaintiff or sons of his were the owners into a private residence for the King, and went to Larnaca to receive the latter. On arrival at Nicosia about the 22nd June, the King and his retinue went into residence at the hotel, in which certain structural alterations were then made by plaintiffs at defendant's request.

Among the defendant's retainers was one Jemil Pasha whose exact position is not altogether clear. On the 16th July a lease of the hotel premises was executed by plaintiffs as lessors and by Jemil Pasha purporting to sign on behalf of the King as lessee.

The important words are these:—" the period of the lease is not fixed but it is for so long as His Majesty is in Cyprus. The rent agreed is £50 for every month to be paid at the beginning of every month the same as has been paid to the end of July and two pounds extra every month for the gardener . . . . . the rent to be paid half at the beginning of the month and the other half at the middle of the month." The position at this time as to payment made between the parties was that about the beginning of July the defendant had paid to the plaintiff a sum by way of rent which was in fact equivalent to £52 a month up to the end of July. The defendant remained in occupation of the hotel until the end of February, 1926. Prior to that time he had requested a reduction of rent; this was refused and on 23rd January he told plaintiff Najem Houry he was going to leave; and in fact he did leave at the end of February, having paid at the rate of £52 a month to that date. One of the defences in the Court below was a denial that the King had authorised the execution of the lease. The Court below found that he had in fact authorised it, and I need only say that I think that was a finding which is amply supported by the evidence.

The next question is what the parties intended as to the term of the lease; and that presents no great difficulty. The words used leave no doubt in my mind that the King intended to bind himself to pay rent, and the defendants intended to make sure that they received it, for as long as the King remained in Cyprus: he might die, he might cease to live in Cyprus: if he did he was to be free of his obligations under the lease: if not he was to conform to them. There is nothing unreasonable in that, and nothing more uncertain than there is in a lease to a man for his life; and indeed it may be looked at as a lease for life subject to determination by the voluntary act of the lessee in going to live somewhere else than in Cyprus. The facts are very much like those in *G.N.R. Co.* v. *Arnold*, Times L.R., Vol. 33, p. 114 (1916), except that there the plaintiffs (under-lessors) who sought to put an end to a lease " for the duration of the war," on the ground of uncertainty, had the excuse that their own head-landlord had refused his consent to the lease and consequently they, plaintiffs, were in a quandary such as by no means beset the King of the Hedjaz when he sought to get out of his bargain in the case now before us. There is certainly the difference here that both the contingencies which may put an end to the lease are uncertain; but death must happen to everyone sooner or later, and as to determination on the King's leaving

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Cyprus that is a right which being wholly for his advantage it would be strange if the King could rely upon as a legal ground for avoiding liability on the lease as a whole. In *G.N.R.* v. *Arnold*, Mr. Justice Rowlatt is reported as saying "It was not possible to-day to say that where parties had deliberately expressed the intention that one should be tenant to the other for the period (of the war) their agreement could be torn up, and he thought that the law was ingenious enough to get round the difficulty," and judgment was given for the defendant. The question for us is whether Turkish Law, as it exists to-day in Cyprus, which admittedly governs the matter before us, can be fairly interpreted so as to yield a similar result, or whether under it the King had, as the Court below has held that he had, the right to repudiate his contract as unquestionably he did.

The Turkish Law relating to leases in general is to be found in Book 2 of the Mejellé, Articles 404 to 611; and there can be no question but that this, whether capable of exact interpretation or not, is law in Cyprus to-day and must, whether subject or not to other legislative provisions as I shall consider later, be applied in this case.

Several articles must be looked at. Article 420, Corps de Droit Ottoman (Young, Vol. VI., p. 224) says that "In letting, the chief object of the contract is the enjoyment." (of the thing hired). Title I, Chapter 2, gives the conditions necessary to the formation of a contract, and Chapter 3 of the same title those necessary to its validity; if any of the former is lacking the contract is bad (nul) (Article 458); if any of the latter, it is voidable merely ("annulable"). As to what "void" means, the meaning can hardly be other than in English and in any case need not concern us, for the conditions required by Chapter 2 were all present here. It is on the ground of voidability, not voidness, that the defendant has purported to act here, and all we are told about voidability is to be found in Articles 461 and 462. 461 reads "A voidable letting has certain consequences. In such a contract, the lessor cannot claim the rent stipulated for, but is entitled to a sum to be fixed by valuation." Article 462 reads "Voidability of a contract of letting arises from the fact that the rent is not fixed or that the contract lacks some other condition essential to its validity. In the former case the person who uses the thing hired must pay a sum fixed by valuation, whatever it may be. In the latter the sum to be paid must also be fixed by valuation, but must not be more than the rent agreed upon." There is another Article, 471, which

bears on the subject and reads, " When the hiring is voidable it is not enough that the lessee has been put in a position to enjoy (the thing hired). As long as he has not had effective enjoyment he is not liable to pay any rent." The rights of the party seeking to set aside a voidable lease, and what limitations there may be to them, are not dealt with.

But whatever voidability may mean, we must turn to Articles 450, 451 and 484 to see whether it has application in this case. Article 450 says " the price of the letting must be fixed." If that means rent, it has been fixed here as to the amount of the monthly payments, but not as to the number of them, which will depend on circumstances the occurrence of which is provided for. Article 451 says " The enjoyment which is the object of the hiring must be known and determined so that it may not be subject to dispute." Read literally, this would render every letting voidable which either party chose to contest, but one must attempt to place some more definite construction on the words, and I consider that the reasonable sense to attribute to it is that, as ambiguity leads to disputes, there must be no ambiguity. There is nothing in this principle to forbid a lease for life; in fact in Article 452 where a contract for the hiring of the services of a wet-nurse is dealt with, it seems intended to be made clear that it is enough to say that the hiring is for so long as the child is suckling; though in exact words what the article says is " the object of the contract is sufficiently determined by the fixing of the duration of the hiring; " this being the one thing which it is impossible to fix at so many days, months or even years at the beginning of the hiring in so uncertain a matter as the period of maternal nutrition. Then in Article 484 it is said that " the owner may lawfully let a thing either for a short term like a day or for a long term like a year, provided that the duration of the letting is fixed." The example of the wet-nurse shows that this cannot mean fixed as so many days or years, and I can attribute no other meaning to it than that there should be no uncertainty as to what is to put an end to the term. There is none here; the King pays rent while he is in Cyprus and he does not pay it if he goes to live elsewhere or if he dies. It is true that a judicial decision might be needed as to what the word " is " means, in the case of the happening of certain contingencies; but it is impossible to say that a definite and reasonable meaning may not be attached to the phrase.

There is matter in Article 372, which refers to the effects of voidability of a sale, which may be intended to apply also in the case of a lease and if read literally would

dispose of this case so far as it is to be determined by the Mejellé; it says that in a voidable sale " Either party has the right to avoid the contract . . . . but . . . . if the purchaser adds anything to the subject matter, as when a house is in question and he has had repairs done . . . . the right of avoidance cannot be exercised." This was the case here; the King made alterations as soon as he went into occupation and it is arguable that he thereby lost his right of avoidance.

If the fundamental principles, which are to be found at the beginning of the Mejellé, (Articles 1 to 100), are given a natural interpretation, it would appear to be the duty of the Court to do substantial justice between the parties in such a case as this in the way of obliging the lessee to carry out his express contract. Article 17 for instance says " Difficulty calls for facility. In other words, the need of clearing up an embarrassing situation is a legitimate motive for taking, to that end, measures proper to resolve the difficulties, and for showing oneself tolerant. The provisions of the law relating to pledge . . . . and many others, are founded on this principle . . ." There can in my view be no straining of these fundamental articles in utilizing them to support a contract which is nowhere expressly forbidden in other parts of the same Code.

But it is argued on behalf of the respondent that even if this lease is one not voidable under the provisions of the Articles of the Mejellé, it still contravenes the terms of Regulation 7 of the Regulations of the 10th Rebi-ul-Evvel 1291. It is therefore necessary to consider these Regulations in the light of their legal extent, the terms of Regulation 7, and finally its possible application to the present case.

The Regulations occur in the third volume of the Destour, page 511. They appear in a French translation in Legislation Ottomane (1873) Vol. 5 at page 279.

The Turkish word by which they are described (as a heading in the Destour) is given in roman letters in Vahid Bey's English-Turkish Dictionary (1924) as " Nizamname, " written regulations "; on the other hand " Law " is in Turkish " Qanoun." In the French translation of Nicolaides these regulations of 10 Rebi-ul-Evvel, 1291 are headed " Municipalité, Nouveau reglement sur la Location des biens-immeubles " and it appears from a footnote that they re-enacted with alterations certain earlier regulations of 6 Shaban, 1284 on the same subject printed at Vol. 1 p. 50 of the work (Nicolaides). The general effect of these regulations may be said to be to lay down certain re-

quirements for the making of leases, their registration, and the payment of lease dues to certain State or Municipal Offices, but they do not in so many words repeal any part of the Mejellé.

In practice it seems that no regard is paid to them in Cyprus. These exists here no " Direction des Contrats," the fees ordered to be taken are not collected, and in Articles 12 and 25 at least there are provisions which no modern community could tolerate for an hour and which we cannot find that there has been any attempt to enforce here. The Regulations, however, have on more than one occasion been before this Court for consideration. In *Tritoftides* v. *Nicola*, C.L.R., Vol. V., p. 31, (1900) while it was stated that this law (that is these Regulations) have never been repealed, either expressly or impliedly, it was held that its provisions did not apply to the particular facts. In *Koukoulli* v. *Hamid Bey*, C.L.R., Vol. VII., p. 85, (1907) it was held, in effect, that such provisions of these Regulations as are of general application were in force in Cyprus at the time of the Occupation in 1878, as being contained in the Destour and not proved not to have been in force here. In *Anastassi* v. *Hussein* (1924), a case not yet reported in the books, it was held that certain legislation not on this subject but forming a part of and published in the Destour was really on a departmental instruction and not law of general application.

We may now look at Art. 7 of the Regulations, the only one which concerns us in this case. It runs " The term of leases of Mevkoufé lands for ordinary farming purposes may not exceed three years: that of any other immovable must be for at most nine years."

If we assume that that is part of a law of general application and that it governs the facts in this case, it still does not follow that the present lease, which is not for a term of years at all, is either void or voidable for there is none of the Regulations which says so and if there was it would be in conflict with the rights given by the Mejellé as interpreted above. It may well be that such a lease as this would be a novelty and that if the parties brought it in Constantinople for instance they would be told by the Turkish Officials administering a department which does not exist now in Cyprus and is not shown ever to have existed here at all, to alter the term to one of nine years subject to determination, but that does not of itself invalidate a lease such as this if it is otherwise legal.

At the same time I agree with the view taken in *Anastassi* v. *Hussein* that mere publication of legislative provisions in the Destour, while it may raise a presumption of appli-

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cability, is not conclusive as to their legal effect, and I think that where such provisions are of the class Nizamname and not clearly laws promulgated by the Sultan we are entitled to hold that they do not apply in Cyprus when internal evidence shows as is shown here that they have not only no relation to Cyprus conditions but are in conflict with legislation which, as the Mejellé, emanated directly from the Imperial Source.

The appeal must accordingly in my opinion, be allowed and judgment be entered for the appellants for a sum which we estimated at £1,500 on the first three heads: they will keep their judgment on heads 4 and 5 but the finding for the respondent on head 6 will stand. There will therefore be judgment for appellants for £1,617 and costs.

The respondent's cross appeal is dismissed with costs.

DICKINSON, *J.*: This is an appeal by plaintiffs against the judgment of the President, District Court, Nicosia, sitting alone in a foreign action whereby he dismissed the claim of plaintiffs to damages against the defendant for breach of a contract of lease dated 16th July, 1925, entered into between plaintiff Najem Houry and the defendant in respect of the Palace Hotel, Nicosia, the breach being that whereas defendant had agreed to occupy the premises for " so long as His Majesty is in Cyprus " and to pay rent at the rate of £50 a month therefor, the defendant left the premises on 28th February, 1926, and ceased to pay the said rent, although he still remained and still continues to remain in Cyprus.

At issues and throughout the trial the defendant and his counsel strenuously denied that he had authorised Jamil Pasha, one of his entourage, to sign on his behalf the agreement put forward by plaintiffs, and further denied any knowledge of any such agreement. After hearing a mass of evidence on the point, the President found as a fact that the defendant knew all about the lease and had dictated its terms himself and had instructed Jamil Pasha to sign on his behalf.

The material terms of the contract are as follows:—

> Clause 4: " The period of the lease is not fixed but it is for so long as His Majesty is in Cyprus;" and Clause 5: " The rent agreed is £50 for every month to be paid at the beginning of every month, the same as has been paid up to the end of July, and £2 extra every month for the gardener."

The learned President in his judgment found that the lease was void on the ground of an insufficient stating of the period of the lease as required in his opinion by Art.

2 of Law 10 Rebi-ul-Evvel, 1291, and consequently that no damages for breach could be recovered. He goes on to say that he regrets that he is forced to come to this conclusion as he is satisfied that both parties intended that the lease should continue for so long as the defendant was in Cyprus, and he feels that his judgment will work a great hardship on the plaintiffs.

Mr. Amirayan argued before us that there was no reason why the King should have entered into a contract of lease as he was gaining no benefit thereby. With this contention I cannot agree. The King was accommodated in a most convenient building, where he had his entire entourage of other thirty persons all under one roof; and to find another similar residence would be difficult. Further he had the advantage of keeping in touch with the Houry family, who speak Arabic and know the languages of the country.

With the findings of fact in the judgment of the learned President there seems to me to be no reasonable ground for dissent; and on the evidence recorded, in my opinion, he could not have arrived at any other conclusions. The only matter for this Court to decide is whether the contract of lease dated 16th July, 1925, is enforceable within the law applicable to leases, so as to make it the basis for an action for damages for the breach thereof.

I agree with the President that by virtue of Clause 25 of the C.C.J.O., 1882, the law applicable to this case is Ottoman law as modified by Cyprus Statute Law.

The civil rights of people in their daily affairs with one another, corresponding somewhat to the Common Law of England were recorded by the Mejellé Commission appointed for the purpose in a selection of the opinions of leading jurists set down in the books of the work known as the Mejellé, which was published with the authority of the Sultan. This work is not clear in its provisions, and the translations have done little to assist the Courts in understanding it. It may be that a knowledge of the difficulty there might be in understanding these provisions from the fact that the articles are so disjointed moved the Commission at the commencement of their work to set down certain articles which appear to be maxims of equity for the guidance of the Courts. These maxims purport to give the widest powers to the Courts to see that substantial justice is done. Art. 17 reads: "Hardship causes the giving of facility;" and Art. 18: "Where a matter is narrow it becomes wide. That is to say, so far as hardship is experienced in a matter, latitude and indulgence are shown."

The defendant submits that the Nizamname of 10 Rebiul-Evvel, 1291, published in the Destour, Vol. V., p. 511, is the law governing contracts of lease and in support of his contention he cites the judgments in *Tritoftides* v. *Nicola*, C.L.R., Vol. V., p. 31. and *Koukoulli* v. *Hamid Bey*, C.L.R., Vol. VII., p. 85.

It is necessary to examine what legislative force a Nizamname has, and whether it was a law of general application in use in Turkey at the date of the British occupation or not.

The word " Nizamname " is translated " regulation " in the latest officially recognised English-Turkish Dictionary of Vahid Bey published in 1924. In that work the word " Law " is translated as " Qanounname."

The Destour contains many sets of rules or regulations which obviously are not laws, *e.g.* there is a Qanounname which creates a Land Registry Department, and the succeeding document is a Niazamname setting out a set of regulations issued to that Department.

The Greek translation clearly distinguishes between the two words Qanounname and Nizamname giving to the former full legislative authority, and to the latter the force of departmental regulations and rules. So also does the French translation of Young.

Neither of the earlier decisions of *Tritoftides* v. *Nicola*, C.L.R., Vol. V., p. 31, and *Koukoulli* v. *Hamid Bey*, Vol. VII., p. 85 dealt with this particular point. The former held that whilst this Nizamname might have the force of law, it was not necessary that certain of the provisions of the Nizamname should be carried out before an action would lie on a contract of lease. The latter held that there was a presumption that all laws of general application in force in Turkey at the time of the British occupation must be taken to be in force in Cyprus.

The Supreme Court in that case did not inquire whether this Nizamname was in fact such a law, they seem to have assumed so, from the fact that it is contained in the Destour.

Now there was only one authority in Turkey before the British occupation of Cyprus who could make a law, *i.e.*, the Sultan, and it was necessary in order that a law should have effect that it received his approval and sanction, which was evidenced by its having his sign manual thereon in the same way as our Cyprus laws bear the signature of the Governor of Cuprus.

The Qanounnames published in the Destour bear the sign manual of the Sultan, whereas very few, if any, of the Nizamnames are shown to do so. The Nizamname of 10 Rebi-ul-Evvel, 1291, is not shown in any way to have received Imperial approval.

In the action *Anastassi* v. *Hussein*, reported in C.L.R., Vol. XII., the Supreme Court considered the legislative force of a certain Nizamname in the Destour on the subject of Orphan Estates and then held, in effect, that as this Nizamname—without the Sign Manual of the Sultan—differed from certain provisions of the Mejellé which had received Imperial Sanction, the Nizamname must be held not to be settled law.

Regulations issued by the authority of an officer of State which have not received the Imperial assent cannot, it seems to me, be allowed to impose restrictions on the free enjoyment of property enjoyed by reason of law unquestionably approved by the Sultan.

In so far, therefore, as the judgment in *Tritoftides* v. *Nicola* and *Koukoulli* v. *Hamid Bey* cited above, tend to give this Nizamname of the 10 Rebi-ul-Evvel, 1291, the full effect of settled law, in my opinion they must be overruled.

I am of opinion, therefore, that the law applicable to contracts of lease is the provisions of the Mejellé. The articles which set out the law affecting such contracts require certain conditions to be present in all contracts of hire, viz.: contractual capacity of both parties, a *consensus ad idem*, the existence of the thing hired, that the period be stated definitely and that the rent be known. Otherwise the contracting parties are free to make their own terms, and, as far as I can see, without any limit to the period of the hiring, provided no clause contains ambiguous matter likely to lead to dispute.

The present contract is attacked only in respect of the stating of the period, which is for so long as His Majesty is in Cyprus. In my opinion this period of hiring is definite. The parties when contracting must have realised that in the natural course of things the defendant must one day leave Cyprus or else die there. For the sake of comparison we may examine English decisions on the matter, particularly when no Cyprus decisions has dealt with this point before, *vide Queen's Advocate* v. *Van Milligan*, C.L.R., Vol. III., p. 211 and *Karayeorghiades* v. *Haji Pavlo and Sons*, C.L.R., Vol. V., p. 39. The case of the *Great Northern Railway Co.* v. *Arnold*, reported in Times Law Reports, Vol. XXXIII, No. 9, seems to me to turn on a peculiarly similar term in the contract: " for the period of the war." There Mr. Justice Rowlatt, while holding the contract to be a good one, says:—

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" But it is not possible to-day to say that where parties have deliberately expressed the intention that one should be tenant to the other for the period of the war, their agreement could be torn up, and I think that the law is ingenious enough to get round the difficulty. If a lease for 999 years had been made terminable with the conclusion of the war, it would have been perfectly good as a tenancy; I have decided it is not necessary to rectify the agreement."

I cannot see any reason for holding the present contract of lease either void or voidable. It is true that Art. 484 of the Mejellé, in describing what period a lease must be made for, says it may be for a fixed time whether it be long like years or short like a day; but in saying that such periods are the general means of fixing the time a lease is to run, it must not be taken definitely to prohibit an equally definite period, even though the exact date of its termination cannot be ascertained on the day the lease is signed. Had the lease been made for a period of years with a proviso inserted to the effect that the lessee was to be released from further liability to pay rent after the date he ceased to be in Cyprus, this lease would have been in complete accord with the general practice of leases entered into by Government officials admitted by Mr. Amirayan, where invariably it is provided that the lessee shall be free from the liability to pay further rent in the event of his being transferred elsewhere. I should not hesitate, if it were necessary, to amend the terms of this lease so that it may accord with the recognised practice of leases entered into by officials. Compare Mejellé, Art. 36 " Custom is of force." I do not think, however, that it is necessary to do so. I find that the lease produced is a valid contract entered into by the defendant, which contract he has broken during his continuous existence in Cyprus, and that the plaintiffs are entitled to damages for such breach.

As to the measure of damages—as the respondent is an old man, said to be 85 years of age, we may regard the period of the lease as being more likely to terminate with his death than by his ceasing to stay in Cyprus. His life may be said to have been worth four and a half years' purchase on the day the writ was issued, *i.e.*, 30th March, 1926, and if on account of the additional chance of his leaving Cyprus before his death we deduct 20% from the total rent for that period of four years and seven months (he left the premises in February, 1926) @ £50 a month we arrive at a sum of £2,200. From this we must deduct the sum of £700, *i.e.*, the rental value for this period of the premises now in plaintiff's hands, that leaves the sum of £1,500.

I find that plaintiffs are entitled to recover this sum as damages from defendant.

Appeal allowed.