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ANASTASSIA D. SEVERIS *v.* MICHALAKIS KYPRIANOU AND ANOTHER.

[JACKSON, C.J., AND HALID, J.]

ANASTASSIA D. SEVERIS, *Appellant*,

v.

MICHALAKIS KYPRIANOU AND ANOTHER, *Respondents*.

(Civil Appeal No. 3760.)

Ejectment—Premises—Building in which persons are employed—Tenant in possession—Increase of Rent (Restriction) Law, 1942.

The appellant as owner of certain premises known as " Pantheon " which were leased to the respondents by a lease which expired on the 1st March, 1944, brought an action for ejectment on the termination of the lease. The premises in the lease were described as a summer resort or place of entertainment, and the purposes for which they were to be used were described as " a café, restaurant, and place for public shows, with or without music, including a talking cinema ".

It was contended by the appellant that the premises could not be considered to be a " building " in the sense in which that word is used in the definition of " premises " in section 2 of the Increase of Rent (Restriction) Law, 1942; and if held to be a building they were not a building in which persons are employed or work; and that the respondents were not entitled to the protection afforded by section 7 of the Law to a tenant in possession.

Held : Where there is a lease of both land and buildings to be used together, each of the two, land and buildings being necessary to the other for the express purpose of the lease, and each assisting the other in the fulfilment of that purpose, the premises must be treated as a whole; and, since the lease includes buildings essential for the purposes for which the land was leased, the premises must be treated as a " building " within the meaning of section 2 of the Increase of Rent (Restriction) Law, 1942.

Intervals for which employment on the premises is interrupted by unavoidable causes are not to be considered as destroying the character of the premises as premises " in which persons are employed or work ".

Where a company formed to carry on the enterprise for which the premises were leased has taken over property on the premises belonging to the tenant and the tenant has an interest in the company and there has been no sub-lease or assignment, the tenant is entitled to the protection of section 7 of the Increase of Rent (Restriction) Law, 1942, as the tenant in possession.

Appeal from the judgment of the District Court of Nicosia.

C. D. Severis for the appellant.

Ch. Mitsides for the respondents.

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

JACKSON, C.J.: This is an appeal against the decision of the District Court of Nicosia dismissing the appellant's claim, as the owner of certain premises known as " Pantheon ", to recover possession of those premises from the first respondent on the termination of a lease granted to him and ended on the 1st March, 1944. The second respondent was joined in the claim as the guarantor of the first.

The appellant's claim was dismissed by the District Court on the ground that the premises fall within the provisions of the Increase of Rent (Restriction) Law, 1942, and that the respondents were protected by section 7 of that law against ejectment.

The principal respondent has held the premises in question under a series of leases beginning with a lease for three years from the 5th February, 1938. In that lease the premises are described as " a summer resort," or place of entertainment, and the purposes

for which they were to be used are described as " a café, restaurant and a place for public shows, with or without music, including a talking cinema ". The respondent used the premises for the purposes described in the lease until the imposition of the black-out in 1940. After that date he could make no use of them but he has remained in possession under three successive extensions of his original lease. The rent in the original lease was £75 a year but this was reduced in the extensions, presumably in view of the fact that the premises could not be used for their original purposes. The rent in the most recent of these extensions was £25 a year and the extension, as already noted, ended on the 1st March, 1944.

During the negotiations between the owner's agent and the first respondent about an extension of the original lease the owner's agent wrote to the first respondent on the 2nd April, 1941, a letter which contained the following sentence :— " I state to you that I am prepared to lease to you the ' Pantheon ' for a period of four years at £30 per annum as long as the black-out continues and £100 after it is over ". In a further letter dated 4th April, 1941, the owner's agent wrote as follows :— " Believe me that I accept at £30 for your sake and because I do not want after the black-out is over to cause you to discontinue the exploitation of the ' Pantheon ". Apparently the arrival of a time when it seems probable that the " Pantheon " can again be used for its original purposes, and at a considerably greater profit than was foreseen when those kindly letters were written, has induced a change of mind in the appellant, and her claim in the District Court is the result. She did not ask for a revision of rent but for ejectment.

Three questions arose for the decision of the District Court :—

(a) Whether the premises could be considered to be a " building " in the sense in which that word is used in the definition of " premises " in section 2 of the Increase of Rent (Restriction) Law, 1942,

(b) If the premises are a " building ", are they " a building in which persons are employed or work " ?

(c) Is the first respondent entitled to the protection of section 7 of the Law as a tenant in possession ?

The first of these questions is by no means easy to answer. The premises in question, " Pantheon ", consist of an area of land little more than 2 donums in extent, situated in a good position in the township of Nicosia. It is in evidence that the land, and such buildings as have been on it from time to time, have been used as an open-air café, restaurant and a place of entertainment since 1925. At the time of the first lease to the respondent in 1938 the buildings on the land appear to have consisted of one which was used for the preparation of food and drinks, another which was used partly as a store and partly as an engine room for a cinema, and some lavatories. Considerable additions have been made by the respondent to these buildings during his tenancy, but the buildings erected by the respondent are not included in the lease and he has the right to remove them on its expiration. We have therefore to consider whether, by reason of the buildings included in the lease of the land, the whole premises, that is to say the land and buildings together, can be considered to be a " building " within the meaning of the Increase of Rent (Restriction) Law.

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It appears that there was no plan of the premises before the District Court and, in the absence of such a plan, we found it impossible to form a clear idea of the relation of the buildings to the land on which they stand, and we took the unusual course, for a Court of Appeal, of inspecting the premises ourselves, accompanied by the advocates of both parties.

Since the premises came into the appellant's ownership the land and buildings have never been separately used. They have always been used together as an open-air café and restaurant and a place of open-air entertainment. The buildings included in the lease, as distinct from those subsequently added by the respondent as tenant, are admittedly of small value in comparison with the land and occupy only a very small part of it. The appellant accordingly contended that the real subject of the lease is the open space used for entertainment and that the few buildings which the lease includes are unimportant adjuncts. He argued, therefore, that the premises as a whole could not properly be considered to be a "building" in the sense in which the word is used in section 2 of the Law.

As we have already said, this is not at all an easy question to answer, for there might be cases in which the building on a piece of land would be so subsidiary to the purpose for which the land was leased and used that no one would think of treating the land and building together as a "building" within the meaning of the Law. An extreme example would be an enclosed football or sports ground without any seating accommodation but with a small ticket-collector's box at the entrance.

But the circumstances in the present case are different. The purpose for which the lease provides that the premises shall be used, and for which indeed they have been used for a considerable number of years, is as a café and restaurant as well as a place for open-air entertainment. That is to say, a purpose which entails the use of buildings as an important part of that purpose. Even if the premises were used only as an open-air café and restaurant some space around the buildings would be required. The greater the space that is occupied with the buildings and the more attractive the entertainment that can be provided in that space, the greater the number of people who will come there and the greater the amount of business that will be done in the buildings by the café and the restaurant. Indeed it appears from the evidence that without the possibility of attracting customers to the premises by an open-air entertainment of some kind the café and the restaurant cannot pay their way.

We have examined a number of cases arising under the English Rent Restriction Acts in order to see whether any guidance could be found in them upon the question whether premises such as those with which we are now concerned should be regarded as having primarily one character or primarily another. The appellant's advocate quoted a case arising under an English statute imposing varying rates on land and on buildings and in which land that included certain buildings was nevertheless treated as land. The statute which was considered in that case, as well as the questions to which it gave rise, were so very different from the Law and the circumstances with which we are now concerned that we could find

no assistance in that authority. English cases more nearly in point are those which arose under the English Rent Restriction Acts giving protection to dwelling houses. One of these cases was the *Epsom Grand Stand Association* v. *Clark* (1919 W.N. 170) in which it was held by the Court of Appeal that a licensed public house in the main street of a big town was a " dwelling house " within the Rent Restriction Acts because the tenant and his family and servants actually lived in a small part of it. That decision was afterwards very strongly criticized by Mr. Justice McCardie in the cases of *Walter & Son Ltd.* v. *Thomas* (1921, 1 K.B. p. 541) and *Brackspear and Sons Ltd.* v. *Barton* (1924, 2. K.B.p.88). Although the learned judge disagreed very strongly with the decision of the Court of Appeal he had, of course, to follow it and in doing so he said that it was no longer possible to look at the "dominant purpose " of the lease of certain premises in order to determine whether they were business premises or a dwelling house.

The decision of the Court of Appeal in the Epsom case was afterwards embodied in the second proviso of section 12 of the Rent Restriction Act of 1920, and we felt that, even if it were of any assistance to do so in this case, we could not attempt to determine whether the dominant purpose of the lease with which we are concerned was a lease of land or a lease of buildings. It was in fact a lease of both to be used together, each of the two land and buildings, being necessary to the other for the express purpose of the lease and each assisting the other in the fulfilment of that purpose.

We were also referred to the provisions of para. (iii) of the proviso to the English Rent Restriction Act of 1920 defining the circumstances in which land leased with a house is admitted to the protection of the Act or excluded from it. In the conditions with which that proviso deals the house is clearly severable from the land and can be used without it. In the case before us the buildings are not severable from the land leased with them, in that they cannot be used for the purposes for which they were leased without that land.

The premises in this case must, in our view, be treated as a whole and, since the lease of those premises includes buildings essential for the purposes for which the land was leased, the premises must, in our view, be treated as a building in the sense in which that word is used in section 2 of the Increase of Rent (Restriction) Law, 1942.

In order to bring a building within the definition of " premises " entitled to the protection of the Law, the building must be one " in which persons dwell or are employed or work ". The evidence does not suggest that anyone lives in these particular premises, but persons are undoubtedly employed and work there when the premises are used for the purposes for which they were leased. And it is in evidence that more than 25 persons were employed at the " Pantheon " until the black-out prevented the use of these premises for their proper purposes. It is evident from the nature of the premises, which are a place of summer entertainment, that employment cannot be continuous, and the intervals during which the premises could not be used were prolonged by the black-out. There can be no doubt, however, that persons are to be employed there, as they previously were, whenever the premises can be used for the purposes for which they are leased. We were informed

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that a number of persons are in fact employed there now. Having regard to the fact that employment in these premises cannot in any case be continuous, we do not think that we should consider the intervals for which employment has been interrupted, either because of the nature of the enterprise or because of the black-out, as destroying the character of these premises as premises " in which persons are employed or work ".

The only question remaining is the question whether the first respondent is entitled to the protection of the Law as the tenant in possession. It is in evidence that a company has been formed to carry on the business of the " Pantheon " and that this company has taken over from the first respondent the property on the premises that belongs to him. But the first respondent has an interest in the company and there has been no sub-lease or assignment. He remains the tenant and, in our opinion, he is the tenant in possession for the purposes of the Increase of Rent (Restriction) Law.

For the reasons we have given we think that the District Court was right and that this appeal must be dismissed with costs.

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

GEORGE S. MALAKOS, *Appellant*,

v.

LOUIS LOIZOU AND ANOTHER, *Respondents*.

(*Civil Appeal No.* 3742.)

Hire-purchase agreement—Injury caused by third party to article bailed—Remedies of Bailee—Contract Law, 1930, *section* 188.

The appellant acquired a motor-cycle from a firm of motor car dealers under a hire-purchase agreement, a term of which was that the motor-cycle was to remain the property of the said dealers until the last instalment under the agreement was paid. In September, 1940, the appellant hired the motor-cycle to the Military authorities for a payment of £5 a month. While the motor-cycle was being ridden by a member of the Forces, and while there were instalments still unpaid under the said hire-purchase agreement, it came into collision with a motor car belonging to the respondents, and was injured. The appellant thereupon brought this action for negligence against the respondents as owners of the said motor car.

It was contended by the respondents that the appellant being neither the owner of the motor-cycle, nor a bailee in possession had no right of claim against them.

Held : By section 188 of the Contract Law, 1930, a bailee in possession of the goods bailed is entitled to use such remedies as the owner might use against a third party causing injury to the goods bailed. But where a bailee, having hired goods under a hire-purchase agreement, himself parts with possession of such goods for a fixed term, not yet expired, he has no right to claim damages for injury by third persons to such goods.

There is nothing in section 188 of the Contract Law which extends the rights of a bailee, in respect of injury to goods bailed, beyond the rights recognized by the Common Law of England.

Appeal from the judgment of the District Court of Limassol.

C. Myrianthis for the appellant.

J. Eliades for the respondents.