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

PAPA MARCOS SOCRATES, *Appellant*,

v.

ERODOTOS GEORGHIOU AND OTHERS, *Respondents*.

(*Civil Appeal No.* 3748.)

Agents Lien—Contract Law, 1930, *section* 299—*Defence* (*Licensing of Dealers in Certain Goods*) *Order*, 1942, *section* 2.

The appellant was claimant in interpleader proceedings brought in an action in which Erodotos Georghiou and another obtained judgment against one Theodoros Antoniou and seized in execution certain wheat and barley at a Government store. The appellant claimed a lien on the wheat and barley on the ground that though the licence to purchase it under the Defence (Licensing of Dealers in Certain Goods) Order, 1942, under which the goods were purchased, was in the name of the defendant, he himself had paid the price and was entitled to take delivery.

Held: An essential condition for the creation of a lien under section 229 of the Contract Law, 1930, is that the agent must have received the property in respect of which the lien is claimed.

Appeal from the decision of the President of the District Court of Limassol reversing the judgment of the Magistrate in favour of the appellant.

J. Clerides for the appellant.

J. Eliades for the respondents.

The facts are clearly set forth in the judgment of the Court which was delivered by:

JACKSON, C.J.: This is an appeal from the decision of the District Court of Limassol reversing the judgment of the Magistrate in favour of the appellant who, by way of interpleader, claimed certain property which had been seized in execution by a judgment-creditor.

The facts, which are not in dispute, are as follows. In October, 1942, a certain Theodoros Antoniou, a baker, held a licence from the Commissioner, Limassol, to purchase 800 okes of wheat and 200 okes of barley from the Government Store at Limassol. The licence was not produced before us but both sides agree that it was a licence issued under the Defence (Licensing of Dealers in Certain Goods) Order, 1942. By section 2 of that Order, no person could, after the 23rd March, 1942, deal in, sell or have in his possession any goods mentioned in the schedule to the Order without a licence from the Commissioner of the District. The goods mentioned in the schedule included wheat and barley. The baker, being without the money to pay for the wheat and barley that his licence authorized him to purchase, agreed with the appellant that the latter should take the licence, pay for the wheat and barley and take delivery of it. The appellant was then to have it ground into flour at his father-in-law's mill and sell the flour to the baker, by the sack, as the baker was in a position to pay for it. The appellant said that he was to make no profit out of this transaction, but it is obvious that some payment was to be made for the grinding of the grain and it would be strange if, whether by that means or by some other, the appellant, who admittedly lent money to his friends from time to time, was to get nothing for his outlay of the purchase money for the grain and his storage of it. The appellant took the baker's licence and sent his brother to the Government store

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to pay for the grain and take delivery of it. The brother presented the licence to the proper authority, paid £23. 6*s*. 6*p*. and got a receipt for the payment in the baker's name. For lack of time he was unable to take delivery of the grain on that day. About two days later the appellant sent another person, a lorry driver, to the Government Store, with the receipt, to take delivery. In the meantime the grain had been seized, as the baker's property by his judgment-creditor. The appellant accordingly interpleaded in the Magistrate's Court. He claimed that he was the owner of the grain or, in the alternative, that he had what he described as "rights" in respect of it until the baker paid him its value. He gave no precise description of these "rights". The Magistrate held that the baker was the person who was entitled to possession of the wheat and barley, but that he had "dispossessed himself" of it until he paid the appellant for it and that the appellant had a lien on the grain for the money he had paid. The Magistrate accordingly decided that the appellant was entitled to the whole of the 800 okes of wheat and 200 okes of barley, the price on the day of his decision being the same as the price which the appellant had paid.

The District Court held, on appeal, that the property in the grain was in the baker, the grain itself being in the possession of the Government. The Court also held that the appellant had no title to the grain, and observed that it was not in his possession and that possession would not have been given to him, because a licence to possess grain was necessary and the appellant had none.

As far as we can understand the grounds of the Magistrate's decision the main difference between it and the decision of the District Court was that the Magistrate considered that the appellant had a lien on the grain for the purchase money that he had paid and the District Court considered that no such lien existed.

In this Court the argument turned on the existence of a lien. Mr. Clerides for the appellant, argued that the baker had made the appellant his agent to purchase the grain and to keep possession of it until the baker could pay for it sack by sack. Mr. Clerides pointed out that, according to the evidence, the officials in charge at the Government Store had no means of identifying licence-holders and that the appellant would no doubt have been given possession of the grain had the baker's licence been presented on his behalf, with payment, before the grain had been seized. According to the evidence, this statement appears to us to be a correct statement of what would probably have occurred, whether or not it would have been in accordance with the provisions of the Order issued under the Defence Regulations. Notwithstanding that Order, Mr. Clerides maintained that the appellant was entitled to get possession of the grain as agent of the baker and to retain possession of it until the baker paid. In support of his argument Mr. Clerides referred to section 229 of the Contract Law which establishes an agent's lien on property of his principal which has been received by the agent. Even if we assume that the appellant was the baker's agent in this case, it is clear that, under the section quoted, a lien could only be created in favour of the agent in respect of property which the agent had "received" within the meaning of the section and so could "retain". The appellant had certainly

not received the grain in this case, nor had he, indeed, even a right to receive it into his own possession, for possession of wheat and barley was controlled by the Order under the Defence Regulations already mentioned and the appellant had no licence to possess the grain. It was not argued, for the appellant, that the property in the grain had passed to him ; nor, indeed, could such a proposition have been maintained. The sole claim put forward on his behalf was to a lien on the grain as the baker's agent. As we have already pointed out, an essential condition for such a lien is that the agent must have received the property in respect of which the lien is claimed and the grain had not been received by the appellant in this case. Accordingly, without expressing any opinion on the question whether the appellant was or was not the baker's agent we consider that the judgment of the District Court was right and that this appeal must be dismissed with costs.

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

POPI N. IOANNIDES, *Appellant*,

v.

DEMETRIOS O. FRANGOS, *Respondent*.

(*Civil Appeal No.* 3752.)

Counter-claim—Independent Action—Rules of Court, 1938, *O.* 19 *r.* 3—*Civil Jurisdiction of District Courts—Courts of Justice Law*, 1935, *section* 16 (5) *and* (7).

This action was brought in the Magistrate's Court of Limassol claiming £23. 6*s*. 6*p*. for rent. The defendant counter-claimed for damages amounting to £31. 8*s*. 7*p*. and set off against this the sum of £11. 15*s*. 5*p*., which, he alleged, was the true amount of rent due. The plaintiff raised the objection that the Magistrate could not entertain the counter-claim, as the sum claimed therein for damages, namely £31. 8*s*. 7*p*., was in excess of his jurisdiction. The Magistrate considering that the net amount of the counter-claim was only £19. 13*s*. 2*p*. overruled the objection. On appeal by the plaintiff, the President of the District Court held that a counter-claim is a separate action and that the Magistrate had exceeded his jurisdiction. The defendant appealed.

Held : Unless a Court orders a counter-claim to be disposed of in an independent action, it is not an independent action but a part of the action brought by the plaintiff to enforce his claim. The test in applying section 16 (7) of the Courts of Justice Law, 1935, is whether the Magistrate has jurisdiction to award the maximum relief claimed by either party.

Appeal from the decision of the President of the District Court of Limassol reversing the judgment of the Magistrate.

J. Clerides for the appellant.

M. Houry (with *P. Solomonides*) for the respondent.

The facts are clearly set forth in the judgment of the Court which was delivered by :

JACKSON, C.J. : In this case the plaintiff-respondent sued the defendant-appellant in the Magistrate's Court, Limassol, for a sum of £23. 6*s*. 6*p*. for rent of certain premises in Limassol leased to the defendant as a shop. The defendant admitted a smaller sum due for rent, £11. 15*s*. 5*p*. and counter-claimed for a sum of £31. 8*s*. 7*p*.,