The other points taken on this appeal can be disposed of quite shortly. When an application for the guardianship or custody of an infant is made to a Court, the question of whether the party who does not obtain custody may be given right of access is always in issue. It is, however, desirable that where the Court contemplates, in certain cases, making an order as to access, that it should intimate to the parties or their counsel what it has in mind so that, if necessary, it can hear further evidence or arguments before making its decision. In the present case it is not clear from the record that the provisions as to access were discussed with counsel and parties, but we have no doubt that these provisions were inserted only after careful consideration; and it must be remembered that one of these provisions is that the mother should have access to the child from the hour it leaves school until 6 p.m.

In our view the order as to custody and access which was obviously carefully considered and drawn by the District Court should be allowed to stand. If the parties to this appeal put the welfare of their child above everything else and make a serious and sincere effort to carry out the order of the Court, we see no reason why the arrangements contained in the order should not work well.

In our view this appeal must be dismissed with costs.

[HALLINAN, C.J., AND ZEKIA, J.]
(June 30, 1954)

SHAKIR ILKAY, *Appellant,*

v.

HALIT KIAZIM, *Respondent.*

(*Civil Appeal No.* 4093)

Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231 *section* 21—*Roof separately owned—Room built on roof—Not built on "land" for purposes of section* 21.

Before the enactment of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 231, the appellant's predecessor in title for valuable consideration gave to the respondent's predecessor in title the roof of the appellant's house to use as a terrace and to build a room thereon. The terrace was made, and both roof and terrace were registered in the name of the respondent's predecessor. In 1953 the respondent began to build a room on the roof and the appellant brought proceedings to prevent this.

Section 21 of Cap. 231 provides that any building erected on land after Cap. 231 came into operation is deemed to be the property of the owner of the land. The District Court dismissed the claim.

Upon appeal,

Held: The building which the respondent erected on the roof was not built on "land" within the meaning of section 21.

Appeal dismissed.

Appeal by plaintiff from the judgment of the District Court of Paphos (Action No. 1660/53) in favour of defendant.

Sir Panayiotis Cacoyannis for the appellant.

G. Clerides for the respondent.

Judgment was delivered by :

HALLINAN, C.J. : The appellant in this case owns a shop at Paphos and the respondent owns premises which adjoin the appellant's shop. In 1938 the predecessors in title of the parties made an agreement whereby the respondent's predecessor ceded a small strip of land to the appellant's predecessor and the latter gave the roof of his shop to the respondent's predecessor as a terrace and/or to build a room thereon. Shortly after, in the same year, the terrace was included in the title-deed of the respondent's predecessor who removed and rebuilt the roof above the terrace and built a parapet on it overlooking the street. There is direct access from the respondent's premises on to the terrace over the appellant's shop. In 1953, the respondent demolished part of the terrace roof and began to build a storey, whereupon the appellant instituted these proceedings, claiming a declaration that the roof was the property of the appellant and that the respondent had merely a right of user.

The trial Court held that the terrace roof was a separate piece of immovable property, and that the respondent was the owner thereof and had the right to build on it. Alternatively, the Court held that if the respondent was not the owner, he had a licence to use the terrace and build on it.

Since, in our opinion, the decision of the trial Court was right on the first ground, it will not be necessary for us in this judgment to discuss the question of licence, which was fully argued on the hearing of the appeal.

The respondent's predecessor in title under the agreement of 1938, and the title-deed which he procured pursuant to the agreement, clearly obtained the ownership of the roof and terrace of the appellant's shop. Prior to the passing of the Immovable Property (Tenure, Registration and Valuation) Law (Cap. 231), there was nothing in the Law to prevent an owner from alienating part of a building, and it was clearly the intention of the parties to the agreement of 1938 that the ownership of the roof should pass. Section

21 (2) of Cap. 231 provides, *inter alia*, that any building or other erection or structure erected on any land before the coming into operation of the Law, shall be deemed to be the property of the owner of the land unless another person is registered as the owner thereof. Now, on the coming into operation of Cap. 231, the respondent's predecessor was the registered owner of the roof and terrace. Section 21 further provides that any building or other structure erected on any land after the coming into operation of Cap. 231, shall be deemed to be the property of the owner of the land. The question which here falls for decision is whether the building which the respondent is erecting on the terrace is a building on land, within the meaning of section 21. In our view it is not ; and we reach this conclusion both on the literal interpretation of the section and when we interpret it according to its scope and object. Interpreted literally, the building which the respondent seeks to erect is not a building on land but on the terrace, which is a building or structure and not land.

Looking at the section as a whole, where there is a separate title-deed and ownership of a structure (such as the terrace in this case) on which a new building is to be erected, apart from the land, in our view, it was not the intention of the legislative authority that the new building should belong to the owner of the land and not to the owner of the structure. There is nothing in section 21 to prevent the respondent who owns the terrace from erecting a building thereon which will be his property and not the property of the appellant who owns the shop and land below the terrace. When in the agreement of 1938 the appellant's predecessor gave the respondent's predecessor the terrace and the right to build thereon, he obviously ceded the space above the terrace necessary for building.

In our opinion the decision of the trial Court was correct and this appeal must be dismissed with costs.