1960
March 3,
April 8.

GEORGHIOS E. GLYKYS
v.
IOANNIS STYLIANOU IOANNIDES

[ZEKIA, J. and ZANNETIDES, J.]

GEORGHIOS E. GLYKYS,
Appellant (Plaintiff),

v.

IOANNIS STYLIANOU IOANNIDES,
Respondent (Defendant).

(*Civil Appeal No.* 4300).

Landlord and Tenant—Protected premises—Rent (Control) Laws, 1954 and 1955—Business premises—Exempted from operation of those laws as from the 1st Jan. 1959—Order by the Governor under Section 3 (2) (see: Supplement 3 to the Cyprus Gazette of the 31st Dec. 1958 under No.1154)—Tenant continuing to remain in occupation and paying rent—New tenancy created.

Periodic tenancy from month to month—Notice to quit—Requirements—Notice otherwise valid containing an offer for a new tenancy—Offer does not invalidate the notice.

Order of ejectment—Stay—Powers and discretion of the Court—Courts of Justice Law, 1953, section 53: Civil Procedure Rules, O.34, r.5.

Mesne profits—The rental value at the time.

Practice—Costs—Discretion—Considerations of kindness—Wrong criterion—Wrong exercise of the discretion.

The respondent was the statutory tenant of a shop, owned by the appellant, until the 1st January 1959 when by virtue of the order of the Governor under sub-section 2 of section 3 of the Rent (Control) Laws, 1954 and 1955, published in Supplement No.3 to the C.G. of the 31st December 1958, p. 1069 under No. 1154, all business premises within all rent restriction areas have been exempted from the operation of those Laws. He continued thereafter in occupation, paying the monthly rent. It was conceded that the respondent became thus a contractual tenant of the premises from month to month. On the 25th May 1959 the appellant (landlord) sent a notice requiring the tenant (respondent) to vacate the premises by the 30th June 1959, offering, in addition, to grant him a new tenancy on certain terms. As there was no response by the tenant, the landlord brought an action claiming recovery of possession of the shop in question and mesne profits. It was contended by the tenant at the trial that the notice to quit was not a valid notice in view of the fact that it contained the offer for a new tenancy referred to above. The trial Court, in due course, granted the order for possession with a stay for two months, mesne profits, but, apparently moved by considerations of kindness, the Court did not allow to the successful landlord any costs. The plaintiff-landlord appealed against that part of the judgment relating to the

stay of execution and to the costs. The defendant cross-appealed against the order for ejectment on the ground that the contractual tenancy was never determined by a valid notice and against the order for mesne profits.

Held : Dismissing the cross-appeal:

(1) It was conceded by the tenant that the tenancy was one from month to month beginning on the 1st January, 1959, and the question is whether the notice exhibit No. 1 was a valid notice to quit terminating the tenancy. No sacramental form is necessary for a notice to quit to be valid; if it is clear and certain in terms it is enough; it is sufficient if " there be plain and unambiguous words claiming to determine the existing tenancy at a certain time ". see: *per* Coleridge L.J., in *Gardner v. Ingram*, (1889) 61 L.T.729, at p. 730, cited with approval by Atkin, L.J. in *P. Phips and Co. Ltd. v. Rogers* (1925) 1 K.B. 14, at p. 27, C.A.

(2) In the present case the words of the notice to quit, exhibit No.1 are: " You are therefore required to deliver to me vacant possession of the above premises till the 30th June. 1959 ". In our mind they are unambiguous words putting an end to the possession of the tenant as such and thus terminating the tenancy. The fact that the notice contained an offer of a new tenancy did not invalidate it at all —*see* Halsbury's Laws of England, 3rd Edition, Volume 23 p. 523 para. 1174.

(3) The tenancy in question was one from month to month beginning from the 1st January, 1959, and consequently expiring on the last day of January and of each succeeding month ; for such a tenancy to be determined a month's notice expiring on the last day of the month was necessary; such was exhibit No. 1 because it was sent on the 25th May, 1959, terminating the tenancy on the last day of June, 1959.

(4) With regard to mesne profits : it is true that the words 'mesne profits' are not mentioned in the statement of claim, but simply in para. 5 (b) of it are the following words: " £15 per month as from the 1st July, 1959, to delivery "; but the general tenor of the whole statement of claim shows that it was about ' mesne profits ', and so the learned judge took it to be because in his order he said: " £13 per month mesne profits ", and so in fact it was because ' mesne profits ' are damages for trespass, damages which the landlord suffers through being out of possession of the land or of the premises.

We are of the opinion that the statement of the claim taken as a whole sufficiently indicates that what the landlord was claiming in para. 5 (b) of his statement of claim is damages for being out of possession of his shop *i.e.* ' mesne profits '. With regard to the amount, it seems that the trial judge took

as a measure the rental value of the shop at the material time which we think is not a wrong measure (*see: Clifton Securities Ltd. v. Huntley and Others* (1948) 2 All E.R., pp. 283-284). The landlord stated the rental value of the shop was £15 per month and the tenant said it was £5 per month. The Judge decided £13: we do not think that we can interfere.

Held: On the appeal:

(1) *Affirming on this point the judgment of the lower Court:*

It is clear from the last part of section 53 of the Courts of Justice Law, 1953 (*post*) and the Civil Procedure Rules, 0.34. r.5 (*post*) that the Court has got power if it thought just to postpone for a certain time the operation of an order for possession. In the case of *Jones v. Savery* (1951) 1 All E.R. 820, cited in this appeal, rule 11 of Order 24 of the County Court Rules 1936, which is almost similar to our rule 5 of Order 34, was construed as giving power to the Court to postpone the operation of an order for possession.

In the present case we are of the opinion that the learned trial Judge was right in giving the tenant time. The length of the time must, of course, depend on the circumstances of the particular case. In the case above cited, which was a case for the delivery of possession of a stable, one month was given to the tenant to remove his horses from the stable. In the case here we are of the opinion that two months time was a reasonable time for the tenant to deliver vacant possession of the shop and that the Judge was right in granting him that time.

(2) *Reversing on this point the judgment of the lower Court:*

As regards the costs of the action it is clear that the learned trial Judge was moved by feelings of kindness towards the tenant in not ordering him to pay costs: feelings of kindness are not, of course, the correct criterion in deciding the question of costs. We think that the landlord must have his costs in the Court below. Some guidance of the principles on which costs are awarded may be gathered from the judgment of this Court in the case of *Chrysoulla Eleftheriou v. Dora N. Rousson and Another* (Civil Appeal No. 4253), *unreported*. (*Note:* now reported in 23 C.L.R. 191).

(3) As to the costs in this Court in view of the result of the appeal we are of the opinion that we must let each party bear its own costs.

Appeal allowed in part. Cross-Appeal dismissed. No order as to costs in this Court.

Cases referred to:

Gardner v. Ingram (1889) 61 L.T. 729.

P. Phips and Co. (Northampton and Towcester Breweries) Ltd. v. Rogers (1925) 1 K.B.14, C.A.

Jones v. Savery (1951) 1 All E.R. 820.

Clifton Securities Ltd. v. Huntley and Others (1948) 2 All E.R. 283.

Chrysoulla Eleftheriou v. Dora Rousou 23 C.L.R. 191.

Appeal and Cross-Appeal.

Appeal by the plaintiff against that part of the judgment of the District Court of Nicosia (Hj. Anastassiou, D.J.) dated the 9th November 1959 (Action No. 2856/59) whereby the trial Judge: (1) granted a stay of execution for two months of the order of ejectment given ; (2) refused to allow costs to plaintiff. There was, also, a cross-appeal by the defendant.

Xanthos Clerides for the appellant.

M. Triantafyllides for the respondent.

Cur. adv. vult.

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

ZANNETIDES, J. : The appellant is the owner of a shop at 150, Paphos Street, Nicosia. The respondent was the tenant of that shop for many years using it as a bicycle repairer's shop ; as tenant he was protected from eviction by the various laws passed between the years 1942 and 1954 for the protection of tenants. The last of those laws is law No.13 of 1954, the Rent (Control) Law, 1954.

On the 31st December, 1958, the Governor in Council, in exercise of the powers vested in him by sub-section 2 of section 3 of the said Law, exempted from its operation all business premises and thus deprived them, as from that date, of the protection afforded to them by that Law.

The tenant continued, after the exemption, to be in occupation of the shop paying, as before, the monthly rent of £4.15.0. On the 25th May, 1959, the landlord sent him a written notice requiring the tenant to deliver to him (the landlord) vacant possession of the shop by the 30th June, 1959, offering, in addition, to grant him a new tenancy under certain terms ; this notice was produced in evidence as exhibit No.1 ; further to that notice the landlord's counsel sent a letter to the tenant on the 10th July, 1959, and as there was no response by the tenant the landlord began this action in the District Court of Nicosia to recover possession ; he further claimed £15 per month as from the 1st July, 1959, until delivery of possession. The action was defended and the learned District Judge, who heard the case, made an order for

possession but stayed its operation for two months ; in other words, he gave the tenant two months' time to deliver possession from the 9th November, 1959, the date of the order ; he further adjudged the respondent to pay £13 per month as mesne profits from the 1st July, 1959, till delivery of possession ; as regards costs he deprived the landlord of his costs.

The landlord appealed from that order and his complaint is that the learned Judge was wrong (*a*) in staying the order for possession for two months ; (*b*) in not giving him £15 per month as mesne profits ; and (*c*) in depriving him of his costs in the action.

The tenant cross-appealed alleging (I quote from his notice of cross-appeal) " that the tenancy from month to month of respondent which arose after the 1st January, 1959, was never terminated and therefore respondent was not a trespasser " ; also that in the way the claim was framed and on the evidence heard, the Court was wrong to adjudge him to pay £13 mesne profits or any mesne profits at all. He also asked for a new trial or the reception of new evidence.

We did not receive new evidence and we do not think it is a proper case to order a new trial, so we proceed to consider the grounds of complaint against the order. Let us deal first with the question of the proper termination of the tenancy. It was conceded by the tenant that the tenancy was one from month to month beginning on the 1st January, 1959, and the question is whether the notice exhibit No. 1 was a valid notice to quit terminating the tenancy. No sacramental form is necessary for a notice to quit to be valid ; if it is clear and certain in terms it is enough ; it is sufficient if "there be plain and unambiguous words claiming to determine the existing tenancy at a certain time ". The words in inverted commas are those of L.J. Coleridge in *Gardner v. Ingram*, (1) cited with approval by Atkin L.J. in *P. Phips and Co. Ltd. v. Rogers* (1925) 1 K.B. 14, C.A. at p. 27.

In the present case the words of exhibit No.1 are : " You are therefore required to deliver to me vacant possession of the above premises till the 30th June, 1959 ". In our mind they are unambiguous words putting an end to the possession of the tenant as such and thus terminating the tenancy. The fact that the notice contained an offer of a new tenancy did not invalidate it at all — see Halsbury's Laws of England, 3rd Edition, Volume 23 p. 523 para. 1174 :—

> " A notice to quit must be clear and certain in its terms. It is bad if it is expressed so as to take effect on a contingency, such as a notice to quit given by the landlord if a breach of covenant shall be committed or by the tenant when he can get another situation. If, however, definite notice to quit is given, it is not invalidated by the addition of words requiring, in a notice by the landlord, an

increase, or, in a notice by the tenant, a diminution, of rent, if the tenant stays on. A notice so expressed operates as a notice to quit, with an offer to grant or to take a new tenancy as the case may be ".

As we said before the tenancy in question was one from month to month beginning from the 1st January, 1959, and consequently expiring on the last day of January and of each succeeding month ; for such a tenancy to be determined a month's notice expiring on the last day of the month was necessary ; such was exhibit No.1 because it was sent on the 25th May, 1959, terminating the tenancy on the last day of June, 1959.

For the above reasons we find that exhibit No.1 was a valid notice to quit and that it did terminate the tenancy on the 30th June, 1959.

As to the landlord's complaint that the learned Judge was wrong in staying the operation of the order for two months, the short answer to this is (*a*) the last part of section 53 of the Courts of Justice Law, 1953, which is as follows:—

> ".....but the Court by which such judgment is given, or any Court having jurisdiction to hear such judgment on appeal, may at any time, if it shall so think fit, and whether an order for execution shall have been issued or not, direct that execution of such judgment be suspended for such time and subject to terms or otherwise as to such Court may seem just ;"

and (*b*) rule 5 of Order 34 of the Civil Procedure Rules which runs as follows:

> " Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done ".

It is clear from those two enactments that the Court has got power, if it thought just to postpone for a certain time the operation of an order for possession. In the case of *Jones v. Savery* (1951) 1 All E.R. 820, cited in this appeal, rule 11 of Order 24 of the County Court Rules 1936, which is almost similar to our rule 5 of Order 34, was construed as giving power to the Court to postpone the operation of an order for possession. In the present case we are of the opinion that the learned trial Judge was right in giving the tenant time. The length of the time must, of course, depend on the circumstances of the particular case. In the case above cited which was a case for the delivery of possession of a stable, one month was given to the tenant to remove his horses from the stable. In the case here we are of the opinion that two months time was a reasonable time for the tenant to

deliver vacant possession of the shop and that the Judge was right in granting him that time.

With regard to the question of mesne profits it was argued by the learned counsel for the tenant that there was no proper claim for that in the statement of claim and further that there was no evidence in the case justifying the Judge to grant them.

It is true that the words "mesne profits" are not mentioned in the statement of claim but simply in para.5 (*b*) of it are the following words: "£15 per month as from the 1st July, 1959, to delivery"; but the general tenor of the whole statement of claim shows that it was about mesne profits, and so the learned Judge took it to be because in his order he said "£13 per month mesne profits" and so in fact it was because what are really mesne profits? Mesne profits are damages for trespass, damages which the landlord suffers through being out of possession of the land or of the premises.

We are of the opinion that the statement of the claim taken as a whole sufficiently indicates that what the landlord was claiming in para.5 (*b*) of his statement of claim is damages for being out of possession of his shop *i.e.* mesne profits. With regard to the amount, it seems that the trial Judge took as a measure the rental value of the shop at the material time which we think is not a wrong measure (*see : Clifton Securities Ltd. v. Huntley and Others* (1948) 2 All E.R., pp. 283-284). The landlord stated the rental value of the shop was £15 per month and the tenant said it was £5 per month. The Judge decided £13 ; we do not think that we can interfere.

As regards the costs of the action it is clear that the learned trial Judge was moved by feelings of kindness towards the tenant in not ordering him to pay costs ; feelings of kindness are not, of course, the correct criterion in deciding the question of costs. We think that the landlord must have his costs in the Court below. Some guidance of the principles on which costs are awarded may be gathered from the judg-judgment of this Court in the case of *Chrysoulla Eleftheriou v. Dora N. Rousou and another* (Civil Appeal No. 4253), *unreported.* (*Note:* now reported in 23 C.L.R. 191).

The result is that the cross-appeal is dismissed ; the appeal is allowed to the extent only of giving the appellant his costs in the Court below and we order accordingly.

As to the costs in this Court in view of the result of the appeal we are of the opinion that we must let each party bear its own costs.

Appeal allowed in part. Cross-Appeal Dismissed. No order as to costs in this Court.