purchased by the Defendant, to wit:—a garden with a hut situated in St. Andrea's street bounded two sides road, heirs of G. Kakathimi and Onofrios Jassonides, on condition that the said right be exercised within one month of the date hereof and that on the production within one month from the date hereof of the qochan to the said property by the Plaintiff, the Defendant do pay the costs of the Plaintiff in the District Court and on appeal, and, the Defendant having undertaken through his advocate Mr. Pascal Constantinides to furnish security to the satisfaction of the Plaintiff for the payment of such sum as shall be adjudged on taxation to be due in respect of the said costs, it is further ordered that, in the event of the failure of the Defendant to furnish the said security the said purchase price, without prejudice to the above declaration, be paid into Court to await the order of the Court. Liberty to apply.

This 16th day of December, 1907.

[TYSER, C.J. AND BERTRAM, J.]

GEORGHI HAJI DIMITRI KOUKOULLI AND ANOTHER, *Plaintiffs*,

v.

HAMID BEY AND ANOTHER, *Defendants.*

IMMOVABLE PROPERTY—LEASE—NECESSITY FOR WRITTEN CONTRACT—LAW OF 10 REBI-UL-EVVEL, 1291—EQUITABLE RULE AGAINST UNCONSCIENTIOUS ADVANTAGE—LAWS IN FORCE IN CYPRUS—CYPRUS COURTS OF JUSTICE ORDER IN COUNCIL, 1882, ARTS. 3 AND 23—PUBLICATION OF LAWS—LAW OF 25 REBI-UL-AKHIR, 1289.

All laws of general application appearing by the Destur to have been in force in the Ottoman Empire on the 13th July, 1878, are presumed to have been in force in Cyprus on that date, unless the contrary is proved.

A lease of immovable property must be in writing; if not in writing it is invalid and cannot be enforced either specifically or by damages.

The Law of 10 Rebi-ul-Evvel, 1291, explained. Tritofides v. *Nicola (1900) 5 C.L.R., 31 distinguished.*

Where, however, a lessee, who in reliance on a verbal lease has expended money on the improvements of the leased property is dispossessed by the lessor, and the lessor thus reaps the benefit of the lessee's improvements, the lessee is entitled on equitable grounds to be repaid by the lessor the value of the improvements.

The Defendants verbally leased to the Plaintiffs 114 donums of uncultivated land on terms that they should cultivate it and enjoy the produce until the harvest of the following year, when they were to pay a rent of 2s. a donum. The Plaintiffs cleared and double-ploughed the land, and the Defendant, before the Plaintiffs had derived any benefit from the property, sold it to a purchaser, who ejected the Plaintiffs.

HELD: *that the Defendant must repay to the Plaintiffs the amount expended on the property.*

This was an appeal from a judgment of the District Court of Larnaca.

The Plaintiffs entered into a verbal agreement with the Defendant Hamid Bey, by which he leased to them 114 donums of Arazi Mirie for a term commencing December, 1905, and ending with the harvest of 1907. The land was uncultivated. The Plaintiffs were to cultivate it

TYSER, C.J. & BERTRAM, J.

GEORGHI HAJI DIMITRI KOUKOULLI AND ANOTHER v. HAMID BEY AND ANOTHER

and enjoy the produce till the harvest of 1907, when they were to pay a rent of 2*s*. a donum. The Plaintiffs cleared and double-ploughed the land intending to sow it in 1906. They alleged that in so doing he incurred an expense of about £20. In the course of the year 1906, however, the Defendant Hamid Bey sold the property, and the purchaser immediately dispossessed the Plaintiffs.

The Plaintiffs then sued the Defendant Hamid Bey claiming damages for breach of the agreement. The Defendant pleaded that the agreement was not binding, inasmuch as under the Law of 10 Rebi-ul-Evvel, 1291, a lease of lands must be in writing.

The Plaintiffs in reply contended that the Law of 10 Rebi-ul-Evvel, 1291, had never been put in force in Cyprus, and cited the Law of 25 Rebi-ul-Akhir, 1289.

The District Court gave judgment in favour of the Defendant.

The Plaintiffs appealed.

Nicolaides for the Appellants.
Artemis for the Respondents.

The Court allowed the appeal.

Judgment: CHIEF JUSTICE: This is an action for damages brought by the lessee against the lessor of Arazi Mirie under an agreement made by word of mouth, the damages being alleged to have been caused by the sale of the property by the lessor to a third person. Special damage is alleged in respect of money expended in cleaning and cultivating of the benefit of which the Plaintiffs alleged that they were deprived.

The principal defence raised was that the contract not being in writing could not be sued upon and reliance was placed on the Law of 10 Rebi-ul-Evvel, 1291.

It was contended on behalf of the Plaintiffs that that law was not in force on the 13th day of July, 1878, because it had not been published in accordance with the Law of 25th day of Rebi-ul-Akhir, 1289, and that only the Ottoman laws in force in Cyprus on that date were law in Cyprus by virtue of Clauses 3 and 23 of the Cyprus Courts of Justice Order, 1882.

As to this argument it may first be remarked that there is no proof that the Law of the 25th day of Rebi-ul-Akhir, 1289, was ever published in the Island.

If we are to assume that, by reason of its being incorporated in the Destur, it was in force in Cyprus, then by the same reasoning the Law of the 29 Jemazi-ul-Evvel, 1291, was in force in Cyprus for it also is incorporated in the Destur.

I doubt myself whether the former law was ever observed in Cyprus, or whether it was in force. The only ground for supposing it was in force is that ever since the occupation it has been the practice of the Courts to regard all laws in the Destur of a date prior to the 13th day of July, 1878, as being in force in Cyprus and on the same ground there is reason to hold that the Law of the 29 Jemazi-ul-Evvel, 1291, is in force in Cyprus.

It is my opinion that every law of a date prior to the 13th day of July, 1878, contained in the Destur must be held to be in force in Cyprus unless the contrary is proved.

There is no evidence to the contrary in the case of the Law of 29 Jemazi-ul-Evvel, 1291, and therefore we must hold that it is in force in Cyprus.

By that law it is enacted that every letting of Arazi must be by written contract.

It was argued that this did not mean that a contract not in writing could not be sued on but that any one making such a contract was liable to penalties.

The case of *N. Tritofides* v. *M. J. Nicola* (1900) 5 C.L.R., 31 was cited in support of this proposition.

In that case however there was a written contract. The only objection was that Sec. 12 of the Law had not been complied with and that the contract had not been submitted to the Municipality.

Sec. 1 is in different terms to Sec. 12; Sec. 1 makes writing compulsory. Sec. 12 is directory and there is a penalty for non-compliance with its provisions.

It is enacted by Sec. 26 that if an action is brought on any stipulation not included in those contained in a (or the) written contract it cannot be heard.

It is contended that this means only that when there is a written contract it shall be the sole evidence of what was agreed upon between the parties. In other words it is contended that if there is a written contract no action will lie on any agreement outside that contract, but that if there is no written contract the parties may set up any verbal agreement they please.

If one reads Sec. 26 with Sec. 1, I do not think that this can have been the intention of the legislature.

Taking together the two sections mean that every contract of lease must be in writing and that no action shall be heard to enforce a stipulation which is not contained in the written contract required by the Law.

The Plaintiffs cannot sue on the lease. The only question is whether they are entitled to recover anything from the Defendant, by reason of their being turned out by the Defendant, after they had expended money, in reliance on the verbal lease, the benefit of which expenditure will accrue to those who dispossess them.

When the Defendant sold the property he must be taken to have known that the lease being invalid the Plaintiffs would be ousted from his holding.

Doubtless the fact that the land had been cleared and double-ploughed was calculated to enhance its value and to facilitate the sale.

The purchaser will get the benefit of the labour and money expended on the property.

The Defendant by the sale dispossessed the Plaintiffs and the Defendant either directly or indirectly will receive the benefit of the Plaintiffs' expenditure.

TYSER, C.J. & BERTRAM, J.

GEORGHI HAJI DIMITRI KOUKOULLI AND ANOTHER v. HAMID BEY AND ANOTHER

In my opinion it is inequitable that the Defendant should through his vendee repossess himself of the land and not give compensation for the improvement the Plaintiffs have effected.

The expenditure on the improvement was by the terms of the contract part of the price to be paid for the right to use the land.

The principle laid down in the head note to *Theodoulo Zenobio* v. *Meirem Osman*, 2 C.L.R., 168, applies.

It would be inequitable for the Defendant (the lessor) to take a wrongful advantage of his own share in a transaction which he knows is without legal effect. The Defendant has sold the property and has defended himself by a plea that the lease was not valid. He must repay the Plaintiffs the cost of the improvements effected.

The appeal must be allowed, and the case must be remitted to the Court below to ascertain the amount expended by the Plaintiff.

BERTRAM, J.: From the whole scope of the law under consideration it seems to me to be intended that all leases of immovable property not in writing shall be invalid and unenforceable.

A distinction should be drawn between the two classes of requirements contained in the law. The first consists of those which declare that the contract shall be in writing, that it shall contain a statement of the particulars esssential to a lease, and that no action shall be brought that is based on any term not included in the contract. The second class consists of those which direct that the contract shall be submitted for the approval of certain local authorities, and, if approved, registered in the local archives.

The requirements of the second class are directory only, and the observance of them is not essential to the validity of the contract. They are in effect nothing more than requirements of Municipal Police, to be enforced by the penalties prescribed in Art. 18. This is clear from Art. 25 and from the Vezirial Circular of 23 Jemazi-ul-Akhir, 1294, (Destur 4, 357) issued in explanation of the law. This is also the effect of the decision in *N. Tritofides* v. *M. J. Nicola* (1900) 5 C.L.R., 31, which in my opinion is confined to the class of requirements.

The requirements of the former class—those which declare that the contract shall be in writing, and shall embrace all the necessary terms of a lease, are of a different character. Their object presumably is to secure certainty in contracts relating to immovable property. They are obligatory, not merely directory in their terms, and the intention of the law, in my opinion, is that no contract shall be valid if it does not comply with them. I conclude this not so much from Art. 26 (the more natural interpretation of which seems to me to be that when the contract has been reduced to documentary form, the document shall be conclusive as to the terms of the contract) but from the whole scope of the articles dealing with these requirements—in particular from Art. 1, from the second part of Art. 18 (which declares the obligation of subsequently reducing the contract into writing in cases where circumstances necessitate an immediate transfer of the property), from Art. 26 already referred to, and from Art. 29 which specially authorises verbal

agreements for the sub-letting of portions of khans, though even in this case the law declares that such verbal agreements shall only have a very limited effect.

I have therefore come to the conclusion that the contract in this case not being in writing is invalid, and cannot be enforced by action.

There remains the further question whether on an equitable principle analogous to that which allows compensation to a person who in good faith and in reliance on a supposed title has planted trees or erected buildings on another person's land, and to that by which a person who repudiates an informal sale of immovable property is not allowed to retain the benefit of the purchase money he has received from the buyer, the Defendant should not be required to return to the Plaintiffs some compensation for the expenditure, which in reliance upon the agreement, they have made upon the land, and of which the Defendant has indirectly reaped the benefit. The application of the principle to cases of the return of purchase money is explained in *Zenobio* v. *Osman* (1893) 2 C.L.R., 172, *Haralambo* v. *Ashmore* (1899) 5 C.L.R., 22, 23, *Evaggeli* v. *Nicola* (1900) 5 C.L.R., 49, and other cases. It seems to me that the present case may be legitimately considered as falling within the same principle, and that it would be inequitable to allow the Defendant to repudiate the agreement and at the same time to reap the benefit of the expenditure which in reliance on the agreement the Plaintiffs have made upon the land. The Defendant must therefore pay to the Plaintiffs the amount of that expenditure.

I concur in what the Chief Justice has said as to the *prima facie* presumption that all laws of general application in force in the Ottoman Empire at the date of the English occupation were in force in Cyprus on that date.

Appeal allowed.

[TYSER, C.J. AND BERTRAM, J.]

BETWEEN

TSIKKINOU HAJI SAVA, *Plaintiff,*

v.

KYRIAKOU YEORGHI MARIOLOU, *Defendant.*

BOUNDARIES—ADJOINING PROPRIETORS EACH CLAIMING UNDER QOCHAN—BURDEN OF PROOF—POSSESSION.

Where there is a dispute as to boundaries between two adjoining proprietors, both claiming under qochans, each of which is consistent with the claim of the person holding under it, and where one of the parties is in possession of the land in dispute, the onus lies upon the party seeking to disturb that possession to establish his claim to the satisfaction of the Court.

Appeal of the Defendant from the judgment of the District Court of Famagusta.