[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

ELENI IORDANI CHRISTODOULIDES,

Appellant-Plaintiff,

v.

THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND TOWNSMEN OF THE MUNICIPAL CORPORATION OF FAMAGUSTA,

Respondents-Defendants.

(*Civil Appeal No.* 4374).

Street Alignment—The Streets and Buildings Regulation Law, Cap. 96, *sections* 12 *and* 13—*Cession of part of the private property to the street under section* 13 (1)—*No compensation payable—However, " if it is established that hardship would be caused if no compensation were paid, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case "—Proviso to section* 13 (1)—*Hardship—Meaning and scope—Claim for such compensation in case of such hardship—Period of prescription—When it starts to run.*

Limitation of Actions—The Public Officers Protection Law, Cap. 313, *section* 2 (1)—*Assuming this statute is applicable to the case in hand, the three months' period of prescription provided by the said section commences, in cases of claims for compensation for " hardship " under the proviso to section* 13 (1) *of the Streets and Buildings Regulation Law, Cap.* 96 (supra), *from the day when such claim was rejected by the appropriate Authority and not from the day when the private property or portion thereof became part of the street under the provisions of section* 13 (1) *of Cap.* 96 i.e. *the day when the building permit has been granted under the said section—Whether undue delay on the part of the land owner to submit a claim for compensation for " hardship " under the proviso to section* 13 (1), *of Cap.* 96 (supra) *may affect the above rule as to prescription—Question left open.*

Section 13 (1) of Cap. 96 (*supra*) provides :

" Where a permit is granted by an appropriate authority and such permit entails a new alignment for any street, in accordance with any plan which has become binding under

section 12 of this Law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of such street *without the payment by the appropriate authority of any compensation whatsoever :*

Provided that, if it is established that hardship would be caused if no compensation were paid, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case.

(2) When a permit is granted under sub-section (1), the District Lands Office shall, upon application by any interested party, cause the necessary amendments to the relative registrations to be effected and the amended registration shall be held final notwithstanding that any certificate relating thereto remains unaltered."

Section 2 (1) of the Public Officers Protection Law, Cap. 313, provides :—

" Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any Law or Order of the Queen in Council or any Order of the Governor in Council or Order or Regulations made thereunder, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such Law, Order, Regulations, duty or authority, the following provisions shall have effect:—

(*a*) the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complaint of or in the case of a continuance of damage or injury, within three months after the ceasing thereof :

Provided . . . . . . "

The appellant applied, on the 17th August, 1959, to the Municipal Council of Famagusta, for a permit to erect a building on her building site of 8,281 sq. ft. at Stavros Quarter Famagusta. The Council issued to her a building permit on the 26th August, 1959, on condition (*a*) that the area affected by the street alignment should be ceded and (*b*) no part of the building to be at a distance of less than ten feet from the boundaries and from the line of alignment to be kept. On the following day the appellant wrote a letter to the Council claiming

£2,000 as compensation for the space ceded to the Council and the Council replied on the 6th October, 1959, that " since the damage caused to appellant's property was not such as to render the award of damages imperative her claim was considered as unreasonable ".

The appellant thereupon, brought an action against the Council on the 2nd December, 1959, claiming the amount of £2,000 for hardship caused to her by having to cede 3,500 sq. ft. to a public street out of her property.

The trial Court found that hardship would have been caused if compensation were not paid and proceeded to assess compensation at £1,000, but found also that the claim was statute-barred under the Public Officers Protection Law, Cap. 313 section 2 (1) (*a*) holding that the prescriptive period of three months started running from the date of the issue of the building permit, *i.e.* 26th August, 1959 and not from the day on which the defendant Authority rejected the plaintiff's claim for compensation (*i.e.* 6th October, 1959). The District Court, therefore, dismissed the appellant's-plaintiff's claim.

The appellant appealed against this dismissal.

The main points argued on appeal related to the two issues referred to above : (1) Whether hardship was caused to the appellant by the cession of part of her property to the street and, if so, what would be a reasonable amount to be awarded as compensation. (2) Whether the action of the plaintiff is statute-barred.

The High Court allowing the appeal :—

Held, (*I*) *per* ZEKIA, J., WILSON, P. AND JOSEPHIDES, J. *concurring :*

(1) (*a*) As to the first point (*viz.* as to hardship), I find myself in agreement with the trial Court that a case of hardship has been established by the plaintiff-appellant and that in the circumstances of the case the amount of £1,000 assessed by the trial Court was a reasonable one. A space of land situated in the centre of the commercial and industrial part of the town amounting to over 43% of the total area owned by the plaintiff was, by operation of the law, ceded to the street. Obviously this amounts to a hardship. No doubt if the space taken was not an extensive one and the decrease in

value of the remaining portion was not substantial, a case of hardship cannot be said to have been made but the amount of loss sustained in this case, even after taking into account the advantage a land owner will derive from a straightened and widened road passing by his building site, is not an amount which could reasonably be expected to be accepted or suffered by a public and fair-minded citizen in favour of public interest without any compensation. To my mind it must remain always a question of fact dependent on the surrounding circumstances whether in a particular case a case of hardship within the meaning of the proviso to section 13 (1) of the Streets and Buildings Regulation Law, Cap. 96 (*supra*) has been made or not.

(*b*) In ascertaining whether hardship was caused under the proviso, in my view both the objective and the subjective aspect of the case should be considered. I am not persuaded that the trial Court either in law or in principle in the assessment of the compensation erred. Therefore, I cannot see my way for interfering with their assessment.

(2) (*a*) Coming to the second point, (viz : the question of limitation), section 2 (1) (*a*) of the Public Officers Protection Law, Cap. 313 (*supra*), makes it clear that the material time for the commencement of the prescriptive period is next after the occurrence of the act or neglect or default complained of. In this case the permit and the terms embodied therein are not the act or acts complained of but the complaint is the default on the part of the council for refusing to pay reasonable compensation for the hardship suffered by the appellant-plaintiff, and the date starts as from the date of the letter sent by the Mayor on behalf of the Corporation i.e. 6th October, 1959, to the plaintiff informing her of the decision of the council not to pay her any compensation. That being so the action of the plaintiff was brought in time. The cession of the portion of land to the street could not be made a ground of complaint by the plaintiff inasmuch as this was affected by operation of the law and the council had no discretion in the matter.

(*b*) No doubt liability to pay compensation in a case of hardship originates from the date of issue of the building permit but the complaint in this case, could only be related to the decision of the council for non-payment of any compensation.

(c) This argument gains greater force when one reads the proviso to section 13 (1) of the Streets and Buildings Regulation Law, Cap. 96 (*supra*). The proviso casts the onus of establishing a case of hardship which entitles the owner of a piece of land to compensation for letting out part of his property to a public road under an approved scheme of new alignment, on the land owner. The municipal authority is called to pay reasonable compensation after the establishment of a case of hardship. So under the procedure envisaged by section 13 (1) the time for payment of compensation by the Council to the land owner affected is after the latter had made out a case of hardship justifying compensation. A complaint for non-payment of compensation cannot and need not, therefore, be made or dated earlier. The combined effect of this proviso and sub-section (*a*) of 2 (1) of the Public Officers Protection Law leaves no doubt in my mind that the cause of action against the municipal council starts after the date of the default, that is, the refusal on their part to pay compensation to the plaintiff-appellant.

(*d*) I am also mindful of the consequences this interpretation might lead in a case where a land owner under similar circumstances after obtaining a building permit makes no claim for compensation promptly and after an unreasonable delay tries to establish a case of hardship and if such a course is open to a land owner the above construction will not defeat the object of the Public Officers Protection Law assuming of course that the Corporation in such cases is covered by this law. I thought it better, however, to reserve my opinion on this point until such an occasion arises.

(3) I am of the opinion, therefore, that the appeal should be allowed and the judgment of the trial Court set aside and the respondents-defendants be adjudged to pay the sum of £1,000 with costs here and in the Court below to the appellant.

Held, (II) *per* VASSILIADES, J., WILSON, P. and JOSEPHIDES, J. *concurring* :

(1) (*a*) Applying section 2 (1) (*a*) to the position in this case, as required by the fundamental rule of interpretation that a statute is to be expounded and applied " according to the intent of them that made it " (*Fordyce* v. *Bridges*, 1847, 1, H.L.C. 1, 4), I am clearly of opinion that the makers of this section intended it to put an end to undue delay in pursuing

claims of this nature, after the completion and not as from the origin, of their cause ; after the end of reasonable negotiations to settle the claim for compensation between the claimant and the authority concerned, or from the communication of the latter's decision that no compensation is payable, and not from the date of the permit on which the claim originated. Sub-paragraphs (*c*) and (*d*) of sub-section (1) lend, in my opinion, considerable support to this view of the section. In this case, the three months period of limitation did not commence to run before the 6th October, 1959.

(*b*) Having reached this conclusion, I find it unnecessary for the purposes of this case, to enter into the question whether the Public Officers Protection Law (*supra*) is, or is not, applicable to such claims. And this judgment must not be taken as deciding that question at all ; or as deciding the further question whether the provisions of this statute require any adaptation under Article 188 to bring them into line with Article 23 (3) of the Constitution when applied to claims of this nature, as submitted on behalf of appellant.

(2) (*a*). I shall now proceed to deal with the other question arising in this appeal, *i.e.* whether the circumstances constitute a case of hardship entitling the appellant to compensation. In the absence of special definition for the purposes of this statute, the word " hardship " in this section, must carry its ordinary meaning in the context in which it is used by the legislator. Reading section 13 (1) of the Streets and Buildings Regulation Law (*supra*) in the framework of the statute as a whole, I find that the word presents no difficulty whatever in ascertaining the effect of the section upon the case in hand.

According to the Shorter Oxford English Dictionary, 3rd Ed., p. 866 " hardship " is the quality of being hard to bear ; hardness of fate or circumstances ; a piece of harsh treatment. And " harsh " according to the same dictionary at p. 869 is a treatment " repugnant to the feelings ".

(*b*) The legislator expressly provided under section 13, that any space between the old and the new alignment of a street " shall become part of such street without the payment by the appropriate authority of any compensation whatsoever ". But as this might, in certain circumstances, amount to a piece of hard treatment, a treatment of the owner of the affected site, repugnant to the feelings of the ordinary man, if no com-

pensation were paid to the expropriated owner for the extensive loss he sustained by the severity of the statute, the legislator made it clear that this was not intended ; and he expressly provided in the same section that if it is established that hardship would be caused "*if no compensation were paid*" the appropriate authority "*shall pay* such compensation as may be reasonable having regard to all the circumstances of the case". I have underlined certain words to lay stress in their use by the legislator. And to show that the hardship must be sought in the non-payment of compensation ; and not in the loss of part of the site, which is, as submitted, unavoidable.

(*c*) In this case, for the loss of over 40% of the extent of a building-site, the District Court found that hardship would occur if no compensation were paid. They gave their reasons for reaching this conclusion in their judgment. And, in my opinion, both their approach to the question, and their conclusions thereon, are correct and must be sustained.

(3) (*a*) Coming now to the last question arising in the appeal, *i.e.* the amount of the compensation to which the appellant is entitled, I am inclined to the view that the wording of the section indicates that the compensation should not be measured on the value of the land lost to the street ; but it must be sufficient to constitute reasonable compensation to the owner of the affected site, "having regard to all the circumstances of the case". This, in my opinion, means that together with the value of the site before and after the alignment, all other relevant circumstances in a particular case, must be taken into account in assessing the compensation, which is the responsibility of the trial Court in the first instance. And that unless it can be shown on appeal, that the trial Court acted on wrong principle, or made their finding on irrelevant factors, this Court should not interfere with the assessment made by the trial Court merely because it may appear to be lower or higher than our own estimate ; unless this Court thinks that the amount awarded is unreasonable in the circumstances.

(*b*) In this case, no such cause has been shown on either side, for altering the amount found by the trial Court ; and the compensation should, I think, remain at £1,000.

(4) I would allow the appeal and give judgment for the appellant for £1,000 with costs here and in the District Court.

Appeal allowed. Judgment of the District Court set aside. Judgment for the appellant entered with costs throughout.

Cases referred to :

Fordyce v. *Bridges* (1847) 1, H.L.C. 1, at p. 4 ;

Eleni Iordani Christodoulides v. *The Mayor, Deputy Mayor, Councillors and Townsmen of the Municipal Corporation of Famagusta*, 1961 C.L.R. 129, at p. 134, *per* Josephides, J.

Appeal.

Appeal against the judgment of the District Court of Famagusta (Attalides, P.D.C. and Loizou, D.J.) dated the 6.4.62 (Action No. 2096/59) dismissing plaintiff's claim for £2,000 compensation for hardship suffered by plaintiff in consequence of a street alignment.

St. Pavlides with *A. Michaelides* for the appellant.

A. Ch. Pouyouros with *S. Marathovouniotis* and *Fronis Saveriades* for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgments delivered by Zekia and Vassiliades, JJ.

Wilson, P. : Mr. Justice Zekia will deliver the first judgment in this case.

Zekia, J. : The plaintiff-appellant brought an action against the Municipal Corporation of Famagusta claiming the amount of £2,000 for the hardship caused to her by having to cede 3,500 sq. feet to a public street out of her property, a building site of 8,281 sq. ft. at Stavros Quarter, Famagusta (plot No. 535, sheet 33 plan 1343).

The appellant on the 17th August, 1959, applied for a permit, to erect a building on the said plot, to the Municipal Council of Famagusta. On the 26th of the same

month the building permit was issued to her which building permit included inter alia as special terms the following :

(*a*) The area affected by the street alignment to be ceded.

(*b*) No part of the building to be at a distance of less than 10 feet from the boundaries and distance from the building from the line of alignment to be kept.

On the following day the appellant addressed a letter to the Council by which she claimed for the space ceded to the street £2,000 as compensation. The Mayor of Famagusta on behalf of the Municipal Corporation by letter dated 6th October, 1959, informed the appellant as follows :

" Since the damage caused to your property due to the taking of the space of the alignment is not such as to render the award of any damages imperative your claim for such damage is considered as not reasonable. "

The appellant, therefore, brought on the 2nd December, 1959, the present action against the respondent corporation.

The respondent council contended (*a*) that no hardship would have been caused to the plaintiff if compensation were not to be paid within the proviso of section 13 of the Streets and Buildings Regulation Law, Cap. 96, and (*b*) that three months having elapsed from the date of the issue of the permit to the date of the institution of the action against the Corporation, the claim of the appellant became statute-barred and, therefore, an action could not lie against the Corporation.

The trial Court found that a hardship would have been caused if no compensation were to be paid and the compansation payable was assessed at £1,000. The same Court, however, upheld the second point of the defendants and found that the Public Officers Protection Law applied and the date for the commencement of the specified three months prescriptive period was the date of the issue of the building permit, that is, the 26th August, 1959,

and the three months having expired by the date the action was brought (2nd December, 1959) the claim was prescribed.

The main points argued before us related to the two issues referred to above: (1) Whether hardship was caused to the appellant by the cession of part of her property to the street and, if so, what would be a reasonable amount to be awarded as compensation. (2) Whether the action of the plaintiff is statute barred.

The relevant provisions of the Law are sections 13 of the Streets and Buildings Regulation Law (Cap. 96) and 2 (1) (*a*) of the Public Officers Protection Law (Cap. 313). For convenience we quote both sections hereunder :

> " 13 (1) Where a permit is granted by an appropriate authority and such permit entails a new alignment for any street, in accordance with any plan which has become binding under section 12 of this Law, any space between such alignment and the old alignment, which is left over when a permit is granted, shall become part of such street without the payment by the appropriate authority of any compensation whatsoever :
>
> Provided that, if it is established that hardship would be caused if no compensation were paid, the appropriate authority shall pay such compensation as may be reasonable having regard to all the circumstances of the case.
>
> (2) When a permit is granted under sub-section (1), the District Lands Office shall, upon application by any interested party, cause the necessary amendments to the relative registrations to be effected and the amended registration shall be held final notwithstanding that any certificate relating thereto remains unaltered."
>
> " 2 (1) (*a*) the action, prosecution or proceeding shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in the case of a continuance of damage or injury within three months after the ceasing thereof :
>
> Provided that if the action, prosecution or proceeding be at the instance of any person for cause arising while such person was a convict prisoner, it may be commenced within three months after the discharge of such person from prison."

As to the first point I find myself in agreement with the trial Court that a case of hardship has been established by the plaintiff-appellant and that in the circumstances of the case the amount of £1,000 assessed by the trial Court was a reasonable one. A space of land situated in the centre of the commercial and industrial part of the town amounting to over 43% of the total area owned by the plaintiff was, by operation of the law, ceded to the street. Obviously this amounts to a hardship. No doubt if the space taken was not an extensive one and the decrease in value of the remaining portion was not substantial, a case of hardship cannot be said to have been made but the amount of loss sustained in this case, even after taking into account the advantage a land owner will derive from a straightened and widened road passing by his building site, is not an amount which could reasonably be expected to be accepted or suffered by a public and fair-minded citizen in favour of public interest without any compensation. To my mind it must remain always a question of fact dependent on the surrounding circumstances whether in a particular case a case of hardship within the meaning of the proviso to section 13 (1) of the Streets and Buildings Regulation Law, Cap. 96 (*supra*) has been made or not. In ascertaining whether hardship was caused under the proviso, in my view both the objective and the subjective aspect of the case should be considered. I am not persuaded that the trial Court either in law or in principle in the assessment of the compensation erred. Therefore, I cannot see my way for interfering with their assessment.

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OF FAMAGUSTA
—
Zekia, J.

Coming to the second point, section 2 (1) (*a*) of the Public Officers Protection Law, Cap. 313, cited above, makes it clear that the material time for the commencement of the prescriptive period is next after the occurrence of the act or neglect or default complained of. In this case the permit and the terms embodied therein are not the act or acts complained of but the complaint is the default on the part of the council for refusing to pay reasonable compensation for the hardship suffered by the appellant-plaintiff, and the date starts as from the date of the letter sent by the Mayor on behalf of the Corporation (*viz.* 6th October, 1959) to the plaintiff informing her of the decision of the council not to pay her any compensation. That being so the action of the plaintiff was brought in time. The cession of the portion of land to the street could not be made a ground of complaint by the plaintiff inasmuch as this was affected by operation of the law and the council had no discretion in the matter. No doubt, liability to

pay compensation in a case of hardship originates from the date of issue of the building permit but the complaint in this case, could only be related to the decision of the council for non-payment of any compensation. This argument gains greater force when one reads the proviso to section 13 (1) of the Streets and Buildings Regulation Law. The proviso casts the onus of establishing a case of hardship which entitles the owner of a piece of land to compensation for letting out part of his property to a public road under an approved scheme of new alignment, on the land owner. The municipal authority is called to pay reasonable compensation after the establishment of a case of hardship. So under the procedure envisaged by section 13 (1) the time for payment of compensation by the Council to the land owner affected is after the latter had made out a case of hardship justifying compensation. A complaint for non-payment of compensation cannot and need not, therefore, be made and/or dated earlier. The combined effect of this proviso and sub-section (*a*) of 2 (1) of the Public Officers Protection Law leaves no doubt in my mind that the cause of action against the municipal council starts after the date of the default, that is, refusal on their part to pay compensation to the plaintiff-appellant.

I am also mindful of the consequences this interpretation might lead in a case where a land owner under similar circumstances after obtaining a building permit makes no claim for compensation promptly and after an unreasonable delay tries to establish a case of hardship and if such a course is open to a land owner the above construction will not defeat the object of the Public Officers Protection Law assuming of course that the Corporation in such cases is covered by this law. I thought it better, however, to reserve my opinion on this point until such an occasion arises.

Having come to this conclusion I do not consider it necessary to go to the other points argued including the one submitted by the learned counsel of the appellant, namely, whether the Public Officers Protection Law applied to the present case at all.

I am of the opinion, therefore, that the appeal should be allowed and the judgment of the trial Court set aside and the respondents–defendants be adjudged to pay the sum of £1,000 with costs here and in the court below to the appellant.

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WILSON, P.: I concur with the reasons for judgment which have been given, and also with the reasons for judgment which are about to be read by Mr. Justice Vassiliades.

I desire only to add this: I am of the opinion that there is no difference between the two judgments concerning the elements to be taken into account in determining the meaning of "hardship". It is always a question of fact.

VASSILIADES, J.: This is an appeal against the judgment of the District Court of Famagusta, dismissing appellant's claim against the Municipal Corporation of that town, the respondents herein, for £2,000 compensation for hardship alleged to have been suffered by the appellant in consequence of a street alignment, made by the respondents under the Streets and Buildings Regulation Law, Cap. 96.

There is no dispute about the street alignment, which cut off an area of about 3,500 sq. feet, out of a total of 8281 sq. feet, from a building site belonging to the appellant. But the respondents deny any hardship; and contend that in any case, the claim is statute-barred by the provisions of section 2 (1) (*a*) of the Public Officers Protection Law, Cap. 313.

The District Court found that the appellant would suffer hardship, in the circumstances, if no compensation were paid, which they proceeded to assess at £1,000. But, sustaining the defence of limitation, the trial Court dismissed appellant's action as statute-barred.

The appeal seeks to attack that judgment, both as regards the applicability of the Public Officers Protection Law (*supra*) to the claim in this case, and as regards the amount of compensation awarded. The respondents on the other hand, by a cross appeal seek to attack the trial-Court's judgment on the issue of hardship.

Three main questions, therefore, fall to be decided in this appeal:—

1. Whether the claim is statute-barred;
2. Whether there is a case of hardship entitling the appellant–plaintiff to compensation under the law; and
3. Whether compensation should be awarded in the amount assessed by the trial-Court, or else what amount.

The facts connected with these issues are :

The Municipal Council of the town of Famagusta, a body established under the Municipal Corporations Law, Cap. 240, exercising their powers as the appropriate authority under section 3 (2) (*a*) of the Streets and Buildings Regulation Law, (*supra*), prepared and published in 1947, plans under the provisions of section 12 (1) of that statute (Cap. 96) with the object of widening and straightening public streets in the part of the town known as Stavros quarter, which (plans) affected a building site at a street-junction, belonging to the appellant by virtue of registration under the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224. The appellant was in the United States of America at that time, and did not become aware of such plans until about twelve years later, in 1959, when the buyer of her site in question, who had agreed to buy for £4,000 declined to complete the sale on the ground that after the agreement he discovered that almost half of the registered land would have to be ceded to the Municipality for the widening of the street-junction, before any building permit could be issued in respect of that site.

On ascertaining that this was in fact the position, the appellant, apparently acting upon advice, advertised the sale of her property through an estate agent ; and failing any offer from prospective buyers, the appellant had building-plans duly prepared for the curtailed plot, which she submitted to the respondents with an application for a building-permit, made upon respondents' printed form (Exh. 8).

On the 26th August, 1959, the respondents issued to the appellant upon payment of the appropriate fee official permit No. 9949 (Exh. 5) authorising the construction of the proposed building, upon certain terms and conditions, the first of which was that the area of the site affected by the street alignment " be ceded " to the Corporation. Such area, according to the relative documents (Exhs. 8 and 5 with plan attached as Exh. 2) was an area of 3,531 sq. ft. out of a total of 8,281 sq. ft. viz. 42.5% of the surface of the registered plot.

On the following day, the 27th August, 1959, the appellant wrote to the respondents Exh. 6, asking " for compensation due to the alignment ", and stating that the value of the part to be ceded was £2,000. About six weeks later (which presumably was the time required by the respondents as public authority, to exercise their statutory power to

consider and decide upon appellant's application for compensation) the respondents replied on the 6th of October, 1959, that "the decision of the Council on the subject" was that as the—

> "damage caused to (the) property due to the taking of the space of the alignment is not such as to render the award of any damage imperative, (the) claim for such damage is considered as not reasonable." (Exh. 7).

There is no evidence on record that further discussions on appellant's claim took place between the parties, but, in any case, Court-proceedings were not taken until the 2nd December, 1959, when the present action was filed.

Respondents' first objection to the claim, raised preliminary to the trial, was that appellant's failure to appeal to the Governor in Council under section 18 of the Streets and Buildings Regulation Law (*supra*) against the town plans prepared and published in 1947, or against the conditions imposed in the permit, was sufficient reason for dismissing the action. The District Court, after hearing argument on the objection, decided that "as the plaintiff did not avail herself of the rights given to her by section 18 she cannot claim damages for such acts by action;" and dismissed the claim with costs on the 16th November 1960. That judgment was set aside on appeal, in May 1961, when this Court remitted the case to the District Court to hear evidence on the issues raised by the pleadings and determine the claim in the light of such evidence. Dealing in the course of his judgment with the issue of prescription under the Public Officers Protection Law (*supra*), Mr. Justice Josephides said: "We are, therefore, of opinion, that that issue will have to be determined by the trial Court, after receiving in evidence the letters exchanged between the parties, as well as other evidence of the course of negotiations, if any, as to the settlement of plaintiff's claim for compensation, which the parties may wish to adduce." (*Eleni Iordani Christodoulides* v. *The Mayor . . . . ., of Famagusta*, 1961 C.L.R. 129, at p. 134).

The District Court heard the case in January, 1962, and having admitted in evidence, *inter alia*, the permit issued by respondents on the 26th August, 1959 (Exh. 5); appellant's application for compensation of the 27th August (Exh. 6); and respondents' reply of the 6th October (Exh. 7) found on the material before them that "there is such hardship as envisaged by the proviso to section 13 (1) because the use to which the remaining part of the plot affected by the alignment can be put to, is materially affected by the extent of the area taken away, and the value

of the remaining is consequently reduced considerably ;" and the Court proceeded to assess, in the circumstances of this case, the compensation to which the appellant would be entitled, finding it at £1,000 taking into account the betterment of the property by the widening of the street ; but adopting the view that "the material date on which the act complained of occurred, is the date on which the building permit was issued, *i.e.* the 26th August, 1959", the District Court came to the conclusion that on the 3rd December 1959 (when the action was filed) the claim was statute-barred, under section 2 (1) (*a*) of the Public Officers Protection Law (*supra*) and dismissed the action.

Learned counsel for the appellant submitted that the Public Officers Protection Law is not applicable to this case at all ; but even if applicable, the limitation should run from the communication of respondents' refusal to pay compensation to the appellant, made by Exh. 7, on 6th October, 1959 ; and not from the date of the permit. Moreover, counsel submitted that the Public Officers Protection Law must now be construed and applied as required by article 188 (1) and (4) of the Constitution, with such modification as may be necessary to bring it into conformity with Article 23 (3) regarding property-rights, subjected to restrictions or limitations in the interest of town planning. However, all this becomes academic in this case, counsel added, if the period of limitation began to run from the date of respondents' communication to the appellant in Exh. 7, and not the date of the permit, Exh. 5.

I, therefore, propose to deal first with the question of the time when the period of three months limitation began to run, assuming that the Public Officers Protection Law is applicable as it stood at the time of the filing of the action on 2nd December, 1959 ; and assuming further, that the respondents are a "person" within the meaning of that word in section 2 (1) of the statute.

As far as this case is concerned, I read section 2 (1) as follows :—

> "Where any action............is commenced against any person for any act done in pursuance .. ...of any law .... or of any public authority...... .the following provisions shall have effect :—
>
> (*a*) the action........shall not lie or be instituted unless it is commenced within three months next after the act, neglect or default complained of, or in the case of a continuance of damage or injury, within three months after the ceasing thereof."

It is, therefore, necessary to ascertain precisely which is the " act, neglect or default " of the protected " person " done in pursuance of law or authority, which is the cause of appellant's complaint, in this action ; the cause of her action. And if it is a case of " a continuance of damage ", when did such continuance of damage cease.

To find the cause of the action, one must look at the writ ; and, if necessary, at the statement of claim. Here "the claim is for £2,000 damages for the hardship caused to plaintiff in respect of space" etc And the " hardship " complained of, is that stated in paragraphs 4 and 5 of the statement of claim ; the " hardship " caused by respondents' communication of the 6th October, 1959, specifically referred to in these paragraphs of appellant's pleading, as the fact which caused (or completed) the hardship constituting the cause of action.

That the respondents understood the hardship complained of, to be the " hardship " contemplated in the proviso to section 13 (1) of the Streets and Buildings Regulation Law, is obvious from their pleading. They put that kind of hardship in issue, and fought their case on the ground, *inter alia*, that the alignment in question, in the circumstances of this case, was not such as to amount to the hardship contemplated by the section.

In their reply to appellant' s request for compensation, dated the 6th October, 1959, (Exh. 7) the respondents say that they consider her claim " as not reasonable " because " the damage caused to (the) property due to the taking of the space of the alignment is not such as to render the award of any damage imperative." By this the respondents can only mean that in exercising their authority under section 13 (1) to consider and decide whether in her case " it is established that hardship would be caused if no compensation were paid ", they (the respondents) decided the question in the negative ; and therefore no compensation was payable. Otherwise, had they found that hardship would be caused if no compensation were paid, their obligation to compensate the claimant would be " imperative " as the section provided that " the authority *shall* pay such compensation as may be reasonable having regard to all the circumstances of the case."

As pointed out by counsel for the appellant in the course of his argument, the respondents had no alternative but to enforce the town plans when granting the building permit, and the appellant had no alternative to acting accordingly, if she decided to put a building on her site.

The only matter open for consideration and decision by the respondents in exercising their statutory authority, was whether the non-payment of compensation, would cause hardship, in the circumstances of the particular case. And it was the decision of the respondents in this connection, that gave cause to the complaint at first, and subsequently to the action.

That there is substance in this submission, it becomes obvious by reversing the position. Had the respondents reached the conclusion that the non-payment of compensation would cause hardship as contemplated by the section, they (the respondents) would have to pay compensation as provided by the statute ; and in such a case there would be no complaint, or cause for appellant's action. This reversion makes it, I think, clearer, that it is the exercise of respondents' authority in this connection, and not their granting of the permit, which gave rise and cause to the action. And such exercise of authority was not communicated to the appellant until October 6th, 1959.

Applying now section 2 (1) (*a*) to this position, as required by the fundamental rule of interpretation that a statute is to be expounded and applied " according to the intent of them that made it " (*Fordyce* v. *Bridges*, 1847, 1, H.L.C.1, 4), I am clearly of opinion that the makers of this section intended it to put an end to undue delay in pursuing claims of this nature, after the completion and not as from the origin, of their cause ; after the end of reasonable negotiations to settle the claim for compensation between the claimant and the authority concerned, or from the communication of the latter's decision that no compensation is payable ; and not from the date of the permit on which the claim originated. Parts (*c*) and (*d*) of sub-section (1) lend, in my opinion, considerable support to this view of the section. In this case, the three months period of limitation did not commence to run before the 6th October, 1959.

Having reached this conclusion, I find it unnecessary for the purposes of this case, to enter into the question whether the Public Officers Protection Law (*supra*) is, or is not, applicable to such claims. And this judgment must not be taken as deciding that question at all ; or as deciding the further question whether the provisions of this statute require any adaptation under Article 188 to bring them into line with Article 23 (3) of the Constitution when applied to claims of this nature, as submitted on behalf of appellant.

I shall now proceed to deal with the second question arising in this appeal, *i.e.* whether the circumstances constitute a case of hardship entitling the appellant to compensation. In the absence of special definition for the purposes of this statute, the word " hardship " in this section, must carry its ordinary meaning in the context in which it is used by the legislator. Reading section 13 (1) of the Streets and Buildings Regulation Law (*supra*) in the framework of the statute as a whole, I find that the word presents no difficulty whatever in ascertaining the effect of the section upon the case in hand.

According to the Shorter Oxford English Dictionary, 3rd Ed., p. 866 " hardship " is the quality of being hard to bear ; hardness of fate or circumstances ; a piece of harsh treatment. And " harsh " according to the same dictionary at p. 869 is a treatment " repugnant to the feelings."

The legislator expressly provided under section 13, that any space between the old and the new alignment of a street " shall become part of such street without the payment by the appropriate authority of any compensation whatsoever." But as this might, in certain circumstances, amount to a piece of hard treatment, a treatment of the owner of the affected site, repugnant to the feelings of the ordinary man, if no compensation were paid to the expropriated owner for the extensive loss he sustained by the severity of the statute, the legislator made it clear that this was not intended ; and he expressly provided in the same section that if it is established that hardship would be caused "*if no compensation were paid*" the appropriate authority "*shall pay* such compensation as may be reasonable having regard to all the circumstances of the case." I have underlined certain words to lay stress in their use by the legislator. And to show that the hardship must be sought in the non-payment of compensation ; and not in the loss of part of the site, which is, as submitted, unavoidable.

In this case, for the loss of over 40% of the extent of a building-site, the District Court found that hardship would occur if no compensation were paid. They gave their reasons for reaching this conclusion in their judgment. And, in my opinion, both their approach to the question, and their conclusions thereon, are correct and must be sustained.

Coming now to the last question arising in the appeal, *i.e.* the amount of the compensation to which the appellant

is entitled, I am inclined to the view that the wording of the section indicates that the compensation should not be measured on the value of the land lost to the street ; but it must be sufficient to constitute reasonable compensation to the owner of the affected site, " having regard to all the circumstances of the case." This, in my opinion, means that together with the value of the site before and after the alignment, all other relevant circumstances in a particular case, must be taken into account in assessing the compensation, which is the responsibility of the trial-Court in the first instance. And that unless it can be shown on appeal, that the trial Court acted on wrong principle, or made their finding on irrelevant factors, this Court should not interfere with the assessment made by the trial Court merely because it may appear to be lower or higher than our own estimate ; unless this Court thinks that the amount awarded is unreasonable in the circumstances.

In this case, no such cause has been shown on either side, for altering the amount found by the trial Court ; and the compensation should, I think, remain at £1,000.

I would allow the appeal and give judgment for the appellant for £1,000 with costs here and in the District Court.

JOSEPHIDES, J. : I also concur and associate myself with what has been stated by the learned President of this Court

Appeal allowed. Judgment of the District Court set aside. Judgment for the appellant entered with costs throughout.