[TRIANTAFYLLIDES, LOIZOU, HADJIANASTASSIOU, JJ.]

CYPRUS HOTELS CO. LTD.,

Appellants-Plaintiffs,

v.

HOTEL PLAZA ENTERPRISES LTD. AND OTHERS,

Respondents-Defendants.

(Civil Appeal No. 4770).

Courts—Jurisdiction—Territorial jurisdiction of District Courts—The Courts of Justice Law 1960 *(Law of the Republic No.* 14 *of* 1960), *section* 21(2)*—"Matter relating to immovable property"—Striking out of writ of summons and service thereof for want of territorial jurisdiction—Whether claim for an injunction and declaration concerning an arbitration clause in, and the validity of, a contract of lease amounts to an action relating to a "matter relating to immovable property" within section* 21(2), *supra—In construing a provision regarding territorial jurisdiction one must look to the real object of such provision.*

Jurisdiction—Territorial Jurisdiction of the District Courts in civil matters—Section 21(2) *of Law No.* 14 *of* 1960, *supra—See above.*

Territorial Jurisdiction—See above.

Statutes—Construction—Construction of a provision regarding territorial jurisdiction of the Courts—The object of such provision has to be looked into—Section 21(2) *of the Courts of Justice Law* 1960 *(Law of the Republic No.* 14 *of* 1960)*—See, also, above.*

Words and Phrases—"On any other matter relating to immovable property" in section 21(2) *of the Courts of Justice Law* 1960 *(supra)—See, also, above.*

Immovable Property—"Matter relating to immovable property"—Section 21(2) *of the Courts of Justice Law* 1960, *supra—See above.*

Practice—Writs of summons—Conditional appearance—Civil Procedure Rules, Order 16, *rule* 9*—Striking out writ and service thereof—Premature in the present case—Stage at which*

such striking out may be ordered in this case—Possibly under the Civil Procedure Rules, Order 33, rule 10, or under the inherent jurisdiction of the Court.

Practice—Appeal—Interim order pending hearing of appeal—Application for—Direction made for the speedy hearing of the appeal on its merits—Subject to any question of costs which may arise in relation to such application.

This is an appeal by the plaintiffs against a ruling of the District Court of Nicosia in Action No. 3967/68 on an application by the defendants (now respondents) to strike out the writ of summons and the service thereof for want of jurisdiction. In granting the application the District Court of Nicosia held that the said action relates to a matter relating to immovable property within section 21(2) of the Courts of Justice Law, 1960 (Law of the Republic No. 14 of 1960) and, as such immovable property is situate in the Limassol District, they did not have territorial jurisdiction to entertain the action.

Section 21(2) reads as follows:

"(2) Where the action relates to the partition or sale of any immovable property or any other matter relating to immovable property, such action shall be taken in the District Court of the District within which such property is situate".

The aforesaid action No. 3967/68 was commenced by a generally indorsed writ of summons in which the following reliefs are claimed:-

(*a*) An injuction restraining the defendants (now respondents) from taking any further steps under clause 14 of a written agreement, dated the 19th March, 1966, for the purposes of arbitration proceedings between the parties.

(*b*) A declaration that the matters contained in a "notice for arbitration" dated the 10th September, 1968, and served by the defendants-respondents on the plaintiffs-appellants do not fall within the aforesaid clause 14.

(*c*) A declaration that the agreement in question is valid, subsisting and binding.

The aforesaid agreement of the 19th March, 1966, is

in effect, a contract by virtue of which the respondents have leased to the appellants the "Miramare" hotel in Limassol and also granted them an option, under certain conditions, to acquire 65% of the shares in respondent 1, which is a limited company and of which the shareholders are the other respondents; the said hotel being the property of respondent 1.

On the 2nd September, 1968, the respondents served notice on the appellants, under clause 13 of the agreement, of their intention to end the term of the lease, after the expiration of five days thereafter, on the ground that the appellants failed to remedy certain defaults with which they had already been charged by a letter of the 30th July, 1968. The appellants denied any such default by their letter of the 3rd September. On the 10th September, 1968, notice was served by the respondents on the appellants, under clause 14 of the agreement of the 19th March, 1966,*(supra)*, to the effect that the respondents would proceed (unless the dispute were to be settled within a period of thirty days) to appoint their arbitrator, and would call on the appellants to appoint their arbitrator, for the purpose of referring to arbitration the several allegations against the appellants, regarding default on their part to conform with their obligations under the said agreement.

Then, on the 28th September, 1968, the appellants filed the aforesaid action No. 3967/68 in the District Court of Nicosia. The respondents having entered a conditional appearance with the leave of the trial Court, applied on the 17th October, 1968, under Order 16, rule 9, of the Civil Procedure Rules to set aside the writ and the service thereof, on the ground of want of territorial jurisdiction of the District Court of Nicosia in view of section 21(2) of the Courts of Justice Law, 1960 (*supra*). As already stated the District Court of Nicosia gave its ruling in favour of the respondents granting their application.

Against that ruling the plaintiffs took the present appeal and the Court by majority (Hadjianastassiou, J. *dissenting)* allowing the appeal:-

Held, per Triantafyllides, J. (Loizou J., *concurring).*

(1)(*a*) On the material on record at this stage, claims (*a*) and (*b*) in the writ of summons (*supra*) must be treated

as involving only questions of interpretation and applicability of the arbitration clause (clause 14) in the agreement of the 19th March, 1966.

(*b*) Subject to the scope of claims (*a*) and (*b*) becoming more definite in the framework of the pleadings—which are yet to be exchanged between the parties—I take the view that such claims, as they appear to stand now, could not be held to amount to an action relating to a matter relating to immovable property in the sense of section 21(2) of the Courts of Justice Law 1960 (*supra*).

(*c*) I cannot construe this sub-section (2) so widely as to bring within its ambit claims (*a*) and (*b*), as generally endorsed at present; to do so would amount to extending the ambit of sub-section (2) into realms too remotely away from its true object. (Cf. *R.* v. *Shoreditch County Court Registrar, Ex parte Saxon Finance Corporation Ltd.* [1937] 4 All E.R. 231.).

(2) The District Court adopted an erroneous approach in treating claims (*a*) and (*b*) (*supra*) as arising out of claim (*c*) (*supra*), which they regarded as the main one. On the contrary, it seems that claim (*c*) is an ancillary one, which can only assume any significance after it has been decided, by arbitration or otherwise—and this would involve the determination first of claims (*a*) and (*b*) — whether there has or has not been default on the part of the appellants, lawfully leading to the termination of the relevant agreement.

(3) Even if claim (*c*) (*supra*) might be taken, at first sight, to amount to a claim for a declaration that the appellants are entitled to retain possession of the hotel (which possession they have refused to surrender), and it might be argued that such a claim is within the ambit of section 21(2) (*supra*), when one does bear in mind the nature of the agreement of the 19th March, 1966, (namely, a lease coupled with an option to acquire the majority shareholding in the company owning the hotel subject-matter of the lease) as well as the generality of claim (*c*), as framed, it cannot be said that, at the present stage of the proceedings, either the District Court, or this Court, would be entitled to hold definitely that this claim is excluded from the territorial jurisdiction of the Court below by virtue of sub-section (2); a lot will depend on the contents of the pleadings, before

one can form a view in this respect with sufficient certainty.

(4) In my view the District Court took the course complained of rather prematurely. Therefore their ruling has to be reversed. The case should proceed to trial in the ordinary course and it is always open to the District Court, once pleadings have been closed (the matters to which this action relates being then clearly defined) to take, if need be, such a course, for want of territorial jurisdiction, as it may deem think fit—possibly under Order 33, rule 10, of the Civil Procedure Rules, or under its inherent jurisdiction for the purpose.

Held, per Hadjianastassiou J. *(dissenting).*

(1) In my opinion the words "any other matter relating to immovable property" in section 21(2) of the Courts of Justice Law *(supra)* do not refer to things *ejusdem generis* with "partition or sale of immovable" which words precede the phrase in question. By using the words "any other matter" the legislature intended a wider sense so as to include, for instance, a contract of lease.

(2) In my view the principal contract with which we are concerned in this case is the contract of lease. It is this contract of lease which alone gives meaning to the option to buy shares, to the arbitration clause, as well as the option to renew the period of lease and other matters. One cannot simply sever clauses 13 and 14 from the contract of lease and ask the trial Court to grant an injunction restraining the defendants (respondents) from proceeding under clause 14 without having to deal with the contract as a whole.

(3) I have, therefore, reached the conclusion that the trial Court quite rightly on a reasonable construction of section 21(2) of the Law held that the action, relating to immovable property situate outside the District of Nicosia, is not within their territorial jurisdiction and made an order setting aside the writ and the service thereof.

Appeal allowed; no order as to costs of the appeal or of the proceedings in the Court below which have given rise to the appeal.

Cases referred to:

Holy Monastery of Ayios Neophytos v. *Antoniades* (reported in this Vol. at p. 10 *ante*);

R. v. *Shoreditch County Court Registrar, Ex parte Saxon Finance Corporation Ltd.* [1937] 4 All E.R. 231;

The Attorney-General v. *Ibrahim*, 1964 C.L.R. 95.

Appeal.

Appeal against the ruling of the District Court of Nicosia (Ioannides, Ag. P.D.C. & Kourris D.J.) dated the 11th November, 1968, (Action No. 3967/68) whereby the writ of summons and service thereof on the defendants was set aside.

A. Triantafyllides, for the appellants.

M. Houry with *Ch. Demetriades*, for the respondents.

Cur. adv. vult.

The following direction was made by the Court on the 15th November, 1968.

TRIANTAFYLLIDES, J.: Having considered the record before us, in this appeal, as well as a related civil application No. 8/68—for an interim order pending the hearing of this appeal —we formed the view that the best course is to proceed straightaway to hear the appeal on the merits, and leave aside the application for an interim order, subject, of course, to any question of costs which may arise in relation to such application.

Counsel for the appellants has stated that he is ready to proceed with the hearing of the appeal today, and counsel for the respondents have stated that, although they are not ready today, they do not object to the hearing of the appeal commencing today, but they would require until tomorrow to prepare for their reply to the arguments to be advanced by counsel for the appellants; actually, both counsel have been notified by a Registrar of the Court, three days ago, that there was a possibility of the appeal being heard today, instead of the Court dealing first with the application for an interim order.

In the circumstances, we shall, therefore, begin the hearing of the appeal now, and we shall continue with such hearing tomorrow at 10.30 a.m.; we shall hear today counsel for the appellants only.

The following judgment was read on the 18th November, 1968 by:

TRIANTAFYLLIDES, J.: The Court has considered and reached its decision in this appeal. In view of the urgent nature of the matter it will proceed to announce such decision now and reserve the reasons therefor for later; there was no time to prepare a reasoned judgment during the time intervening between last Saturday noon, when we reserved judgment, and this morning.

Only two members of the Court are agreed on the decision which we are going to announce; the other member of the Court feels that he should have an opportunity of considering further, and more fully, the questions raised in this appeal, in the light of the submissions made, before reaching a final conclusion about its outcome; once, however, two of us are in agreement about such outcome, we have decided to follow the precedent set in *The Attorney-General* v. *Ibrahim*, 1964 C.L.R. 95 and announce now our decision—which will be, eventually, either the unanimous or the majority decision of the Court in this appeal.

Our decision is that this appeal is allowed and the ruling under appeal is set aside; we shall give our reasons as soon as possible, in the next few days.

Regarding costs, and taking everything into consideration, it is ordered that there shall be no Order as to costs for the proceedings before us, or for the proceedings in the Court below which have given rise to this appeal.

REASONS FOR JUDGMENT

The following reasons for the judgment of the Court delivered on the 18th November, 1968 were read on the 27th November, 1968 by:-

TRIANTAFYLLIDES, J.: This is an appeal against a ruling given by a Full District Court in Nicosia, in civil action 3967/68, on an application by the respondents-defendants to strike out the "writ of summons and/or the service thereof".

By their ruling the learned Judges of the Court below have held that the said action is one relating to a matter relating to immovable property, in the sense of sub-section (2) of section 21 of the Courts of Justice Law 1960 (Law 14/60), and that as such immovable property is to be found in the Limassol District they did not have territorial jurisdiction to entertain the action.

It is common ground between the two sides to this appeal that, but for sub-section (2) of section 21, the District Court of Nicosia would have jurisdiction in the matter under sub-section (1) of the same section.

The action concerned was commenced by a generally endorsed writ of summons (under Order 2, rule 1, of the Civil Procedure Rules) in which are claimed, in substance, the following specific reliefs:-

(a) An injunction restraining the respondents from taking any further steps—under clause 14 of a written agreement, dated the 19th March, 1966—for the purposes of arbitration proceedings between the respondents and the appellants

(b) A declaration that the matters contained in a "notice *for arbitration*", *dated the 10th September, 1968,* and served by the respondents on the appellants, do not fall within the aforesaid clause 14

(c) A declaration that the agreement in question is valid, subsisting and binding

The agreement of the 19th March, 1966, which is part of the record before this Court, is, in effect, a contract by virtue of which the respondents have leased to the appellants a hotel—the Miramare hotel—in Limassol, and have also granted them an option, under certain conditions, to acquire 65% of the shares in respondent 1, which is a limited company, and of which the shareholders are the other respondents, the said hotel being the property of respondent 1

From the material before this Court, it appears that the events which have given rise to civil action 3967/68 are shortly as follows:-

On the 30th July, 1968, the respondents gave notice to the appellants, under clause 13 of the aforementioned agreement, requiring them to fulfil certain obligations under such

agreement, which, allegedly, they had not fulfilled.

An inconclusive correspondence ensued, as to whether or not there was any default on the part of the appellants. Eventually, on the 2nd September, 1968, the respondents served notice on the appellants—under the said clause 13—of their intention to end the term of the lease, after the expiration of five days thereafter, on the ground that the appellants had failed to remedy the defaults with which they had already been charged; by means of such notice the appellants were requested to surrender "on and from the 8th September, 1968", the Miramare hotel to respondent 1.

The appellants replied on the 3rd September, 1968, stating that they intended to continue holding the hotel as the lawful tenants thereof, and denying the contents of the respondents' notice of the 2nd September, 1968.

On the 10th September, 1968, notice was served by the respondents on the appellants, under clause 14 of the agreement concerned, to the effect that the respondents would proceed (unless the dispute between the parties were to be settled within a prescribed period of thirty days) to appoint their arbitrator, and would call on the appellants to appoint their arbitrator, for the purpose of referring to arbitration the several allegations against the appellants, regarding default on their part to comform with their obligations under the said agreement.

The right of the respondents to take possession of the hotel, because of the alleged defaults by the appellants, was not included by the respondents among the matters to be referred to arbitration, by virtue of the notice of the 10th September, 1968—presumably because the respondents intended to rely, eventually, in case of a favourable outcome of the arbitration, on clause 13 of the agreement.

Then, on the 28th September, 1968, civil action 3967/68 was filed in the District Court of Nicosia, and an interim order was obtained by the appellants—on the basis of an *ex parte* application—substantially in the terms of claim *(a)* in the endorsement on the writ of summons.

On the 15th October, 1968, the respondents obtained leave to file a conditional appearance in the action; and on the 17th October, 1968, the respondents, having filed such an appearance, applied, under Order 16, rule 9, of the Civil

Procedure Rules, to set aside the "writ of summons and/or the service" thereof, on the ground of want of territorial jurisdiction of the District Court of Nicosia, in view of sub-section (2) of section 21 of Law 14/60; their application was opposed by the appellants, and the Court gave its ruling, in favour of the respondents, on the 11th November, 1968

It is now up to this Court to pronounce on the correctness of such ruling

I do not propose to go into the whole question of the exact construction of sub-section (2) of section 21 of Law 14/60 I shall confine myself, for the purposes of this appeal, to deciding whether the Court below was right in striking out the writ of summons, and its service, for want of territorial jurisdiction, at the stage at which it has done so, and for the grounds on which it relied for the purpose

The main reasoning of the Court, in its ruling, was as follows -

> "Looking at the various claims in the writ of summons and bearing in mind the documents before us, we see that claims 'A' and 'B' arise out of claim 'C' In other words, the only issue in the present case is whether the agreement between the parties dated the 19th March 1966 has been validly terminated by the applicants or not. If it had been so validly terminated, no question of an injunction, as claimed in claim 'A' or a declaration as in claim 'B' would arise Claim 'C' is for a declaration that the above mentioned agreement is valid, subsisting and binding In other words, that the notice served by the applicants purporting to terminate it and inviting the plaintiffs-respondents to quit and surrender the hotel. is not valid It is, therefore, clear that the dispute affects in substance the recovery or not of possession of the hotel in question
>
> "Section 21(2) of the Courts of Justice Law. No 14/60, reads as follows -
>
> "(2) 'Where the action relates to the partition or sale of any immovable property or any other matter relating to immovable property, such action shall be taken in the District Court of the district within which such property is situate'.

"In construing the said sub-section, we do not agree with the submission of learned counsel for the applicants that 'any other matter relating to immovable property' should be given the meaning of any other matter either directly or indirectly relating to immovable property and we further do not agree with him that a lease creates an estate in land, (see section 4 of the Immovable property Law, Cap. 224). Neither do we agree with the submission that the words 'any other matter relating to immovable property' should be limited to matters relating to ownership only as submitted by counsel for the respondents.

"In our view, the construction to be given upon the words 'or any other matter relating to immovable property' should be any other matter which directly affects the immovable property in question. In the present case the substance of the claim relates to the validity of the agreement between the parties which in substance affects the recovery or not of the possession of the hotel in question. In our opinion, this is a matter directly affecting the immovable property in question and, therefore, is outside the jurisdiction of this Court".

It was up to the respondents to satisfy the District Court that the writ of summons ought to be struck out for want of territorial jurisdiction; and if they failed to do so, then the respondents' relevant application should have been dismissed.

In deciding in favour of the respondents, the District Court acted on the basis of the material on record before it; no oral evidence was heard. As the same material is before this Court, I did not find myself at any disadvantage in deciding whether the respondents did make out, before the District Court, a sufficient case of want of territorial jurisdiction, so as to entitle them to a ruling in their favour.

I have reached the conclusion, contrary to the view of the District Court, that the respondents were not, and are not entitled, at this stage, to have the writ of summons or its service struck out, for want of territorial jurisdiction; and my reasons, in this respect, are as follows:-

Claims *(a)* and *(b)* in the writ of summons are, obviously, interrelated and, in effect, amount to a prayer that the dispute, which has arisen between the parties regarding the existence or not of defaults by the appellants, should not be

referred to arbitration under clause 14 of the agreement between the parties. The reasons for such a prayer are to be found, set out, to a certain extent, in an affidavit filed by the appellants on the 28th September, 1968, in support of their application before the District Court for an interim order; they seem to be, *inter alia*, that none of the matters specified in the "notice for arbitration" dated the 10th September, 1968, falls within the ambit of the said clause 14, and that, on a true construction thereof, such clause is not an arbitration agreement within the meaning of section 2 of the Arbitration Law, Cap. 4.

I have to treat, therefore, claims *(a)* and *(b)*, on the basis of the material on record at this stage, as involving only questions of interpretation and applicability of the arbitration clause (clause 14) in the agreement of the 19th March, 1966.

Subject to the exact scope of claims *(a)* and *(b)* becoming more definite, in the framework of the pleadings—which are yet to be exchanged between the parties—I take the view that such claims, as they appear to stand now, could not be held to amount to an action relating to a matter relating to immovable property, in the sense of sub-section (2) of section 21 of Law 14/60.

It is not in dispute by either side that the said sub-section (2) is a provision laying down the territorial—and not the substantive—jurisdiction of District Courts, for reasons of convenience; I cannot construe it so widely as to bring within its ambit claims *(a)* and *(b)*, as generally endorsed at present; to do so would amount to extending the ambit of sub-section (2) into realms too remotely away from its true object.

In this respect it is to be derived from the case of *R.* v. *Shoreditch County Court Registrar, Ex parte Saxon Finance Corporation, Ltd.*, [1937] 4 All E.R. 231, which was cited before us, that in construing a provision regarding territorial jurisdiction one must look to the real object of such a provision; and I do not think that claims *(a)* and *(b)*, as at present presented, could be found to be within the ambit of the object of sub-section (2) of section 21 of Law 14/60.

It seems to me that it would have to be decided, *first*, whether or not the arbitration clause in question is applicable to the issue of determining the existence of the alleged defaults

on the part of the appellants, *then* it would have to be determined—by arbitration or otherwise—whether any, or some, of such defaults exist, *then* the effect of such defaults—if found to exist—would have to be adjudicated upon in the light of clause 13 of the agreement concerned, and *then* a question of recovery of possession in relation to immovable property, the Miramare Hotel, could arise, so as to presumably bring into play sub-section (2) of section 21.

In this connection I take the view that the District Court adopted an erroneous approach in treating claims *(a)* and *(b)* as arising out of claim *(c)*, which it regarded as the main one. On the contrary, I would say that it seems that claim *(c)* is an ancillary one, which can only assume any significance after it has been decided, by arbitration or otherwise—and this would involve the determination first of claims *(a)* and *(b)*—whether there has or has not been default on the part of the appellants, lawfully leading to the termination of the relevant agreement.

Claim *(c)* appears to have been brought about because of the notice given by the respondents on the 2nd of September, 1968, terminating the said agreement and claiming possession of the hotel. But it is to be noted that, once the appellants refused to surrender possession, the respondents themselves did not go on to file an action for recovery of possession, but they proceeded to initiate arbitration proceedings, by their notice of the 10th September, 1968, thus treating the agreement as being still in force; therefore, it could not be said, for the present, that what is in substance in issue is the recovery of possession of the hotel or not, on the basis of the agreement having come to an end.

Even if claim *(c)* might be taken, at first sight, to amount to a claim for a declaration that the appellants are entitled to possession of the hotel, and it might be argued that such a claim is within the ambit of sub-section (2) of section 21, when one does bear in mind the nature of the agreement between the parties (namely, a lease coupled with an option to acquire the majority shareholding in the company owning the subject-matter of the lease) as well as the generality of claim *(c)*, as framed, it cannot be said that, at the present stage of the proceedings, either the District Court, or this Court, would be entitled to hold definitely that this claim is excluded from the territorial jurisdiction of the Court below

by virtue of sub-section (2); a lot will depend on the contents of the pleadings, before one can form a view in this respect with sufficient certainty.

For the above reasons I find that the ruling of the District Court has to be reversed, and that the writ of summons, and its service, in civil action 3967/68 should not have been struck out; in my view, such a course was adopted by the District Court rather prematurely.

The case should proceed to trial in the ordinary course and it is always open to the District Court, once the pleadings have been closed and the trial has commenced (the matters to which this action relates being then clearly defined) to take, if need be, such a course, for want of territorial jurisdiction, as it may deem fit—possibly under Order 33, rule 10, of the Civil Procedure Rules, or under its inherent jurisdiction for the purpose.

LOIZOU, J.: I agree that the appeal should be allowed, for the reasons stated by my brother Triantafyllides, J.; and I do not desire to add anything further on the appeal.

HADJIANASTASSIOU, J.: The decision of this appeal appears to me to involve a question with regard to the true construction of section 21, sub-ss. 1 and 2 of the Courts of Justice Law.

In this case the main contention of counsel for the appellant was that the Full District Court of Nicosia has jurisdiction to hear and determine this case under the provisions of section 21(1) of the said law. He further submitted that the trial Court erred in construing sub-s. 2 of section 21 of Law 14 of 1960.

On September 28, 1968, the plaintiffs Cyprus Hotels Co. Ltd., of Nicosia, instituted an action No. 3967/68 against the defendants of Limassol, claiming:-

> "A. An injunction restraining the defendants and/or each one of them, their servants and/or agents, from proceeding or taking any further steps under clause 14 of the Contract dated the 19th March, 1966 and/or from proceeding to the appointment of an arbitrator and/or from taking any other step under the said clause 14 for the purpose of arbitration.
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> "B. A declaration of the Court that the matters con-

tained in the notice for arbitration dated 10.9.1968 sent by the defendants and/or either of them to the plaintiffs do not fall within clause 14 of the aforesaid contract.

"C. A declaration of the Court that the agreement between the parties dated 19.3.1966 is valid, subsisting and binding".

On October 17, 1968, the defendants filed an application under the provisions of Order 16 rule 9 of the Civil Procedure Rules, claiming an order setting aside the writ of summons and/or the service thereof on them, for want of jurisdiction under the provisions of section 21 sub-s.2 of Law 14/1960. The facts in support of this application appear in the affidavit of Mr. Theophylactos Mavrommatis.

I read:

"3. To the best of my personal knowledge, information and belief the subject-matter of this action is and/or relates to a contract between the parties, dated 19.3.66.

"4. To the best of my personal knowledge, information and belief the said contract relates exclusively to the lease by Defendants to Plaintiffs of the Hotel Miramare in Limassol, the property of Defendant 1 Company, of which the remaining Defendants are shareholders, under the terms and conditions therein contained.

"Copy of the said contract has already been filed in this action, attached to my affidavit, dated 15.10.68, in our Ex. Parte Application for leave to enter conditional appearance.

"5. I am advised by our Advocates and verily believe, that in view of the above:

"*(a)* the subject-matter of this action relates to a matter relating to immovable property, situate within the District of Limassol and, therefore, by virtue of s. 21(2) of the Courts of Justice Law, 14 of 1960, the action ought to have been brought at the District Court of Limassol and that the District Court of Nicosia has no jurisdiction in the matter.

"*(b)* this is a proper case for an application to set aside the writ and/or the service of the writ for lack of jurisdiction and that, therefore, it is a proper case for the granting of the order asked for".

The plaintiffs filed an opposition, supported by an affidavit by Mr. Costakis Loizou dated October 26, 1968. It reads:

"2. I have read the affidavit of Theofylactos Mavrommatis and I deny his allegations contained in clauses 3, 4 and 5.

"3. The present case comes within the ambit of s. 21(1) *(a)* of Law 14/60 and does not come at all within s. 21(2) of the aforesaid Law. The relevant contract dated 19.3.66 was signed at Nicosia and provides (Part XIX) for an option on the part of the plaintiffs to buy shares.

"4. On the strength of s. 21(1) *(a)* of Law 14/60 the District Court of Nicosia has jurisdiction to entertain the present action".

Reading through the correspondence exchanged between the parties, one cannot but wonder why the parties had never tried amicably to resolve their differences.

Be that as it may, and as the parties have failed to agree whether or not there was any default on the part of the plaintiffs to comply with the terms of the contract of lease, the defendants served a notice on the plaintiffs on September 2, 1968, under the provisions of clause 13(*c*) of the contract of lease, of their intention to terminate the said contract. The notice reads:

"Whereas on the 30th July, 1968, the Hotel Plaza Enterprises Limited and Theofylactos Mavrommatis of Limassol for himself and for the other shareholders of the said Company (herein referred to as 'the First Party') gave to the Cyprus Hotels Co. Ltd., (herein referred to as 'the Second Party') a written notice in the terms of the attached copy.

"And whereas 30 days have elapsed from the date on which such Notice was given to the Second Party, the Second Party has failed to perform, keep or fulfil the covenants, undertakings and obligations of the Agreement between them dated 19th March, 1966, as particularly set out in paras. 1(*a*), 1(*b*), 1(*d*), 2(*c*) and 3 in the said notice, of which a copy is hereto attached, and to remedy the default therein mentioned.

NOW THEREFORE

"The First Party gives to the Second Party Notice of Intention to end the term of leasing after the expiration of five days from the date of giving of this Notice and, accordingly, the First Party appoints Sunday the 8th September, 1968, as the date on which the term created by the above recited Agreement dated 19th March, 1966, shall expire and that all right title and interest of the Second Party under and by virtue of the said Agreement shall cease and be extinguished and the Second Party is hereby required as on and from the 8th September, 1968 to quit and surrender the Miramare Hotel to the First Party and to cease all connection and interference in the said Miramare Hotel.

Please note that the signatories to this document are authorised to arrange with you the peaceful taking over of the Hotel".

On September 3, 1968, counsel for plaintiffs replied to the defendants as follows:-

"On behalf of our clients, the Cyprus Hotels Co. Ltd. we acknowledge receipt of your letter dated the 2.9.68 the contents of which are categorically rejected and denied.

"Our clients will continue according to their contract to hold the Miramare Hotel as the lawful tenants thereof. Consequently no question of taking over of the hotel can possibly arise as suggested in your letter under reply".

On September 10, 1968, notice was served by the defendants on the plaintiffs, under para. 14 of the contract of lease, to the effect that the defendants would proceed (unless the dispute between the parties was settled within a prescribed period of 30 days) to appoint their arbitrator and would call on the plaintiffs to appoint their arbitrator for the purpose of referring to arbitration the several allegations for failure on the part of the plaintiffs to comply with their obligations under the stipulations of the contract of lease.

On September 30, 1968, on an ex-parte application by the plaintiffs in the District Court of Nicosia an Interim Order was obtained in favour of the plaintiffs.

I had the occasion to peruse the contract of lease made in Nicosia on March 19, 1966, and I have found it a very elaborate and comprehensive document indeed. It covers 17 typed pages, with 20 clauses and numerous sub-clauses; and it provides *inter alia* a machinery for resolving any controversy disagreement or dispute between the parties to arbitration as well as an option to buy shares and the right to assign the lease under para. 15.

I propose reading now the clauses referred to in these proceedings:

"Para. 1(1) The First Party hereby lets and leases to Ledra and Ledra hereby takes and hires from the First Party the Hotel of the First Party in Limassol known as the Miramare Hotel (hereinafter called 'the Hotel') comprising the Site, Building and Furnishings and Equipment, and all revenue derived therefrom, for a term commencing on 15th April, 1966 and expiring unless sooner terminated pursuant to the provisions hereof, at midnight on 14th April, 1971 with option to Ledra to renew the term of said leasing for an additional second period ending on midnight on 14th April, 1976 exercisable as in sub-para. (5) hereof.

. . . . . .

"(5) The option for a renewed term as in sub-para.(1) hereof provided shall be exercisable by Ledra giving notice thereof in writing to the First Party not later than the 14th October, 1970. Such renewed term shall be upon the same terms, covenants and conditions as in this agreement provided except that there shall be no option for any further renewal for any further additional period.

. . . . . .

"Para. 13. If at any time, or from time to time, during the term of the leasing any of the following events of default (herein called 'Events of Default') shall occur and are not remedied within the periods of time hereinafter specified, namely:

"(*a*) Ledra shall default in the payment of any instalment of rental which may become due hereunder and such default shall continue for thirty (30) days after the same is due and payable;

"(*b*) If the Hotel shall be abandoned or evacuated by Ledra and such default shall continue for a period of thirty (30) days or more; or

"(*c*) If Ledra shall fail to perform, keep or fulfil any of the orders, covenants, undertakings, obligations or conditions of this agreement, and any such default shall continue for a period of thirty (30) days after notice thereof by First Party to Ledra: Then in the case of any such Event of Default, and upon expiration of the applicable periods of grace above mentioned, First Party may give to Ledra a notice of intention to end the term of leasing after the expiration of five (5) days from the date of giving of such notice (herein called the 'Five-Day Notice'), and on the date set forth in said notice, the term of leasing and all right, title and interest of Ledra hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of the term of leasing, and Ledra will thereupon quit and surrender the Hotel to First Party. If, upon receipt of such Five-Day Notice, Ledra shall proceed promptly and with all due diligence to cure the same and thereafter to prosecute the curing of such default with all due diligence, it being intended that in connection with a default not succeptible of being cured with all due diligence within such five-day period, the time for Ledra to cure the same shall be extended for such period as may be necessary to cure the same with all due diligence, then such notice shall be of no force and effect and the rights of the parties shall be the same as existed prior to the giving of said Five-Day Notice.

"Para. 14.(1) "If any controversy, disagreement or dispute should arise between the parties in the performance, interpretation and application of this agreement, either party may serve the other a written notice stating that such party desires to have the controversy, disagreement or dispute referred to arbitration and, unless the controversy, disagreement or dispute is settled between the parties, the party giving the notice shall 30 days after such notice appoint his arbitrator and call upon

the other party to appoint his arbitrator and thereupon the matter shall be referred to arbitration and shall be regulated under and in accordance with the Law relating to arbitration in force for the time being.

"(2) The generality of this paragraph shall not be affected by any provision in any other paragraph providing for the reference to arbitration of any particular matter.

. . . . . .

"19.(1) It has been mutually agreed between the parties that during the first five years period of lease the First Party, if so requested in writing by Ledra shall transfer or cause to be transferred unto the name of Ledra 65% of the shares of the Hotel Enterprises Plaza Company Ltd., the value of such shares to be assessed on the basis as follows:-

If the request is made-

"(*a*) on or before midnight of 14th April, 1967, the value of such shares shall be based on an estimated capital value of the Company as a whole in the sum of £200,000.

"(*b*) on or before midnight of 14th April, 1968, the value of such shares shall be based on an estimated capital value of the Company as a whole in the sum of £205,000.

"(*c*) on or before midnight of 14th April, 1969, the value of such shares shall be based on an estimated capital value of the Company as a whole in the sum of £210,000.

"(*d*) on or before midnight of 14th April, 1970, the value of such shares shall be based on an estimated capital value of the Company as a whole, in the sum of £215,000.

"(*e*) on or before midnight of 31st December, 1970, the value of such shares shall be based on an estimated capital value of the Company as a whole in the sum of £220,000 unless Ledra shall have given notice of renewal for an additional second period as in para. 1(1) and 1(5) hereof provided, in which case the request for the transfer of shares, as

hereinbefore, may be made on or before midnight of 14th April, 1971.

"(2) If Ledra in the exercise of the options in this paragraph obtains 65% of the shares of the Company then in such case the First Party shall have the right to nominate one of their number to be a member in the Board of Directors of the Company.

"(3) For the purposes of this Agreement and so that the First party shall be ready to comply with any request of Ledra as in sub-para. (1) above provided, the First Party agrees and undertakes that, during the First period of leasing, ending at midnight on 14th April, 1971, shall not transfer or in any way alienate any of the shares already issued or to be issued in excess of shares representing 35% of the share Capital of the Company keeping intact the 65% of the share capital, 65% as above being the percentage in respect of which Ledra may exercise the options as hereinabove provided".

It is common ground that the plaintiffs took possession of the Hotel in question under the terms of the said contract of lease.

The Full District Court after hearing counsel and after dealing with all relevant documents before them, delivered their reasoned ruling dated November 11, 1968, setting aside the writ of summons and/or service thereof on the applicants-defendants. It is this ruling that the appellants now seek to set aside.

"It reads:-

"Looking at the various claims in the writ of summons and bearing in mind the documents before us, we see that claims 'A' and 'B' arise out of claim 'C'. In other words, the only issue in the present case is whether the agreement between the parties dated the 19th March, 1966 has been validly terminated by the applicants or not. If it has been so validly terminated, no question of an injunction, as claimed in claim 'A' or a declaration as in claim 'B' would arise. Claim 'C' is for a declaration that the above mentioned agreement is valid, subsisting and binding. In other words, that the notice served by the Applicants purporting to terminate it and inviting the plaintiffs-respondents to quit and surrender

the hotel, is not valid. It is, therefore, clear that the dispute affects in substance the recovery or not of possession of the hotel in question.

"Section 21(2) of the Courts of Justice Law, No. 14/60 reads as follows:-

"(2) 'Where the action relates to the partition or sale of any immovable property or any other matter relating to immovable property, such action shall be taken in the District Court of the district within which such property is situate'.

"In construing the said sub-section, we do not agree with the submission of learned counsel for the applicants that 'any other matter relating to immovable property' should be given the meaning of any other matter either directly or indirectly relating to immovable property and we further do not agree with him that a lease creates an estate in land (see section 4 of the Immovable Property Law, Cap. 224). Neither do we agree with the submission that the words 'any other matter relating to immovable property' should be limited to matters relating to ownership only as submitted by counsel for the respondents.

"In our view, the construction to be given upon the words 'or any other matter relating to immovable property' should be any other matter which directly affects the immovable property in question. In the present case the substance of the claim relates to the validity of the agreement between the parties which in substance affects the recovery or not of the possession of the hotel in question. In our opinion, this is a matter directly affecting the immovable property in question and, therefore, is outside the jurisdiction of this Court".

There is no doubt that section 21 of the Courts of Justice Law deals with the territorial jurisdiction of the District Courts in civil matters.

Counsel for the appellants has contended that this case comes within the ambit of section 21 sub-s. 1 and not within the provisions of sub-s.2, because section 21(1) should be construed as being comprehensive and mutually exclusive from the operation of sub.s.2.

In the light of this submission I have to consider the meaning of this section. It is clear in my view, when the subject-matter of the section and the type of actions which are being dealt with are born in mind, that the object of the section is to prevent undue hardship to defendants from actions being brought against them in districts remote from the place in which they live. The primary provisions of this section is that the plaintiff must seek the defendants and not bring them to give his answers where the plaintiff may be. An exception to this principle is to be found in sub-s. (1) (*a*) and (*b*). Counsel agreed that but for sub-section 2, the District Court of Nicosia would have had jurisdiction in the matter. I have reached the conclusion that the submission of counsel cannot succeed, because section 21(1) and (2), has to be read as a whole in this case and not as contended by counsel for the appellants, viz., that sub.s(1) is mutually exclusive. Counsel further submitted that the words "or any other matter relating to immovable property" in sub-s.(2) of section 21, should be construed under the doctrine of *ejusdem generis*, as meaning of "matters relating to ownership of the property". I propose reading it:-

Sub-s.(2) of section 21 provides:-

> "Where the action relates to the partition or sale of any immovable property or any other matter relating to immovable property, such action shall be taken in the District Court of the district within which such property is situate".

With due respect, I hold a different view. In my opinion the words "any other matter relating to immovable property" in section 21 sub-s. (2) do not refer to things *ejusdem generis* with "partition or sale of immovable property"—which words precede "any other matter" because it would be observed that the Legislature by using the words "any other matter" intended to show that a wider sense was intended, as, for instance, when any matter is relating to immovable property, it also includes a contract of lease. In the words of this section, therefore, when the action is relating to immovable property such action shall be taken in the District Court of the district within which such property is situate.

The question which I have to decide therefore, is whether it is true to say that in this action the appellant company would be concerned not merely with an injunction and a

declaratory judgment in their claims A and B, but also and inevitably with the contract of lease, in claim C, viz., whether it is valid, subsisting and binding.

As I had occasion to state earlier the contract of lease is a very elaborate document and, certainly an option to purchase shares given to the appellant company or an option to renew or assign the said lease is not an independent contract under which the rights and liabilities of the parties were depended on a condition, but a state of affairs capable of resulting in a concluded contract on a certain contingency. See the case *Holy Monastery of Ayios Neophytos* v. *Antoniades* (reported in this Vol. at p. 10 *ante*). I would like, however, to add that at the time the option is exercised the lease must still be current, that is, it has not been already determined for breach of covenant.

It is, therefore, quite understandable in my view, the reason why counsel inserted also claim C, in the writ of summons which is in my view the main subject-matter of the action. It seems to me that the principal contract with which we are now concerned in this case is the contract of lease; and that the proceedings contemplated by the appellants were manifestly related to this contract. It is this contract of lease which alone gives meaning to the option to buy shares, to the arbitration clause, as well as the option to renew the period of lease and other matters; and one, therefore, has to gather the effect of this instrument from its language as a whole. One cannot simply sever clauses 13 and 14 from the contract of lease and ask the trial Court to grant an injunction restraining the respondents from proceeding under clause 14 of the said contract of lease without having to deal with the contract as a whole.

With the greatest respect to the majority view taken by my learned brothers, I have reached a different conclusion. In my opinion, the trial Court quite rightly on a reasonable construction of the words of sub-s.2 of the law, reached the conclusion that the action relating to immovable property was outside their jurisdiction and quite properly made an order setting aside the writ of summons and the service thereof. I would, therefore, affirm the order of the Court. For the reasons I have endeavoured to explain and in view of the construction I have put on section 21(2) of Law 14/60 it seems to me, that this action was mainly and manifestly related on the contract of lease, so that it could not be brought

in the District Court of Nicosia, but, in the Court of the district within which such property is situate, as provided by sub-s.2 of section 21.

I would, therefore, dismiss the appeal.

Appeal allowed; no order as to costs of the appeal or for the proceeding in the Court below which have given rise to the appeal.