1980 March 31

[TRIANTAFYLLIDES, P., MALACHTOS, SAVVIDES, JJ.]

GRIGORIS K. PETSAS,

Appellant-Respondent,

v.

PAVLOS PAVLIDES,

Respondent-Applicant.

(*Civil Appeal No.* 5909).

Landlord and tenant—Statutory tenancy—Rent in arrear—Demand of—No notice in specific terms required—Section 16(1)(*a*) *of the Rent Control Law,* 1975 (*Law* 36/75)—*Whether tenant entitled to dispute authority of advocate sending the notice.*

Principal and agent—Advocate and client—Notice of demand of arrears of rent by advocate acting on behalf of client—Whether tenant can dispute authority of advocate.

Landlord and tenant—Practice—Jurisdiction—Statutory tenancy—Court constituted under section 4(1) *of the Rent Control Law,* 1975 (*Law* 36/75)—*Has jurisdiction to determine, in the same proceedings, claims for eviction, on ground of arrears of rent, and claims for mesne profits and recovery of such arrears of rent—Rule* 3(1) *of the Rent Control Rules,* 1975 *made under section* 25(1) *of Law* 36/75.

Practice—Trial of action—Adjournment—Discretion of trial Court—Principles on which it is exercised—And principles on which Court of Appeal interferes with exercise of such discretion—Application to postpone trial to enable counsel to consider legal position—After closing of case hearing adjourned to another date and counsel had ample time to prepare himself on legal aspect of the case—No wrong exercise of discretion by refusal to adjourn and no injustice caused to appellant—Order 33, *rule* 6 *of the Civil Procedure Rules.*

Words and Phrases—"Action" in section 2 *of the Courts of Justice Law,* 1960 (*Law* 14/60) *and Order* 1, *rule* 2 *of the Civil Procedure Rules.*

Landlord and tenant—Practice—"Action"—In the Rent Control Law, 1975 (Law 36/75)—Meaning—Form of proceedings under the Law—Rule 3(1) of the Rent Control Rules, 1975.

Jurisdiction—It can be raised at any stage of the proceedings—And can be determined by trial Judge on his own motion.

The appellant has since 1964 been the tenant of a shop at Hermes street Nicosia at a monthly rent of £8 which was gradually increased and since June, 1974, was, by consent, fixed at £12 per month. It was not disputed that he was a statutory tenant and in arrears of rent since June, 1974. In an application by the landlord under the Rent Control Law, 1975 (Law 36/75) the appellant was adjudged to pay arrears of rent for the period 1.6.1974–31.1.1979 (excluding the months of July and August, 1974), mesne profits from 1.2.1979 till delivery of the premises and to deliver vacant possession of the premises by 31.1.1979.

Upon appeal by the tenant counsel for the appellant contended:

(a) That the trial Judge was wrong in finding that the notice of demand of the arrears of rent was a good and valid notice because it was not stated therein that it was being sent in pursuance to the provisions of section 16(1)(a)* of Law 36/75 and did no mention that in case of non-compliance ejectment proceedings would be instituted.

(b) That the said notice of demand was of no effect and bad in law because the tenant never authorized witness 1 (Papantoniou) to act as his agent for the purpose of collecting any rents nor did he ever retain or instruct any advocate to institute these proceedings or to send any notice of demand of rent.

(c) That the trial Judge wrongly refused to grant an adjournment applied for by appellant's counsel on 6.9.1978 and consequently the legal rights of the appellant have been prejudiced.

(d) That a Court constituted under the provisions of section 4(1)** of Law 36/75 has no jurisdiction to deter-

* Quoted at p. 165 *post*.

** Quoted at p. 173 *post*.

mine claims for arrears of rent and mesne profits, which being monetary claims were subject to the provisions of the Law of Contract and consequently they could only be pursued by civil proceedings commenced by a writ of summons under the Civil Procedure Rules; and not by an application under Law 36/75 which provided a different procedure and under the provisions of which the rules of evidence, which are mandatory under the Civil Procedure Rules in Actions, are relaxed under the provisions of Law 36/75 which also provide for special rules of procedure.

(e) That the trial Judge wrongly assumed that the objection to the jurisdiction was raised by counsel for the appellant after the completion of the hearing.

There was, also, another contention namely that the trial Judge failed to make a finding as to whether the appellant was a tenant substantially affected by the emergency, in view of the fact that the shop is situated in a stricken area and, as a result, he was entitled to a reduction of 20 per cent of his monthly rent as from 20.7.1974 onwards under section 15(1) of Law 36/75. In the course of the hearing of the appeal, however, counsel for the landlord, conceded to a reduction of the amount of the judgment by 20 per cent and, therefore, the Court of Appeal found it unnecessary to deal further with such contention other than making an order reducing the amount of the judgment both in respect of arrears of rent and mesne profits by 20 per cent.

Held, (1) that no notice in specific terms is contemplated by section 16(1)(a) of the Rent Control Law, 1975 but only a written notice of demand of rent lawfully due; and that, accordingly, contention (a) must fail.

(2) That the finding of the trial Judge that the tenant had been adequately informed that witness Papantoniou was authorised by the landlord to collect the rent was based on the evidence before him and this Court has not been convinced by counsel for the appellant that such finding was wrong in law or not warranted by the evidence before the Court; that, moreover, this Court is in full agreement with the finding of the trial Judge that it was not necessary for the said notice of demand, which was sent by an advocate, to be accompanied by a certified copy or a photocopy of the document appointing witness Papantoniou

as the landlord's attorney to collect the rents, because when an advocate acts on behalf of his client this presupposes authority and it is not upon a litigant to dispute such authority; and that, accordingly, contention (b) must fail.

(3) (*After stating the principles governing the exercise of discretion by a trial Court in granting or refusing an adjournment and the principles upon which the Court of Appeal will interfere with the exercise of such discretion—vide pp. 169–70 post*) that whether or not to grant an adjournment is at the discretion of the trial Court; that in refusing an adjournment the trial Judge did not exercise his discretion wrongfully or in a way not expedient for the interest of justice; that, moreover, no injustice was caused to the appellant by the refusal of the adjournment because in any event after the closing of the case of the landlord on 6.9.1978, the hearing was adjourned for continuation to 23.11.1978 and therefore counsel for the appellant had ample time to prepare himself on the legal aspect of the case; and that, accordingly, contention (c) must fail (see Order 33 rule 6 of the Civil Procedure Rules).

(4) That section 4 of the Rent Control Law, 1975 makes unambiguous provision that any matter incidental to the recovery of possession can be dealt with by the same Court in the same proceedings; that the object of the legislator in inserting this provision was to avoid duplicity of proceedings on the same issues one under the Rent Control Law for eviction on the ground of arrears of rent under section 16(1)(a) and another one under the Civil Procedure Rules for the recovery of such arrears of rent; that a summary procedure is contemplated by the Rent Control Law to secure a speedy and less expensive procedure; that, therefore, the Court dealing with the determination of a dispute concerning recovery of possession is authorised and has jurisdiction to deal in the same proceedings with any matters incidental thereto such as the recovery of arrears of rent; and that, accordingly, contention (d) must fail.

(5) That the objection to the jurisdiction was not only raised in the address of counsel but was specifically pleaded in the defence; that even if it had not been pleaded, being a point of law, it could be raised by counsel at any stage of the proceedings; that, moreover, being a matter touching the jurisdiction of the Court it could be determined by the trial Judge on his own

motion as a Court cannot assume jurisdiction which it does not possess; that irrespective of the finding of the trial Judge that such point was raised only during the address, the Judge tackled this issue and made his finding in this respect; and that, therefore, there is no substance in dealing further with contention (e).

Held, further, (*with regard to the use of the word "action" in certain sections and the word "application" in other sections of Law* 36/75) that though the use of different expressions for the same type of proceedings may on the face of it cause certain misunderstandings it is clear from the definition* of the word "action" both in the Courts of Justice Law, 1960, (Law 14/60) section 2 and the Civil Procedure Rules, Order 1, rule 2, that such term includes proceedings in any other manner as well; that, therefore, the word "action" where referred to in the Rent Control Law, 1975 (Law 36/75) cannot have any meaning other than that of proceedings instituted under rule 3(1) of the Rent Control Rules, 1975, made by the Supreme Court under section 25(1) of Law 36/75, that is, by application in the form set out therein.

Appeal partly allowed.

Cases referred to:

Xenopoulos v. *Constantinidou* (1979) 1 C.L.R. 519 at pp. 526 and 527;

Ttofaros v. *Vassiliou and Others* (1970) 1 C.L.R. 17 at p. 18;

Charalambous v. *Charalambous and Another* (1971) 1 C.L.R. 284 at p. 293;

Protopapas v. *Vassiliou* (1959–1960) 24 C.L.R. 132.

Appeal.

Appeal by the tenant against the judgment of the District Court of Nicosia (Hji Constantinou, S.D.J.) dated the 23rd December, 1978, (Rent Appl. No. 456/78) whereby he was ordered to deliver vacant possession of a shop at Hermes Str. No. 295, Nicosia and was adjudged to pay arrears of rent from 1.6.1974 till 31.1.1979 (excluding the months of July and August, 1974) and mesne profit as from 1.2.1979.

P. Lysandrou, for the appellant.

G. Constantinides, for the respondent.

Cur. adv. vult.

* Quoted at p. 175 *post.*

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Savvides, J.

SAVVIDES J.: This is an appeal against the judgment of the District Court of Nicosia in an Application under the Rent Control Law (Law No. 36/75), whereby the appellant, respondent in the Court below, was adjudged to pay arrears of rent as from 1.6.1974 till 31.1.1979 (excluding the months of July and August, 1974), mesne profits as from 1.2.1979 till delivery of the premises, and the appellant was ordered to deliver to the applicant, vacant possession of a shop at Hermes Street No. 295, Nicosia, the property of the applicant with stay of execution till 31.11.1979 and, thereafter, from month to month, subject to certain terms as to the payment of arrears of rent and mesne profits.

The appellant had leased the said shop from the respondent since 1964 at the rent of £8.—per month and continued to occupy same as statutory tenant till the filing of the application under appeal, at a rent which was grandually increased and since June, 1974, was, by consent, fixed at £12.— per month. The said shop is situated at Hermes Street, a street which is facing the line of the area controlled by the Turkish forces which invaded Cyprus.

The fact that the appellant was a statutory tenant, is not contested. It was not in dispute either that the appellant was in arrear of rent since June, 1974, and the finding of the trial Court in this respect, has not been appealed.

Numerous grounds of appeal were advanced by the notice of appeal and argued before this Court, contesting the correctness of the judgment of the trial Court, both in respect of the eviction order, the arrears of rent and mesne profits.

The first issue with which we have to deal in the present appeal, is the contention of the appellant that the trial Judge was wrong in finding that the notice of demand of the arrears of rent was a good and valid notice in view of the fact that it was not stated therein that it was being sent in pursuance to the provisions of section 16(1)(a) of Law 36/75 and no mention was made in it that in case of non-compliance ejectment proceedings would be instituted. It was further argued that such notice was of no effect and bad in law because it was not accompanied by a certified copy of the document alleged as authorizing applicant's witness 1 to act as the landlord's attorney for collecting rents

and instructing the advocate to send the notice for arrears. Also that the appellant was not bound to comply with such invalid notice and pay the arrears of rent to applicant's witness 1 or to applicant's counsel. (These are grounds 1 and 2 of the Appeal).

It has been argued by counsel for the appellant that the applicant never authorized applicant's witness 1 to act as his agent for the purpose of collecting any rents nor did the applicant ever retain or instruct any advocate to institute the present proceedings or to send any notice of demand of rent. Proceedings were, according to the appellant, instituted by applicant's witness No. 1 who was the person who instructed the advocate to take such proceedings, on his own motion, and for personal reasons without any authority from the plaintiff. In consequence, the letter sent by advocate asking for payment of the arrears of rent, was sent without any express authority on the part of the applicant himself.

On these contentions, the trial Judge in his judgment found as follows:–

> "Coming now to the second point raised by the learned counsel for the defence, i.e. that *Exhibit* 1 is bad in law because it is not therein mentioned that it is being sent pursuant to the provisions of section 16(1)(a) of Law 36/75, and that it is not therein stated that in case of non–compliance ejectment proceedings would be instituted against the defendant, I must say that I find no substance in such a submission. Under section 16(1)(a) of the Law, the only obligation of the landlord is to serve on the tenant a written notice of his demand for any lawfully due rent and must wait for twenty–one days before instituting proceedings to see if within that time limit the tenant offers the lawfully due rent. Neither I find there is substance in the counsel's submission that *Exhibit* 1 should have been accompanied by a certified copy or a photocopy of the alleged document appointing Papantoniou as the landlord's Attorney to collect the rents for the simple fact that an advocate acting on behalf of his client presupposes authority and it is not upon a litigant to dispute such authority. The tenant had an obligation to pay the rents to the counsel's office and is not entitled to say that he will only pay if the landlord himself personally comes to collect the rent".

We find ourselves in full agreement with the findings of the trial Judge in this respect. No notice in specific terms is contemplated by section 16(1)(a) of the Rent Control Law 36/75, but only a written notice of demand of rent lawfully due. Section 16(1)(a) reads as follows:

"Οὐδεμία ἀπόφασις καὶ οὐδὲν διάταγμα ἐκδίδεται διὰ τὴν ἀνάκτησιν τῆς κατοχῆς οἱασδήποτε κατοικίας ἢ καταστήματος, διὰ τὸ ὁποῖον ἰσχύει ὁ παρὼν Νόμος, ἢ διὰ τὴν ἐκ τούτου ἔξωσιν ἐνοικιαστοῦ, πλὴν τῶν ἀκολούθων περιπτώσεων:

(α) εἰς περίπτωσιν καθ' ἣν οἱονδήποτε νομίμως ὀφειλόμενον ἐνοίκιον καθυστερεῖται ἐπὶ εἴκοσι μίαν ἢ περισσοτέρας ἡμέρας μετὰ τὴν ἐπίδοσιν ἐγγράφου εἰδοποιήσεως ἀπαιτήσεως εἰς τὸν ἐνοικιαστὴν καὶ δὲν ὑπάρξει οἱαδήποτε προσφορὰ τούτου πρὸ τῆς ἐγέρσεως τῆς ἀγωγῆς:

Νοεῖται ὅτι ἐνοίκιον θὰ θεωρεῖται ὡς προσφερθὲν δυνάμει τῆς παραγράφου αὐτῆς, ἐὰν τοῦτο ἐστάλη διὰ συστημένης ἐπιστολῆς εἰς τὸ πρόσωπον τὸ δικαιούμενον νὰ εἰσπράξῃ τοῦτο·..."

("16.—(1) No judgment or order for the recovery of possession of any dwelling house or business premises to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:

(a) where any rent lawfully due is in arrear for twenty-one days or upwards after notice of demand in writing has been given to the tenant and there was no tender thereof before the institution of the action:

Provided that rent shall be deemed to have been tendered under this paragraph if it has been sent by registered letter to the person entitled to receive the same;...").

In a very recent case, *Xenopoulos* v. *Constantinidou* (1979) 1 C.L.R., 519, at pp. 526 and 527, A. Loizou, J. in delivering the judgment of the Court and dealing with the formality of a notice under section 16(1)(a) of the Rent Control Law, 36/75, found as follows:

"From the wording of section 16(1)(a) of the Law, it becomes apparent that such a notice need not be drafted

in any particular form or that the word "demand" has to be used. A demand may be expressed in a courteous way and when a landlord requests payment of the rent due, he is doing nothing else but demand payment of same. It is enough if the wording of such a notice constitutes a reminder to the tenant that he is in arrear of rent lawfully due and that he is expected to pay same. The legal consequences of its non-payment after the lapse of 21 days from such notice, are laid down in the Law which everyone is presumed to know. No warning of any kind for such consequences or of the intention of a landlord to exercise his rights under the Law need be included in the notice, nor is it in law necessary to specify therein that such a notice is sent pursuant to the Rent Control Law.

If any other interpretation was given to the said statutory provision, it would amount reading into it words which the legislator did not choose to include. In our view the way the aforesaid notice of demand in writing was drafted in the present case, gave to the tenant all necessary information and conveyed to him the message that the Law demands of a landlord to give to a tenant before the former is entitled to take legal steps for recovery of possession for the non-payment of rent, and no question of a breach of a duty of disclosure on the principle of uberrimae fidei relationship comes into play. This ground of appeal therefore fails."

The judgment of the trial Judge in the present case then proceeds as follows:

"Moreover, I find that the tenant had been adequately informed that the witness was authorized by the landlord to collect the rent and I do not believe the tenant who denied that he was shown the document and the letters by the landlord's witness."

The trial Judge based such finding on the evidence before him and we have not been convinced by counsel for the appellant that such finding is wrong in law or not warranted by the evidence before the Court. In the result both these grounds of appeal fail.

Another contention of the appellant (ground 8 of the appeal), was that the trial Judge failed to make a finding as to whether

the appellant was a tenant substantially affected by the emergency, in view of the fact that the shop is situated in a stricken area and, as a result, entitled to a reduction of 20 per cent of his monthly rent as from 20.7.1974 onwards, and gave judgment for the full rent payable.

This contention is based on section 15(1) of the Rent Control Law which reads as follows:-

S.15.-(1) "Διαρκούσης τῆς ἐκρύθμου καταστάσεως καὶ ἐν πάσῃ περιπτώσει οὐχὶ πέραν τῆς 31ης Μαρτίου 1978 ἅπαντα τὰ καταβαλλόμενα ἐνοίκια δι' ἀκίνητα μειοῦνται ἀπὸ τῆς 20ῆς Ἰουλίου 1974 κατὰ εἴκοσι τοῖς ἑκατὸν καὶ ὁ ἐνοικιαστὴς ἀπὸ τῆς ἡμερομηνίας ταύτης θὰ καταβάλλῃ τὸ οὕτω μειούμενον ποσὸν πρὸς πλήρη ἐξόφλησιν τῶν πρὸς τὸν ἰδιοκτήτην ὑποχρεώσεών του:

.....

Νοεῖται περαιτέρω ὅτι οὐδὲν τῶν ἐν τῷ παρόντι ἄρθρῳ διαλαμβανομένων ἐφαρμόζεται—

(α) ἐκτὸς ἐὰν ὁ ἐνοικιαστὴς ἀποδεδειγμένως ἔχῃ ἐπηρεασθῆ οὐσιωδῶς ἐκ τῆς ἐκρύθμου καταστάσεως· ἢ

....."

("15.—(1) During the abnormal situation and in any case not later than the thirty-first December, 1975, all the rents payable for premises shall be reduced by twenty per cent as from the twenthieth July, 1974 and the tenant shall pay, as from that date, the sum so redueed in full satisfaction of his liabilities towards the landlord:

.....

Provided further that nothing in this section contained shall apply—

(a) unless the tenant is proved to have been substantially affected by the abnormal situation; or

.....")

Counsel for the appellant admitted that in the course of his argument and address before the trial Court he did not make any reference to appellant's claim for the reduction of rent; therefore the trial Judge might have been misled that this claim which appears in paragraph (3) of the defence was abandoned. In the course of the hearing of the appeal, however, counsel for the

landlord, respondent in the appeal, conceded, very rightly in our view, to a reduction of the amount due under the judgment both in respect of arrears of rent and mesne profits by 20 per cent, taking into consideration the fact that the shop is situated at an area which was considerably affected as a result of the Turkish invasion. Therefore, in the light of such concession, we find it unnecessary to deal further with this ground of appeal other than by making an order reducing the judgment both in respect of arrears of rent and mesne profits by 20 per cent.

Another ground of appeal (ground 7) was that the trial Judge refused to grant an adjournment when such adjournment was applied for on 6.9.1978 with the consequence that the legal rights of the respondent have been prejudiced.

The reason advanced by counsel in support of his application for adjournment, before the trial Court, was that in view of certain misunderstandings he had with his client and the serious legal points which were involved, he needed some more time to consider the legal points and the surrounding circumstances. We wish to point out that an adjournment had been granted earlier by the Court on 2.8.1978 on the application of counsel for the respondent together with an application for leave to withdraw from the conduct of the defence, in view of the fact that appellant did not attend his office to give him further instructions and the appellant had elected to conduct his case personally. In any event, after the case for the landlord was concluded on 6.9.1978, the further hearing was adjourned to and concluded on 23.11.1978.

The powers of the trial Court to grant or refuse an adjournment under Order 33, rule 6 of the Civil Procedure Rules, are discretionary, and, subject to their proper exercise, they are of a very wide nature. In *Ttofaros* v. *Vassiliou & others* (1970) 1 C.L.R., 17, Triantafyllides, J. (as he then was) in delivering the judgment of the Court dismissing an appeal against the refusal of an adjournment, had this to say at page 18:–

> "We would have to examine whether such refusal had been decided upon in the proper exercise of the relevant discretionary powers—which are of quite a wide nature—....."

The principles which may guide the Court in granting or refusing an adjournment as well as the principles upon which

the Court of Appeal will interfere with the exercise of such discretion are expounded by Josephides, J. in *Charalambous* v. *Charalambous and Another* (1971) 1 C.L.R., 284 in which an appeal against refusal to grant an adjournment was dismissed. At page 293, the judgment reads as follows:-

"Order 33, rule 6, provides that 'the Court may, if it thinks it expedient for the interest of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms (if any), as it may think fit'. This rule reproduces substantially the provisions of the old English Rules of the Supreme Court, Order 36, rule 34. The leading case on this point is *Maxwell* v. *Keun*, which has been cited by appellant's counsel. It is unquestionable that whether or not to grant an adjournment is at the discretion of the trial Court. However, as observed by Sir Jocelyn Simon P. in *Walker* v. *Walker* [1967] 1 All E.R. 412 at p. 414 'we have authoritative guidance from the Court of Appeal in *Maxwell* v. *Keun* to a two-fold effect: First, where the refusal of an adjournment, would result in a serious injustice to the party requesting the adjournment, the adjournment should be refused only if that is the only way that justice can be done to the other party; and, secondly, that although the granting or refusal of an adjournment is a matter of discretion, if an appellate Court is satisfied that the discretion has been exercised in such a way as would result in an injustice to one of the parties, the appellate Court has both the power and the duty to review the exercise of the discretion'.

In *Maxwell* v. *Keun & Others* [1928] 1 K.B. 645 (quoted earlier), it was held that 'the Court of Appeal ought to be very slow to interfere with the discretion vested in a Judge by Order XXXVI, rule 34, with regard to such a matter as the adjournment of the trial of an action before him, and very seldom does so; but if it appears that the result of an order refusing such an adjournment will be to defeat the rights of the applicant altogether, and to do that which the Court of Appeal is satisfied would be an injustice to one or other of the parties, the Court has power to review the order, and it is its duty to do so.

Rule laid down in *Sackville West* v. *Attorney-General* [1910] 128 L.T. Journ. 265 applied'.

The same principles were applied in a recent case, that of *Rose* v. *Humbles (Inspector of Taxes) etc.* [1970] 2 All E.R. 519.

To sum up, although the adjournment of a hearing by a trial Court is a matter, prima facie, for the discretion of that Court and an exercise of that discretion will not be interfered with by an appellate Court in normal circumstances, if the discretion has been exercised in such a way as to cause what can properly be regarded as an injustice to any of the parties affected, then the proper course for an Appellate Court to take is to ensure that the matter is further heard.

On this point we also have the Cyprus case of *Efstathios Kyriacou & Sons Ltd.* v. *Stephanos Mouzourides* (1963) 2 C.L.R. 1".

We find that the Judge in refusing an adjournment did not exircise his discretion wrongfully or in a way not expedient for the interest of justice. We are further of the view that no injustice was caused to the appellant by the refusal of the adjournment because in any event after the closing of the case of the landlord on 6.9.1978, the hearing was adjourned for continuation to 23.11.1978 and therefore counsel for the appellant had ample time to prepare himself on the legal aspect of the case.

Grounds 3, 5 and 6 of the appeal touch the jurisdiction of the Court to adjudge arrears of rent and mesne profits in proceedings for recovery of possession under the Rent Control Law.

Learned counsel for the appellant maintained that a Court constituted under the provisions of section 4(1) of the Rent Control Law (Law 36/75), has no jurisdiction to determine claims for arrears of rent and mesne profits, which being monetary claims were subject to the provisions of the Law of Contract and in consequence they could only be pursued by civil proceedings commenced by a writ of summons under the Civil Procedure Rules and not by an application under the Rent Control Law which provided a different procedure and under the provisions of which the rules of evidence which are mandatory under the Civil Procedure Rules in actions are relaxed under the provisions of the Rent Control Law, which also provide for special rules of procedure.

Section 4(2) of Law 36/75 reads as follows:

S.4(2) "Τὸ Δικαστήριον κατὰ τὴν ἀκρόασιν οἱασδήποτε δικαστικῆς ὑποθέσεως δυνάμει τοῦ παρόντος Νόμου, τηρουμένου οἱουδήποτε διαδικαστικοῦ Κανονισμοῦ, δὲν δεσμεύεται ὑπὸ τοῦ ἑκάστοτε ἰσχύοντος δικαίου τῆς ἀποδείξεως, ἀλλὰ ἐν ᾗ περιπτώσει μάρτυς ἀρνεῖται νὰ ἀπαντήσῃ εἰς οἱανδήποτε ἐρώτησιν, ἥτις κατὰ τὴν γνώμην τοῦ Δικαστηρίου τείνει νὰ ἐνοχοποιήσῃ τοῦτον, δὲν ἀπαιτεῖται παρ' αὐτοῦ ὅπως ἀπαντήσῃ εἰς τὴν τοιαύτην ἐρώτησιν καὶ δὲν ὑπόκειται εἰς δίωξιν διότι ἀρνεῖται νὰ ἀπαντήσῃ εἰς ταύτην."

("4.—(2) The Court on the hearing of any proceedings under this Law, subject to any Rules of Court, shall not be bound by the law of evidence in force for the time being, but in case a witness refuses to answer any question which in the opinion of the Court tends to incriminate him, he shall not be required to answer such question and will not be liable to prosecution for refusing to answer the same.")

The trial Judge in dealing with this matter found as follows:-

"It is a fact that the claim for an order of possession comes within the ambit of Law 36/75, whereas the claim for arrears of rent and mesne profits is clearly a money claim and falls outside the ambit of the Law. However, it must not be overlooked that under section 4(1) of the Law a member or members of the District Court are appointed to determine on any dispute arising out of the application of the Law. Thus, as a member appointed under the said action, I am given jurisdiction to determine on the issues of arrears of rent and mesne profits. In my opinion the proper issue that is raised, is whether these three issues can be tried in the same proceedings in view of the provisions of section 4(2) of the Law which provides that a Court established under section 4(1) of the same law is not bound by the rules of evidence.

Consequently it is my opinion that it would have been impossible for this Court in the same proceedings to hear and determine on disputes, one of which falls within and two of the issues falling outside the ambit of Law 36/75, because during the trial the Court would not be bound by the rules of evidence as regards the first issue, whereas it

would be bound by the rules of evidence as regards the other two issues. This question, however, is being raised after the completion of the hearing and during the hearing this difficulty did not arise. Therefore, I am faced with another question which is whether the proceedings can be regarded as a nullity."

The Judge then proceeded in his judgment to consider the legal position of joinder of other causes of action with a claim for recovery of land under the English Law and the misjoinder of causes of action and concluded as follows:-

"It is clear from the above authorities that the question is not that the proceedings are void or amount to nullity, but it is a mere question of irregularity which in this particular case is of no importance. Before concluding on this point I would cite a passage from the judgment of Lord Denning, M.R., in the case of *Payne* v. *Cofnen* [1974] 2 All E.R. 1109 at p. 1112:-

'I think the time has come to adopt a new approach. There is no need to order a new rule. The practice can be altered without it. The Courts already have power to do it. R.S.C., Ord. 33, r. 4(2), says:

'In any (action begun by writ) different questions or issues may be ordered to be tried at different places or by different modes of trial and one or more questions or issues may be ordered to be tried before the others'.

I would rather remind of the provisions of Ord. 13, r. 1 of our Civil Procedure Rules according to which..... if it appears to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

Under the above circumstances I can see no difficulty in determining both on the issue of an order for possession and the issue for arrears of rent. Regarding the claim for mesne profits the legal position is that such a claim cannot arise until after the termination of tenancy; this

being a statutory tenancy, the issue of mesne profits cannot arise until after and from the date of an order for possession."

Section 4(1) of Law 36/75 to which reference is made by the trial Judge, reads as follows:

"4.(1) Τὸ 'Ανώτατον Δικαστήριον, τηρουμένων τῶν διατάξεων τοῦ Συντάγματος, διορίζει ἐν σχέσει πρὸς ἑκάστην ἐπαρχίαν, μέλος ἢ μέλη τοῦ 'Επαρχιακοῦ Δικαστηρίου τῆς τοιαύτης 'Επαρχίας ἐπὶ σκοπῷ ἀκροάσεως καὶ ἐκδόσεως ἀποφάσεως ἐπὶ οἱασδήποτε διαφορᾶς ἀναφυομένης κατὰ τὴν ἐφαρμογὴν τοῦ παρόντος Νόμου καὶ παντὸς παρεμπίπτοντος ἢ συμπληρωματικοῦ πρὸς τοιαύτην διαφορὰν θέματος."

("4.—(1) The Supreme Court shall, subject to the provisions of the Constitution, appoint with respect to each district, a member or members of the District Court of such district for the purpose of hearing and determining any dispute arising during the application of this Law and any matter incidental or supplementary thereof.")

And the "Court" is defined under section 2, as "the competent Court established under section 4".

We do not agree with the approach of the trial Judge on this issue. The case is not such as to be determined on the question of misjoinder of causes of action in one and the same action instituted by writ of summons, under the Civil Procedure Rules, or the question of the use of the wrong type of writ of summons as in the case of *Protopapas* v. *Vassiliou* (1959–1960) 24 C.L.R. 132. The Rent Control Law 36/75 is a Law enacted to regulate all matters concerning disputes arising out of tenancies falling within its ambit and providing for special rules of procedure for regulating proceedings under the law. Furthermore the Court dealing with such disputes is a Court specially constituted by the same Law presided by a Judge specially appointed for such purpose. The issue as to whether there is jurisdiction to determine disputes touching eviction and recovery of arrears of rent is one which can be determined without any difficulty by reference to the provisions of the Rent Control Law. Section 4 of such Law makes unambiguous provision that any matter incidental to the recovery of possession can be dealt with by the same Court in the same proceedings. The object of the legislator in inserting

this provision was to avoid duplicity of proceedings on the same issues one under the Rent Control Law for eviction on the ground of arrears of rent under section 16(1)(a), and another one under the Civil Procedure Rules for the recovery of such arrears of rent. A summary procedure is contemplated by the Rent Control Law to secure a speedy and less expensive procedure and therefore the Court dealing with the determination of a dispute concerning recovery of possession is authorized to deal in the same proceedings with any matters incidental thereto such as the recovery of arrears of rent.

Another point which we find wrong in the judgment of the trial Court is that although he made an absolute finding that "it would have been impossible for this Court in the same proceedings to hear and determine on disputes, one of which falls within and two of the issues outside the ambit of Law 36/75" nevertheless later he proceeds in his judgment and assumes jurisdiction as a Judge sitting to adjudicate on matters within the ambit of the law, and determines disputes which, according to his finding, are not within the ambit of the law and in consequence within his jurisdiction.

In view of our finding however that the Court had jurisdiction to deal with all the matters before him and in fact had done so, grounds (3), (5) and (6) fail.

We disagree also with the trial Judge that the objection to the jurisdiction on arrears of rent was raised by counsel for the appellant after the completion of the hearing (a matter which has given rise to ground (4) of the appeal). This legal objection was raised not only in the address of counsel but is specifically pleaded in paragraph 3 of the defence. In any case even if it had not been pleaded, being a point of law, it could be raised by counsel at any stage of the proceedings, and furthermore, being a matter touching the jurisdiction of the Court it could be determined by the trial Judge on his own motion as a Court cannot assume jurisdiction which it does not possess. Irrespective, however, of the finding of the Judge that such point was raised only during the address, the Judge tackled this issue and made his finding in this respect. We therefore find no substance in dealing further with ground (4) of the appeal.

Before concluding our judgment in this appeal, we find it

necessary to deal shortly with the use of the word "action" in certain sections and the word "application" in other sections. Thus in sections 16(1)(a) and 16(3) the word "action" appears. The use of different expressions for the same type of proceedings may on the face of it cause certain misunderstandings. It is clear however from the definition of the word "action" both in the Courts of Justice Law 14/60, section 2 and the Civil Procedure Rules, Order 1, rule 2 that such term includes proceedings in any other manner as well. The definition under the Civil Procedure Rules is as follows:

> " 'Action' means a civil proceeding commenced by writ or in such other manner as may be prescribed by any Law or Rules of Court;" (Civil Procedure Rules, Order 1, rule 2).

The same definition appears in section 2 of Law 14/60, as follows:-

> " 'Αγωγή' σημαίνει πολιτικήν διαδικασίαν άρχομένην διά κλητηρίου εντάλματος ή κατά τοιοῦτον ἄλλον τρόπον ὡς καθορίζεται ὑπό διαδικαστικοῦ κανονισμοῦ" (Law 14/60 s.2).
>
> (" 'Action' means a civil proceeding commenced by writ or in such other manner as may be prescribed by Rules of Court").

Therefore, the word "action" where referred to in the Rent Control Law, cannot have any meaning other than that of proceedings instituted under rule 3(1) of the Rules of Court made by the Supreme Court under section 25(1) of Law 36/75, that is, by application in the form set out therein.

In the result, the appeal is dismissed, save to an order varying the judgment for arrears of rent and mesne profits by 20 per cent. Concerning costs, taking into consideration all the facts of the case, we make no order for costs.

Appeal partly allowed.