PC
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79, 1947

No. 24 of 1945.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE, SITTING AS A COURT OF APPEAL.

BETWEEN

ARIEH ZVI LIPSHITZ *Appellant*

AND

HAIM ARON VALERO, and Others *Respondents.*

RECORD OF PROCEEDINGS.

ADLER & PEROWNE,
46/7 LONDON WALL,
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Solicitors for the Appellant.

BARTLETT & GLUCKSTEIN,
199 PICCADILLY,
LONDON, W.1,
Solicitors for the Respondents.

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79, 1947

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In the Privy Council.

No. 24 of 1945.

ON APPEAL

FROM THE SUPREME COURT, SITTING AS A COURT OF APPEAL, JERUSALEM.

BETWEEN

ARIEH ZVI LIPSHITZ - - *Appellant*

AND

MOSHE VALERO - - *Respondent.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

INDEX OF EXHIBITS.

No. 24 of 1945.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT, SITTING AS A COURT OF APPEAL, JERUSALEM.

BETWEEN

ARIEH ZVI LIPSHITZ - *Appellant*

AND

MOSHE VALERO - *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

STATEMENT OF CLAIM.

In the Magistrate's Court of Jerusalem.

No. 1. Statement of Claim, 10th June 1942.

Jerusalem, 10.6.42. Civil Case 1559/42.

IN THE MAGISTRATE'S COURT OF JERUSALEM.

Plaintiff: MOSHE VALERO, represented by H. A. Valero by virtue of a general power of attorney 109/126 of 21.5.42.

Defendant: A. Z. LIPSHITZ, owner of cafe "Tuv Taam," King George Avenue, Jerusalem.

Subject matter: Eviction from land and claim for rent of LP.6.300.

STATEMENT OF CLAIM.

1. In accordance with an agreement made and signed by the Plaintiff and Defendant on 28.11.41, the Plaintiff leased to Defendant 98.75 sq. m. of his land situate at King George Avenue in Jerusalem, for a period of one month as from 28.11.41 at LP.13.500.

2. Clause 5 of the agreement provides for the renewal of the lease every month under the same conditions but on condition that the Defendant must notify the Plaintiff of his desire to do so, three days before the expiration of the month, and must pay the monthly sum of LP.13.500 in advance and also provided that the Plaintiff did not notify the Defendant of the termination of the lease in accordance with Clause 3 of the said agreement.

3. Clause 3 empowers the Plaintiff to terminate the lease at any time and the Defendant must leave the leased property three days after the receipt of the Plaintiff's notice.

In the Magistrate's Court of Jerusalem.

No. 1. Statement of Claim, 10th June 1942, *continued.*

On 31.5.42, the Plaintiff notified the Defendant on the termination of the lease, but notwithstanding this notice and the Plaintiff's subsequent warning the Defendant refuses to vacate the said plot of land and is still using it.

4. The Defendant did not notify the Plaintiff of his desire to continue the lease and also he failed to pay the sum of LP.13.500, in advance on the last day of payment (28.5.42) as required by Clause 5 of the above agreement.

5. The Defendant is actually using an area of 155.75 sq. m. i.e. 57 sq. m. more than the area which is allowed to use, under the contract.

6. The Plaintiff therefore prays the Court for an order to issue against Defendant to vacate the said land for all or any of the following reasons.

(A) The Defendant has no right to remain on this land because the contract of lease has been terminated and has ceased to exist since the day of the receipt by the Defendant of the Plaintiff's notice to this effect.

(B) The Defendant has breached the above mentioned agreement by his failure to pay in advance to the Plaintiff the sum of LP.13.500 on the day of payment and also by his failure to notify the Plaintiff of his desire to renew the lease as stated in para. 4 of this statement of claim.

(C) The Defendant has breached the said agreement by using 57 sq. m. more than the area which was leased to him as is stated in para. 5 of this statement of claim.

7. The Plaintiff also prays the Court to charge the Defendant with payment of LP.450 mils per day from 28.5.42 till the day of the filing of this action (total LP.6.300) and with payment of costs interests and advocate's fees.

8. As the claim is one for the eviction from land situate in Jerusalem, and as the amount of the claim is less than LP.150, this Court has jurisdiction to deal with this claim.

(Sgd.) H. A. VALERO, Advocate,
Rep. of Plaintiff.

In the Magistrate's Court of Jerusalem.

No. 2. Statement of Defence, 18th June 1942.

No. 2.

STATEMENT OF DEFENCE.

IN THE MAGISTRATE'S COURT OF JERUSALEM.

Civil Case No. 1559/42.

MOSHE VALERO, represented by his advocate H. A. Valero, Mizpa Bldg., Jaffa Road, Jerusalem Plaintiff

V.

A. Z. LIPSHITZ, represented by his advocate Herman Cohn, 1 Ben Yehuda Street, Jerusalem - Defendant.

STATEMENT OF DEFENCE.

The Defendant prays that the action be dismissed and the Plaintiff ordered to bear costs and advocate's fees, on the following alternative grounds, viz. :—

(1) The action is contrary to the provisions of the Rent Restrictions (Business Premises) Ordinance, 1941.

(2) The Defendant denied that the Plaintiff needs the land for the purpose of building or for any other purpose whatsoever, and he maintains that the notice of the Plaintiff dated 31.5.1942 was not, therefore, effectual.

(3) The Defendant admits that he is in possession of the leased property described in the Statement of Claim, and he maintains that he is entitled to such possession and that the agreement of lease is in force and has not been annulled.

(4) The Defendant denies having committed a breach of the said agreement. It had been agreed upon between him and the Plaintiff that the Plaintiff should collect the monthly rent on the 28th day of every month in the Defendant's shop, and the Plaintiff did so every month. When on 28.5.1942 the Plaintiff did not send a collector, the Defendant on 29.5.1942 and also after that day tendered the rent to him, and the Plaintiff refused to accept it.

(5) The Defendant denies being in possession of or using the Plaintiff's land other than the land let to him or the user of which had been allowed him by the Plaintiff. Moreover, the Plaintiff cannot sue for " eviction " in respect of land which had not been let to the Defendant ; he should have sued for recovery of possession thereof.

(6) The action is inconsistent with the principles of equity which have the force of law in Palestine. The Defendant leased the property on 28.11.1940 and with the Plaintiff's consent erected a building thereon, investing an amount exceeding LP.500.

(7) The intention of the Plaintiff is only to unlawfully enrich himself : after the Defendant had from time to time been compelled to agree to a rise in rent, the Plaintiff now tries by some legal trick to get into possession of the whole building which the Defendant has erected without reimbursing the Defendant for his expenses (see Clause 4 of the agreement attached to the Statement of Claim).

18.6.1942. (Sgd.) HERMAN COHN,
Attorney for Defendant.

In the Magistrate's Court of Jerusalem.

No. 3.
Reply by Plaintiff, 21st July 1942.

No. 3.

REPLY BY PLAINTIFF.

IN THE MAGISTRATE'S COURT OF JERUSALEM. 21.7.42.

Civil Case No. 1559/42.

MOSHE VALERO, represented by his advocate H. A. Valero, Mizpa Bldg., Jaffa Road, Jerusalem Plaintiff

V.

A. Z. LIPSHITZ, represented by his advocate Herman Cohn, 1 Ben Yehuda Street, Jerusalem Defendant.

WRITTEN REPLY

to the Defendant's Statement of Defence pursuant to the Order of the Court dated 19.7.1942.

The Plaintiff does not admit any of the facts which the Defendant alleges in the Statement of Defence and replies as follows :—

(1) The Rent Restriction (Business Premises) Ordinance, 1941, does not protect the Defendant, as the said Ordinance applies only to " premises " and not to an area of unbuilt land such as was let to the Defendant.

(2) The Plaintiff need not prove or tell the Defendant for what purpose he required the land, because it is clear from the Agreement that the Plaintiff may terminate the Agreement for any purposes he thinks fit, and therefore his notice dated 31.5.1942 is of full effect.

(3) The Plaintiff denies that it was agreed between him and the Defendant that the Defendant should pay the rent in his shop. He likewise denies that he did so every month. The Plaintiff further denies that the Defendant tendered payment of rent on 29.5.1942 as alleged in para. (4) of the Statement of Defence.

(4) The Defendant has admitted :—

(A) that he received the notice dated 31.5.1942 to terminate the Agreement (vide para. 2 of the Defence) ;

(B) that he was under obligation to pay the rent on 28.5.1942 (vide Notice of Payment into Court) ;

(C) that payment of the rent was not tendered nor effected on the date of payment (vide para. 4 of Defence) ;

(D) the Defendant did not deny in his Defence (and that amounts to an admission) that he did not notify his intention to have the lease renewed (vide Clause 5 of the Agreement and para. 4 of the Statement of Claim).

In view of all these admissions or any one of them, the Plaintiff is entitled to an order for eviction against the Defendant.

(5) It is clear from Clause 5 of the Agreement that the lease is terminated on the 28th day of every month and is not renewed unless the lessee (Defendant)—

(A) has notified the lessor three days before expiration of lease of his intention to renew ;

(B) has paid the rent in advance ;

(C) the lessor did not annul the lease under Clause 3 of the Agreement.

Whereas none of the vital conditions (A) and (B) were fulfilled and, moreover, the lease, if any, was cancelled by the lessor, the Defendant has no right to be on the land, and must vacate it.

(6) It results from the aforesaid that even if the Rent Restriction (Business Premises) Ordinance protects the Defendant (which the Plaintiff denies), the Plaintiff is under that Ordinance entitled to an order for eviction against the Defendant, because he did not perform the terms of the Agreement as required under Section 4 (1) (*a*) and (*b*) in that :—

he did not pay the rent on the day it was due ; he did not notify three days in advance his intention to renew ; and he uses 50 square metres more than he is entitled to under the Agreement.

(Sgd.) H. A. VALERO.

No. 4.

NOTICE OF MOTION for Further and Better Particulars.

No. 4. Notice of Motion for Further and Better Particulars, 8th September 1942.

IN THE MAGISTRATE'S COURT OF JERUSALEM.

Civil Case No. 1559/42.

MOSHE VALERO, represented by his advocate H. A. Valero, Mizpa Bldg., Jaffa Road, Jerusalem Plaintiff

V.

A. Z. LIPSHITZ, represented by his advocate Herman Cohn, 1 Ben Yehuda Street, Jerusalem Defendant.

NOTICE OF MOTION.

TAKE NOTICE that the Court will be moved on the 29th September, 1942, at 9 o'clock in the forenoon or so soon thereafter as counsel can be heard, by the above named Defendant, that the Plaintiff be ordered to furnish further and better particulars as to his allegation in para. 3 of the Statement of Claim and para. 2 of his Reply dated 21.7.1942, disclosing a clear answer to the plea of the Defendant that the Plaintiff does not need the land at all ; and further that the Plaintiff be ordered to attach to his written pleadings a copy of the notice which according to him was sent to the Defendant on 31.5.1942 ; and that the Plaintiff be ordered to bear the costs of this application.

In the Magistrate's Court of Jerusalem.

No. 4. Notice of Motion for Further and Better Particulars, 8th September 1942, *continued.*

The grounds of this application are as follows, viz. :—

(A) In his reply dated 21.7.1942, the Plaintiff evades giving particulars of the Plaintiff's need of the land in issue which is a condition precedent to the effect of his notice dated 31.5.1942, although the Defendant in his Statement of Defence expressly pleaded that the said notice was of no effect because the Plaintiff was not in need of the land. Particulars as to the Plaintiff's need of this land are within the knowledge of the Plaintiff only.

(B) Under Rule 105 of the Magistrate's Courts Procedure Rules the Plaintiff should in his Statement of Claim have set out the terms of the notice which according to him had been sent to the Defendant on 31.5.1942 or he should have attached it thereto. The Defendant cannot be expected to admit having received the notice or to deny having received it so long as the contents of the notice have not been made known to him.

Dated this 8th September, 1942.

(Sgd.) HERMAN COHN,
Advocate for Defendant.

To : Moshe Valero,
c/o his advocate H. A. Valero,
Jerusalem.

No. 5. Further and Better Particulars, 6th October 1942.

No. 5.

FURTHER AND BETTER PARTICULARS.

IN THE MAGISTRATE'S COURT OF JERUSALEM.

Civil Case No. 1559/42.

MOSHE VALERO - Plaintiff

V.

A. Z. LIPSHITZ - - Defendant.

PARTICULARS

furnished by Plaintiff upon the Order of the Court.

The land in issue was required by the Plaintiff for the purpose of building thereon, or, in the alternative, for the purpose of selling the same.

6.10.42.

(Sgd.) H. A. VALERO,
Advocate for Plaintiff.

In the Magistrate's Court of Jerusalem.

No. 6.
Motion to strike out paragraphs 6 and 7 of Statement of Defence and Order made thereon, 21st July 1942.
1st September 1942.

No. 6.

MOTION to strike out paragraphs 6 and 7 of Statement of Defence and Order made thereon.

IN THE MAGISTRATE'S COURT OF JERUSALEM.

Civil Case No. 1559/42.
Motion No. M/208/42.

MOSHE VALERO - - Plaintiff

V.

A. Z. LIPSHITZ - - - - - Defendant.

APPLICATION

under Rule 1090 of the Magistrates' Courts Procedure Rules, 1940.

In pursuance of the above rule, the Plaintiff hereby prays the Court to strike out paragraphs 6 and 7 of the Statement of Defence of the Defendant, because they contain unnecessary matters which embarrass and are wilfully intended to prejudice, complicate and delay the fair trial of the action.

(Sgd.) H. A. VALERO,
Advocate for Plaintiff.

NOTICE OF MOTION.

TAKE NOTICE that the Court will be moved on the 1.9.1942 at 8.30 a.m. or so soon thereafter as counsel can be heard, by the above named Plaintiff, that paragraphs 6 and 7 of the Defendant's Statement of Defence be struck out under rule 109 of the Magistrates' Courts Procedure Rules, 1940, and that the costs of this application be on the Defendant.

Dated this 21st day of July, 1942.

(Sgd.) H. A. VALERO,
Advocate for Plaintiff.

To : Mr. A. Z. Lipshitz,
c/o Mr. Herman Cohn, Advocate,
Jerusalem.

ORDER.

UPON HEARING advocates of both parties, I ORDER that the Defendant shall strike out of his Defence the words

" The intention of the Plaintiff is only to unlawfully enrich himself "

and the words

" by some legal trick "

appearing in paragraph 7 thereof ; subject to the aforesaid, the application is dismissed. No costs.

1.9.1942. (Sgd.) BENJAMIN LEVI,
Magistrate.

In the Magistrate's Court of Jerusalem.

No. 7.
Reply to paragraphs 6 and 7 of the Defendant's Statement of Defence.

No. 7.

REPLY to paragraphs 6 and 7 of the Defendant's Statement of Defence.

(Pursuant to the Order of the Court dated 1.9.1942.)

IN THE MAGISTRATE'S COURT OF JERUSALEM.

Civil Case No. 1559/42.

In the Case of :—

MOSHE VALERO, represented by his Advocate H. A. Valero, Mizpa Building, Jerusalem - Plaintiff

V.

A. Z. LIPSHITZ, represented by his Advocate Herman Cohn, Abdulafia Building, Ben Yehuda St., Jerusalem - Defendant. 10

REPLY

to Paras. 6 and 7 of the Defendant's Statement of Defence.

(Pursuant to the Order of the Court dated 1.9.42.)

The Plaintiff denies that he gave his consent to the lessee to erect a building on the leased property. The leased property was let only for the purpose of a garden. When the Plaintiff passed by and saw that the lessee was erecting a building, he expressed his surprise, and notified lessee that he was doing same without permission. The lessee replied that he was erecting the building on his own responsibility. 20

(Sgd.) H. A. VALERO, Advocate,

Attorney for Plaintiff.

No. 8.
Record of Magistrate's Court.

No. 8.

RECORD of Magistrate's Court.

RECORD.

6.10.42. Representatives of both parties appeared.

Counsel for Plaintiff : May I submit the following evidence.

First witness for Plaintiff : HAIM AARON VALERO, Advocate, duly sworn deposed :— 30

I am in charge of leasing the property of the Plaintiff, I am his son, I am also in charge of the collection of rent, etc. In the month of May I received final instructions to evict the Defendant from the land which he now occupies, because the Plaintiff was in need of the land. On 31.5.42 the Plaintiff signed a notice of termination of the lease (Exh. P/2) which I sent to Defendant. On 31.5.42 an hour or two after the sending of the letter the Defendant came to my office in connection with the payment of the rent which was overdue since the 28.5. I told him that the Plaintiff in any case terminates the lease and that the Defendant came late to pay

as he should have come on 28.5. The Defendant replied that on 29.5 he was busy with a criminal case and that he could not come, whilst as regards 28.5 he said nothing.

The Defendant occupied part of the land, about 50 metres of it, already two or three years previous to that. His café is found in property not belonging to the Plaintiff but which is adjacent to the Plaintiff's land. Prior to P/1, the Plaintiff leased to the Defendant 50 metres of his land for the purpose of making a garden attached to his café. The Defendant started building quite a massive wall around, and it was clear that it was not intended for the garden, there were already marks of windows. I told him that the lease was for a short term, that he was doing that without consent and that at the expiry of the lease he will have to pull it down or lose it according to the contract. The Defendant answered that he knew that and that he acted at his own risk. This took place two years ago. When coming to sign P/1, Defendant wished to renew the old contract. I told him that Plaintiff did not wish to lease the place at all because he intended either to build on it or to sell it. The Defendant went to see all sorts of friends and asked them to influence the Plaintiff to lease the place for a shorter time and in an absolutely temporary manner. As a result of this the land was leased to him, according to P/1 for one month on the understanding that the Defendant was bound to leave afterwards. Many a time I emphasised that three days before the 28th of every month the Defendant had to notify me as regards the coming month and to pay the money in advance. As regards the payments of December, January, February and March, the Defendant or his brother called on me at my office and paid the rent. Every time I repeatedly stressed that he had to come exactly according to the contract for otherwise he will find himself dangerously placed in connection with the breach of contract. During the months of April and May I was not in Jerusalem. Instructions were given at the time to my clerk who collected the rent, that there was no need to go to the Defendant's premises, for the Defendant will come to pay in the office but as regards these two payments I told my clerk to go to Defendant's shop as an exception owing to my absence from Jerusalem. I was on the place myself and saw that he was actually using an area larger than that agreed upon i.e. he was using 150 metres instead of 90–100 metres in accordance with the contract P/1.

X-xd.: D/1 is the first contract, dated 28.11.40. The seal of the City Engineer's Department is dated 30.12.40. I did not submit it to the above-mentioned department. I believe that the Defendant presented it. The Defendant had to apply for a permit to build fence to the garden and I believe that he submitted D/1 in order to prove that he was authorised by the Plaintiff. D/1 was drafted by me and was signed by the Defendant. P/1 was drafted by me and the Defendant signed in my office. He negotiated with me and the Plaintiff as regards the measure of the rent. Finally I agreed to the sum of LP.13.500. I do not think that prior to P/1 we were informed that the Plaintiff was in need of the land. I am also dealing with matters of sale. I was instructed to enter into negotiations if there is a suitable offer not only in respect of this land. About a year ago this matter was spoken of, brokers came to see me and offered proposals that were not suitable, but as regards this land nothing came out. We did not find a suitable purchaser. Now other offers were made in respect of all the lands. I do not know if there is at present a purchaser.

In the Magistrate's Court of Jerusalem.

No. 8. Record of Magistrate's Court, *continued.*

No broker brought to me a purchaser who can be taken into account. I am not the only one who deals with that, I together with the Plaintiff. I have a special clerk for collection of rents from those to whom I send him. His name is Barouch Levi. I have a clerk who replaces him in case of illness. Apart from myself the Plaintiff and the above-mentioned clerks there is no one else who collects rents.

When anyone comes to my office to effect payment, I note in my book that I received money. I do not write down whether the payor came himself or whether it was sent by post, but the clerk writes in his notebook that someone has paid. I only enter payments in. On 28.12, the Defendant or his brother came to see me at the office in order to pay. It is recorded with me. I also remember that during the first four months they came to my office to pay. It is utterly untrue that the rent was collected in the café. At the time of signing the contract P/1, we spoke about the mode of paying the rent. The Defendant knew for years that I have a clerk for collection. I did not tell them that the clerk will come to collect, but I told them that they had to inform me or my clerk three days in advance and to pay at the office. The reason why the lease is for a term of one month is that the Plaintiff did not want at all to lease to the Defendant, for he was in need of the land for purpose of sale or building. A year or a year and a half ago I went to the engineer Mr. Brin and asked him to draw out plans for erecting on this land a building of 5–6 floors, but for the time being one floor only. I told everything to the engineer but I told him to investigate as to the requirements of the municipality, the contractor and the materials, before incurring any expenses. We encountered difficulties in connection with the materials and the matter was delayed. No application was submitted to the municipality. Half a year ago I went to see the controller of materials who told me that he doubted much if I could succeed in obtaining a permit for the release of the materials. Afterwards I did not deal with this matter any more. As far as I know we hitherto found no suitable purchaser. We leased for a term of one month to provide for a case of our building on the land or selling it. I measured the area with my steps and found that he was occupying about 150 metres. I took the steps outside the building around all the land. I do not remember the number of steps. I stepped in two directions and after multiplying I obtained the said result. This was half a year ago, after making of P/1. Some weeks before the filing of this action I sent my clerk to tell the Defendant that he did not fulfil the terms of a certain oral agreement made between the Defendant and the Plaintiff (not in my presence), whereby the Defendant had to erect a fence and close the remainder of the plot with a fence of height 40–50 cms. and that in case the Defendant complied with this requirement he would be allowed to use the remaining 50 metres which he actually occupied. I therefore sent my clerk to inform the Defendant that as he failed to erect the fence and that as he built a passage without permission he was forbidden to use the said remaining 50 metres. The Defendant made something that cannot be called a fence, he placed a stone near a stone. He also built a passage to the café across the Plaintiff's land. The clerk told me subsequently that the Defendant replied to him that it was better for the land that a passage was made. I again sent the clerk Levi to inform him that he did not comply with the terms of the agreement and that I was at liberty to take action, and that I refused to leave the state of

affairs as it was, notwithstanding that he wished to persuade me that it was nicer to leave it as it was. The 28.5 was a Thursday. The Defendant called on me on Sunday. My office is closed on Saturday. In April I was not in the office but the office was not closed. I sent then the clerk to collect the rent. As recorded with me, on 7/4 and 29/4 the clerk gave me the payments, of March and April. In May I told the clerk not to go to collect. On 7/4 and 29/4 I was in Jerusalem. I do not remember if I was here on 28/4. Before leaving I instructed the clerk to collect from the Defendant as an exception. On my return I revoked expressly this instruction and told the clerk not to go. I did not tell the Defendant nor did I tell the clerk to tell the Defendant that the clerk came to collect payments only because of my absence. On the site where the Defendant has now erected a building (part of the Plaintiff's land) there was previously an open garden. Before D/1 the Defendant occupied the land during the summer months five months each time and used it as an open garden. I think that there was an agreement in writing. I do not remember what was the amount of the rent. After the signing of P/1 I saw that he started erecting walls of a building, in January, February 1941. In 1940 we told him that we were not disposed to renew the contract for a number of months but for a whole year and he signed D/1. He said that he was unable to make people sit in an open garden during winter, but this was the reason for his having rented for the summer months only. He did not say that he had to erect a building. It actually came out that he had to pay for a whole year notwithstanding that he was actually able to use it in the summer only. The arrangement came as a result of his having occupied always the premises for more than five months. I think that prior to D/1 he paid on a monthly basis.

Second witness of the Plaintiff : The PLAINTIFF duly sworn deposed :—

Before we signed P/1 there were many differences with the Defendant. I had no desire to renew the contract. I wished to remain free to use the land. He submitted various offers in order to persuade me to enter into a contract. Prior to P/1, his last proposal was to constitute a sort of partnership whereby the whole land will yield LP.70 per month but on condition that the contract should run for a term of three years. I found that it was not worth my while to bind myself for three years and therefore I refused. As a result of further negotiations and the addition of area to the area previously held by him, we made the contract P/1. I agreed for a month only, because I did not want to bind myself in a more absolute manner, I introduced a stipulation empowering me to terminate the lease at any time. I reserved this right for various purposes : I prepared building plans, but owing to the situation I was unable to carry them into effect. The second aim was sale. I am negotiating with many brokers in connection with the sale of this plot of land. During 1942, two brokers applied to me. One of them offered LP.17,000 but I asked 20,000. One of them named Dedis was interested in having the land free from a lease. I told him that according to the contract I was able to deliver the land at any time. After the signing of P/1, the Defendant asked me to sign an application to the municipality for a permit to build a fence. The intention was to close the part which he used as a garden. I refused. " A " is the part which he wished to fence. " B " is the building which he erected without permission, " C " is the

In the Magistrate's Court of Jerusalem.

No. 8. Record of Magistrate's Court, *continued.*

remainder of the land and " D " is the remainder of the land which he used in excess of the area permitted to him by the contract. (Plan of witness Exhibit P/4.) I wished to safeguard my interests in respect of " C." The Defendant then proposed to me to fence all the plot : " A," " B," " C," " D," I consented, on condition he fenced the whole land but not part " A " in which he had to mark the location of the garden with flowers, on condition the fence surrounded the whole land. The Defendant agreed. On this basis I signed the application to the municipality regarding the licence. Bona fide and without a request on his part, I told him that as he undertook to fence all the land I gave him part " D " for gratis use. We spoke of a fence high enough to prevent people from entering. The fence in part " A " was to be made of wood and flowers. But instead of this he erected a strong and beautiful fence around " A." I passed by there and remarked to him but Defendant said that he would do everything in order. After finishing the fence in part " A " he neglected the general fence, or he merely made marks and doors and a passage : " E " " F " " G." I was very much angry at him and decided to bring an eviction case against him in order to recover my land, for during that time brokers came to see me and as the Defendant did not deliver the land I was unable to get the price which I asked. I saw that the Defendant was starting to erect a building, surpassing the height of the fence. I remarked to him that it was dangerous to spend too much money as I might need the land at any moment. To this he retorted that he acted at his own risk. According to the contract, any construction belongs to the Defendant who is allowed a certain time to pull it down or remove the construction.

X-xd. : It is now 20 years that I and my family are owners of the land. It is now 10 years that the Defendant has often applied to me wishing to take the whole land on lease. I asked 5 per cent. of the value of the land, a sum which he could not afford. I was always intending to build on the land but for various reasons I was unable to carry my aim into effect. On account of the war there are now further difficulties. I did not apply to the controller of industry but my son did, in order to release materials. I know that there are difficulties. At present I shall not be able to build because I shall not be granted a permit, but my purpose is now different ; I desire to be the owner of the land in order to sell it. Mr. Dides was the only one who has expressly asked me if the land was unoccupied, but obviously everyone is interested in that. Dides offered LP.17,000, whilst I asked LP.20,000. He did not return subsequently. This took place a month and a half ago, i.e. after the bringing of this action. Other brokers have also applied to me. Before the war Mr. Mousayof offered LP.12,000. Some weeks ago Mr. Bier rang me up and asked if I agreed to sell at LP.16,000. Hitherto the highest offer was LP.17,000, but on condition to have the land vacated in order to avoid disputes, I signed D/1 which is a contract for 12 months with the right of rescission by notice. I did not send such notice. This is the seal of the City Engineer's Department. I did not submit the contract to this department. Possibly it was submitted by the Defendant but I do not remember that he asked my consent. I do not remember signing an application for a permit to build. This is not impossible, if I see the document I shall be able to answer and explain. The building started to be erected a short time after P/1 and not after D/1. As far as I remember

the building is in existence since a few months. When I noticed that the height exceeded that of a fence and that there were window marks, I made him the above mentioned remark. " Constructions " (structures) in P/1 mean : fence, anti-solar cloth which used to be before, and wood with flowers. Prior to D/1 I leased to him the land for the summer months. At that time this cloth was used by him and I thought that also after P/1 there will be cloth or something else, according to his responsibility, but I did not think that there will be something more than a garden. The Defendant did not ask me if he could erect a building. He only made the above mentioned remark : on his own risk. It was foolish of him to invest money in a building, notwithstanding that the contract was temporary, for one month. In the course of the above mentioned conversation I told him that it was foolish of him to spend money on this building, at this he answered that he acted at his own risk. We did not speak any more about the building. He paid a small sum for the summer months. I entered into this temporary contract in order to make him a favour and not to make business with him. I signed the form of a permit for the building of the fence. Maybe I did not read it, for I trusted him as I should trust a good Jew, but I knew that it was a form for a fence. I did not give instructions to warn him to build a fence as he promised. I myself spoke to him somewhat severely, as he abused my confidence, for he did just the converse of what we agreed upon. Immediately after he built the fence he traced the passage, two months after P/1. I think that the building was already erected then. The building was erected after the signing of the last contract. Prior to the opening of the passage the Defendant did not use part " C " for the purpose of passage. This was absolutely forbidden to him before the signing of P/1. After D/1 he opened a door on the land and at this I told him that he was not allowed to do so. Our relations were then good and I did not want to demand from him to close the door. He opened the door in order to communicate with the kitchen. To the area which I leased to him there is an entrance from King George Avenue. After P/1 he is entitled to have a door as he is allowed to use an additional area. All the town was passing on the open land and that is why I did not forbid him before P/1. I, myself did not measure the area which I leased to him neither the area of the passage. The passage has a width of about 2 metres, and runs along the whole land. Apart from the passage he does not use the land. Prior to D/1 there was a unilateral agreement signed by the Defendant. He then used to pay on a monthly basis. He used to pay sometimes to my second son Shlomo who has no office. I was in Europe and I do not know if at that time they came to him for collection of the rent or whether he came. I also do not know what was the position afterwards. I rely entirely on my son. The word " construction " in the contract can also include a building.

R-xd. : Prices of land are much higher than those of 10 years ago. The time now is extraordinary good for the sale of land or buildings. Mr. Bier visits me every year and knows my prices. This year he asked me about the price and I told him LP.20,000. He said he will try but did not return. I did not apply to him again, I am waiting. " G " is the café, " H " the kitchen, " I " is the door which he made for the garden and possibly " J " to communicate with the kitchen. This he did without

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permission but now he is allowed to do so. The oral agreement was to enclose with a fence the whole of my land, around all the land.

Counsel for Plaintiff: I close my case.

Adjourned to 13.10.42.

13.10.42.

First witness of the Defendant: Mr. ARO ALTERMAN, duly sworn, deposed :—

I am an engineer. I know the building which was added to café Tuv-Taam. I built it on Plaintiff's land in 1940–1941. The Plaintiff knew about the building. I saw the Plaintiff's signature on the plan of the land. When I drew the plans for the above mentioned additional building I had to obtain the signature of the owner of the land for without it the municipality will not grant a permit. I handed over the plans to the Defendant for the purpose of making the Plaintiff sign them. As I heard that he refused to sign I went together with the Defendant to the Plaintiff that he may sign the plans. There were some disputes between them, apparently as to the question of price, the terms of the contract between them were different and there were negotiations. The Plaintiff refused to sign the plans but he saw them. We showed them to him and explained that we were going to make a covered winter garden. He showed no interest at all as to the form of the building. We spoke only of the area. The plans are now in the hands of the advocate for Defendant are not the ones which I showed him. I did not show him a plan but a sketch of a plan. I do not remember if it was one of these. In any case I showed him one plan. The Plaintiff did not give her signature for the municipality. I received a licence from the municipality. I received D/1 from the Defendant and submitted it to the municipality. The municipality required the consent of the Plaintiff for the building. I informed the municipality that the Plaintiff has consented. The Plaintiff has truly consented. The Plaintiff did not sign in my presence D/1. I have also submitted a plan to the municipality in respect of the fence but I did not build it. Also in respect of the fence the municipality required the consent of the Plaintiff. The Plaintiff consented. I did not go to him. I know that he consented by the signature which I saw on the plan, Exhibit D/2. This was after the erection of the additional building. D/2 the additional building is marked as a building. Near the yellow colour, in the place which I marked "A," on the plan D/2, there is the signature of the Plaintiff which I submitted to the municipality.

X-xd.: I myself prepared the plan of the building. I built the building. I submitted to the municipality the plan of the building. The plan which I submitted to the municipality was not shown by me to the Plaintiff, and was not signed by Plaintiff. A signature was asked from me. They refused to grant me a permit without a signature. The permit was given to me in reliance on D/1. D/1 was received by me and the Defendant, from Mr. Valero Advocate (counsel for Plaintiff in this action). The Plaintiff surely agreed that the Defendant should erect a building on this land. The Plaintiff was not interested in the building, he was only interested as regards the area but not as regards the building. According to the contract the building belonged to the Defendant and had to be

demolished at the expiry of the lease. This was agreed upon in my presence. At the beginning of the winter 1941 I dealt with the matter of the permit and the building and in Purim (carnival feast) 1941 the building was completed. It cost a good amount of money. I was not concerned whether it was worth the Defendant's while to build a building for a few months. The Defendant knew that it was a temporary building it was agreed between them that it will be demolished in case the Plaintiff wished to build and as this was at the beginning of the war there were prospects that the Plaintiff will not build during the duration. This is also in accordance with the agreement in writing. There is a fence between the two gardens marked D/2. There is no passage according to the plan prepared by me. The red external line does not bear a sign of a passage. There is no entrance from around. However in the municipality there is a plan similar to D/2 showing a door in the fence between the two gardens. If counsel for Plaintiff says that there is no such a door marked in the municipality plan then possibly the plan was corrected. Maybe some one made the correction. The correction can be detected but if there is a red line, a correction cannot be recognised. I do not know if D/2 is corrected. If one plan is corrected then all of them must be corrected. The red external line was added in " B." I make a door in D/2 and it seems that it was corrected. A door is marked by leaving an open space in the line. It seems that the Defendant corrected D/2 without telling me. I did not build, the Defendant built himself. I saw the fence only from outside. There is a fence built of simple stone, of height of 80/90 cms. There is a passage and stairs to the land. I do not remember what was in the middle of the land. I think that there is gravel. I do not remember if there is a door to the garden. He did not let me build the fence because he thought that others will do it cheaper. This is why I did not visit him for three months. I heard about this action only the day before yesterday.

R-xd. : The relations between me and the Defendant are not so good. I did not receive the permit for the fence. I did not measure the height of the fence. No height is indicated on D/2. I did not speak with the Plaintiff about the height of the fence. The plan which I showed to Plaintiff was the same as the one which I submitted to the municipality there were however certain changes, only a different front, but the same area and the same marking of the building. The Plaintiff knew that the Defendant intended to erect a building there. He understood what we were going to make there. I spoke about the war with the Defendant only whilst from the Plaintiff I heard nothing about the war. The Plaintiff said he had a plan to build on the land, this he said to both me and the Defendant. This was not a reason for the Plaintiff not to agree to the Defendant's building.

The witness asks for fees. I am an engineer.

ORDER : The Defendant must pay to the witness the sum of 500 mils which will be considered as part of the costs.

Counsel : I shall be busy to-morrow in Haifa. Case therefore adjourned to 15.10.42.

15.10.42.

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No. 8. Record of Magistrate's Court, *continued.*

Second witness of Defendant : THE DEFENDANT duly sworn deposed :—

D/1 is not the first contract between me and the Plaintiff. In 1937 we made the first agreement as regards an area of about 50 sq. metres. I applied then to the Plaintiff and he entered with me into a temporary contract, after conducting lengthy negotiations in connection with the amount. When I applied to him at that time, he agreed on principle to lease to me, on this there were no negotiations. There was a condition that in case the Plaintiff wished to build I had to vacate. The rent amounted to about LP.27.500. He leased to me for the summer months up to 1.11. In winter I had no need for it but as I left the fence I had to pay LP.5 in the first year. In 1937 we made an agreement in writing, which remained with the Plaintiff. I do not remember if he gave me a copy in 1937. As regards the second year I applied to the Plaintiff some months before but the Plaintiff said that he still did not know and that he will decide on the coming of summer. Afterwards we discussed the price. He asked for LP.40, I offered 27 and finally we agreed on LP.30, for the summer months till 15.11. In 1939 I again applied to him ; I offered LP.27 and we agreed on LP.32.500 for the same period. In 1938, 1939 and 1940 we made an oral agreement to the effect that I must not dismantle the structure which will remain on the land. The agreements in writing are all found with the Plaintiff. I was not given copies of them. I consulted nobody as regards the drafting of the agreements, for I did not think that there will be disputes. In 1939, only for the summer months so also in 1940. For about LP.30 may be LP.32 or LP.27. The agreement in writing as above-mentioned. In the middle of summer I told the Plaintiff that I wished to arrange a beautiful " winter garden." Previously there was merely a small fence and I wished to make it in such a way as to make it fit for use during the whole year, a building with glass, a beautiful coffee house. I told this to the Plaintiff during the months of the past summer. The Plaintiff proposed to found a partnership, i.e., that the Plaintiff should be a partner in all the business to the extent of 50 per cent. ; he will give me the land, I shall build and receive the price of the building ; 50 per cent. of the net profit. It never occurred to me to make such a proposition. The proposition was made by the Plaintiff. I prepared a plan and an offer, I did not refuse. The plan was of a building larger than the one which I actually erected, twice as large, and of a garden, and I showed it to him. I showed him a plan and an offer, i.e., as to who was going to manage the business, etc. The Plaintiff said that he will study the matter. He afterwards told me to work out a more detailed plan showing the amount of profit which the business is capable of yielding. I worked out a more detailed plan, in which I calculated a profit of LP.50 to each party. I told the Plaintiff. One or two days later the Plaintiff said that he did not want a partnership, but wanted a monthly rent of LP.40 for allowing me to build on my account and to arrange everything I like, for a period of five–four years. I said five years, whilst the Plaintiff said four. I did not consent to his proposal for I was unable to undertake the risk. The rent was too high. It was for the whole land. Afterwards I offered to him to rent the small area which I hitherto occupied. I offered him about LP.30 as before. The Plaintiff asked 60–80–100. We agreed on LP.60 on 1.12.40. On the same day we made a contract in writing. It remained with the Plaintiff. I received no copy. It was typewritten I did not sign on D/1. I signed on the agreement received by the Plaintiff.

After four–six weeks I received D/1. In the agreement which I signed it was written that all the construction (structure) will be my own private property. In D/1 there is an additional provision that in certain cases the construction will belong to the Plaintiff. I signed this document (the document which was in the possession of Counsel for Plaintiff was put by the Counsel for Plaintiff at his disposal and was submitted by the Defendant and marked Exhibit D/4). The additional provision in D/4, is not written in my handwriting. Maybe I wrote the initials of my name in the margin, but I am not sure. This is the form in which I write my initials but I cannot tell if those on D/4 are mine. When I signed D/4 the additional provision was not there. D/4 without the additional provision is the agreement which I mentioned above and which I delivered to the Plaintiff. After that I signed D/4 I applied to the municipality for a building licence. The municipality asked from me to produce either the plan signed by the Plaintiff or the agreement signed by the Plaintiff. I did not receive D/4 from the Plaintiff. I told the municipality that there was a written agreement between me and the Plaintiff and they asked me to produce it. I went ten times to the Plaintiff and asked him to give me the contract or to sign on the plan but he refused. I then asked my money back and told him that otherwise I will see an advocate to claim my right. The Plaintiff's son then added the sentence : " If the lessee does not vacate the above-mentioned property " till " the expenses which he incurred on them." D/1 was typed in my presence in Mr. Valero's office and was delivered to me after that it was signed by the Plaintiff. The addendum was inserted by the request of the Plaintiff when I asked for the contract in order to obtain the building permit. This was the Plaintiff's condition, otherwise he would not have given me the written agreement. Having no other alternative I agreed. The Plaintiff knew that I needed his signature for submission to the municipality for I told him that I needed his signature in order to receive the building licence. I related to him the details. Already before the signing of D/4 a building plan was ready with me, which I showed to the Plaintiff before the signing of D/4. Plaintiff said nothing. He did not object, he knew the purpose for which I rented the land, negotiations were conducted for about half a year. I was in possession of about 12 plans and I showed one of them to the Plaintiff, before D/4. When I asked for the signature, I showed the Plaintiff another plan, also one of the 12. He was able to see from the plans the kind of building I was about to erect, I also told him. The first plan was cancelled and I do not know where it is, we might have thrown it. The second plan which I showed him is at the municipality ; it is the approved plan, the approved general view. I did not receive a copy of it. I was granted a building permit. D/1 was submitted to the municipality by me or by my engineer. I built what is now built, in accordance with the licence. The building cost me about LP.500. The building was finished on the beginning of March 1941. During the time of the building I saw the Plaintiff many times. He came to my café. I do not remember if he showed any interest as regards the building. The first plan which I showed him provided for bricks below, glass in the middle and wood above. This was not approved by the municipality which asked for a permanent building. I conveyed this to the Plaintiff and showed him another plan, i.e., the plan of the present building. The Plaintiff told me nothing. As to the Plaintiff's evidence

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No. 8. Record of Magistrate's Court, *continued.*

that he told me that it was foolish of me to invest so much money and about my risk, such conversation may have been held in my café. When I showed him the said second plan prior to its approval, the Plaintiff did not tell me that it was foolish of me to invest so much money in a permanent building. On some occasions we spoke in my café about the building but I do not remember what was said by the Plaintiff and by myself. I told him that formerly I intended to build a temporary building but that this was not approved by the municipality and that I had no other way but to erect a permanent building and that after paying the rent and the contractor I was short of money for the permanent building. For this purpose I contracted debts. There were many talks. Once he said that I acted foolishly, once he said that I did nicely that I did cleverly, I do not remember details. In this respect I received no letter from him. After the completion of the building the Plaintiff saw it frequently, we had talks and never did he tell me that I had to vacate or that he wished to build ; this he said only after the termination of the lease. He never said that he wished to sell or that he had an interested purchaser. I received no written notice during the term of D/1. Few months before the expiry of the term, negotiations started again. I applied to the Plaintiff in order to rent once more the place, for a year, to extend the lease. The Plaintiff told me that he still did not know and that perhaps he will build. I did not ask for details of his building. I did not reply, I went away. The Plaintiff promised me orally that so long as he did not build I shall be able to use the land, he made this promise at the time of making the contract D/1. Now he told me that he desired to build. But after lengthy negotiations, he told me that it will not be worth his while to build if I rent a larger area. At the time I did not want to rent another area, but I had no other way and I agreed, for a month, at LP.13.500 per month. For what is built plus 50 sq. metres, LP.162 a year. We made a contract for a month as the Plaintiff refused to take it for a year, for he said that perhaps he will build. I do not know why he was not satisfied with having a right of rescission under a contract for a year such as D/1, the Plaintiff knew. I signed P/1. I did not receive a copy signed by the Plaintiff. I asked. I also did not receive an unsigned copy. P/1 was drafted by the advocate Valero or by the Plaintiff. I signed at the office of Advocate Valero. I do not remember if the Plaintiff was present. I signed immediately after reading the contents. I received the original of P/2. Then I received this letter (D/4). This is a copy of the reply which I sent him (D/5). (Representatives of parties agree to the submission of the document D/5 notwithstanding the words " without prejudice " for what it is worth.)

For lack of time this case adjourned 19.10.42.

19.10.42. The Defendant being warned that he is under oath continued : When I was compelled to take more land, I built a fence. When we made P/1 the Plaintiff did not want to renew the contract unless I rented an additional area. I built a fence for my garden ; around my garden. We did not speak of a fence around the whole land. Only when I applied for a licence to build a fence, the municipality asked for the signature of the Plaintiff. I ran to him during several months. Once he said that he did not want a fence, once he told me to build a fence of such and such a height, once he told me to build it of stones without requiring

a permit, once he told me not to make a fence in the middle of the land. I was compelled to take an additional area. In Exhibit D/2 " A " is my " winter garden " and in the part adjacent to it I was obliged to take another 50 sq. metres and he afterwards compelled me to take till the end all the area of part " C " and to erect on his part " B " a fence of height of 40 cms. and afterwards I obtained his signature. We did not speak of a passage but I told the Plaintiff that I will do a door and I marked the door. The Plaintiff did not object. I received this licence (Exh. D/6) from the municipality. This licence D/6 contained a remark that I was not allowed to build with cement. I built the fence in accordance with the licence. The height is 80 cms. from the inside, where I use the height, and 40 from the outside. In part " B " 80 cms. and in part " C " 40 cms. according to the agreement. The fence was built for me by Mr. Levy and I paid for it LP.103, LP.23 of which were spent for the fencing of part "B". The fence is made of sand, water and stone. The fence is not strong enough. I built it in April and May 1942. The Plaintiff says it. He previously said that the height of the stones should be only 40 cms. He subsequently came concerning the passage; that he did not allow the making of a passage I said that according to my opinion, it is allowed, for I had passage there for nine years already. I told him that nevertheless I was prepared to pay him separately and that if he in no way allows—I shall close. Nine years ago I did not receive permission from the Plaintiff, but I used to pass to the knowledge of the Plaintiff who did not object. When I offered him additional payment he said that he did not agree unless I rented the whole land and added LP.300 to the amount of the rent. I was unable to consent. I paid the rent in pursuance of P/1 as follows: On making the contract I paid for a month at the office of Advocate Valero, who reminded me at the time of the contract, that it was written that I had to notify three days in advance if I wished to continue the lease and that I had to pay in time. I replied to him that I was ready to extend the contract in advance and even to pay him for a half year but that I was unable to agree to come every time to the office in order to extend the contract and pay the rent. Then Advocate Valero answered: Never mind, I shall send. In truth, he sent. He sent even in the first month, but I wished to call on Advocate Valero for in the meantime the law for the protection of tenants was enacted and I wished to tell him that the rent was too high and that I shall be unable to compete with the other café owners who pay a much lesser rent. I entered and told Advocate Valero once more, to fix a rent according to the new law and that I was ready to renounce the garden. I paid him the rent for the month on condition that it will be on account until he agrees. He answered that he refused and that a contract was a contract. I asked for a receipt to contain the words " payment on account " but I did not receive. It was by the end of December. Several times they came to collect and I paid in the café, I do not remember whether this was in January. I know the collector, Barouch Levi, a clerk of the Advocate Valero. I know him for nine years. He did not tell me that he came to collect from me. In April the collector came to me. In May he did not come. I waited a day, he used to come after the 28th on the 29th or 30th of the month. I waited for him the whole day of Friday and when he failed to come I went on Sunday morning to the office of Advocate Valero. They did

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not receive the rent. I wished to send through "Egged." "Egged" sent the money on the same day and Mr. Valero again did not receive. I then received P/2. I went to an advocate. There were three letters P/2, D/4 and I think there was another one. I wrote to him D/5. I came in touch with Advocate Valero and told him that I was not aware of any wrong that I committed against him and if he complained about the fence I could not do it strong as I did not use cement but that I was ready to repair it every time something fell from it without using cement according to the law. Mr. Valero refused, but wanted me to take the whole and pay LP.300. I told him that this was impossible. Apart from this I had a talk with the Plaintiff. I requested Dr. Valach to mediate between the Plaintiff and me. By Dr. Valach's request the Plaintiff gave me an appointment. I went to the Plaintiff who told me that I had bad intentions as regards the passage and the fence. I told him that I entertained no bad intention and did not expect something bad to happen. I asked to settle the dispute. The Plaintiff proposed to me to renounce my building in his favour, and to rent the whole land and add LP.300 to the yearly rent, and to continue the lease also on a monthly basis. I was unable to accept such proposal. During this conversation the Plaintiff did not tell me that he desired to build on the land or that he wanted to sell it.

X-xd.: I am the proprietor of a café and a confectionery, since December 1933. My café is situate on King George Avenue. I was formerly a merchant of wine in Berlin for eight years. I have experience in trade. As from 1937 I started renting a part in the Plaintiff's land for the summer months. At first I made a wooden fence with cover. It was agreed that this should be dismantled at the expiry of the period of the lease; this was agreed in the first year whilst in the second year we agreed to leave it. I paid LP.5 because I did not dismantle the fence in 1937. I paid in cash and involuntarily. A letter was sent to me by Mr. Mizrahi, and I paid in the office of Mr. Mizrahi. I do not remember that there was a judgment against me for the sum of LP.5. In any case I was not present. I do not remember if there was an action. Every year negotiations are continued until a price is agreed upon. The Plaintiff always told me as an excuse that perhaps he will build. He told me that he wanted to build. On one occasion the Plaintiff proposed to me to form a partnership. I came to the Plaintiff and he then proposed to form a partnership. In 1941 I wanted to renew the contract and make a garden with a whole construction, this is the winter garden, i.e. a fence of brick, glass in the middle and a wooden roof. That is how I wanted to make a winter garden and I came with this proposal to the Plaintiff. I wanted a term of some years. The Plaintiff proposed to take the whole in partnership, this was in 1940. When the partnership was not formed, the Plaintiff proposed to me to rent the whole and pay LP.40 per month. He wanted me to rent the whole in order to obtain a larger rent. I heard from Advocate Valero that the area of the land was 300 pics or sq. metres. The front of my building is about 8½ metres. It may be half of the whole front or less, but about half. I do not know the present value of the land. I prepared 12 plans for a permanent construction, before I went to show them to the Plaintiff. I made about 10 plans. I did not show them all to the Plaintiff, but I showed him the temporary construction

and a permanent one. The temporary one was shown to him first, by the end of November 1940 whilst the temporary construction was shown to him the second time, after about six weeks. I showed the Plaintiff the plan of the temporary building, I came to him in order to make a contract of lease for a longer term, for some years. The Plaintiff agreed to the temporary building, I do not have the plan of the temporary building I lost it as I did not use it. Bricks, glass and wood temporary. The Plaintiff agreed. We made the contract D/4 without the addendum and it was orally agreed that so long as he does not build I can remain on the land. This had to be removed in case he wished to build. The addendum detracts from my right, for without it the construction will always remain my own property. In my opinion the addendum makes a difference. I was unable to object. The partnership proposal was that every party should receive 50 per cent. of the profits. During the second meeting I said that every one will receive LP.50 per month. I do not remember saying LP.70 but there is a written offer. I think it was no less than LP.50. The Plaintiff did not agree. The plan of a temporary building was not carried into effect because the municipality did not approve it. I made a new plan which I showed to the Plaintiff. He did not sign it, I do not know why, I did not ask him why. We agreed that he should give the written agreement for the municipality. This was enough for me. I received the agreement at the office of Advocate Valero maybe on the same day or maybe on the next day. I was entitled to the agreement. The Plaintiff knew that I was going to erect a permanent building, as it is built at present. The Plaintiff once said : You do not know me and you build such a building, once he said beautiful and once he said foolish. When the Plaintiff told me how I built such a building without knowing him I answered that I had to erect the building after paying the rent and LP.100 to the contractor. The Plaintiff knew, when I showed him the second plan that I was going to build a permanent building. I knew that the contract was for one year. I knew that according to the terms of the contract I had to vacate at the end of the year and even before that time in accordance with a notice. I built because the Plaintiff promised me that as long as he did not build I shall remain on the land. Were he to build I would have removed what I built. I knew that I was taking upon myself this risk. I thought that it was certain that he will not build. I knew that he will not build and that he will agree to the extension of the term of the contract. Also at the end of the year the Plaintiff promised me orally that I shall remain on the land if he did not build and I was sure that he will not break his promise. He leased to me for a period of one month, in order to hold me in his hands and be able to ask me, every minute a higher rent. I agreed because I was compelled to agree. He did not come with a revolver, but the revolver was that I built. I built on my own mind and I have taken upon myself this risk.

Adjourned to 20.10.42.

20.10.42. Representatives of parties agree for convenience to stop at this stage the evidence of the Defendant and to call two other witnesses, summoned to Court and to proceed with the Defendant's evidence after the hearing of their evidence.

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No. 8. Record of Magistrate's Court, *continued.*

Third witness of the Defendant : LEO POMRANZ, duly sworn, deposed :—

I am Chief Superintendent of Building in the Jerusalem Municipality, in the City Engineer's Department. An application to build on the Plaintiff's land was submitted to us. It was submitted by the Defendant on 13.12.40 an application to erect a temporary building was presented to us. This was refused on 29.12.40. On 30.12.40 an application to build a permanent building was submitted to us. The seal on D/1 bears the same date. The seal must also contain the signature of the Municipal Secretary, and it is not there. I do not know how D/1 containing such a seal can be found outside our file. On 13.12.40 this exhibit (D/7) was entered in the file, unsigned. We refused this application and a new application was submitted. On 24.12.40 a plan as regards the erection of a permanent building, partly made of beton, was presented (Exhibit D/8). This plan was not approved. Plan D/9 was approved. D/10 is the licence which was issued. On 8.1.42 the Defendant submitted amended plans. The licence is dated 12.2.41. We require either the consent of the owner of the land or a proof that he does not object. I did not deal with this matter and I do not know if the consent of the landlord was asked in this case. I only see that a copy of the agreement was submitted and that the licence was granted.

X-xd. : We refuse by means of a letter. The letter is dated 29.12. The letter was handed to the Defendant. Before the refusal to the building of a temporary building there was a proposal to erect a mixed building : partly built of temporary material. I also dealt with this case. I saw plan D/8 before the refusal. This is a plan of a building partly temporary in its nature. The plan D/9 was submitted on 8.1. On 30.12 a different plan was attached to the application for a permanent building. The office is open till 2 o'clock. I do not know when he prepared the plan, I know when he brought it. Were we to approve the plan for a temporary building there would have been no need for another plan. I find in the file no contract except D/7. Often we see the original contract and are satisfied by attaching the copy in the file. In such case there must be the same text. I do not know whether D/1 was seen by the clerk, I only suppose so, but there is nothing in the file. For the sake of order a signed original should have been seen. Nowadays we are stricter, for we found out that in actions brought by us we had no clear proof as to the owner of the land and his relation to the builder. In connection with contraventions of building regulations.

R-xd. : I find no recording whatsoever in the file to the effect that D/1 was in our file. The date on the seal varies from that on the seal of D/7. The seal on D/7 is earlier. There is no signature of a clerk neither on D/1 nor on D/7. The refusal which was notified to the Defendant on 29.12 was known to me on 24.12 and the decision was prior to this. It was decided that the committee has approved the application on principle but on condition that the building should be built of permanent material in accordance with the regulations. This is what I learnt on 24.12.

To the Court : There is no recording on the file between 24.12 and 29.12 as regards the Defendant's knowledge.

Fourth witness of Defendant: ABRAHAM BOURKON, duly sworn, deposes :—

I am an official of the District Commissioner's Office in the Urban Property Tax Department. The Plaintiff owns a land adjacent to " Tuv Taam " Café. According to the valuation the annual value of this land is LP.208. The valuation was made during the 1940/41 fiscal year, starting to run from 1.4.41. The annual value is 6 per cent. of the general value. The general value of the land is LP.3,470. The Plaintiff applied for a reduction of the value. The value was higher and the Plaintiff desired to reduce it. His appeal was allowed. He has to pay 10 per cent. Urban Property Tax per year, i.e. LP.20.800 mils.

X-xd.: I did not deal with valuations for a long time and I do not know the market price. During the past two years prices of land in Jerusalem have risen. The intention underlying the application for the reduction of the valuation was to reduce the tax. Every landlord endeavours to reduce.

R-xd.: The valuers are experts valuers so appointed by the High Commissioner. Had the Plaintiff told us that the market price was LP.15,000 then in my opinion, the valuers would have taken into account the valuation of the surrounding. An appeal against valuation is written on a form.

Continuation of the Defendant's evidence: THE DEFENDANT duly warned that he is under oath. Deposed :—

Maybe there was an action and a judgment given against me given in my default, maybe this is a copy of the judgment (P/4) and maybe this is a copy of the Statement of Claim (P/7). I sent LP.5 as a result of this judgment and of the agreement that the building should remain during the whole winter. I submitted an application for the fence (D/2). The fence surrounds Part " C " and Part " B." D/2 is a final plan which I submitted to the Municipality on reliance of which I received a licence. Prior to this I prepared another plan by my engineer. I do not remember if there is any difference between the two plans. The addendum was not there. The fence around " B " was not there, I think that this is the main difference. I do not know exactly, without seeing the plan. I did not pay attention to the drawings. I went to the Plaintiff with a plan of a fence, to be signed. D/2 was the second plan. First there was a different plan. The Plaintiff refused to sign on the first. He said that it was no concern of his and I could erect a fence without a licence. This was the first plan (Exh. P/6). It does not contain the addendum regarding a fence near " B." There is a passage door (point " A "). He refused to sign on P/6, he said that he did not find the first plan and asked me to bring another copy. They forgot to mark the passage on D/2. As on P/6. The Plaintiff told me that with a fence around the land the Municipality will buy his land. I showed him on D/2 the place where I wanted to open the door, but we did not mark it, we forgot it. I wanted to erect a fence around 50 metres, but the Plaintiff agreed only to a fence in the extremity. I received no consideration for this. According to the written agreement, 100 metres were leased to me but I am using 150 metres

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No. 8. Record of Magistrate's Court, *continued.*

approximately. The Plaintiff allowed me to use the extra 50 metres. I obtained the signature on condition that I should build the fence in accordance with D/2. There is a door in the fence near " C " (the witness points to a door on plan D/2). There is a passage of stairs to the café. There are stones on either side. I put gravel. I built the passage to the garden for whoever wishes to enter there.

Adjourned to 22.10.42 as the Defendant said he was unable to appear on the next day.

22.10.42. Representatives of both parties appeared and asked the Court to visit the place. It was decided to visit the place. I visited the place in the presence of the representatives of the parties. I saw everything they showed me, in the presence of both parties.

22.10.42. Representatives of parties appeared.

Continuation of Defendant's evidence : DEFENDANT was warned that he was under oath and continued :—

X-xd. : We used the land for passage to the kitchen and store through the land. The entrance to the café is situate on the King George Avenue. The public sometimes use the back door. I did not make it for the public but for my own use. I paid the first two payments at the office of Advocate Valero. All in all I paid six times. I do not remember where I paid the third time. I sent my brother with the money to Advocate Valero, but I do not remember during which payment or how many times. I am sure that he came in May with the money but Advocate Valero did not receive. My brother himself pays the rent, he takes from the cash without even asking me. I do not remember if on 1.2 my brother went to the above-mentioned office to pay, maybe. I think that I also came on February to pay. In April I paid two payments. I wanted to pay already in winter but I asked the Plaintiff either to sign on the plan or cancel the contract. I came every day twice. I, or my brother or my young man went to Advocate Valero. I do not remember if Advocate Valero was in his office on April. I do not remember the number of payments which I made to Mr. Baruch Levy, the clerk. I paid him, but I do not know whether it was in April or otherwise. In December too, the clerk came to me for the money, but I told him that I wished to pay in the office. I do not remember that the clerk told me by the end of March or the beginning of April that Advocate Valero was not in Jerusalem. I received this original letter (P/7) and subsequently I spoke with Advocate Valero on the telephone. I did not offer payments to Advocate Valero on 29.5, but on Sunday. If it is written in the Statement of Claim that I came on 29.5, it is a mistake. I did not go on Sunday but I sent my brother. Advocate Valero used to send his clerk on the 28th or 29th of the month. In the previous years and also this year. I do not remember that Advocate Valero told me orally that I had to come always to pay and that he would not send his clerk, I do not think that he told me that. I paid the first two payments in his office, and maybe the third also. My brother went to pay and I do not remember if he went also one time before me.

R-xd. : The Plaintiff did not tell me of which material to build the fence. We spoke about a height of 40 cms. Apart from this we spoke

of no other details. He did not tell me that the fence should be in such a manner as to prevent people from entering.

Adjourned to Sunday 25.10.42.

25.10.42.

Fifth witness of Defendant: ISAAC ISACHEROF. Duly sworn Deposed :—

I am a clerk at the office of the Advocate Mr. Cohen who appears for the Defendant. I received this certificate (extract) from the Land Registry (D/11). The Werko office informed me about the block and the parcel. This was in connection with the present case before the Court.

Sixth witness of Defendant: ELIAZAR ZEEV LIFSHITZ, duly sworn, deposed :—

I assist my brother in the shop. I went to Advocate Valero's office to pay the rent. By the end of March and the beginning of April. I then went a number of times with the sum of LP.13.500 in my hand, but my brother instructed me not to pay unless the Plaintiff signed the plan which had to be submitted to the Municipality. I brought a plan of 50 sq. metres, the Plaintiff told me that he was unable to sign as he could not erect a fence in the middle of the land that there should be a plan to cover the whole land. I went several times and once he told me that he did not want to sign at all. I do not remember if I already went on January. Several times at the end of the month or at the beginning of the month Mr. Valero's clerk came to collect the rent. Sometimes my brother paid immediately if he had money in the cash and sometimes he asked him to return on the next day and I also heard him say : To-morrow my brother will come to you to pay. The clerk did not always come on the 28th of the month exactly, absolutely not.

X-xd.: On April I went many times to Advocate Valero's office. I found him in the office by the end of March or at the beginning of April. I paid the money, either to Advocate Valero or to the Plaintiff himself or to the clerk. I did not pay at the end of March because my brother instructed me to pay only on the above-mentioned condition, not to pay the rent unless I obtained the signature. I do not remember if I paid in February. I do not remember if I paid more than once. I never received receipt. I asked whether it was necessary to have a receipt and the Plaintiff said that it was not. Between 27.3 and 4.4 approximately. I went many times for we wished to settle the matter and start with the building. I am a religious man. I would have agreed to pay during the " Hol-Amoed " (unholy days) of Passover but not on Passover or Saturday. Perhaps on the Passover Eve I paid to the Plaintiff or to Advocate Valero but not to the clerk.

R-xd.: I did not record the date. It was in the beginning of April not the beginning of March. Possibly I had to go on March one time.

Counsel for Defendant: I close my case.

Representatives of both parties: We are ready to sum up.

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Adjourned to 26.10.42.

26.10.42. Owing to lack of time the case is adjourned to 1.12.42 after my annual leave for the summing up or for a compromise.

No. 8. Record of Magistrate's Court, *continued.*

3.12.42. Advocates of parties present.

SUMMING UP.

Advocate of Defendant.—Three causes of action, the main one—that the contract was determined by notice of 31.5.42. It may be valid only if Rent Restriction (Business Premises) Ordinance 1941 does not apply. If the Ordinance applies then the contract is renewed automatically. No need to notify renewal and no use of notice of rescission. Section 4. If the Ordinance does not apply—the notice is not in order and cannot determine the contract. Ordinance applies. Second cause—Defendant failed to pay rent LP.13.500 on 28.5 and failed to notify Plaintiff of desire to continue. Third cause—broke agreement in that he used area larger than that let.

Three main facts evince from evidence: (1) Notice of 31.5.42 does not enumerate purpose for which Plaintiff needs land. It was not sent to Defendant because Plaintiff really needs the land for the purpose of building or, for any other purpose. Clause 3 of P/1—notice that such an event has happened must be sent. Evidence makes it clear that such an event has not taken place. Plaintiff does not need the land as above. In my application of 8.9.42 I asked for particulars as to what purpose he needed the land, and in the result of that application a notice of 29.2 was lodged that (A) for the purpose of building and (B) for the purpose of selling the land. By that notice Plaintiff is bound. His and his son's evidence prove that he cannot build at present, that he has neither material nor permits and no prospect to get them at least for the duration of the war and that they had not at the time the action was lodged. But Plaintiff frankly added that he would not sell for less than 20,000 and he had no proposal in that amount, i.e. that the event as stated in Clause 3 has not taken place. Plaintiff had no opportunity either to sell or build. Position has not at all changed since agreement was made; the notice which was sent is merely a bogey to determine the contract simply without the condition in Clause 3 having been materialised. Second main point—In March and April or twice in April, 1942, Plaintiff sent the clerk of his son to Defendant to collect the rent. The clerk did not receive instructions to tell nor did he tell Defendant that he would not come in May: Defendant in May was ready and willing to pay the rent as in the previous months in time and duly. Plaintiff admitted by evidence of his son that on 31.5 the money was proposed to him, that 30.5 was Saturday. Defendant said in his evidence that on 29.5 he waited for the clerk of Plaintiff who was in the previous months in the habit of being late one or two days. In C.A. 186/42 (12 Ct. L.R. 149) of 22.10.42, a delay of 11 days in the circumstances of that case should not be deemed as non-payment within the meaning of the Rent Restriction Ordinance. The judgment of Judge Shaw was upheld by the Supreme Court, although the Magistrate had given an order of eviction on the ground of such a delay. LP.13.500 was deposited into Court since the beginning of the claim. Plaintiff claims a lesser amount. Third fact—that there was an agreement between the parties that Defendant may use an additional area on condition that he

would fence the whole land by a fence of 40 centimetres. Not only the evidence of Defendant but also evidence of Plaintiff. Vide minute of proceedings page 3 in the middle, a height of 40 to 50 cms. Defendant did all he was bound to do under this agreement, applied to Municipality for permission he got permit with the restriction that he should not build by lasting materials except stones. Permit Exh. D/6, observation. Defendant built the fence of stones at a height of not less than 40 cms. and in certain places even more. If due to the present emergency, to weather or elapse of time the fence has been spoilt that does not deprive me from using the consideration for the building of the fence—the use of the additional area. Plaintiff has not proved his contention in Statement of Claim that the additional area is 57 sq. metres. It was his duty to prove it as I denied it in my defence. Only evidence is the single evidence of the son of Plaintiff who spoke of 50 sq. m. approximately and that his knowledge he derived from walking around the place without any professional help, without a surveyor and surveying instrument. Therefore my alternative pleading is that (A) Defendant is not using any additional area without permission but he is using it either by virtue of the lease or with the consent of Plaintiff (and that the consent of Plaintiff has not been given full consideration), (B) alternatively, not proved actual use without permission and consent of the said area. Therefore all the three causes of action fall. No other breach of agreement is pleaded by the Plaintiff in Statement of Claim.

As to three days' notice of desire to renew the lease—it is not needed: C.A. 186/42. No corroboration to the evidence of Plaintiff's son that he had told Defendant repeatedly that if he would not notify of his desire to renew three days before the 28th of each month the lease shall automatically be cancelled; but it was also proved by the evidence of the son of Plaintiff and of Defendant and his brother beyond any doubt that no such notice was given never since the agreement till the lodging of the action. And Defendant testified and he was not cross-examined on it, that when the agreement was made and his attention was drawn to this point he said that he was already notifying them that he wanted to remain. Therefore Plaintiff is estopped from alleging breach of contract, because on 28.5 no notice was given, a notice which never before was asked nor given. If P/1 is construed as a whole then according to the interpretation of the Plaintiff the agreement becomes pending every month: as under Clause 3 Plaintiff may send a notice of determination in a certain event, it would follow that if I do not issue notice upon the event happening or if the event has not happened—the contract is not cancelled but it continues. Clause 5 must be interpreted in this spirit that the notice the lessee must give is ejusdem generis together with the payment of LP.13.500, and in fact it is part of it: it is not a question of notice but of payment of rent. No person would contend, true you have paid me the lease but you have not notified and therefore there is no contract. Therefore only the payment is important, the contract is continued by it without it being dependent on the notice or no notice. The Ordinance of 1941 applies. Advocate of Plaintiff shall have to agree that if it applies the case shall fall unless he proves there was a delay in payment or breach of contract. Reply to defence.

For lack of time adjourned till 6.12.42–9.12.42.

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No. 8. Record of Magistrate's Court, *continued.*

9.12.42. Advocates of parties present.

Advocate of Defendant continues: 1941 Ordinance, Section 2: " premises—any premises other than dwelling-houses to which Ordinance 1940 applies Section 4 No judge etc. . . . shall give eviction judgment against a tenant from premises except in the specified circumstances." Here there are not one of the circumstances specified in Section 4. Therefore under Section 4 no judgment of eviction can be given. I cannot succeed in this plea unless I satisfy the Court that the " land " in this case is included in " premises." I am aware that the official translation of " premises " into Hebrew is a " house " (" bayit "). That is why in Section 4, too, it was translated into " bayit " (house). Without prejudice to my alternative plea that there is a house on this land I say that under Section 12 of the Interpretation Ordinance the English version prevails. Premises have not been translated correctly into " house," they include also land without buildings and buildings which are not houses. True, there are these judgments: C.A. 232/37 (5 P.L.R. 77). Stable, whether it is premises within the meaning of Landlord and Tenants Ordinance, " stable is premises." I would have been in a better position if " building " was not there. But the judgment as regards this point is merely obiter, it is clearly said that this decision was not necessary. It is a rule that obiter does not bind Courts in other cases. The word building is not important here and it must be construed as a whole. The last passage is essential and it must be read: " anything capable of contract between the landlord and tenant." Because a stable is a building then the decision is correct, but what is not a building should not be excepted from the rule. C.A. 61/36—(Gorali p. 3) is silent as regards the question whether land is premises. Therefore the question is still open for decision C.A. D.C. T.A. 294/37 (Gorali 70) " Landlord and Tenant Ordinance do not apply land, but only to premises as defined by Ordinances. Premises do not include land." No reasons, the ratio decidendi is not clear. The Court is not bound by this judgment. The legal presumption is erroneous. First of all the grammatical construction the golden rule of construction. The grammatical construction of premises—the aforementioned. That is the primary meaning in any dictionary. An old meaning. Only in 1480 for the first time used in connection with immovable property. 1570 Shorter Oxford Dictionary. In 1480 used the word in legal sense. Premises in the meaning of " the houses, lands and tenements beforementioned." The first Act in which I found the word used in such a sense, 2 William & Mary, Session 1, Chapter 5, 1689 (7 Chitty's Statutes 438). (The Act has been repealed.) It is permissible and the word must be used in other Acts in pari materia in other Acts. Beach's Cardinal Rules of Interpretation, 3rd ed., 402. I shall later on mention also the Acts which are not in pari materia, in order to ascertain the grammatical meaning, but so far I shall deal with landlords and tenants.

Section 1, Section 2: " land and ground charged with rent " " the premises charged with rent."—The whole law deals with agricultural produce on the field, there can be no other meaning but unbuilt land. Landlord and Tenant Act, 1709 (still in force in England), 10 Halsbury's Statutes 318).

Section 1 " lands or tenements the said premises " . . . Of course still in its old meaning of " afore-mentioned." From that old meaning another notion developed, an independent one and of independent

existence. In its historical and etymological way; the original and the separate meaning cannot be detached one from another. The meaning was not confined to buildings only: Small Tenements Recovery Act, 1838 (10 Halsbury's Statutes 324): premises—house, land or other corporeal hereditables.

Leases Act, 1845 (15 Halsbury's Statutes, 102), sec. 5: lands.

Schedules I, II: premises—lands

II, s. 2, s. 3: pave the premises, etc.

Law of Property Act, 1925, s. 145 (15 Halsbury's Statutes, 325).

s. 205: land or building, etc.

s. 145: premises.

Landlord and Tenant Act, 1927 (10 Halsbury's Statutes, 375) "an act to provide . . . premises used for business purposes, etc. . . ."

S. 1: tenant of holding to which this part of Act applies.

S. 17: "any part of premises held under lease, etc." not being agricultural holdings within the meaning of Agr. Holdings "Act . . ." If agricultural holdings were not excepted the term premises would have included them. Holding cannot mean houses or buildings alone. Holding and premises have here equal meaning.

Increase of Rent, etc., Restriction Act, 1915—It shall not apply to "land other than a garden or other premises within the curtilage of dwelling-house."

Scott v. *Austin*, 122 L.T. 235—The question was whether lands abutting on dwelling-houses are included in that definition. The example itself is not important here, because the judge comes to the conclusion that it is a garden:—

> "Other ground adjoining cottage . . . The whole of the premises including the cottage, the garden and the adjoining plots of land . . . Land other than garden or other premises . . . what is meaning of premises within curtilage of dwelling-house . . . domestically appertaining to dwelling-house, etc."

The learned Judge finds that the use of the word premises as including unbuilt land is self understood use. It is the duty of the Court to look at other laws enacted by the Palestine legislature to find out what he means by "premises." The Palestine legislature has not used this word in this Ordinance. He used it quite frequently. It is natural to conclude that he did not want to use it in another meaning, as otherwise he would have restricted the meaning in the interpretation section. I shall confine myself to striking examples.

Section 186 of Customs Ordinance (Drayton 662): "enter and search any premises . . ." If it meant buildings only then the inspectors would not be able to seize on open fields, etc. . . .

Firearms Ordinance, Section 40 (Drayton, 705): It is obvious that house and premises are not the same thing. Every law must be interpreted so that each word shall have a meaning as far as possible.

Official Secrets Ordinance, Section 14 (Drayton, 1301): "entering . . . any premises." No Court would refuse to issue an order because the premises are not built.

In the Magistrate's Court of Jerusalem.

No. 8. Record of Magistrate's Court, *continued.*

Sewerage and Drainage Ordinance (although repealed) (Drayton, 1321): " Premises include . . . buildings and land of any tenure, whether built upon or not." It would follow that at any rate the word is capable of having that broad meaning without insult to the language.

Tobacco Ordinance, s. 36.

Food and Essential Commodities Ordinance, 1939, s. 7 (p. 85): " enter upon premises of any trader," etc. . . .

Essential Commodities Reserves Ordinance, 1939, s. 14.

Public Health Ordinance, 1940 (p. 239), s. 2: " Premises " includes buildings and lands of any tenure, whether open or closed, whether built upon or not."

Defence Regulations, 1939 (p. 696), Amendment, 1942, Supp. II, p. 517: " Entering upon land, etc. . . . rooms or other spaces on premises to which the Order applies . . . premises of different classes or description." Hence, " premises to which the order applies " are equal to " removal of anything in, on or over any land."

Regulation 2 of the Defence Regulations: " land " same meaning as in Land (Expropriation) Ordinance: " . . . land of any category or tenure, etc. . . . " (p. 8). " Premises " have such a broad notion that they may include " different classes and descriptions." The broadest term which the Legislature deemed it fit to use in this important regulation is the term " premises," Regulation 58 (p. 695), " premises " even include highway.

Andrews v. *Andres & Others* (99 L.T. 214): Buckley, L.J.: " . . . public highways is not premises . . . premises plainly implies land, and perhaps with buildings upon it . . . "

Beacon Life Assurance & Co. v. *Gibb*, Privy Council (7 L.T. 574–577): " ' Premises ' although in popular language applied to buildings, in legal meaning the thing before-mentioned. Steamer included in ' premises '."

" Premises " in our Ordinance has the broadest meaning which the Legislature could choose. It did not write " buildings " or " houses." There is a presumption that it used it in the meaning as it did in similar enactments before it. *Mersey Docks* v. *Cambran*, 11 House of Lords (Beal's 406):—

> " Presumption is pari materia have words same meaning. Unless there is something to rebut presumption that should be so construed, even if . . . etc."

Even if the whole plot was empty and there was no house thereon the Ordinance would apply. S. 3. Rent Restriction (Dwelling-houses) Ordinance, s. 3: " Garden or other premises within curtilage of dwelling-house ": *Scott* v. *Austin*, hence, applies to Palestine law.

Adjourned for lack of time.

21.12.42.—Parties as before.

Advocate of Defendant-(continues): Paragraphs 6–7 of my Defence. As amended by order of the Court of 1.9.42. Claim is contrary to principles of equity. Application to Palestine Law under Article 46 of the O.I.C., C.A. 221/38 (50 L.R. 544). There is a tendency of the Courts to apply

these doctrines in eviction cases as in England vide delay in payment of rent, etc. In the present case it is not equitable to evict, on the contrary eviction must be refused. Halsbury, Modern Equity, 83. *Smith* v. *Clifford, etc.*, relieving against forfeiture. Determination of lease is a forfeiture, in Palestine by an eviction claim. The rule is broad and comprehensive. When the Court has opportunity to help the landlord by something except eviction, the Courts would grant such relief. The power of the Court to grant relief is not limited. *Hyman* v. *Rose* (106 L.T. 907). Snell, Equity, 22nd ed., 375 : " House of Lords has refused to lay down any rules to fetter this discretion." In the meantime in England all such rules have been made statutory but that does not affect the position, as those were doctrines of equity followed for hundreds of years, before they became written law.

Here the first cause of action is failure of Defendant to pay the rent in time. The remedy is simple, he shall pay it now. If he has been prejudiced—which we deny—by such failure we shall pay him interest. In England it is provided by written law that a landlord cannot demand eviction on the ground of delay in payment of rent unless a notice has been sent beforehand. It is not only a provision of law but also a matter of manners. First witness admitted that one or two days after 28.5 money was offered but acceptance was refused. Another cause is that Defendant is using larger area of land than what has been let to him. Without admitting this claim, it there is any cause of action at all that may be removed : Defendant will not use any area of land which Plaintiff shall succeed to satisfy the Court that it was used by the Defendant without permission. If any loss has been caused to him an equivalent rent for the user in past will be paid to him. That is not a loss which necessitates eviction. Another cause of action : notice of determination of lease. Without prejudice to my submissions that it was not given in accordance with the agreement and has no value, and is also invalid under the Rent Restriction Ordinances—however, in equity eviction should not be asked on such a notice. There was an agreement between the parties whose form and contents were changed during the time which elapsed between the signature of Defendant and that of Plaintiff. The result of that alteration is that if Plaintiff succeeds in this claim the building erected by him shall become the property of Plaintiff. Such an agreement is contra bones mores. As it has been proved that Plaintiff was aware and agreed to the erection of the building before Defendant started to erect it, and in fact he charged a rent considering that, higher than that he used to get, a relationship of trust was created between the parties thereby. Although I looked for authorities I could not find a precedent to be similar in all facts with the case here. *Middleton* v. *Magney* (Snell, 130). It was proved by the evidence of Defendant that in reliance upon the promise of Plaintiff that he would not need to vacate the land till after the war—when he may be able to build—that Defendant spent a fair amount of LP.500–600, and he is entitled to the protection of the Court not to lose his investment which he made in good faith, in spite of what is written in the contract. There is a corroboration to this evidence by that of Mr. Alterman and of the Plaintiff and his son themselves, who on one hand stated that they wanted the land for building and on the other hand they admitted that they were unable to build for the duration, as permission could not be had.

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No. 8. Record of Magistrate's Court, *continued.*

Point 7 in the Defence : In all circumstances of the case the Court will not help Plaintiff to succeed in this case as the action has been lodged with intention to enrich simply on account of others. The object of the notice sent to us on 31.5 was as stated in reply to our application for particulars that Plaintiff needed the land for building or sale. A building he cannot erect till after the war—as he admitted. Sale—the following facts have been proved. D/11—the land has been acquired by Plaintiff at LP.133.590. No rebutting evidence was brought in respect of the matters on which I shall dwell now, and therefore all these proofs are conclusive. In 1925 there was a partition action and partition effected, the property under the law is valued by valuers and the highest bidder gets the property. Therefore, there was here either a sale between co-owners, LP.133 being the highest bid or that partition was carried out and the value of the plot which fell in the share of Plaintiff was LP.133 for the purpose of fees/taxes. At any rate, it was valued in 19 and hence the purchase price paid by Plaintiff or that he might have been asked to pay would not exceed LP.133. Evidence of Borkun, pages 16–15 : the present value or last year's value is LP.3,450. The valuers appointed by the High Commissioner for that purpose valued the land at a higher price but the valuation was downed to that value after the appeal made by Plaintiff. That clearly shows that even in the eyes of Plaintiff the land has no higher value. I do not want to suspect him of intending to defraud Government by non-payment of taxes which to his knowledge as a Judge they must be paid according to the actual value of the land. It was proved that the land which was bought at LP.133 its value now or last year's was LP.3,400. Plaintiff said on oath that he was offered LP.17,000 but he did not accept the offer and that he would not sell at less than LP.20,000. In order to be able to sell at LP.20,000 he needs the help of the Court to evict the Defendant, as otherwise he would not get, so he alleges, the price of LP.20,000. The Court he considers, is an instrument therefor. That is a price which exceeds value by LP.17,000. The Court would not respect itself if such a Plaintiff came before it and suffered without a negative reaction. That would have been in normal times. In an emergency not only the claim is immoral, but now it is also illegal. Defence (Prevention of Profiteering) Regulation, No. 2, 1942. (Off. Gaz. No. 1226 of 1.10.42, p. 1503). Regulation 7 : " price more than reasonable profit." Is land also a commodity. Regulation 2. Definition includes anything which the public or part of the public requires for his daily needs. Quite a wide definition to include also a land on which people live. If Plaintiff is allowed to transfer the land at reasonable profits these should be 0 per cent. per annum on the investment. Plaintiff has failed to prove the facts necessary to base thereon the cause of breach of contract. Rent Restriction Ordinance applies and the conditions under Section 4 are not here, notification of determination of contract is not in conformity with the agreement, and the whole case is contrary to principles of equity which protect the Defendant. Pray dismissal of action with costs and advocate's fees.

For lack of time adjourned till 23.12.42, 8.1.43.

(Sgd.) Dr. LEVY.

8.1.43. Parties as before.

Advocate for Plaintiff: First of all the case must be tried upon the agreement and oral circumstances must be disregarded, under the Ottoman Law. Defendant is not protected by the Ordinance, and at any rate the contract has been broken.

Agreement: " area," part of his plot of land and in addition thereto another area. All for the building of a garden. The period of lease is one month from 18.11—18.12. LP.13,500. Clause 3. Such a notice only in the event of lessor wanting to determine the lease before the expiry of the month. After the expiry of the month there is no contract between the parties and there is no need to give notice. That is an important point. The lease expired on 28.5. There was no renewal and there was no need to notify. It was given only to do a favour to Defendant to remove the construction within a given period. Clause 4. Only in the event of Defendant failing to comply with the notice it is the property of Plaintiff. Clause 5. " Provided that he." Defendant has to do two things notify and pay the sum in advance. That is not a matter of payment by instalments. But it is a condition precedent to the maintenance ot the lease. It is a vital condition. A condition which created the lease.

Defendant has admitted that he had to pay in advance on 28.5.42, vide the notice of payment of money into Court. Has admitted to be in possession of the leased property. Admitted that rent was not paid nor offered on the day payment fell due. Not denied that he failed to notify he wanted to renew the lease. It means admission. Admitted receipt of notice. Defendant offered payment only on 31.5 and not on 29.5 as written in the Defence. Defendant admitted in his evidence.

Originally Plaintiff had no desire to let to Defendant because he intended to build or sell. Defendant went to all sorts of friends to influence to let.

Page 2. I stressed that he had to come to office and pay in advance and otherwise his position would be dangerous in point of breach of agreement. On 28.2 Defendant and his brother came to pay in my office. I rely on my evidence. I did not say that the clerk will collect. Page 12 (middle): He admits that I reminded him to pay in time. Page 18 (middle): the brother of the Defendant: " Not to the clerk." " Only on that condition " told me Defendant. It is clear that the payments should have been made in my office for the Plaintiff. Four payments were made in my office and the other two payments were made on my express instructions with the Defendant because of my absence from Jerusalem.

It appears that the Defendant wanted at the outset to prove that Plaintiff had signed the building plan but it is clear that it is not signed. He wanted to prove that Plaintiff agreed that there should be there a building, but it is clear that Plaintiff was not at all interested in having a building there and refused to sign. Page 5 in the middle: " My risk." Page 6 in the middle: He warned him after he started to build and said it was my risk. Page 9 in the middle. Page 11: " I don't remember if he was interested in the building." " That was not approved by the municipality "! and he also did not show it and the Plaintiff did not sign,

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etc., etc. Defendant said that when Plaintiff came to the coffee house that he had erected a permanent building because the Municipality did not approve of a provisional building—he said that in order to excuse himself, to explain to Plaintiff that shows that Plaintiff had not agreed previously. Page 13—I showed only the provisional construction, Plaintiff agreed to a provisional construction " not to a permanent one." 14. " I knew that I assumed that risk." " He let me only for one month." " I agreed because I was compelled to agree." " By revolver I meant that I built a building on my own accord." It would follow that clearly Plaintiff did not agree to a building. It is a fact that the plan submitted to the Municipality was not signed by Plaintiff, and although they came to him for signature—that shows that Plaintiff did not want to sign. He had reasons therefor. That was a warning to Defendant that he should not take the risk and there was no intention of Plaintiff to become rich on account of Defendant. P/3 was added with ink. Assuming it was for the advantage of Plaintiff. The fact that the paragraph was added afterwards is a further warning to Defendant to think over before he builds. He came to see me and wanted a contract, and I gave him D/3 with that written warning. Before he started to build Defendant filed an application for a permanent building before he had shown the plans to Plaintiff. Page 13 (in the middle): " end of November 1940—after 6 weeks approximately "—beginning of January. Page 14 24.12: an application for provisional building submitted. Page 15 30.12: another plan, permanent building, final application, which was approved. It follows he showed Plaintiff only afterwards. By the way, it shows the mala fides of Defendant in the whole matter. Submitted on 24.12, approved on 29.12. It is clear that Plaintiff at all did not want to let the Defendant but Defendant begged him to renew the lease and that Plaintiff agreed to one year. D/3. Defendant came to Plaintiff with supplications and plans and Plaintiff refused to sign. After the refusal Defendant went to the Municipality with the agreement without the signature of the Plaintiff on the plan and came only afterwards to Plaintiff with fait accompli, after he had already got his permit, so to speak to apply for his consent. Plaintiff warned him. Defendant built at his risk therefore the whole matter of the building is not connected with the plan. Even if Plaintiff would have signed the building plan that would not have released the Defendant from eviction from the plot at the expiration of the lease in accordance with his signature. That is not contrary with the provisions of the contract. No doubt Defendant had made his account that he would earn enough during the year or he had made another account that is not the concern of the Court. Plaintiff agreed to extend for one month on the clear condition that he can rescind before the expiration of that month. Defendant agreed to it having no other alternative. Then the building was already completed for one year approximately. Defendant should have been evicted already before that. The period of lease expired on 28.5, and was not renewed by payment of money in advance and by notification, on the contrary Plaintiff served him with a notice that he allows him three more days to vacate although he was not obliged to do that as there was no lease.

Adjourned for lack of time.

17.1.43. Parties as before.

Advocate of Plaintiff (continues): Section 2 definition of premises. Refers to 1940 Ord., Section 3 (1). Legislature did not define clearly what it means. Nevertheless the intention is clear. Section 3 (1) of 1940 must be read in the 1941 Ordinance, in the following manner: This Ordinance shall apply to a house or any part of a house let as separate business premises where such letting does not include it. They did not write business house for its meaning in English is a house of business, such as stock exchange, etc. Section 4 (1) (*f*) of 1941 Ordinance does not apply to land but to a building. Also Section 6 (1): " substantially to alter or reconstruct . . . premises."

Also Section 6 (5) " construction of premises " provision 2 " premises have been rebuilt or substantially altered."

Presume, that premises must be constructed. Landlords and Tenants Ordinance shows undoubtedly that the Ordinance does not apply before the completion of the building. Not on a vacant land. Authorities quoted by my friend are in my favour. (Gorali 70) " on several occasions." C.A. D.C. T.A. 294/37. The Court was not patient to hear again what it had already decided several times. It is final. C.A. 232/37—Section 4: " We take the term to mean any building other than dwelling-house." That is a Palestinian judgment. Also in England " premises " mean always building. Concise Oxford Dictionary: " ' Houses,' buildings with grounds and appurtenances." That is the usual meaning of the word. Every Englishman of the street would understand the word in such a manner. That is also in accordance with the decision given in Palestine. Land in itself would never be called premises. A law which restricts liberty must be construed in a manner favourable to person whose liberty has been restricted.

31 Digest, 583, para. 7322 (2), 31 Digest 571, para. 7085: " Act not to be needlessly extended." If land at all— it should be land attached to house. Digest 31, page 571 (*c*) It is the usual and daily meaning which determines. 42 Digest 616–623. My friend dealt only with the other Palestinian Ordinances. Wherever there is a definition of premises that meaning is confined to that Ordinance only. In the Search and Arrests Ordinance no warrant of search is necessary other than for a closed place. Here an unbuilt land was let. Even if the Court finds the Ordinance protects Defendant Plaintiff is entitled to a judgment for eviction as Defendant committed a breach of agreement by failing to pay and failure to offer to pay the rent in advance as he undertook in the contract 1941 Ordinance, Section 4 (1) the words here are different from that of 1941 Ordinance Section 8 (1). 1941 Ordinance: " failure to pay rent lawfully due " is one of the grounds for eviction. C.A. 1186/42 (12 C.L.R. 149) last paragraph. District Court (C.A. District Court Jerusalem 13/42 20.7.42): " Sec. 8 . . . failure to pay rent punctually is not one of these four causes," " continues to pay rent," these words are not found at all in 1941 Ordinance. The important words " continues to pay rent," C.A. District Court, Jerusalem 30/42.

Under the 1941 Ordinance failure to pay on the date of payment is a sufficient cause for eviction. When rent is due " Woodfall, Landlords and Tenants" (20th ed., p. 490): " Rent is due in the morning but not until

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midnight may be distrained for on following day." 31 Digest 232/3, para. 3716 : " When rent becomes in arrear—day after due date."

Even if payment falls due on Sunday, on Monday it would be in arrear. Till the last moment of day of payment—enough. Even if there was an oral agreement between the parties not to pay on that date (which is not the case here) would not be valid.

Parole evidence cannot be adduced against a written contract. 31 Digest, para. 3672. Defendant has committed breach of contract in that he failed to pay on 28.5. Section 4 (1) (*a*) assuming the Ordinance applies.

Besides he committed a breach of an important condition. He is using a larger area, as admitted by him in Court. Also on that ground of breach I am entitled to a judgment for eviction.

Defendant said on oath that he is using more than was let to him, p. 16, " 150 metres instead of 100 metres." From the evidence of Plaintiff, my evidence and that of Defendant it is clear that the additional area was given to him ex gratia, only on condition that he should erect a fence around in a definite manner. You visited the place, and saw that instead of erecting a fence so that to prevent a passage he levelled the land and built a free passage. The reason why Plaintiff wanted the fence to be erected is to prevent passers by. Defendant did quite the opposite. All his allegations that the fence did not stand, etc., is sheer nonsense. Where he wanted it to be fast—it held out.

He who has a weak case clings to equity. Equity should not be applied to lease matters, as the Mejelle and the Ordinance cover all the cases. " Relief against forfeiture " is not common law and equity but Acts of Parliament, and are not imported to Palestine under Article 46. Even assuming that in Palestine that should not be resorted to, forfeiture may only be in the event of a breach of a contract which has not yet expired. But here the lease has expired, therefore, there is no room for relief against forfeiture, unless there is a special law which provides for his remaining on the place. Relief is given only in two cases, of surprise and accident. Woodfall, 20th ed., p. 400 : " The result of the modern cases before Conveyancing Act : only Accident or surprise," supra, p. 415 : " Agreement for weekly tenancy determinable by week's notice, etc., until required to pull them down." 31 Digest, p. 64, para. . Woodfall, 359 : Modes of determination of tenancy. Effluxion of time, etc. Also Mejelle, Articles 591–2. Categorically no room for equitable relief after the expiration of the contract. Time cannot be extended by any other means otherwise every contract of lease would have been valueless. Contrary to all principles of contract. 20 Digest, 233, para. 6. No surmises and suggestions may be made by law and proofs.

Digest, para. 22, page 234 : " no interference with operation of Statute : Chancery cannot interfere with statute law."

Digest, 31, page 238, para. 56 : " covenant in lien, ignorance of party's own rights. Construction of covenants the same in equity as in law." Digest, 31, page 238, para. 57 ; page 248, para. 129 ; page 263, para. 254 ; time of essence of contract. According to the evidence in this case, my evidence which was corroborated by that of Defendant, I warned Defendant

that he must come in time and pay. " Time was of the essence of the contract."

C.A. 221/38 on which my friend relied as the sole Palestinian judgment, is not relevant. A contract of sale of land on condition the purchaser would enter immediately on land—purchaser cannot be evicted because of equitable lien. Here there is no matter of equitable lien.

The value of land, etc., as if Plaintiff wants to take advantage of war time. Irrelevant. That is not a commodity and not needed by Defendant —bona fides. We have seen that Defendant has built the day before with stone—tampering with evidence is a serious matter. He is not a victim of injustice. He is conducting himself contrary to justice and fairness. See also the contradiction in his evidence. " Stroud's Judicial Dictionary," 2nd ed., Supp. 2, p. 716—premises—testator my six cottages and premises.

" Premises does not include land unbuilt on, even, etc."

Ask for an order to evict, costs and advocate's fees according to the volume of work.

Adjourned for delivery of judgment till 31.1.43.

Adjourned till 28.2.43. Parties notified.

(Sgd.) Dr. B. LEVY.

No. 9. Judgment 28th February 1943.

No. 9.

JUDGMENT.

(Translation from Hebrew.)

Civil Case No. 1559/42.

IN THE MAGISTRATE'S COURT OF JERUSALEM.

MOSHE VALERO - - - - - Plaintiff

V.

A. Z. LIPSHITZ - - - Defendant.

JUDGMENT.

1. Plaintiff is the owner of a plot of land in King George Avenue, Jerusalem. Defendant is the owner of Café " Tuv Taam " which abuts on the said plot of land. Defendant took on lease from Plaintiff part of the said land, on yearly terms, as from 1937, and till 1940, to be used as a " garden " for his café during the summer months. After summer 1940 Defendant planned to erect on that place a " winter garden " for his café, and with that view entered with Plaintiff into a Contract of Lease dated the 28th November, 1940—Exh. D/3. That contract was made for one year but it contained a stipulation as follows :—

> " In the event of the lessor needing the plot for the purpose of building or for any other purpose whatsoever lessee must vacate the said plot within three days upon receipt of a notice in writing from the lessor of his desire in that regard. In such an event the lessor shall have to return to the lessee the proportional rent for the balance of the period the lessee shall not have used the plot in

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consequence of the said demand by the lessor, and this agreement shall be deemed abrogated upon the delivery of the notice by the lessor as stated above."

Another provision in the said contract reads as follows :—

" Any construction made by the lessee shall remain his own property, provided it is removed on the expiry of the period of lease or on the demand being made by the lessor therefor as aforesaid."

Some weeks after the signature of the said contract of lease (Exh. D/3) Defendant asked the Town Planning Committee for a permission to build a " winter garden " on the said plot of the Plaintiff, and for that purpose he had to submit to that body a copy of the contract of lease. Defendant was not in possession of a copy signed by the Plaintiff. Plaintiff did not deliver to him the copy of contract unless the following words were added to the above provision as regards " construction " and Defendant confirmed that addition to the contract (Exh. D/3) by initialling it, viz. :—

" If the lessee shall not vacate the property leased as above all the construction made by the lessee shall be the property of the lessor, and the lessee shall not be entitled to ask for the expenses incurred therefor."

A copy of the contract, Exh. D/3, including the above additional words, was signed thereupon by the Plaintiff (Exh. D/1), and handed over to Defendant. On 12.2.41 Defendant got the permit to build the winter garden, and about the beginning of March, 1941, Defendant completed its erection.

2. In November 1941 when the term of the lease under contract D/1–D/3 expired. Defendant wanted to take on lease the leased area for one more year, but Plaintiff did not agree to the lease unless the area so leased was larger and that the period of lease should be for one month only which might be renewed month by month under certain conditions. Therefore, the parties entered on 28th November 1941, into the contract of lease, Exh. P/1, on which this action is based. Clause 1 of the contract, Exh. P/1, provides for the area leased, and the object of the lease. Clause 2 reads :—

" The period of lease is for one month from 28th November, 1941, at a rent of LP.13.500 which shall be paid in advance."

Clause 3 has been taken almost verbatim from the previous contract Exh. D/1–D/3 and reads :—

" In the event of the lessor needing the plot for the purpose of building or for any other purpose whatsoever lessee must vacate the premises within 3 days from the day of receipt of a notice in writing from the lessor of his desire in that regard. In such an event the lessor shall have to return to the lessee the proportionate rent for the balance of the period the lessee has not used the plot in consequence of the demand of the lessor, and this agreement shall be deemed abrogated upon the delivery of the notice as aforesaid."

Clause 4, too, was copied almost verbatim from the previous contract, D/1, as amended, and reads :—

" All the construction which shall be made by the lessee shall remain his private property, it being expressly provided that it

shall be removed upon the expiry of the period of lease or on the demand being made by the lessor for the vacation of the land under Clause 3 of this agreement. If the lessee fail to vacate the leased property as aforesaid, all the construction made by the lessee shall remain the property of the lessor and the lessee shall not be entitled to claim the expenses incurred therefor."

Clause 5 reads :—

"Should there be no notice by the lessor under Clause 3 or for any other arrangement, this agreement shall be renewed automatically for one additional month, and if so, shall be month by month, under the same conditions as in this agreement are contained, on condition that lessor shall notify the lessee of his such desire three days before the end of each month and shall pay the monthly amount of LP.13.500 in advance."

Clause 6 and 7 contain subsidiary provisions which are immaterial in this case.

3. On the basis of the contract of lease, Exh. P/1, the tenancy relations between the parties continued from the end of November 1941, till May, 1942. On 31st May, 1942, Plaintiff sent to Defendant a written notice (Ex. P/2) in the following language :—

"I hereby inform you that I am terminating the lease of the part of the plot which you have taken on lease from me, in King George Avenue, as the plot is needed by me for another purpose vide Clause 3 of the Agreement which you signed on 28th November, 1941. You have committed a breach of the agreement in that you have not paid the rent when it fell due (28th May 1942). I wish to remind you that under the said agreement you have to remove the construction you have erected on the land within three days from the receipt of this letter, otherwise, it shall become my private property and you shall not be entitled to use it."

On 4th June, 1942, the Advocate of Plaintiff sent to Defendant the letter Exh. D/4 which inter alia, reads as follows :—

"In spite of the notice by my client, Mr. M. Valero, to you of the 31st May, 1942, concerning the termination of the lease of the land in King George Avenue, you have not until this day vacated the land, as you were bound to do pursuant to Clause 3 of the agreement of lease which you signed on the 28th November, 1941."

Continuing this said letter, the Advocate of Plaintiff calls upon the Defendant to vacate the land within three additional days as from the 4th June, 1942. Defendant did not comply with the demand of Plaintiff, and on the 12th June, 1942, Plaintiff filed this action, in which he claims the vacation of the land and the payment of rent for the period from 28th May, 1942, till the date of filing of the action, in the sum of LP.6.300 mils.

4. The first question arising in this case is whether Defendant is protected by the Rent Restrictions (Business Premises) Ordinance, 1941, which was applied to the town planning area of Jerusalem on 14.12.41 (Official Gazette No. 1153). Section 4 of the Ordinance provides that no Court shall give judgment for the eviction of any tenant from any

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" premises " although the term of tenancy of that tenant is expired, except in certain cases which are described in the section. The term " premises " is defined in Section 2 of the Ordinance as follows :—

> " ' Premises ' means any premises other than dwelling-houses to which the Rent Restrictions (Dwelling-houses) Ordinance, 1940, applies."

Under the heading of " Application to Dwelling-houses," Section 3 of the Rent Restrictions (Dwelling-houses) Ordinance, 1940, provides :—

> " 3. (1) This Ordinance shall apply to a house, or any part of a house, let as a separate dwelling, where such letting does not include any land other than the site of the dwelling-house and a garden or other premises within the curtilage of the dwelling-house, and where such house or part of a house shall be deemed to be a dwelling-house to which this Ordinance applies : Provided that this Ordinance shall not apply to an hotel or boarding house.
>
> (2) This Ordinance shall apply to a dwelling-house which is also used by the tenant for any professional or commercial purpose, provided that the Court is satisfied that no substantial part of the rent is payable in respect of the portion used for such purpose."

5. In order to avoid any misunderstanding, I wish to point out that the " winter garden " referred to in paragraph 1 above does not constitute the leased property, nor is it part of the leased property. The " winter garden " which was erected by the Defendant on part of the land of the Plaintiff during the previous term of tenancy was the property of Defendant at the beginning of the present term of tenancy (i.e., on 28th November, 1941), and remained the property of Defendant during the continuation of the tenancy of the land under contract P/1. Whether the " winter garden " still remains the property of Defendant even to-day, or it has passed to the ownership of Plaintiff under Clause 4 of the said contract, I have not to decide in this case, and therefore I do not express any opinion in this matter. Whether or not the " winter garden " belongs to Plaintiff or Defendant, Defendant has not taken on lease the " winter garden " from the Plaintiff nor has Plaintiff let it to Defendant ; Defendant is in possession of the " winter garden " not as the tenant of the Plaintiff. Therefore—and this was not disputed by Counsel of the parties—the issue is whether the plot of land let by Plaintiff to Defendant under contract of lease P/1—i.e., the land itself disregarding the " winter garden " which is not part of the property let—constitutes " premises " within the meaning of the Ordinance.

6. It seems that there are as yet no decisions of Courts as to the correct meaning of the term " premises " in the Rent Restriction (Business Premises) Ordinance, 1941, but there are some decisions concerning the meaning of the same word in the Landlords and Tenants (Ejection and Rent Restriction) (Extension) Ordinance, 1935. Section 2 of that Ordinance defines " premises " very similarly to that in the Ordinance of 1941, Section 2, vide paragraph 4 above, i.e. :—

> " ' Premises ' means any premises other than dwelling-houses as defined in the principal Ordinance."

The definition of dwelling-house in Section 2 of the principal Ordinance —The Landlords and Tenants (Ejection and Rent Restriction) Ordinance, 1934—is to some extent similar to that in Section 3 of the Rents Restrictions

(Dwelling-houses) Ordinance, 1940. In Civil Appeal 61/36 one of the parties raised the question whether land came within " premises " within the meaning of the Ordinance. But the Supreme Court did not give a reply to that question. In the said judgment it was said :—

" Counsel for the Appellant has raised two points for determination by the Court. He argued that the Ordinance relied upon by the Court of Trial does not apply in the present case for two reasons. First, because the said Ordinance refers to premises, while the subject matter of the lease in this case is land ; and secondly because the Respondents are not tenants within the meaning of the Ordinance as they are under no obligation to pay rent and were thus in possession at will. On this second point the Court is in the entire agreement with Appellant's contention and we hold that since no rent is payable the Respondents are not tenants and that for these reasons the Landlords and Tenants (Ejection and Rent Restriction) Ordinance, No. 12 of 1935, does not apply."

In C.A. 232/37 (5 P.L.R. 77) it was decided that a stable came within " premises " as meant by the Ordinance of 1935, and it is said :—

" ' Premises ' are defined in the Ordinance to mean any premises other than dwelling-houses, and we take the term to mean any building other than a dwelling-house, which is capable of being the subject of a contract between a landlord and a tenant. Appellant is a riding master and uses these stables for the purpose of his business, and we have no doubt that they are premises within the meaning of the Ordinance."

In this definition the Supreme Court has restricted the term " premises " to a building but the question of land was not in issue. In C.A. D.C. T.A. 294/37 (1937 Tel-Aviv Judgments—Gorali, p. 70), it was said :—

" This Court has on several occasions decided that the Landlords and Tenants (Ejection and Rent Restriction) Ordinances do not apply to land but to premises as defined in these Ordinances themselves. In other words, ' premises ' do not include land. There is nothing in this appeal to show that the Magistrate erred in law or drew wrong inferences from the facts. The appeal is dismissed."

7. In the case of *Beacon Life Assurance Co.* v. *Gibb* (1862 7 L.T.P. 574), Lord Chelmsford, who delivered the judgment of the Privy Council, said, inter alia (p. 576) :—

" Now the word ' premises,' although in popular language it is applied to buildings, in legal language means ' the subject or thing previously expressed ' and the question here is in what sense this word is used."

In the case of *Stumbles* v. *Whitely* (House of Lords) (1930), A.C. 544 (143 L.T.R. 441), the Landlord and Tenant Act, 1927, was considered, Section 17 of which reads :—

" The holdings to which this part of this Act applies are any premises held under a lease, other than a mining lease, made whether before or after the commencement of this Act, and used wholly or partly for carrying on thereat any trade or business and not being agricultural holdings within the meaning of the Agricultural Holdings Act, 1923."

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Under the said Act a tenant of premises conducting there a trade may ask the lessor in certain cases to renew the contract of lease with him for a further period. The lessee in that case had taken on lease an hotel with certain rights of fishing and the lessor had contended that fishing right would not come within " premises " as meant by the said Act and therefore he should not be bound to renew the said contract of lease. In his judgment, Lord Hailsham said, inter alia (at p. 493) :—

> " When I look at Section 17, the definition section, and I find the reference to ' any premises held under a lease,' I see no sufficient reason for supposing that the Legislature did not there include merely the actual buildings in which a trade is carried on but also the land surrounding them, the easements granted as appurtenant to them, and any other incorporated hereditaments, which may form part of the premises in the strict legal sense of the term which are the subject-matter of the habendum. Any other construction would, it seems to me, defeat the plain purpose of the Act, which obviously was to provide that in the circumstances defined in the Act the Tenant should have a right to continue to carry on his trade or business in the premises in the legal sense in which he was carrying them on under the lease for which he seeks that renewal."

8. Advocate of Defendant has collected numerous English and Palestinian Laws to show that the word " premises " could be used much more broadly and include, also, lands not built on. The question, however, is what is the definition of the word " premises " in Rent Restriction (Business Premises) Ordinance, 1941. Plaintiff's advocate, on the one hand, pointed out that in the said Ordinance there are some provisions as regards " premises " which apply to building only. In fact, Section 6 (1) and Section 6 (2) include the words :—

> " Provided further that if at any time any premises shall have been rebuilt or substantially altered, etc. . . . "

And also the words :—

> " Provided further that . . . rent payable . . . in respect of any premises completed during any Hejira year, etc."

And Section 5 (6) provides :—

> " For the purpose of this Section the construction of premises shall be deemed to be completed when the premises are first occupied."

There is no doubt that in these provisions the Legislature has made use of the word " premises " in the restricted meaning of building ; and they afford a certain weight to the assumption that the true interpretation of the word " premises " throughout the Ordinance is building, or building and the property connected therewith. But decisive proof for the proposition that the word " premises " cannot be given a wider interpretation than the special provisions aforesaid, is not contained therein. See also remarks of Lord Hailsham in the case referred to above of *Stumbles* v. *Whitely* (at p. 443) as to similar provisions in the Landlord and Tenant Act 1927.

9. In coming to decide between the two propositions offered for the interpretation of the word " premises "—which lays down the application of the said Ordinance—I am of opinion that the restricted should be

preferred to the wider interpretation. As Bray J. said in *Wilcock* v. *Booth* (1920), 89 L.T.K.B. 864 ; 122 L.T.R. 678 (31 Digest 583, para. 6322) :—

> " In construing these emergency statutes regard must, of course, as in other statutes, first be had to the plain meaning of the statutes themselves as a matter of construction, but we think that, restricting as they do the ordinary rights of individuals arising from their mutual contracts and relationships, the Acts should not be needlessly extended beyond the particular mischief which they are designed to avoid or to remedy."

The Ordinance, as stated in the title, has been enacted " to make certain provisions as to the relationship of landlords and tenants of certain premises." And Section 1 provides that the Ordinance may be cited as the Rent Restriction (Business Premises) Ordinance, 1941. But, other than Section 1, which fixes the " short title " only, there is—if I am not wrong—no mention in the whole Ordinance of the word " business " ; and all the sections of the Ordinance apply to " premises " without restriction to " business." Under Section 3 of the Ordinance, as amended by Section 3 of the Defence (Amendment of the Rent Restrictions (Business Premises) Ordinance, 1941) Regulations, 1942 (Palestine Gazette No. 1239 of 24.12.42. Supplement 2, p. 1938), the High Commissioner in Council may extend the Ordinance not only to Municipal Areas, but to Local Council areas, so that under the aforesaid Section 2 as amended even " premises " in villages may come within the Ordinance. Had I accepted the wide interpretation of the word " premises " as including also plots and lands with no relationship to building, I should have thereby included within the ambit of the Ordinance all sorts of plots and lands in town and village, without any indication of the fact that the legislature had so intended ; and I would thereby have unnecessarily extended—in my view—the operation of the Ordinance beyond its object. For these reasons I am of the opinion that a plot which has no building on it is beyond the term " premises " within the meaning of the said Ordinance. In accordance with what has been stated in Clause 5 hereinabove, I hold, therefore, that the Defendant in this case is not protected by the said Ordinance, and that this action must be heard in conformity with the general law.

10. The main cause of action is that the Plaintiff has availed himself of his right under Clause 3 of the Contract—Exhibit P/1—(See para. 2 above)—and terminated the contract by the notice, Exhibit P/2—(See para. 3 above). The Defendant, in his Statement of Defence, denied that Plaintiff was in need of the plot for the purposes of building or for any other object whatsoever, and submitted that Plaintiff's notice was, therefore, of no value. In his statement of reply, Plaintiff argued that he was not bound to prove or to tell Defendant the purpose for which he needed the plot, because it is clear from the agreement (Exh. P/1) that Plaintiff could terminate the agreement for any purpose he deemed fit. This question —what should Plaintiff prove according to the correct construction of Clause 3 of the contract—will be dealt with by me in paragraphs 12–14 hereunder. Before doing so, I wish to dwell on the evidence actually heard in connection with this matter. On the application of Defendant (Motion in file 276/42), Plaintiff has defined the purpose for which he needed the plot as " (*a*) for the purpose of building, or, if building is impossible,

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No. 9. Judgment, 28th February 1943, *continued.*

(*b*) for the purpose of selling the plot, inasmuch as it is in better demand and the purchaser prefers where there is no tenancy, etc., thereon."

11. As to the object of the building: It is true that Plaintiff made various plans generally, but he obtained no permit for the materials, for which reason he stopped from further dealing with the matter. I find that the Plaintiff at the time of the notice and also subsequently was not in need of the plot for building purposes. As to the object of the sale; it is a fact that the Plaintiff offered the plot for sale to brokers and other interested parties during all the time, since prior to the signature of the contract P/1 with Defendant, and still so now. Plaintiff has from time to time received offers of prices, but he has not yet agreed to any offer. Plaintiff stated in his evidence on oath that his object was to sell the plot for which purpose he applied that it be vacated. Plaintiff further said in evidence that although only one of the bidders demanded that the plot be vacant in order to avoid disputes—(and the negotiations with this purchaser took place after the institution of this action and broke off because Plaintiff did not agree to the price offered)—yet it was self-evident —according to Plaintiff's evidence—that any purchaser was so interested. Plaintiff's son testified that following his father's instructions, he, too, negotiated with brokers for the sale of the plot, but that no purchaser who could be considered was brought to him. In the light of all these facts, Defendant's Advocate was right, to some extent, in summing up that the position with regard to the sale of the plot had not changed since the signature of the contract, Exh. P/1. But, in my view, there is not, necessarily, any need in the " change of position." I think it suffices that Plaintiff continued to conduct negotiations for the sale of the plot; that he continues offering it for sale; and that he sues for eviction therefrom in order to make the sale easier. I find that the Plaintiff has discharged the onus of proving that he is in need of the plot for the sale thereof.

12. Moreover, it seems to me that, according to the true construction of the contract—Exh. P/1—there is no necessity at all to hear evidence as to the need by Plaintiff of the plot, or that, in any event, the slightest of proofs would be sufficient. In order to construe Clause 3 of the said contract, it is necessary to read it together with the other provisions of the same contract. While Clause 3 was copied almost verbatim from the previous contract (Exh. D/1 or D/3), the other provisions of the present contract (Exh. P/1) are totally different from those of the aforesaid previous contract. The previous contract was one of lease for a fixed period of one year, without a right of option by Defendant to extend the period of lease to an additional period, at his will. The right of Plaintiff under the previous contract to terminate the lease in the event of his becoming in need of the plot for the purpose of building, or any other purpose whatsoever, was a special right to bring the lease to an end even before the expiration of the period of one year. Had Plaintiff not terminated (or could not have terminated) the contract D/1, within the year of lease, the contract would, in any case, have come to an end at the end of that period of one year. Contrary to the said contract, the present one (Exh. P/1) is a contract of lease for one month only; but this difference, per se, is of no importance. There is no essential difference between a contract of lease for one year and a contract of lease for one month. The main difference between the two contracts is that in the present contract, contrary to the previous one, Defendant was given an option to renew the

contract month by month at his desire, by a three days' notice and payment of the rent in advance. Plaintiff has no means to prevent the extension by Defendant of the contract from month to month, other than the notice of termination under Clause 3. The right of Plaintiff to terminate the lease in the event of his becoming in need of the plot to build on, or for any other reason whatsoever, has in the present contract, a role which it had not under the previous contract; a role of supreme importance. This right of revocation by the Plaintiff is, in fact, the only restriction of the right of the Defendant to renew the contract at his will month by month ad infinitum.

13. Any person, therefore, interpreting Clause 3 of the contract, Exh. P/1, in a way tending to restrict the right of the Plaintiff to revoke the contract—an interpretation which would limit his right of revocation in the event of " change of circumstances " (see Clause 11 above), or generally, to any event not dependent on the wish of the Plaintiff only—would, in effect, be saying that so long as such an event has not come through, the Defendant alone may shorten or extend the period of lease, as he wishes, and Plaintiff is dependent on such a will by Defendant for an indefinite period. This interpretation is not in conformity with the intention of the parties at the time they entered into the contract. According to the evidence of the parties, Plaintiff did not want to be bound for more than one month. Defendant said in his evidence : " He let me for one month, so that I should depend on him and so that he could demand higher rent." The interpretation which would conform with the intention of the parties is that Plaintiff should be bound not more than the Defendant is ; that is to say, that Defendant could not renew the contract at any time for more than one month against the wish of the Plaintiff. That is why Clause 5 of the contract begins with the words : " Should there be no notice by the lessor under Clause 3 or for any other arrangement " ; and that is why the notice referred to in Clause 3 is described as the notice of the lessor " of his desire in that regard." In my opinion, therefore, Clause 3 must be construed in accordance with the intention of the parties, so that Plaintiff is the only person to decide if he needs the land or not. The words " in the event of the lessor needing the plot for the purpose of building or for any other purpose whatsoever " mean—in contract P/1—having regard to the other provisions of the contract, mean, therefore, in the event of the lessor feeling a need for the land, in the event of the lessor desiring the land for his own purpose. This matter, in this respect (though not in all respects), is similar to that of *Cheshire Lines Committee* v. *Lewis and Co.* (1880), 50 L.T. (Q.B.), 121, C.A. (44 L.T.R. 293), where the circumstances thereof led the Court to interpret the words :—

> " Gentlemen, you may have the premises as per agreement signed by you until the railway company requires to pull them down "

as meaning :—

> " The true way to read this document is : ' until the railway company requires the premises ' ; not necessarily for the purpose of pulling them down." Bramwell, L.J., at page 297 ;

or,

> " Until the Plaintiffs wanted the premises for their own purposes " (Bratt, L.J., at p. 298).

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No. 9. Judgment, 28th February 1943, *continued.*

14. The above construction which does not actually differentiate between the wish and the need of the Plaintiff and which relieves him from proving his objects and accounting for them, is, in my opinion, the correct construction of the contract P/1 pursuant to the parties' intention. It may be added that it is, seemingly, also the only construction which gives the contract legal validity. Any interpretation which does not vest the Plaintiff with the absolute right of terminating the lease whenever he so wishes must stumble upon the difficulty that the contract gives Defendant a right of " perpetual renewal." I am not so sure whether the Palestine Law recognises such a right at all. See Art. 451 and 484 of the Mejelle, and the proviso in Art. 64, as amended, of the Ottoman Civil Procedure Code—that the contract shall not be contrary to the " general order." The English Courts do not interpret any stipulation in a contract of lease as a condition giving a lessee the right of perpetual renewal, unless the condition is clear and leaves no room for another interpretation. (Halsbury, " Laws of England," Hailsham Edition, Vol. 20, pp. 154–155, para. 167.) The English Law, since 1st January, 1926, has ceased to recognise the right of perpetual renewal; and any contract of lease containing such a stipulation becomes, by virtue of the law, a tenancy for 2,000 years subject to the right of the lessee to terminate it at such times as the original lease would have expired in the event of non-renewal. (Law of Property Act, 1922, Section 145, Schedule XV, paras. 1 (1), 5; Law of Property Act, 1925, Section 202; Halsbury, 20, pp. 155–156, para. 168.) If the Palestine law recognises a right of perpetual renewal, surely such a lease is of no validity without registration thereof in the Land Registry. Under Section 2 of the Land Transfer Ordinance (Laws of Palestine, Cap. 81) " disposition " includes a lease embodying a right of option which could make the period of lease exceed three years. See also C.A. 105/32 (3, Rotenberg, 1172) as to an " automatic " extension dependent on certain conditions. Parties' Advocates did not raise the question of the validity of the contract of lease (P/1) under the Land Transfer Ordinance, and I, therefore, do not wish to decide on it. I only wish to remark that whoever interprets the said contract in a manner that Defendant could renew it month by month without Plaintiff having an equal right to terminate the contract at his will, would actually presume that the Defendant, by virtue of his right of option, could extend the period of lease to more than three years without the Plaintiff being able to release himself of the contract of lease; that is to say, that the lease is a " disposition " within the meaning of the Land Transfer Ordinance. I therefore think that this interpretation not only is not in conformity with the intention of the parties, but will also deprive the contract of lease of its legal validity.

15. Defendant's Advocate further argued that a notice under Clause 3 of the contract must state that a necessity has arisen and mention the object for which Plaintiff stands in need of the plot. But Clause 3 does not say that the lessee must vacate upon receipt of a notice in writing that the lessor is in need of the plot for any purpose whatsoever, but only after receiving " a notice in writing from the lessor of his such desire." The notice, Exh. P/2, was, therefore, sufficient.

16. For all the aforesaid reasons, I am of the opinion that the notice, Exh. P/2, was effective under Clause 3 of the contract, and that in

accordance with that clause the contract becomes void with the delivery of such a notice. Defendant received the notice in writing on the 31st day of May, 1942, and, under Clause 3, he was bound to vacate not later than on 3rd June, 1942. The additional notice, Exh. D/4, granted Defendant an extension till the 7th June, 1942, to vacate, and the action was filed on 12th June, 1942. Plaintiff must, therefore, succeed in his action for eviction. (See also para. 20 hereunder.)

17. In the light of para. 16, supra, it is not necessary to deal with the further causes of the action for eviction. I shall, however, deal with them briefly in order to complete the judgment. Plaintiff bases his action for eviction also on the non-renewal of the lease under Clause 5 of the contract, Exhibit P/1. There is no dispute that the lease was renewed on 28.4.42 for an additional month. The contract would, under Clause 5, have been renewed on 28th May, 1942, for a further month in the absence of any notice by the lessor under Clause 3, and provided the Defendant would have informed Plaintiff of his wish to renew the lease three days prior to the expiration of the month (i.e. apparently on 25th May, 1942), and provided, further, he had paid the monthly rent of LP.13.500 in advance. Defendant did not notify Plaintiff of his desire to renew the lease for an additional month, either on 15th May, 1942, or prior to 31st May, 1942: neither did he pay to Plaintiff the sum of LP.13.500 or tender payment on 28th May, 1942, or on 29th May, 1942 (the 30th May, 1942, fell on a Saturday). He did so only on 31st May, 1942. On 31.5.1942 Defendant was notified in writing (Exhibit P/2) of the cancellation of the lease by Plaintiff, and Plaintiff's attorney refused to accept the payment.

18. Plaintiff relied on the absence of a notice by the Defendant and on the non-payment of the said sum in time on two different aspects: (A) as non-renewal of the lease under Clause 5, and (B) as breach of the contract of lease by the Defendant. The correct aspect is, in my opinion. (A) and not (B). Defendant was not bound under the contract, Exhibit P/1, to intimate his desire to renew the lease or to pay the sum of LP.13.500.— If he neither notified nor paid, the contract was not renewed for an additional period. Accordingly, the position of the Defendant in this case is more difficult than it would have been in the event of a mere breach of contract. Had there been a breach of contract on the part of the Defendant, and had the question been whether such a breach would have entitled Plaintiff to cancel the lease prior to the expiration thereof, it would have been necessary to limit the right of termination which would have affected the existing right of the lessee to enjoy the property pending the expiry of the period of lease. In the event of a breach of the contract, the Defendant would, perhaps, have succeeded in getting relief against forfeiture. But in the case of renewal of the contract for an additional period by a unilateral notice, it would, in the contrary, be necessary to curtail the right of renewal, because it is this which would affect the right of the other party to take advantage of the expiry of the term of lease. Therefore, notice of renewal of the contract prior to the expiration of the period of lease is a condition precedent to the renewal of the lease under the contract. Whoever fails to notify in time, forfeits the right of renewal and cannot be relieved on principles of equity unless there be special circumstances. Halsbury (Hailsham Edition), Vol. 20, pp. 153–154, para. 166, and note (g). As to the extent of the strictness of the Courts regarding exercise of option—(verily, this was an option by the lessee to

In the Magistrate's Court of Jerusalem.

No. 9. Judgment, 28th February 1943, *continued.*

terminate the lease, but the principle is a general one)—see the new judgment of 24.7.42, *Hankey* v. *Clavering*, C.A. (1942) (2 All E.R. 311).

19. Defendant paid the rent during the first four months of the contract, Exh. P/1, in the office of the Plaintiff. It was not agreed between the parties that Plaintiff should collect the rent in Defendant's shop. But for two succeeding months, Plaintiff's attorney sent his clerk to collect the rent from Defendant, who, therefore, expected the clerk of Plaintiff's attorney to come on 28th May, 1942, and depended on his coming on about that date. The clerk not having come on the 28th May or the 29th May, Defendant went on the 31st May, 1942, to Plaintiff's attorney, and wanted to pay, but Plaintiff's attorney refused to accept payment. Defendant paid the sum of LP.13.500 into Court. Had this been a breach of contract, it would have been possible to relieve Defendant of the termination of the lease by Plaintiff. But since the payment in advance was under Clause 5 a condition precedent to the renewal of the contract for an additional period, I think that Plaintiff (even disregarding the notice of termination by him under Clause 3) was not bound to accept payment and give in in the renewal of the contract subsequent to the expiration of the period. And this applies also to the absence of notice. Defendant, apparently, never especially made an intimation of the renewal of the contract; and it is clear that payment of rent in advance included also a notice of renewal on his part. In preceding months, Plaintiff received the rent and thereby agreed to the renewal of the contract without previous notice. But I do not think that this constituted a waiver—in future—of the stipulation of a previous notice under the contract. Before the expiry of the month in question i.e. on the 27th May, 1942, or before that, Defendant did not intimate his desire to renew the contract; and, after the expiry of the month, i.e. on the 28th May and later, Plaintiff was no longer bound to Defendant. Notice of renewal by Defendant came only in the form of an offer of payment on 31st May, 1942, i.e. a few days after the expiry of the period of lease, instead of three days prior to the expiry of the period; and Plaintiff was entitled to reject this notice. The Plaintiff must, therefore, succeed in the action for eviction also on the ground of non-renewal of the contract in time.

20. Defendant, in his Statement of Defence, pleaded that the action was contrary to the principles of equity, because Defendant, with the agreement of Plaintiff, erected a building on the plot and invested LP.511 in it; and that Plaintiff is now endeavouring to take possession of the building erected by the Defendant without refunding Defendant the cost thereof. It is a fact that Defendant built the "Winter Garden" during the currency of the previous contract (Exh. D/1—D/3), and it was then clear to him that if at the end of the period of the contract Plaintiff would not renew the contract with him, he would have to dismantle the "Winter Garden" without getting a single penny from the Plaintiff. Defendant accepted the risk in this spirit when he erected the building. The condition for the removal of the building is expressly mentioned in the contract, Exh. D/3, and, in addition, Defendant, prior to the commencement of the building operations, subscribed his signature to the clear stipulation, which was added to Exh. D/3 and included in Exh. D/1 (see para. 1 herein-above), that should Defendant not vacate the plot when the contract comes to an end and on the expiration of the period thereof or by notice of termination from the Plaintiff, the building shall pass

to the ownership of the Plaintiff without payment by the latter of the cost thereof. All these conditions were again endorsed by the Defendant after the erection of the building when contract P/1 was signed. I am not satisfied that the Plaintiff, contrary to what is stated in contract Exh. D/1—D/3, and again in contract Exh. P/1—verbally promised Defendant (assured Defendant) that he could remain on the plot so long as Plaintiff did not build. I am not to decide in this case to whom the said building now belongs, for, in this case, Plaintiff only sued for the vacation of the plot; and Plaintiff's advocate explicitly said (during the hearing of the Notice of Motion in File M. 208/42) that in Statement of Claim Plaintiff did not claim the building. Accordingly, the parties' Advocates never raised any argument on the question of ownership. One thing however is clear—whoever is vested with the ownership, Plaintiff is not bound to pay Defendant the costs of the building. If, or in so far as the contract does not contain provisions contrary to Article 531 of the Mejelleh, Plaintiff may choose to acquire the said building by paying the equivalent value; but both under Article 531 and the contract, Plaintiff is not indebted to the Defendant in any amount. Defendant erected the " Winter Garden " neither at the expense nor on the invitation of Plaintiff, and there is no undertaking on the part of Plaintiff to defray the cost of the building or any other payment. Defendant never pleaded such an undertaking. Defendant's Advocate relied on Civil Appeal 221/38 (5 P.L.R. 543), in which it was held that a purchaser who is in possession of the land has a right of lien according to the principles of equity to secure the price paid by him, and that so long as the vendor has not refunded the price to him, he cannot get back the land. The right of lien was given to the purchaser in that case only because he had the right to claim refund of the price. In this case, Defendant is not entitled to claim from Plaintiff the cost of the building or part thereof, and he, therefore, has likewise no right to a lien on the plot to secure a non-existent right to the refund of the costs. The precedent in *Middleton* v. *Magney* (1864), 10 L.T.R. 408; 32 Digest 270, para. 507, is no authority in favour of Defendant, because a right of lien was there given to the lessee to secure certain payments which the lessor undertook in the contract of lease to make to the lessee. In the present case, Plaintiff did not undertake to pay any sum whatever to the Defendant, and the latter, therefore, has likewise no right of lien.

21. The dispute between the parties as to whether Defendant is making use of an additional area of the land with or without the authority of the Plaintiff, is, in my view, not important. Even if Defendant is using the additional area without permission, this would not constitute a cause for the termination of the contract of lease, Exh. P/1. On the other hand, even were Defendant right in his allegation that Plaintiff agreed that he should make use of the additional area, yet his authority to make use of the additional area would lapse simultaneously with the expiry of the contract of lease, and Defendant would have to hand back the additional area along with that leased, which is mentioned in the said contract.

22. Plaintiff claimed rent in the sum of LP.6.300.—Defendant did not deny his indebtedness to Plaintiff of this amount, but that he offered Plaintiff's Advocate payment of rent admounting to LP.13.500 before the action was instituted, which Plaintiff's advocate refused to accept; and Defendant paid the sum of LP.13.500 into Court.

In the Magistrate's Court of Jerusalem.

No. 9. Judgment, 28th February 1943, *continued.*

23. I therefore adjudge Defendant to vacate the plot of Plaintiff in King George Avenue, Jerusalem, which abuts on the Café " Touv Taam," and to pay Plaintiff the costs of the case including LP.10 Advocate's fees. I further order that out of the sum of LP.13.500, which was deposited in Court by Defendant, there shall be paid to Plaintiff a sum of LP.6.300 mils.

Delivered in open Court this 28th day of February, 1943, in the presence of Mr. Valero, Advocate for Plaintiff, and Mr. Cohn, Advocate for Defendant.

(Sgd.) Dr. BENJAMIN LEVY,
Magistrate,
Jerusalem.

In the District Court of Jerusalem, sitting as a Court of Appeal.

No. 10. Notice of Appeal to District Court, 26th March 1943.

No. 10.

NOTICE OF APPEAL to District Court.

IN THE DISTRICT COURT OF JERUSALEM
Sitting as a Court of Appeal.

Civil Appeal No. 15 of 1943.

A. Z. LIPSHITZ, represented by his attorney, Mr. Herman Cohn, Advocate, whose address for service is No. 1, Ben Yehuda Street, Jerusalem Appellant

V.

MOSHE VALERO, represented by Mr. H. A. Valero, Advocate, Mizpah House, Jaffa Road, Jerusalem Respondent.

APPEAL against the judgment of the Magistrate's Court of Jerusalem (His Worship Dr. Benjamin Levi) in Civil Case No. 1559/42 dated February 28th, 1943, whereby Appellant was ordered to evict the land of the Respondent adjacent to Café Tuv Taam in King George Avenue, Jerusalem, with costs.

The following are the alternative grounds of appeal, viz. :—

(1) The learned Magistrate erred in holding that the Rent Restriction (Business Premises) Ordinance, 1941, was not applicable to the issue.

(2) The construction put by the learned Magistrate upon the terms of Clause 3 of the Contract of Lease (P/1) was wrong in law, and the Magistrate erred in holding that in order to render a notice under that clause valid and effectual, it was not necessary that the lands should in fact be required by the Respondent for some purpose.

(3) There was no evidence upon which the learned Magistrate could find that the lands were or are required by the Respondent for some purpose ; on the other hand, there was ample evidence before the Magistrate upon which he could and should have found that the Respondent did not in fact at any material time require the lands for any purpose whatsoever.

(4) The learned Magistrate erred in holding that the Appellant was not entitled to equitable relief as against the Respondent.

(5) The learned Magistrate was wrong in ordering parts of paragraph 7 of the Statement of Defence to be struck out; he should have dismissed the action on the ground that it was brought with the sole object of undue and improper profiteering.

No. 10. Notice of Appeal to District Court, 26th March 1943, *continued.*

It is respectfully prayed that this appeal may be allowed, the judgment of the Magistrate's Court set aside, and the Respondent's claim dismissed, with costs and advocate's fees in Your Honourable Court and in the Court below.

Dated this 26th day of March, 1943.

(Sgd.) HERMAN COHN,
Attorney for Appellant.

No. 11.

JUDGMENT.

No. 11. Judgment, 18th June 1943,

IN THE DISTRICT COURT JERUSALEM
in its Appellate capacity.

Civil Appeal No. 15/43.

A. Z. LIPSHITZ - - - - - - - Appellant

V.

MOSHE VALERO - - - - - - - Respondent.

JUDGMENT.

This is an appeal from the judgment of the learned Magistrate, Jerusalem, dated 28.2.43, in Civil Case No. 1559/42 whereby the Appellant (Defendant in the Court below) was ordered to vacate the land which he had leased from the Respondent (Plaintiff in the Court below) and to pay the latter a sum of LP.6.300 mils on account of balance of rent.

The particular feature of this case is that the Appellant, who is the yearly tenant of this land since 1937, has in the meantime erected a building thereon.

The Plaintiff's grounds for eviction are the following :—

(A) The Defendant has no right to remain on this land because the contract of lease was terminated from the day he received the Plaintiff's notice to this effect.

(B) The Defendant has breached the agreement by his failure to pay in advance to the Plaintiff the monthly rent of LP.13.500 mils on the day of payment and also because he did not notify the Plaintiff of his desire to renew the lease.

(C) The Defendant has also breached the agreement by using 57 square metres more than the area which he had leased. (See para. 6 of the Statement of Claim.)

In the District Court of Jerusalem, sitting as a Court of Appeal.

No. 11. Judgment, 18th June 1943, *continued.*

The learned Magistrate, in his elaborate judgment, has set out in detail the history and facts of this case and has found in substance as follows :—

As regards (A), at the time of giving the notice and after it, the Plaintiff was not in need of the land for the purpose of building thereon, and as regards his intention to sell, the Plaintiff had not yet received any offer, he had agreed to. The Magistrate, however, found that there was no necessity to prove that the Plaintiff really needed the land, and that, in view of Clause 3 of the contract, the mere notice by Plaintiff that he " desired " to resume the lease was sufficient. (See paras. 11, 12 and 15 of the judgment.) The Magistrate, therefore, held that the notice P/2 which was necessary was sufficient and came to the conclusion that the contract of lease was therefore determined and that, in view of the second notice (Exhibit D/4) the Defendant should have vacated the land not later than on the 12th June, 1942. (Para. 16 of the judgment.)

As regards (B), the learned Magistrate found that the delay of three days, including a Saturday, in the circumstances of this case, did not constitute a good ground for determination of the contract (paras. 18 and 19 of the judgment).

With regard to (C), the learned Magistrate held that this was not at all a ground for determining the contract (para. 21 of the judgment).

As regards the monthly renewal of the lease by the Defendant provided for under Clause 5 of the contract, it appears that during the whole term of the tenancy, with the exception of paying regularly the rent at the end of each month—the Defendant never did notify the Plaintiff of his desire to renew the lease.

On the other hand, the learned Magistrate held that the Rent Restriction (Business Premises) Ordinance, 1941, did not apply to this case. (Paras. 4–9 of the Judgment.)

The grounds of appeal are in substance :—

(A) That the Rent Restrictions (Business Premises) Ordinance, 1941, does apply.

(B) That in any event there was no ground for determination of the contract and/or for eviction.

After reading the record of the Court below, and after hearing the arguments of both parties and after careful consideration of the various documents and contracts of lease, we find as follows :—

While expressing no opinion on the contention that the term " premises " figuring in the definition contained in Section 2 of the Rent Restrictions (Business Premises) Ordinance covers land too, as was argued by Mr. Cohn for the Appellant, who has referred us to a good many authorities in support of his view, and although the learned Magistrate (para. 20 of his judgment) was not satisfied with the evidence of the Defendant to the effect that Plaintiff promised him verbally that he would let him on the land so long as he (Plaintiff) would not want to build on it (page 15 of the Record), yet, it appears that the Plaintiff knew perfectly well that the Defendant was intending to erect a building (a sort of a winter garden-café) on the land. There was even more than that indeed, it would appear that the Plaintiff in a way has consented to the erection of the building. In fact, on or about the 12th February, 1941, on the application

of the Defendant for a signed copy of the contract of lease, the Plaintiff signed D.1 and delivered it to Defendant, after inserting in it a special clause regarding possible forfeiture of the " construction," which clause Plaintiff had previously added in handwriting, in the copy D.3. The Plaintiff thereby enabled the Defendant to obtain the building permit from the Municipality (D.6), and thus the erection of the building was completed in March, 1941 (see pages 9, 13 and 19 of the Record, and last part of para. 1 of the judgment).

Be that as it may, the fact is that on 28th November 1941, date of the last contract of lease (P.1), the erection of the building had already been completed. As a matter of fact, in this contract of lease, there are certain references to the " construction," etc. (Clauses 4 and 6 of the contract.)

It follows therefore that without going into the alternative contention put forward by Mr. Cohn to the effect that by operation of the contract, namely, Clauses 4 and 5 thereof, the ownership of the building had already passed to Plaintiff—that is not the subject-matter of this case—we feel that there can be no doubt that the real and actual subject-matter of the lease P.1 was not " a land " but a land on which, to the knowledge of both parties, there happened to be the building—of the well known " Tuv Taam Café," which cost Defendant over LP.500.–. That being so, we are of the opinion that the Rent Restrictions (Business premises) Ordinance, 1941, does apply to this case.

Now of the three grounds for eviction in this case, the only one valid under the Rent Restrictions (Business Premises) Ordinance, 1941, is that relating to the failure to pay rent in time, and the learned Magistrate found, and we think quite rightly, that this was not a good ground, in view of the circumstances of this case. In fact, at the end of each of the last two months, out of the six months of the tenancy under P.1, the Plaintiff used to send his clerk to the shop of the Defendant to collect the rent, so that the Defendant, not being aware of any change of instructions or attitude, expected the clerk to come again on the 28th May, 1941. That was a Thursday. The clerk did not come on that day, nor on the following day, the 29th of the month. The 30th of that month was a Saturday. On Sunday, the 31st, the Defendant went to the office of Plaintiff and tendered the rent. The Plaintiff, however, refused to accept it and the Defendant paid it into Court.

This disposes of this appeal. We wish, however, to go a step further. Indeed, even if it were not for the application of the Rent Restrictions (Business Premises) Ordinance, 1941, in view of the evidence and circumstances in this case, we think that the Magistrate erred in his interpretation of Clause 3 of the contract. In fact, there does not appear to have been evidence to warrant the view that the intention of the parties was that Plaintiff should be able to determine the contract at his simple " wish." A proviso for resumption in a lease must, it is said, be construed strictly against the lessor. If there is a power to the landlord to resume " for building or other purposes," the power cannot be exercised unless there is a bona fide desire and intention on the landlord's part to take possession for those purposes. Power to sell for " building sites " is confined to sale for the erection of dwelling-houses and the like, and does not extend to a site for a small pox hospital (" Woodfall on Landlord and Tenant," 24th ed.,

In the District Court of Jerusalem, sitting as a Court of Appeal.

No. 11. Judgment, 18th June 1943, *continued.*

p. 984). This applies the more so in this case where, in view of the whole trend of the contract P.1 and particularly Clause 3 thereof, where " need to build " was mentioned as one of the possible reasons for resumption of the lease, it would appear that the simple " desire " of the Plaintiff was not intended to be sufficient to determine the contract, and in view of the clear findings of the Magistrate that in fact the Plaintiff was not in need of the land, it follows that the condition precedent for the notice, with a view to determining the contract, as envisaged by Clause 3 of the contract, did not materialise.

In the circumstances, the appeal is allowed, the judgment of the learned Magistrate set aside, and the Respondent's action for eviction dismissed, together with costs here and below to include attendance fee as certified by the Magistrate, for the Appellant, and LP.3, Advocate's fee for attendance on appeal.

(Sgd.) N. BARDAKY, Judge.

(Sgd.) ALI HASNA, Judge.

Delivered in open Court this 18th day of June, 1943, in the presence of Mr. Herman Cohn for the Appellant, and Mr. Aharon Valero for the Respondent.

(Sgd.) N. BARDAKY, Judge.

No. 12. Application for leave to appeal to Supreme Court, 25th June 1943.

No. 12.

APPLICATION for leave to appeal to Supreme Court.

Civil Appeal No. 15/43.

IN THE DISTRICT COURT OF JERUSALEM,
Sitting as a Court of Appeal.

MOSHE VALERO - Applicant

V.

A. Z. LIPSHITZ - - Respondent.

APPLICATION FOR LEAVE TO APPEAL.

1. Application is hereby made to this Honourable Court for leave to appeal from the judgment of this Court given on the 18th day of June, 1943, allowing the appeal of the Respondent from the judgment of the Magistrate's Court of Jerusalem in Civil Case No. 559/42 dated 28.3.43.

2. The grounds of this application are that :

(A) This Honourable Court erred in that it took into consideration matters not raised in the Court below and not pleaded in the Notice of Appeal and unsupported by the evidence produced in the case.

(B) This Honourable Court erred in holding that the Rents Restriction (Business Premises) Ordinance, 1941, applied to this case and protected the Defendant.

(C) This Honourable Court erred in that it held that there was no breach of contract to justify eviction even if the Rent Restriction (Business Premises) Ordinance, 1941, does apply.

(D) The construction put by this Honourable Court on the terms of the contract of lease (P/1) was wrong in law.

(E) This Honourable Court wrongly applied the law to the facts of the case as proved before the learned Magistrate.

(F) There was no evidence before the Magistrate sufficient in law or at all to support this honourable Court's finding.

(G) The decision of this Honourable Court involves points of novelty, complexity and general importance.

No. 12. Application for leave to appeal to Supreme Court, 25th June 1943, *continued.*

Wherefore it is prayed that this Honourable Court be pleased to grant the applicant leave to appeal from the judgment of this Court in Civil Appeal No. 15/43 to the Supreme Court of Palestine.

(Sgd.) H. A. VALERO,
Attorney for the Applicant.

No. 13.

ORDER granting leave to appeal to Supreme Court.

No. 13. Order granting leave to appeal to Supreme Court, 8th July 1943.

Civil Appeal No. 15/43.

IN THE DISTRICT COURT OF JERUSALEM,
Sitting as a Court of Appeal.

Before: HIS HONOUR JUDGE ALI BEY HASNA.

Applicant: MOSHE VALERO

(Plaintiff)

Respondent: A. Z. LIPSHITZ

(Defendant)

NATURE OF APPLICATION: Application for leave to appeal to the Supreme Court sitting as a Court of Appeal against the judgment of the District Court of Jerusalem dated 18.6.43.

ORDER.

I do not see in Mr. Herman Cohn's submissions anything preventing me from granting to the Applicant leave to appeal. I therefore grant Applicant leave to appeal from the judgment of the District Court dated 18.6.43 to the Supreme Court sitting as a Court of Appeal.

Given this 8th day of July, 1943, in the presence of attorneys for both parties.

(Sgd.) ALI HASNA,
Presiding Judge.

In the Supreme Court, sitting as Court of Appeal, Jerusalem.

No. 14. Notice of Appeal to Supreme Court, 19th July 1943.

No. 14.

NOTICE OF APPEAL to Supreme Court.

Civil Appeal No. 240/43.

IN THE SUPREME COURT,
Sitting as a Court of Appeal, Jerusalem.

In the Matter of :—

MOSHE VALERO, represented by H. A. Valero, Barrister-at-Law, Mizpah House, Jerusalem Appellant

vs.

A. Z. LIPSHITZ, represented by Herman Cohen, advocate, No. 1, Ben Yehuda Str., Jerusalem - Respondent.

NOTICE OF APPEAL.

1. This is an appeal against the judgment of the Jerusalem District Court in its appellate capacity No. 15/43, dated 18.6.43, allowing the appeal of the Respondent against the judgment of the Magistrate's Court of Jerusalem in Civil Case No. 1559/42, dated 28.2.43, whereby the learned Magistrate ordered the eviction of the Respondent from the land of the Appellant.

2. Leave to appeal against the judgment of the District Court was granted by Judge Ali Hasna, the Presiding Judge of the Court which delivered the judgment appealed against, on the 8th day of July, 1943.

3. Inasmuch as the said judgment of the District Court is contrary to law and prejudicial to the interests of the Appellant appeal is hereby lodged against the same within the period prescribed by law on the following alternative grounds :—

(A) The Honourable District Court erred in that it considered matters and grounds not raised nor argued before the Magistrate as Court of Trial or before the District Court as the Court of Appeal either in writing or orally.

(B) The Honourable District Court erred in holding that the Rents Restriction (Business Premises) Ordinance, 1941, applies to this case and protects the Respondent.

(C) The Honourable District Court erred in that it decided that there was no breach of the term(s) of the contract of lease (Exh. P/1) to justify eviction, even if the Rents Restriction (Business Premises) Ordinance, 1941, does apply.

(D) It is respectfully submitted that the construction put by the District Court on the terms of the contract of lease (Exhibit P/1) was wrong in law, and contrary to the intention of the parties as found as a fact by the learned Magistrate.

(E) It is further submitted that the Honourable District Court wrongly applied the law to the facts of the case as proved before, and found by, the learned Magistrate.

(F) There was no evidence before the learned Magistrate sufficient in law or at all to support the District Court's findings (if indeed it was competent to make any new findings) and judgment.

WHEREFORE it is prayed that this appeal be allowed and the judgment of the District Court set aside, confirming the judgment of the learned Magistrate for eviction and LP.6.300 with costs and advocate's fees in this Honourable Court and the Courts below.

(Sgd.) H. A. VALERO,
Barrister-at-Law,
Attorney for the Appellant.

No. 14. Notice of Appeal to Supreme Court, 19th July 1943, *continued.*

No. 15.

JUDGMENT.

No. 15. Judgment, 24th November 1943.

Civil Appeal No. 240/43.

IN THE SUPREME COURT,
Sitting as a Court of Civil Appeal.

Before : MR. JUSTICE ROSE, MR. JUSTICE FRUMKIN and MR. JUSTICE KHAYAT.

In the Appeal of :—

MOSHE VALERO - - - Appellant

V.

A. Z. LIPSHITZ - - - - Respondent.

Appeal from the judgment of the District Court, Jerusalem, in its appellate capacity, dated the 18th day of June, 1943, in Civil Appeal No. 15/43.

For Appellant : Mr. Aharon Valero.

For Respondent : Mr. Herman Cohen.

JUDGMENT.

This is an appeal against the judgment of the District Court of Jerusalem allowing an appeal from a judgment of the Magistrate's Court of Jerusalem.

On the 28th November, 1940, the Appellant leased to the Respondent for a period of twelve months a small plot of land some 50 square metres in extent in King George Avenue, Jerusalem. Subsequently this agreement was renewed on similar conditions from month to month. Clause 3 of the agreement provided :—

" In the event of the lessor needing the plot of land for the purpose of building or for any other purpose whatsoever, the lessee must vacate the said plot of land within three days from the receipt

In the Supreme Court, sitting as Court of Appeal, Jerusalem.

No. 15. Judgment, 24th November 1943, *continued.*

of a notice in writing from the lessor of his desire in that regard . . . and this agreement shall be deemed to be abrogated upon the delivery of the notice by the lessor as aforesaid."

The notice was duly given, but the Respondent contended that it should be disregarded as the Ejusdem generis rule should be applied and the Appellant had given no reason why, and called no evidence as to the purpose for which he required the plot. We consider, however, that the words " for any other purpose whatsoever " are of so wide a nature as to bring the matter within that class of case in which the rule is specifically excluded by words of generality.

The main point at issue, therefore, is whether the Rent Restriction (Business Premises) Ordinance, 1941, applies to the present case. The Appellant argued that while it is true that a " winter garden " or café was built on this land by the Respondent to the knowledge of the Appellant, this fact cannot affect the nature of the lease itself which related only to unbuilt land, and that it is clear from the scope of the Ordinance as a whole that it was not intended to apply to such land. The Respondent on the other hand contends that " premises " includes anything which can be the subject of a conveyance or bequest and that there is no logical reason to restrict the term to buildings or to land accompanied by buildings.

The matter is no doubt arguable but having regard to the principle that any Ordinance which restricts the freedom of contract between individuals must be construed strictly, and, in the case of ambiguity, in such a way as to limit it to the particular mischief which it is designed to meet, we are of opinion that the correct view is that this Ordinance does not apply to unbuilt land. While it is no doubt true that the term " premises " may sometimes be used to cover land unaccompanied by buildings, we are of opinion that in this particular Ordinance, having regard to its limited contents and scope, the term should not be so extended. It follows that in our opinion the Ordinance is inapplicable to the land which is the subject-matter of the present case. We would add, as regards the merits, that the Respondent himself admitted in evidence that he built the café at his own risk, and we are satisfied, therefore, that he was alive to the uncertainty of his venture.

For these reasons the appeal must be allowed, the judgment of the District Court set aside and the judgment of the Magistrate restored. The Appellant will have the costs of the proceedings here and in both Courts below, the costs of this appeal to be on the lower scale and to include the sum of LP.15 for advocate's attendance fee.

Delivered this 24th day of November, 1943.

(Sgd.) ALAN ROSE,
British Puisne Judge.

(Sgd.) G. FRUMKIN,
Puisne Judge.

(Sgd.) F. KHAYAT,
Puisne Judge.

In the Supreme Court, sitting as Court of Appeal, Jerusalem.

No. 16.

APPLICATION for leave to appeal to Privy Council.

(*Not printed.*)

No. 16. Application for leave to appeal to Privy Council, 22nd December 1943 (*not printed*).

No. 17.

AFFIDAVIT by Alexander Cohen.

No. 17. Affidavit by Alexander Cohen, 15th December 1943.

IN THE SUPREME COURT.
Sitting as Court of Civil Appeal.

Privy Council Leave to Appeal.

Application No. 24 of 1943.

ARIEH ZVI LIPSHITZ, Café Owner, of King George Avenue, Jerusalem, whose address for service is c/o Herman Cohn, Advocate, No. 1 Ben Yehuda Street, Jerusalem - - Applicant

V.

MOSHE VALERO, Judge, of Bezalel Street, Jerusalem, whose address for service is c/o H. A. Valero, Advocate, Mizpa Building, Jaffa Road, Jerusalem Respondent.

AFFIDAVIT.

I, the undersigned ALEXANDER COHEN, a civil engineer, of No. 85, Eliezer Ben Yehuda Street, Tel Aviv, make oath and say as follows :—

(1) I am a land valuer licensed under the Land Valuers Ordinance.

(2) I have inspected the land at present occupied by the above-named Applicant for the purposes of the Tuv Taam Café adjacent to the shop occupied by him and situated in King George Avenue, Jerusalem, forming part of the land registered in the Land Registry of Jerusalem Volume 16 Folio 72 in the name of the above-named Respondent.

(3) The land thus occupied by the above-named Applicant exceeds in value the amount of LP.500 (five hundred pounds).

And I swear that this is my name and this is my signature and that the contents of this my affidavit are true.

(—) ALEXANDER COHEN.

LP.1 revenue stamps.

Sworn at the Magistrate's Court of Jerusalem, this 15th day of December, 1943 before me,

(—) AZOULAI,
Magistrate.

In the Supreme Court, sitting as Court of Appeal, Jerusalem.

No. 18. Affidavit by Herman Cohn, 22nd December 1943.

No. 18.

AFFIDAVIT by Herman Cohn.

IN THE SUPREME COURT.
Sitting as Court of Civil Appeal.

Privy Council Leave to Appeal.
Application No. 24 of 1943.

ARIEH ZVI LIPSHITZ - Applicant

V.

MOSHE VALERO Respondent.

AFFIDAVIT.

I, the undersigned, HERMAN COHN, advocate, of Jerusalem, make oath and say :—

(1) I have acted as counsel for Mr. Arieh Zvi Lipshitz in the case brought against him by Mr. Moshe Valero in the Magistrate's Court of Jerusalem, Civil Case No. 1559/42, and was present at all hearing of the said case.

(2) On October 6th, 1942, the said Mr. Moshe Valero, giving evidence before the Magistrate, deposed that he was offered for his plot of land in King George Avenue, Jerusalem, the subject-matter of the said action, a sum of LP.12,000 before the war, and a sum of LP.17,000 in or about August, 1942, and that he at that time had asked for a price of LP.20,000.

(3) On October 20th, 1942, Mr. Avraham Bourkon, an officer in the District Commissioner's Office, Jerusalem, giving evidence before the Magistrate in the said action, deposed that the value of the plot of land in issue had during the fiscal year 1940/41 been officially assessed at LP.3,470.

(4) The land let to the said Mr. Arieh Zvi Lipshitz by the said Mr. Moshe Valero comprises 98.75 square metres out of a total area of 604.32 square metres belonging to the said Mr. Moshe Valero.

(5) In paragraph 6 of the Statement of Defence delivered on behalf of the said Arieh Zvi Lipshitz in the said action, it was pleaded that the said Mr. Arieh Zvi Lipshitz erected a building on part of the land leased to him and invested in such building a sum exceeding LP.500. This statement of fact was not denied by or on behalf of the said Mr. Moshe Valero.

And I swear that this is my name and this is my signature and that the contents of this my affidavit are true.

(—) HERMAN COHN.

Sworn at the Magistrate's Court of Jerusalem, this 22nd day of December, 1943, Before me

Magistrate.

In the Supreme Court, sitting as Court of Appeal, Jerusalem.

No. 19. Affidavit by Moreno Meyouhas, 16th January 1944.

No. 19.

AFFIDAVIT by Moreno Meyouhas.

IN THE SUPREME COURT,
Sitting as a Court of Civil Appeal.

Privy Council Leave to Appeal Application No. 24 of 1943.

ARIEH ZVI LIPSHITZ - - - Applicant

V.

MOSHE VALERO - - - Respondent.

AFFIDAVIT.

I, MORENO MEYOUHAS, Engineer and Licensed Land Valuer of Jerusalem, make oath and say as follows :—

(1) I have this day inspected the building erected by Mr. A. Z. Lipshitz on the land of Mr. Moshe Valero in King George Avenue and known as Café Tuv Taam.

(2) In the beginning of 1941 it would cost to build such a building about LP.325 (three hundred and twenty-five Palestine Pounds).

(3) To-day it would cost to build the same building about LP.450 (four hundred and fifty Palestine Pounds).

(4) The pulled-down value of the said building (i.e. the stones, windows, iron, etc., after the building is pulled down) I assess at LP.180.

(–) MORENO MEYOUHAS.

Sworn before me this 16th day of January, 1944.

Magistrate.

No. 20. Order granting conditional leave to Appeal to Privy Council, 1st February 1944 (*not printed*).

No. 20.

ORDER granting conditional leave to Privy Council.

(*Not printed.*)

In the Supreme Court, sitting as Court of Appeal, Jerusalem.

No. 21.
Order granting final leave to Appeal to Privy Council, 26th April 1944.

No. 21.

ORDER granting final leave to Privy Council.

IN THE SUPREME COURT,
Sitting as a Court of Civil Appeal.

Privy Council Leave Application 24/43
(Civil Appeal No. 240/43).

Before: MR. JUSTICE EDWARDS and MR. JUSTICE FRUMKIN.

In the Application of:

ARIEH ZVI LIPSHITZ - - - - - - Applicant

V.

MOSHE VALERO - - - - - - - Respondent.

Application for final leave to appeal to His Majesty in Council from the judgment of the Supreme Court sitting as a Court of Civil Appeal dated the 24th day of November, 1943, in C.A. No. 240/43.

For Applicant: Mr. Herman Cohn.

For Respondent: Mr. Aharon Valero.

ORDER.

WHEREAS by order of this Court dated the 1st day of February, 1944, the Applicant was granted conditional leave to appeal to His Majesty in Council subject to the following conditions:

> That the Applicant give security for the costs of the appeal in the sum of LP.300 by bank guarantee of one of the three banks, namely, Barclays, Anglo-Palestine or Ottoman, and that the Applicant do take the necessary steps for the purpose of procuring the preparation of the record and the despatch thereof to England within two months from the date of this order.

WHEREAS the Applicant has fulfilled the said conditions in that he has filed a bank guarantee in the sum of LP.300 duly executed by the Anglo-Palestine Bank Ltd., Jerusalem, and also filed an index of the record of documents and exhibits containing the documents to be included in the record to be despatched to His Majesty in Council.

The Court therefore ORDERS, and IT IS HEREBY ORDERED, in pursuance of Article 21 of the Palestine (Appeal to Privy Council) Order in Council, that final leave to appeal to His Majesty in Council be granted.

We feel unable now to order the present Applicant to give security because Article 7 of the Palestine (Appeal to Privy Council) Order in Council does not provide for the Court requiring security when granting stay of execution.

Given this 26th day of April, 1944.

(-) D. EDWARDS,
British Puisne Judge.

(-) G. FRUMKIN,
Puisne Judge.

In the Privy Council.

No. 22.
Order in Council granting leave to substitute new Respondents in place of deceased Respondent, 7th December 1945.

No. 22.

ORDER IN COUNCIL granting leave to substitute new Respondents in place of deceased Respondent.

AT THE COURT AT BUCKINGHAM PALACE.

The 7th day of December, 1945.

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT — MR. BARNES
LORD PRIVY SEAL — MR. NOEL-BAKER
MR. PALING

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 26th day of November 1945 in the words following, viz. :—

L.S.

" WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Appellant in the matter of an Appeal from the Supreme Court of Palestine sitting as a Court of Appeal between Arieh Zvi Lipshitz Appellant and Moshe Valero Respondent (Privy Council Appeal No. 24 of 1945) setting forth: that the Appeal is pending before Your Majesty in Council: that the Respondent has died as appears from a supplemental record which has arrived at the Privy Council Office from which it also appears that pursuant to the Order of the Court dated the 12th September 1945 contained in the supplemental record it was certified that (1) Haim Aron Valero (2) Salomon Valero (3) Sara Rachel Valero were the proper persons to be substituted on the record in the place of the deceased Respondent: And humbly praying that (1) Haim Aron Valero (2) Salomon Valero (3) Sara Rachel Valero be substituted in the Appeal for the deceased Respondent and that the Appeal be revived accordingly:

" THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and the Solicitors for the Respondent having signified in writing their consent to the prayer thereof Their Lordships do this day agree humbly to report to Your Majesty as their opinion that (1) Haim Aron Valero (2) Salomon Valero (3) Sara Rachel Valero ought to be substituted in place of the deceased Respondent and that this Appeal ought to stand revived accordingly."

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof the High Commissioner or Officer Administering the Government of Palestine for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

E. C. E. LEADBITTER.

Exhibits.

EXHIBITS.

P/1.
Agreement between M. Valero and A. Z. Lipshitz, (*translation*) 28th November 1941.

P/1.

AGREEMENT between M. Valero and A. Z. Lipshitz.

(Translation from Hebrew.)

AGREEMENT made between Mr. MOSHE VALERO who shall be called hereinafter the lessor and between Mr. A. Z. LIPSHITZ to be called hereinafter the lessee.

1. The lessor hereby lets to the lessee an area of $7\frac{1}{2} \times 6\frac{1}{2}$ square metres of his land on King George Avenue at Jerusalem (i.e. the area which was let to lessee under agreement of 28.11.40) and in addition thereto an area of 50 sq. m. in the South-Eastern part of the plot of land, behind the portion already let to the lessee, for the arrangement of a garden for his café.

2. The period of lease is for one month as from 28th November, 1941, at a rent of LP.13.500 which shall be paid in advance.

3. In the event of the lessor needing the plot of land for the purpose of building or for any other purpose whatsoever, the lessee must vacate the said plot within 3 days from the receipt of a notice in writing from the lessor of his desire in that regard ; in such an event the lessor shall have to return to the lessee the proportional rent for the remainder of the period during which the lessee shall not have used the plot in consequence of the demand by the lessor as aforesaid and this agreement shall be deemed abrogated upon the delivery of a notice as aforesaid.

4. All the construction which the lessee shall make shall remain his private property it being expressly provided that at the end of the term of lease or upon demand being made by the lessor to vacate the land under clause 3 of this agreement it shall be removed. Should the lessee fail to vacate the let property as aforesaid all the construction made by the lessee shall remain the property of the lessor, and the lessee may not claim the expenses he had incurred therefor.

5. Should there be no notice by the lessor under clause 3 or for any other arrangement, this agreement shall be renewed automatically for one further month and so forth month by month on the same conditions as in this agreement are included, provided that the lessee shall notify the lessor of his such desire three days before the expiration of each month and shall pay the monthly amount of LP.13.500 in advance.

6. The lessor shall be free to use the remainder of his land for any purpose he shall deem fit, and also he shall be entitled to close any windows and use any walls erected by the lessee, without any payment.

7. The lessor and the lessee renounce hereby the necessity of sending notarial or any other notice to each other.

(Sgd.) MOSHE VALERO.

(Sgd.) LIPSHITZ.

In witness whereof the parties have signed, Jerusalem,

28th November, 1941.

Exhibits.

P/2.
Letter from M. Valero to A. Z. Lipshitz, 31st May 1942 (*translation*)

P/2.

LETTER from M. Valero to A. Z. Lipshitz.

(*Translation.*)

M. Valero,
P.O. Box, 388,
Jerusalem.

Mr. A. Z. Lipshitz,
Owner of Café Touv Ta'am,
King George Avenue,
Jerusalem,

31st May, 1942.

Dear Sir,

I hereby notify you that I terminate the tenancy of a part of the plot which you took on lease from me in King George Avenue, on the ground that the plot is needed by me for another purpose, vide Clause 3 of the agreement you signed on 28th November, 1941.

You committed a breach of the provisions of the contract in that you failed to pay an instalment of the rent on date of maturity (28th May, 1942).

I wish to remind you that under the said agreement you must dismantle all the construction you carried out on the plot within three days of the receipt by you of this letter, otherwise it will become my own property and you will have no right to the use thereof.

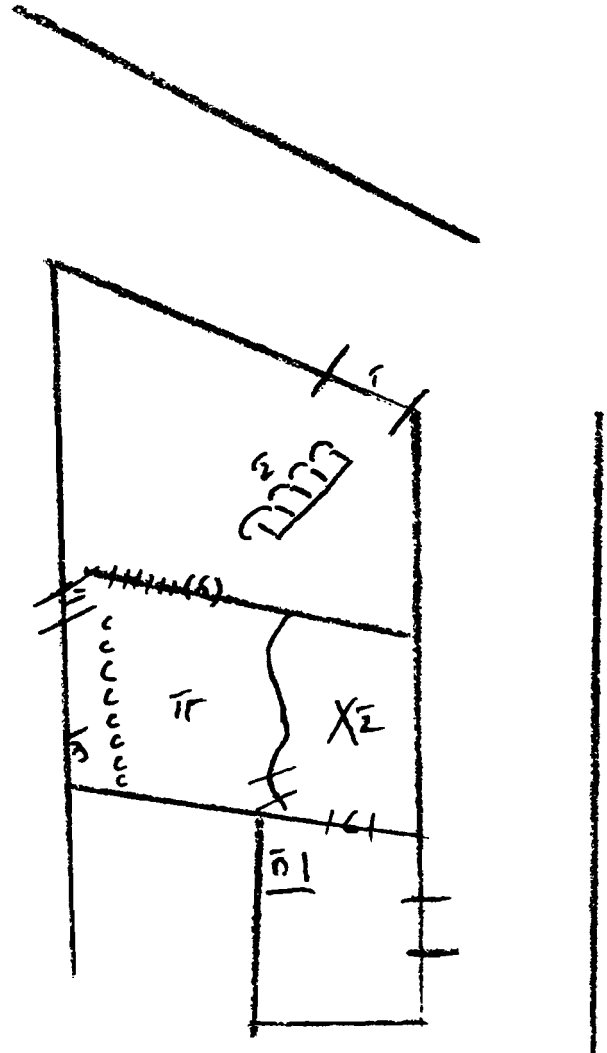
Yours faithfully,

(Sgd.) M. VALERO.

Exhibits.

P/3.
Map.

P/3.
MAP.



Exhibits.

P/7.

LETTER from H. A. Valero to A. Z. Lipshitz.

(*Translation.*)

P/7. Letter from H. A. Valero to A. Z. Lipshitz, (*translation*) 14th May 1942

Mr. A. Z. Lipshitz,
Owner of Café Touv Ta'am,
King George Avenue,
Jerusalem.

Jerusalem, 14th May, 1942.

Dear Sir,

You failed to put up a wall round the plot, contrary to what has been agreed between you and my client, Mr. M. Valero : and you, further, make use of part of the plot which has never been let to you as a passage.

I hereby finally notify you that should you fail to fence off the plot as agreed and to close the exterior stairs passage within five days of to-day, I shall be compelled to take appropriate action against you for the preservation of my client's rights.

Yours faithfully,

(Sgd.) H. A. VALERO,
Advocate.

D/1, D/3 and D/7.

AGREEMENT between M. Valero and A. Z. Lipshitz.

(*Translation.*)

D/1.
D/3.
D/7.
Agreement between M. Valero and A. Z. Lipshitz *undated* (*translation*)

AGREEMENT Made between Dr. MOSHE VALERO who shall be called hereinafter the " lessor " and Mr. A. Z. LIPSHITZ who shall be called hereinafter the lessee.

The lessor hereby lets to the lessee an area $7\frac{1}{2} \times 6\frac{1}{2}$ square metres of his plot of land in King George Avenue, Jerusalem for the arrangement of a garden for his café house for a period of 12 months beginning from the date of signature of this agreement at a price of LP.60 which shall be paid as follows: LP.40 cash and LP.20 by promissory note payable on 1.2.41.

In the event the lessee shall not vacate the place let punctually on the expiry of the term of lease, he shall pay to lessor LP.1 per each day till he vacates the let place.

In the event of the lessor needing the plot for the purpose of building or for any other purpose whatsoever the lessee must vacate the said plot of land within three days from the day he receives a notice in writing from the lessor of his desire in that regard ; in such an event the lessor shall have to return to the lessee the proportional rent for the remainder of the period during which the lessee shall not have used the plot of land in consequence of the demand of the lessor as aforesaid, and this agreement shall be deemed abrogated upon the delivery of the notice by the lessor as stated above.

Exhibits.

D/1.
D/3.
D/7.
Agreement between M. Valero and A. Z. Lipshitz, *undated* (*translation*) *continued.*

All the construction which the lessee shall make shall remain his own property, provided it is removed on the expiry of the period of lease or on the demand being made by the lessor therefor as aforesaid. *(If the lessee shall not vacate the property leased as above all the construction made by the lessee shall be the property of the lessor, and the lessee shall not be entitled to ask for the expenses he has incurred thereon.)*

The lessor and the lessee hereby waive the necessity of sending a notarial or any other notice to each other.

In witness whereof the parties have affixed their signatures.

Lessee	Lessor
(Sgd.) A. Z. LIPSHITZ.	(Sgd.) M. VALERO.

Translator's note : The sentence between the asterisk *()* is written in ink.

D/4.
Letter from H. Valero to A. Z. Lipshitz, 4th June 1942.

D/4.

LETTER from H. Valero to A. Z. Lipshitz.

H. A. Valero,
Barrister at Law,
Jerusalem.
Jerusalem, 4.6.42.

Registered.

Dr. A. Z. Lipshitz,
c/o " Tuv Ta'am " Café,
King George Avenue,
Jerusalem.

Notwithstanding my client's (Mr. M. Valero) notice to you dated 31.5.42, as regards the termination of the lease on the land situate in King George Avenue, you failed to vacate the land as you were bound to do in accordance with clause 3 of the contract of lease which you signed on 28.11.41.

I hereby notify you again, *for the last time*, that if you fail to vacate the land as aforesaid within three additional days from to-day, I shall be compelled to take legal eviction proceedings against you, a thing which may cause you great inconvenience and unnecessary expenses.

(Sgd.) H. VALERO,
Advocate.

Exhibits.

D/5.
Letter from A. Z. Lipshitz to H. A. Valero 7th June 1942. (*translation*)

D/5.

LETTER from A. Z. Lipshitz to H. A. Valero.

(*Translation.*)

Without Prejudice.

A. Z. Lipshitz,
Jerusalem.
7.6.42.

Mr. H. Aharon Valero, Advocate,
Jerusalem.

Dear Sir,

I beg to acknowledge the receipt of your letter of the 4th instant. Before being able to reply to it I would ask you to be good enough to furnish me with the contract of lease which was signed on the 28th November, 1941 and upon which you rely. Mr. Valero has not left with me a copy of the contract, in spite of my numerous requests; and without knowledge of the contents of the agreement, I am unable to obtain legal advice as to whether I should comply with your request in your letter under reference or not.

Yours faithfully,

(Sgd.) A. Z. LIPSHITZ.

No. 24 of 1945.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF PALESTINE, SITTING AS A COURT OF APPEAL.

BETWEEN

ARIEH ZVI LIPSHITZ *Appellant*

AND

HAIM ARON VALERO, and Others *Respondents.*

RECORD OF PROCEEDINGS.

ADLER & PEROWNE,
46/7 LONDON WALL,
LONDON, E.C.2,
Solicitors for the Appellant.

BARTLETT & GLUCKSTEIN,
199 PICCADILLY,
LONDON, W.1,
Solicitors for the Respondents.

The Solicitors' Law Stationery Society, Limited, Law and Parliamentary Printers, Abbey House, S.W.1.
WL1038-31031