

43.1076

# In the Privy Council.

No. 9 of 1947.  
 UNIVERSITY OF LONDON  
 VICI  
 -9 OCT 1956  
 INSTITUTE OF ADVANCED  
 LEGAL STUDIES

## ON APPEAL

FROM THE SUPREME COURT OF PALESTINE, SITTING AS A COURT OF APPEAL, JERUSALEM, *INSTEAD OF* ADVANCED LEGAL STUDIES

44476

BETWEEN

NUZHA BINT EL-HAJ SULEIMAN ABU KHADRA *Appellant*

AND

1. HAJ IBRAHIM SALEH EL-HELOU,
2. HASHEM ABU KHADRA,
- 10 3. NAJATI ABU KHADRA,
4. THE EXECUTION OFFICER, District Court, Jaffa - *Respondents.*

## CASE FOR THE APPELLANT.

RECORD.

1. This is an appeal from the judgment of the Supreme Court sitting as a Court of Appeal, Jerusalem, dated the 30th January, 1945, dismissing the Appellant's appeal from the judgment of the Land Court, Jaffa, dated the 23rd July, 1944, which had ordered specific performance of a contract for the sale of land entered into between the Appellant and the first Respondent. p. 26.  
p. 21.

2. The Supreme Court dismissed the Appellant's appeal on the ground 20 that it was out of time.

3. The Civil Procedure Rules, 1938, provide as follows:—

Rule 207.—The decree shall bear the date on which the judgment was pronounced or entered.

Rule 321.—The period within which notice of appeal against any decree . . . may be lodged shall be—

(a) 30 days from the date of the decree if judgment delivered in the presence of the Appellant, or from the date of service upon him of notification in the form No. 32 in Schedule 1 hereof, if in his absence ;

\* \* \* \* \*

30 Provided that an Appellant may lodge a notice of appeal before the service upon him of such notifications respectively.

4. The judgment in the Land Court was delivered on the 23rd July, 1944. The notice of appeal to the Supreme Court was lodged on the 26th August, 1944. Accordingly if the first alternative in Rule 321 (a) applies the Appellant's appeal was lodged three days too late. It was and

CASE FOR APPELLANT

is the Appellant's submission that the first alternative in this Rule does not apply as the judgment was not "delivered in the presence of the Appellant." It is common ground that no notification of the judgment was served.

5. The Appellant was not personally present when judgment was delivered in the Land Court. This judgment concludes :—

p. 25, l. 11.

Judgment delivered on 23.7.44 in presence of the Plaintiff in person and absence of the attorney for the Defendants, who did not appear but sent his clerk.

The Supreme Court interpreted this sentence as follows :—

p. 27, l. 5.

From this we infer that the Judge satisfied himself that the clerk was authorised to represent the attorney for the purpose of hearing judgment, and in accordance with the usual courtesy extended by the District Court Bench to a busy lawyer, who was probably engaged in another Court, he accepted that representation.

And then concluded :—

p. 27, l. 10.

We are satisfied that the Rule (i.e., Rule 321 (a)) was sufficiently complied with.

6. The Appellant submits that it is not enough that a rule of this character should be "sufficiently" complied with, and that if the rule is to be invoked to bar the Appellant's appeal it must be strictly complied with.

7. Rule 24 of the Civil Procedure Rules, 1938, provides :—

Any application to or appearance or act in any Court required or authorised by law to be made or done by a party in such Court, may, except otherwise expressly provided by any law for the time being in force, be made or done by the party in person or by an advocate duly appointed to act on his behalf: Provided that any such appearance shall, if the Court or Judge so directs, be made by the party in person.

It is not the Appellant's submission that for the first alternative in Rule 321 (a) to apply, the judgment must be delivered in the personal presence of the Appellant, but she does submit that for it to apply either the Appellant or her duly appointed advocate must be there, and that whether the Supreme Court's inference was right or wrong as to the Trial Judge's satisfaction for the presence of the clerk makes no difference, as a lawyer's clerk has no standing and is not representative of the master or of the client either in Court or in Chamber proceedings.

8. The judgment in the Land Court was given by Judge Daoudi who sat alone for the hearing of the case. It is submitted that the Judge had no jurisdiction to sit, as he purported to do, as a Land Court. By Section 5 of the Land Courts (Amendment) Ordinance 1939 a new section (Section 11) was added to the Land Courts Ordinance providing for the constitution

of Land Courts. This section was amended by the Land Courts (Amendment) Ordinance, 1942, and now and at the time this action was brought and tried reads—

Constitution of Land Courts.

11. (1) Land Courts shall be constituted as follows :—

(a) where the value of the land or the subject matter of the dispute exceeds two hundred and fifty pounds of a Land Court consisting of a president or relieving president or two Judges of a District Court.

10 Judge Daoudi was a judge of the District Court of Jaffa. He was neither president nor a relieving president. It was throughout the submission of the Plaintiff (that is, the first Respondent) that the value of the land the subject matter of the dispute exceeded LP.250 as otherwise the action would have had to be brought in the Magistrates Court.

9. The Appellant submits that the judgment of the Supreme Court, sitting as a Court of Appeal, Jerusalem, dated the 30th January 1945 should be set aside, and that the matter should be remitted to the said Court for it to hear the appeal on the merits, alternatively, that the judgment of the Land Court Jaffa dated the 23rd July 1944 should be set  
20 aside and the first Respondent's action should be dismissed for the following among other

### REASONS.

- (1) Because the Appellant's appeal to the Supreme Court was not out of time.
- (2) Because the judgment delivered by Judge Daoudi on the 23rd July 1944 was not delivered in the presence of the Appellant within the meaning of Rule 321 (a) of the Civil Procedure Rules.
- (3) Because Judge Daoudi had no jurisdiction to sit as a  
30 Land Court.
- (4) Because the judgment of Judge Daoudi is wrong.

PHINEAS QUASS.

T. L. WILSON & Co.,  
6 Westminster Palace Gardens,  
London, S.W.1,  
*Solicitors for the Appellant.*

In the Privy Council.

ON APPEAL FROM THE SUPREME  
COURT OF PALESTINE, SITTING AS  
A COURT OF APPEAL, JERUSALEM

---

BETWEEN

NUZHA BINT EL-HAJ  
SULEIMAN ABU  
KHADRA - - - *Appellant*

AND

HAJ IBRAHIM SALEH  
EL-HELOU and  
Others - - - *Respondents.*

---

CASE FOR THE APPELLANT.

---

T. L. WILSON & CO.,  
6 Westminster Palace Gardens,  
London, S.W.1,  
*Solicitors for the Appellant.*