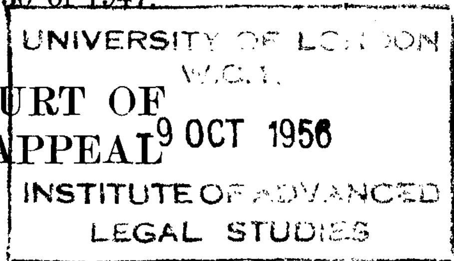
51, 1948

In the Privy Council

No. 30 of 1947.


UNIVERSITY OF LONDON
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9 OCT 1956
INSTITUTE OF ADVANCED
LEGAL STUDIES
44481

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

BETWEEN

(1) ESTHER MAMANOFF and MICHAEL MAMANOFF
(2) DOV GUTERMAN and DVORA GUTERMAN
(3) REUVEN LEV and ETIA MALKA LEV
(4) MEIR WIND
(5) GERSHON MABOVITZ
(6) NISSIM MIRAKOV COHEN and MALKIEL MIRAKOV COHEN
(7) BENJAMIN MANN
(8) BLUMA VORTMAN
(9) BRANCHA BEN-YA'ACOV ... ... (*Defendants*) APPELLANTS

AND

JOSEPH FORER ... ... (*Plaintiff*) RESPONDENT.

CASE FOR THE RESPONDENT

RECORD

1.—This is an Appeal from the Judgment dated the 13th April, 1945, of the Supreme Court of Palestine sitting as a Court of Civil Appeal affirming the Judgment dated the 11th September, 1944, of the District Court of Tel-Aviv in favour of the above-named Respondent in a series of nine Consolidated Actions which he brought against the above-named Appellants. [p. 45] [p. 36]

2.—The actions were brought to recover "equivalent" or "estimated" rent—a claim analogous to the English claim for use and occupation—by reason of the fact that the Appellants had for a number of years used and occupied without payment of rent nine flats in a building belonging to the Respondent at 24 Hashoftim (or Judges) Street, Tel-Aviv, Palestine. There was no dispute in the Courts below as to the dates from which the Appellants had occupied the flats, or the rate at which "equivalent rent" should be assessed, if any should be recoverable.

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CASE FOR THE RESPONDENT.

RECORD

pp. 55–74

pp. 86–7

3.—The Respondent had between October, 1937, and May, 1939, entered into nine separate agreements with the Appellants, each purporting to be an agreement for the sale of a specific flat in the said building. Prior to the hearing of the present actions in the Courts below the Respondent had brought another series of actions in the Courts of Palestine claiming possession of the flats on the ground that the said agreements were null and void under the law of Palestine, and Judgment had been given in each of those actions holding the agreements to be null and void, and since the hearing of the present actions in the Supreme Court that Court has affirmed a decision of the Land Court that these agreements were null and void. 10 The latter Judgment (dated the 26th September, 1945), is the subject matter of Appeal No. 32 of 1947 now pending before His Majesty's Privy Council. The claim for "equivalent rent" rests, in the first place, on the submission that the latter decision of the Supreme Court is right and these agreements are null and void. The argument and submissions of the Respondent on this matter are fully set out in the printed Case for the Respondent in that Appeal, and the Respondent begs leave to refer thereto and ventures to submit that it will be to the convenience of the Board that those submissions should not be repeated in this place, the Board having directed that the present Appeal should be tried on the same day 20 as that Appeal.

4.—The claim for "equivalent" or "estimated" rent arises under the Mejelle, Article 472, as explained and illustrated by Articles 417, 596, 597 and 598. There is more than one translation of that Code and the terms of the translations differ, but Article 417 in Hooper's translation reads as follows :—

"If a person uses the property of another person without the "conclusion of a contract and without such person's permission, and "if it is property prepared for hire, an estimated rent must be paid, "but not otherwise. But if the owner of the property has previously 30 "demanded payment of rent, and such person uses such property, "rent is payable, even though no benefit can be derived from such "property. The reason for this is that, by using the property, such "person is deemed to have agreed to pay the rent."

The phrase "prepared for hire" is treated of in Article 417 which (in Hooper's translation) reads as follows :—

"Prepared for hire is said of anything designed and prepared "to be let on hire. It relates to real property such as inns, houses, "baths and shops originally built or bought in order to let on hire, "and also such things as carriages and horses let on hire. If a thing 40 "is let continuously on hire for a period of three years, it is a proof "that it is prepared for hire. If a person has a thing made for himself "and tells people that it is prepared for hire, such thing is deemed "to be prepared for hire."

RECORD

5.—In the present case there was no previous demand by the Respondent for rent, and it was submitted on his behalf in the Courts below that in the circumstances of this case the Appellants had used his property without the conclusion of a contract and without such person's permission, and that it was property prepared for hire.

6.—The submission that the Appellants had used the Respondent's property "without the conclusion of a contract" is based upon the proposition of law that the agreements with the Appellants, referred to above, were null and void.

10 7.—The submission that the Appellants had used the Respondent's property "without such person's permission" is based on the fact that the Appellants used and occupied the said property under a term of the said agreements and not otherwise, and that those agreements are null and void.

8.—The Respondent submits that the property was "property prepared for hire" in the sense that it was property suitable and appropriate for hire, and this, it is submitted, is the true construction of that phrase. It is further submitted that Articles 596, 597 and 598 of the Mejelle, to various translations of which the Respondent craves leave to 20 refer at the hearing of this Appeal, do not affect this construction of Articles 472 and 417.

9.—In the District Court His Honour Judge Ross expressed his agreement with a Judgment of the Tel-Aviv Magistrate that the agreements were void. He further held that the flats in question were property "prepared to be let on hire" within the meaning of Article 417 of the Mejelle and were being used "without contract or permission" within the meaning of Article 472, since the contracts were void and no "permission" by the Respondent had been proved. He also held that Article 598, which had been relied on by the Appellants, referred to quite different classes of 30 agreements from the present. He held further that the Appellants had no equitable lien on the property—a proposition which is the subject matter of Appeal to His Majesty as Council in Appeal No. 32 of 1947—and accordingly gave Judgment for the Respondent against the Appellants for various sum as equivalent rent, with interest from the date of action.

p. 36, l. 37
p. 37, l. 5
p. 37, l. 7
l. 8
p. 37, l. 10
p. 37, l. 15

10.—On Appeal the Supreme Court affirmed the decision of the District Court that Article 472 of the Mejelle applied. They went on to hold that "even assuming that the Appellant did originally use the "premises with permission, yet as soon as he himself in 1941 set up the "defence that the contract was void, there was therefore no longer any 40 "valid contract, and the character and nature of his occupation changed, "and it is clear that the Respondent had ceased to allow the Appellant

p. 46, l. 24
p. 47, l. 4

" to use the premises, this fact being obvious from the Respondents conduct " in bringing an action tor eviction. The Appellant would therefore no " longer be regarded as using the premises with the Respondent's " permission."

11.—In the Respondent's submission—as made above in paragraph 7—the Appellants used the property without permission of the Respondent because no permission was given except by a clause of a contract which is null and void. But if the Respondent were wrong in this it is submitted that from the date when the Appellant Lev pleaded in the Respondent's action (7126/40) in the Magistrate's Court, Tel-Aviv, commenced in July, 1940, that the agreement with him was void, relying on a previous Judgment of the District Court (83/39), and the Court decided in his favour, he could no longer say that he was occupying the premises with the permission of the Respondent, and the Supreme Court was entitled in all the circumstances, to hold that he raised this defence with the knowledge for and on behalf of all the Appellants. If the Respondent was wrong in this, equivalent rent would at least be payable from December, 1942, when the Appellant brought actions for possession against each of the present Appellants in the Magistrates Court, Tel-Aviv (Civil Cases 6938–46/42).

12.—The Respondent humbly submits that this Appeal should be dismissed with costs for the following among other

REASONS

1. Because the agreements between the Respondent and the Appellants were null and void.

2. Because the Appellants have used the Respondent's flats without the conclusion of a contract and without the Respondent's permission and because the flats were property " prepared for hire " within the meaning of Article 417 of the Mejelle.

3. Because for the above reasons the Respondent was entitled to succeed in his claim for " equivalent rent."

4. Because the Judgments of the District Court and of the Supreme Court were right.

A. S. DIAMOND.

In the Privy Council.

No. 30 of 1947.

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

BETWEEN

ESTHER MAMANOFF AND OTHERS (*Defendants*) APPELLANTS

AND

JOSEPH FORER (*Plaintiff*) RESPONDENT.

CASE FOR THE RESPONDENT

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