

51,1948

No. 30 of 1947.

**In the Privy Council.**

UNIVERSITY OF LONDON  
W.C.1

-9 OCT 1958

INSTITUTE OF ADVANCED  
LEGAL STUDIES

44479

**ON APPEAL**

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

BETWEEN

Case No. 287/1943

ESTHER MAMANOFF and MICHAEL MAMANOFF

Case No. 284/1943

DOV GUTERMAN and DVORA GUTERMAN (Defendants) *Appellants*

AND

JOSEPH FORER (Plaintiff) - - - - - *Respondent*

AND BETWEEN

Case No. 291/1943

REUVEN LEV and ETIA MALKA LEV

Case No. 290/1943

MEIR WIND

Case No. 289/1943

GERSHON MABOVITZ

Case No. 288/1943

NISSIM MIRAKOV COHEN and MALKIEL MIRAKOV  
COHEN

Case No. 286/1943

BENJAMIN MANN

Case No. 285/1943

BLUMA VORTMAN

Case No. 283/1943

BRACHA BEN-YA'ACOV (Defendants) *Appellants*

AND

JOSEPH FORER (Plaintiff) - - - - - *Respondent.*

**RECORD OF PROCEEDINGS**

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# In the Privy Council.

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## ON APPEAL

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

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BETWEEN

Case No. 287/1943

ESTHER MAMANOFF and MICHAEL MAMANOFF

Case No. 284/1943

10 DOV GUTERMAN and DVORA GUTERMAN  
(Defendants) - - -

*Appellants*

AND

JOSEPH FORER (Plaintiff)

*Respondent*

AND BETWEEN

Case No. 291/1943

REUVEN LEV and ETIA MALKA LEV

Case No. 290/1943

MEIR WIND

Case No. 289/1943

20 GERSHON MABOVITZ

Case No. 288/1943

NISSIM MIRAKOV COHEN and MALKIEL  
MIRAKOV COHEN

Case No. 286/1943

BENJAMIN MANN

Case No. 285/1943

BLUMA VORTMAN

Case No. 283/1943

BRACHA BEN-YA'ACOV (Defendants)

*Appellants*

30

AND

JOSEPH FORER (Plaintiff)

*Respondent.*

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# RECORD OF PROCEEDINGS

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## No. 1.

## STATEMENT OF CLAIM.

*In the  
District  
Court of  
Tel-Aviv.*

IN THE DISTRICT COURT OF TEL-AVIV.

Civil Case No. 287/43.

No. 1.  
Statement  
of Claim,  
30th July  
1943.

YOSSEF FORER - - Plaintiff

vs.

1. ESTHER MAMANOFF  
2. MALKIEL MAMANOFF - Defendants.

Value of Claim : LP.468.750.

1. The Plaintiff is the owner of a house situated at 24, Hashoftim 10 Street, Tel-Aviv, which is registered in his name in the Land Registry Office, Tel-Aviv, under folio No. 53 page 148.

2. The first and second Defendants are husband and wife and occupy since the 15th May, 1938, a flat in the second floor in the said house consisting of three rooms and of its appurtenances, and failed to pay any rent to the Plaintiff until now.

3. The Defendants have alleged that they had entered the flat in the said house of the Plaintiff by virtue of an agreement dated 26.5.38, whereby they apparently intended to buy this flat, but this agreement is void and of no effect whatsoever, by virtue of judgment dated 25.2.41 20 issued in the Magistrate's Court, Tel-Aviv, in files No. 4931/40 and 4932/40, and by virtue of a decision in the Magistrate's Court, Tel-Aviv, dated 21.7.43, in files Nos. 6944/42 and 6945/42. In fact and in law, there exists no agreement whatsoever between the parties in respect of the occupation or rent of the said flat.

4. Plaintiff has instituted eviction proceedings against the Defendants in the Magistrate's Court, Tel-Aviv, and in accordance with the decision dated 21.7.43, judgment for eviction in favour of Plaintiff should be entered upon his depositing in Court the amount received from the Defendants under the said agreement which was found void and of no 30 effect. Plaintiff has complied with this decision and has deposited the said amount, and the judgment for eviction is about to be entered.

5. Under the circumstances, the Plaintiff is entitled by law to recover from the Defendants estimated rent in respect of the flat occupied by them.

6. Plaintiff claims from the Defendants estimated rent for a period of 62 months and 15 days, i.e. as from the 15th May, 1938, until the 30th of July, 1943, the date of filing this action.

7. Plaintiff submits that the estimated rent of the flat occupied by the Defendants amounts to LP.7.500 per month. The sum thus due by 40 the Defendants amounts to LP.468.750.

It is accordingly prayed that judgment be entered in favour of the Plaintiff against the Defendants, jointly and severally, for the amount of LP.468.750 with interest, as from the date of action, together with costs and advocate's fees.

(Sgd.) E. D. GOITEIN,  
Attorney for Plaintiff.

## No. 2.

## STATEMENT OF DEFENCE.

(Translation from Hebrew.)

*In the  
District  
Court of  
Tel-Aviv.*

(A) Before replying to the Plaintiff's Statement of Claim, I wish to remark that a Defendant by the name of Malkiel Mamanoff is unknown to us. The name of my client's husband is not Malkiel. It transpired that a name such as Malkiel is not in existence as regards this action.

No. 2.  
Statement  
of Defence  
(Transla-  
tion from  
Hebrew),  
15th  
August  
1943.

(B) My client's husband pleads lack of privity, as the contract referred to by the Plaintiff was entered only with the 1st Defendant, and therefore  
10 the Statement of Claim must be struck out as far as first Defendant's husband is concerned.

1. The Statement of Claim does not comply with the requirements of the law as set out in Rule 7 (C, D, F and G) of the Civil Procedure Rules, 1938.

2. The first Defendant and alternatively her husband definitely denies that they or any of them should pay rent to the Plaintiff for the flat in the jointly owned house. Between the 1st Defendant and Plaintiff there is a contract for sale dated 26.5.38, whereby the latter undertook to transfer to the name of the Defendant a certain share in the land and in  
20 the jointly owned house at the Land Registry. The Defendant paid to the Plaintiff at the request of the General Mortgage Bank for Palestine Ltd. ; she paid to the receiver and subsequently to the Bank itself all the amounts which were fixed in the contract, and up to the present day she paid on account of her share in the plot and the flat a sum amounting to over LP.300.-. There were no relations of lease between Defendants and Plaintiff. The fact that during a period of over five years they were not requested to make any payment for the flat is evidence that no one could think of coming with such a request to the Defendant. The Plaintiff admits that the Defendant entered the flat by virtue of a contract dated  
30 26.5.38, whereby they intended to acquire a flat. It appears that the Plaintiff admits that no relations of lease existed between the parties but relations of contract for sale.

4. The Defendants deny Plaintiff's allegation that this contract is invalid and was cancelled by a Court. The Plaintiff testified in case No. 6944/42 of the Magistrate's Court Tel-Aviv that he never had any litigation with the Defendants. How then does the Plaintiff know that this contract which never was the subject matter of litigation before a competent Court, is cancelled ? As regards the cases in files Nos. 4931-32/40 of the Magistrate's Court Tel-Aviv, they do not pertain at all to this  
40 action and secondly since when does a judgment of the Magistrate's Court bind the District Court ?

5. The Plaintiff relied on the decision given by the Magistrate's Court Tel-Aviv in file No. 6944-45/42 in another action of the Plaintiff against 1st Defendant. I wish to point out that that decision has not yet become a binding judgment, since the Plaintiff did not yet comply with all the directions of His Worship the Magistrate, and since even such a judgment would not bind the District Court, then the ruling in question certainly could not.



*In the  
District  
Court of  
Tel-Aviv.*

No.2.  
Statement  
of Defence  
(Transla-  
tion from  
Hebrew),  
15th  
August  
1943,  
*continued.*

6. Even if the Magistrate would deliver judgment in favour of the Plaintiff in another claim, his judgment is not final, as Defendant maintains that he had no jurisdiction to try that case; and in case such judgment would be given, appeal will be brought to the Court of Appeal. In the meantime, the contract signed by both parties and which is not illegal or contrary to public policy, remains valid and cannot be repudiated by the desire or unilateral demand of one of the parties. As long as a competent Court has not decided on the validity or otherwise of the contract, the least that can be said about this claim for rent is that it is premature.

7. *Alternatively*, although the Defendants do not admit in any way 10 the right of the Plaintiff to sue them for rent for the five years, in view of the existence of the contract for sale, and further taking into consideration that 1st Defendant paid and continues to pay all the time on account of the purchase price, it is submitted that this action must be dismissed on the ground that Plaintiff did not apply in the first instance to the Rents Tribunal and did not ask for its decision on the rent paid or payable for the flat in question on the 1st of April, 1940, in accordance with the Rent Restrictions (Dwelling Houses) Ordinance, 1940.

In my submission this Court has no jurisdiction to try this action or to assess the rent of the flat before an order of the Rents Tribunal of 20 Tel-Aviv has been produced.

8. The prayer that both Defendants be adjudged jointly and severally is also misconceived, since they did not sign any contract of lease, and did not undertake to pay to Plaintiff any rent for the flat.

For the foregoing reasons it is prayed that the action be dismissed as wrong in every respect and against justice and elementary equity, and that Plaintiff be ordered to pay costs and advocate's fees.

(Sgd.) S. AHARONOV,

For Defendants.

No. 3.  
Issues  
(Transla-  
tion from  
Hebrew),  
10th  
October  
1943.

**No. 3.**  
**ISSUES.**

30

(Translation from Hebrew.)

Before HIS HONOUR DR. KORNGRUEN, Judge.

1. Whether they are bound to pay any rent at all ?
2. Whether there was any action between Plaintiff and Defendants as mentioned in paragraph 3 of the Statement of Claim ? And if ever this agreement between them was revoked at any time ?
3. Whether judgment was given—or is to be given—for eviction as mentioned in paragraph 4 of the Statement of Claim ?
4. Whether Plaintiff is legally entitled to any reasonable rent, and 40 if so entitled, what amount is due ?
5. Whether the person Malkiel is a party to this action ?

- 6. Whether there is privity between the parties ?
- 7. Whether the action is in accordance with Rule 7 of the Civil Procedure Rules, 1938 ?
- 8. What amount was paid on the strength of the contract between Mamanoff and Plaintiff ? Whether there is such a contract ?
- 9. Whether there were between the parties relations arising from lease or sale ?
- 10. What is the legal effect of the fact that Plaintiff did not apply to the Rents Tribunal to fix the rent, and if for this reason the action is not premature ?

*In the District Court of Tel-Aviv.*  
 No. 3.  
 Issues (Translation from Hebrew), 10th October 1943,  
*continued.*

Order : I order to enter this case on the list of pending cases. The parties were notified to be ready with their evidence on the day fixed for hearing.

(Sgd.) DR. KORNGRUEN,

10.10.43.

Judge.

Before HIS HONOUR JUDGE PAGET J. BOURKE, R/President.

Date of Hearing : 19.6.44.

By consent of parties action consolidated with Civil Case No. 283/43.

(Sgd.) PAGET J. BOURKE,

R/President.

20

**No. 4.**

**STATEMENT OF CLAIM.**

Civil Case No. 284/43.

YOSSEF FORER

- -

Plaintiff

*vs.*

1. DOV GUTERMAN

2. DVORA GUTERMAN

Defendants.

Value of Claim : LP.455.000.

1. The Plaintiff is the owner of a house situated at 24, Hashoftim Street, Tel-Aviv, which is registered in his name in the Land Registry Office, Tel-Aviv, under folio No. 53, page 148.

2. The 1st and 2nd Defendants are husband and wife and occupy together since the 10th July, 1938, a flat in the second floor in the said house consisting of three rooms and of its appurtenances, and failed to pay rent to the Plaintiff until now.

3. The Defendants have alleged that they had entered the flat in the said house of the Plaintiff by virtue of an agreement dated 6th July, 1938, whereby they apparently intended to buy this flat, but this agreement

No. 4.  
 Statement of Claim,  
 30th July 1943.

*In the  
District  
Court of  
Tel-Aviv.*

No. 4.  
Statement  
of Claim,  
30th July  
1943,  
*continued.*

is and was found to be void and of no effect whatsoever by virtue of a final judgment dated 25.2.41, issued in the Magistrate's Court, Tel-Aviv, in files No. 4931/40 and 4932/40. In fact and in law, there exists no agreement whatsoever between the parties in respect of the occupation or rent of the said flat.

4. Under the circumstances, the Plaintiff is entitled by law to recover from the Defendants estimated rent in respect of the flat occupied by them.

5. Plaintiff claims from the Defendants estimated rent for a period of 60 months and 20 days, i.e. as from the 10th day of July, 1938, until 10 the 30th day of July, 1943, the date of filing this action.

6. Plaintiff submits that the estimated rent of the flat occupied by the Defendants amounts to LP.7.500 per month. The sum thus due by the Defendants amounts to LP.455.-.

It is accordingly prayed that judgment be entered in favour of the Plaintiff against the Defendants, jointly and severally, for the amount of LP.455.- with interest as from the date of action, together with costs and advocate's fees.

(Sgd.) E. D. GOITEIN,  
for the Plaintiff. 20

No. 5.  
Statement  
of Defence,  
1st  
September  
1943.

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No. 5.  
**STATEMENT OF DEFENCE.**

1. It will be submitted by Defendants that the present action is premature.

*Alternatively :*

2. Defendants were and are not under any liability whatever to pay any rent to Plaintiff in respect of the flat occupied by them.

3. Plaintiff did not comply with Rule 118 of the Civil Procedure Rules, 1938, as he did not attach to the Statement of Claim the agreement referred to by him in para 3 thereof. 30

4. It is denied that there is no valid agreement in fact or in law between the parties.

5. It is also denied that the construction of the said agreement by the Magistrate's Court is binding upon this Honourable Court.

6. It is denied that in the circumstances Plaintiff is entitled to recover from Defendants any estimated rent or otherwise. Defendants paid a part of the purchase price of the flat, and this part remained during the whole period in the hands of Plaintiff.

*Alternatively :*

7. It is denied that Plaintiff is entitled, if at all, to the rent as from 10.7.38. 40

8. It is denied that the estimated rent of the flat occupied by Defendants amounts to LP.7.500 per month.

Wherefore it is prayed that Plaintiff's action may be dismissed with costs and advocate's fees.

(Sgd.) H. DVORIN,  
Advocate for Defendants.

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**No. 6.**  
**ISSUES.**

*In the  
District  
Court of  
Tel-Aviv.*

(Translation from Hebrew.)

Before HIS HONOUR DR. KORNGRUEN, Judge.

No. 6.  
Issues  
(Transla-  
tion from  
Hebrew),  
13th  
October  
1943.

The following issues have been fixed :—

All the issues fixed in Civil Case No. 283/43 (see No. 28, p. 25,  
with the exception of issue No. 6).

12.10.43.

(Sgd.) SHVO,  
Attorney for Plaintiff.

10

(Sgd.) J. ROTENSTREICH,  
Attorney for Defendants.

See Decision in Civil Case No. 283/43.

(Sgd.) DR. KORNGRUEN,  
Judge.

13.10.43.

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**No. 7.**

**STATEMENT OF CLAIM.**

IN THE DISTRICT COURT OF TEL-AVIV.

No. 7.  
Statement  
of Claim,  
30th July  
1943.

20

Civil Case No. 291/43.

YOSSEF FORER

Plaintiff

*v.*

REUVEN LEV  
ETIA MALKA LEV

Defendants.

Value of Claim : LP.405.400.

1. The Plaintiff is the owner of a house situated at 24, Hashoftim  
Street, Tel-Aviv, which is registered in his name in the Land Registry  
Office, Tel-Aviv, under folio No. 53, page 148.

30 2. The First and Second Defendants are husband and wife and  
occupy together since the 10th of April, 1938, a flat in the second floor in  
the said house consisting of two rooms and its appurtenances, and a store  
in the said house, and failed to pay any rent to the Plaintiff until now.

3. The Defendants have alleged that they had entered the flat in  
the said house of the Plaintiff by virtue of an agreement dated 6th October,  
1937, whereby they apparently intended to buy this flat, but this agreement  
is and was found to be void and of no effect whatsoever by virtue of a final  
judgment dated 20.6.41, issued in the Magistrate's Court, Tel-Aviv, in  
file No. 3060/41. In fact and in law, there exists no agreement whatsoever  
between the parties in respect of the occupation or rent of the said flat

40 and store.

*In the  
District  
Court of  
Tel-Aviv.*

No. 7.  
Statement  
of Claim,  
30th July  
1943.  
*continued.*

4. Plaintiff has instituted eviction proceedings against the Defendants in the Magistrate's Court, Tel-Aviv, and in accordance with the decision dated 21.7.43, judgment for eviction in favour of Plaintiff should be entered upon his depositing in Court the amount received from the Defendants under the said agreement which was found void and of no effect. Plaintiff has complied with this decision and has deposited the said amount and the judgment for eviction is about to be entered.

5. Under the circumstances, the Plaintiff is entitled by law to recover from the Defendants estimated rent in respect of the flat and store occupied by them. 10

6. Plaintiff claims from the Defendants estimated rent in respect of the flat for a period of 63 months and 20 days, i.e. as from the 10th of April, 1938, until the 30th July, 1943, the date of filing this action, and estimated rent in respect of the store for a period of 59 months i.e. as from the 1st of September, 1938, until the 30th July, 1943.

7. Plaintiff submits that the estimated rent of the flat occupied by the Defendants amounts to LP.5 per month, and the estimated rent of the store amounts to LP.1.500 mils per month. On account of the rent of the store, Defendants have paid for one month only, i.e. LP.1.500 mils. The sum thus due by the Defendants amounts to LP.318.400 for the flat, 20 and LP.87 for the store, making a total of LP.405.400 mils.

It is accordingly prayed that judgment be entered in favour of the Plaintiff against the Defendants jointly and severally for the amount of LP.405.400 with interest as from the date of action, together with costs and advocate's fees.

(Sgd.) E. D. GOITEIN,  
For the Plaintiff.

No. 8.  
Statement  
of Defence,  
1st  
September  
1943.

**No. 8.**  
**STATEMENT OF DEFENCE.**

1. It will be submitted by Defendants that the present action is 30 premature.

*Alternatively :*

2. It is denied that Defendants occupy a store as alleged in paragraph 2 of the Statement of Claim.

3. Defendants were and are not under any liability whatever to pay any rent to Plaintiff in respect of the flat occupied by them.

4. Plaintiff did not comply with Rule 118 of the Civil Procedure Rules, 1938, as he did not attach to the Statement of Claim the agreement referred to by him in paragraph 3 thereof.

5. It is denied that there is no valid agreement in fact or in law 40 between the parties.

6. It is also denied that the construction of the said agreement by the Magistrate's Court is binding upon this Honourable Court.

7. The judgment of the Magistrate's Court, if such judgment will be given will not be a final one and for this reason will not be binding upon this Honourable Court. Such judgment, if at all, would not constitute res judicata.

*In the District Court of Tel-Aviv.*

8. It is denied that in the circumstances Plaintiff is entitled to recover from Defendants any estimated rent or otherwise. Defendants paid a part of the purchase price of the flat, and this part remained during the whole period in the hands of Plaintiff.

No. 8.  
Statement of Defence,  
1st  
September  
1943,  
*continued.*

*Alternatively :*

10 9. It is denied that Plaintiff is entitled, if at all, to the rent of the flat as from 10.4.38, and to the rent of the store as from 1.9.38.

10. It is denied that the estimated rent of the flat occupied by Defendants amounts to LP.5 per month, and the estimated rent of the store to LP.1.500 per month. It is also denied that Defendants have ever paid anything to Plaintiff for rent in respect of any store.

Wherefore it is prayed that Plaintiff's action may be dismissed with costs and advocate's fees.

(Sgd.) H. DVORIN,  
Advocate for Defendants.



20

No. 9.

**APPLICATION TO AMEND DEFENCE.**

(Translation from Hebrew.)

Defendants do hereby apply for leave to amend the defence filed by them in this file by adding paragraph 8 :—

“ It is denied that Etia Malka Lev was privy to any contract or agreement with the Plaintiff or that the flat is occupied by her independently from the occupation of Defendant No. 1.”

This defence is necessary in order to fix the issues between the parties.

(Sgd.) O. ROTENSTREICH,  
Attorney for Defendants.

No. 9.  
Application  
to amend  
Defence  
(Transla-  
tion from  
Hebrew),  
25th  
October  
1943.

30

Application granted.

(Sgd.) KORNGRUEN,  
Judge.  
25.10.43.



*In the  
District  
Court of  
Tel-Aviv.*

**No. 10.  
ISSUES.**

(Translation from Hebrew.)

Before HIS HONOUR DR. KORNGRUEN, Judge.

No. 10.  
Issues  
(Translation  
from  
Hebrew),  
25th  
October  
1943.

The same issues as fixed in file No. 283/43 (see No. 28, p. 25) with an additional issue :—

Did the Defendant occupy a shop in the Plaintiff's house ?

Order : I order to accept the proposed issues and to enter action on list of pending cases. Parties were notified to be ready with their evidence on the day of hearing.

(Sgd.) Dr. KORNGRUEN,

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25.10.43.

Judge.

No. 11.  
Statement  
of Claim,  
30th July  
1943.

**No. 11.**

**STATEMENT OF CLAIM.**

Civil Case No. 290/43.

YOSSEF FORER - - - Plaintiff

v.

MEIR WIND Defendant.

Value of Claim LP.419.500.

1. The Plaintiff is the owner of a house situated at 24, Hashoftim 20 Street, Tel-Aviv, which is registered in his name in the Land Registry Office, Tel-Aviv, under folio No. 53, page 148.

2. The Defendant occupies since the 15th August, 1939, a flat in the first floor in the said house consisting of three rooms and its appurtenances, and a store in the said house, and failed to pay any rent to the Plaintiff until now.

3. The Defendant has alleged that he had entered the flat in the said house of the Plaintiff by virtue of an agreement dated 15.5.39, whereby he apparently intended to buy this flat, but this agreement is void and of no effect by virtue of judgment dated 25.2.41 issued in the Magistrate's Court in files Nos. 4931/40 and 4932/40. In fact and in law, there exists no agreement whatsoever between the parties in respect of the occupation or rent of the said flat and store. 30

4. Plaintiff has instituted eviction proceedings against the Defendant in the Magistrate's Court, Tel-Aviv, and in accordance with the decision dated 21.7.43, judgment for eviction in favour of Plaintiff should be entered upon his depositing in Court the amount received from the Defendant under the said agreement which was found void and of no effect. Plaintiff has complied with this decision and has deposited the said amount and the judgment for eviction is about to be entered. 40

5. Under the circumstances, the Plaintiff is entitled by law to recover from the Defendant estimated rent in respect of the flat and the store occupied by him.

6. Plaintiff claims from the Defendant estimated rent for a period of 47 months and 15 days, i.e. as from the 15th August, 1939, until the 30th day of July, 1943, the date of filing this action, in respect of the flat and store.

7. Plaintiff submits that the estimated rent of the flat occupied by the Defendant amounts to LP.7.500 mils per month, and the estimated rent of the store amounts to LP.1.500 mils per month. On account of the rent of the store Defendant paid the sum of LP.8. The sum thus due by the Defendant amounts to LP.336.250 mils for the flat, and LP.63.250 for the store, making a total of LP.419.500 mils.

It is accordingly prayed that judgment be entered in favour of the Plaintiff against the Defendant for the amount of LP.419.500, with interest as from the date of action, together with costs and advocate's fees.

(Sgd.) E. D. GOITEIN,  
for the Plaintiff.

*In the  
District  
Court of  
Tel-Aviv.*

—  
No. 11.  
Statement  
of Claim,  
30th July  
1943,  
*continued.*

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**No. 12.**  
**STATEMENT OF DEFENCE.**

No. 12.  
Statement  
of Defence,  
1st  
September  
1943.

1. It will be submitted by Defendant that the present action is premature.

*Alternatively :*

2. It is denied that Defendant occupies a store, as alleged in paragraph 2 of the Statement of Claim.

3. Defendant was and is not under any liability whatever to pay any rent to Plaintiff in respect of the flat occupied by him.

4. Plaintiff did not comply with Rule 118 of the Civil Procedure Rules, 1938, as he did not attach to the Statement of Claim the agreement referred to by him in paragraph 3 thereof.

5. It is denied that any judgment, as alleged in paragraph 3 of the Statement of Claim, was ever given against Defendant in any of the files mentioned in the said paragraph or in any other file, and/or that any action was ever brought by Plaintiff against Defendant apart from the action for eviction which is still pending.

6. It is denied that there is no valid agreement in fact or in law between the parties.

7. The judgment of the Magistrate's Court, if such judgment will be given, will not be a final one and for this reason will not be binding upon this Honourable Court. Such judgment, if at all, would not constitute res judicata.



*In the  
District  
Court of  
Tel-Aviv.*

8. It is denied that in the circumstances Plaintiff is entitled to recover from Defendant any estimated rent or otherwise. Defendant paid a part of the purchase price of the flat, and this part remained during the whole period in the hands of Plaintiff.

No. 12.  
Statement  
of Defence,  
1st  
September  
1943,  
*continued.*

*Alternatively :*

9. It is denied that Plaintiff is entitled, if at all, to the rent of the flat and/or store as from 15.8.39.

10. It is denied that the estimated rent of the flat occupied by Defendant amounts to LP.7.500 per month, and the estimated rent of the store to LP.1.500 per month. It is also denied that Defendant has ever paid anything to Plaintiff for rent in respect of any store. 10

Wherefore it is prayed that Plaintiff's action may be dismissed with costs and advocate's fees.

(Sgd.) H. DVORIN,  
Advocate for Defendant.

No. 13.  
Issues  
(Translation  
from  
Hebrew),  
13th  
October  
1943.

**No. 13.**  
**ISSUES.**

(Translation from Hebrew.)

Before HIS HONOUR DR. KORNGRUEN, Judge.

The same issues as framed in Civil Case 283/43 (see No. 28, p. 25) 20 with the following issue :—

Whether Defendant occupies a shop in Plaintiff's house ?

12.10.43.

(Sgd.) SHVO.  
Attorney for Plaintiff.  
(Sgd.) ROTENSTREICH,  
Attorney for Defendant.

See Decision in Civil Case No. 283/43.

(Sgd.) Dr. KORNGRUEN,  
Judge. 30

13.10.43.

Before HIS HONOUR JUDGE PAGET J. BOURKE, R/President.

Date of Hearing : 19.6.44.

By consent of parties action consolidated with Civil Case No. 283/43.

(Sgd.) PAGET J. BOURKE,  
R/President.

19.6.44.

No. 14.  
**STATEMENT OF CLAIM.**  
Civil Case No. 289/43.

*In the  
District  
Court of  
Tel-Aviv.*

YOSSEF FORER

Plaintiff

v.

GERSHON MABOVITZ

Defendant.

No. 14.  
Statement  
of Claim,  
30th July  
1943.

Value of Claim LP.267.500.

1. The Plaintiff is the owner of a house situated at 24, Hashoftim Street, Tel-Aviv, which is registered in his name in the Land Registry Office, Tel-Aviv, under Folio No. 53, page 148.

2. The Defendant occupies since the 15th February, 1939, a flat in the third floor in the said house consisting of two rooms and of its appurtenances, and failed to pay any rent to the Plaintiff until now.

3. The Defendant has alleged that he had entered the flat in the said house of the Plaintiff by virtue of an agreement dated 17.2.39, whereby he apparently intended to buy this flat, but this agreement is void and of no effect whatsoever. In fact and in law there exists no agreement whatsoever between the parties in respect of the occupation or rent of the said flat.

4. Plaintiff has instituted eviction proceedings against the Defendant in the Magistrate's Court, Tel-Aviv, and in accordance with the decision dated 21.7.43, judgment for eviction in favour of Plaintiff should be entered upon his depositing in Court the amount received from the Defendant under the said agreement which was found void and of no effect. Plaintiff has complied with this decision and has deposited the said amount and the judgment for eviction is about to be entered.

5. Under the circumstances, the Plaintiff is entitled by law to recover from the Defendant estimated rent in respect of the flat occupied by him.

6. Plaintiff claims from the Defendant estimated rent for a period of 53 months and 15 days, i.e. as from the 15th February, 1939, until the 30th day of July, 1943, the date of filing this action.

7. Plaintiff submits that the estimated rent of the flat occupied by the Defendant amounts to LP.5 per month. The sum thus due by the Defendant amounts to LP.267.500 mils.

It is accordingly prayed that judgment be entered in favour of the Plaintiff against the Defendant for the amount of LP.267.500, with interest as from the date of action, together with costs and advocate's fees.

(Sgd.) E. D. GOITEIN,

For the Plaintiff.

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*In the  
District  
Court of  
Tel-Aviv.*

No. 15.  
Statement  
of Defence,  
1st  
September  
1943.

**No. 15.**

**STATEMENT OF DEFENCE.**

1. It will be submitted by Defendant that the present action is premature.

*Alternatively :*

2. Defendant was and is not under any liability whatever to pay any rent to Plaintiff in respect of the flat occupied by him.

3. Plaintiff did not comply with Rule 118 of the Civil Procedure Rules, 1938, as he did not attach to the Statement of Claim the agreement referred to by him in paragraph 3 thereof. 10

4. It is denied that there is no valid agreement in fact or in law between the parties.

5. The judgment of the Magistrate's Court, if such judgment will be given, will not be a final one and for this reason will not be binding upon this Honourable Court. Such judgment, if at all, would not constitute *res judicata*.

6. It is denied that in the circumstances Plaintiff is entitled to recover from Defendant any estimated rent or otherwise. Defendant paid a part of the purchase price of the flat, and this part remained during the whole period in the hands of Plaintiff. 20

*Alternatively :*

7. It is denied that Plaintiff is entitled, if at all, to the rent as from 15.2.39.

8. It is denied that the estimated rent of the flat occupied by Defendant amounts to LP.5 per month.

Wherefore it is prayed that Plaintiff's action may be dismissed with costs and Advocate's fees.

(Sgd.) H. DVORIN,  
Advocate for Defendant.

No. 16.  
Issues  
(Translation from  
Hebrew),  
13th  
October  
1943.

**No. 16.  
ISSUES.**

30

(Translation from Hebrew.)

Before HIS HONOUR DR. KORNGRUEN, Judge.

The same issues as determined in File No. 283/43 (see No. 28, p. 25) except issue No. 5.

13.10.43.

(Sgd.) SHVO,  
Attorney for Plaintiff.

(Sgd.) ROTENSTREICH,  
Attorney for Defendant. 40

See Order in Civil Case 283/43.  
13.10.43.

(Sgd.) DR. KORNGRUEN,  
Judge.

Before HIS HONOUR JUDGE PAGET J. BOURKE, R/President.

Date of hearing : 19.6.44.

By consent of parties action consolidated with Civil Case No. 283/43.

(Sgd.) PAGET J. BOURKE,  
R/President.

No. 17.

STATEMENT OF CLAIM.

Civil Case No. 288/43.

*In the  
District  
Court of  
Tel-Aviv.*

YOSSEF FORER - - - - - Plaintiff

*v.*

MALKIEL MIRAKOV COHEN  
NISSIM MIRAKOV COHEN - - - Defendants.

No. 17.  
Statement  
of Claim,  
30th July  
1943.

Value of Claim : LP.446.250.

1. The Plaintiff is the owner of a house at 24, Hashoftim Street,  
10 Tel-Aviv, which is registered in his name in the Land Registry Office,  
Tel-Aviv, under Folio No. 53, page 148.

2. The First and Second Defendants are brothers and occupy since  
the 15.8.38 a flat in the third floor in the said house consisting of three  
rooms and of its appurtenances, and failed to pay any rent to the Plaintiff  
until now.

3. The Defendants have alleged that they had entered the flat in  
the said house of the Plaintiff by virtue of an agreement dated 8.8.1938,  
whereby they apparently intended to buy this flat, but this agreement is  
void and of no effect whatsoever, by virtue of judgment dated 25.2.41,  
20 issued in the Magistrate's Court, Tel-Aviv, in files Nos. 4931/40 and 4932/40,  
and by virtue of a decision in the Magistrate's Court, Tel-Aviv, dated  
21.7.43, in files Nos. 6944/42 and 6945/42. In fact and in law, there  
exists no agreement whatsoever between the parties in respect of the  
occupation or rent of the said flat.

4. Plaintiff has instituted eviction proceedings against the Defendants  
in the Magistrate's Court, Tel-Aviv, and in accordance with the decision  
dated 21.7.43, judgment for eviction in favour of Plaintiff should be  
entered upon his depositing in Court the amount received from the  
Defendants under the said agreement which was found void and of no  
30 effect. Plaintiff has complied with this decision and has deposited the  
said amount and the judgment for eviction is about to be entered.

5. Under the circumstances, the Plaintiff is entitled by law to  
recover from the Defendants estimated rent in respect of the flat occupied  
by them.

6. Plaintiff claims from the Defendants estimated rent for a period  
of 59 months and 15 days, i.e. as from the 15.8.1938, until the 30th day  
of July, 1943, the date of filing this action.

7. Plaintiff submits that the estimated rent of the flat occupied by  
the Defendants amounts to LP.7.500 mils per month. The sum thus due  
40 by the Defendants amounts to LP.446.250 mils.

It is accordingly prayed that judgment be entered in favour of the  
Plaintiff against the Defendants, jointly and severally, for the amount  
of LP.446.250 mils with interest as from the date of action, together with  
costs and advocate's fees.

(Sgd.) E. D. GOITEIN,

For the Plaintiff.



## STATEMENT OF DEFENCE.

(Translation from Hebrew.)

*In the  
District  
Court of  
Tel-Aviv.*

No. 18.  
Statement  
of Defence  
(Transla-  
tion from  
Hebrew),  
15th  
August  
1943.

1. The action was not drafted in accordance with the requirements of Rule 7 (c) (d) (f) and (g) of the Civil Procedure Rules, 1938.

2. The Defendants categorically deny that they are bound to pay rent to the Plaintiff for the flat in the apartments house in view of the contract between the parties dated 8.8.38 under which the latter undertook to transfer into their names in the Land Registry a Musha' part in the plot and apartments house. The Defendants paid Plaintiff and the Receiver 10 on behalf of the Mortgage Bank all the amounts specified in the contract and up to date they have paid a sum exceeding LP.300.

3. No tenancy relations exist between the Defendants and the Plaintiff. The best proof is that for nearly five years they were not called upon to pay rent and such an idea could not possibly occur to anybody.

The Plaintiff naively contends: the Defendants maintained that they entered the flat in Plaintiff's house on 8.8.38 on the strength of the contract of the same date under which they proposed to purchase the flat. It follows therefore that no tenancy relations existed between the parties 20 but relations existing from sale.

4. The Defendants deny the submission of the Plaintiff that that contract is invalid and that it was annulled by a judicial tribunal. In case No. 6945/42 of the Magistrate's Court, Tel-Aviv, the testimony of the Plaintiff was recorded to the effect that he had never brought any action against the Defendants and that there was no litigation between them.

In the circumstances, how can the Plaintiff allege that the contract, which has never been the subject of any litigation before a competent court, has been annulled?

As to the Magistrate's Court cases No. 4931/40—4932/40 it is submitted 30 that they are irrelevant to the present case and in any case no binding this Court.

5. The Plaintiff relies on a decision given by the Tel-Aviv Magistrate in case No. 6944—45/42 in another claim by the same Plaintiff against the Defendants. In my submission that decision also is not binding on a higher Court, the more so as that decision has not yet assumed the force of a judgment as the Plaintiff has not complied with all the directions of the Magistrate.

6. Even if the Magistrate decided another claim in favour of the Plaintiff, his judgment is not final since Defendants maintain that he had 40 no jurisdiction to try that case. On the other hand if the judgment will not be in Defendants' favour they may appeal. In the meantime the contract signed by the parties which is not illegal or contrary to public policy remains valid and may not be repudiated by the desire or unilateral demand of one of the parties. As long as a competent Court has not decided the validity or otherwise of the contract the least that can be said about this claim for rent is that it is premature.

7. Alternatively, although the Defendants do not admit in any way the right of the Plaintiff to sue them for rent for the five years in view of the contract of sale and the payments which they have been making all along on account of the sale, it is submitted that this action must be dismissed on the ground that Plaintiff ought to have applied in the first instance to the Rents Commissioner, and ask for his decision on the rent paid or which ought to have been paid for the flat in question on the 1st April, 1940.

10 In my submission this Court has no jurisdiction to try this action or assess the rent of the flat as no order of the Rents Commissioner has been produced.

8. The prayer that Defendants be charged jointly and severally is also misconceived since they did not sign any contract of lease and undertook no liability to pay Plaintiff any rent for the flat.

For the foregoing reasons, it is prayed that the action be dismissed as wrong in every respect and that Plaintiff be charged with costs and advocate's fees.

(Sgd.) AHARONOV,  
for Defendants.

*In the  
District  
Court of  
Tel-Aviv.*

No. 18.  
Statement  
of Defence  
(Transla-  
tion from  
Hebrew),  
15th  
August  
1943,  
*continued.*

20

No. 19.

ISSUES.

(Translation from Hebrew.)

Before HIS HONOUR DR. KORNGRUEN, Judge.

10.10.43.

No. 19.  
Issues  
(Transla-  
tion from  
Hebrew),  
10th  
October  
1943.

1. Whether they are bound to pay any rent at all ?
2. Whether there was any action between Plaintiff and Defendant as mentioned in para. 3 of the Statement of Claim ? And if ever this agreement between them was revoked at any time ?
- 30 3. Whether judgment was given—or is to be given—for eviction as mentioned in paragraph 4 of the Statement of Claim ?
4. Whether Plaintiff is legally entitled to any reasonable rent—and if entitled—what amount is due ?
5. Whether the person Malkiel is a party to this action ?
6. Whether there is privity between the parties ?
7. Whether the action is in accordance with Section 7 of the Civil Procedure Rules, 1938 ?
8. What amount was paid on the strength of the agreement between Mamanoff and Plaintiff ? Whether there is such contract ?
- 40 9. Whether there were between the parties relations arising from hire or sale ?

*In the  
District  
Court of  
Tel-Aviv.*

No. 19.  
Issues  
(Translation  
from  
Hebrew),  
10th  
October  
1943,  
*continued.*

10. What is the legal effect of the fact that Plaintiff did not apply to the Rent Commission to fix the rent and if by this conduct the action is not premature ?

*Decision :* I order to enter this case on list of pending cases. Parties were notified to be ready with all their evidence on the day fixed for hearing of case.

10.10.43.

(Sgd.) DR. KORNGRUEN, Judge.

Before HIS HONOUR JUDGE PAGET J. BOURKE, R/President.

Date of Hearing : 19.6.44.

By consent of parties action consolidated with Civil Case No. 283/43. 10

(Sgd.) PAGET J. BOURKE,

R/President.

No. 20.  
Statement  
of Claim  
30th July  
1943.

**No. 20.**

**STATEMENT OF CLAIM.**

Civil Case No. 286/43.

YOSSEF FORER - - - - Plaintiff

*v.*

BINYAMIN MANN - - - - Defendant.

Value of Claim : LP.318.400.

1. The Plaintiff is the owner of a house situated at 24, Hashoftim 20 Street, Tel-Aviv, which is registered in his name in the Land Registry Office, Tel-Aviv, under folio No. 53, page 148.

2. The Defendant occupies since the 10th April, 1938, a flat in the first floor in the said house, consisting of two rooms and of its appurtenances, and failed to pay any rent to the Plaintiff until now.

3. The Defendant has alleged that he had entered the flat in the said house of the Plaintiff by virtue of an agreement dated 1.2.1938, whereby he apparently intended to buy this flat, but this agreement is void and of no effect whatsoever, by virtue of judgment dated 25.2.41, issued in the Magistrate's Court, Tel-Aviv, in files No. 4931/40 and 4932/40, and by 30 virtue of a decision in the Magistrate's Court, Tel-Aviv, dated 21.7.43, in file No. 6946/42. In fact and in law, there exists no agreement whatsoever between the parties in respect of the occupation or rent of the said flat.

4. Plaintiff has instituted eviction proceedings against the Defendant in the Magistrate's Court, Tel-Aviv, and in accordance with the decision dated 21.7.43, judgment for eviction in favour of Plaintiff should be entered upon his depositing in Court the amount received from the Defendant under the said agreement which was found void and of no effect. Plaintiff has complied with this decision and has deposited the said amount and the judgment for eviction is about to be entered. 40

5. Under the circumstances, the Plaintiff is entitled by law to recover from the Defendant estimated rent in respect of the flat occupied by him.

6. Plaintiff claims from the Defendant estimated rent for a period of 63 months and 20 days, i.e. as from the 10.4.1938, until the 30th day of July, 1943, the date of filing this action.

7. Plaintiff submits that the estimated rent of the flat occupied by the Defendant amounts to LP.5.- per month. The sum thus due by the Defendant amounts to LP.318.400 mils.

10 It is accordingly prayed that judgment be entered in favour of the Plaintiff against the Defendant for the amount of LP.318.400 with interest as from the date of action, together with costs and advocate's fees.

(Sgd.) E. D. GOITEIN,  
For the Plaintiff.

*In the  
District  
Court of  
Tel-Aviv.*  
- -  
No. 20.  
Statement  
of Claim,  
30th July  
1943,  
*continued.*

---

No. 21.

**STATEMENT OF DEFENCE.**

1. It will be submitted by Defendant that the present action is premature.

*Alternatively :*

20 2. Defendant was and is not under any liability whatever to pay any rent to Plaintiff in respect of the flat occupied by him.

3. Plaintiff did not comply with Rule 118 of the Civil Procedure Rules, 1938, as he did not attach to the Statement of Claim the agreement referred to by him in paragraph 3 thereof.

4. It is denied that any judgment, as alleged in paragraph 3 of the Statement of Claim, was ever given against Defendant in any of the files mentioned in the said paragraph or in any other file, and/or that any action was ever brought by Plaintiff against Defendant apart from the action for eviction which is still pending.

30 5. It is denied that there is no valid agreement in fact or in law between the parties.

6. The judgment of the Magistrate's Court, if such judgment will be given, will not be a final one and for this reason will not be binding upon this Honourable Court. Such judgment, if at all, would not constitute res judicata.

7. It is denied that in the circumstances Plaintiff is entitled to recover from Defendant any estimated rent or otherwise. Defendant paid a part of the purchase price of the flat, and this part remained during the whole period in the hands of Plaintiff.

40 *Alternatively :*

8. It is denied that Plaintiff is entitled, if at all, to the rent of the flat as from 10.4.38.

9. It is denied that the estimated rent of the flat occupied by Defendant amounts to LP.5.- per month.

Wherefore it is prayed that Plaintiff's action may be dismissed with costs and advocate's fees.

(Sgd.) H. DVORIN,  
Advocate for Defendant.

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No. 21.  
Statement  
of Defence,  
1st  
September  
1943.



*In the  
District  
Court of  
Tel-Aviv.*

**No. 22.  
ISSUES.**

(Translation from Hebrew.)

Before HIS HONOUR DR. KORNGRUEN, Judge.

The same issues as in File No. 283/43 (see No. 28, p. 25) with an additional one :—

Has a judgment been issued against the Defendant as it is stated in paragraph 3 of the Statement of Claim ?

12.10.43.

(Sgd.) SHVO, 10  
Attorney for Plaintiff.

(Sgd.) ROTENSTREICH,  
Attorney for Defendant.

See Decision in Civil Case 283/43.

13.10.43.

(Sgd.) Dr. KORNGRUEN,  
Judge.

Before HIS HONOUR JUDGE PAGET J. BOURKE, R/President.

Date of Hearing : 19.6.44.

By consent of parties action consolidated with Civil Case No. 283/43. 20  
19.6.44.

(Sgd.) PAGET J. BOURKE,  
R/President.

No. 23.  
Statement  
of Claim,  
30th July  
1943.

**No. 23.  
STATEMENT OF CLAIM.  
Civil Case No. 285/43.**

YOSSEF FORER - - - - - Plaintiff

v.

MRS. BLUMA VORTMAN - - - - - Defendant.

Value of Claim LP.477.500 mils. 30

1. The Plaintiff is the owner of a house situated at 24, Hashoftim Street, Tel-Aviv, which is registered in his name in the Land Registry Office, Tel-Aviv, under folio No. 53, page 148.

2. The Defendant occupies since the 10th April, 1938, a flat in the first floor in the said house consisting of three rooms and of its appurtenances, and failed to pay any rent to the Plaintiff until now.

3. The Defendant has alleged that she had entered the flat in the said house of the Plaintiff by virtue of an agreement dated 9th November, 1937, whereby her late husband intended to buy this flat, but apart from

the breach of the agreement committed by the husband of Defendant, whereby she lost all or any right under it, the agreement is void and of no effect whatsoever. In fact and in law there exists no agreement whatsoever between the parties in respect of the occupation or rent of the said flat.

*In the  
District  
Court of  
Tel-Aviv.*

4. Under the circumstances, the Plaintiff is entitled by law to recover from the Defendant estimated rent in respect of the flat occupied by her.

No. 23.  
Statement  
of Claim,  
30th July  
1943,  
*continued.*

5. Plaintiff claims from the Defendant estimated rent for a period of 63 months and 20 days, i.e. as from the 10th April, 1938, until the 30th day of July, 1943, the date of filing this action.

10 6. Plaintiff submits that the estimated rent of the flat occupied by the Defendant amounts to LP.7.500 per month. The sum thus due by the Defendant amounts to LP.477.500 mils.

It is accordingly prayed that judgment be entered in favour of the Plaintiff against the Defendant for the amount of LP.477.500 mils with interest as from the date of action, together with costs and advocate's fees.

(Sgd.) E. D. GOITEIN,  
for the Plaintiff.

**No. 24.**

20

**STATEMENT OF DEFENCE.**

No. 24.  
Statement  
of Defence,  
1st  
September  
1943.

1. It will be submitted by Defendant that the present action is premature.

*Alternatively :*

2. It is denied that Defendant occupies the flat in question since 10.4.38. The flat was occupied by the late husband of Defendant and since his death is occupied by Defendant and her family.

3. It is denied that Defendant's late husband committed breach of the agreement with Plaintiff losing all his rights thereunder and that the said agreement is void and of no effect whatsoever.

30 4. It is also denied that either in fact or in law no agreement exists between Plaintiff and Defendant's late husband.

5. Plaintiff did not comply with Rule 118 of the Civil Procedure Rules, 1938, as he did not attach to the Statement of Claim a copy of the agreement referred to in paragraph 3 hereof.

6. It is denied that Plaintiff is entitled in law to recover from Defendant any rent whatever.

*Alternatively :*

40 7. Defendant can be liable for the liabilities of her late husband only to the extent of the assets inherited by her, and as such were nil she cannot be made liable for any rent since the date of occupation till the date of the death of her late husband.

8. It is denied that the estimated rent in respect of the flat occupied by Defendant is LP.7.500 per month.

Wherefore it is prayed that Plaintiff's Claim may be dismissed with costs and Advocate's fees.

(Sgd.) H. DVORIN,  
Advocate for Defendant.

*In the  
District  
Court of  
Tel-Aviv.*

**No. 25.  
ISSUES.**

(Translation from Hebrew.)

No. 25.  
Issues  
(Transla-  
tion from  
Hebrew),  
13th  
October  
1943.

Before HIS HONOUR DR. KORNGRUEN, Judge.

1. Is the claim premature ?
2. Does the Defendant occupy the said flat as from 10.4.38 or from any other date ?
3. Has the late husband of the Defendant committed a breach of contract ?
4. Is the agreement a valid one in accordance to law ? 10
5. Did the Plaintiff comply with Rule 118 ?
6. Is the Plaintiff entitled to a reasonable rent or any other rent in respect of any period and what amount is due ?
7. Is the Defendant liable for any obligation that the deceased has undertaken ?

(Sgd.) SHEVO,

Attorney for Plaintiff.

(Sgd.) O. ROTENSTREICH,

Attorney for Defendant.

Attorneys for parties produce draft of issues by consent. 20

*Decision* : I order to accept the said issues and to enter case on list of pending cases, parties were notified to be ready with their evidence on the day fixed for hearing of cases.

(Sgd.) KORNGRUEN,

Judge.

13.10.43.

Before HIS HONOUR JUDGE PAGET J. BOURKE, R/President.

Date of hearing : 19.6.44.

By consent of parties action consolidated with Civil Case No. 283/43.

(Sgd.) PAGET J. BOURKE, 30

R/President.

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No. 26.

STATEMENT OF CLAIM.

Civil Case No. 283/43.

*In the  
District  
Court of  
Tel-Aviv.*

YOSSEF FORER - - - - - Plaintiff

v.

MRS. BRACHA BEN-YAACOV - - - - - Defendant.

No. 26.  
Statement  
of Claim,  
30th July  
1943.

Value of Claim LP.345.

1. The Plaintiff is the owner of a house situated at 24, Hashoftim Street, Tel-Aviv, which is registered in his name in the Land Registry Office, Tel-Aviv, under Folio No. 53, page 148.

2. The Defendant occupies since the 1st of October, 1939, a flat in the third floor in the said house consisting of three rooms and of its appurtenances, and failed to pay any rent to the Plaintiff until now.

3. The Defendant has alleged that she had entered the flat in the said house of the Plaintiff by virtue of an agreement dated 21st May, 1939, whereby she apparently intended to buy this flat, but this agreement is and was found to be void and of no effect whatsoever by virtue of a final judgment dated 25.2.41, issued in the Magistrate's Court, Tel-Aviv, in files No. 4931/40 and 4932/40. In fact and in law, there exists no agreement whatsoever between the parties in respect of the occupation or rent of the said flat.

4. Plaintiff has instituted eviction proceedings against the Defendant in the Magistrate's Court, Tel-Aviv, and in accordance with the decision dated 21.7.43, judgment for eviction in favour of Plaintiff should be entered upon his depositing in Court the amount received from the Defendant under the said agreement which was found void and of no effect. Plaintiff has complied with this decision and has deposited the said amount and the judgment for eviction is about to be entered.

5. Under the circumstances, the Plaintiff is entitled by law to recover from the Defendant estimated rent in respect of the flat occupied by her.

6. Plaintiff claims from the Defendant estimated rent for a period of 46 months, i.e. as from the 1st of October, 1939, until the 30th day of July, 1943, the date of filing this action.

7. Plaintiff submits that the estimated rent of the flat occupied by the Defendant amounts to LP.7.500 mils per month. The sum thus due by the Defendant amounts to LP.345.-.

It is accordingly prayed that judgment be entered in favour of the Plaintiff against the Defendant for the amount of LP.345, with interest as from the date of action, together with costs and advocate's fees.

(Sgd.) E. D. GOITEIN,  
for the Plaintiff.

## STATEMENT OF DEFENCE.

*In the  
District  
Court of  
Tel-Aviv.*

No. 27.  
Statement  
of Defence,  
1st  
September  
1943.

1. It will be submitted by Defendant that the present action is premature.

*Alternatively :*

2. Defendant was and is not under any liability whatever to pay any rent to Plaintiff in respect of the flat occupied by her.

3. Plaintiff did not comply with Rule 118 of the Civil Procedure Rules, 1938, as he did not attach to the Statement of Claim the agreement referred to by him in paragraph 3 thereof. 10

4. It is denied that there is no valid agreement in fact or in law between the parties.

5. It is also denied that the construction of the said agreement by the Magistrate's Court is binding upon this Honourable Court.

6. The judgment of the Magistrate's Court, if such judgment will be given, will not be a final one and for this reason will not be binding upon this Honourable Court. Such judgment, if at all, would not constitute res judicata.

7. It is denied that in the circumstances Plaintiff is entitled to recover from Defendant any estimated rent or otherwise. Defendant 20 paid a part of the purchase price of the flat, and this part remained during the whole period in the hands of Plaintiff.

*Alternatively :*

8. It is denied that Plaintiff is entitled, if at all, to the rent as from 1.10.39.

9. It is denied that the estimated rent of the flat occupied by Defendant amounts to LP.7.500 per month.

Wherefore it is prayed that Plaintiff's action may be dismissed with costs and advocate's fees.

(Sgd.) H. DVORIN,  
Advocate for Defendant.

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No. 28.  
ISSUES.

(Translation from Hebrew.)

Before HIS HONOUR DR. KORNGRUEN, Judge.

*In the  
District  
Court of  
Tel-Aviv.*

No. 28.  
Issues  
(Translation  
from  
Hebrew),  
13th  
October  
1943.

1. Is the present action premature.
2. Was the Defendant liable or under an obligation to pay rent to the Plaintiff.
3. Did the Plaintiff comply with Rule 118.
- 10 4. Is the contract existing between the parties binding both theoretically and practically.
5. Does the interpretation given by the learned Magistrate bind the District Court.
6. Would the judgment of the Magistrate Court, that is going to be delivered, bind the District Court.
7. Is the Plaintiff entitled to demand reasonable rent for any period and if so, what amount.

(Sgd.) SHEVO,

Attorney for Plaintiff.

(Sgd.) O. ROTENSTREICH,

Attorney for the Defendant.

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Counsels for parties produce issues by consent.

*Decision* : I order to accept the draft and to enter file on list of pending cases, parties were notified to be ready with all their evidence on day fixed for hearing.

(Sgd.) KORNGRUEN,

Judge.

13.10.43.

Before HIS HONOUR JUDGE PAGET J. BOURKE, R/President.

Date of hearing : 19.6.44.

*In the  
District  
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Tel-Aviv.*

No. 29.

PROCEEDINGS.

IN THE DISTRICT COURT, TEL-AVIV.

No. 29.  
Proceedings  
9th June  
1944 to  
13th July  
1944.

Civil Case No. 283/43.

Before HIS HONOUR JUDGE C. C. ROSS, R/President.

YOSSEF FORER - - - - Plaintiff

*vs.*

BRACHA BEN YAACOV - - Defendant.

*For Plaintiff:* Goitein.

*For Defendant:* Rotenstreich.  
Aharonov.

10

Date of hearing: 19.6.44.

*Plaintiff's  
Witnesses.*

Goitein opens the case for the Plaintiff and calls the following witnesses:—

(i) Mayer Antebi.

(i) MAYER ANTEBI. sworn.

I work in the Municipal Corporation of Tel-Aviv as Secretary to the tax office. I have a reference in my files to 24, Judges Str. Since 15.4.38 the following have been living there:—

Simha Vortman  
Reuven Lev  
Benjamin Mann  
Esther (Bachmall) Mamanoff (on 15.5.38)  
Dov Guterman (on 1.8.38)  
Meir Wind (on 1.11.39)  
Gershon Mabovitz (on 15.2.39)  
Bracha Ben Yaacov (on 1.11.39)  
Malkiel Mamanoff (Cohen) (on 15.9.39)

20

These persons stopped paying property tax in May, 1941 approximately after paying for some time.

No property tax appears to be owing from my records. In fact the Plaintiff has paid the property tax in these cases since 24.11.42—the sum of LP.196.490 was paid in respect of the period 15.4.38—until 31.12.43.

*Xd. 1.—(i) Rotenstreich:* Property tax is payable only by the owner. Tax however was not paid by the Plaintiff before November, 1942. We sent tax collectors to collect the tax. We ceased sending collectors to the Defendants in these cases because they were no longer debited with the tax owing to the fact that Plaintiff admitted in a letter that he only was responsible. Here is the letter. (Produces it and marked Ex. D/1.)

(2) *Aharonov:* We did not ask any of the Defendants whether they wished to continue paying. We did not receive any letter from the Defendants, stating that they wished to stop payment. The Plaintiff's letter (Ex. D/1) was the first intimation we received that tax was to be paid him. The corporation usually enquires who is the owner and I think this enquiry was made here.

*Rxd.:* No money was paid to my knowledge by any Defendant since May, 1941, approximately.

(ii) JOSEPH FORER sworn says :—

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—  
*Plaintiff's  
Witnesses.*  
—  
(ii) Joseph  
Forer.

I am the Plaintiff in this case. I own 24 Judges Str. and it consists of ten flats which can be leased to tenants. I entered into sale agreements with the present nine Defendants. The tenth flat is not material to this case. I produce the nine tenancy agreements (P/1 and marked Ex. P.1—P.9). None of the nine Defendants paid me the sums required of them by the agreements, but some of them gave me promissory notes in respect of the first year only. Only one failed to pay on these notes—Mr. Lev. I sued him. His defence was that there was no valid agreement between  
10 the parties. I produce a certified copy of the Magistrate's judgment (produces it and marked Ex. P/10). As regard the various tenancy agreements I sued Ben Yaacov, Guterman and other persons who are not parties here. I produce the judgment in the case of Ben Yaacov and Guterman (produces it and marked Ex. P/11). These judgments are to the effect that the agreements are void. One case (not against present Defendant) was appealed. It was in respect of one of these flats. I filed suits against all Defendants for recovery of these flats and I obtained judgment in seven cases. All were appealed and the validity of the contracts was argued in this court. All appeals were dismissed and appeals  
20 to the Supreme Court are pending. Four Notarial Notices were sent to five of the present Defendants. These are they (produces it and marked P/12—15). One of the defences was that the rent should be fixed by the Tribunal. I made an application to the Tribunal and I got judgment assessing the rents. These are they (produces it and marked P/16—P/25). In addition I brought an action for breach of the agreement against Lev. Judgment was given in favour of Lev. I was present in Court at the hearing. I have not got the judgment with me. The agreement was held to be invalid. I produce the judgments in the eviction cases against all Defendants (produces it and marked P/26 & 27). I own no other  
30 houses beside this. I built two other houses and sold the flats to purchasers and I have transferred the flats to them. Besides I owned another house in Tel-Aviv which I sold in 1942. It was in the same street and the same kind of house. In 1938 for a similar flat to Lev's I received LP.4 p.m. In 1939 LP.5.500. In 1940 rents decreased but since 1941 the rents would be LP.6.500 approximately.

There were two rooms in this flat. Of all the nine Defendants six had 3-room flats and three 2-room flats. Apart from Lev, Mabovitz and Mann had 2-room flats. For a flat of three rooms LP.6 was charged in 1938, in 1939 LP.8, in 1940 rents decreased, and since 1941 prices  
40 reached LP.8.500 or LP.9. From the rent must be deducted the expenses of cleaning and heating—about 5 per cent. must be deducted in pre-war days. Now the percentage would be about  $7\frac{1}{2}\%$ . An average rent for 3-room flat should be in my opinion LP.7 $\frac{1}{2}$ , and for two-room flat LP.5. This includes depreciation. In March, 1941, I had a meeting of tenants and I asked for payment of arrears of rents and that the nine flats should be registered in the name of a co-operative society. No such registration was made. There was no further meetings. In the Guterman cases all the other Defendants were witnesses—I remember Mann giving evidence.

*Xxd.*: (i) In 1938 possession was given to the Defendants. And  
50 they paid me sums on account of the purchase price. They were never



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*continued.*

*Plaintiff's  
Witnesses.*

(ii) Joseph  
Forer,  
*continued.*

tenants, nor were they to be owners. They were members of a co-operative society I believe. I allowed them entry, because I had agreed to sell the Defendants the flats. They never paid me the sums due to me—they stopped payment after a time. From Ben Yaacov I received LP.200 on the signing of Exh. P/1 the balance to be received on completion—not later than 1.12.39. There is nothing about it in Art. 2—it is in Art. 6. I did not transfer it because I was not asked to. No file in the Registry was prepared because it was not for me to do it. There were 14 attachments of total value LP.200.— in November, 1939. In Ben Yaacov LP.500 were to be received. I received LP.300.— on entry. The balance 10 was to be paid on the date of transfer which was to be 10.7.39 or earlier. In Vortman's case (he died before commencement of this suit) his widow and a sub-tenant live there. I did not know if she has any children there. I saw a child there once. I was about five times there. I never saw a child after his death. I claim rent for the period prior to his death. I cannot say whether he left assets. I got no judgment against his widow. No Court of Palestine has ever declared that the contract was void. I never filed an action against either Vortman or his widow except an eviction case which was dismissed. In Mann's case I received LP.100 and a number of Promissory Notes which were paid. Part of the LP.100 was LP.50.— 20 worth of timber. On 13.8.39 I received a notarial notice from Mann in which I was requested to transfer the house to Ben Yaacov and Gutterman jointly but I had reason to believe that the others did not agree. Mamanoff, Mirakoff and Wind spoke to me, I therefore sent notarial warnings to Ben Yaacov and Gutterman requiring them to transfer the property to a co-operative society. This was after I had received the timber. I wrote a registered letter to Mann asking him to agree to the application but I received no reply. I filed three actions against Lev. The defence was the same in two cases, namely, that the contract was void. I lodged an action for damages and rent in the alternative. I 30 lost the case. I was told to file a fresh action. Gutterman and Ben Yaacov did not suggest that the contract was void. A receiver of the building was appointed by a creditor. He collected sums from all the Defendants except Gutterman and Ben Yaacov. I do not know why they did not pay. The receiver was discharged on 15.10.42. I also spoke to Gutterman then, but I did not ask why he did not pay the receiver. He had to pay his balance in a lump sum. Ben Yaacov also had to pay a lump sum. In 1938 the fair rent was LP.4.—, in 1941 LP.6.— and the mean is therefore LP.5.— which I consider fair at the present time.

On 1.4.40 the standard rent of two rooms was LP.5.500. It was 40 later that year that rent decreased. No further contract was made with the nine Defendants after those already mentioned.

(ii) Mamanoff had a claim lodged against him also. In the contract of Esther Mamanoff there is no signature. I received LP.150 in cash from him and LP.54 (I think) from the receiver on account of interest and principal. The purchase price was LP.600. She could pay the instalments over LP.20 years. I undertook to transfer a part of plot of land divided into several parts. She was to have a 3-room flat. There were 24 in the house. I had to transfer 1/5 of the plot. But not in her name. Before the Magistrate I admitted I might have received a letter about it. 50 In clause 5 there is a stipulation that if no co-operative is formed the

property shall be transferred to Mamanoff. I lodged no claim against Mamanoff except an action for eviction.

Hearing adjourned to 20.6.44 at 9 a.m.

(Sgd.) C. C. ROSS.

19.6.44.

20.6.44. Cross Exm. of Plaintiff continues.

I started to pay property tax on 25.11.42 because the Corporation came to levy execution. The occupants of the flats paid the property tax at first. All stopped paying taxes at the end of 1942. I had no money to  
 10 pay before November, 1942. It is not true that the occupants mortgaged the house to prevent its occupation by another person. They paid for the third mortgage. I still maintain the rent figures which I gave in 1941 LP.4 & LP.6. Mr. Weis lived in my house in 28 Judges Str. which I have sold. I think he paid me LP.4 per month, for a two room flat from 1.8.39-1.8.40. I had a special account with him as he owed me money Abraham Habas lived there too in a 3-room flat. He paid me LP.6 per month for the period 1.9.39-1.9.40. I know Arthur Bernard—he lived there too in two flats one of two rooms and then one of 3 rooms. During  
 20 this period 1.9.39 to 1.9.40 he paid me a year's rent in advance at LP.4.500 per month. I knew Defreis—he also lived there from 3.8.39 to 3.8.40 at the same rate, I think. Elieser Berman was also living there in a 3-room flat—he paid LP.6 per month. I do not know one Hotzinger. I know Britzel Youssef—he lived in a 3-room flat. In 1940 he paid me LP.6 per month. I deposited the sum directed by the magistrate on 26.7.43 I was not ordered to pay interest.

*Rxd.* : None.

(iii) AHARON SPIVAK sworn says :—

I manage 25 houses in Tel-Aviv. I arrange the leases for the landlords. I have been an estate manager for 19 years and have been in  
 30 Tel-Aviv throughout. I know a good deal about rental values. I know 24 Judges Str. and have been inside it where I inspected 2 flats. I was not allowed by the occupiers of the others to enter. In the same area I have leased a newly completed 2-room flat for LP.5 per month. The rent remained the same until 1939 when there was a rise and a similar flat fetched LP.5.500 per month. Subsequently rents were restricted. I do not manage flats of 3 rooms in that area but in 1938 they should have fetched LP.7. I manage flats of 3 rooms. They each fetched LP.7.500 at the same period. If central heating was not provided a reduction would have to be made which would be difficult to compute. It would cost  
 40 about LP.18 p.a. for hot water. The price for heating has risen by LP.50 since the war.

*Xrd.* : (i) I have given evidence for Mr. Forer before. In March, 1944 I gave evidence before the Magistrate, Tel-Aviv, in respect of this house. I managed then 25 houses. I may have said I managed 20 before the magistrate. Judges Str. is centrally situated for residential purposes. Allenby Road is the centre of the town. Judges Str. is some distance from the "Heart of Tel-Aviv." It is near Sarona. Judges Str. is not asphalted. I have not managed houses there but in a parallel street in Prophets Str. which has had an asphalt since 1940 or 1941, after I leased

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—  
*Plaintiff's  
 Witnesses.*

—  
 (ii) Joseph  
 Forer,  
*continued.*

(iii) Aharon  
 Spivak.

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*Plaintiff's  
Witnesses.*

(iii) Ahron  
Spivak,  
*continued.*

the flats. In 1939 there was no asphalt. 24, Judges Str. is now in a poor condition. I saw most of the 2 flats I inspected—only one room in one case. The Plaintiff's house is in a worse condition than it should be because no care is taken of it. It has no garden. Rents fell after September, 1940, rents went down. I did not see 28, Judges Str. I heard the Plaintiff's testimony regarding it. I would have asked me. There was a case against me for requiring key money. It was withdrawn when I repaid it. I did say in the Magistrate's Court that LP.0.500 per month was a reasonable deduction for supplying water twice a day to a tenant.

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(ii) I made no distinction between floors as a rule as regards rents. I remember that after September, 1940, top floors were unpopular, then after raids ceased prices rose again. Front or back outlook makes no difference. I cannot say whether there are asphalt roads adjoining. Judges Str. One flat I inspected was on the 1st floor and one on the 2nd. I only had verbal authority to inspect them. It was 14 days before the case in the Magistrate's Court. I inspected the two flats at the same time. I let a flat in 77 Rothschild Boulevard to Twersky Miriam. This is in the centre of Tel-Aviv. I do not agree it is better situated than Judges Str. She pays LP.4.500 p.m. from her. Until the last two years she paid LP.4 p.m. I made no repairs in it. The tenants paid more rent voluntarily.

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*Rxd.* : Judges Str. is near Kchen Boulevard. It is considered one of the best and most fashionable centres in Tel-Aviv. All Landlords in Tel-Aviv ask for "key money."

*Close of the case for the Plaintiff.*

Rotenschtreich opens the case on behalf of his clients. He refers to art. 598 of the Mejelle and states that he relies thereon if contract is void (which he denies).

Before he calls his evidence Counsel for Plaintiff admits :—

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(i) That Defendants entered the premises by virtue of the contracts which are before the court and not as trespassers ab initio ;

(ii) That they used the said premises by virtue of the said contracts.

*Defendants'  
Witnesses.*

(i) Benja-  
min Mann.

He calls the following witnesses :—

(i) BENJAMIN MANN sworn says :—

I am fueling ration officer in Tel-Aviv and am a Defendant in these cases. I entered into this agreement (Exh. P/4) with Plaintiff in 1938 and gave him LP.50 cash and LP.50 timber as an earnest. The flat was not completed when I entered. I did everything required under the contract but the Plaintiff did not comply with my request to transfer the building to Messrs. Ben Yaacov and Gutterman—the nominees of all the tenants. Mr. Wind was not then a tenant. No man called Bomarder has lived in the block. No one objected at all. I entered the flat as owner.

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*Xrd. (Plaintiff)* : I did not know then that I could not become owner without registration. I wanted to become legal owner when I found out. I have been living in Palestine for 29 years. I know what a

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—  
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—  
(i) Benja-  
min Mann,  
*continued.*

Kushan is. My parents had a lease in Palestine. I am 38 years old. When I was 25 I knew what a Kushan was. I knew that a kushan was required when I entered the flat. I knew that I could not get a kushan for the 2 rooms. I sent the notarial notice in August, 1940, I think. We had no lawyer then. I cannot remember anything which happened in 1940. I cannot say whether any of my colleagues said in court that the agreement was null and void, but I heard that they had. I made no objection. I would not say that if this was so there could be no question of registration. I paid LP.0.750 for one year's insurance in 1939. I paid  
10 nothing in 1940. I signed the second mortgage document. I gave no Power of Attorney to Gutterman or Ben Yaacov nor can I say whether any of my colleagues. The committee was not registered.

*Aharonoff* : None.

*Red.* : No proceedings were brought against me in 1940. None of my colleagues consulted me about their cases. We gave a verbal authority to Ben Yaacov and Gutterman. We did not consider a written Power of Attorney necessary. The first mortgage was with a bank. The second with a private individual. No interest was paid and we went to the Execution Office to try to raise sufficient to buy the house by auction.  
20 I did not pay insurance the second year because Mr. Forer had to collect it.

(ii) BRACHIA BEN YAACOV sworn says :—

(ii) Bracha  
Ben-  
Yaacov.

I know Mr. Forer. I entered into a contract with him. This is it (Exh. P/1). I paid him LP.200 as earnest. I entered as an owner of the flat. Mr. Forer never registered the building as required by his contract. Mr. Ben Mair (deceased) then was my lawyer and he and I and Mr. Forer discussed the transfer. I was always ready to complete the sale and so were my colleagues but Plaintiff never completed and he did not comply with my notarial notice to transfer the property to our nominees. In  
30 LP.234.070. Two ladies were living in my flat before I entered on 15.9.44. They paid LP.2.250 p. month for two rooms and the other LP.1.350 for one room. I have never advised my colleagues. From the time Plaintiff received the money I was satisfied that he would not complete.

*Red. (Plaintiff)* : I asked for my money back in June or July, 1939. Already in July, 1939, we knew he would not transfer. We thought it nevertheless proper to appoint a committee. I was one of the two members. We were advised that registration was unnecessary. I went into my flat on the 15th December. The transfer was to take place on the  
40 1st December. I do not remember what Mr. Mamanoff or Mr. Mirakof said to me when the committee was appointed. I never saw the rent paid by the previous owners—I heard from the municipality.

*Aharonov* : None.

*Red.* : Mrs. Cohen (the previous tenant) gave promissory notes for the rent to the Plaintiff who gave them to the bank for collection. The sum was LP.2.250.

(iii) BLUMA VORTMAN sworn says :—

(iii) Bluma  
Vortman.

I am the widow of Simha Vortman. My husband died 4 years ago. He left a lemonade kiosk destroyed in an air-raid and nothing else but

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debts. I remember entering this flat 6 years ago. I bought a flat of three rooms. I was present when my husband and the Plaintiff spoke. He said he needed the money to complete the house. I have never appointed administratrix of my husband's estate. I live in the flat, my son, daughter and grandchild. This is the contract (Ex. P/3.)

*Xxd. (Plaintiff):* I have sublet one of the rooms. I took no key money. The first sub-tenant paid LP.3 per month, the new LP.6 per month. I use the money for my own purposes. I have a new lemonade kiosk now. The old licence was in my husband's name—it is still in his name. My husband still owed money on the contract (Exh. P/3). 10

*Aharonov:* None.

*Rxd.:* None.

(iii) Bluma  
Vortman,  
*continued.*  
(iv) Gershon  
Mabovitz.

(iv) GERSHON MABOVITZ sworn says:—

I am an ex-serviceman and am now a casual worker. This (Exh. P/7) is the contract I made with the Plaintiff. I took possession of this flat in 1939 as a purchaser. A man called Kaufman was living then there. I considered myself the owner. Kaufman paid LP.4 per month and paid LP.48 in advance. My contract has never been declared void. I spoke with Mr. Forer about the transfer of the building. He said he would transfer the house after Mrs. Ben Yaacov's flat was sold. 20

After this he put us off again.

*Xxd. (Plaintiff):* I left the country in 1940—I did not know that one of my co-purchasers had alleged the contract void. I joined up at the beginning of 1940. I don't remember any conversation with Mr. Mamanoff. I told Mr. Mann to send a notarial notice in my name. My wife was in the house. He came there. I did not authorise him at a meeting. I said, "If this will expedite the matter, please do it." I don't remember whether Mr. Mann heard the conversation. I don't know what a Kushan is, but I now know that registration of property is required.

*Aharonoff:* None. 30

*Rxd.:* I was present at a meeting where nominees were elected. The resolution at the meeting was unanimous.

There being no further time hearing is adjourned by consent until 10.7.44 at 9.0 a.m.

C. C. ROSS.

20.6.44.

10.7.44 Hearing resumed.

Case for Defendants continues.

(v) Ada  
Meizels.

(v) ADA MEIZELS sworn says:—

I am living in 11 Nehemya Street, Tel-Aviv. I was living in 1938–1939 in 24 Judges St. I took a room with use of kitchen and offices from Plaintiff. I paid LP.1.500 per month. 40

*Xd. (Plaintiff):* I gave promissory notes for rent which have been paid by my husband. I cannot say whether they were all honoured.

*2nd Defendant:* None.

*Rxd.:* None.

(vi) DOV GUTERMAN sworn says :—

I know the Plaintiff. He built 24 Judges St. on which a sign was hung "Flats in a communally owned house for sale." I entered the house and inspected the flats. I saw the owners of the block—Plaintiff and his brother—and arranged to buy it. I bought it and signed the contract (Ex. P/2) and a mortgage was executed in favour of my wife which was registered in the Land Registry. After the mortgage was registered we took possession of the flat. The Plaintiff did not deposit in any Court the money due to me. No eviction order was made against me. I deemed myself owner of the flat when I entered it. I paid Plaintiff LP.530.—. I think it was on 6.7.38. I paid LP.5 and on 10.7.38 I paid LP.45.—. On 12.7.38 I paid LP.250.—. On 15.1.39 I paid him a further LP.50. All these instalments were on account the flat. In November, 1942, a second mortgage was taken over by the tenants of which my share was LP.180. The Plaintiff had made an arrangement with a third party who was ready to bid for the house when it was auctioned by the Execution Office. Therefore we had no alternative but to buy the mortgage but to prevent this. Otherwise we would have lost all our interest. I remember that a meeting was held by all the Defendants when two nominees were elected to whom the house was to be transferred. I was to be one; Mr. Mann was authorised to inform Plaintiff of this election—no one objected to the nomination. No objection was made after the meeting.

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—  
(vi) Dov  
Guterman

*Xxd. (Plaintiff)*: I sent no notice to the Plaintiff but Mr. Mann did. No notice was sent by the committee as such. I think the committee sent no notice. I don't remember the date of the meeting. I gave Mann no power of attorney. True no minutes taken. We told Mann to get the Plaintiff to transfer the house to us. There were no changes at that time. I have never seen this notice but this is his signature (produces it and marked Ex. P/28). I received a notice from Mr. Forer (Ex. P/12) but I took no action. It was sent to my wife also. I might say I owed Plaintiff LP.190. Plaintiff brought two actions against me. The first was for recovery of possession. Judgment was entered in my favour. The notice (Ex. P/12) did say that if I did not pay I would be treated as a tenant. There was a committee already. We did not form a co-operative society. No one paid me anything to act. The "owners" committee all met every Monday and Thursday. The question was how to get rid of the Plaintiff. I never asked for my money back. Mr. Rotenstreich is my lawyer to-day. He did not advise us that the contracts were null and void. He did not raise this point. I think I read the Magistrate's decision (Ex. P/11). I did not hear that these contracts were being contested before. Mr. Lev was present at these meetings. I do not know that he was advised that his contract was null and void. As regards ourselves these contracts are valid.

*Xxd. (2nd Defendant)*: None.

*Rxd.*: None.

*Close of case for Rotenstreich clients.*

Aharonoff calls the following witness :—

(i) MICHAEL MAMANOFF sworn says :—

In 1938 Plaintiff sent me a letter saying that he had built a house and wanted to sell the flats therein. My wife and I inspected the flat and

*In the  
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No. 29.  
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9th June  
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*continued.*

spoke with the Plaintiff with a view to purchasing the flat in her name. My wife purchased it from Plaintiff. I had three rooms and conveniences and I think it included a proportionate part of the land. The price agreed on was LP.550.-. It was agreed (Ex. P/5) that LP.150.- was to be paid and the balance in monthly instalments of LP.3.- for 20 years. My wife on account the price LP.352.680 and continued to pay even after the institution of the present claims. In our agreement (Ex. P/5) the Plaintiff undertook to transfer the flat and land (Clause 2). My wife instructed advocate Neder to demand transfer the flat to her after a year. Plaintiff refused to do so. This is a copy of a letter sent by my wife's advocate to the Plaintiff (produces it without objection and marked Ex. D/2). My wife paid property tax to the Municipality. She also paid the premiums on the Fire Insurance Policy. Before I entered this flat I was living in a two-room flat in King George Road where I paid LP.5.- per month. Plaintiff never asked for rent. I have a document whereby the Municipality has valued the present flat at LP.4.050. Plaintiff forced us to buy the mortgage. I had to pay LP.3.- per month. There was no case between Plaintiff and my wife. I know flat of Mirakoff. His contract is similar to mine. 10

*Xrd. (Plaintiff)* : I have not the receipt for the fire insurance because Plaintiff paid with our money. We did not take receipts from him. I did not see the Plaintiff after I sent the letter (Ex. D/2) to him. I was not afraid that I would be evicted. I did not send a Notarial Notice to Plaintiff. 20

*Xrd. (1st Defendant)* : None.

*Rrd.* : My wife was not obliged to send a Notarial Notice by the contract.

*Close of the evidence for the defence.*

Counsel address the Court.

*Aharonoff* : Action should be against Esther Mamanoff not her husband. Rule 7 (1) (c) Civil Procedure Rules not complied with. No cause of action disclosed in Statement of Claim. He refers to Mejelle Art. 598. My clients are in occupation by virtue of valid contracts. Ownership of flats in "Masha" can be transferred. No judgment against my client at the moment. Art. 597 referred to. Even if valid contracts no remedy. 30

*Rotenshtreich* : Premature as it was filed 31st July, 1943, and on that date judgment had been given against only two of Defendants. Civil Appeal 77/35 Current Law Reports Vol. 1 page 109. Not entitled to possession under Art. 472, 597 and 598 of Mejelle. Refers to Civil Appeal 210/37 (Unreported). Civil Appeal 115/41 Annotated Supreme Court Judgments, Vol. 1 (1941), p. 292. Civil Appeal 221/38 Palestine Law Reports, Volume 5, page 543. 40

Money paid into Court after action filed.  
Contract not void Civil Appeal 9/39, Palestine Law Reports, Vol. 6, page 138.

Registration not conclusive. Land Law Amendment Ordinance 1937, Section 10.

Refers to Civil Appeal 83/37 Current Law Reports Vol. 2 page 4.

Refers to contracts in each case. In one case no written contract at all. (Rule 118 Civil Procedure Rules.)

Civil Appeal 237/39, Current Law Reports, Vol. 5, page 52.

No mention of "stores" in evidence although mentioned in statement of claim. Has no objection to assessment by a suitable Rep. (*sic*) or other tribunal other than this Court.

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No. 29.  
Proceedings  
9th June  
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10 Adjourned for completion of argument to 13.7.44 at 9 a. m .

Sgd. C. C. ROSS.

10.7.44.

13.7.44 Goitein addresses the Court on behalf of the Plaintiff.

One point only in case :—

Can a person occupy premises without paying therefor.

Refers to paragraph 598 of Mejele. Different considerations prevail when party is the actual owner.

Refers to Judgment of Magistrate Kantorovitch (P/11).

Agreement for sale distinguished from sale.

20 Refers to *Howard v. Shaw* (1842), Revised Reports p. 641.

Liable in England for use and occupation. Relies on Articles 472 and 596 of the Mejele, which he submits is on all fours with English Law.

Here no valid contract. Refers to R/President Judge Windham's judgment of 25.2.44.

Land Transfer Ordinance, Section 5.

No necessity to get judgment avoiding the contracts.

Finally submits :—

(I) All contracts null and void (P/26 and P/27).

30 (II) Article 598 does not apply because it deals with sale agreement and not agreement to sell. Also because it deals with tripartite agreements.

(III) Both under English and Palestine Law a person who enters property under agreement which is somehow avoided, the would-be purchaser is obliged to pay equivalent rents.

(IV) No contradiction because lien on purchase price. Suitable basis for assessing rent in evidence.

Judgment reserved. Advocates informed they will be notified.

Sgd. C. C. ROSS.

13.7.44

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*In the  
District  
Court of  
Tel-Aviv.*

No. 30.  
JUDGMENT.

Before HIS HONOUR JUDGE ROSS R/President.

No. 30.  
Judgment,  
11th  
September  
1944.

In the Case of :

YOSSEF FORER - - - - - Plaintiff

*v.*

BRACHA BEN-YAACOV - - - - - Defendant.

1. These actions, which were consolidated by order of the Court and with the consent of the parties, were brought by one Yossef Forer claiming to be the owner of a block of flats at 24, Hashoftim Street, or 10 Judges Street, Tel-Aviv, against various persons who are alleged to have been in occupation of these flats for considerable periods but to have paid no rent or to have made any other payment in respect of such occupation. Altogether there were nine such persons who are the Defendants in these actions.

2. The Plaintiff giving evidence, stated that he owned this building which consisted of ten flats, nine of which were the subject of these proceedings. He stated that he had entered into agreements for the sale of these flats to the Defendants or their privies and he produced the agreements. He said further that he had been unable to enforce these agreements 20 since they had been held void by the Magistrate. He then gave his opinion with regard to what he estimated to be a fair rent for the premises regarding which expert evidence was given by a Mr. Spivak. The Plaintiff was cross-examined at considerable length, but I feel that a great deal of this cross-examination was in reality wholly irrelevant as in my opinion (and here I am in entire agreement with Mr. Goitein) the only major points at issue are whether the agreements (Ex. P 1-9) are void and if so whether the Plaintiff is entitled to charge rent for the period during which the Defendants (or the persons from whom they derive title) have been in 30 occupation. For this reason I consider it to be irrelevant the evidence given by some of the Defendants to the effect that a committee was formed to which the Plaintiff was asked to transfer the property in the flats. If the original agreements were void I cannot see that subsequent but abortive negotiations designed to put the matter on a legal footing can affect the cases.

3. As to whether these agreements were void or otherwise I think it is unnecessary to say more than that I entirely agree with the view expressed by the learned Magistrate and hold all these agreements (Ex. P1-9) to be void and I find that the Defendants are in fact occupying the block of flats owned by the Plaintiff and that they have no legal title thereto. 40 The question then remains, and it is the main question in these cases, whether the Plaintiff is entitled to charge equivalent rent over the period during which these Defendants have been in occupation.

4. Although it seems definite that the Mejele does apply to cases of this character it is not without interest or importance that English law is not (as I first thought) against the Plaintiff on this point and the case (*Howard v. Shaw* (1842), R.R. 641) referred to by Mr. Goitein does seem to

show that in similar cases in England a charge for use and occupation can be made. This is indeed common sense and may be of some importance in considering which articles of the Mejele has application. The terms of the articles referred are indeed obscure but it does seem to me that here is a block of flats "prepared to be let on hire" within the meaning of Art. 417 and that this property is being used "without contract or permission" within the meaning of Art. 472, since the contract is void and no "permission" by the Plaintiff has been proved. Art. 598 which was relied on by the Defendants, clearly refers in my opinion (in so far as it supports their contention) to quite different classes of agreements from the present.

*In the  
District  
Court of  
Tel-Aviv.*  
—  
No. 30.  
Judgment,  
11th  
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1944,  
*continued.*

5. Notwithstanding the able argument put forward by Mr. Rotenshtreich on behalf of some of the Defendants I think that the liability by the occupier to pay equivalent rent in a case such as the present is beyond dispute. There can be no equitable lien on the property because equity will only interfere where there is a valid contract which can be enforced and here there is none.

6. It now remains to apply these findings to the issues in each case and here I feel that I should draw attention to the most unsatisfactory way in which the issues have been framed, and particularly to the fact that some of the points listed for determination seem neither raised by the pleadings nor apparently essential for the determination of the cases.

My findings in each case, then are as follows:—

*Case 283/43.*

1. *Is the action premature?*—No, the action is not premature, as it was maintainable immediately the cause of action arose.

2. *Was the Defendant liable or under an obligation to pay rent to the Plaintiff?*—Yes, for the reasons already adduced.

3. *Did the Plaintiff comply with Rule 118?*—Yes, I think he has so complied.

4. *Is the contract existing between the parties binding both theoretically and practically?*—It is not easy to see what this means, but the contract has, of course, been held void.

5. *Does the interpretation given by the learned Magistrate bind the District Court?*—No, but the District Court has chosen to follow it. Here again the wording is very vague and I do not altogether follow the meaning of paras. 5 & 6 of the Defence. Any Judgment of a court of competent jurisdiction is final (unless appealed from) as regards all matters determined thereby, but a Court of Superior jurisdiction is not bound by the reasoning whereby it comes to its decision.

6. *Would the judgment of the Magistrate's Court that is going to be delivered bind the District Court?*—This is an impossible issue to answer and is in any event of no importance now in view of the other findings.

7. *Is the Plaintiff entitled to demand reasonable rent for any period and if so for what amount?*—Yes, for the amount claimed, namely, LP.345 with interest from date of action.

*Case 284/43.*

The findings in so far relevant in this case are the same, the equivalent rent to which the Plaintiff is entitled being in this case LP.455 with interest from the date of action.

*In the  
District  
Court of  
Tel-Aviv.*

*Case 285/43.*

Except as regards issues 2, 3 and 7 the issues in this case are covered by the findings in case 283/43. The findings on the remaining issues are as follows :—

No. 30.  
Judgment,  
11th  
September  
1944,  
*continued.*

2. *Has the Defendant occupied the flat from 18.4.38 or any other date?*  
—Yes, I find the former date which was not contradicted by the Defendant in her evidence.

3. *Did the husband of the Defendant commit a breach of contract?—*  
No, the contract was void.

7. *Is the Defendant liable for any obligation the deceased has undertaken?* 10  
—No, she is liable for equivalent rent for use and occupation. Here the Plaintiff is entitled to LP.475.500 with interest from the date of action.

*Case 286/43.*

This does not differ materially from case 283/43 and here the Court finds that the Plaintiff is entitled to LP.318.400 with interest from date of action.

*Case 287/43.*

Although the issues here are framed somewhat differently they are in effect covered by previous findings, and I find the Plaintiff entitled to claim the sum of LP.468.750 with interest from the date of action by way 20 of equivalent rent from both the Defendants jointly and severally.

*Case 288/43.*

The same remarks apply in this case. The Defendants did not give evidence, and the Plaintiff is accordingly entitled to the sum of LP.446.250 with interest from the date of action from both the Defendants jointly and severally.

*Case 289/43.*

The issues in this case are the same as in case 283/43 with one exception. The findings are the same and the Plaintiff is accordingly 30 entitled to the sum of LP.267.500 with interest from the date of action.

*Case 290/43.*

The same remarks apply here and the Court finds that the Plaintiff is entitled to the sum of LP.419.500 with interest from the date of action.

*Case 291/43.*

Here again the evidence for the Plaintiff was uncontradicted and the Plaintiff is therefore entitled to the sum claimed, namely LP.405.400 with interest thereon from date of action against the Defendants jointly and severally.

It follows that there will in each case be judgment for the Plaintiff for the amount named. The Plaintiff will also be entitled to the costs of each 40 action to include LP.10 advocate's attendance fee.

Given this 11th day of September, 1944, in the presence of the advocates for the parties.

(Sgd.) C. C. ROSS,  
Acting R/President.

**No. 31.**  
**NOTICE OF APPEAL.**

IN THE SUPREME COURT SITTING AS A COURT OF APPEAL.  
Civil Appeal No. 393/44.

*In the  
Supreme  
Court  
sitting as a  
Court of  
Appeal.*

1. ESTHER MAMANOFF  
2. MICHAEL MAMANOFF

Appellants

*vs.*

YOSSEF FORER

Respondent.

No. 31.  
Notice of  
Appeal,  
10th  
October  
1944.

10 Appeal is hereby made from the judgment of the District Court, Tel-Aviv, given in Civil Case No. 287/43 (consolidated with Civil Case No. 283/43) on 11.9.1944 in presence, finding Respondent entitled to claim the sum of LP.468.750 with interest from the date of action by way of equivalent rent from the two Appellants jointly and severally.

The following grounds of appeal are respectfully urged :—

1. In this case the Court below held an agreement for the sale of a part of a house, entered into by the parties to have been void. The Court had no jurisdiction to make such finding, particularly so since another Court, namely the Land Court, was seized of the same issue upon an action brought by Respondent, which action was pending at the time of the  
20 delivery of the judgment under appeal.

2. The Court below erred in holding the agreement to have been void.

3. Even if the Court below had jurisdiction and were right in its decision that the agreement was incapable of enforcement it erred in holding that an agreement incapable of enforcement can give no rise to an equitable lien.

4. The Court below erred in holding that in the circumstances of the present case Appellants are liable to pay any rent at all, that the premises in question were prepared to be let on hire, that permission by the  
30 Respondent had not been proved, and that the agreement in the present case does not afford to Appellants protection against a claim for rent.

5. There was no evidence upon which Appellants could have been found liable for the sum mentioned in the judgment.

6. There was no ground on which Appellants could be made liable jointly and severally, nor any ground upon which Second Appellant could be made to share the liability, if any, of First Appellant.

Wherefore it is prayed that the appeal may be allowed and the judgment of the Court below be set aside with costs and advocate's fees, here and in the Court below.

40

(Sgd.) M. ELIASH,

Attorney for Appellants.

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*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*

No. 32.  
Notice of  
Appeal,  
10th  
October  
1944.

**No. 32.**  
**NOTICE OF APPEAL.**

Civil Appeal No. 396/44.

1. DOV GUTTERMAN  
2. DVORA GUTTERMAN
- Appellants

*v.*

YOSSEF FORER - - Respondent.

Appeal is hereby made from the judgment of the District Court, Tel-Aviv, given in Civil Case No. 284/43 (with No. 283/43 and other cases consolidated) on 11.9.44 in presence, finding Respondent entitled to claim the sum of LP.455.- with interest from the date of action by way of equivalent rent from the two Appellants jointly and severally. 10

The following grounds of appeal are respectfully urged :—

*(See No. 31, page 39.)*

\* \* \* \* \*

(Sgd.) M. ELIASH,

Attorney for Appellants.

No. 33.  
Notice of  
Appeal,  
10th  
October  
1944.

**No. 33.**  
**NOTICE OF APPEAL.**

Civil Appeal No. 389/44.

1. REUVEN LEV  
2. ETIA MALKA LEV
- Appellants 20

*v.*

YOSSEF FORER Respondent.

Appeal is hereby made from the judgment of the District Court, Tel-Aviv, given in Civil Case No. 291/43 (with C.C. 283/43 & other cases consolidated) on 11.9.1944 in presence, finding Respondent entitled to claim the sum of LP.405.400 with interest from the date of action by way of equivalent rent from the two Appellants jointly and severally.

The following grounds of appeal are respectfully urged :—

*(See No. 31, p. 39, for grounds of appeal Nos. 1 to 6.)*

\* \* \* \* \*

7. There was no privity between Second Appellant and Respondent. This was particularly pleaded in the Defence and was in issue in the Court below. The judgment of the Court below is nevertheless silent on the point. 40

8. The allegation of Respondent in his statement of claim that Appellants occupy also a store, was denied by Appellants in the Defence, and the fact was in issue in the Court below. No evidence was led on this point, the judgment of the Court below contains no finding in this regard, and nevertheless Respondent was by the judgment given the whole amount which he had claimed.

Wherefore it is prayed that the appeal may be allowed and the judgment of the Court below be set aside with costs and advocate's fees, here and in the Court below.

10

(Sgd.) M. ELIASH

Attorney for Appellants.

*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*

No. 33.  
Notice of  
Appeal,  
10th  
October  
1944,  
*continued.*

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**No. 34.  
NOTICE OF APPEAL.**

Civil Appeal No. 390/44.

MEIR WIND

Appellant

v.

YOSSEF FORER

- Respondent.

No. 34.  
Notice of  
Appeal,  
10th  
October  
1944.

20 Appeal is hereby made from the judgment of the District Court, Tel-Aviv, given in Civil Case No. 290/43 (with Civil Case 283/43 and other cases consolidated) on 11.9.1944 in presence, finding Respondent entitled to claim the sum of LP.419.500 with interest from the date of action by way of equivalent rent from the Appellant.

The following grounds of appeal are respectfully urged :—

(See No. 31, p. 39, for grounds of appeal Nos. 1 to 5.)

\* \* \* \* \*

30 6. The allegation of Respondent in his statement of claim that Appellant occupies also a store, was denied by Appellant in the Defence, and the fact was in issue in the Court below. No evidence was led on this point, the judgment of the Court below contains no finding in this regard, and nevertheless Respondent was by the judgment given the whole amount which he had claimed.

Wherefore it is prayed that the appeal may be allowed and the judgment of the Court below be set aside with costs and advocate's fees, here and in the Court below.

(Sgd.) M. ELIASH

Attorney for Appellant.

No. 35.

NOTICE OF APPEAL.

Civil Appeal No. 391/44.

GERSHON MABOVITZ - - - - - Appellant

v.

YOSSEF FORER - - - - - Respondent.

Appeal is hereby made from the judgment of the District Court, Tel-Aviv, given in Civil Case No. 289/43 (with Civil Case 283/43 and other cases consolidated) on 11.9.1944 in presence, finding Respondent entitled to claim the sum of LP.267.500 with interest from the date of action by way of equivalent rent from the Appellant. 10

The following grounds of appeal are respectfully urged :—

(See No. 31, p. 39, with the exception of ground No. 6.)

\* \* \* \* \*

Wherefore it is prayed that the appeal may be allowed and the judgment of the Court below be set aside with costs and advocate's fees, here and in the Court below.

(Sgd.) M. ELIASH,  
Attorney for Appellant.

No. 36.

NOTICE OF APPEAL.

Civil Appeal No. 392/44.

1. NISSIM MIRAKOV COHEN  
2. MALKIEL MIRAKOV Appellants

v.

YOSSEF FORER - - Respondent.

Appeal is hereby made from the judgment of the District Court, Tel-Aviv, given in Civil Case No. 288/43 (with Civil Case 283/43 and other cases consolidated) on 11.9.1944 in presence, finding Respondent entitled to claim the sum of LP.446.250 with interest from the date of action by way of equivalent rent from the two Appellants jointly and severally. 30

The following grounds of appeal are respectfully urged :—

(See No. 31, page 39.)

1. In this case the Court below held an agreement for the sale of a part of a house, entered into by the parties to have been void. The Court had no jurisdiction to make such finding, particularly so since another Court, namely the Land Court was seized of the same issue upon an action brought by Respondent, which action was pending at the time of the delivery of the judgment under appeal.

2. The Court below erred in holding the agreement to have been void. 40

3. Even if the Court below had jurisdiction and were right in its decision that the agreement was incapable of enforcement, it erred in

In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.

No. 35.  
Notice of  
Appeal,  
10th  
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1944.

No. 36.  
Notice of  
Appeal,  
10th  
October  
1944.

holding that an agreement incapable of enforcement can give no rise to an equitable lien.

4. The Court below erred in holding that in the circumstances of the present case Appellants are liable to pay any rent at all, that the premises in question were prepared to be let on hire, that permission by the Respondent had not been proved, and that the agreement in the present case does not afford to Appellants protection against a claim for rent.

5. There was no evidence upon which Appellants could have been found liable for the sum mentioned in the judgment.

10 6. There was no ground on which Appellants could be made liable jointly and severally, nor any ground upon which Second Appellant could be made to share the liability, if any, of First Appellant.

Wherefore it is prayed that the appeal may be allowed and the judgment of the Court below be set aside with costs and advocate's fees, here and in the Court below.

(Sgd.) M. ELLASH,

Attorney for Appellants.

*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*  
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No. 36.  
Notice of  
Appeal,  
10th  
October  
1944,  
*continued.*

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No. 37.  
NOTICE OF APPEAL.

Civil Appeal No. 394/44.

20

BENJAMIN MANN

-

- Appellant

*v.*

YOSSEF FORER

Respondent.

No. 37.  
Notice of  
Appeal,  
10th  
October  
1944.

Appeal is hereby made from the judgment of the District Court, Tel-Aviv, given in Civil Case No. 286/43 (with Civil Case 283/43 and other cases consolidated) on 11.9.1944 in presence, finding Respondent entitled to claim the sum of LP.318.400 with interest from the date of action by way of equivalent rent from the Appellant.

The following grounds of appeal are respectfully urged :—

30

(See No. 31, p. 39, with the exception of ground No. 6.)

\* \* \* \* \*

Wherefore it is prayed that the appeal may be allowed and the judgment of the Court below be set aside with costs and advocate's fees, here and in the Court below.

(Sgd.) M. ELLASH,

Attorney for Appellants.

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*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*

No. 38.  
Notice of  
Appeal,  
10th  
October  
1944.

**No. 38.  
NOTICE OF APPEAL.**

Civil Appeal No. 395/44.

BLUMA VORTMAN - - - - - Appellant

v.

YOSSEF FORER - - - Respondent.

Appeal is hereby made from the judgment of the District Court, Tel-Aviv, given in Civil Case No. 285/43 (which was consolidated with C.C. 283/43 and other cases) on 11.9.1944 in presence, finding Respondent entitled to claim the sum of LP.475.500 with interest from the date of 10 action by way of equivalent rent from the Appellant.

The following grounds of appeal are respectfully urged :—

(See No. 31, p. 39, for grounds of appeal Nos. 1 to 5.)

\* \* \* \* \*

6. In any case there was no ground in law upon which Appellant could have been made personally liable in respect of any liability incurred by her late husband, and the judgment does not differentiate between the liability, if any, attaching to her late husband's estate, or the liability, if any, attaching to her personally.

Wherefore it is prayed that the appeal may be allowed and the judgment of the Court below be set aside with costs and advocate's fees, 20 here and in the Court below.

(Sgd.) M. SCHARF,  
Attorney for Applicants.

No. 39.  
Notice of  
Appeal,  
10th  
October  
1944.

**No. 39.  
NOTICE OF APPEAL.**

Civil Appeal No. 397/44.

BRAKHA BEN-YAACOV Appellant

v.

YOSSEF FORER Respondent.

Appeal is hereby made from the judgment of the District Court, 30 Tel-Aviv, given in Civil Case No. 283/43 (with which other cases were consolidated) on 11.9.1944 in presence, finding Respondent entitled to claim the sum of LP.345.- with interest from the date of action by way of equivalent rent from the Appellant.

The following grounds of appeal are respectfully urged :—

(See No. 31, p. 39, for grounds of appeal Nos. 1 to 5.)

\* \* \* \* \*

6. Alternatively, Appellant is not liable as from 1.10.39.

Wherefore it is prayed that the appeal may be allowed and the judgment of the Court below be set aside with costs and advocate's fees, 40 here and in the Court below.

(Sgd.) M. SCHARF,  
Attorney for Appellant.

**No. 40.**  
**JUDGMENT.**

*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*

Civil Appeals Nos. 389-397/44.

Before MR. JUSTICE EDWARDS and MR. JUSTICE PLUNKETT

Civil Appeal No. 389/44.

In the appeal of—

No. 40.  
Judgment,  
13th April  
1945.

		<i>v.</i>			
	1. REUVEN LEV				Appellants
	2. ELIA MALKA LEV				Appellants
10	YOSSEF FORER -		<i>v.</i>	-	Respondent.
	MEIR WIND -				Civil Appeal No. 390/44. Appellant
	YOSSEF FORER -		<i>v.</i>		Respondent.
	GERSHON MABOVITZ -				Civil Appeal No. 391/44. Appellant
	YOSSEF FORER		<i>v.</i>		Respondent.
					Civil Appeal No. 392/44.
20	1. NISSIM MIRAKOV COHEN				Appellants
	2. MALKIEL MIRAKOV		<i>v.</i>		Appellants
	YOSSEF FORER -				Respondent.
					Civil Appeal No. 393/44.
	1. ESTHER MAMANOFF				Appellants
	2. MICHAEL MAMANOFF		<i>v.</i>		Appellants
	YOSSEF FORER -			-	Respondent.
30	BENJAMIN MANN				Civil Appeal No. 394/44. Appellant
	YOSSEF FORER		<i>v.</i>		Respondent.
	BLUMA VORTMAN				Civil Appeal No. 395/44. Appellant
	YOSSEF FORER		<i>v.</i>		Respondent.
					Civil Appeal No. 396/44.
	1. DOV GUTERMAN				Appellants
	2. DVORA GUTERMAN		<i>v.</i>		Appellants
40	YOSSEF FORER				Respondent.
					Civil Appeal No. 397/44.
	BRAKHA BEN-YA'ACOV			-	Appellant
	YOSSEF FORER -		<i>v.</i>		Respondent.

These appeals have, by consent of parties' advocates, been consolidated for hearing, as they all arise out of what is substantially one judgment delivered by the District Court of Tel-Aviv on 11th September, 1944, in Civil Cases 283-291 inclusive of 1943.

*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*

—  
No. 40.  
Judgment,  
13th April  
1945,  
*continued.*

Shortly stated, the facts are that the present Respondent (who was the Plaintiff in the Court below) owned a block of flats in Tel-Aviv, and entered into agreements with various persons for what may be called the sale of those flats on the instalment system. A Magistrate subsequently held those agreements to be void. The Respondent then requested the Appellants to pay equivalent rent for the period during which they had been in occupation. This the Appellants refused to do, whereupon the Respondent brought these actions in the District Court. The learned A/Relieving President of the District Court considered it unnecessary to decide whether the agreements were in fact void, although he went on to say that he entirely agreed with the finding of the Magistrate that they were void. He also held that the Mejele definitely applied to an action for equivalent rent, but he also considered on the authority of the case of *Howard v. Shaw* (1842), Vol. 58, Revised Reports 641, that in English law also the landlord would in such circumstances be entitled to recover equivalent rent. 10

Dr. Eliash, advocate for the Appellant, tells us that on 21st December, 1944, the Land Court held that these agreements were void and that there are pending in this Court Civil Appeals Nos. 16–24 inclusive of 1945, in which the correctness of that judgment will be queried. 20

The first question, which in my view we have to decide, is whether the Mejele applies. Although the Respondent's advocate argued that the Mejele does not apply, nevertheless, the Court below which decided the cases in his favour held that the Mejele did apply. With this part of the finding of the Court below I am in agreement. It is clear that the Respondent asked for equivalent rent, and provision for such a remedy is found in the Mejele. There is here no question of any local Ordinance passed on the lines of an English Act of Parliament such as the Rent Restrictions Ordinance coming into play or interfering with the rights of landlords and tenants. In my view, we have here an Ottoman Law 30 dealing with this branch of juristic remedies. The dictum in Civil Appeal No. 240/37, Palestine Law Reports, Vol. 5, page 159, especially at the bottom of page 163, is in point. In spite of Mr. Goitein's citation of English authorities, I think that we must confine ourselves within the four walls of Article 472 of the Mejele. The question arises whether the Respondent is entitled to recover rent under Article 472. Now, whichever translation of the Mejele is relied upon, I consider that it is essential for the landlord to prove user of his premises without his (the landlord's) permission. Mr. Goitein's argument is that, although his client gave permission, it was only given on the understanding that the tenant would 40 be on the premises as a result of the conclusion of a valid contract.

Paragraphs 4 and 5 of the Statement of Claim in the District Court in Civil Case 291/43, are in the following terms :—

“ 4. Plaintiff has instituted eviction proceedings against the Defendants in the Magistrate's Court, Tel-Aviv, and in accordance with the decision dated 21st July, 1943, judgment for eviction in favour of Plaintiff should be entered upon his depositing in Court the amount received from the Defendants under the said agreement, which was found void and of no effect. Plaintiff has complied with this decision and has deposited the said amount and the judgment 50 for eviction is about to be entered.”

“ 5. Under the circumstances, the Plaintiff is entitled by law to recover from the Defendants estimated rent in respect of the flat and store occupied by them.”

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 valid contract, and the character and nature of his occupation changed, and it is clear that the Respondent had ceased to allow the Appellant to use the premises, this fact being obvious from the Respondent's conduct in bringing an  
 10 action for eviction. The Appellant could therefore no longer be regarded as using the premises with the Respondent's permission. In my view, therefore, the learned Relieving President came to a correct conclusion in holding that Article 472 Mejelle applies.

The reasons given above apply to all the appeals, which are therefore all dismissed with costs to be taxed on the lower scale, to include one advocate's attendance fee at the hearing of LP.15.—.

Delivered this 13th day of April, 1945, in the presence of Dr. Eliash for the Appellants and Mr. Goitein for Respondent.

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(Sgd.) O. PLUNKETT,  
A British Puisne Judge.

(Sgd.) D. EDWARDS,  
British Puisne Judge.

*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*

No. 40.  
Judgment,  
13th April  
1945,  
*continued.*

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**No. 41.**

**APPLICATION for Leave to Appeal to the Privy Council.**

Privy Council Leave Application No. 24/45.

1. ESTHER MAMANOFF,
2. MICHAEL MAMANOFF

Applicants

(Appellants in C.A. 393/44.)

*v.*

30

YOSSEF FORER

Respondent.

**NOTICE OF MOTION.**

---

TAKE NOTICE that the Court will be moved on Thursday the 31st day of May, 1945, at 9 o'clock in the forenoon or so soon thereafter as counsel can be heard, by the above named Applicants that leave to appeal to His Majesty in Council from the judgment of the Supreme Court sitting

No. 41.  
Application  
for leave to  
appeal,  
10th May  
1945.

*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*

No. 41.  
Application  
for leave to  
appeal,  
10th May  
1945,  
*continued.*

as a Court of Appeal delivered on 13.4.45 in C.A. Nos. 389-397/44, be granted on the usual conditions, on the grounds following :—

(A) The said agreement is prejudicial to the interest of Applicants.

(B) The matter in dispute on the appeal amounts to or is of the value of over £500, and involves, directly or indirectly, some claim and/or question to or respecting property or a civil right amounting to or of the value of £500 or upwards.

And that the said judgment shall not be carried into execution, and execution thereof be suspended pending determination of the Appeal by 10 His Majesty in Council ; further that costs be costs in the cause.

Dated this 10th day of May, 1945.

(Sgd.) M. ELIASH,

Attorney for Applicants.

No. 42.  
Affidavit,  
11th May  
1945.

No. 42.

**AFFIDAVIT.**

I, the undersigned, MORDECAI ELIASH, Advocate of Princess Mary Avenue, Jerusalem, make oath and say as follows :—

1. I am one of the attorneys for E. and M. Mamanoff of Tel-Aviv who applied for leave to appeal to the Privy Council from the Judgment of 20 the Supreme Court, delivered on 13.4.1945, in Civil Appeals Nos. 389-397/44 consolidated.

The said E. and M. Mamanoff were appellants in C.A. No. 393/44 which was consolidated with the other aforementioned appeals.

2. The action against the said E. and M. Mamanoff was originally filed by the present respondent, Mr. Yossef Forer, on 31.7.43 and Judgment was given by the District Court, Tel-Aviv in Civil Case No. 287/43 (which was consolidated with Civil Case No. 283/43 and other cases) on 11.9.1944 awarding respondent the sum of LP.468.750 with interest from the date of action by way of equivalent rent. 30

3. I have made a computation of the amounts due from the said E. and M. Mamanoff and have found that the judgment debt together with interest from the date of action till the date of judgment of the District Court, Tel-Aviv, amounts to LP.515.508.

4. It is evident from the proceedings that :—

(A) The Respondent Mr. Yossef Forer has in the past received from E. Mamanoff an amount of over LP.240.— on account of an agreement to sell and transfer to her certain shares in the plot and house known as 24, Hashoftim Street, Tel-Aviv, which agreement he desires to avoid, but which E. Mamanoff alleges has given her 40 an equitable title to the said shares. The matter is pending on appeal before the Supreme Court in Civil Appeals Nos. 16-24/45. Even in case Mr. Forer will be successful in the said appeal, he

will have to refund the said sums to E. Mamanoff. Moreover, E. Mamanoff and other persons who have also applied for leave to appeal from the aforementioned Judgment of the Supreme Court, hold jointly a mortgage on the property claimed by Respondent to be his own for an amount of LP.747.855 with interest for several years. Thus there will be funds to set off against the amounts adjudged under the Judgment appealed from. If on the other hand Mr. Forer will not be successful, E. Mamanoff will be an owner and will not have to pay rent according to the Judgment under appeal.

*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*  
-----  
No. 42.  
Affidavit.  
11th May  
1945,  
*continued.*

10

(B) Mr. Forer has heavily mortgaged the property in connection with which the dispute the subject matter of this case has arisen ; if E. and M. Mamanoff will be successful in the Privy Council, they will not be likely to recover anything they will pay, if execution is not stayed pending the determination of the appeal by the Privy Council.

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(C) E. and M. Mamanoff are of very humble circumstances and means. In order to pay the amounts adjudged they would have to sell their personal effects, household belongings, etc. which would cause grievous and irreparable loss in case the Privy Council will decide in their favour if execution is not stayed until the Judicial Committee will have decided the case.

Whereunto I have set my hand this 11th day of May, 1945.

Sworn by Mr. Mordecai Eliash, Advocate of Princess Mary Avenue, Jerusalem, before me Michel Cotran, Assistant Registrar, Supreme Court, this 11th day of May, 1945, at my office in the Supreme Court, Jerusalem.

(Sgd.) M. COTRAN

Assistant Registrar, Supreme  
Court of Palestine.

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No. 43.

**APPLICATION for Leave to Appeal to the Privy Council.**

Privy Council Leave Application No. 26/45.

1. DOV GUTERMAN  
2. DVORA GUTERMAN - - Applicants.  
(Appellants in Civil Appeal  
396/44.)

No. 43.  
Application  
for leave to  
appeal,  
10th May  
1945.

v.

YOSSEF FORER.

**NOTICE OF MOTION.**

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TAKE NOTICE that the Court will be moved on Thursday the 31st day of May, 1945, at 9 o'clock in the forenoon or so soon thereafter as counsel can be heard, by the above named Applicants that leave to appeal

*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*

to His Majesty in Council from the judgment of the Supreme Court sitting as a Court of Appeal delivered on 13.4.45 in Civil Appeals Nos. 389-397/44, be granted on the usual conditions, on the grounds following:—

(A) The said agreement is prejudicial to the interest of Applicants.

(B) The matter in dispute on the appeal amounts to or is of the value of over £500, and involves directly or indirectly, some claim and/or question to or respecting property or a civil right amounting to or of the value of £500 or upwards.

And that the said judgment shall not be carried into execution, and 10 execution thereof be suspended pending determination of the Appeal by His Majesty in Council; further that costs be costs in the cause.

Dated this 10th day of May, 1945.

(Sgd.) M. ELIASH  
Attorney for Applicants.

No. 43.  
Application  
for leave to  
appeal,  
10th May  
1945,  
*continued.*

No. 44.  
Affidavit,  
11th May  
1945.

No. 44.

**AFFIDAVIT.**

I, the undersigned, MORDECAI ELIASH, Advocate of Princess Mary Avenue, Jerusalem, make oath and say as follows:—

1. I am one of the attorneys for Mr. Dov Guterman and Mrs. Dvora 20 Guterman of Tel-Aviv who applied for leave to appeal to the Privy Council from the Judgment of the Supreme Court, delivered on 13.4.1945, in Civil Appeals Nos. 389-397/44 consolidated.

The said Mr. and Mrs. Guterman were Appellants in Civil Appeal No. 396/44 which was consolidated with the other aforementioned appeals.

2. The action against the said Mr. and Mrs. Guterman was originally filed by the present Respondent, Mr. Yossef Forer, on 31.7.43 and Judgment was given by the District Court, Tel-Aviv in Civil Case No. 284/43 (which was consolidated with Civil Case No. 283/43 and other cases) on 11.9.1944 awarding Respondent the sum of LP.455.000 with interest from the date 30 of action by way of equivalent rent.

3. I have made a computation of the amounts due from the said Mr. and Mrs. Guterman and have found that the judgment debt together with interest from the date of action till the date of judgment of the District Court, Tel-Aviv, amounts to LP.500.386.

4. It is evident from the proceedings that:—

(A) The Respondent Mr. Yossef Forer has in the past received from the said Mr. and Mrs. Guterman the amount of over LP.300.— on account of an agreement to sell and transfer to them certain shares in the plot and house known as 24, Hashoftim Street, Tel-Aviv, 40 which agreement he desires to avoid, but which Mr. and Mrs. Guterman allege has given them an equitable title to the said shares. The matter is pending on appeal before the Supreme Court in Civil Appeals Nos. 16-24/45. Even in case Mr. Forer will be successful in the said appeal, he will have to refund the said sums to Mrs. and Mr. Guterman. Moreover, Mrs. and Mr. Guterman and other persons

who have also applied for leave to appeal from the aforementioned Judgment of the Supreme Court, hold jointly a mortgage on the property claimed by Respondent to be his own for an amount of LP.747.855 with interest for several years. Thus there will be funds to set off against the amounts adjudged under the Judgment appealed from. If on the other hand Mr. Forer will not be successful, Mr. and Mrs. Guterman will be owners and will not have to pay rent according to the Judgment under appeal.

*In the Supreme Court sitting as a Court of Appeal.*

No. 44.  
Affidavit,  
11th May  
1945,  
*continued.*

10

(B) Mr. Forer has heavily mortgaged the property in connection with which the dispute the subject matter of this case has arisen ; if Mr. and Mrs. Guterman will be successful in the Privy Council, they will not be likely to recovery anything they will pay, if execution is not stayed pending the determination of the appeal by the Privy Council.

20

(c) Mrs. and Mr. Guterman are of very humble circumstances and means. In order to pay the amounts adjudged they would have to sell their personal effects, household belongings, etc. which would cause grievous and irreparable loss in case the Privy Council will decide in their favour if execution is not stayed until the Judicial Committee will have decided the case.

Whereunto I have set my hand this 11th day of May, 1945.

Sworn by Mr. Mordecai Eliash, Advocate of Princess Mary Avenue, Jerusalem, before me Michel Cotran, Assistant Registrar, Supreme Court, this 11th day of May, 1945, at my office in the Supreme Court, Jerusalem.

(Sgd.) M. COTRAN  
Assistant Registrar, Supreme  
Court of Palestine.

30

**No. 45.**

**ORDER granting Conditional Leave to Appeal.**

*[Not printed.]*

No. 45.  
Order  
granting  
conditional  
leave to  
appeal  
*[Not  
printed]*,  
16th July  
1945.

**No. 46.**

**APPLICATION for Final Leave to Appeal.**

*[Not printed.]*

No. 46.  
Application  
for final  
leave to  
appeal  
*[Not  
printed]*,  
12th July  
1945.

**No. 47.**

**BOND.**

*[Not printed.]*

No. 47.  
Bond  
*[Not  
printed]*,  
26th  
August  
1945.



*In the  
Supreme  
Court  
sitting as a  
Court  
of Appeal.*

No. 48.

**ORDER granting Final Leave to Appeal.**

Privy Council Leave Applications  
Nos. 24 & 26/45.

Before MR. JUSTICE SHAW.

No. 48.  
Order  
granting  
final leave  
to appeal,  
26th  
September  
1945.

In the Application of—

1. ESTHER MAMANOFF  
2. MICHAEL MAMANOFF - - - P.C.L.A. No. 24/45.  
Applicants

*vs.*

10

YOSSEF FORER - - - Respondent.

P.C.L.A. No. 26/45.

1. DOV GUTERMAN  
2. DVORA GUTERMAN - - Applicants

*vs.*

YOSSEF FORER - - - Respondent.

Application for final leave to appeal to His Majesty in Council from the judgment of the Supreme Court in Civil Appeals Nos. 393/44 and 396/44.

**ORDER :**

Whereas by order of this Court dated the 16th day of July, 1945, the Applicants were granted conditional leave to appeal to His Majesty in Council subject to the following conditions :—

That the Applicants will each within two months from this date furnish security in LP.300 for three years by a bank guarantee of one of the recognized banks and will take steps with a view to procuring the preparation of the record and its despatch to England within two months from this date.

And whereas the Applicants have fulfilled the said conditions in that each of them has filed a guarantee bond in the sum of LP.300 issued by the Anglo-Palestine Bank Ltd., Tel-Aviv branch, dated the 26th August, 1945, as prescribed and has filed a list of the documents which should constitute the file to be despatched to England, and has further applied for the settlement thereof, and the parties have appeared before the Acting Chief Registrar of this Court for the settlement thereof which record has been settled.

Now, therefore, the Court 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 to Applicants.

Given this 26th day of September, 1945.

40

(Sgd.) B. V. SHAW,  
British Puisne Judge.

No. 49.

**ORDER granting Special Leave to Appeal.**

AT THE COURT AT BUCKINGHAM PALACE

The 2nd day of August, 1946

Present

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT

MR. SECRETARY EDE

LORD MACMILLAN

MR. BARNES

*In the  
Privy  
Council.*No. 49.  
Order  
granting  
special  
leave to  
appeal,  
2nd  
August  
1946.

WHEREAS there was this day read at the Board a Report from the  
10 Judicial Committee of the Privy Council dated the 30th day of July 1946  
in the words following, viz. :—

“ 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 Appellants  
in the matter of seven Appeals from the Supreme Court of Palestine  
sitting as a Court of Appeal between (1) Reuven Lev (2) Etia Malka  
Lev Appellants and Yossef Forer Respondent Civil Appeal  
No. 389/44 and between Meir Wind Appellant and the same  
Respondent Civil Appeal No. 390/44 and between Gershon Mabovitz  
20 Appellant and the same Respondent Civil Appeal No. 391/44 and  
between (1) Nissim Mirakov Cohen (2) Malkiel Mirakov Appellants  
and the same Respondent Civil Appeal No. 392/44 and between  
Benjamin Mann Appellant and the same Respondent Civil Appeal  
No. 394/44 and between Bluma Vortman Appellant and the same  
Respondent Civil Appeal No. 395/44 and between Brakha Ben-Ya-  
acov Appellant and the same Respondent Civil Appeal No. 397/44  
setting forth (amongst other matters): that this is a Petition for  
special leave to appeal from a Judgment of the Supreme Court  
dated the 13th April 1945 affirming a Judgment of the District Court  
30 of Tel-Aviv dated the 11th September 1944 and for a stay of  
execution of the Judgment of the Supreme Court pending such  
Appeal: that the Judgment of the District Court was given in nine  
actions that were consolidated which actions had been brought  
by the Respondent against the Petitioners and against one Mamanoff  
and one Guterman: that the Appeals to the Supreme Court by the  
Petitioners and Mamanoff and Guterman were also consolidated  
and one Judgment was delivered in the Consolidated Appeal:  
that the Respondent claimed rent in respect of nine flats (all in  
one building erected by him) severally occupied by the Petitioners  
and Mamanoff and Guterman: that the Petitioners and Mamanoff  
40 and Guterman had gone into occupation of the flats pursuant to  
agreements made with the Respondent whereby for the stated  
consideration he agreed to transfer a flat to each: that the District  
Court held that the agreements were void and that the Respondent  
was entitled to recover rent for the whole of the periods the flats  
had been occupied: that the Petitioners submit that the only

*In the  
Privy  
Council.*

No. 49.  
Order  
granting  
special  
leave to  
appeal,  
2nd  
August  
1946,  
*continued.*

Court that was entitled to decide the question as to the validity of the agreements was the Land Court and that the District Court had no more jurisdiction than the Magistrate's Court to entertain this question: that on the 16th July 1945 the Supreme Court gave to Mamanoff and Guterman leave to appeal to Your Majesty in Council on each providing a guarantee in L.P.300 (which guarantees have since been provided), but refused leave to each of Your Petitioners on the grounds (1) that their cases did not fall within Act 3 (a) of the Palestine (Appeal to Privy Council) Order in Council as in the opinion of the Court the matter in dispute on the Appeal 10 did not amount to L.P.500 or over and (2) that their cases were not of such a nature as to bring them within the scope of Act 3 (b) of the Order in Council: that on the 20th March 1946 Your Majesty in Council gave the Petitioners and Mamanoff and Guterman special leave to appeal from a judgment of the Supreme Court in nine other consolidated actions brought against them by the Respondent in which the substantial question to be decided is whether the Agreements under which the Petitioners were let into possession of the flats are valid or void: And humbly praying Your Majesty in Council to grant the Petitioners special leave to appeal from the 20 Judgment of the Supreme Court dated the 13th April 1945 and for an Order that these Appeals and the Appeals in which leave to appeal has been granted in Palestine be consolidated and for a stay of execution of such Judgment and further and other relief as to Your Majesty in Council may seem fit:

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly 30 to report to Your Majesty as their opinion that (the Solicitors for the Petitioners in England having personally undertaken to secure that the guarantees provided under the Orders of the said Supreme Court dated the 16th day of July 1945 shall be treated as security in all the nine appeals) (1) leave ought to be granted to the Petitioners to enter and prosecute their Appeals against the Judgment of the Supreme Court of Palestine sitting as a Court of Appeal dated the 13th day of April 1945 (2) these Appeals and the Appeals in which leave to appeal has been granted in Palestine ought to be consolidated and heard together upon one Printed 40 Case on each side and (3) the nine appeals so consolidated ought to be heard as their Lordships may determine either together with or following upon the Appeals in which special leave to appeal was granted to the Petitioners and others by Your Majesty's Order in Council dated the 20th day of March 1946.”

“AND Their Lordships do further report to Your Majesty that the proper officer of the said Supreme Court ought to be directed to transmit to the Registrar of the Privy Council without delay an authenticated copy under seal of the Record proper to be laid before Your Majesty on the hearing of the Appeals upon payment by the Petitioners of the usual fees for the same.” 50

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.

*In the  
Privy  
Council.*

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.

No. 49.  
Order  
granting  
special  
leave to  
appeal,  
2nd  
August  
1946,  
*continued.*

E. C. E. LEADBITTER.

**EXHIBITS AND DOCUMENTS.**

10

**EXHIBIT P/9.**

*Exhibits.*

**AGREEMENT between Mr. Yossef Forer and Reuven Lev & Yehuda Bomrader.**

**P/9.**

(Translation from Hebrew.)

Agreement  
between  
Yossef  
Forer and  
Reuven  
Lev and  
Yehuda  
Bomrader  
(Transla-  
tion from  
Hebrew),  
6th  
October  
1937.

20

Between Mr. Yossef Forer hereinafter called the first party and Reuven Lev and Mr. Yehuda Bomrader hereinafter called the second party. Whereas the first party is building a house of common ownership in Hashoftim Street 24, and has agreed to sell to the second party a flat, in this house of common ownership, in the second floor consisting of two rooms, kitchen, bathroom and w.c., one room of which flat is in the front and one room and the conveniences face the west, and whereas second party agrees to purchase this flat, therefore the two parties have come to the following agreement :

1. The second party agrees to pay for the above flat the sum of LP.550 (five hundred and fifty Palestine Pounds) in the following manner :

LP.200 (two hundred Palestine Pounds) by stairs, marble and mosaic which the first party is ordering for the houses which he is building now and which he will order for the houses which he will build in the future and the sum of

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LP.350 (three hundred and fifty Palestine Pounds) remain to be paid in monthly instalments during twenty years from the day of completion of the building the sum of LP.3 per month.

As an additional security the second party gives bills for the whole period except the mortgages which will be made on the whole building. In these instalments is also included the interest for the amount of LP.350.

40

2. It was agreed between both parties that 60% of what is due to the second party for the stairs, marble and mosaic will be deducted by the first party in favour of the sum of LP.200 on account of the flat and 40% the second party will receive by bills until 5 months.

3. Both parties have agreed to the following prices : Every step 450 (four hundred and fifty) Mils, each square metre of mosaic 350 Mils (three hundred and fifty), each square metre of marble 850 (eight hundred and fifty) Mils, each hole 50 Mils, transport expenses to the building on account of second party marble for walls 850 Mils a square metre.

*Exhibits.*  
 P.9.  
 Agreement  
 between  
 Yossef  
 Forer and  
 Reuven  
 Lev and  
 Yehuda  
 Bomrader  
 (Transla-  
 tion from  
 Hebrew),  
 6th  
 October  
 1937,  
*continued.*

4. Second party undertakes to make the stairs immediately without any delay, beautiful stairs, good to the complete satisfaction of the first party and undertakes to come to complete them, to clean, to polish, to repair everything that will need repairing on the first request of first party on account of the second party.

5. First party undertakes to complete the building until Passover 1938.

6. The First party is entitled to transfer the second party to a second building and to give him such a flat in the second building and the second party has no right to object to it. 10

7. The First party is also entitled to sell the flat to another without asking for the consent of the second party and to pay to the second party the amount which he invested in the flat.

8. The second party undertakes to pay the monthly instalments accurately and in case there will be a delay in two instalments he will be considered as having broken this deed and first party will be entitled to sell the flat to another without any previous warning or notarial notice.

9. First party undertakes to build the building in accordance with the plan certified by the Municipality of Tel-Aviv as per the technical outline herewith attached to be considered as inseparate part of this 20 contract.

10. Second party undertakes to pay his share in the Municipality taxes which will be due by him on his entering the flat, he also undertakes to pay his share in the Werko or other taxes which the Government will ask on the building.

11. Second party undertakes to participate in the expenses for insuring the house against fire and earthquake and also for the fuel for the central heating and hot water.

12. The second party hereby undertakes to give his share either in the canalisation if there will be any canalisation nearby the house in 30 common ownership or for the road if any will be constructed in Hashoftim Street and also his share for the transfer of the building in the names of the buyers in the Land Registry.

13. The second party shall be entitled to hand over or to sell the flat to another.

14. The second party undertakes to carry out all the provisions of this contract and in the event of his breaking this contract or any of the provisions of this contract he is liable to pay damages in the sum of LP.200 and the first party shall be entitled to sell this same flat after a notary public notice will be received by the second party from the first party. 40

15. The first party undertakes to pay damages in the amount of LP.200 if he shall break this contract or a provision of this contract after having received a notary public notice from the second party.

16. In the event that the first party shall sell the above building and until 4 months from the day of the completion of the building he will not start erecting a second building, the first party undertakes to return to the second party all the amount which he invested in the flat.

In witness whereof the parties have signed.

Tel-Aviv, 6th October, 1937.

(Signatures).

50

## EXHIBIT P/9.

## AGREEMENT between Yossef Forer and Reuven Lev.

(Translation from Hebrew.)

*Exhibits.*

P.9.

Agreement  
between  
Yossef  
Forer and  
Reuven  
Lev and  
Yehuda  
Bomrader  
(Transla-  
tion from  
Hebrew),  
6th  
October  
1937.

Between Mr. Joseph Forer hereinafter called the first party and Reuven Lev and Mr. Yehuda Bomrader hereinafter called the second party.

Whereas the first party is building a house of common ownership in Hashoftim Street 24, and has agreed to sell to the second party a flat, in this house of common ownership, in the second floor consisting of two rooms, kitchen, bathroom and w.c., one room of which flat is in the front and one room and the conveniences face the west, and whereas second party agrees to purchase this flat, therefore the two parties have come to the following agreement:—

1. The second party agrees to pay for the above flat the sum of LP.550.— (five hundred and fifty Palestine Pounds) in the following manner:

LP.200.— (two hundred Palestine Pounds) by stairs, marble and mosaic which the first party is ordering for the houses which he is building now and which he will order for the houses which he will build in the future, and the sum of

LP.350.— (three hundred and fifty Palestine Pounds) remain to be paid in monthly instalments during twenty years from the day of completion of the building the sum of LP.3.— per month.

As an additional security the second party gives bills for the whole period except the mortgages which will be made on the whole building. In these instalments is also included the interest for the amount of LP.350.—.

2. It was agreed between both parties that 60% of what is due to the second party for the stairs, marble and mosaic will be deducted by the first party in favour of the sum of LP.200.— on account of the flat and 40% the second party will receive by bills until 5 months.

3. Both parties have agreed to the following prices: Every step 450 (Four hundred and fifty) mils, each square metre of mosaic 350 mils (three hundred and fifty) each square metre of marble 850 (eight hundred and fifty) mils, each hole 50 mils, transport expenses to the building on account of second party marble for walls 850 mils a square metre.

4. Second party undertakes to make the stairs immediately without any delay, beautiful stairs, good to the complete satisfaction of the first party and undertakes to come to complete them, to clean, to polish, to repair everything that will need repairing on the first request of first party on account of the second party.

5. First party undertakes to complete the building until Passover 1938.

6. The first party is entitled to transfer the second party to a second building and to give him such a flat in the second building and the second party has no right to object to it.

*Exhibits.*  
 P.9.  
 Agreement  
 between  
 Yossef  
 Forer and  
 Reuven  
 Lev and  
 Yehuda  
 Bomrader  
 (Transla-  
 tion from  
 Hebrew),  
 6th  
 October  
 1937,  
*continued.*

7. The first party is also entitled to sell the flat to another without asking for the consent of the second party and to pay to the second party the amount which he invested in the flat.

8. The second party undertakes to pay the monthly instalments accurately and in case there will be a delay in two instalments he will be considered as having broken this deed and first party will be entitled to sell the flat to another without any previous warning or notarial notice.

9. First party undertakes to build the building in accordance with the plan certified by the Municipality of Tel-Aviv and as per the technical outline herewith attached to be considered as inseparate part of this 10 contract.

10. Second party undertakes to pay his share in the Municipality taxes which will be due by him on his entering the flat, he also undertakes to pay his share in the Werko or other taxes which the Government will ask on the building.

11. Second party undertakes to participate in the expenses for insuring the house against fire and earthquake and also for the fuel for the central heating and hot water.

12. The second party hereby undertakes to give his share either in the canalisation if there will be any canalisation nearby the house in 20 common ownership or for the road if any will be constructed in Hashoftim Street and also his share for the transfer of the building in the names of the buyers in the Land Registry.

13. The second party shall be entitled to hand over or to sell the flat to another.

14. The second party undertakes to carry out all the provisions of this contract and in the event of his breaking this contract or any of the provisions of this contract, he is liable to pay damages in the sum of LP.200 and the first party shall be entitled to sell this same flat after a notary public notice will be received by the second party from the first 30 party.

15. The first party undertakes to pay damages in the amount of LP.200 if he shall break this contract or a provision of this contract after having received a notary public notice from the second party.

16. In the event that the first party shall sell the above building and until 4 months from the day of the completion of the building he will not start erecting a second building, the first party undertakes to return to the second party all the amount which he invested in the flat.

In Witness whereof the parties have signed.

Tel-Aviv, 6th October, 1937.

40

(Signatures)

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## EXHIBIT P.3.

## AGREEMENT between Mr. Yossef Forer and Simha Vortman.

(Translation from Hebrew.)

*Exhibits.*

P.3.

Agreement  
between  
Yossef  
Forer and  
Simha  
Vortman  
(Transla-  
tion from  
Hebrew),  
9th  
November  
1937.

Between Mr. Joseph Forer, hereinafter called for short the first party and between Mr. Simha Vortman, hereinafter called the second party.

10 Whereas the first party builds a house in common ownership in Hashoftim Street No. 24, and agrees to sell to the second party a flat in the said house in the first floor above the pillars, consisting of three rooms kitchen, bathroom and w.c., that is to say, three shares out of 26 shares in which the house is divided together with plot of land and three shares out of 26 to build a fourth floor—in accordance with the plan certified by the Municipality of Tel-Aviv, two rooms of the flat face the front, and whereas the second party agrees to purchase this flat, therefore, the parties have come to the following agreement :—

20 1. The second party undertakes to pay for the said flat LP.600 (Six hundred Palestine Pounds). The manner of payment is : On signing this contract LP.275 (Two hundred and seventy-five Palestine Pounds) in cash, and the balance in the sum of LP.325 (Three hundred and twenty-five Palestine Pounds) in a mortgage for 20 years from the day of the completion of the building, and he undertakes to pay LP.2.780 mils (Two Palestine Pounds 780 mils) per month. As additional security, the second party gives bills for the whole period. These instalments include the interest and the capital together.

2. The first party undertakes to make all the repairs which will be needed during one year if it transpires that the damages have been caused through the fault of the first party.

30 3. The first party undertakes to build the building in accordance with the technical description enclosed herewith and which is considered as an inseparable part of this agreement.

4. The second party undertakes to pay the bills regularly and in case he will delay in two instalments, he will be considered as having committed a breach of this contract and the first party will be entitled to sell the flat to another on account of the second party, without any previous or notarial notice.

40 5. The first party will transfer in the Land Registry all the building in the name of the committee which the partners will elect, on condition that they will sign the mortgage for all the sum which will become due from all the building in accordance with the account of the bills which the parties have given.

6. The second party undertakes to pay all the taxes which the Municipality of Tel-Aviv will ask for all the building after its completion—his own share. Similarly, he undertakes to pay his share in the urban property tax or any other tax which the Government will ask for all the building.

7. The second party undertakes to pay his own share for the cleaning of the staircase room and for the electricity of the staircase room.



*Exhibits.*  
 P.3.  
 Agreement  
 between  
 Yossef  
 Forer and  
 Simha  
 Vortman  
 (Transla-  
 tion from  
 Hebrew),  
 9th  
 November  
 1937,  
*continued.*

8. The second party undertakes to participate in the expenses of the general repairs which will be needed for the benefit of all the parties in the building, except the repairs which every tenant will make in his own flat at his own cost.

9. The second party undertakes to pay his share in the canalisation if it will be made near the house owned in common or for the construction of the road if it will be made in the road, in this part, and which the Municipality of Tel-Aviv will ask.

10. The second party is entitled to hand over or sell the flat to another. 10

11. The second party undertakes to obey to the decisions given by the majority of the partners to this house which is owned in common.

12. The second party undertakes to fulfil all the conditions of this contract and in the event of his committing a breach of the contract or one of the conditions of this contract, he undertakes to pay damages in the sum of LP.200 and the first party will be entitled to sell his flat after the second party will receive a notary public notice from the first party.

13. The first party undertakes to pay damages in the sum of LP.200 if he will commit a breach of this contract or one of its conditions after he will receive a notary public notice from the second party. 20

In witness whereof, the parties have signed this contract in Tel-Aviv, this 9th day of November, 1937.

(Signatures.)

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**EXHIBIT P/4.**

**AGREEMENT between Yossef Forer and Benjamin Mann.**

(Translation from Hebrew.)

Between Mr. Joseph Forer, hereinafter called for short the first party and between Mr. Benjamin Mann, hereafter called for short the second party.

Whereas the first party has built a house of common ownership in 24, Hashoffim Street, and agrees to sell to the second party a flat in the said house in the first floor above the pillars consisting of two rooms, kitchen, bathroom and w.c. a flat of which one room faces the front and the second westwards, and 30

Whereas the second party agrees to purchase this flat,

Therefore both parties have come to the following agreement —

1. The second party agrees to pay for the said flat the sum of Five Hundred (500) Palestine Pounds. The manner of payment is: Fifty Palestine Pounds in cash on signing this contract, and this contract is considered as a receipt of the said sum, Fifty Palestine Pounds by Plywood, 40 and the balance in the sum of Four Hundred (400) Palestine Pounds by monthly instalments, during 20 years from the day of the completion of the building, of LP.3.420 mils per month. As additional security, the

P.4.  
 Agreement  
 between  
 Yossef  
 Forer and  
 Benjamin  
 Mann  
 (Transla-  
 tion from  
 Hebrew),  
 1st  
 February  
 1938.

second party undertakes to give bills for the whole period. These instalments include interest for the sum of Four Hundred (400) Palestine Pounds.

2. The First Party undertakes to complete the building till the 1st of April, 1938, and undertakes to repair all the damage in this flat during one year as from the day of the completion of the building, if it transpires that the damages were caused through the fault of the first party.

3. The second party undertakes to pay the monthly instalments regularly and in case he will delay in two payments, he will be considered as having committed a breach of the contract and the first party will be entitled to sell the flat to another on the account of the second party without any previous or notarial notice.

4. The first party undertakes to erect the building according to the plan certified by the Municipality of Tel-Aviv and the technical outline enclosed herewith which is considered as an inseparable part of this contract.

5. The second party undertakes to pay the municipal taxes which will fall in his share on his entering the flat. Similarly, he undertakes to pay his share in the urban property tax or other taxes which the Government will ask for the building.

6. The second party undertakes to participate in the expense for the insurance of the house against fire, and earthquake and also in the expenses of the fuel for the central heating and hot water.

7. The second party undertakes to give his share for the canalisation if it will be made near the house owned in common or the road if it will be arranged in the Hashoftim Street. Similarly, his share in the transfer of the building in the Land Registry in the name of the partners, in the expenses for the transfer of the mortgage.

8. The second party is entitled to hand over or to sell the flat to another.

9. The second party undertakes to fulfil the provisions of the contract and in case that he will commit a breach of the contract or one of the provisions of this contract, he undertakes to pay damages in the sum of Two Hundred (200) Palestine Pounds and the First Party is entitled to sell his flat after the second party will receive a notary public notice from the first party, and the first party shall return to the second party all the money received in cash and the bills after reducing the 200 Palestine Pounds for damages.

10. The first party undertakes to pay damages in the sum of Two Hundred Palestine Pounds (200) if he will commit a breach of the contract or one of the provisions of this contract, after he will receive a notary public notice from the second party and also undertakes to return to the second party the LP.100 in cash and all the bills (J.F.B.M.).

In Witness whereof we have signed, Tel-Aviv, this 1st day of February, 1938.

The first party will transfer in the Land Registry all the building in the name of a committee which will be elected by all the members at any time required, provided that they will sign the mortgages for the whole sum that will then become due from all the members (J.F.B.M.).

(Signatures.)

*Exhibits.*

P.A.

Agreement  
between  
Yossef  
Forer and  
Benjamin  
Mann  
(Translation from  
Hebrew),  
1st  
February  
1938,  
*continued.*

*Exhibits.***EXHIBIT P/5.****AGREEMENT between Mr. Yossef Forer & Mrs. Esther (Machmel) Mamanoff.**

(Translation from Hebrew).

P.5.  
 Agreement  
 between  
 Yossef  
 Forer and  
 Esther  
 Mamanoff  
 (Transla-  
 tion from  
 Hebrew),  
 26th May  
 1938.

Made in Tel-Aviv on the 26th day of May, 1938, between Mr. Yossef Forer hereinafter called the first party on the one part and Mrs. Esther (Machmel) Mamanoff, hereinâfter called the second party on the other part.

Whereas the first party has built a house of common ownership in Hashoftim Street, 24, Tel-Aviv, and has offered to the second party a flat in the aforesaid house, and whereas the second party has agreed to purchase from the first party a flat in the aforesaid house in accordance with the following conditions, therefore this contract was made. 10

*Article 1 :* First party hereby undertakes to sell and to transfer to the second party who agreed to purchase from the first party part of the plot registered in the Land Registry Office, Tel-Aviv, in Volume No. 53 Folio 148 (situated in Hashoftim Street, No. 24, Tel-Aviv), consisting of an area to be in proportion to the number of rooms to be owned together with the other flat owners.

The sale includes also part of the building erected on the above-mentioned plot, namely, it includes a flat in the second floor consisting of three rooms, kitchen, bathroom and w.c. facing the yard and also together with the other flat owners, the staircase, washing room, the garden and the roof which the first party has to place at any time at the disposal of the purchaser as common owner. 20

*Article 2 :* The price of the aforesaid flat was fixed by both parties to be LP.550 (five hundred and fifty Palestine Pounds) and shall be paid by the second party to the first party in the manner and in the instalments as hereinafter stated :—

(A) LP.150 (one hundred and fifty Palestine Pounds) on the date of signing this contract. 30

(B) LP.400 (four hundred Palestine Pounds) in equal monthly instalments during 20 years from the day of her entering into the flat. The aforesaid sum shall bear interest of 7% p.a.

To secure the payment of the aforesaid outstanding debt, the first party may mortgage the said flat for the aforesaid amount without the joint and several liability and in accordance with the terms of the mortgage the second party shall have to deliver bills to the mortgagee to cover the remainder of the aforesaid monthly instalments. The conditions of the mortgage deed shall be the same as the conditions of the mortgage deed of the Palestine Mortgage Bank Ltd. 40

The second party hereby delivers to the first party four bills of LP.3.420 each payable on 15.6.38, 15.7.38, 15.8.38 and 15.9.38 respectively and also eight bills of LP.3 each to fall due every month as from the 15.10.38, altogether being twelve bills in a total sum of LP.37.680 and this shall be on account of the capital and the interest as aforesaid.

On the day of the transfer in the Land Registry the parties have to settle the account of the aforesaid instalments in accordance with the terms of the payments of the Mortgage Bank and to consider the aforesaid bills on account of the payments of the mortgage.

The costs to be involved in connection with the mortgage deed and the aforesaid transfer (his share) shall be borne by the second party.

*Article 3 :* First party deposits with Mr. Moshe Rojani and with the consent of the second party a bill for the sum of LP.150 (one hundred and fifty Palestine Pounds) to the order of the second party in consideration of the aforesaid advanced payment and it has been agreed that the aforesaid bill shall be returned to the first party without payment only on the day of the transfer in the Tabu of the building in the name of all the purchasers.

10 *Article 4 :* First party undertakes to hand over to the second party the flat at the time that the second party will require it and this shall not be later than two weeks from the day of signing this Deed.

*Article 5 :* First party undertakes to transfer at the Land Registry the aforesaid plot and the whole of the building erected thereon to a committee or to a co-operative society of the house in common ownership which shall be formed by all the flat owners at any time that he will be required to do so by any of the flat owners free from any charge (except the charge of the flat owners in accordance with the contracts) and the first party undertakes as well to sign on all the necessary documents and to appear in the Land Registry Office.

20 In the event that such a committee or co-operative society shall not be formed within one year from the day of signing this Deed, the first party shall transfer to the second party his share in the plot and in the building as aforesaid Musha.

*Article 6 :* Second party undertakes to pay his share in the Government and municipal taxes as from the day of his entering into the flat and also in the costs of the fuel for the central heating and hot water. The Government and municipal taxes up to the date of the entry in the flat by the second party shall be borne by the first party.

30 *Article 7 :* First party undertakes to insure the house against fire and earthquake for the benefit of the tenant in proportion and the second party undertakes to participate proportionally in these costs. The first party shall hand over to the second party the insurance policy.

*Article 8 :* The second party undertakes to pay his proportional share in the canalisation expenses and road in the event that the first party or any other person shall pay the amount to be due by the second party.

*Article 9 :* The second party shall be entitled to hand over or to sell the aforesaid flat to another without the consent of the first party.

40 *Article 10 :* The first party undertakes to complete finally the aforesaid building as the doors to the building, painting and whitewashing the corridors, and the roof, fence, etc., as early as possible.

*Article 11 :* First party shall be responsible for the good standing of the building during one year from the day of signing this contract and he shall make the necessary repairs within the said period at his costs.

*Article 12 :* Any party committing a breach of this agreement shall pay to the other party the sum of LP.200 as prefixed liquidated damages, in the event that the first party shall commit the breach he shall have—in addition to the aforesaid amount—to return and to pay to the second party the money that he received in cash and in bills together with 9% interest on the aforesaid amount.

*Exhibits.*

— — —  
P.5.

Agreement  
between  
Yossef  
Forer and  
Esther  
Mamanoff  
(Translation  
from  
Hebrew),  
26th May  
1938,

*continued.*

*Exhibits.*  
—  
P.5.  
Agreement  
between  
Yossef  
Forer and  
Esther  
Mamanoff  
(Transla-  
tion from  
Hebrew),  
26th May  
1938,  
*continued.*

This contract has been made in duplicate and signed by both parties in the presence of Moshe Rojani with the free will of both parties and after the second party has seen the flat and was pleased.

Made this 26th day of May 1938.

Supplement to Article 2. The costs of the aforesaid mortgage shall include :—

(A) The interest (5%) which the Mortgage Bank deducts from the amount of the mortgage.

(B) Advocate's fees and the fees of the architect of the aforesaid Bank.

(C) The lawful tax (1%) which shall be paid in the Land Registry at the registration of the Mortgage Deed.

Whereas the second party entered into the flat on the 15.5.38 the agreement shall therefore come into force as far as payments are concerned from that date, namely 15.5.1938.

(Stamps and thumbprints and signatures of the parties.)

I hereby guarantee for the signature of Mrs. Mamanoff.

(Sgd.) M. ROJANI.

Certify thumbprint of Mrs. Mamanoff.

10

P.2.

Agreement  
between  
Yossef  
Forer and  
Dov and  
Dvora  
Guterman  
(Transla-  
tion from  
Hebrew),  
6th July  
1938.

**EXHIBIT P/2.**

20

**AGREEMENT between Mr. Yossef Forer & Mr. Dov Guterman & Mrs. Dvora Guterman,**  
(Translation from Hebrew.)

Made in Tel-Aviv on the 6th day of July 1938 between Mr. Yossef Forer Hereinafter called the first party on the one part and Mr. Dov Guterman and Mrs. Dvora Guterman hereinafter called the second party, on the other part.

Whereas the first party has built a house of common ownership in Hashoftim Street, 24, Tel-Aviv and has offered to sell to the second party a flat in the aforesaid house, and whereas the second party has agreed to purchase from the first party a flat in the aforesaid house in accordance with the following conditions, therefore this contract was made.

1. First party hereby undertakes to sell and to transfer to the second party who hereby agrees and undertakes to purchase from the first party part of the plot registered in the Land Registry Office, Tel-Aviv in Volume No. 53 Folio 148 (situated in Hashoftim Street No. 24 Tel-Aviv) consisting of an area to be in proportion to the number of rooms to be owned together with the other flat owners. The contract of sale includes also part of the building erected on the above-mentioned plot, namely, a flat in the second floor consisting of three rooms, kitchen, bathroom and w.c. facing towards the front, and also together with the other flat-owners the staircase, washing room, the garden and the roof which the first party has to place at any time at the disposal of the purchaser as common owner.

2. The price of the aforesaid flat was fixed by both parties to be LP.500 (five hundred Palestine Pounds) and shall be paid by the second party to the first party in the following manner :

30

40

LP.50. in cash (fifty Pal. Pounds) on the date of signing this contract

LP.250.- (two hundred & fifty Palestine Pounds) in cash at the time of effecting the third mortgage in favour of the second party and the balance of

LP.125.- in cash and by bill payable within one year from the date of this contract and not later than the 10th day of July 1939 ; Total two hundred Palestine Pounds on the date of transfer of the building in the Land Registry to the name of the committee or the co-operative society.

10

3. First party undertakes to hand over to the second party the above flat not later than one week from the day of signing this contract.

4. First party undertakes to transfer at the Land Registry the aforesaid plot and the whole of the building erected thereon to a committee or to a co-operative society of the house in common ownership which shall be formed by all the flat-owners free from any charge (except the charge of the flat-owners in accordance with the contracts) and the first party undertakes as well to sign on all the necessary documents and to appear in the Land Registry Office.

20

5. First party undertakes to insure the house against fire and earthquake for the benefit of the second party in proportion.

6. First party shall be responsible for the good standing of the building during one year from the day of signing this contract and he shall make the necessary repairs within the said period at his costs.

7. Second party undertakes to pay his share in the Government and municipal taxes as from the day of his entering into the flat and also in the costs of the fuel for the central heating and hot water. The Government and municipal taxes up to the date of the entry in the flat by the second party shall be borne by the first party.

30

8. The second party undertakes to pay his proportional shares in the canalisation expenses and road in the event that the first party or any other person shall pay the amount to be due by the second party.

9. The second party shall be entitled to hand over or to sell the aforesaid flat to another without the consent of the first party.

10. First party undertakes to effect in favour of second party a third mortgage as security for the sum of six hundred Palestine Pounds and the expenses of this mortgage shall be borne by both parties.

11. Any party committing a breach of this agreement shall pay to the other party the sum of LP.150 as prefixed liquidated damages.

40

This contract has been made in duplicate and signed by both parties with the free will of both parties and after the second party has seen the flat and was pleased.

Made this 6th day of July 1938.

Signature of first party and of Dov Guterman only.

*Exhibits.*

P.2.

Agreement between Yossef Forer and Dov and Dvora Guterman (Translation from Hebrew), 6th July 1938,

*continued.*

*Exhibits.***EXHIBIT P/6.****AGREEMENT between Yossef Forer and Nissim and Malkiel Mirakov Cohen.**

P.6.

Agreement  
between  
Yossef  
Forer and  
Nissim  
and  
Malkiel  
Mirakov  
Cohen  
(Translation from  
Hebrew),  
8th August  
1938.

(Translation from Hebrew.)

Made in Tel-Aviv on the 8th day of August, 1938, between Mr. Joseph Forer hereinafter called the first party on the one part and Messrs. Malkiel and Nissim Mirakov-Cohen, hereinafter called the second party on the other part.

Whereas the first party has built a house of common ownership in Hashoftim Street 24, Tel-Aviv, and has offered to sell to the second party a flat in the aforesaid house, and whereas the second party have agreed to purchase from the first party a flat in the aforesaid house in accordance with the following conditions, therefore this contract was made. 10

*Article 1.*

First party hereby undertakes to sell and to transfer to the second party who agreed to purchase from the first party part of the plot registered in the Land Registry Office, Tel-Aviv, in Volume No. 53, Folio 148 (situate in Hashoftim Street No. 24, Tel-Aviv), consisting of an area to be in proportion to the number of rooms to be owned together with the other flat-owners.

The sale includes also part of the building erected on the above-mentioned plot, namely, it includes a flat in the third floor consisting of three rooms, kitchen, bathroom and w.c. in the front of the house facing the Hashoftim Street; and also together with the other flat-owners, the staircase, washing room, the garden and the roof, which the first party has to place at any time at the disposal of the purchase as common owner. 20

*Article 2.*

The price of the aforesaid flat was fixed by both parties together with all the expenses of the transfer and the mortgage at a total price of LP.600.- (six hundred Palestine Pounds) and shall be paid by the second party to the first party in the manner and in the instalments as hereinafter stated :- 30

(A) LP.100 (one hundred Palestine Pounds) on the date of signing this contract.

(B) LP.50 (fifty Palestine Pounds) on the day of transfer of the flat in the Land Registry Office.

(C) LP.50 (fifty Palestine Pounds) within three years from the day of their entering the flat in equal monthly instalments of LP.1.620.

(D) LP.400 (four hundred Palestine Pounds) in equal monthly instalments during 20 years from the day of their entering into the flat. The aforesaid sum shall bear interest of 7% per annum. 40

To secure the payment of the aforesaid outstanding debt, the first party may mortgage the said flat for the aforesaid amount without the joint and several liability and in accordance with the terms of the mortgage the second party shall have to deliver bills to the mortgagee to cover the remainder of the aforesaid monthly instalments. The conditions of the mortgage deed shall be the same as the conditions of the mortgage deed of the Palestine Mortgage Bank Ltd.

The second party hereby deliver to the first party eighteen bills of LP.4.700 each being LP.1.620 on account of the payment of the LP.50 referred to in Article 2 (c) above and LP.3.080 on account of the payment of LP.400 referred to in Article 2 (D) above, as from the 10th of October, 1938, and this shall be on account of the capital and the interest as aforesaid.

On the day of the transfer in the Land Registry the parties have to settle the account of the aforesaid instalments in accordance with the terms of the payments of the Mortgage Bank and to consider the aforesaid  
10 bills on account of the payment of the mortgage.

The costs to be involved in connection with the mortgage deed and the aforesaid transfer (second party's share) shall be borne by the first party as above.

*Article 3.*

First party deposits with Mr. Moshe Rojani and with the consent of the second party a bill for the sum of LP.100 (one hundred Palestine Pounds) to the order of the second party in consideration of the aforesaid advanced payment and it has been agreed that the aforesaid bill shall be returned to the first party without payment only on the day of the transfer in the  
20 Tabu of the building in the name of all the purchasers.

*Article 4.*

First party undertakes to hand over to the second party the flat at the time that the second party will require it and this shall not be later than two weeks from the day of signing this contract.

*Article 5.*

First party undertakes to transfer at the Land Registry the aforesaid plot and the whole of the building erected thereon to a committee or to a co-operative society of the house in common ownership which shall be formed by all the flat-owners at any time that he will be required to do so  
30 by any of the flat-owners free from any charge (except the charge of the flat-owners in accordance with the contracts) and the first party undertakes as well to sign on all the necessary documents and to appear in the Land Registry Office.

In the event that such a committee or co-operative society shall not be formed within one year from the day of signing this contract, the first party shall transfer to the second party his share in the plot and in the building as aforesaid Musha'a.

*Article 6.*

Second party undertakes to pay their share in the Government and  
40 municipal taxes as from the day of their entering into the flat and also in the costs of the fuel for the central heating and hot water. The Government and municipal taxes up to date of the entry in the flat by the second party shall be borne by the first party.

*Article 7.*

First party undertakes to insure the house against fire and earthquake for the benefit of the tenant in proportion and the second party undertake to participate proportionally in these costs. The first party shall hand over to the second party the insurance policy.

*Exhibits.*

—  
P.6.

Agreement  
between  
Yossef  
Forer and  
Nissim and  
Malkiel  
Mirakov  
Cohen  
(Transla-  
tion from  
Hebrew),  
8th August  
1938,  
*continued.*



*Exhibits. Article 8.*

P.6.  
 Agreement  
 between  
 Yossef  
 Forer and  
 Nissim and  
 Malkiel  
 Mirakov  
 Cohen  
 (Transla-  
 tion from  
 Hebrew),  
 8th August  
 1938,  
*continued.*

The second party undertake to pay their proportional share in the canalisation expenses and road in the event that the first party or any other person shall pay the amount to be due by the second party.

*Article 9.*

The second party shall be entitled to hand over or to sell the aforesaid flat to another without the consent of the first party.

*Article 10.*

The first party undertakes to complete finally the aforesaid building as the doors to the building, painting and whitewashing the corridors, and the roof fence, etc., as early as possible. 10

*Article 11.*

First party shall be responsible for the good standing of the building during one year from the day of signing this contract and he shall make the necessary repairs within the said period at his costs.

*Article 12.*

Any party committing a breach of this agreement shall pay to the other party the sum of LP.200 as prefixed liquidated damages, in the event that the first party shall commit the breach he shall have—in addition to the aforesaid amount—to return and to pay to the second party the money that he received in cash and in bills together with 9% interest on the aforesaid amount. 20

This contract has been made in duplicate and signed by both parties with the intervention and in the presence of Moshe Rojani with the free will of both parties and after the second party have seen the flat and were pleased.

Made this 8th day of August, 1938.

(Stamp and signature of parties.)

Witness : Sgd. M. ROJANI.

P.7.

Agreement  
 between  
 Yossef  
 Forer and  
 Gershon  
 Mabovitz  
 (Transla-  
 tion from  
 Hebrew),  
 17th  
 February  
 1939.

**EXHIBIT P/7.**

30

**AGREEMENT between Yossef Forer and Gershon Mabovitz.**

(Translation from Hebrew.)

Made in Tel-Aviv on the 17th day of February, 1939, between Mr. Joseph Forer hereinafter called the first party on the one part and Mrs. Shifra Gershonowitz and Mr. Gershon Mabowitz hereinafter called the second party on the other part.

Whereas the first party has built a house of common ownership in Hashoftim Street 24, Tel-Aviv and has offered to the second party a flat in the aforesaid house, and whereas the second party has agreed to purchase from the first party a flat in the aforesaid house in accordance with the following conditions, therefore this contract was made. 40

1. First party hereby undertakes to sell and to transfer to the second party who agreed to purchase from the first party part of the plot registered

in the Land Registry Office, Tel-Aviv, in Volume No. 53, folio 148 (situated in Hashoftim Street No. 24, Tel-Aviv), consisting of an area to be in proportion to the number of rooms to be owned together with the other flat owners. The sale includes also part of the building erected on the above mentioned plot, namely, a flat in the third floor consisting of two rooms, kitchen, bathroom and w.c., the flat in the front, and also together with the flat owners, the staircase, washing room, the garden and the roof, which the first party has to place at any time at the disposal of the purchaser as common owner.

*Exhibits.*

—  
P.7.

Agreement  
between  
Yossef  
Forer and  
Gershon  
Mabovitz  
(Transla-  
tion from  
Hebrew),  
17th  
February  
1939,

*continued.*

- 10 2. The price of the aforesaid flat was fixed by both parties to be LP.450.— (Four hundred and fifty Palestine Pounds) and shall be paid by the second party to the first party in the manner and in the instalments as hereinafter stated :—

(A) LP.100 (One hundred Palestine Pounds) in cash on the date of signing this contract.

(B) LP.350 (Three hundred and fifty Palestine Pounds) in monthly instalments: commencing as from today the sum of LP.3.— per month during 20 years. These instalments include also interest.

- 20 3. The costs to be involved in connection with the transfer of the flat in the Land Registry shall be borne by first party.

4. First party undertakes to transfer at the Land Registry the aforesaid plot and the whole of the building erected thereon to a committee or to a co-operative society of the house in common ownership which shall be formed by all the flat-owners at any time that he will be required to do so by any of the flat-owners free from any charge (except the charge of the flat-owners in accordance with the contracts) and the first party undertakes as well to sign all the necessary documents and to appear in the Land Registry Office.

- 30 5. First party shall be responsible for the good standing of the building during one year from the day of signing this contract and shall make the necessary repairs within the said period at his costs and after the flat-owner leaves the flat.

- 40 6. Second party undertakes to pay his share in the Government and municipal taxes as from the day of his entering into the flat and also in the costs of the fuel for the central heating and hot water. The Government and municipal taxes up to the date of the entry in the flat by the second party shall be borne by the first party. The second party undertakes as well to pay his share in the insurance of the house against fire and earthquake.

7. The second party undertakes to pay his proportional share in the canalisation expenses and road in the event that the first party or any other person shall pay the amount to be due by the second party.

8. The second party shall be entitled to hand over or to sell the aforesaid flat to another without the consent of the first party.

9. Any party committing a breach of this agreement shall pay to the other party the sum of LP.150.— (One hundred and fifty Palestine Pounds) as prefixed liquidated damages.

*Exhibits.*

P.7.

Agreement  
between  
Yossef  
Forer and  
Gershon  
Mabovitz  
(Transla-  
tion from  
Hebrew),  
17th  
February  
1939,  
*continued.*

This contract has been made in duplicate and signed by both parties with the free will of both parties and after the second party has seen the flat and was pleased.

Made this 17th day of February, 1939.

(Signature of parties)

*Receipt :*

I hereby acknowledge receipt of the sum of LP.100.— from the second party in accordance with paragraph 2 (A). I have also received 12 monthly instalments in the amount of LP.36 in accordance with paragraph 2 (B), that means, from the 16th February, 1939, until the 16th February, 1940. 10

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**EXHIBIT P.8.**
**AGREEMENT between Yossef Forer and Simcha Trushinsky.**

(Translation from Hebrew.)

Made in Tel-Aviv on the 15th day of May, 1939, between Mr. Joseph Forer, hereinafter called the first party and between Mr. Simcha Trushinsky, hereinafter called the second party on the other part.

Whereas the first party has built a house of common ownership in 24, Hashoftim Street, Tel-Aviv, and has offered to sell to the second party a flat in the aforesaid house of common ownership.

And whereas the second party has agreed to purchase from the first party a flat in the said house. 20

Therefore this contract was made.

1. The first party hereby undertakes to sell and to transfer to the second party, who hereby agrees and undertakes to purchase from him part of the plot registered in the Land Registry Office, Tel-Aviv, in Volume No. 53, folio 148 (situated in Tel-Aviv, 24, Hashoftim Street), consisting of an area to be in proportion to the number of rooms to be owned together with the other flat owners.

This agreement of sale includes also part of the building erected on the above-mentioned plot, namely, a flat in the first floor consisting of three rooms, kitchen, bathroom and w.c. facing the yard, and also together with the other flat owners, the staircase, washing room, the garden and the roof, which the first party has to place at any time at the disposal of the purchaser as common owner. 30

2. The price of the aforesaid flat was fixed by both parties to be Five Hundred and Fifty Palestine Pounds and shall be paid by the second party to the first party as following : Twenty Five Palestine Pounds (25) in cash on the date of signing this contract, One Hundred and Fifty Palestine Pounds in cash on receiving the keys of the flat, Twenty Five Palestine Pounds by a bill for a period of six months from the day of the receipt of the keys and the entry into the flat, and the balance in the sum of Three Hundred and Fifty (350) Palestine Pounds by instalments, for the period of 20 years from the date of the entry into the flat, of LP.3.— per month. These instalments include interest. 40

P.8.  
Agreement  
between  
Yossef  
Forer and  
Simcha  
Trushinsky  
(Transla-  
tion from  
Hebrew),  
15th May  
1939.

3. The first party undertakes to hand over to the second party the above flat not later than three months as from to-day, that is to say, not later than 15.8.39. Otherwise, for every day of delay in delivering the flat, the first party shall pay to the second party 250 mils per day.

4. The first party undertakes to transfer at the Land Registry the above plot and the whole of the building erected thereon to the committee or the co-operative of the house owned in common, which will be formed by all the flat owners, at any time that he will be required so to do by one of the flat owners, free from any charge (except the charge of the flat owners in accordance with the contracts), and the first party undertakes as well to sign all the necessary documents and to appear in the Land Registry Office.

5. The first party undertakes to insure the house against fire and earthquake for the benefit of the second party in proportion.

6. The first party undertakes to deliver to the second party the flat complete, repaired and arranged as required by the second party.

7. The second party undertakes to pay his share in the Government and municipal taxes as from the day of his entering into the flat and also in the costs of the fuel for the central heating and hot water. The Government and municipal taxes shall be borne by the first party up to the date of the entry in the flat by the second party.

8. The second party shall be entitled to hand over or to sell the above flat to another without the consent of the first party.

9. Any party breaking the present contract shall pay to the other party as prefixed liquidated damages the sum of One Hundred and Fifty Palestine Pounds, without any notarial or other legal notice.

This contract has been made in two copies to be deemed as one and was signed by both parties by their free will and after the second party has seen the flat and was pleased.

30 This 15th day of May, 1939.

(Signatures.)

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**EXHIBIT P/1.**

**AGREEMENT between Mr. Yossef Forer and Bracha Ben-Ya'acov.**

(Translation from Hebrew.)

Made and signed in Tel-Aviv, on the 21st day of May, 1939.

Between

Mr. Joseph Forer, hereinafter called for short the first party, on the one part; and Mrs. Bracha Ben-Ya'acov of Tel-Aviv, hereinafter called for short the second party on the other part.

40 Whereas the first party is the owner of a parcel No. 457 in block 6304 in Tel-Aviv (Hashoftim Street, 24) registered in his name in the Land Registry Office, Tel-Aviv, in Volume No. 53, Folio 148, and

Whereas the first party has erected on the above parcel a house of common ownership consisting of 10 flats and this house contains 26 rooms and conveniences, and

*Exhibits.*  
P.8.  
Agreement  
between  
Yossef  
Forer and  
Simcha  
Trushinsky  
(Translation  
from  
Hebrew),  
15th May  
1939,  
*continued.*

P.1.  
Agreement  
between  
Yossef  
Forer and  
Bracha  
Ben-  
Ya'acov,  
21st May  
1939.

*Exhibits.*  
—  
P.1.  
Agreement  
between  
Yossef  
Forer and  
Bracha  
Ben-  
Ya'acov,  
21st May  
1939,  
*continued.*

Whereas the first party has agreed to sell to the second party and the second party has agreed to purchase from the first party a flat in the above house under the conditions stated below.

Therefore it was agreed and conditions made between the parties as follows :—

*Article 1.*

The first party hereby undertakes to sell and to transfer to the second party and the second party hereby undertakes to purchase and receive from the first party a part of the above plot consisting of an area to be in proportion to the number of rooms to be owned together with the other flat owners. 10

The first party undertakes as well to sell and to hand over to the second party, and the second party undertakes to purchase and to receive from the first party a flat facing the yard, in the third floor, containing 3 rooms, a kitchen, bathroom and w.c., and also together with the other flat owners the staircase, washing room, the garden and the roof.

*Article 2.*

The price of the above flat has been fixed by both parties to be LP.500, and the second party undertakes to pay the above amount to the first party as follows :—

(A) LP.200 in cash at the time of signing this contract and the first party hereby acknowledges the receipt of this amount. 20

(B) LP.300 in cash at the time of transfer of the plot and the building at the Land Registry Office to the names of two or three of the purchasers of the flats in the above building of common ownership.

In the event that the transfer will be effected before the tenants living in the flat will vacate it, then the second party will pay to the first party at the time of the transfer LP.200 only, and he will deposit the balance of LP.100 at the Workers' Bank or at another bank agreed upon between the parties, in order to remit it to the first party after the handing over of the flat to the second party when it is completely vacated by the tenants. 30

The first party undertakes to hand over to the disposal of the second party the room from the three rooms of the above flat not later than the 3rd July, 1939, and two rooms not later than the 1st October, 1939, otherwise he will pay for every day of delay in handing over : in the first case 100 mils a day and in the second case 250 mils a day, and this as prefixed damages for the damages that may be caused to the second party through the delay in handing over, and without the necessity of notarial notices or other notices. 40

*Article 3.*

The second party hereby declares that he has seen the flat before the signing of the contract and has agreed to purchase it.

*Article 4.*

The first party undertakes to hand over to the second party, the flat in good condition, repaired and arranged as requested by the second party.

*Article 5.*

The second party shall be entitled to sell the above flat and hand it over to another without the need of receiving the first party's consent to it.

*Article 6.*

The second party undertakes from the day of his entry into the flat to pay his share in the taxes, both Government and Municipal, and also to take part in the expenses for the fuel, central heating and hot water, the keeping of the house, and in the insurance payments against fire and earthquake.

- 10 Until the handing over of the flat to the second party, all these payments are to be borne by the first party.

The first party undertakes to transfer the above plot and the whole building erected thereon to the name of two or three of the purchasers of the flats in the house of common ownership, and they will hold it in favour of all the purchasers of the flats in the above house, during 10 days from the day when the request will be made by the purchasers of the flats and not later than the 1st December, 1939, and he undertakes to sign all the necessary documents and to appear in the Land Registry Office in order to effect the transfer.

- 20 The plot and the house will be transferred when they are clean from all debt, mortgage, attachment or any appeal, except from the mortgage for the debts of the flat-owners in accordance with their contracts which are :—

- (A) first mortgage to the Mortgage Bank for the amount of LP.2,400.—.
- (B) second mortgage to Mrs. Gertrude Mayer for the amount of LP.900.—
- (C) third mortgage for security to Mrs. Dvora Guterman for the amount of LP.600.—.

30 *Article 7.*

- The first party declares and hereby certifies that with the payment of the amount of LP.500 mentioned in paragraph 2, the second party settles the whole price of the flat and he will not be liable for any payments and undertakings in connection with the mortgages referred to in the previous provision and as security to this provision the first party undertakes to cause at the time of the transfer of the plot and house that a fourth mortgage be registered in favour of the second party as security for the amount of LP.500.—, and in the mortgage there will be a condition, to the effect that after the settlement of the above second mortgage for the amount of LP.900 the fourth mortgage will step in the second place, but the first party will also have the right to register the second mortgage in the sum of LP.500.— in his favour *pari passu*, if he wishes, and the first party assumes the responsibility that Mrs. Dvora Guterman owner of the third mortgage agrees to all this.

*Article 8.*

Any party committing a breach of this contract or any of its provisions, he will have to pay to the other party the sum of LP.150 as prefixed and agreed damages for the damages which may be caused to him through this breach, without the need for proving the damages and without the necessity

*Exhibits.*

P.I.  
Agreement  
between  
Yossef  
Forer and  
Bracha  
Ben-  
Ya'acov,  
21st May  
1939,  
*continued.*

*Exhibits.*  
 P.1.  
 Agreement  
 between  
 Yossef  
 Forer and  
 Bracha  
 Ben-  
 Ya'acov,  
 21st May  
 1939,  
*continued.*

of notarial warnings or any other warnings, because both parties have agreed that there should be no need for warnings and have agreed that the mere fact of committing a breach of the contract or any of its conditions by any of the parties will serve as a notarial warning and will come in its place. If the first party will commit the breach, then besides the above damages he will be bound to return immediately to the second party and without any delay the amount of LP.200 which he has received from him at the time of signing the contract.

*Article 9.*

This contract has been made in duplicate deemed as one. All this 10  
 has been made with the free will and complete consent of both parties and after they have read the contract attentively they have set their signatures.

In Tel-Aviv on the 21st day of May, 1939.

Signed on a stamp of 50 mils.

JOSEPH FORER.

BRACHA BEN-YA'ACOV.

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**EXHIBIT D/2.**

**LETTER from Advocate M. Nader, Attorney of Mrs. Mamanoff, to Joseph Forer.**

(Translation from Hebrew.)

13.7.39. 20

Registered.

Without Prejudice.

Mr. Joseph Forer,  
 38, Hagdud Haivri Str.,  
 Tel-Aviv.

Dear Sir,

I was instructed by my client Mrs. Esther Mamanoff to inform you as follows :—

1. Pursuant to the agreement between yourself and my said client dated the 26.5.38, I hereby demand of you to transfer to the name of my 30  
 said client her share in the property bought by her from you, and which you undertook to transfer into her name in the Land Registry as Masha.
2. You should complete the construction of the building: repairs to doors, whitewashing and painting of corridors, railing, etc.
3. You should comply with all other terms of the said agreement without any exception.

Should you fail to comply with the demands of my client within a fortnight (14 days) as from the date of the receipt of this my letter you shall be deemed to have committed a breach of the agreement aforementioned and my client shall have to take legal steps for the protection of her rights 40  
 under the agreement.

Yours faithfully,

Sgd. M. NADER, Advocate.

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D.2.  
 Letter from  
 Advocate  
 M. Nader,  
 Attorney of  
 Mrs.  
 Mamanoff,  
 to Yossef  
 Forer  
 (Transla-  
 tion from  
 Hebrew),  
 13th July  
 1939.

## EXHIBIT P/28.

## NOTARY PUBLIC NOTICE to Joseph Forer.

(Translation from Hebrew.)

Mr. Joseph Forer,  
38, Hagdud Haivri St.,  
Tel-Aviv.

Dear Sir,

1. The following was stipulated in the agreement made between me, the undersigned, Benjamin Mann, and yourself :—

10           “ The first Party (yourself) will transfer in the Land Registry the whole house into the name of a Committee to be elected by all the members at any time he will be required to do so provided they will then sign the mortgages for the whole amount which shall then be due from all the members.”

2. All the members, i.e. all the purchasers of the flats in the said jointly owned house sold by you (24 Hashoftim St. Tel-Aviv) have elected a Committee composed of Messrs. Dov Guterman and Bracha Ben-Ya'acov.

20           3. All the “ members ”—the said purchasers are desirous of and demand the transfer by you in the Land Registry of the house into the names of the two members of the said Committee, and they on their part will take over the mortgages for the balance due from all the members as provided in the agreement thereinbefore mentioned.

30           4. On 26.7.39 I have already asked you to comply with your said undertaking and I have allowed you a period of seven days in order to do so, but you did not heed my demand, now I give you again a period of 10 (ten) days as from the receipt by you of this Notarial Notice within which to transfer in the Land Registry in the names of Messrs. Dov Guterman and Bracha Ben Ya'acov the house in 24 Hashoftim St. Tel-Aviv, and Messrs. Guterman and Ben-Ya'acov on their part are willing to appear in the Land Registry and to sign all papers required for the transfer and for their taking over of the mortgages in respect of the debts due from the members under the contract.

5. I do warn you that should you not effect within 10 days the transfer in the Land Registry of the house in 24 Hashoftim St. Tel-Aviv into the name of Messrs. Dov Guterman and Bracha Ben-Ya'acov you will be considered to have committed a breach of the agreement between us and you will be liable for all losses and damages which you will cause thereby and for all the expenses incurred as a result of the breach of the contract by you.

40           6. I further draw your attention to the following :—

By clause 4 of the contract you undertook to build the house conforming to the plan approved by the Municipality of Tel-Aviv. This was one of the basical conditions of our contract. Now you are committing a breach of this undertaking by making considerable alterations in the ground floor of the building against the wish of the purchasers of the flats in the jointly owned building ; I do warn you that should you not immediately stop the building operations in the said floor—without taking into consideration whether or not you will obtain a permit therefor from the Municipality—

*Exhibits.*

P.28.

Notary  
Public  
Notice to  
Joseph  
Forer  
(Transla-  
tion from  
Hebrew),  
13th  
August  
1939.



*Exhibits.*  
 P.28.  
 Notary  
 Public  
 Notice to  
 Joseph  
 Forer  
 (Transla-  
 tion from  
 Hebrew),  
 13th  
 August  
 1939,  
*continued.*

I shall be compelled to claim the stoppage of work in Court as well as the costs and advocate's fees ; And also that whatever you build contrary to the permit approved in February, 1938, you will have built at your own risk and you will have to demolish it, and in addition you will be responsible for all the damages and costs caused or which may be caused to me by such action on your part.

Yours faithfully,

(Sgd.) BENJAMIN MANN.

13.8.39.

Volume 86, Folio 1775.  
 Mr. Joseph Forer,  
 Tel-Aviv.

10

Dear Sir,

At the request of Mr. Benjamin Mann, resident of Tel-Aviv, I send you this Notarial Notice, please acknowledge receipt thereof.

This 13th day of August, 1939.

N. BARNETT,  
 Notary Public Tel-Aviv.

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**EXHIBIT P/14.**

**NOTARY PUBLIC NOTICE to Reuven Lev.**

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(Translation from Hebrew.)

P.14.  
 Notary  
 Public  
 Notice to  
 Reuven Lev  
 and to  
 Yehuda  
 Bomrader  
 (Transla-  
 tion from  
 Hebrew),  
 6th  
 September  
 1939.

I the undersigned, Joseph Forer, hereby give notice to Mr. Reuven Lev of Hashoftim Street, 24, second floor, Tel-Aviv, and to Mr. Yehuda Bomrader, 17 Lilienblum Street, Bookshop, Tel-Aviv, as follows :-

Whereas under article 1 of the contract entered between us on 6.10.37 you had to pay to me the sum of LP.200 by stairs, marble and mosaic, and whereas you supplied me with the above materials in the value of LP.145 only and you still owe me the sum of LP.55.-,

And whereas under the above article 1 you had to pay the sum of LP.3 per month and on account of the above monthly payments you are still owing LP.25.230, of these LP.22.230 also on account of bills which you gave in order to facilitate the collection of the amount of LP.22.230 mentioned above, and whereas under the article 1 mentioned above you undertook to give bills to secure the monthly payments of LP.3 mentioned above for a period of 20 years and in spite of that you have not yet signed the bills for the period commencing as from 10.8.39,

Therefore I hereby give you notice as follows :

If within 8 days from receipt of this notice you will not pay me the sum of LP.25.230 or you will not pay me the sum of LP.7.230 and the sum of LP.18 to the persons who are holding the above bills which were signed in order to facilitate the collection of the above monthly payments, and you

40

will not hand to me bills bearing your signature falling due every 10th of the month for LP.3 each for the period commencing as from 10.8.39 and until 10.3.58, and you will not supply me with stairs, marble and mosaic for a total amount of LP.55, you shall be responsible for all the damages that I have suffered as a result of your breach of the contract made between us on 6.10.37 through your non-fulfilment of your aforesaid undertakings or any of them and you will have to compensate me for all the aforesaid damages, and you will also be responsible for all the costs of action and advocate's fees which I shall have to spend in order to collect the aforesaid damages from you and for the costs of sending this notary public notice and in addition to that *you shall have to vacate the flat*, which is the subject matter of the contract between us dated 6.10.37. I shall be entitled as well to sell the aforesaid flat to anyone I wish and any loss that I shall suffer as a result of such a sale shall be borne by you.

*Exhibits.*  
 — —  
 P.14.  
 Notary  
 Public  
 Notice to  
 Reuven Lev  
 and to  
 Yehuda  
 Bomrader  
 (Transla-  
 tion from  
 Hebrew),  
 6th  
 September  
 1939,  
*continued.*

And I request from the Notary Public to furnish you with a copy of this notice.

In witness whereof I set my hand. Joseph Forer.  
 Tel-Aviv, 6th September, 1939.

(Sgd.) JOSEPH FORER.

20 NAPHTALI ZILENGOLD.

ETIA LEV.

I have handed to the father-in-law of the above at the residence of the above and he signed for him.

I have handed to the wife of the above at the residence of the above and she signed for him.

(Signed) 6.9.39.

(Signed) 6.9.39.

Volume 87 Folio 1955.

To Mr. Reuven Lev,  
 Yehuda Bomrader,  
 Tel-Aviv.

Dear Sir,

30 At the request of Mr. Joseph Forer an inhabitant of Tel-Aviv I send to you this Notary Public Notice. Please acknowledge receipt thereof, to-day 6.9.1939.

N. BARNETT,  
 Notary Public, Tel-Aviv.

Copy of the original, which is filed in civil case file 9763/39 of the Magistrate's Court, Tel-Aviv.

Seal of the Magistrate's Court  
 Tel-Aviv.

*Exhibits.*

## EXHIBIT P/12.

## NOTARY PUBLIC NOTICE to D. &amp; D. Guterman 27.12.39.

(Translation from Hebrew.)

P.12.  
 Notary  
 Public  
 Notice to  
 Dov and  
 Dvora  
 Guterman  
 (Transla-  
 tion from  
 Hebrew),  
 27th  
 December  
 1939.

I, the undersigned, JOSEPH FORER, hereby give notice to Mr. Dov Guterman and Mrs. Dvora Guterman of Hashoftim Street, 24, second floor Tel-Aviv as follows :—

Whereas under Article 1 of the contract entered between us on 6.7.1938 you bought from me part of the plot which is registered in the Land Registry Office Tel-Aviv in Volume 53 Folio 148 (situated at Hashoftim Street 24, Tel-Aviv) of an area in proportion with the number of rooms 10 owned together with the other flat owners,

And whereas you undertook to pay as price for the flat the sum of LP.500 and you have already paid certain sums and you are still owing the sum of LP.150,

And whereas you undertook to form together with the other flat-holders a committee or co-operative society and I undertook to transfer the plot and the whole building to this committee or co-operative society at any time that I shall be required to do so by one of the flatholders.

And whereas under Article 2 of the Contract you undertook to pay to me the balance in the sum of LP.150 "not later than the 10th day of 20 July 1939 total sum of LP.200 on the day of transfer of the building in the Land Registry" into the name of this committee or co-operative society,

Therefore I hereby give you notice as follows :—

In the event that you will not see to it that within 10 days from the date of the receipt of this notice of mine a committee or co-operative society be formed and in the event that you will not enable me to transfer the aforesaid plot and building to this committee or co-operative society and to receive from you the aforesaid balance and to carry out my undertaking under the contract of 6.7.38 and enable me to cancel the third 30 mortgage which I registered for security purposes in accordance with Article 10 of the aforesaid Contract in your favour in the name of Mrs. Drorah Guterman, then you shall be responsible for all the damages and losses that I suffered and that I shall suffer as a result of your breach of the contract made between us on 6.7.38 through your non-fulfilment of your aforesaid undertakings or any of them and you will have to compensate me for all the aforesaid damages and losses, and you will also be responsible for all the costs of action and advocate's fees which I shall have to spend in order to collect the aforesaid damages from you and for the costs of sending this notary public notice and in addition to that you shall have to return 40 to my disposal the flat which is the subject matter of the contract between us dated 6.7.38 and you shall be liable to pay rent for any additional day that you will stay in the flat after the expiration of the period prescribed in this notarial notice of mine, and I shall be entitled as well to sell the aforesaid flat to anyone I wish, and any losses that I suffered or shall suffer as a result of such a sale shall be borne by you.

And I request from the Notary Public to furnish you with a copy of this notice.

In witness whereof I set my hand.

JOSEPH FORER.

Volume 90 Folio 2659.

To Mr. Dov Guterman, Mrs. Dvorah Guterman, Tel-Aviv.

At the request of Mr. Joseph Forer an inhabitant of Tel-Aviv, I send to you this Notary Public Notice. Please acknowledge receipt thereof, today the 27th day of December 1939.

10

N. BARNETT,

Notary Public Tel-Aviv.

I have handed to the above in person for himself and signed. 29.12.39. (Signature.)

I have handed to Mr. Dov Guterman, for his wife and signed. 29.12.39. (Signature.)

(Seal of the Notary Public on a stamp of 50 mils.)

True copy of the original which is deposited with the Magistrate's Court Tel-Aviv.

Seal of the Magistrate's Court.  
Tel-Aviv.

20

**EXHIBIT P/13.**

**NOTARY PUBLIC NOTICE to Bracha Ben-Yaacov.**

2650/3

(Translation from Hebrew.)

1130

Seal of the Court of the 27.12.1939 No. 834888.

I, the undersigned, JOSEPH FORER, hereby give notice to Mrs. Bracha Ben-Yaacov of Tel-Aviv, 24, Hashoftim Street, as follows:—

Whereas under article 1 of the contract entered between us on 21.5.1939 you bought from me part of plot No. 457 in block 6304 in Tel-Aviv registered in the Land Registry Office Tel-Aviv in volume No. 53, folio 148 (situated in Tel-Aviv, 24, Hashoftim Street) of an area in proportion with the number of rooms owned with the other flat owners,

And whereas you undertook to pay as price for the flat the sum of LP.500 and you have already paid LP.200 and you are still owing the sum of LP.300,

And whereas you undertook together with the other flat owners to demand from me the transfer of the above plot and the whole building erected thereon into the name of two or three of the flat owners in the said house, which they will hold for the benefit of all the flats in the said house, and I undertook to transfer the plot and the whole building within ten days as from the day on which a request will come to that effect by all the flat purchasers, and not later than the 1st day of December, 1939,

*Exhibits.*

P.12.

Notary  
Public  
Notice to  
Dov and  
Dvora  
Guterman  
(Translation from  
Hebrew),  
27th  
December  
1939,  
*continued.*

P.13.

Notary  
Public  
Notice to  
Bracha Ben  
Ya'acov  
(Translation from  
Hebrew),  
27th  
December  
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*Exhibits.*  
 —  
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 Notary  
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*continued.*

And whereas under article 2 of the contract you undertook to pay to me the balance in the sum of LP.300 in cash upon the transfer of the plot and the building in the Land Registry into the name of two or three of the flat purchasers in the said house owned in common,

Therefore, I hereby give you notice as follows :—

In the event that you will not see to it that within 10 days from the date of the receipt of this notice of mine, all the flat owners, all together with you, will demand from me the transfer of the said plot and the building into the name of two or three of the flat purchasers of the said house owned in common, and if you will not enable me to transfer the plot and the building and to receive from you the above balance, you will be responsible for all the damages and losses that I suffered and that I shall suffer as a result of your breach of the contract made between us on 21.5.39 through your non-fulfilment of your aforesaid undertakings or any of them and you have to compensate me for all the costs of action and advocate's fees which I shall have to spend in order to collect the aforesaid damages from you and for the costs of sending this notary public notice and in addition to that you shall have to return to my disposal the flat which is the subject matter of the contract between us dated 21.5.39. *And you shall be liable to pay rent for any additional day* that you will stay in the flat after the expiration of the period prescribed in this notarial notice of mine, and I shall be entitled as well to sell the aforesaid flat to anyone I wish, and any losses that I suffered or shall suffer as a result of such a sale shall be borne by you.

And I request from the Notary Public to furnish you with a copy of this notice.

In witness whereof I set my hand.

JOSEPH FORER.

Vol. 90, Folio 2650.

To : Mrs. Bracha Ben-Yaacov Tel-Aviv.

30

Dear Madam,

At the request of Mr. Joseph Forer an inhabitant of Tel-Aviv, I send to you this Notary Public Notice. Please acknowledge receipt thereof, today the 27th day of December, 1939.

N. BARNETT,  
 Notary Public Tel-Aviv.

I have handed to the above and she signed.

29.12.39 (signature).

**EXHIBIT P/15.****NOTARY PUBLIC NOTICE to Simcha Vortman.**

(Translation from Hebrew.)

From Joseph Forer,  
Hagdud Haivri Street,  
corner Jerusalem Boulevard,  
Tel-Aviv.

*Exhibits.*

P.15.

Notary  
Public  
Notice to  
Simcha  
Vortman  
(Translation from  
Hebrew),  
7th March  
1940.

Whereas on 9.11.37 a contract was entered between us under which  
you undertook to purchase from me a flat in my house at 24, Hashoftim  
10 Street, and this in the form of Musha—part of the above house,

And whereas in accordance with the above contract you undertook  
to effect certain payments as specified in the above contract, and you  
undertook as well to hand bills as mentioned in the above contract,

And whereas you did not carry out your above undertakings in  
accordance with article 1 of the above contract, and you also committed  
a breach and did not comply in any other way with the conditions of the  
above contract,

I therefore give you notice and warn you as follows :—

(1) You have to leave the flat which you are occupying in my above  
20 mentioned house not later than on 1.4.1940.

(2) In the event that you do not comply with my above request,  
you will be liable to pay suitable rent, and this without affecting my right  
in the rent for all the period before the above date.

(3) Apart of the above mentioned, you will also be liable to compensate  
me for the damage that I have suffered or shall suffer as a result of your  
breach of the above contract or otherwise, and it should not be understood  
from what is written in this notice of mine as if I have given up anything  
of my right in the damages as above or of any other right which I may have  
under the law.

(4) It should not be understood from the fact of my sending this my  
30 notice as if I agree to cancel the condition of giving up the need of sending  
notary public notices in accordance with the above contract.

JOSEPH FORER.

Volume 92 Folio 359.

To Mr. Simcha Vortman, Tel-Aviv.

Dear Sir,

In accordance with the request of Joseph Forer, an inhabitant  
of Tel-Aviv, I hereby send to you this notary public notice. Please  
acknowledge receipt thereof, today 7.3.1940.

40

N. BARNETT,  
Notary Public Tel-Aviv.

I have handed to the above in person at his residence and signed.

8.3.40

(signature).

Seal of the Notary Public on a stamp of 50 mils.

True copy of the original which is deposited with the Magistrate's  
Court Tel-Aviv in file 3001/43.

*Exhibits.*

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 Judgment  
 in Civil  
 Cases Nos.  
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 and  
 4932/40,  
 Magis-  
 trate's  
 Court,  
 Tel-Aviv  
 (Transla-  
 tion from  
 Hebrew),  
 25th  
 February  
 1941.

**EXHIBIT P/11.****JUDGMENT in Civil Cases Nos. 4931/40 & 4932/40, Magistrate's Court, Tel-Aviv.**

(Translation from Hebrew.)

Before HIS WORSHIP THE MAGISTRATE MR. KANTROWITCH.

JOSEPH FORER, through his attorney Dr. KADOURY Plaintiff

v.

BRACHA BEN YAACOV

DOV GUTERMAN

DVORA GUTERMAN

all through their attorney advocate ROTENSTREICH Defendants. 10

**JUDGMENT.**

The following two cases were consolidated in one file :—

(A) 4931/40 against Bracha Ben Yaacov

(B) 4932/40 against Dov and Dvora Guterman

filed by the same Plaintiff Joseph Forer.

In both cases the Plaintiff claims the return and eviction of the flat which the Defendants agreed to buy in accordance with a certain contract. The flats have not yet been transferred to the name of the Defendants and there is still outstanding a part of the price which the Defendants have not paid yet. They have to pay this outstanding sum on the day 20 of the transfer in the Land Registry Office.

In accordance with the contract signed with Bracha Ben Yaacov the Plaintiff has to transfer the plot and *the whole* building erected on it to the name of two or three of the purchasers of the flats of the house in common ownership which they will hold for the benefit of all the flats purchasers of the said house "within 10 days from the day when the request will be made by the flat purchasers and not later than the 1.12.1939."

The Plaintiff contends that that flats purchasers did not put before him such a request. In accordance with the contract signed with Mr. and 30 Mrs. Guterman the Plaintiff has to transfer at the Land Registry the afore-said plot and the whole of the building erected thereon to a committee or to a co-operative society of the house in common ownership which shall be formed by all the flat owners at any time that he will be required to do so by any of the flatholders. The Plaintiff contends that the Defendants did not help to form a committee or a co-operative society and there was no request for the transfer of the house to the name of a committee or co-operative society of the flat purchasers. The Court is of the opinion that the two sorts of contracts are not enforceable by the parties for the following reasons :— 40

(1) Because the contracts do not deal with the transfer of the particular flat which the Defendants agreed to purchase but on the transfer of *all the flats* bought by unknown persons.

(2) Because it is impossible to transfer a flat of a house in common ownership to the name of a single purchaser.

(3) Because in this case the transfer depends on the will of strangers who were not parties to the contract in question.

(4) Because in the case of Guterman the parties agreed to transfer to the name of a non-existing body.

(5) Because the formation of such a body depends on the will of strangers who are not parties to the contract.

10 (6) Because the contracts do not deal with the event when no consent will be obtained from the unknown flatholders or with the event when no co-operative society of the unknown purchasers will be formed and this is a clear deficiency in the contract which could not be amended now.

Before I continue it should be mentioned here that the Mejele does not apply to such contracts, as the Mejele deals with the sale itself and not with agreements for sale; therefore there is no need to deal with the question as to if the sale or the agreement for sale in this case was void in accordance with the provisions of the Mejele.

20 It is for the Court to find out what is the law in such a case where contracts are not enforceable by the parties themselves because no one of the present parties can force other flatholders to agree to a transfer in a certain form and it is not clear from the contracts themselves as to who should obtain such a consent, the vendor or the purchaser. And the names of the purchasers are unknown nor are the parties to the contract.

30 In such a case the contract is void and each party should be returned to its former position. The Plaintiff has to receive his property and the Defendants their money. The Plaintiff is entitled to repudiate the contract and ask for eviction. The Court holds that in the light of the above conclusions there is no question here of breach of contract on the part of any of the parties but from the evidence it is clear that a committee or co-operative society was not formed and there was no request from all the flat purchasers and the Plaintiff had the right to demand that all the purchasers without exception should request him to transfer, otherwise (he can rightly plead) the purchaser who did not agree to the transfer may lodge an action against him. The remaining question is if the Plaintiff's action should be dismissed until he returns the monies which he has already received from the Defendants. In the Palestine Law there is no legal provision to that effect but the attorney for the Defendants relies on English law and pleads that he has an equitable lien. This Court is  
40 bound by the judgment of the Supreme Court in Civil Appeal No. 221/38 in which it is stated "But he (the purchaser) has an equitable lien on the land for his purchase money, and his lien is coupled with possession which was originally obtained with the consent of the Appellant. The Appellant has the legal estate but the Respondent's equitable lien coupled with possession enables him to resist any attempt by the Appellant to evict him."

In that case before the Supreme Court there was an action based on a lawful contract and there was an argument that the vendor broke the

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contract and also a special claim for damages ; here the position is different ; but the principle of equitable lien remains. See also Civil Appeal 134/39 and 83/39 of the District Court Tel-Aviv (Judges Curry and Dr. Korngruen and Edwards and Dr. Manny).

It is therefore decided that the time has not yet come to ask for eviction (until the Plaintiff has settled the question of the return of the monies which he received or until a competent court will release him from such payment).

And these actions are set aside without costs to any party.

In presence of the attorneys for the parties.

10

25.2.41.

(—) M. KANTROWITCH,  
 Magistrate.

(True copy signed and sealed).

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**EXHIBIT P/10.**

**JUDGMENT in Civil Case No. 3060/41, Magistrate's Court, Tel-Aviv.**

(Translation from Hebrew.)

Before : HIS WORSHIP THE MAGISTRATE DR. LEVY.

P.10.  
 Judgment  
 in Civil  
 Case No.  
 3060/41,  
 Magis-  
 trate's  
 Court,  
 Tel-Aviv  
 (Transla-  
 tion from  
 Hebrew),  
 20th June  
 1941.

The Plaintiff : JOSEPH FORER, through his attorney advocate IZHAR HARARI.

20

The Defendant : REUVEN LEV, through his attorney advocate ROTENSTREICH.

**JUDGMENT.**

After hearing the evidence of the parties, I find that the bills, exhibits 1 to 9, were given to the Plaintiff by the Defendant in connection with the void contract (B/1) and therefore the Plaintiff cannot demand from the Defendant the payment of the above bills.

It is not for me to decide and I do not decide on the question, which arose by way of the decision in civil case 9763/39 dated 27.10.40, whether one has to take into consideration the use of the flat by the Defendant, when one fixes the equitable rights of the parties in connection with the recovery of possession, and to return the investments of the Defendant in accordance with the principle of 221/38. 30

I dismiss this action, Plaintiff to be responsible for the Defendant's costs, including LP.2.500 advocates' fees.

Notified on the 20.6.41 in presence of the Plaintiff and attorney for the Defendant.

(—) Dr. LEVY.

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**EXHIBIT D 1.**

**LETTER from Joseph Forer to the Municipality of Tel-Aviv.**  
(Translation from Hebrew.)

Joseph Forer,  
Tel-Aviv.

24.11.1942.

Municipal Corporation of Tel-Aviv,  
Tel-Aviv.

10 Re : Debt of Municipal Property Tax in respect of the house at  
24 Hashoftim Str.

Dear Sir,

I hereby declare before you that I am the sole owner of the house at 24 Hashoftim Str. since the completion thereof, and you ought not to demand of any of the tenants of the house Municipal Property Rate only the General Rate and the Education Rate.

I further declare I shall pay what is due to the Municipality in respect of Municipal Property Rate on the said house.

Yours faithfully,

(Sgd.) JOSEPH FORER.

*Exhibits.*

D.1.  
Letter from Joseph Forer to Municipality of Tel-Aviv (Translation from Hebrew), 24th November 1942.

20

**EXHIBIT P 26.**

**DECISION in Civil Case No. 6938/42, Magistrate's Court, Tel-Aviv.**  
(Translation from Hebrew.)

JOSEPH FORER

-

Plaintiff

v.

REUVEN LEV

Defendant.

P.26.  
Decision in Civil Case No. 6938/42, Magistrate's Court, Tel-Aviv, 21st July 1943.

In Files No. 6938, 6939, 6940, 6941, 6943, 6944, 6945, 6946, all of 1942 actions were filed for the recovery of possession of immovable property.

The points of law and fact arising in each of the above actions are of similar principles, and therefore this judgment applies to each of them.

30 2. The facts are shortly as follows : The Plaintiff is the registered owner of Parcel No. 457, Block No. 6304, at Tel-Aviv, and on this parcel he erected a house of common ownership of 10 flats comprising 26 rooms and appurtenances. In 1937-38 the Plaintiff entered into agreements with various persons, and amongst them with the Defendants, agreements similar in principle to each other (see, for example, agreement Exhibit P/9 and P 10 in file 6938/42, and agreements Exhibits D/1 and D 4 in file 6944/42): by the terms of which the Plaintiff undertook to transfer to each one of the purchasers a definite flat, of so and so many rooms, kitchen, bathroom, etc., situate at the definite spot in the building, for a fixed price  
40 to be paid in accordance with the special conditions of each agreement. The purchasers paid part of the price in cash or by way of professional work at the construction of the building, and were given possession of their

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respective flats. The transfer in the Land Registry was to have taken place on a fixed date, but the person to whom the property was to be transferred was not the purchaser but a legal body which should have been formed in the future. This body, however, was not sufficiently described in any of the agreements. Thus, for example, it is laid down in the agreement with Brakha Ben-Yaacov (Exh. P/9 in file 6938/42) that "the first party (the Plaintiff) undertakes to transfer the said plot of land and the whole building erected thereon to the name of two or three of the purchasers of the flats in the house to be held in common so that they should hold it for the benefit of all the purchasers of the flats in the said house within 10 days of the date of the request to do so by the purchasers of the flats and not later than on the 1st of December, 1939." And the agreements with Messrs. Guterman (Exh. P/10 in file 6938/42) and Mirakov and Mamanoff (Exhibits P/10 in file 6938/42 and D/1 and D/4 in file 6944/42) provide that "the transfer should be made to the committee or to the Co-operative Society of the House to be held in common to be formed by all the flat owners." On the other hand, the agreement with Mr. Wind does not provide at all as to whom the building should be transferred to, since there is no agreement in writing at all between the Plaintiff and Mr. Wind.

3. The transfer has not yet taken place. A substantial part of the purchasers did not pay the instalments they were bound to pay (see Exh. D/5). The Plaintiff got himself involved in debts, the whole building was put up for sale by public auction and the Mortgage Bank, which held the mortgage on the building, appointed a manager of the property, into whose hands the purchasers began to pay their instalments. In the meantime a lengthy series of actions between the Plaintiff and some of the purchasers ensued, and after several complications in the Magistrates' Courts, District Court and Supreme Court, the present eight actions for an order for restitution of the Plaintiff into possession were lodged.

4. The attorneys of the Defendants raised various objections, but before considering them in detail one has to say a few words about the sequence of events and the developments in the manner of claim and reaction in the various stages of the disputes between the parties for these five years, since both of them rely on documents produced in the Courts and on arguments argued in the same in the course of former legal proceedings.

5. It seems that already in 1938 two of the purchasers (Eliahu Grinstein and David Cohen), who are not Defendants in these consolidated files, went back on the deal and demanded the return of the price paid by them for their flat in the form of work at the construction of the building (the case was heard in file No. 5471/38). The Defendant (the Plaintiff in the present files) lodged a counterclaim for damages on the ground of breach of contract. After lengthy proceedings the counterclaim was dismissed and the Plaintiffs, the purchasers of the flats, succeeded in their claim. The matter was brought on appeal before the District Court, Tel-Aviv, and in its judgment, 83/39, the Court (composed of Edwards J. and Dr. Mani J.) upholds the attitude of the Magistrate's Court and points out, *inter alia* :—

"In our view, the agreement between parties is void inasmuch as there is no possibility under the law of this country of registering

at the Land Registry ownership of a flat which is part of a house. The Magistrate was, therefore, right in deciding that the Respondents were entitled to claim money for work done in connection with the agreement in question. The Magistrate was also right in dismissing the Appellant's counter-claim which was based on a void contract."

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6. In May 1940 the Plaintiff lodged claims against Messrs. Guterman and Ben Yaacov (of the Defendants in these consolidated files) demanding recovery of possession, on the ground that the Committee or Co-operative Society of the purchasers of the flat was not yet formed and that the Defendants did not take care to fulfil the terms of the agreement. The cases were heard in files Nos. 4931-4932/40, and after lengthy legal proceedings the Court held "that both the said categories of the agreements are not capable of being performed by the parties" as they are void. The Court, however, dismissed the action as it held that the Defendants have an equitable lien on the flat which does not become extinct unless after the return of the price paid in the meantime to the Vendor, and as the price had not been returned the claim was premature. This judgment was not appealed to a higher Court.

7. In July, 1940, the Plaintiff instituted a claim against Mr. Lev (one of the Defendants in these consolidated files) and claimed LP.150 as liquidated damages for the breach of the said agreement (file No. 7126/40 of this Court). Mr. Lev argued inter alia that the agreement is void because it is contrary to Sec. 11 of the Land Transfer Ordinance and also because it is "generally impossible to transfer in the Land Registry a flat into the name of a purchaser. There is a possibility of transferring in the Land Registry only the whole of the property or definite shares of the property: 2/10, 3/15, etc., but it is impossible to transfer a known and fixed area in a house." Finally, Mr. Lev relied in his arguments on the judgment of the District Court sitting as a Court of Appeal, No. 83/39, quoted in detail hereinbefore (also published in the Collection of Judgments of the District Court, Tel-Aviv, 1939, p. 115—and see P/4 in file 6938/42). The Court acceded to this argument and dismissed the claim. This judgment was also not appealed.

8. In April, 1941, the Plaintiff lodged a second claim against Mr. Lev and demanded therein the sum of LP.26.215 as per promissory notes given to him by Mr. Lev to secure the payment of the price of the flat. In the course of the proceedings Mr. Lev argued "The promissory notes are void: they were given on the strength of a void agreement" and relied on the judgment mentioned above (file No. 7126/40).

40 The Court dismissed the claim and laid down that "the promissory notes . . . were given to the Plaintiff by the Defendant in connection with a void agreement . . . and therefore the Plaintiff is not entitled to demand from the Defendant the payment of the said promissory notes." (See Exh. P/3 in file No. 6938/42.)

9. From all the foregoing it is clear to us that the Plaintiff tried, at least against some of the purchasers of the flats, all the legal ways which were open to him in order to obtain relief; he demanded payment of the balance of the price of the flat, and the Courts held that the agreement is void and does not give any right to demand the price. He demanded damages and was told that as the agreement is void he is not entitled to ask for damages either. He lodged a claim for eviction and his claim was

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dismissed because of the equitable lien the purchasers have in the flats, hence he lodged the present claims wherein he expressly declares himself ready to return to the purchasers of the flats the moneys paid by them till this day.

10. Let us now pass to the arguments of the Defendants in detail :—

(A) The first submission is that this Court has no jurisdiction *ratione materiæ*. According to this submission a Magistrate's Court has jurisdiction to give an order of recovery of possession if the claim is based on tenancy, or on Art. 24 of the Magistrate's Law. I do not think that the jurisdiction of the Magistrates' Courts is so limited as the attorney for 10 Defendant will have it. If, for example, an owner of a flat permitted his friend to stay in one of his rooms and thereafter withdrew his said permission, what is his remedy? From the limited point of view of the attorney for Defendants this owner of the flat has no relief in Court. He is not in a position to lodge a claim under Art. 24 of the Magistrates Law. because he has no certificate of registration in the Land Registry as regards the property, and he cannot claim eviction as he is not "a lessor." Can it be that the guest has the right to remain in the premises against the will of his host? And, let us assume that the host is the registered owner of the house, what will be his remedy? He cannot rely on Art. 24 because the 20 entry of the guest was not by way of "force," as is required by Art. 24, and he cannot claim eviction because there are no tenancy relations between the parties. It would follow that the guest inherits his host during his lifetime. I am, therefore, of the opinion that this is a mistaken point of view to take. The claims are based on the Magistrate Courts Jurisdiction Ordinance, 1939, Sec. 3 (c). The scope of this Section is much wider and forms the material law as to the jurisdiction of Magistrates' Courts to entertain questions of recovery of possession when the relief claimed is recovery of possession. Art. 24 which is subject to Sec. 3 (c) gives only the procedure to be followed in a definite case of a claim for recovery of 30 possession, namely recovery of possession after "taking of property by force." (See C.A. 63/40, Jerusalem.) As long, however, as the basis of the claim is recovery of possession, the Magistrate's Court only is competent to deal therewith. Moreover, the Defendants do not deny that the Plaintiff is the registered owner of the property. From all that transpired in the course of the proceedings and from the terms of the agreements (see, for example, Clause 3 of the agreement with Mr. Guterman, Exh. P/10 in file 6938/42), it is clear that the Plaintiff gave the purchasers possession of the flats. Thus there is evidence of ownership as well as of previous possession, namely the necessary elements required under Art. 24 of the 40 Ottoman Magistrates Law.

(B) The second submission also denies the jurisdiction of the Magistrates' Courts in these cases. In accordance with this submission the Magistrate's Court has no jurisdiction to decide as to the validity of agreements concerning an undertaking to sell property the value whereof exceeds LP.150.—

Let us see what substance is there in this submission: there can be no doubt that had the Plaintiff come to this Court to claim an order declaring the agreements to be void, the Court would not have been competent to entertain the claim. However, the Plaintiff not only does 50 not put forward any such demand in his claim, but he did not even produce

the agreements in support. He demands the recovery of possession by virtue of the registration in the Land Registry. The Defendants come and argue "You cannot succeed in your claim because we have agreements." The question arises whether the Court is competent to express an opinion on the matter of the validity of these agreements or not.

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Let us take, for example, some other parts of our legislation, and let us see how far the Magistrate's Court is limited by the powers conferred upon it by the Magistrates Courts Jurisdiction Ordinance, 1939, and in  
 10 which cases the Magistrate is entitled to overstep these limits when he has to deal incidentally with matters that are not directly within the scope of his jurisdiction.

(1) Under Sec. 3 of the Evidence Ordinance (Cap. 54) a wife cannot give evidence against her husband in a criminal case, only in certain exceptional cases. Let us assume that the prosecution demands the evidence of the wife in a case which does not fall within that exception, and the accused takes objection to the admissibility of her evidence stating her to be his wife. Will the Court order the prosecution to obtain at first a declaration from the District Court to the effect that this is the legal wife  
 20 of the accused, and not be entitled to decide this question, which arose in the course of a criminal case, only because it has no jurisdiction to deal with matters of personal status ?

(2) Let us assume that the company institutes a claim against a person demanding the payment of a certain sum of money under a contract to acquire debentures. The Defendant alleges that the Company has not been registered in accordance with Law, that the issue of debentures is contrary to the Articles of the Company, that the persons who signed the contract are not managers of the company and could not bind the company by contracts, etc., etc. There is no other law less frequently applied by  
 30 the Magistrate's Court, because of its limited jurisdiction than the Law of Companies ; however, in a case like the one mentioned before, will the Court be bound to dismiss the claim until the Plaintiff will produce a declaratory judgment from the District Court to the effect that the Company has been registered in accordance with Law, that the debentures had been issued in accordance with the Articles of the Company and that the persons who signed the contract were authorised to do so ? Or, will it be entitled to decide these questions while dealing with the subject matter of the claim which falls within the scope of its jurisdiction ?

(3) In a civil claim for an amount exceeding LP.10 the Plaintiff wishes  
 40 to lead evidence of strangers. The Defendant submits that under Art. 80 of the Civil Procedure strangers cannot be heard as witnesses. The Plaintiff submits that the Defendant is his mother-in-law and relies on Art. 82 (1). The Defendant denies it. Does this denial necessitate the dismissal of Plaintiff's claim and should he apply to the competent Court for a declaratory judgment to the effect that the Defendant is his mother-in-law ; or, is it within its province to decide so after hearing evidence which does not bear on the subject matter itself ?

(4) To take a last example, a person claims LP.100 damages in respect of a breach of a contract as to property the value whereof amounts to  
 50 LP.1,000. The defence is that the contract is void and as such does not

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*continued.*

create any rights in favour of the parties thereto. Is the Magistrate's Court bound to interrupt the proceedings immediately or is it entitled to hear evidence and decide as to the validity of the contract?

It is clear that in all the aforementioned cases the Magistrate's Court has no jurisdiction if it is ab initio asked to give a declaratory judgment, but in the event of the question arising incidentally, I can see no objection to the Court expressing an opinion as to the matter. This submission is especially strange when coming from Defendants as Lev and others, who relied in former cases on the illegality of the agreements and obtained an express decision as to this from a Magistrate's Court. 10

The attorney for the Defendants relies on the judgment in C.A. 5/27, which lays down, in form of obiter dictum, that if the lessor asks for a declaratory judgment to the effect that the contract of tenancy is void, he has to go to the Land Court. This judgment, however, is not only not contrary to what was said hereinbefore, but supports the conclusion reached by this Court. Upon perusal of the judgment it becomes clear that the Court was confronted with the question of the validity of the tenancy contract made for a period of more than three years. Such a contract of tenancy is a disposition of immovable property within the meaning of Sec. 2 of the Land Transfer Ordinance, 1920. And had such 20 a question arisen in the Magistrate's Court, the Court would not have been competent to deal with the matter even incidentally because of the express limitation in Sec. 4 of the Magistrates Courts Jurisdiction Ordinance, 1939, which lays down that a Magistrate cannot entertain any civil or criminal action which may involve a decision as to the ownership of immovable property the value whereof exceeds LP.150. Were the attorney for Defendants right in his contention, the legislature should have inserted a similar restriction immediately after Sec. 3 (e) (1) dealing with the jurisdiction of the Magistrate's Court in claims for money.

(c) The third contention is that the Defendants are the owners of the 30 property and are entitled to claim the registration thereof into their names. This contention also involves a denial as to the jurisdiction of the Magistrate's Court. I do not think that it is sufficient for the Defendant to come to Court and say "I claim ownership" in order to succeed in the claim. No substantial proof, with the exception of the agreement, has been produced by the Defendants in support of this their contention, and with the agreement the Court will deal later on. Anyhow, in order to enable the Defendants to prove that they are right in their contention, this Court gave them a sufficient delay to go to the competent Court; they did not take this chance and the Court is not of the opinion 40 that it ought to interrupt the proceedings at this stage on the basis of the said plea. Anyhow, the Defendants can always apply to the competent Court for the recognition of their ownership of the flats although I fail to see how a Defendant like Lev will be able to claim ownership on the strength of an agreement which he himself considers to be void. A decision as to recovery of possession does not involve any denial of a right to ownership in the property. (See C.A. 59/38, District Court, Tel-Aviv, composed of Edwards, J., and Dr. Many, J.).

(d) The fourth and most important submission is that the Defendants entered the flats with the consent of the Plaintiff and by virtue of an agreement for sale and whereas they are ready to accept transfer of the 50

properties, the Plaintiff is not entitled to evict them. Here we come to the question of the validity and legality of the agreements.

The attorney for Defendants submits that claims have not been lodged against all the Defendants and that there are no decisions to the effect that their agreements are void; and even as regards those against whom claims had been previously instituted a previous judgment as to the illegality of the agreements cannot be deemed to constitute a "res judicata," and it cannot bind this Court. He relies on a judgment in C.A. 9/39 (6 P.L.R. 138). I do not think that the Plaintiff ought to be compelled to repeat with regard to everyone of the Defendants the lengthy procedure followed by him against the Defendants Lev and others to ask first for the price and then for damages, etc. The matter will cause only additional costs and make the proceedings vexatious and nobody will profit thereby; and I do not take the former judgments as a basis, but I take into consideration the facts as found in these cases; and I conclude from them that the agreements do not give the Defendants any legal right in the property, whether because they are void ab initio or because they are not capable of execution in view of the vagueness of their terms. And these are the reasons: (1) Each of the agreements deals with a specific flat in a house to be held in common. It is impossible to transfer a specific flat to a specific purchaser, but only a specific share out of a known number of shares. (2) The agreements do not provide for the transfer of the flat which it has been agreed to purchase, but for the transfer of all the flats purchased by unknown persons. If one purchaser complies with the terms of his agreement, the vendor is not yet bound to transfer the building, but only after all the purchasers, who were not yet known at the time of signature of the agreement with the one, comply with the conditions as well. (3) The transfer ought to have taken place into the name of a legal body which was not yet in existence at the time of signature of the agreement, was not created till this day, and as to which it was not known in what manner it will be created as its creation was dependent on the will of other persons who were not parties to the agreement, and the purchasers did not act as one group but each of them acted separately. (4) The agreements do not provide what should happen in the case of the Co-operative Society or committee not being formed, or in the event of other purchasers not agreeing to the registration of the whole building in the name of "two, three of the purchasers." (5) It is true that in the case of Mirakov and Mamanoff the agreement provides that if no committee would be created within one year from the signature of the agreement "the first party (the Plaintiff) shall transfer to the second party (Defendant) his share in the building and plot . . . Musha'a"; but we have no modus according to which it would be possible to fix how many shares out of all the shares of the building ought to be transferred to them. And even if the Defendants are entitled to obtain indefinite shares in form of Musha'a, this does not mean that the shares which will come to them will of necessity cover the flats occupied by them at present. (6) There is no agreement in writing with Mr. Wind and there is no way to know the particulars of the agreement. According to him the Plaintiff promised him to sell him a flat and in the meantime he acquired the right of a previous purchaser, Turchinski, and stands in his shoes; but the same Turchinski could also not have acquired a specific flat and have it transferred into his name and Wind is in no better position than Turchinski. From the foregoing it would follow that all

*Exhibits.*

P.26.  
Decision in  
Civil Case  
No.  
6938/42,  
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trate's  
Court,  
Tel-Aviv,  
21st July  
1943,  
*continued.*



*Exhibits.*

—  
P. 26.  
Decision  
in Civil  
Case No.  
6938/42,  
Magis-  
trate's  
Court,  
Tel-Aviv,  
21st July  
1943,  
*continued.*

the agreements on the strength of which the Defendants are in possession of the flats, are void and incapable of execution. I think, however, that the case of Mr. Guterman must be considered separately. Their agreement is void like all the other agreements and does not give them any right; it transpired, however, in the course of proceedings that Mrs. Guterman got a mortgage in her favour on the self same flat. (See special conditions in Exh. D/3.) Whatever be the validity of the original agreement, this Court is not competent to decide that a mortgage deed registered in the Land Registry is invalid. By virtue of this deed Mrs. Guterman lent the Plaintiff a certain amount of money and got a certain pledge, the pledge 10 could not be taken out of her hand before the loan has been paid off and this Court is not competent to deal with questions concerning the extinguishing of the encumbrance of a mortgage. If the Plaintiff maintains that the mortgage is invalid he ought to apply to the competent Court since the jurisdiction of this Court is limited by virtue of Sec. 4 of the Magistrates Courts Jurisdiction Ordinance, 1939.

(E) The fifth submission of the attorney for Defendants is that the purchasers of the flats have an equitable lien on the properties, and so long as they did not receive their money back they cannot be evicted from the flats. Attorney for Plaintiff states in the Statement of Claim that he is 20 ready to return to everyone of the Defendants his money and hence no useful purpose will be served to consider further the question with which both parties deal at length, namely, whether the Defendants are at present lawfully in possession of the flats or not. It is to be pointed out that in the Statement of Claim it is stated that the Defendants are wrongly, and not "unlawfully," in the flats. As already said, the agreements do not entitle them to a transfer in the Land Registry. At first they enter with the consent of the Plaintiff deeming the agreement to be valid and capable of execution. In C.A. 221/38 on which attorney for Defendants relies, it was found that 30 the transfer could be effected; in the cases before us there is no such possibility. The Plaintiff is ready to return the price and to extinguish thereby the equitable lien. And I see no objection thereto. Attorney for Plaintiff suggests that an eviction judgment be given which should not be executed so long as the Plaintiff shall not have returned the money. I do not think that this is a reasonable way. The source of all the interminable disputes between the parties is, to a considerable extent, to be found in the conditions of the market and the fluctuation of prices of immovable property during the last five years. 1938-40 were years when prices were on the decline. Prices of immovable property were low and this was the 40 reason, for example, why Plaintiff claimed payment of the price from Lev and others; and they argued the agreements were void and that they were not liable to pay but entitled even to ask for the return of the amounts already paid. In the years of War, prices of houses went up, and then things became a different aspect; the Plaintiff demanded the return of the property and the Defendants, with Lev amongst them, argue that they are entitled to obtain ownership of the property. Should the Court follow the Plaintiff's suggestion, the Defendants would be at his mercy; if the Plaintiff will deem it necessary he will execute the judgment and return the money to them; if it will not please him, from an economical point of view, he will not execute the judgment, but will wait for a further increase 50 in prices. I am, therefore, of the opinion that the most reasonable way to

follow will be to order the Plaintiff to deposit in Court the sum of money due to each of the Defendants within five days from today and only upon compliance by him with this decision, will judgment issue in his favour. When fixing the amounts which the Plaintiff ought to deposit, notice should be taken of the amount received by the Plaintiff at the time of the signature of the agreement, whether in cash or in form of work, and of all other amounts paid by the Defendants either to Plaintiff or to the receiver appointed on behalf of the Mortgage Bank in accordance with the account in D/6. The amounts received by the Mortgage Bank after the dismissal of the receiver were put in as deposits and Plaintiff's account was not credited with them. According to Dr. Ariyan, an employee of the Bank, the Defendants are at liberty to withdraw these amounts at any time they choose, and, therefore, the Plaintiff cannot be ordered to deposit these amounts also. The Plaintiff should also deposit all the promissory notes which were not paid by the Defendants to this day and which are in the possession of the Plaintiff or of the third party.

(F) The last submission of attorney for Defendants is that the Defendants are protected by the Rent Restrictions (Dwelling Houses) Ordinance, 1940. I do not think that there is any substance in that submission. The Defendants are not "tenants" at all. They did not lease the flats and they did not pay rent. Moreover, when the Plaintiff in one of the former claims (file No. 7126/40) tried to claim rent, Mr. Lev argued that he is not bound at all to pay rent and relied on Arts. 597-8 of the Mejelle. The Court acceded to his arguments and dismissed the claim for payment of rent. How can he, and the other Defendants as well, claim the protection of a law enacted expressly for the benefit of "tenants," who are in contractual relations with lessors, and not for the benefit of any person in possession of a flat not by virtue of a tenancy agreement.

In conclusion I would point out that seven of the Defendants agreed to the consolidation of their actions and to the hearing thereof simultaneously, and only two of them (Defendants in files Nos. 6944-5/42) asked for a separate hearing; and the Court had to hear the evidence twice. However, after consideration, it became clear that neither the Statements of Defence lodged in the said files, nor the pleadings give rise to any new points which were not dealt with by the Court hereinbefore, and hence the reasons of this judgment apply also to the actions in those files.

This decision was delivered in the presence of the attorneys of the parties, this 21st day of July, 1943.

(Sgd.) Dr. S. CHESHIN.

**EXHIBIT P/27.**

**JUDGMENT in Civil Case No. 6938/42, Magistrate's Court, Tel-Aviv.**

(Translation from Hebrew.)

YOSSEF FORER - Plaintiff

vs.

BRACHA BEN-YAACOV - Defendant.

Pursuant to the decision of this Court of 21.7.43 the Plaintiff deposited the amount of money alleged by the Defendants to have been paid by them

*Exhibits.*  
— —  
P.26.  
Decision  
in Civil  
Case No.  
6938/42,  
Magis-  
trate's  
Court,  
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21st July  
1943,  
*continued.*

P.27.  
Judgment  
in Civil  
Case No.  
6938/42,  
Magis-  
trate's  
Court,  
Tel-Aviv,  
2nd  
November  
1943.

*Exhibits.*  
 —  
 P.27.  
 Judgment  
 in Civil  
 Case No.  
 6938/42,  
 Magis-  
 trate's  
 Court,  
 Tel-Aviv,  
 2nd  
 November  
 1943,  
*continued.*

on account of the purchase price to the Plaintiff in the course of time. By signing Exh. A dated 25.10.43 all the parties have consented to the fact of the amounts being correct and of their having been deposited. The Plaintiff also deposited a number of promissory notes which were in his possession.

The Defendants contend that there are still due to them some other amounts which were spent for the purpose of paying the landlord's taxes during the period they were in possession of the flats, costs of an air raid shelter, watchman's wages, etc. The Plaintiff produced a Bank Guarantee for the amount of LP.500.— to secure the payment of any additional amounts a competent Court may find due to them or to anyone of them and thereby fulfilled all he had to fulfil in order to extinguish the equitable lien of them on the flats sold. 10

Now, therefore, and in view of the decision of 21.7.43 and the reasons stated therein it was decided to adjudge everyone of the Defendants to vacate the flats occupied by them as per the following details :—

*Reuven Lev*—a flat of two rooms on the second floor.

*Brakha Ben Yaacov*—a flat of two rooms on the third floor.

*Gershon Mabowitz*—a flat of two rooms on the second floor.

*Meyer Wind*—a flat of three rooms on the first floor. 20

*Esther Mamanoff*—a flat of three rooms on the second floor.

*Malkiel and Nissim Mirakoff-Cohen*—a flat of three rooms on the third floor.

*Benjamin Mann*—a flat of two rooms on the first floor.

of Plaintiff's house, situate at 24, Hashoftim Street, Tel-Aviv.

Upon eviction each of the Defendants shall be entitled to receive the amount deposited in his favour namely :—

*Lev*—LP.217.785 and a promissory note for LP.28.—

*Ben-Yaacov*—LP.234.070.

*Mabowitz*—LP.187.187. 30

*Wind*—LP.257.

*Mamanoff*—LP.250.680.

*Mirakoff*—LP.236.240.

Each of the Defendants shall pay to Plaintiff the costs incurred in his file, together with LP.3.— advocate's fees.

The claim against Guterman (file No. 6942/42) is dismissed with costs and LP.3.— advocate's fees.

It would be an illusion to assume that the parties will take this judgment as final and the matter will certainly be brought before the higher Courts. 40

In order to prevent any further legal delays in this Court, to save the parties trouble and expense in lodging applications for stay of Proceedings, etc., I decide to stay the said eviction orders until the hearing of the appeals in the District Court and at any rate for a period of two months.

Delivered in open Court this 2nd day of November, 1943, in the presence of parties' advocates.

(Sgd.) Dr. SH. CHESHIN,  
 Magistrate.

**EXHIBIT P/18.****DECISION of Rents Tribunal (Dwelling Houses), Tel-Aviv, in Case No. 168/43.**

(Translation from Hebrew.)

Rents Tribunal

(Dwelling Houses),

Tel-Aviv.

Bialik Str. Municip. Building.

File No. 168/43.

19.12.43.

Applicant : JOSEPH FORER.

10 Respondents : DOV &amp; DVORA GUTERMAN.

After hearing the parties and visiting the place, the Tribunal fixes the standard rent for the leased premises to the sum of LP.7.500 (seven Palestine Pounds and 500 mils) per month—includes hot water, central heating and cleaning.

The Tribunal also decides that each party will bear its own costs.

The Tribunal decides that the fixing of the standard rent in this case will not affect in any way the rights of the parties in connection with their other rights, if any in this flat, and also in connection with their rights towards other courts before which their cases may be heard.

20 This decision has been given in open Court in the presence of the Applicant's son and the representative of the Respondents.

(Sgd.) M. GORODISSKY,  
Chairman of the Rents Tribunal  
(Dwelling Houses).  
Tel-Aviv.

Seal of the Rents Tribunal, Tel-Aviv.

*Exhibits.*

P.18.  
Decision  
of Rents  
Tribunal  
(Dwelling  
Houses),  
Tel-Aviv,  
in Case  
No.  
168/43,  
19th  
December  
1943.

*Exhibits.***EXHIBIT P/19.****DECISION of Rents Tribunal (Dwelling Houses), Tel-Aviv, in Case No. 167/43.**

(Translation from Hebrew.)

P.19.  
 Decision of  
 Rents  
 Tribunal  
 (Dwelling  
 Houses),  
 Tel-Aviv,  
 in Case No.  
 167/43,  
 19th  
 December  
 1943.

Rents Tribunal

(Dwelling Houses),

Tel-Aviv.

Bialik St. Municip. Building.

File No. 167/43.

Applicant : JOSEPH FORER.

Respondents : ESTHER and MICHAEL MAMANOFF.

After hearing the parties and visiting the place, the Tribunal fixes 10 the standard rent for the leased premises to the sum of LP.6.750 (Six Palestine Pounds 750 mils) per month—includes hot water, central heating and cleaning.

The Tribunal also decides that each party will bear its own costs.

The Tribunal decides that the fixing of the standard rent in this case will not affect in any way the rights of the parties in connection with their other rights, if any, in this flat, and also in connection with their rights towards other courts before which their cases may be heard.

This decision has been given in open Court in the presence of the Applicant's son and the representatives of the Respondents. 20

(Sgd.) M. GORODISSKY,  
 Chairman of the Rents Tribunal  
 (Dwelling Houses).  
 Tel-Aviv.

Seal of the Rents Tribunal, Tel-Aviv.

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**JUDGMENT in Civil Appeal No. 198/43, District Court, Tel-Aviv.**

Before HIS HONOR THE R/PRESIDENT JUDGE WINDHAM.

In the Appeal of :—

R. LEV - - - - - Appellant

vs.

JOSEPH FORER Respondent.

Appeal from the judgment of the Magistrate's Court, Tel-Aviv, in file No. 6938/42 dated 2.11.43.

Judgment  
in Civil  
Appeal No.  
198/43,  
District  
Court,  
Tel-Aviv,  
25th  
February  
1944.**JUDGMENT.**

10 1. This is an appeal from a judgment of the Magistrate's Court, Tel-Aviv, Dr. Cheshin, in which the learned magistrate granted orders for recovery of possession of a number of flats in a block to the registered owner of the block (the Respondent) against the several occupants of the flats (the Appellants).

The actions were brought against each occupant separately but were consolidated, and the appeals of the five occupants who appealed have been similarly consolidated, the facts and the legal position with regard to them all being the same, save to a limited extent in the case of two of them where there were distinguishing features with which I will presently deal.

20 2. The facts of this case, including a résumé of the events which led up to it and the previous litigation between the parties are set out at length in the judgment of the learned magistrate and I need only summarise briefly the facts with which this appeal is directly concerned. The Respondent in 1938 entered into a written agreement with each Appellant to sell to him one of the flats in the block, together with, in the case of Appellants Mirakov and Mamanoff, a part of the plot on which the block stood. The Appellants paid part of the instalments of purchase price agreed upon but defaulted on the remainder. Eventually the Respondent sued them successfully below for recovery of possession of the flats. The  
30 learned Magistrate held that he had jurisdiction to order recovery of possession, that the order did not involve a decision as to the ownership of the flats such as would have lain outside his jurisdiction, and that the agreements in question upon which the Appellants relied were void and incapable of execution. He made his order after having required the Respondents to deposit in court, for repayment to the respective Appellants, all sums which he had received from them towards purchase price, of the flats, and the judgment became operative only upon due compliance with this requirement.

3. The main grounds of appeal are, first, that the magistrate had no  
40 jurisdiction to make the order for recovery of possession since it involved a decision as to the ownership of immovable property and thereby fell within section 4 of the Magistrate's Courts Jurisdiction Ordinance, 1939; secondly that the Magistrate had no power to declare that the agreements upon which the Appellants relied were void and incapable of execution; thirdly that even assuming he had such a power, he erred in deciding that these particular agreements were void and incapable of execution; and lastly that since the Appellants were in possession and had paid part of the

Judgment  
in Civil  
Appeal No.  
198/43,  
District  
Court,  
Tel-Aviv,  
25th  
February  
1944,  
*continued.*

purchase price, they had an equitable lien on the flats which entitled them to retain possession. These grounds of appeal, and the others that have been raised before this Court, were all argued at length in the Court below and were rejected by the learned Magistrate in his long and carefully reasoned judgment, after consideration of the legal issues. I may say at once, that I agree entirely with the conclusion which he reached, and after perusing his judgment I find there is little I can usefully add to it. I would, however, make the following further observations on the main grounds of appeal.

4. With regard to section 4 of the Magistrates Courts Jurisdiction Ordinance, 1939, I do not consider this case involves a decision as to ownership. The Respondent is admittedly the registered owner of the block of flats in question. Had the Appellants been claiming specific performance of an agreement to transfer the flats and to register them in their name, that might well have been considered as involving a decision as to ownership, and it would have lain outside a Magistrate's jurisdiction. But, they were not. The most that the learned Magistrate was being asked to decide upon was their claim to continue in possession under an equitable right falling short of ownership. Clearly, therefore, the claim fell within Section 3 (c) and outside section 4 of the Ordinance. 10

5. With regard to whether the Magistrate had power to declare the agreements void and incapable of enforcement, I do not think he would have had power had the principal relief sought by the Respondent been a declaration that the agreements were valid, for then the proper tribunal would have been the Land Court. But, here the Respondents did not rely on the agreements and did not ask for such a declaration. They asked for recovery of possession, a relief which fell within section 3 (c) of the Ordinance, and the Magistrate's declaration as to the validity of the agreements was only ancillary to this relief. That being so, I consider that he had power to make the declaration. In so holding I rely on Civil Appeal 92/42, which I take to be the authority for the propositions that, where the principal relief sought falls within the Magistrate's jurisdiction he may make an ancillary declaration although the latter, had it been the main relief sought, would have fallen outside his jurisdiction. 20 30

6. As to whether the learned Magistrate was right in declaring the particular agreements in this case to be void and incapable of performance, I think there can be no question that he was right with regard to the agreements of which each provided for the sale of a flat only. For they were agreements for the performance of a thing legally incapable of being performed. Under section 10 of the Land Law (Amendment) Ordinance, 40 as enacted in the Land Law (Amendment) Ordinance, 1937, no registration shall after 1937 be made or documents of title issued in respect of the ownership of buildings sold separately from the land on which the buildings stand. This, combined with the provisions of the Land Transfer Ordinance which render void any dispositions not registered must render the agreements void and incapable of enforcement. It is argued that this does not apply to the agreements of the Appellants Mirakov and Mamanoff since these provide for the sale not only of specified flats, on the second and third floor respectively, but also for the sale of part of the plot on which the block of flats stands, in musha'a shares, "in an area proportional to the 50 number of rooms together with the other flat owners." But this variation in the form of the disposition, which is apparently an attempt to get round

the provision of section 10 of the Land Law (Amendment) Ordinance that prevents the registration of the sale of a building or part of a building separately from the ground on which it stands, is ineffective for that purpose. For there is no escaping the effect of that section, which is that the boundary between the properties of contiguous owners must lie in a vertical and not a horizontal plane; so that a person cannot be the sole owner of a specified flat on (say) the third floor except by virtue of being registered as the sole owner of that part of the plot lying vertically below the flat, and this will automatically make him the sole owner of all the flats lying in between, and of those (if any) lying above "usque atcaelum." Musha'a shares in the plot, such as these two agreements promise to convey, must carry with them, and can only carry with them similar musha'a shares in the whole block of flats, i.e. in every floor—no more and no less. Thus to agree to convey at the same time musha'a shares in the plot on which the block of flats stands and ownership of one particular flat on a particular floor is to attempt the fusion of incompatibles. For these reasons I consider that the learned Magistrate was right in holding these two agreements to be as void and incapable of performance as those which promised to transfer ownership in a flat only. In his judgment he considered these two agreements separately from the others in so far as they differed and I would here say, in answer to the contention of their advocate, that the two appellants concerned were in my view in no way prejudiced by the fact, that he kept no separate records and delivered no separate judgments in their case.

7. There remains the last main line of defence, namely that recovery of possession of the flats from the Appellants could not be ordered since they were in possession under an agreement to sell (Civil Appeal 140/43 being the main authority cited on this point), and that, having paid part of the purchase price, they were protected by their equitable lien (Civil Appeal 221/38 being relied on). But in these and all the other cases, cited in this connection the agreements in question were valid, and they cannot be relied on where, as here, the agreements were void and incapable of performance. Such agreements can give no equitable or other rights in the property. The most they can give the Appellants is a right to have the instalments which they paid returned to them before their eviction is ordered. And, as I have already said, these instalments were returned before the Magistrate's judgment became operative.

8. For all these reasons, and for the others which are sufficiently set out in the learned Magistrate's Judgment, I dismiss these consolidated appeals. The Appellants to share equally in paying the Respondent's costs of the appeal, to include an advocate's attendance fee of LP.30.—.

Judgment delivered in open Court this 25th day of February, 1944, in the presence of Dvorin and Aharonoff for Appellants and Goldberg for Respondent.

(Sgd.) R. WINDHAM,  
R/President.

The execution of this judgment is stayed pending hearing of application for leave to appeal provided that the Appellants lodge their application within 10 days from to-day.

R. WINDHAM,  
R/President.



Judgment  
in Civil  
Appeals  
Nos. 110-  
116/44,  
Supreme  
Court,  
Jerusalem,  
28th July  
1944.

**JUDGMENT in Civil Appeals Nos. 110-116/44, Supreme Court, Jerusalem.**

Before : MR. JUSTICE ROSE and MR. A/JUSTICE PLUNKETT.

IN THE APPEAL OF :

Civil Appeal No. 110/44.

GERSHON MABOVITZ - - - Appellant

*v.*

JOSEPH FORER - Respondent.

Civil Appeal No. 111/44.

MEIR WIND - - - Appellant

*v.*

JOSEPH FORER - Respondent. 10

Civil Appeal No. 112/44.

1. NISSIM MIRAKOV-COHEN

2. MALKIEL MIRAKOV-COHEN - Appellants

*v.*

JOSEPH FORER - Respondent.

Civil Appeal No. 113/44.

ESTHER MAMANOFF Appellant

*v.*

JOSEPH FORER Respondent. 20

Civil Appeal No. 114/44.

BRACHA BEN YA'ACOV - - Appellant

*v.*

JOSEPH FORER - - - Respondent.

Civil Appeal No. 115/44.

BENJAMIN MAN Appellant

*v.*

JOSEPH FORER Respondent.

Civil Appeal No. 116/44.

REUVEN LEV - - Appellant 30

*v.*

JOSEPH FORER - Respondent.

Appeals from the judgment of the District Court, Tel-Aviv, in its appellate capacity, dated the 25th day of February, 1944, in Civil Appeals Nos. 199/43, 196/43, 211/43, 210/43, 195/43, 197/43 and 198/43.

For Appellants : Messrs. Mordechai Eliash and Olshan.

For Respondents : Mr. E. D. Goitein and Mrs. Gluckman.

**JUDGMENT.**

These are appeals from the judgment of the District Court of Tel-Aviv, sitting in its appellate capacity, which appeals, for the sake of convenience, 40 have been consolidated.

This is one of those unfortunate matters in which we feel obliged to say that the learned Magistrate had no jurisdiction to entertain the matters before him. While these distinctions, in cases of this class, between the jurisdictions of the Magistrate's Court, the Land Court and the District Court may perhaps seem to be somewhat artificial, there is a long line of authorities to the effect that where a claim to ownership of immovable property is principally involved, it is the Land Court alone that has jurisdiction. It is true, as the Respondent argues, that there is authority for the proposition that the jurisdiction of a Court is not ousted merely because some ancillary relief is asked for which, taken by itself, would lie beyond the jurisdiction of the Court, provided that the principal matter or claim is within its jurisdiction. This principle, however, would not seem to avail the Respondent in the present proceedings because, as Mr. Eliash points out, these proceedings are for the recovery of possession of a number of flats, the defence being that each tenant is the owner by purchase of his particular flat.

This matter must, of course, depend upon the interpretation of the particular agreements entered into between the parties, and it seems to us that the Appellants' contention is correct that it was necessary for the Plaintiff-Respondent in order to succeed in his action to obtain a decision on the question whether the agreements were null and void. So far from the question of ownership, which is, of course, dependent upon the agreements, being an ancillary matter, it seems to us that this question lies in the very forefront of the dispute. That being so, we are of opinion that the Magistrate had no jurisdiction to decide this matter. We come to this conclusion with regret, not because we have formed any opinion on the merits adverse to the Appellants' case, but merely on the ground that it is unfortunate that after a lengthy hearing in two Courts, the matter should have to be recommenced ab initio.

Having regard to the result to which we have come, we consider that it is undesirable for us to express any opinion on the other matters which have been raised before us, as they will no doubt have to be considered de novo by the appropriate Court. We feel it, unnecessary, therefore, to deal at length with the various propositions enunciated by the learned Magistrate but we would, perhaps, mention in passing that the answer to the example cited by him of an indulgent host inheriting an importunate guest for the whole of his lifetime if the Magistrate has no power to order recovery of possession, would seem to be provided by article 1226 of the Mejelle.

The appeal is therefore allowed and the judgments of the Magistrate's Court and the District Court are set aside and judgment entered for the Appellants. The Appellants will have their costs here and below the costs of this appeal to be on the lower scale and to include the sum of LP.25 for advocate's attendance fee. Advocate's fees in the Court below are reversed.

Delivered this 28th day of July, 1944.

(Sgd.) ALAN ROSE,

British Puisne Judge.

I concur.

(Sgd.) O. PLUNKETT,

A/British Puisne Judge.

Judgment  
in Civil  
Appeals  
Nos. 110-  
116/44,  
Supreme  
Court,  
Jerusalem,  
28th July  
1944,  
*continued.*