FISHER, C.J. & STUART, P.J. 1923

March 9

[FISHER, C.J. AND STUART, P.J.]

HAJI ADAMOS ANTONIOU

v.

YEORGHIOS IOANNOU AND FOUR OTHERS.

LEASE—SUBLEASE—CONSENT OF LANDLORD—DAMAGES.

APPEAL of defendants from the judgment of the District Court awarding £137 10*s.* by way of damages and rent for premises occupied by some of them without the consent of the owner (plaintiff).

The facts are disclosed fully in the judgment of the District Court which runs as follows:—

In this case the plaintiff claims the return of property situate in Nicosia which was leased by him to the Sesame Oil Association Company by contract of lease dated the 19th May, 1917. He further claims a sum of £8 a month as damages from the date of the action until the date of evacuation by the defendants, and further sums as damages for restoring the premises to the existence they were in when the lease was granted.

The defendants are five in number and were five members of the Sesame Oil Association Company which took the original lease of the premises to which I have already referred. This company was dissolved on the 12th August, 1920, upon which an offer was made to the plaintiff for a return of his property to him.

As compensation he demanded a sum of £30 and also to be allowed to keep the ovens. This is admitted by both parties, and as the lease did not expire until the 18th May, 1922, it is obvious that the plaintiff was justified in demanding some monetary compensation in view of the termination of his lease two years before it had run its course.

The defendants, however, would not accept this proposition and apparently the third and fourth defendants sublet the premises to the first and second defendants. This sublease was effected by exhibit S.Y. 2. The defendants allege that this lease was made with the consent of the plaintiff. The plaintiff on the other hand contends that he never consented to this lease, but it only came to his knowledge at some considerable time after it had been made.

The evidence on this point is somewhat conflicting. The first defendant alleges that he went to the plaintiff's shop on the 13th August, 1920, and informed him of this sublease and the plaintiff said " you have done well." There is no corroboration of the first defendant's evidence on this point.

The plaintiff, however, says that the first defendant came to his shop on this day and asked him to be allowed to stay in his shop for another three months as he could not find a shop of his own.

This evidence of the plaintiff's is corroborated by that of his son who gave evidence to this effect. The first defendant does not deny the presence of the son at this interview, and the plaintiff's story is consistent with his acceptance of four months rent from the first defendant.

On the whole the Court prefer the evidence of the plaintiff on this point and are of opinion that if he had consented to this sub-lease, his signature and consent would have been given on the document S.Y. 2. The Court therefore find as a fact that the plaintiff had no knowledge at the time of this sublease and never consented to it.

The defendants further contend that even if the plaintiff never consented to this lease being granted, such consent was not necessary and it was open to them to make such a subletting in accordance with the provisions of the Mejellé.

First of all it would be as well to consider the position. The Sesame Oil Company (consisting of eight members originally) took the lease. The Company was dissolved, and two of its former members sublet the property to two other of its members.

There is no evidence that the remainder of the members of the company joined in such lease or approved of it or authorised these two members to make such a lease on their behalf. Under these circumstances is such a lease valid ?

The Court are of opinion that it is not, and the third and fourth defendants had no power to make and the first and second defendants no right to take a lease under such circumstances. The defendants Nos. 1 and 2 having taken a sublease of the whole premises proceeded to sublet a portion of it to the fifth defendant. Apparently it was the khan which the fifth defendant took.

We have been referred to various articles in the Mejellé with regard to subletting. Now these articles are not as lucid as they might be, and there are apparently no decisions of the Court to assist us.

Article 586 says that if the subletting is made previous to taking possession it is good. If subsequent to taking possession, the reverse would, it is presumed, follow and hence the subletting in this case would not be good.

Again according to article 587 a person can sublet provided the user of the article is not changed. Whether this article applies to moveables

or immoveables or both is not clear, but in any case we think that subletting in this case varied the user to which the premises had been put.

For all these reasons we think that as no power to sublease was contained in the original lease, and no consent to such sublease was given the sublease to defendants Nos. 1 and 2 by defendants Nos. 3 and 4 was bad and also the sublease to defendant five by defendants Nos. 1 and 2.

With regard to damages we think the plaintiff has exaggerated his claims and is only entitled to £137 10*s.* being £5 for the mangers, £15 for the cesspit, £5 for the planks, and £2 for the well and £110 10*s.* for rent.

For Appellants *Stavrinakis* and *Clerides.*

For Respondents *Paschalis* and *Hajipavlo.*

Judgment: Plaintiff leased the premises to an association which later dissolved. The members of the association asked to be allowed to consider the lease as cancelled. Plaintiff made them an offer. They declined to accept. Without plaintiff's authority some of them treated the property as if there had been no break in the contract and sublet the premises. Plaintiff warned them that those in occupation had no right to be there and the District Court expressly found that he was not a party to the arrangements under which the premises were occupied. In our opinion the District Court is right and plaintiff's claim is well founded.

Appeal dismissed with costs.