1980 May 16

[HADJIANASTASSIOU, A. LOIZOU AND MALACHTOS, JJ.]

ANDREAS TH. MICHAELIDES,

Appellant,

v.

GEORGHIOS GAVRIELIDES,

Respondent.

(*Civil Appeal No.* 6026).

Landlord and tenant—Statutory tenancy—Business premises—Recovery of possession—Premises reasonably required for the business of the landlord's son—Section 16(1)(*g*) *of the Rent Control law,* 1975 (*Law* 36/75)*—No order for recovery of possession can be made when the business will be carried on by a limited company of which the son and his wife are the two shareholders and of which they have complete control.*

The sole question in this appeal was whether the landlord was entitled to obtain an order of ejectment, under section 16(1)(g)* of the Rent Control Law, 1975 (Law 36/75), on the ground that the premises were required for the carrying on of a business by his son where in fact the business was to be carried on by a limited company of which the son and his wife were the two shareholders and of which they had complete control.

Held, that a company and the individual or individuals forming a company are separate legal entities, however complete the control might be by one or more of those individuals over the

* Section 16(1)(g) reads as follows:

"16(1) No judgment or order for the recovery of possession of any dwelling house or business premises to which this Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:

.....

(g) Where the dwelling house or business premises are reasonably required for occupation by the landlord, his spouse, his son, daughter, son-in-law, daughter-in-law, brother or sister, who are over eighteen years of age and in either case the Court considers it reasonable to give such judgment or make such order:.....".

company; that the meaning of the words in section 16(1)(g) of Law 36/75 is plain and unambiguous and that the law passed purported to protect the class of persons referred to in paragraph (g) and had nothing to do with private companies; and that once the son of the landlord and his company are entirely separate entities, and this is not a matter of form but a matter of substance and reality, the landlord or his son cannot bring themselves within the provisions of section 16(1)(g) by holding the premises through a company which the son and his wife control (principles laid down by Willmer L.J. in *Tuntstall* v. *Steigmann* [1962] 2 All 417 at pp. 421, 422 and 423 and principles formulated in *Gramophone and Typewriter Limited* v. *Stanley* [1908] 2 K.B.D. 89 at p. 98 adopted).

Appeal allowed.

Per curiam: We take the opportunity to state that it is for the House of Representatives to decide whether the time has come to amend the law as to include such private companies, and to consider whether same should be afforded the opportunity of having the protection of the law regarding business holdings.

Cases referred to:

Tunstall v. *Steigmann* [1962] 2 All E.R. 417;

Salomon & Co. v. *Salomon* [1897] A.C. 22;

Duport Steels Ltd. v. *Sirs* [1980] 1 All E.R. 529 at pp. 541, 551, 552;

Beswick v. *Beswick* [1967] 2 All E.R. 1197 at p. 1202;

Gramophone and Typewriter Limited v. *Stanley* [1908] 2 K.B.D. 89 at p. 98.

Appeal.

Appeal by the tenant against the judgment of the District Court of Larnaca (Pikis, P.D.C.) dated the 8th November, 1979, (Rent Appl. No. 14/78) whereby he was ordered to vacate and deliver vacant possession of 3 shops situate at Iphestos Str., Larnaca.

A. Poetis, for the appellant.

G. Nicolaides with *A. Kramvis*, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment of the Court. This appeal which is from the order of the President of

the District Court of Larnaca made on 8th November, 1979, raises a novel point on the construction of section 16(1)(g) of the Rent Control Law 1975 (Law No 36/75). The President of the District Court decided that the landlord was in the circumstances entitled to obtain an order of ejectment. Section 16(1) says that:-

"Οὐδεμία ἀπόφασις καὶ οὐδὲν διάταγμα ἐκδίδεται διὰ τὴν ἀνάκτησιν τῆς κατοχῆς οἱασδήποτε κατοικίας ἢ καταστήματος, διὰ τὸ ὁποῖον ἰσχύει ὁ παρὼν Νόμος, ἢ διὰ τὴν ἐκ τούτου ἔξωσιν ἐνοικιαστοῦ, πλὴν τῶν ἀκολούθων περιπτώσεων:

......"

And (ζ) is in these terms:-

"Εἰς περίπτωσιν καθ' ἣν ἡ κατοικία ἢ τὸ κατάστημα ἀπαιτεῖται λογικῶς πρὸς κατοχὴν ὑπὸ τοῦ ἰδιοκτήτου, τῆς συζύγου του, τοῦ υἱοῦ του, τῆς θυγατρὸς του, τοῦ γαμβροῦ του, τῆς νύμφης του, τοῦ ἀδελφοῦ του ἢ τῆς ἀδελφῆς του, οἵτινες εἶναι ἡλικίας ἄνω τῶν δεκαοκτὼ ἐτῶν καὶ εἰς οἱανδήποτε τῶν περιπτώσεων τούτων τὸ Δικαστήριον θεωρεῖ λογικὴν τὴν ἔκδοσιν τοιαύτης ἀποφάσεως ἢ τοιούτου διατάγματος:

Νοεῖται ὅτι οὐδεμία ἀπόφασις καὶ οὐδὲν διάταγμα θὰ ἐκδίδωνται δυνάμει τῆς παραγράφου αὐτῆς, ἐὰν ὁ ἐνοικιαστὴς πείσῃ τὸ Δικαστήριον ὅτι, λαμβανομένων ὑπ' ὄψιν ὅλων τῶν περιστάσεων τῆς ὑποθέσεως, θὰ ἐπροξενεῖτο μεγαλυτέρα ταλαιπωρία διὰ τῆς ἐκδόσεως τοῦ διατάγματος, ἢ τῆς ἀποφάσεως παρὰ διὰ τῆς ἀρνήσεως ἐκδόσεως τούτου.

Διὰ τους σκοποὺς τῆς παραγράφου αὐτῆς ὁ ὅρος 'περιστάσεις τῆς ὑποθέσεως' περιλαμβάνει τὸ ζήτημα κατὰ πόσον ὑπάρχει διαθέσιμον ἕτερον μέρος στεγάσεως διὰ τὸν ἰδιοκτήτην ἢ τὸν ἐνοικιαστήν, καὶ τὸ ζήτημα κατὰ πόσον ὁ ἰδιοκτήτης ἠγόρασε τὸ ἀκίνητον μετὰ τὴν ἡμερομηνίαν καθ' ἣν ἐτέθη ἐν ἰσχύι ὁ παρὼν Νόμος πρὸς τὸν σκοπὸν ἀποκτήσεως κατοχῆς δυνάμει τῶν διατάξεων τῆς παρούσης παραγράφου."

And in English section 16(1) of the Rent Control Law says that:-

"No judgment or order for the recovery of possession of any dwelling house or business premises to which this

Law applies, or for the ejectment of a tenant therefrom, shall be given or made except in the following cases:

....."

And (g) is in these terms:-

"Where the dwelling house or business premises are reasonably required for occupation by the landlord, his spouse, his son, daughter, son-in-law, daughter-in-law, brother or sister, who are over eighteen years of age, and in either case the Court considers it reasonable to give such judgment or make such order:

Provided that no judgment or order shall be given or made under this paragraph if the tenant satisfies the Court that, having regard to all the circumstances of the case, greater hardship would be caused by granting the order or judgment than by refusing to grant the same.

For the purposes of this paragraph, the expression 'circumstances of the case' shall include the question whether accommodation is available for the landlord or the tenant, and the question whether the landlord purchased the premises after the date of the coming into operation of this Law for the purpose of gaining possession under the provisions of this paragraph;".

The necessary facts can be stated shortly as follows: The application was made by the owner Georghios Gavrielides for an order for the recovery of possession of three adjoining shops, combined into one, by the demolition of the internal walls, retaining three entrance doors and situated at Ifestos street of Larnaca. The shops were occupied by the respondent Andreas Th. Michaelides over a number of years. The tenant is using the shop for the storage and display as well as for the transaction or retail trade of glassware. The owner runs a grocery at a shop adjoining the premises let to the respondent. Part of this shop is used by his son Prokopis for his separate business, viz., the display and sale of hunting equipment, notably cartridges, shot-guns and ancillary equipment.

On 22nd September, 1977, the owner of the said shop sent a notice to the respondent to quit the premises in question, signifying the need of the premises for the use of his son, but the respondent refused to comply.

The respondent opposed the applicant's alleged need of the premises and maintained that the prerequisites for the making of an order were not present. The respondent is also the tenant occupier of a number of shops in the area where the subject shops are situated. He is also the occupant of a fairly large shop at Nicos Rossos Street and another large shop rented from Mr. Theodoulou, as well as a small shop situated nearby, used as a store. In addition, the respondent purchased in 1976 two large shops at an advantageous nearby location.

The applicant and his son made it quite clear that the shop of which they make joint use, is quite unsuitable to accommodate the business of both, as well as unsafe, for it is inadvisable to store inflammable substances like gun-powder with any other articles. It is also true to say that previously the father and his son were jointly in business, but subsequently his son branched off, and as from the year 1978, he formed a family limited company with his wife for the production of cartridges and pellets as well as the import of shot-guns and ancillary articles. Indeed, they set up a factory at Larnaca industrial estate since 1978.

The applicant maintained that the grocery shop was inadequate for both the storage and display of the products of this family company of the son and his wife and the business of the owner. They further alleged that only one third of their trade is conducted from the shop and the remaining two-thirds are being conducted on a wholesale basis by deliveries made at the address of customers. There was a further allegation that the gun-powder factory of Prokopis Gavrielides is an unsuitable place for the transaction of business both on account of its location and the dangerous condition of the premises because of the storage of inflammable substances. In addition, the son took over the business of hunting equipment from his father who has a long association with the area, and the two of them had been carrying on business for some time before they separated.

It has not been challenged that the whole of the shares of the company were held by the son of the landlord and his wife. The learned President, having considered the contentions of both counsel, and particularly the argument of counsel for the respondent that the premises were needed to be occupied by

the company as such and not by the son, and having addressed his mind to the further argument that a private company is a legal entity separate and distinct from that of its shareholders, had this to say:

> "In the present case the reality of the matter is that the family company is the instrument through which the son of the owner transacts his business and can justifiably be described as his agent. Prokopis Gavrielides is the alter ego of the company as the one who pulls the strings for his subservient horse to move. Whereas I agree that the company itself, be it a family one, is not among the beneficiaries listed in section 16(1)(g), Law 36/75, nonetheless, the fact that a person named therein carries on his business through a family company does not mitigate the need of the premises nor does it exclude, as in this case, the son of the owner from the ambit of the provisions of the law. In my judgment the fact that the son of the owner, Mr. Prokopis Gavrielides, does business through a family company does not alter the situation nor does it lessen the need he may have of the premises. Hence I don't regard the existence of this company an insuperable obstacle in the way of the owner recovering possession."

Then, having raised the question whether the premises were reasonably required by the landlord, the learned Judge reached the conclusion that the said premises are reasonably required by the owner in order to offer his son business accommodation, and that the burden is on the landlord to satisfy the Court that the premises are required and the request is reasonable.Finally he made an order of ejectment against the tenant.

The present appeal is from this order and the question which was before the learned President comes now before this Court, and is whether the son of the landlord can be said to intend to occupy the premises for the purposes of carrying on a business in accordance with the terms of sub-section (g), when in fact the business is to be carried on by a limited company of which the son and his wife are the two shareholders and of which they have complete control.

Counsel for the appellant argued (a) that the premises in question would be used by the company which has been formed

and not by the son of the landlord, and that irrespective of whether or not the son would be carrying on the business, in accordance with the authorities and principles pertaining regarding a private company, the learned President was wrong in granting an order for ejectment once the son would not be occupying the premises in question in his personal capacity;

(b) that the learned President was also wrong in law, once he had agreed that the company itself, being a family one, is not among the beneficiaries listed in section 16(1)(g) of Law 36/75, and wrongly made the said order of ejectment; and

(c) that the learned President was wrong in interpreting the law that it does not exclude the son to carry on his business through a family company, and that it does not mitigate the need of the premises nor does it exclude, as in this case, the son of the owner from the ambit of the provisions of the law.

Finally, counsel very ably argued that only persons specifically named in our law can take advantage of the provisions of the Rent Control Acts, and that a family company cannot avail themselves of the provisions of section 16(1)(g) of Law 36/75. Counsel relies mainly on *Tunstall* v. *Steigmann* [1962] 2 All E.R. 417.

On the contrary, counsel for the respondent argued at length that in effect the son of the landlord was carrying on business in his own name also, because he was licensed to sell guns personally; and taking that as a realistic view of the law, in effect the business is carried on by the son of the landlord, notwithstanding that it was being carried on by a limited company, and that paragraph (g) does not exclude the son of the owner from the ambit of the provisions of section 16(1)(g) of the Rent Control Law.

We think that it is necessary to state that since the decision in *Salomon & Co.* v. *Salomon* [1897] A.C. 22, it has been said time and again that a company and the individual or individuals forming a company were separate legal entities, however complete the control might be by one or more of those individuals over the company. That is the whole principle of the formation of a limited liability company, and it would be contrary to the scheme of the Company Acts to depart from that principle.

The learned President, dealing with the corporate veil of a company, referred to a number of cases, indicating readiness on the part of the Court to pierce the corporate veil, if that was deemed necessary in the interests of justice. It is true that in some instances modern company law disregarded the principle that the company is an independent legal entity, and generally speaking the Courts are more inclined, in appropriate circumstances, to lift the veil of the corporateness where question of control is in issue than when a question of ownership arises. The veil of corporateness is lifted in the cases in Palmer's Company Law, Volume 1, 22nd Edition at pp. 160, 162. But with respect to the trial Court's decision, this is one of the cases where the lifting of the veil is not enumerated in cases connected with the Rent Acts.

With this in mind, we think it becomes necessary to consider section 16(1) of the Rent Control Law, 1975. Section 16 says quite clearly that no judgment and no order of ejectment can be granted for the recovery of possession of any house or business premises for which this law applies or for the ejectment of a tenant except in the following circumstances:.....(g) where a house or business premises are reasonably required for occupation by the landlord, his spouse, his son,..... provided that no judgment and no order of ejectment shall be given if the tenant satisfies the Court that having regard to all the circumstances of the case, greater hardship would be caused by granting the order or judgment than by refusing to grant the same.

There is no question, of course, of the premises being required here as a residence for the landlord, and the only question to be considered is whether it was the intention of the son of the landlord to occupy the said holding for the purposes of a business to be carried on by him therein. In the light of the facts of this case, we have formed the view that in all the circumstances before the trial Court, it cannot be said that it is the intention of the son of the landlord to carry on the business, because such business clearly would be carried on by the company formed for that occasion. We think the answer is provided in the case of *Tunstall* v. *Steigmann*, [1962] 2 All E.R. 417. Omerod, L.J., dealing with the question whether a landlord can successfully oppose the tenant's application for a new tenancy on proof that she intends to occupy the holding for the purposes of a business within the meaning of s. 30(1)(g) of the

Landlord and Tenant Act, 1954, to be carried on by a company of which she holds all but two of the shares and over which she exercises complete control, said at pp. 420, 421:-

> "I have formed the view that in these circumstances it cannot be said that it is the intention of the landlord to carry on the business. It was decided in *Salomon* v. *Salomon & Co.*,[1], that a company and the individual or individuals forming a company were separate legal entities, however complete the control might be by one or more of those individuals over the company. That is the whole principle of the formation of limited liability companies and it would be contrary to the scheme of the Companies Act to depart from that principle.
>
> It has been contended in this case that a realistic view should be taken of the circumstances. It is submitted that any person in the street would say that the business was the landlord's business, notwithstanding that it was being carried on by a limited company, and that in those circumstances it should be held that the provisions of para. (g), to which I have referred, should be considered to be satisfied. That, I think, is a dangerous doctrine. It may be that in practice the landlord will continue to carry on the business as it has been carried on in the past when she was undoubtedly the proprietor of it. It may be that she will derive a profit or otherwise from the business as she has done in the past. But the fact remains that she has disposed of her business to a limited company. It is the limited company which will carry on the business in the future, and, if she acts as the manager of the business, it is for and on behalf of the limited company. In my judgment the fact that she holds virtually the whole of the shares in the limited company and has complete control of its affairs makes no difference to this proposition. The object of a limited liability company, as I understand it, is that the shareholders shall have some protection and some limit to the liability which they may incur in the event of the company being unsuccessful. It is to be assumed that the landlord in this case assigned her business to the limited company for some good reason which she considered to

1. [1897] A.C. 22.

be of an advantage to her. She cannot say that in a case of this kind she is entitled to take the benefit of any advantages that the formation of a company gave her, without at the same time accepting the liabilities arising therefrom. She cannot say that she is carrying on the business or intends to carry on the business in the sense intended by para. (g) of the subsection and at the same time say that her liability is limited as provided by the Companies Act.

It has been argued in the course of this case that there have been a number of departures from the principle of *Salomon* v. *Salomon & Co.*[1] in order that the Courts may give effect to what has been described as the reality of the situation, and it is submitted in these circumstances that the Court should look at the realities of the situation and that those realities are that the business will in future be carried on by the landlord as it has been carried on in the past. We were referred to *Re Yenidje Tobacco Co., Ltd.*[2], where Lord Cozens-Hardy, M. R., dealt with a point in his judgment[3], the effect of which was that the Court would look behind the fact of incorporation if the incorporation was in reality the incorporation of a partnership and would treat the matter for the purposes of winding-up as though it were a partnership.....

In addition, it was submitted that, in applying the Rent Restrictions Acts, the Court has always looked to the reality of the transaction and would not allow the purpose of the Acts to be defeated by the use of the Companies Acts. In support of this contention we were referred to *Samrose Properties Ltd.* v. *Gibbard*[4].

Whilst it may be argued that in the above circumstances the Courts have departed from a strict observance of the principle laid down in *Salomon* v. *Salomon & Co.*[5], it is true to say that any departure, if indeed any of the instances given can be treated as a departure, has only been made to deal with special circumstances when a

1. [1897] A.C. 22.
2. [1916–17] All E.R. Rep. 1050; [1916] 2 Ch. 426.
3. [1916–17] All E.R. Rep. at p. 1051; [1916] 2 Ch. at p. 429.
4. [1958] 1 All E.R. 502.
5. [1897] A.C. 22

limited company might well be a facade concealing the real facts. Counsel was unable to point to any special circumstances in this case other than that the landlord has complete control of the company. In my judgment that is not enough. I see no reason to depart from well established principles, and I would allow the appeal."

Willmer, L.J., delivering the second judgment in dismissing also the appeal, said at pp. 421, 422, and 423:-

"The problem which has arisen in this case is one of engaging simplicity, but I do not find it at all easy of solution. The question is whether under s. 30(1)(g) of the Landlord and Tenant Act, 1954, a landlord can successfully oppose the tenant's application for a new tenancy on proof that she intends to occupy the holding for the purposes of a business to be carried on by a company of which she holds all but two of the shares and over which she exercises complete control. Can the landlord in such circumstances show that the business is to be carried on by him (or her) so as to come within the words of the subsection?

The Judge decided that the landlord was entitled to succeed. He took the view that in common sense where an individual is in such complete control of the company it can truthfully be said that the intention is to occupy for the purpose of his or her business, such business being the running of the company. In reaching this conclusion he was clearly influenced by some observations made obiter by members of this Court in *Pegler* v. *Craven*[1]. The actual question at issue in that case was not quite the same as here. The matter arose under the Leasehold Property (Temporary Provisions) Act, 1951, and it was the occupation of the tenant, and not that of the landlord, that was in question. These differences, however, do not affect the question how far, if at all, occupation by a company can be equated with occupation by the individual who controls the company. The significant difference between *Pegler* v. *Craven*[2] and the present case is that in the former case the tenant who was claiming had no

1. [1952] 1 All E.R. 685; [1952] Q.B. 69.
2. [1952] 1 All E.R. 685; [1952] 2 Q.B. 69.

more than a majority shareholding, and had not the same measure of control over the company as the landlord in the present case. This Court held that in the circumstances of that case the occupation by the company could not be said to be occupation by the tenant so as to bring the tenant within the Act. But the members of the Court expressly reserved for future consideration what would be the right of a tenant (and equally, it would seem, of a landlord) who was in fact beneficial owner of all or substantially all the issued shares of such a company. It was suggested by Sir Raymond Evershed, M.R.[1], that there might be some circumstances in which it could be said that the company in occupation would be but the alter ego of the individual concerned. The Judge here has based his decision on the view that the present is just such a case, that the company is but the alter ego of the landlord and that, accordingly, occupation by the company for the purposes of its business would amount to the same as occupation by the landlord for the purposes of her business.

Mr. Bramall, in an attractive and forceful argument, has sought to support the judge's view on a number of grounds. First, he says that, construing the language of the subsection in accordance with the ordinary meaning of the words used, the landlord here did intend to occupy the holding for the purposes of a business to be carried on by her. The business was in substance her business, the company being a mere piece of mechanism to enable the landlord's business to be carried on. This, it is said, was the reality; and we were invited to look at the reality and substance of the proposed occupation rather than at its form. As relevant to this argument I ventured to direct attention to *Lennard's Carrying Co., Ltd.* v. *Asiatic Petroleum Co. Ltd.*[2], and some reliance was placed on what was said by Viscount Haldane, L.C., in that case. He described the managing director of the appellant company as one who was[3]

> '...really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation.'

1. [1952] 1 All E.R. at p. 690; [1952] 2 Q.B. at p. 79.
2. [1914-15] All E.R. Rep. 280; [1915] A.C. 705.
3. [1914-15] All E.R. Rep. at p. 283; [1915] A.C. at p. 713.

In that case the question was whether a casualty which had occurred to a ship was 'without the actual fault or privity' of her owners, who were a limited company; and the answer given was that in such a case the fault or privity must, in the words of Lord Haldane, be that

> '...of somebody who is not merely a servant or agent for whom the company is liable upon the footing respondeat superior, but somebody for whom the company is liable because his action is the very action of the company itself.'

This phrase has been relied on as showing that in the view of Lord Haldane—with whom the other members of the House concurred—there are cases in which an individual may be so identified with the company he controls that he can, for some purposes at any rate, be regarded as the alter ego of the company. It is suggested that this concept should be applied in relation to s. 30(1)(g) of the Landlord and Tenant Act, 1954, at least to any case in which it can truly be said that the landlord is the alter ego of the company.

Next, we were referred to a number of cases in which the Court has thought it proper to look behind the outward form of a transaction or of an organisation in order to ascertain the reality of the matter.....

Similarly in the application of the Rent Acts the Court has always looked to the reality of the matter, and has not allowed a transaction within the Acts to be dressed up in such a way as to evade them: *Samrose Properties, Ltd.* v. *Gibbard*[1] was cited as an illustration of this. The present case, it is said, is eminently one in which regard should be had to the reality rather than the form of the business on which the landlord seeks to rely.

Lastly, we were referred to *Hill (Patents), Ltd.* v. *University College Hospital Board of Governors*[2], where the hospital governors were held entitled to invoke s. 30(1)(g) of the Landlord and Tenant Act, 1954, i.e. to rely on an intention to occupy the holding for the purposes of a

1. [1958] 1 All E.R. 502.
2. [1955] 3 All E.R. 365.

business to be carried by them, notwithstanding that they were under a statutory duty to manage and control the hospital on behalf of the Minister of Health, and notwithstanding that the minister might also be in occupation through them. The facts of the case were very special, and, except in so far as it suggests that in some circumstances occupation may be shared between more than one legal entity, I do not find it very helpful or relevant to the problem of the present case.

I have certainly felt the force of the argument on behalf of the landlord; but in the end I am satisfied that it cannot prevail. There is no escape from the fact that a company is a legal entity entirely separate from its corporators—see *Salomon* v. *Salomon & Co.*[1]. Here the landlord and her company are entirely separate entities. This is no matter of form; it is a matter of substance and reality. Each can sue and be sued in its own right; indeed, there is nothing to prevent the one from suing the other. Even the holder of one hundred per cent of the shares in a company does not by such holding become so identified with the company that he or she can be said to carry on the business of the company. This clearly appears from *Gramophone & Typewriter Ltd.* v. *Stanley*[2], a decision of this Court which seems to me, on due consideration, to be destructive of the argument for the landlord. As was pointed out by Fletcher Moulton, L.J.[3], control of a company by a corporator is wholly different in fact and law from carrying on the business himself: '...the individual corporator does not carry on the business of the corporation'. This being so, I do not see how it is possible for the landlord in the present case to assert that she intends to occupy the holding for the purpose of a business to be carried on by her. Her intention, as has been made plain, is that the company which she controls shall carry on its business on the holding. But that, unfortunately for her, is something for which the Act makes no provision. In this connexion it is not without significance that the Act does make provision (by s. 41) for the case where the landlord's interest is held in trust, in

1. [1897] A.C. 22.
2. [1908] 2 K.B. 89.
3. [1908] 2 K.B. at p. 98.

which case references in s. 30(1)(g) to the landlord are to be construed as including reference to the beneficiaries under the trust; special provision is also made (by s. 42) for the case where the landlord's interest is held by a member of a group of companies, in which case the reference in s. 30(1)(g), to intended occupation is to be construed as including intended occupation by any member of the group. No similar provision has been made to cover the case where an individual landlord intends that the occupation shall be by a company which he controls.

For these reasons I feel driven to the conclusion that the Judge's decision cannot be supported in law. I do not think that the landlord here brings herself within s. 30(1)(g) by proving an intention to occupy through the medium of the company which she controls. She cannot therefore successfully oppose the grant of a new tenancy."

With this principle in mind, and having considered very carefully the force of the argument on behalf of the landlord and tenant in the present case, we think we should confine ourselves in examining whether the meaning of the statutory words of our law is plain and unambiguous.

In the present appeal, there is no escape from the fact that the company is a legal entity entirely separate from its corporation. Here the company and the two individuals, the son and his wife, forming the company, are entirely separate entities, however complete the control might be by the two individuals over the company. Each can sue and be sued in their own right. Even the holder of one hundred per cent of the shares in a company does not by that holding become so identified with the company that he can be said to carry on the business of the company. This being so, we do not see how it is possible for the son of the landlord in the present case to assert that he intends to occupy the holding for the purposes of a business to be carried on by him. His intention, as has been made plain, is that the company which he and his wife control shall carry on its business on the said holding.

It is said time and again regarding statute law that the Judge's duty is to interpret and to apply the law, not to change it to meet the Judge's idea of what justice requires. It is equally

true to say that interpretation does, of course, imply in the interpreter a power of choice when differing constructions are possible, but our law requires the Judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. As we said earlier, the trial Judge in construing the provisions of section 16(1)(g) of our Law 36/75, rightly came to the conclusion that a family company is not among the beneficiaries listed in the aforesaid law. Nevertheless, wrongly in our view, he reached the conclusion that in those circumstances, the son was not excluded from the ambit of the provisions of the law.

In *Duport Steels Ltd.* v. *Sirs*, [1980] 1 All E.R. 529, Lord Diplock, dealing with the construction of legislation which gives effect to policies said at p. 541:-

> "My Lords, at a time when more and more cases involving the application of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy, it cannot be too strongly emphasised that the British Constitution, though largely unwritten, is firmly based on the separation of powers: Parliament makes the laws, the judiciary interpret them. When Parliament legislates to remedy what the majority of its members at the time perceive to be a defect or a lacuna in the existing law (whether it be the written law enacted by existing statutes or the unwritten common law as it has been expounded by the Judges in decided cases), the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous, it is not for the Judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient or even unjust or immoral. In controversial matters such as are involved in industrial relations there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable. Under our Constitution it is Parliament's opinion on these matters that is paramount.

A statute passed to remedy what is perceived by Parlia-

ment to be a defect in the existing law may in actual operation turn out to have injurious consequences that Parliament did not anticipate at the time the statute was passed; if it had, it would have made some provision in the Act in order to prevent them. It is at least possible that Parliament, when the 1974 and 1976 Acts were passed, did not anticipate that so widespread and cripping use as has in fact occurred would be made of sympathetic withdrawals of labour and of secondary blacking and picketing in support of sectional interests able to exercise 'industrial muscle'. But if this be the case it is for Parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts, and if so, what are the precise limits that ought to be imposed on the immunity from liability for torts committed in the course of taking industrial action. These are matters on which there is a wide legislative choice, the exercise of which is likely to be influenced by the political complexion of the government and the state of public opinion at the time amending legislation is under consideration."

Lord Scarman, dealing with the same question, said at pp. 551, 552:-

"In our society the Judges have in some aspects of their work a discretionary power to do justice so wide that they may be regarded as lawmakers. The common law and equity, both of them in essence systems of private law, are fields where, subject to the increasing intrusion of statute law, society has been content to allow the Judges to formulate and develop the law. The Judges, even in this, their very own field of creative endeavour, have accepted, in interests of certainty, the self-denying ordinance of stare decisis, the doctrine of binding precedent; and no doubt this judicially imposed limitation on judicial lawmaking has helped to maintain confidence in the certainty and even-handedness of the law.

But in the field of statute law the Judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes and unmakes the law the Judge's duty is to interpret and to apply the law, not to change it to meet the Judge's idea of what justice requires.

Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the Judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the Judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purposes of the statute may the Judge select the construction which best suits his idea of what justice requires. Further, in our system the stare decisis rule applies as firmly to statute law as it does to the formulation of common law and equitable principles. And the keystone of stare decisis is loyalty throughout the system to the decisions of the Court of Appeal and this House. The Court of Appeal may not overrule a House of Lords decision; and only in the exceptional circumstances set out in the practice statement[1] of 26th July, 1966, will this House refuse to follow its own previous decisions.

Within these limits, which cannot be said in a free society possessing elective legislative institutions to be narrow or constrained, Judges, as the remarkable judicial career of Lord Denning MR himself shows, have a genuine creative role. Great Judges are in their different ways judicial activists. But the Constitution's separation of powers, or more accurately functions, must be observed if judicial independence is not to be put at risk. For, if people and Parliament come to think that the judicial power is to be confined by nothing other than the Judge's sense of what is right (or, as Selden[2] put it, by the length of the Chancellor's foot), confidence in the judicial system will be replaced by fear of it becoming uncertain and arbitrary in its application."

In *Beswick* v. *Beswick* [1967] 2 All E.R. 1197, Lord Reid, dealing also with the question of construction, said at p. 1202:-

"In construing any Act of Parliament, we are seeking the

1. Note [1966] 3 All E.R. 77, [1966] 1 W.L.R. 1234.
2. Table Talk of John Selden (Pollock, ed.) (1927) p. 43.

intention of Parliament, and it is quite true that we must deduce that intention from the words of the Act. If the words of the Act are only capable of one meaning we must give them that meaning no matter how they got there. If, however, they are capable of having more than one meaning we are, in my view, well entitled to see how they got there."

We think with respect that the observations made by Lord Diplock and Lord Scarman are equally applicable in Cyprus with regard to interpretation of the laws, but in this country, because of its written Constitution, the Supreme Court has said time and again that in considering the question of the constitutionality of a statute it has to be guided by certain well-established principles governing the exercise of judicial control of legislative enactments. In doing so we have looked for guidance to cases decided by the Supreme Court of the United States of America and, although not bound by such cases, we have adopted the following principles applicable by American Courts, as we are in agreement with the reasoning behind them:-

(a) A rule of precautionary nature is that no act of legislation will be declared void except in a very clear case, or unless the act is unconstitutional beyond all reasonable doubt. In other words a Law is presumed to be constitutional until proved otherwise "beyond reasonable doubt".

(b) Another maxim of constitutional interpretation is that the Courts are concerned only with the constitutionality of legislation and not with its motives, policy or wisdom, or with its concurrence with natural justice, fundamental principles of government or spirit of the Constitution.

(c) It is a cardinal principle that if at all possible the Courts will construe the statute so as to bring it within the law of the Constitution.

(d) The judicial power does not extend to the determination of abstract questions, viz., the Courts will not decide questions of a constitutional nature unless absolutely necessary to a decision of the case.

(e) In cases involving statutes, portions of which are

valid and other portions invalid, the Courts will separate the valid from the invalid and throw out only the latter unless such portions are inextricably connected.

With respect to the learned President, with this in mind, and applying the test to which we have referred earlier, the meaning of the words in paragraph 2, in our view, is plain and unambiguous and the law passed purported to protect the class of persons referred to specifically in the aforesaid paragraph (g) and had nothing to do with private companies. Once therefore the son of the landlord and his company are entirely separate entities, and this is not a matter of form but a matter of substance and reality, we have decided to adopt and apply the weighty pronouncement of Willmer L.J. based on a similar provision of the law to our section 16(1)(ζ), as well as the principles formulated in *Gramophone and Typewriter, Limited* v. *Stanley* [1908] 2 K.B.D. 89. In his judgment Fletcher Moulton L.J. had this to say at p. 98:-

"This legal proposition that the legal corporator cannot be held to be wholly or partly carrying on the business of the corporation is not weakened by the fact that the extent of his interest in it entitles him to exercise a greater or less amount of control over the manner in which that business is carried on. Such control is inseparable from his position as a corporator and is a wholly different thing both in fact and in law from carrying on the business himself. The directors and employees of the corporation are not his agents, and he has no power of giving directions to them which they must obey. It has been decided by this Court, in the case of *Automatic Self-Cleansing Filter Syndicate Co., Ltd. v. Cunningham*[1], that in an English company, by whose articles of association certain powers are placed in the hands of the directors, shareholders cannot interfere with the exercise of those powers by the directors, even by a majority at a general meeting. Their course is to obtain the requisite majority to remove the directors and put persons in their place who agree to their policy. This shows that the control of individual corpo-

1. [1926] 2 Ch. 34.

rators is something wholly different from the management of the business itself."

For the reasons we have given at length, we are driven to the conclusion that the Judge's decision cannot be supported by the law, as we do not think that the landlord or his son can bring themselves within the provisions of section 16(1)(g) by holding the premises through a company which he and his wife control. We, therefore, allow the appeal, but we take the opportunity to state that it is for the House of Representatives to decide whether the time has come to amend the law as to include such private companies, and to consider whether same should be afforded the opportunity of having the protection of the law regarding business holdings.

Appeal allowed. No order as to costs.

Appeal allowed. No order as to costs.