

Law Reports*

H.M. COURT OF APPEAL

(SIR G. BORG C.J.; GANADO J.; CAMILLERI J.)

E. Camilleri vs. G. Vincenti.

Judgment delivered on 9. 6. 47.

Plaintiff rented flat No. 16, Vincenti Buildings, 15, Strait Street, Valletta, at £54 per annum. On the 23rd February, 1944, the landlord, by means of a judicial letter gave notice to the tenant that he intended to increase the rent of the flat. In September 1946, the tenant applied to the Rent Regulation Board rejecting such an increase.

Held that plaintiff had the right to demand the rejection of the increase in rent.

The Court remarked that Section 15 (2) of the Reletting of Urban Property Ordinance (Chap. 109), did not fix any period of time within which the tenant had to file an application contesting the increase in rent. The law was silent on this point and such a period of time could not be desumed from conjectures or from arguments. The abovementioned Section of law laid down that where the rent exceeded £40 per annum the lessor who decided to increase the rent or to impose new conditions must, within the period of one calendar month before the expiration of the lease, give notice to the tenant of his such intention by means of a judicial letter. If the tenant wished to contest **such increase or the imposition** of such new conditions, he must apply to the Board for the rejection of such increase or new conditions; in default of such application the proposed increase or new conditions shall be deemed to have been accepted by the tenant.

Furthermore the Court pointed out that all the periods of time which referred to forfeiture of rights must be clearly laid down by an express provision of the law.

Such a rule was applied in other judgements given by His Majesty's Court of Appeal in re "Mizzi vs. Salomone", August 2, 1924, and in re "Degiorgio vs. Mizzi", June 30, 1939, and by the Rent Regulation Board in re "Caldwell vs. Attard Mon-

* Reported by J. A. Micallef, LL.D.

tulto", March 8, 1933. In the said judgements the Court held that once the period of time within which the tenant could contest the landlord's claim had not been fixed by the legislature it could not hence be established by mere conjecture. It could be pleaded that as the position stood, the tenant could easily evade the law and the owner's rights by simply remaining passive. There was however a remedy to such a state of affairs as the landlord could summon the tenant before the competent Court and ask that a period of time be fixed in which the tenant was to apply for the rejection of the increase in rents.

H.M. COURT OF APPEAL

(SIR G. BORG C.J.; GANADO J.; CAMILLERI J.)

Nicola Spiteri vs. Joseph Gasan.

Decree delivered on 10. 3. 48.

Defendant, by means of a note filed during the sitting, asked the Court to revoke "contrario imperio" a decree ordering the marshall to produce a witness, Antonio Grech by name, and to prevent him from communicating with any other person on the ground that his evidence had not been asked for by any of the parties in the suit.

Held that the Court was authorised by law to issue such an order.

The Court pointed out that it was the constant practice of the tribunal to order the production of a witness whenever his evidence was considered essential. In such cases it was usual for the Court to order plaintiff or defendant to summon such witness but nothing in the law prevented the Court to summon the witnesses "ex officio". The law, in fact, empowered the Court to call any of the parties to the suit to give evidence (v. art. 564 of the Code of Civil Procedure). Besides the laws of Civil Procedure also provided that any person who was present in the Court might be called upon forthwith to give evidence.

Nothing in law prevented the Court from summoning at once a witness by means of a subpoena.

Such an order did not amount to an arrest but was intended only to compel the witness to appear immediately in Court. And once the order is issued it is also lawful for the Court of its own motion to prevent the witness from holding any communication whatever with any other witness.