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INSTITUTE OF ADVANCED
LEGAL STUDIES

In the Privy Council.

No. 87 of 1946.

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ON APPEAL FROM THE SUPREME COURT
OF GIBRALTAR.

(SITTING AS A COURT OF FIRST INSTANCE,
CHANCERY JURISDICTION).

IN THE MATTER of the Estate of ANGEL COSTA (*deceased*)

BETWEEN

PETER COSQUIERI (*Defendant*) *Appellant*

AND

MAGDALENA FORMENTO (*Spinster*), MAGDALENA
SCULLARD (*Married Woman*), ANGEL FORMENTO,
VICTORIA FORMENTO (*Spinster*), VIRGINIA LATIN
(*Spinster*), EDUARDO LABRADOR, JUAN DANINO,
LOURDES RUIZ (*Married Woman*) and JOSEPH
FERNANDEZ (*Defendants*) *Respondents*

CASE FOR THE RESPONDENT,
JOSEPH FERNANDEZ.

1. This is an appeal from a Judgment, Order and Declaration dated the 1st August, 1946, entered by the Supreme Court of Gibraltar sitting as a Court of First Instance in its Chancery Jurisdiction on an Originating Summons taken out by two of the Executors and Trustees of the Will of Angel Costa deceased (hereinafter called "the testator") to have determined the true meaning and effect of the said Will in relation to certain premises in Gibraltar owned by the testator.

Record.
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CASE FOR THE RESPONDENT
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p. 5, l. 4.
p. 12, l. 7.
p. 3, l. 12.
pp. 10-12.

2. The premises in question were known as 127, Main Street, Gibraltar (identified in the General Plan of the Garrison of Gibraltar as R. No. 574) and consisted of a shop on the ground floor and living accommodation above. By a Lease dated the 18th June, 1927, these premises were leased by the testator to a firm named Cosquieri & Co. for a term of 14 years from the 18th June, 1927, at a rent of £30 per month, the lessees to pay in addition all Sanitary Purposes Rates and Water Rates which during the term might be assessed, charged or imposed upon the premises. The said firm continued in occupation of the said premises paying the said rent (subject to a war-time deduction pursuant to Ordinance No. 20 of 1941) right up to the death 10 of the testator. The firm comprised two partners, namely Peter Cosquieri, the Appellant, and Joseph Fernandez, the last-named Respondent, and had been created just before the date of the lease by Indenture dated the 11th June, 1927. The firm carried on its business of ironmongers and general merchants in the shop part of the premises, the living accommodation being sublet by the firm at some date which does not appear to Peter Cosquieri, the Appellant, personally. His sub-tenancy still existed at the date of the testator's death. The receipts for rent given by the testator were all, when signed by him personally, in favour of the firm, though two signed by an agent on his behalf in 1941, referred only to Mr. Cosquieri.

p. 5, l. 4.

p. 4, ll.
33-7.

pp. 6-8.
p. 4, l. 38.
p. 3, l. 12.
p. 3, l. 13.
p. 5, l. 20.
pp. 13-19.

p. 2, l. 36.
p. 2, l. 22.
pp. 20-23.

3. The testator died at Gibraltar on the 29th August, 1945. His last 20 Will was dated the 21st August, 1944, and named as Executors his late wife's nephew, George Gonzalez, and his friends, Ernest J. Guetta and Peter Cosquieri, the Appellant. It was a home-made will and provided in the material clause as follows:—

p. 20, ll.
39-46.

“I direct that the rent of the house which Mr. Peter Cosquieri occupies be not increased nor his rent be increased in any manner nor notice to quit be given to him so long as he shall pay punctually the rents stipulated in the contract. When rents revert to normal this will be as stipulated £30 per month and payment by him of the Rates and Water according to the Contract, with option to its renewal if he 30 so desires on equal circumstances. The house shall not be ceded to anyone and let he and his sons have the right to occupy the house and shop.”

p. 1.

4. On the 18th July, 1946, an Originating Summons taken out by the first two executors named in the Will in the Supreme Court of Gibraltar was re-issued as amended, asking for the determination of the following questions in relation to the above clause of the said Will:—

. 1, l. 37,
. 2, l. 6.

1. Whether according to the true construction of the said Will the Plaintiffs (the said two executors) have power and ought to grant a lease to the Defendant, Peter Cosquieri, and his sons of the house 40 occupied by him mentioned in the said Will.

2. If the Court shall be of opinion that the Plaintiffs have such power, what are the conditions under which such Lease should be granted and for what term.

3. That the costs of this application may be provided for.

4. That such order or direction may be made as the circumstances of the case may require.

5. At the hearing of this summons the contention on behalf of Peter Cosquiere, the Appellant, was that the clause conferred an option for a lease of the whole of the premises upon himself personally for life, followed by an option for a life term in favour of his two sons jointly if both survived him, or, if only one son survived him, in favour of that son. The Chief Justice of Gibraltar rejected this interpretation and it is submitted rightly. It does
10 considerable violence to the clause as a whole, making quite meaningless the references to "the" Contract which provided for payment of £30 per month rent and the Rates and Water (sc. rate), and leaving the stipulation as to "equal circumstances" more or less in the air.

p. 29, 11.15-
22.

6. A modified form of the above contention was put forward by the Plaintiff Executors. They repudiated the claim to a double option for two life tenancies, but suggested that the intention was to provide a new 14-year term in favour of Peter Cosquiere, the Appellant, and his sons. This suggestion, however, still failed to meet the major objections to any idea of a renewal in favour of Peter Cosquiere personally of an existing contract held
20 by the firm P. Cosquiere & Co., and was accordingly rejected by the Chief Justice of Gibraltar.

p. 29, 11. 8-
14.

7. The contention on behalf of this Respondent, which the Chief Justice of Gibraltar upheld, was that the idea uppermost in the testator's mind was the continuation of the status quo. No doubt he intended to benefit his friend Peter Cosquiere, but he aimed to secure this via his firm. The place of business of the firm was to be secured by a renewal of the contract they already held for a new term of 14 years, and this would enable the firm to maintain the existing arrangements by which the living accommodation was sub-let to Peter Cosquiere and his family. The reference to "the house
30 which Mr. Peter Cosquiere occupies" was explained as an identification of the property to which the testator was referring, and the subsequent references to "he" and "his" in the singular followed easily, if loosely, the first reference to him or alternatively were intended to signify him on behalf of his firm. In this way the clause as a whole was given a rational meaning, although the closing words would fall to be regarded as an expression of a pious hope.

p. 29, 11.
27-32.

8. The persons entitled to the residue of the estate (as to which the testator died intestate) are indicated above as Respondents to this Appeal. Their contention, very naturally, was that the clause was extremely vague,
40 if not unintelligible, and therefore was void for uncertainty, with the result that the premises in question lapsed into residue. The Chief Justice of Gibraltar rejected this contention on the ground that an intention to confer a conditional gift was sufficiently clear and it was his duty to seek to fulfil it.

p. 29, 11.
23-26.

9. In accordance with his views, as above indicated, the Chief Justice answered the question in the originating summons (see para. 4 above) as follows :—

p. 27, 11.
30-39.

1. No.
2. Question does not arise.
3. Costs of all parties as between Solicitor and Client to be taxed failing agreement and to be paid out of the estate.
4. The Plaintiffs and the Defendant Cosquiere have power and ought to grant to Cosquiere & Co., a firm, a lease of the premises in question for 14 years, commencing from the 1st October, 1945 (that being the date on which the emergency legislation as to rents in Gibraltar came to an end), on the same terms and conditions as the lease dated the 18th June, 1927, if within one month from to-day the said firm exercises its option for such a lease.

pp. 29-32.
p. 28.

10. In accordance with the said answers by the Chief Justice of Gibraltar, and the reasons for the same contained in the Judgment delivered by him on the 1st August, 1946, an Order and Declaration of the same date was duly entered in the Supreme Court of Gibraltar. This is set out in full in the record.

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11. From this Judgment, Order and Declaration dated the 1st August, 1946, the appellant, on the 26th August, 1946, obtained from the Supreme Court of Gibraltar conditional leave to appeal to His Majesty in Council, the leave being made final on the 18th September, 1946.

12. This Respondent submits that this appeal ought to be dismissed and the Judgment and Order of the Supreme Court of Gibraltar affirmed for the following amongst other

REASONS.

1. BECAUSE on the true construction of the Will of the testator there appeared an intention to grant as a conditional gift an option for the renewal for a period of 14 years of the contract under which the premises in question then stood demised.
2. BECAUSE the only person who could be intended as the recipient of a conditional gift so expressed was the person holding the existing demise, that is to say, the firm Cosquiere & Co.

3. BECAUSE this intention was expressed with sufficient certainty and clarity to be upheld in law and in equity.
4. BECAUSE the decision of the Supreme Court of Gibraltar was right.

STEPHEN CHAPMAN.

In the Privy Council.

No. 87 of 1946.

ON APPEAL FROM THE SUPREME
COURT OF GIBRALTAR.

IN THE MATTER of the Estate of
ANGEL COSTA (*deceased*)

COSQUIERI

v.

FERNANDEZ AND OTHERS.

CASE FOR THE RESPONDENT,
JOSEPH FERNANDEZ.

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Solicitors for the Respondent,
Joseph Fernandez.