

Peter Cosquieri - - - - - *Appellant*

v.

Magdalena Formento and others - - - - - *Respondents*

FROM

THE SUPREME COURT OF GIBRALTAR

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 1ST MARCH, 1948.

Present at the Hearing :

LORD SIMONDS
LORD MORTON OF HENRYTON
SIR MADHAVAN NAIR

[*Delivered by* LORD SIMONDS]

This appeal, which is brought from a judgment of the Supreme Court of Gibraltar, raises a short question of construction arising upon an obscure passage of the will of Angel Costa, a native of Gibraltar and British subject, who will be referred to as "the testator".

The testator, who died on the 29th August, 1945, was at his death possessed of certain premises known as 127, Main Street, Gibraltar, which consisted of a shop on the ground floor with living accommodation above. By a lease dated the 18th June, 1927, these premises had been leased to a firm named Cosquieri and Co., for a term of 14 years from the 18th June, 1927, at a rent of £30 per month, the lessees paying in addition all Sanitary Purposes Rates and Water Rates which might during the term be assessed, charged or imposed upon the premises. After the term had expired the firm remained in occupation of the premises paying the said rent (subject to a wartime deduction pursuant to Ordinance No. 20 of 1941) up to the death of the testator. The firm of Cosquieri and Co. consisted of two partners, the appellant, Peter Cosquieri, and the respondent, Joseph Fernandez, and had been established just before the date of the lease by a partnership deed of 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 sub-let at some date which does not appear to the appellant personally. His sub-tenancy was still in existence at the testator's death. The receipts for the rent of the premises when given by the testator personally were in favour of the firm.

The testator made his last will on the 21st August, 1944, one year before his death. By it he appointed as his executors George Gonzalez, his friend Ernest J. Guetta and the appellant, whom he described as "likewise my friend," and after various bequests and directions gave the direction which has given rise to the present dispute in the following terms:—

"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 so desires on equal circumstances and the house shall not be ceded to anyone and let he and his sons have the right to occupy the house and shop."

The original will was in Spanish and it is common ground that in the translation, which appears upon the record of proceedings and has been cited above, the word "and" after the word "circumstances" has been incorrectly inserted and that the following word "the" should begin with a capital letter. It is unnecessary to refer to any other part of the will except to say that in other proceedings it has been held that the testator was intestate as to his residuary estate and that the respondents other than Fernandez are his next of kin.

It is not surprising that a dispute should have arisen as to the meaning of the cited passage in the will or that the executors should have thought it necessary to have recourse to the Supreme Court of Gibraltar to obtain a judicial interpretation of it. This step was taken by the independent executors, Gonzalez and Guetta, who in the first place cited as defendants only the appellant and certain of the next of kin and by their summons asked whether according to the true construction of the will they had power and ought to grant a lease to the appellant and his sons of the premises in question. This question clearly did not exhaust the possibilities and at a later stage not only the rest of the kin but also the respondent Fernandez were properly added as parties in order that the last named respondent might argue in favour of the contention then and since maintained by him that the will operated to give to the firm of Cosquieri and Co. an option to ask for a renewal of the lease for a period of 14 years in its favour.

On the 1st August, 1946, the learned Chief Justice made an order declaring that according to the true construction of the will the testator meant and intended to bequeath to the firm of Cosquieri and Co. as constituted at the time of his death a conditional gift, namely an option for a lease of the premises in question for the term of 14 years computed from the 1st of October, 1945 (being the date at which under the ordinance normal rents were restored), subject to the payment of rent as reserved by the lease of the 18th June, 1927, and subject to and with the benefit of such lessees' and lessor's covenants, provisos and conditions in all respects as were contained in the lease, and it was thereby further ordered that the time within which the said option was to be exercised should be one month from the date thereof. By a subsequent Order of the Court made on the 26th August, 1946, it was ordered that pending the hearing of the appeal to His Majesty in Council time should not run for exercising the said option and that the executors of the testator's will were not to give notice to quit or grant a lease of the premises in question.

From the judgment of the learned Chief Justice the appellant Cosquieri alone has appealed, the respondents being the next of kin of the testator and Fernandez. No appeal has been brought by the next of kin, whose interest it has throughout been to contend that the relevant direction is void for uncertainty. Their Lordships thought it right in the circumstances to allow counsel for the next of kin to argue in favour of this contention since they had been made respondents and had at least the right to appear.

Their Lordships are of opinion that the learned Chief Justice formed a correct opinion upon this difficult and obscure passage in the testator's will. It would appear to be a home-made document couched in the language of a layman and they agree that all proper efforts should be made to give to it an effective and consistent meaning. In accord with the Chief Justice they find it possible to do so and must therefore reject the contention put forward on behalf of the next-of-kin that the direction is void for uncertainty.

It appears to their Lordships that it must be assumed that the testator was aware of the fact existing at the date of his will and of his death, that it was the firm that was in occupation of the premises, not the appellant alone. It would therefore follow that, when he directed that the rent of the house which the appellant occupied should not be increased nor his rent be increased in any manner nor notice to quit be given to him and so on, he must have known that his direction could have no meaning or effect unless he intended to refer to the existing tenancy which was held not by the appellant but by the firm and further intended to refer to the appellant not merely in his personal capacity but in his representative capacity as a member of the firm. The testator referred to the premises as the house which the appellant occupied, when in fact it was occupied by the firm. So, when he in effect gives directions that the appellant is not to be disturbed in his occupation and tenancy, he must be interpreted as meaning that the firm is not to be disturbed. And so when he adds the words "with option to its renewal if he so desires on equal circumstances" it can only be the firm, which is in occupation and is not to be disturbed in its occupation, that is to have the benefit of the option. It was urged on behalf of the appellant that the testator intended to benefit only his friend the appellant. This may well be so. But that is consistent with the view that he intended to benefit him by giving to the firm, in which he was a partner, the opportunity of remaining in occupation of its premises on favourable terms. Finally, much stress was laid on the last sentence in the clause beginning with the words "The house shall not be ceded to any one" and introducing the appellant's sons upon the scene for the first time. Their Lordships share the opinion of the Chief Justice that to these words, which in his view can only be treated as a final flourish, no meaning can be given which has any application to the existing facts or to the preceding directions and they do not think that such words should be allowed to detract from the force and effect which they find in the earlier part of the clause.

For these reasons, which are substantially those given by the learned Chief Justice, their Lordships are of opinion that his order was correct and should be affirmed. In accordance with the Order of the Supreme Court of the 26th August, 1946, the time for exercising the option has not run during the pendency of this appeal and their Lordships leave it to the parties to apply to that Court in regard to any question that may now arise as to its exercise.

The appellant must pay the costs of the respondent Fernandez of this appeal. The respondent next-of-kin must bear their own costs.

In the circumstances their Lordships are of opinion that this appeal should be dismissed and they will humbly advise His Majesty accordingly.

In the Privy Council

PETER COSQUIERI

2.

MAGDALENA FORMENTO
AND OTHERS

DELIVERED BY LORD SIMONDS

Printed by His Majesty's Stationery Office Press,
Drury Lane, W.C.2.

1948