

1969  
May 13

[VASSILIADES P. JOSEPHIDES, & STAVRINIDES, JJ.]

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MICHAEL  
CONSTANTINOU  
v.  
LOIZOS MICHAEL

MICHAEL CONSTANTINOU,

*Appellant-Plaintiff,*

v.

LOIZOS MICHAEL,

*Respondent-Defendant.*

(Civil Appeal No. 4737).

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*Spring—Well—Appellant's spring water "likely to be substantially diminished" through pumping of water from well sunk by respondent within a distance of 600 feet of appellant's said spring—Matter within the ambit of section 7 of the Wells Law, Cap 351—Compensation as a practical remedy—Order made under section 25(3) of the Courts of Justice Law, 1960 (Law No. 14 of 1960), remitting case to trial Court for assessment of compensation payable under section 8(1)(a) of the Wells Law, Cap. 351—See also herebelow.*

*Wells Law, Cap. 351 sections 7 and 8(1)(a)—Construction of the words "likely to be substantially diminished" in section 7.*

*Statutes—Construction—"Substantially diminished"—Section 7 of the Wells Law, Cap. 351.*

*Wells—Sinking well—No well shall be sunk within a distance of 600 feet of any spring if, by the sinking of such well, the amount of water in any such spring "is or is likely to be substantially diminished"—Section 7 of the Wells Law, Cap. 351—Construction.*

*Words and Phrases—"Is or is likely to be substantially diminished" in section 7 of the Wells Law, Cap. 351.*

The facts sufficiently appear in the judgment of the Court.

### **Appeal.**

Appeal by plaintiff against the judgment of the District Court of Nicosia (Demetriades D.J.) dated the 31st May, 1968 (Action No. 1769/61) dismissing his claim for an order of the Court, *inter alia*, directing the defendant to cease trespassing with certain water rights of plaintiff.

*L. Clerides*, for the appellant.

*Ch. Loizou*, for the respondent.

The following judgments were delivered by:

VASSILIADES, P.: I do not propose going into unnecessary detail for the purposes of the judgment. The only question for decision at this stage, is whether the diminution of the water of the springs in which the appellant is “beneficially interested” — as established by the evidence — is such a ‘substantial diminution’ as to bring the case within the provisions of section 7 of the Wells Law, Cap. 351. The trial Judge took the view that it is not. I am afraid, I cannot agree. I appreciate that the words used by the legislator must be given their natural meaning; and ‘substantial diminution’ must be sufficiently ‘substantial’ as to bring the cases within the provisions of section 7, the object of which is, apparently, to protect water-rights. Rights to a small as well as to a big quantity of water.

I take the view that in the circumstances of this case, and the facts described in the judgment of the trial Court (into which I say again, I find it unnecessary to enter in detail) there is an interference which entitles the plaintiff to a remedy. Mr. Clerides on behalf of the appellant, quite rightly in my opinion, has conceded that the only practical remedy in this case is compensation. This simplifies the case considerably. Both sides agree that no evidence was led before the trial Court upon which the Court could assess such compensation. The evidence adduced was for loss or damage to certain trees or other plantations; but, surely, that does not represent the loss which the appellant suffers by the substantial diminution of his water. Supposing for instance that at the time of the interference which caused the diminution of the water, the plaintiff had no crop and he would not be making any use of the water at that time, or season, or day, that does not mean that he has not established a sufficient cause for which to be entitled to the remedies provided for him in section 8.

I am, therefore, inclined to think that the best way of dealing with the matter, is to make use of the powers with which this Court is provided by section 25(3) of the Courts of Justice Law, (No. 14 of 1960) and refer the case back to the District Court to hear evidence from both sides on the question of the compensation to which the plaintiff is entitled under section

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8(1)(a) for his loss on account of the diminution of the water in question, as established by the evidence already adduced; that is to say the evidence of the water expert, as it appears on record.

I do not think that the plaintiff should be entitled now to adduce any fresh evidence as to the extent of the diminution of the water and the damage to existing plants at the time; but the loss by reason of the diminution of the water which, in the circumstances of this case is sufficiently 'substantial' to entitle the plaintiff to compensation, has to be found on the evidence which both sides may now adduce on that issue. Evidence as to the difference in the value of this water before and after the diminution, as such diminution is shown by the evidence of the water expert who carried out the test; evidence upon which the trial Court will be able to assess the compensation, small or big, to which the plaintiff may be entitled under section 8(1)(a).

JOSEPHIDES, J.: I concur. I must confess that at one stage I had some reservation with regard to the construction proposed to be placed on section 7 of the Wells Law, Cap. 351; but having given the matter some further consideration I am not now prepared to dissent from the conclusion reached by the other members of this Court.

In the present case the amount of the appellant's water, as proved by a test carried out by an expert, was at the beginning of the test 94 imperial gallons per hour; at 350 minutes it dropped to 84 gallons, and at 460 minutes it dropped to 80 gallons per hour, whilst the output of the respondent's well remained steady at 3,000 gallons per hour. The test was then stopped. This means that at the end of 7 hours and 40 minutes the appellant's water had diminished by about 15 per cent.

We do not know whether, had the test not been stopped at that point of time, the appellant's volume of water would not have diminished more. But considering that section 7 of the Wells Law provides that no well shall be sunk within a distance of 600 feet of any spring if, by the sinking of such well, the amount of water in any such spring "is or is likely to be substantially diminished", I think that on the facts of this case it can be reasonably concluded that the pumping of the water from the well sunk by the respondent the amount of the water in the appellant's spring was at least "likely to be substantially

diminished”, within the ambit of section 7. I would, therefore, agree to the order proposed to be made in this appeal.

STAVRINIDES, J.: I agree with the judgment of the learned President of this Court and have nothing to add.

VASSILIADES, P.: In the result the appeal is allowed and the judgment is set aside, including the order for costs. The case is referred back to the District Court under section 25(3) of the Courts of Justice Law, for retrial of the issue of the compensation payable to the plaintiff under section 8(1)(a) of the Wells Law, Cap. 351, for the diminution of the water in question as established by the evidence, already on the record. With costs for the appellant in the appeal on the scale applicable to claims not exceeding £500. The costs in the trial Court to be costs in cause, in the discretion of the District Court.

*Appeal allowed. Judgment  
and orders in terms.*

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