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ELECTRICITY  
AUTHORITY  
OF CYPRUS

v.

ANDREAS  
THEORI  
KALLI  
AND OTHERS

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

THE ELECTRICITY AUTHORITY OF CYPRUS,

*Appellants-Plaintiffs,*

v.

ANDREAS THEORI KALLI AND OTHERS,

*Respondents-Defendants.*

*(Civil Appeal No. 5275).*

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*Negligence—Damage to electric wires through fall of pine tree whilst it was being cut—Standard of proof—Plaintiffs not bound to prove negligence with the same degree as the one required in a criminal case—Admission by defendant 2 that he instructed defendant 3 to cut the tree—Defendant 3 seen in the area—Trial judge could find on the preponderance of evidence that plaintiffs had proved a claim of negligence against both the said defendants—Against defendant 2 for negligently selecting defendant 3, an incompetent contractor—And against defendant 3 because of the negligent way he carried out the instructions of defendant 2 in cutting the pine tree in question.*

*Agency—Father acting as agent of the son—No evidence establishing that he was so acting or that he was an agent of the status who would prima facie be entitled to make statements and admissions on behalf of his son.*

The appellants (plaintiffs) brought an action against the respondents (defendants) claiming the amounts of £380.195 mils damages on the ground of negligence by the latter in cutting down a pine tree.

The appellants alleged that respondent 1 (defendant 1) was the owner of the land where the pine tree in question was standing; that respondent 2 (defendant 2) was acting as the agent of his son (defendant 1) regarding the said piece of land; and that respondent 3 (defendant 3), acting on the instructions of respondent 2, cut in the presence of the latter the pine tree situated in respondent's 1 land in such a negligent manner so that it fell on the electric wires of the plaintiffs and caused the damage claimed.

5 There was evidence before the trial Court by a Police Constable who said that when he asked respondent 2 who was the person who cut the pine tree in question the latter admitted that he had instructed respondent 3 to cut it. There was also evidence by another Police Constable to the effect that respondent 3 was seen in the area of the field in question on the date when the damage occurred accompanied by the son-in-law of respondent 2 and another person.

10 Respondents contended that they had nothing to do with the cutting of the pine tree and respondent 1 denied that he had instructed anyone to cut the said pine tree on his account; he further denied that his father (respondent 2) had authority to act on his behalf for the land in question. His father (respondent 2) denied that his son instructed him to cut the pine tree or that he had been appointed as an agent; or that he instructed respondent 3 to cut the tree: Respondent 3 denied that he had anything to do with cutting of the tree and that his presence in the area was connected with the cutting of a burned "Kouzala".

25 The trial judge found that the damage to the plaintiffs was the result of the negligence of the person or persons who cut down the tree. With regard to the question whether respondent 1 was vicariously liable with the actual wrongdoer the trial judge came to the conclusion that there was no evidence tending to show that this respondent appointed his father in any way. The trial judge further held that the said admission of respondent 30 to the Police Constable could not be considered as admissible evidence against respondent 3; and after stating that he was reluctant to act on the evidence adduced by the appellant authority went on to dismiss the action.

35 The issues for consideration in the appeal were the following :

40 (A) *Whether respondent 2 was the agent of respondent 1 and if so whether he was an agent of the status who prima facie would be entitled to make statements and admissions on behalf of his son, respondent 1.*

(B) *Whether the statement or admission of respondent*

2 to the Police Constable to the effect that he instructed respondent 3 to cut down the tree is evidence to show that he sought to procure work to be done for him by an independent contractor.

*Held, (I) on issue (A):*

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1. Irrespective of the relationship between father and son the said admission of respondent 2 does not constitute evidence that he was acting as an agent of his son, and we would affirm the decision of the trial judge on this issue.

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2. But even if there was some evidence the plaintiffs have failed to establish that respondent 2 was an agent of the status who *prima facie* would be entitled to make statements and admissions on behalf of respondent 1. (*Edwards v. Brookes (Milk) Ltd.* [1963] 1 W.L.R. 795 distinguished).

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*Held, (II) on issue (B):*

1. From the said statement of respondent 2 to the Police Constable it was open to the trial judge to draw the inference that this respondent acted as the owner of the property and that he had instructed respondent 3 to cut the pine tree in question for his own use. In our view, this statement is evidence by itself of the truth of the matter.

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2. There was evidence in our judgment, on which the trial judge could infer, that those three persons, including respondent 3, did not go there to cut a mere "Kouzala", as they have alleged, but the pine tree in question following the instructions of respondent 2.

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3. Had the trial judge looked into the whole evidence and had he not approached the case with the belief that the appellants (plaintiffs) were bound in effect to prove negligence with the same degree required in a criminal case then the judge could find on the preponderance of that evidence, that the plaintiffs had proved a claim of negligence against both respondents 2 and 3; against respondent 2, because he had negligently selected respondent 3, an incompetent contractor, and against respondent 3, because of the negligent way he carried

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out the instructions of respondent 2 in cutting the pine tree.

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*Appeal partly allowed.*

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Cases referred to :

5 *Edwards v. Brookes (Milk) Ltd.* [1963] 1 W.L.R. 795.

**Appeal.**

v.

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10 Appeal by plaintiffs against the judgment of the District Court of Larnaca (Orphanides, S.D.J.) dated the 13th December, 1973 (Action No. 30/72) dismissing their action for £380.195 mils damages due to the negligence of the defendants in cutting down a pine tree and causing damage to the electric wires of the plaintiffs.

*G. Cacoyiannis*, for the appellants.

*C. Varda (Mrs.)*, for the respondent.

15 *Cur. adv. vult.*

The judgment of the Court was delivered by :

20 HADJIANASTASSIOU, J. : This is an appeal against the judgment of a judge of the District Court of Larnaca dated December 13, 1973, dismissing the action No. 30/72 of the plaintiffs, the Electricity Authority, claiming the amount of £380.195 mils damages against the defendants on the ground of negligence by the latter in cutting down a pine tree.

25 The plaintiffs, on January 15, 1972, brought an action claiming damages against three defendants alleging (a) that defendant 1, Andreas Kalli was the owner of a piece of land situated at Skarinou village in which there were carob trees and one pine tree; (b) that defendant 2, Theoris Kalli, (father of Andreas Kalli) was acting as  
30 the agent of his son (defendant 1) regarding the said field; and (c) that defendant 3, Nicos Stafylaris, acting on instructions of defendant 2, cut in the presence of the latter, the pine tree situated in defendant's 1 land, in such a negligent manner so that it fell on the electric  
35 wires of the plaintiffs and caused the damage claimed.

On February 14, 1972, the defendants denied having caused the damage claimed because of the cutting of the pine tree. They denied that defendant 2 acted as

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the agent of defendant 1 with regard to the land of his son, and/or that he instructed defendant 3 who cut the said pine.

The plaintiffs in support of their claim that the defendants, because of their negligence, have caused the damage complained of, called P.C. Demetrakis David who said that on January 12, 1971, at midday whilst he was in the yard of the police station of Skarinou, he heard a very loud noise and immediately he noticed that the cable wires of the Electricity Authority had been cut and had fallen to the ground. He informed Sgt. Loizos Papachristoforou, the person in charge, who having visited the scene, observed that a pine tree which was freshly cut by a wood cutting machine had fallen on the wires and as a result it caused the damage complained of by the plaintiffs. Having carried out a further inquiry, and because he was informed that the land in which the pine tree was found belonged to Theoris Kalli (defendant 2), he visited him, and when he asked him who was the person who cut the pine tree on his land, the latter replied that he had instructed Nicos Stafylaris to cut it. In cross-examination, it was put to him :

“(Q) I put it to you that you have neither seen nor questioned Theoris.

(A) No, I saw him and when I asked him he told me that he cut the pine; that Stafylaris cut it for him and I do not say so because I have learned that the land belongs to him.”

There was further evidence as to the identification of the persons who allegedly cut the pine tree, and according to P.C. Michalakis Konnaris, when he left the station of the same date, riding his motor cycle at 11 p.m. on his way to the village of Skarinou, he noticed a stationary tractor at the edge of the right hand side of the main road leading to Limassol. He also saw three persons whom he identified from a distance of 50 meters from him. Those persons were proceeding in a nearby field where there was a pine tree as well as the poles on which the electric wires were fixed; and one of them was carrying a wood cutting machine. In cross-examination he said that at first those three persons had their backs turned to him, but when they heard the

noise of his motor cycle they turned and he recognized them from that distance. He further explained that he had known them for some time and that they were his friends. He was sure that their names were Nicos Stafylaris, a merchant whose business was selling coal, and who also owned a wood cutting machine; A. Papalazaros (son-in-law of defendant 2) and Mimis Theodorou. Questioned by Court he said that when he saw those three persons proceeding in that field, the pine had not yet been cut and was still standing.

According to Kypros Charalambides, the Assistant Engineer of the Electricity Authority of Larnaca, when the lights went off in Larnaca, he received a message from the police and visited the scene in Skarinou. He noticed that the top of the pine tree was burned because it had fallen on the electric wires. He explained that the cause of the damage was the cutting of the said pine and that it cost the Electricity Authority, in order to repair the said damage, the amount of £380.195 mils, a sum which the trial judge accepted as being the correct figure of the loss caused to the Electricity Authority, by the persons who negligently carried out the cutting of the pine tree.

In support of their defence, the defendants alleged that they had nothing to do with the cutting of the pine tree, and Andreas Theori Kalli (defendant 1) said that he was the owner of the field in question since 1964, but he denied that he had instructed anyone to cut the said pine tree on his account. In cross-examination, counsel on behalf of the Authority suggested to this witness that from his acts he held out that his father, defendant 2, had authority to act on his behalf for the land in question, but this witness denied it, and his answers are these :-

“The pine was in the middle of the two poles. In my field there are more than 60 carob trees. I do not allow my father to collect the carobs because of the carob trees. It is not true that I left my father in charge (of that property). Until I received a letter from the Electricity Authority on December 2, 1971 with regard to this case, I was not informed that the pine tree had been cut. I do not agree

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that my father was acting as my agent during the relevant period.”

There was further supporting evidence on the issue of agency and Theoris Kalli (defendant 2) denied that his son instructed him to cut the pine tree or that he had been appointed as an agent. He further said that he did not instruct Nicos Stafylaris (defendant 3) to cut the pine, and added :-

“It is not true that Sgt. Loizos called and asked me anything about the pine. It is not true that I told him that I had cut the pine and that I instructed Stafylaris who cut it for me.”

According to Nicos Stafylaris, defendant 3, having denied that he had anything to do with the cutting of the said pine tree, tried to minimize the effect of the evidence of P.C. Konnaris and continued :-

“I saw the policeman Michael Konnaris at the time he was riding his motor cycle and was passing from there. At that time I was unloading the wood cutting machine from the rear of my motor car. I was holding it under my arm. We did not go towards the field of Theoris, defendant 2. We stopped at a point near a half burned ‘kouzala’, which was on the berm of the road.”

In cross-examination he said that that “kouzala” was in the field of defendant 2, but he did not remember whether there was also a pine tree. There was further supporting evidence by Papalazaris Spyrou to the effect that they cut the “kouzala” and they took it away. In cross-examination he said that he had been cultivating the field in question since 1958 and he got instructions from Andreas Theodorou, (defendant 1), and not from his father-in-law (defendant 2). Questioned further he said that defendant 1 does not go to the field when he cultivates it; he looks after it, because defendant 1 does not leave his job to go there. The Court heard more witnesses, but we do not think that the case can be carried any further by referring to their evidence.

The trial judge, having dealt with the evidence of the various witnesses, and having evaluated the facts before him, was satisfied that the damage to the plain-

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5 tiffs was the result of the negligent way the person or persons who cut down the tree. Then, having dealt with the question as to whether defendant 1 was vicariously liable with the actual wrongdoer, the judge came to the conclusion that because he had found "no shred of evidence tending to show that this defendant appointed his father as his agent in any way" that the action of the plaintiffs against defendant 1 should be dismissed.

10 Dealing with the case of defendants 2 & 3, the judge, having referred to the statement made by defendant 2 to P.S. Papachristoforou, and having observed that it was the duty of the latter to approach and interrogate the said defendant and perhaps to obtain a statement from him to pin him down to a definite story so that there would be before the Court sufficient material and more substantial evidence for consideration, he concluded as follows :-

20 "In my view, this is a very serious omission which has deprived the Court of the help necessary in order to arrive at safe conclusions. It seems that the plaintiff authority relied to a great extent on the alleged statement which as I have stated above could not be considered as admissible evidence against defendant 3."

25 Then the learned trial judge, having also dealt with the case of defendant 3, made his conclusions in these terms :-

30 "It seems to me that the mere presence of defendant No. 3 in the area in company with others, raises a suspicion that he may be implicated in the cutting of the tree, but in my view this suspicion is not sufficient under the circumstances to justify the Court to find in favour of the plaintiffs. The story and explanation of the defendant as to his presence at the scene appear to be true and it cannot be rejected. However, I do not close my eyes that I am not dealing with a criminal case where a wrongful act must be proved to the satisfaction of the Court beyond doubt. This is a civil dispute and the Court may decide the case on the preponderance of evidence and the balance of probabilities. I must admit that I have found myself very reluctant to act on

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the evidence adduced by the plaintiff authority. Balancing the probabilities for and against the plaintiffs' claim I am of the view that the plaintiff authority have failed to prove their claim against the defendants and their claim is, therefore, dismissed with costs against the plaintiff authority and in favour of the defendants on the scale applicable to claims between £200 and £500." 5

The first question in this appeal is whether (a) there was evidence that defendant 2 was the agent of defendant 1; and (b) if so, was there evidence that he was an agent of the status who, *prima facie*, would be entitled to make statements and admissions on behalf of his son, defendant 1. 10

We have gone carefully into the evidence adduced on behalf of the plaintiffs and of the defendants in order to see whether, as a question of fact, a representation was made by defendant 1 either expressly or impliedly that he had held out or that he had permitted his father to manage his fields or indeed to act in some way, that is, by cultivating or collecting the carobs for his account, but from the surrounding circumstances of this case, we are satisfied that the plaintiffs have failed to adduce satisfactory evidence in support of their allegation that the father, defendant 2, was the agent of his son. Indeed, they have tried to raise the question of agency only on cross-examination of the witnesses, and no other evidence was heard to that effect. 15 20 25

On the contrary, even from the evidence of Sgt. Papa-christoforou, who was the main witness for the plaintiffs, it was made clear by him that when he visited defendant 2, he had interviewed him not as the agent of his son, but as the owner of the fields in question. We are, therefore, of the view that irrespective of the relationship between father and son, the admission of defendant 2, does not constitute evidence that he was acting as an agent of his son, and we would, in these circumstances, affirm the decision of the judge on this issue, once the plaintiffs, we repeat, have failed to adduce evidence in support of their claim. But even if there was some evidence, again we would have been prepared to say in the circumstances of this case, that again the plaintiffs have failed 30 35 40

on the authority of *Edwards v. Brookes (Milk) Ltd.* [1963] 1 Weekly Law Reports 795, which is distinguishable from the facts of this case, to establish that defendant 2 was an agent of the status, who *prima facie* would be entitled to make statements and admissions on behalf of defendant 1, that is, that he instructed defendant 3 to cut the pine tree in question. We would, therefore, dismiss this contention of counsel on this issue, because, as we said earlier, from the surrounding circumstances, the plaintiffs have failed to establish their claim that defendant 2 was the agent of his son, (defendant 1).

The second question is whether the statement or admission of defendant 2 is evidence to show that he sought to procure work to be done for him by an independent contractor. We think that we would reiterate that defendant 2 never said to the Sergeant Papachristoforou that he was employed by defendant 1 and/or that he was the agent of his son managing his property, and from his statement, therefore, it was open to the trial judge to draw the inference that he acted as the owner of the property and that he had instructed Stafylaris to cut the pine tree in question for his own use. In our view, it is evidence by itself of the truth of that matter, but when one gets, as in this case, the full circumstances of Stafylaris going to the land in question accompanied by the son-in-law of defendant 2 and another, it was evidence in our judgment, on which the judge if he so wished infer, that those three persons did not go there to cut a mere "kouzala" as they have alleged in their evidence, but the pine tree in question following the instructions of defendant 2. Had the trial judge looked into the whole evidence and had he not approached the case with the belief that the plaintiffs were bound in effect to prove negligence with the same degree required in a criminal case, then we think that the judge could find on the preponderance of that evidence, that the plaintiffs had proved a claim of negligence against both defendants 2 & 3. Against defendant 2 because he has negligently selected Stafylaris, an incompetent contractor, and against defendant 3, because of the negligent way he carried out the instructions of defendant 2 in cutting the pine tree in question.

For the reasons we have endeavoured to explain, we

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would reverse the judgment of the trial judge with regard to defendants 2 & 3, and allow the appeal. We would, therefore, enter judgment in favour of the appellants for the sum of £380.195 mils against defendants 2 & 3 with half the costs on a scale between £200 and £500 in the Court below and on appeal. The appeal, therefore, against defendant 1 fails and is dismissed with one-third of the costs against the appellants both in the Court below and here. 5

*Appeal partly allowed* 10  
*Order for costs as above*