

1981 October 14

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

CHRISTOFIS CHRISTODOULOU
AND ANOTHER,

Appellants-Plaintiffs,

v.

CHRISTODOULOS PAPHITIS,

Respondent-Defendant.

(Civil Appeal No. 5986).

Findings of fact—Credibility of witnesses—Evaluation—Appeal turning thereon—Approach of Court of Appeal—Section 25 of the Courts of Justice Law, 1960 (Law 14/1960).

5 This appeal was solely argued on the ground that the findings of the trial Judge based on his evaluation of the credibility of the witnesses, were wrong inasmuch as he had omitted to evaluate the evidence as a whole.

10 The claim of the appellants-plaintiffs was for damages alleged to have been caused to their vineyard by the flock of the respondent which was claimed to have trespassed thereon. In his judgment dismissing the claim the trial Court summed up the testimony of every material witness, proceeded to evaluate it and gave his reasons for such evaluation.

15 *Held*, (1) that the burden is on the appellant to show sufficient reasons for interfering and which this Court will do if it is persuaded that the reasoning behind the trial Judge's findings is wrong; that wide as they are the powers given to this Court by section 25 of the Courts of Justice Law, yet as it has been repeatedly stated, it will do so very reluctantly and in cases
20 where it is only a matter of justice and judicial obligation so to do (see *Steamship Hontestroom (Owners) v. Steamship Sagarack (Owners)* [1927] A.C. 37 at p. 47 and *Charalambous v. Pilakouris* (1976) 1 C.L.R., 198, at at p. 217).

(2) That the discrepancies and differences that existed in the

evidence of the various witnesses and upon which counsel relied in his effort to persuade this Court to interfere with the findings of fact and the conclusions drawn thereon by the trial Judge, were not such as to justify such interference and enable this Court to exercise the powers given to it by section 25 of the Courts of Justice Law, 1960 and reverse the findings of fact based on the credibility of witnesses; that the contention of counsel for the appellant that the learned trial Judge failed to weigh the evidence as a whole cannot be accepted inasmuch as he dealt with the testimony of all material witnesses called before him; accordingly the appeal must fail.

Held, further, that the evaluation of the credibility of witnesses as such is in itself a difficult and onerous task cast upon trial Judges eased only by the advantage they have of observing the demeanour of witnesses and their conduct as a whole when giving their testimony and that this task, however, becomes much more difficult when it comes to an Appeal Court, to decide upon the correctness of such evaluation judging only on the transcribed record devoid of the atmosphere of the trial.

Appeal dismissed.

Cases referred to:

Steamship Hontestroom (Owners) v. Steamship Sagaporack (Owners) [1927] A.C. 37 at p. 47;

Charalambous v. Pilakouris (1976) 1 C.L.R. 198 at p. 217.

Appeal.

Appeal by plaintiffs against the judgment of the District Court of Paphos (Kronides, DJ.) dated the 30th June, 1979, (Action No. 718/77) whereby their action for C£175.- for damages alleged to have been caused to their vineyard by the flock of the defendant was dismissed

E. Korakides, for the appellants.

G. Constantinides with *Chr. Demetriou*, for the respondent.

A. LOIZOU J. gave the following judgment of the Court. This is an appeal from the judgment of a District Judge of the District Court of Paphos, whereby the claim of the appellants for C£175.- being the damage alleged to have been caused to their vineyard at Marona village by the flock of the respondent

which is claimed to have trespassed thereon, was dismissed with costs.

5 It was the case for the appellants that in March 1977 the respondent unlawfully permitted his flock and/or that same escaped his control and entered into the aforesaid vineyard of the appellants and caused the said damage. The respondent denied that his flock ever trespassed on to the said vineyard and the whole issue turned on whether the undisputed damage suffered to the vineyard of the appellants was caused by the
10 flock of the respondent or not.

In support of the claim, appellant 1 gave evidence himself and called three witnesses and the respondent called one witness in addition to himself giving evidence.

15 The appeal before us has been argued on the ground that the findings of the trial Judge based on its evaluation of the credibility of the witnesses was wrong inasmuch as he had omitted to examine and evaluate the evidence as a whole.

20 In his judgment the learned trial Judge summed up the testimony of every material witness and then proceeded to conclude in support of his findings that it was obvious that the case of the appellants with regard to the liability was based solely on the testimony of P.W.1, Andreas Polonos, a shepherd himself who was grazing his flock in that vicinity and who claimed to have been an eye-witness of the incident at which the flock
25 of the respondent trespassed and caused the damage to the vineyard of the appellants. The learned trial Judge pointed out that at the hearing of the case the conduct of this witness was such that it did not inspire confidence as to his credibility; it was obvious he said that his effort was to make himself
30 believed and throw the blame on the respondent with whom his relations were hostile to such an extent that they were neither on speaking nor on greeting terms and that his whole demeanour gave the Judge the impression that he did not tell the truth, and that he invoked repeatedly, as a witness that would bear
35 him out, Kyriacos Demetriou (D.W.1) who was present also at the material time with him at that locality, yet the latter in giving evidence contradicted him on all material points that might implicate the respondent in this case.

On the other hand the learned trial Judge found that the witnesses of the respondent were clear and sincere, especially the aforementioned Kyriacos Demetriou, whom he found as telling the truth without attempting to conceal anything and whose conduct inspired confidence.

5

These were the material witnesses whose testimony was evaluated by the learned trial Judge and for which evaluation he gave his reasons. The rest of the evidence consisted of that relating to the assessment of the damage caused to the vineyard, a fact which was not in dispute by anyone. We cannot, therefore, accept the contention of the counsel for the appellant that the learned trial Judge failed to weigh the evidence as a whole, inasmuch as he dealt with the testimony of all material witnesses called before him.

10

The discrepancies and differences that existed in the evidence of the various witnesses and upon which counsel relied in his effort to persuade us to interfere with the findings of fact and the conclusions drawn thereon by the trial Judge, were not, in our view, such as to justify such interference and enable us to exercise the powers given to this Court by section 25 of the Courts of Justice Law, 1960 (Law Number 14 of 1960) and reverse the findings of fact based on the credibility of witnesses.

15

20

No doubt as pointed out in a number of cases, the burden is on the appellant to show sufficient reasons for interfering and which this Court will do if it is persuaded that the reasoning behind the trial Judge's findings is wrong. Wide as they are the powers given to this Court by section 25 of the Law, yet as it has been repeatedly stated, it will do so very reluctantly and in cases where it is only a matter of justice and judicial obligation so to do, as stated in the *Steamship Hontestroom (Owners) v. Steamship Sagaporack (Owners)* [1927] A.C. 37 at p. 47. (See also *Charalambous v. Pilakouris* (1976) 1 C.L.R., 198, at p. 217).

25

30

We have always felt that the evaluation of the credibility of witnesses as such is in itself a difficult and onerous task cast upon trial Judges, eased only by the advantage they have of observing the demeanour of witnesses and their conduct as a whole when giving their testimony. This task, however,

35

becomes much more difficult when it comes to an Appeal Court to decide upon the correctness of such evaluation judging only on the transcribed record devoid of the atmosphere of the trial.

5 In spite of the great efforts of learned counsel for the appellants we have not been persuaded that this is a proper case for us to interfere with the judgment of the trial Judge and we dismiss the appeal with costs.

Appeal dismissed with costs.