

FISHER,
C.J.
&
GRIM-
SHAW,
P.J.
1924

June 23

[FISHER, C.J. AND GRIMSHAW, P.J.]

THE KING'S ADVOCATE

v.

YANNI CONSTANTI AND OTHERS.

CIVIL PROCEDURE—JUDGMENT BY DISTRICT COURT DISMISSING ACTION—SUBSEQUENT INTERIM ORDER BY SINGLE JUDGE—C.C.J.O., 1882, CLAUSE 35 (a), 42—CIVIL PROCEDURE LAW 1885, SEC. 4 (1).

An action was brought for an injunction to restrain interference with land. The District Court dismissed the action without costs. The Plaintiff subsequently obtained an interim order from a single Judge of the Court restraining the Defendants from interfering with the property, the subject matter of the action, until hearing of an appeal by the Plaintiff against the judgment, unless the Defendants should show cause on a day named in the order. Another Judge confirmed the order and continued the injunction until the hearing of the appeal.

HELD: *That the orders were made without jurisdiction.*

S. Pavlides for Appellants.

The King's Advocates for the Respondent.

Judgment : In this case the plaintiff sued the defendants for trespass, and judgment was given for the defendants dismissing the action without costs.

A few days after judgment a single Judge of the District Court ordered that, notwithstanding the non-success of the plaintiff and the final judgment of the Court, that he had no right to interfere with the defendants, the judgment of the full Court should be so far mitigated that he should temporarily be put in the position of a successful litigant, and another Judge made this order operative until the hearing and disposal of any appeal the plaintiff might bring. The learned Judge justified his order on clause 35 (a) of the C.C.J.O., 1882, but he apparently overlooked the last words of that provision which run: "every such order shall be dealt with in the action as the Court thinks just." The action so far as the District Court was done with, having been finally dealt with by the full Court on the merits. He further cites clause 42, but that applies to a stay of execution, and there could be no execution in this case, and moreover the jurisdiction under that clause is vested in the Court by which judgment is given, or the Supreme Court, and I can find no interpretation enactment which gives this power to a single Judge. Finally the learned Judge relies on section 4 (1) of the Civil Procedure Law, 1885. But that power is only exercisable pending a final judgment or pending execution. Final judgment had been given and no execution was pending in the District Court. There was no foundation for the jurisdiction purported to be exercised, and the appeal must be allowed, but, in view of the settlement of the matters in dispute between the parties, without costs.