



SUPPLEMENT No. 4
TO
THE CYPRUS GAZETTE No. 2821 OF 21ST MARCH, 1940.
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1939
May 10.
THEMISTOCLES VASSILIOU
v.
CHRISTOS VASSILIOU.

[CREAN, C.J., AND GRIFFITH WILLIAMS, J.]

THEMISTOCLES VASSILIOU, OF KAKOPETRIA, *Plaintiff-Respondent*,
v.
CHRISTOS VASSILIOU, OF KAKOPETRIA, *Defendant-Appellant*.
(*Civil Appeal No. 3621*).

CIVIL ACTION CLAIMING DAMAGES FOR ASSAULT—APPLICATION OF THE ENGLISH COMMON LAW AND THE RULES OF EQUITY IN THE COURTS OF THE COLONY—SECTION 49 (c) OF THE COURTS OF JUSTICE LAW, 1935, AND ITS BEARING ON THE CIVIL WRONGS LAW, 1932.—SECTION 58(3) OF THE CIVIL WRONGS LAW.

The appellant assaulted the respondent and broke his (respondent's) arm. For this he was charged by the police; and a few days before the date fixed for the hearing of the case, he appeared before the District Court of Nicosia, in the absence of the respondent, and pleaded guilty to the charge. He was sentenced to pay £1 1s. fine, but no compensation to the respondent was awarded. The respondent later instituted a civil action claiming damages for assault. The District Court awarded compensation for loss of time and medical expenses, but expressed doubt as to whether he was entitled to claim general damages. From this judgment the appellant appealed to the Supreme Court.

HELD: (1) *By section 49(c) of the Courts of Justice Law, 1935, power was given to the Courts of the Colony to apply the English Common Law and the Rules of Equity as in force in England on the 14th November, 1914, in the absence of any provision in the existing laws of the Colony.*

(2) *Because an action lay for damages for assault under the English Common Law and because there is no provision for it in the Civil Wrongs Law, actions for damages for assault can therefore be brought by virtue of section 49(c) of the Courts of Justice Law, 1935.*

(3) *Section 58(3) of the Civil Wrongs Law is only applicable to civil wrongs enumerated in this law and does not affect the right to bring an action for damages for assault under the English Common Law.*

Zannettides for appellant:

The respondent should have applied for compensation under section 32 of the Cyprus Criminal Code as amended by Law 9 of 1931. Anything outside the four corners of the Civil Wrongs Law, 1932, is not a

civil wrong and so no action lies on foot of it. Assault is not a tort within the Civil Wrongs Law.

Paschalis, Jr., for respondent.:

Clause 27 of the Cyprus Criminal Code provides that compensation is a penalty; therefore if the complainant made an application after fine imposed for offence the granting of compensation would be an additional punishment. The case was finished once the accused was sentenced. *Ubi jus ibi remedium*—where there is a right there is a remedy. *George Chakalli v. Paulo Ioannou Kallourena* (Cyprus Law Reports, Vol. III, p. 246). The English Common Law provides a remedy for every civil wrong. Section 49 (c) of the Courts of Justice Law, 1935, introduced the English Common Law into the Colony in the absence of any provision in the existing laws.

Judgment of the Court was delivered by the Chief Justice.

CREAN, C.J.: This is an appeal from a judgment of the District Court of Nicosia dated 11th January, 1938, awarding damages to the respondent for an assault committed on him by the appellant for which the appellant had already been tried and punished by a Criminal Court under the Cyprus Criminal Code, section 233.

The facts of the case are:—

On or about the 22nd August, 1936, the appellant assaulted and beat the respondent with a thick piece of wood and broke his arm. For this the appellant was charged by the Police under section 233 of the Cyprus Criminal Code with assault causing actual bodily injury to the respondent. The case was fixed for hearing on the 7th September, 1936, at Evrykhou, but before that date, namely, on 4th September, 1936, the appellant, in the absence of the respondent appeared before the Court in Nicosia and pleaded guilty to the charge. He was sentenced to pay a fine of £1 1s., but no compensation for injury to the respondent seems to have been asked for, or awarded.

In August, 1937, the respondent instituted a Civil Action against appellant claiming damages for the assault, and on 23rd August, 1937, filed his statement of claim. The defence took preliminary objection to the action on the ground that no right of action existed for the alleged assault by any law in force in the Colony. When the action came on for trial before Raif, D.J., the appellant admitted the assault; the damage suffered was agreed between the parties at £10, but the question of whether or not under the law a civil action for assault lay was argued before the Court. The Court, on the 6th April, 1938, gave judgment in favour of the respondent, holding that the respondent was entitled to claim compensation for loss of time and medical expenses, but expressing doubt as to whether he was entitled to claim general damages. From this judgment the appellant has appealed to this Court.

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It was argued before us by counsel for the appellant that the Civil Wrongs Law, 1932, was an attempt to introduce in a codified form so much of the Law of England relating to Torts, as was considered would be advantageous to the Colony. He submitted that the Civil Wrongs Law was exhaustive and that only such civil wrongs as were defined and enumerated in it could be sued on in the Civil Jurisdiction of the Court, and that deliberately such torts as slander, seduction and assault had been omitted from it. The civil remedy for assault, he said, had already been provided for by giving the Criminal Courts, under section 32 of the Cyprus Criminal Code as amended by Law 9 of 1931, power to award compensation to the party injured; and that the respondent might have, within a reasonable time after conviction, applied to the Court which convicted the appellant to award him compensation. He maintained that it was on account of the existence of this remedy that assault was not included in the civil wrongs set out in the Civil Wrongs Law, 1932. In support of this, in the Court below, he referred to the Injuries to the Persons Act, 1861, 24 & 25 Vict. c. 100 by which it was enacted that in cases of assault where either compensation was awarded or refused and a certificate issued, no action thereafter for damages by the person injured could be maintained in a Civil Court. Counsel for the appellant considered that the existence in England of this provision supported his proposition that, where a remedy already existed in the Criminal Courts at the time of conviction, it must be considered to have been intentionally omitted from the Civil Wrongs Law. Further he argued that since compensation for assault could be given by the Criminal Court convicting, section 49 (c) of the Courts of Justice Law, 1935, which introduced English Common Law when no other provision has been made by any law of the Colony, could not apply to introduce a civil remedy. He also argued that as there was a codified Civil Wrongs Law the English Law of Torts could not apply; torts generally being provided for by the Civil Wrongs Law.

This case raises a matter of great importance to the administration of justice in the Colony, since it seems to be the first time that section 49 (c) of the Courts of Justice Law, 1935, and its bearing on the existing Law of Civil Wrongs has come before the Court for consideration.

Whatever civil wrongs were recognized by Ottoman Law, and defined in the Mejjellé, prior to 1932, the Civil Wrongs Law of that year repealed, and enacted that certain acts or omissions set out therein were to be civil wrongs for which action could be brought. After the passing of this law the only part of the Mejjellé dealing with civil wrongs that had not been totally repealed was the first, namely: Articles 1 to 100 containing legal maxims. These, however, were only operative in so far as they did not conflict with the Civil Wrongs Law, 1932. So it

can be stated that the only tortious acts for which actions could be brought after the 1932 Law were those civil wrongs included in the Civil Wrongs Law. At the time it was passed, that act was exhaustive.

No specific provision was made in the Civil Wrongs Law for injuries to the person; and this was perhaps on account of the fact that by section 2 of Law 9 of 1931, which amended the Cyprus Criminal Code, section 32, it was made possible for anyone assaulted to obtain compensation for injury, up to a specified amount, in a Criminal Court. Prior to this amendment compensation could only be awarded by a Criminal Court in cases where a civil action also lay; and at that time there was no remedy for common assault under the Civil Law.

For many years the Government has been gradually replacing the old indefinite system of Ottoman Law by the more scientific and workable English Law; but naturally the change over has had to be gradual, to avoid possible interference with existing rights, or confusion, or difficulty in the administration of justice. By the Courts of Justice Law, 1935, the Legislature, which must be credited with knowing the effect of its own act, introduced into the Colony by section 49 (c) the Common Law and Rules of Equity in force in England as on the 5th November, 1914, save in so far as provision had been or should be made by any Law of the Colony.

It is a well-known principle of interpretation that where there is a new law making a provision inconsistent with a provision in an earlier law, it is the provision contained in the later law that must prevail, unless expressly excluded by that law. Now the section already set out states definitely that the English Common Law and Rules of Equity are only to apply in the absence of any provision in the existing law. It does not exclude expressly or impliedly the whole existing law relating to tortious acts, and so following the above principle can only be held to exclude such tortious acts as are already provided for by the Civil Wrongs Law, 1932. That law nowhere states expressly that it is exhaustive of the civil wrongs in the Colony, as supplying remedies for all injuries caused by tortious acts; it merely codifies the civil wrongs for which action could, under that law, be brought.

In the case of *Chakalli v. Kallourena* (1895) Cyprus Law Reports, Vol. III, p. 246, the Court of Appeal held that the old maxim of Equity *ubi jus ibi remedium* applied in Cyprus. Whether or not they were justified in coming to that conclusion so long ago is now of no importance, since the Courts of Justice Law, 1935, must be held to introduce this as well as other fundamental maxims into the body of Cyprus Law. And this maxim must be followed by the Court in considering the meaning to be attached to the saving clause at the end of section 49 (c).

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It is, we think, the duty of the Court to interpret that clause, so as to introduce the English Law of Tort where no specific provision is made for any tort known to English Law.

The effect then of introducing the English Common Law and Rules of Equity into the Colony is that civil actions since 1935 can be brought for any torts known to English Law on 5th November, 1914, though not included in the Civil Wrongs Law, 1932, provided no other provision is made in respect of it.

Under the English Law of Torts an action lay for damages for assault, but no provision for assault is made in the Civil Wrongs Law (unless it can be brought within the very loose definition of negligence contained in that law). It is therefore a new cause of action introduced by section 49 (c) of the Courts of Justice Law, 1935.

Section 58 (3) of the Civil Wrongs Law is as follows:—

“ 3. No person shall recover any compensation in respect of any
 “ civil wrong if such civil wrong also constitutes a crime or a
 “ breach of any obligation imposed by any enactment and com-
 “ pensation in respect thereof has been awarded in accordance
 “ with the provisions of any enactment to such person or to any
 “ person through whom such person claims.”

This section provides that where compensation is awarded in respect of any civil wrong, which is also a crime, no action thereafter shall lie for damages. But as has already been pointed out the Civil Wrongs Law is exhaustive of the civil wrongs known to Cyprus before 1935, hence this section is only applicable to such civil wrongs as that Law enumerates. This provision, therefore, does not affect the right to bring an action for damages under the English Common Law whether compensation has been awarded or not. But even if the section were held to be of general application it would not affect the case we have to decide, since it is limited to barring actions where compensation has already been awarded to the party injured.

In the case before us the respondent was in the circumstances without a remedy under the provision of any law in force in the Colony prior to the introduction of the English Common Law by the Courts of Justice Law, 1935. Though there was a criminal prosecution in respect of the assault in which prosecution he was complainant, no compensation was awarded to him; and indeed the case was disposed of in such an irregular fashion that he had no opportunity even of making an application for compensation. It cannot be held, therefore, that section 58 (3) of the Civil Wrongs Law prevents him from pursuing his rights by civil action.

For these reasons the appeal must be dismissed with costs.

Appeal dismissed with costs.