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

(April 15, 1953)

PAVLOS G. CHILIDES OF LARNACA,

Appellant,

v.

NINOS BERAUT OF LARNACA,

Respondent.

(*Civil Appeal No.* 3964.)

Action for inducing breach of contract—Damages already recovered for breach of contract—Civil Wrongs Law s. 59 (2) *not applicable—Full satisfaction not obtained in first action— Remoteness of damage.*

Mrs. S contracted to let premises to C the plaintiff. H, the defendant, induced Mrs. S to break this contract. C sued Mrs. S for the breach and recovered £59 damages. C then sued H in tort for causing Mrs. S to break her contarct. C had lost a valuable agency because of H's tort.

The trial Court dismissed the claim against H because of the provisions of sec. 59 (2) of the Civil Wrongs Law (Cap. 9) which provides :

" No person shall recover any compensation or other relief in respect of any civil wrong, if such civil wrong also constituted a breach of contract, ... and compensation for such breach of contract or obligation has been awarded by any Court .... "

C appealed.

Held : (1) Sec. 59 (2) only applies where the party who has committed a breach of a contractual obligation also at the same time has committed a tort. H in committing a tort had not himself committed a breach of contract.

(2) Had C obtained full satisfaction for his injury against Mrs S he could not recover anything more from H. However, the damages recovered from Mrs. S did not include damages for loss of the agency.

(3) The damages claimed for the loss of the agency were not too remote.

(4) The appeal failed because C had not proved " pecuniary damage " as required under the Civil Wrongs Law.

Note : Under the Civil Wrongs (Amendment) Law, 1953, (No. 38/53) sections 2 and 3, the expression " special damage " has been substituted for " pecuniary damage " in the Civil Wrongs Law, and the definition of " pecuniary damage " has been deleted.

Appeal dismissed.

Appeal by plaintiff from the judgment of the District Court of Larnaca (Action No. 517/49).

Ph. Kalodikis for the appellant.

G. Achilles for the respondent.

The judgment of the Court was delivered by :

HALLINAN, C.J. : The appellant in this case made an agreement in 1946 with a certain Mrs. Josephine Sassin to rent certain premises of hers in Larnaca, the term to commence after the premises had been vacated by Government. In making this contract of lease the appellant had in mind premises which would be suitable for carrying on an agency for the firm of Ouzounian, Soultanian & Co. of Nicosia for the sale of Morris cars and other commodities.

On the 26th August, 1947, the respondent wrote a letter to Mrs. Sassin and thereby induced her to break her contract with the appellant. On the hearing of this appeal it was argued for the respondent that the facts juct stated are not supported by the evidence but, in our opinion, there is ample evidence to justify these findings.

The appellant sued Mrs. Sassin for breach of contract and was awarded £59 which, apparently, was the difference between the rent appellant was to pay to Mrs. Sassin and the rent which he would have to pay for another shop for about a period of a year. The appellant then brought the present action against the respondent claiming damages for the tort causing Mrs. Sassin to break the contract. In paragraph 6 of the statement of claim the appellant stated :

> " Owing to the said unlawful act by the defendant the plaintiff had no longer suitable shops to represent the said cars at Larnaca, and the agency of the said firm and cars was given to another person and the plaintiff suffered damages and loss of business exceeding £300."

The trial Court dismissed the claim because of the provision in section 59 (2) of the Civil Wrongs Law (Cap. 9) :

> " No person shall recover any compensation or other relief in respect of any civil wrong, if such civil wrong also constituted a breach of contract,. . . . . and compensation for such breach of contract or obligation has been awarded by any Court, ... ".

In our opinion the provisions of section 59 (2) only apply where the party who has committed a breach of a contractual obligation also at the same time has committed a tort. For example, bailees, inn-keepers and professional men may have contractual obligations and in committing a breach of these obligations they may be also liable in tort for negligence. But in the present case the respondent who clearly committed the tort of wrongfully inducing a breach of contract had not also thereby committed a breach of contract himself.

Notwithstanding the provisions of section 59 (2) the appellant would not be entitled to succeed if in this action against Mrs. Sassin he had obtained full satisfaction for his

injury. The matter is stated in *Clerk and Lindsell on Tort*, 10th Edition at page 242 :

> " There are cases in which a plaintiff is debarred from bringing an action by reason of his success in a previous proceeding for a different cause, but in such cases he must not only have obtained a judgment, but under that judgment must have obtained full satisfaction for his injury . . . . . ".

Clearly the respondent has committed a tort and, furthermore, the appellant in receiving £59 under the judgment against Mrs. Sassin has not been compensated for the injury he suffered through the loss of the agency. If the damage resulting from the loss of that agency is the kind of damage for which the Court can award compensation then the appellant is entitled to judgment.

The question of when damages are too remote to be the subject of compensation has been the subject of much legal discussion and " it is not easy to state any logical principle by which a test of remoteness of damage is to be ascertained ". A passage from the judgment of Blackburn J. in *Hobbs* v. *London and S.W. Railway*, L.R. 10 Q.B. at p. 121 is cited by Clerk and Lindsell, 10th Edition, at p. 182 :

> " It is something like having to draw a line between night and day ; there is a great duration of twilight when it is neither day nor night ; but though you cannot draw the precise line, you can say on which side of the line the case is."

In tort, since the decision in *Re Polemi* v. *Furness, Withy and Co.* 1921, 3 K.B. 560, compensation can be awarded where the consequences of the tort are the " direct " result of an unlawful act or omission although they could not reasonably have been foreseen. If the damages were at large, the damages therefore are not too remote. In the present case the appellant undoubtedly made his contract with Mrs. Sassin so as to procure the premises for the purposes of the agency which he had been promised and in our view the loss of that agency was the result of the respondent's tort.

But before the appellant's claim can be allowed there is one further and insuperable difficulty. Section 30 of the Civil Wrongs Law which deals with the tort of unlawfully causing a breach of a contract provides that the plaintiff " shall not recover compensation in respect thereof (that is of the tort) unless he has suffered pecuniary damage thereby" and section 2 sub-section 2 of the same law defines pecuniary damages as " any actual loss or expenses which is capable of estimation in money and of which particulars can be given." We do not consider that any such estimation and particulars

1953
April 15

PAVLOS G. CHILIDES
v.
NINOS BERAUT.

of actual monetary loss arising out of the loss of the agency can be or have been given by the appellant so as to bring the damages claimed by him within the definition of pecuniary damages.

This appeal must therefore fail because of the provisions in section 30 that the plaintiff in an action for causing breach of a contract can only recover pecuniary damages. This is yet another example where the Civil Wrongs Law, which has been the subject of critical comment in this Court on more than one occasion, has again denied to plaintiff relief, which, on the merits, he should be given. In England a plaintiff in such an action is entitled to claim damages at large (*Mayne on Damages*, 11th Edition, page 519).

With reluctance we must therefore hold that this appeal be dismissed with costs.

1953
April 15

THE ESTATE OF THE DECEASED OSMAN AHMED PASHA
v.
MEHMED KADIR OSMAN PASHA.

[HALLINAN, C.J., AND ZEKIA, J.]

(April 15, 1953)

THE ESTATE OF THE DECEASED OSMAN AHMED PASHA, *Appellants*,

v.

MEHMED KADIR OSMAN PASHA OF ANOYIRA, *Respondent.*

(*Civil Appeal No.* 3966.)

Ottoman Land Code—"Private Sales" not intended to be registered—Claim by donee from heirs of donor—Judicial decision followed but critically considered.

In 1944 O. A. on the marriage of his son, the plaintiff, executed a "Dowry List" giving his son immovable property. In 1950 O. A. died; no attempt had been made to register the property. The heirs of O. A. other than plaintiff claimed the land; the plaintiff sued the other heirs (the defendants) claiming registration or alternatively £425 the value of the property. At the date of the "Dowry List", the law applicable was not the Immovable Property (Tenure, Registration and Valuation) Law, (Cap. 231), but the Ottoman Land Code.

The trial Court held that it had never been the intention of the parties to register the transaction, and this "private sale" was void; however, on the authority of *Evangeli* v. *Nicola* (5 C.L.R., 49) the defendants must compensate the plaintiff before they took back the property.

Held: (1) If the plaintiff claimed as against O. A., his father, the trial Court's decision based on Evangeli's case would be correct: but plaintiff claimed against O. A.'s other heirs and because of the decision in *Constanti Haji Antoni* v. *Kyriacou Haji Antoni* (4 C.L.R., 66) he could not recover.