SMITH, C.J. & MIDDLETON, J. 1893. Feb. 20.

[SMITH, C.J. AND MIDDLETON, J.]

MICHAIL HADJI PETRO AND OTHERS *Plaintiffs*,

v.

TOGLI YANNAKI *Defendant.*

JURISDICTION—CYPRUS COURTS OF JUSTICE ORDER, 1882, § 28—DISCRETION OF COURT AS TO GRANTING AN INJUNCTION—CLAIM FOR INJUNCTION AND DAMAGES LESS THAN £5—ISOLATED ACT OF TRESPASS—SUPREME COURT TO DRAW INFERENCES OF FACT—RULE 21 OF ORDER XXI., RULES OF COURT, 1886.

In an action before a District Court the plaintiff claimed an injunction and damages less than £5 for an isolated act of trespass. The District Court refused to grant the injunction on the ground that there was no claim of right on the part of the defendant, and dismissed the claim for damages as being within the jurisdiction of a Village Judge and without the jurisdiction of the District Court.

HELD (reversing in part the judgment of the District Court): That it was competent for the District Court to refuse to grant an injunction where no claim of right was set up nor any intention shewn to repeat the act of trespass but that the Court was wrong in refusing to entertain the claim for damages, on the ground that such a claim was incident to the injunction and necessary to avoid a multiplicity of suits.

APPEAL from the District Court of Nicosia.

The facts of the case appeared to be, that on the night of August 16th, 1892, the defendant dammed up a channel in such a way as to prevent water, of which the plaintiffs claimed the right of user, reaching their land, and thereby doing them damage to the estimated extent of 16 shillings. The defendant denied obstructing the water as alleged, and also that the damage amounted to the sum claimed. No claim of right was set up on the part of the defendant, nor was evidence given showing an intention to repeat the act.

The District Court after hearing the evidence offered on both sides, gave judgment dismissing the plaintiffs' claim.

The plaintiffs appealed.

Diran Augustin for the appellants.

Plaintiffs proved both the interference and damage. No plea of want of jurisdiction was raised by the defendant. The Court below was wrong in saying it had had no jurisdiction, and should have granted the injunction as claimed.

Economides for the respondent.

The question of jurisdiction was raised in the District Court, and the District Court were right in not granting an injunction. This is an isolated case of trespass, and not one in which an injunction should be granted. As regards the damages, they were not proved, and even if they were, the District Court is debarred from entertaining such a claim.

Feb. 2.

Judgment: The plaintiffs are the owners of certain water rights at Kythrea, and bring this action against the defendant, claiming an injunction to restrain him from interfering with the water and 16 shillings damages.

It is alleged on behalf of the plaintiffs, that on the night of the 16th August, the defendant obstructed a channel, and caused the water which would have gone to the plaintiffs' fields, to be conducted elsewhere.

At the settlement of the statement of the matters in dispute, the defendant without setting up any claim of right to the water, simply denied that he had interfered with it, and did not admit the amount of damages claimed by the plaintiffs.

The case came on for hearing and witnesses were heard on both sides.

From a perusal of the notes of the President of the District Court headed "judgment," it appears that the action was "dismissed with costs, on ground of want of jurisdiction."

We gather, though it is nowhere expressly stated, that the Court came to the conclusion, that as the defendant set up no claim of right to the water, but had merely interfered with it on one isolated occasion, the plaintiffs were not entitled to an injunction, and that as the damages sought to be recovered were only 16 shillings, the claim for them ought to have been brought before a Village Judge, and that the District Court had no jurisdiction to entertain the claim for them, and judgment was accordingly given for the defendant.

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Against this judgment the plaintiffs appeal, and it is contended for them, that an act of interference on the part of the defendant was proved, and, therefore, they are entitled to the injunction they claim; and that as the damages were the direct consequence of the defendant's act, they are properly claimed in this action.

We are of opinion that the Court below was justified in refusing an injunction in this case. An injunction is an extremely convenient remedy to prevent irreparable damage, or to suppress multiplicity of suits; but we see no reason why the Court should have granted an injunction in this case, where one isolated act of the defendant is complained of, where he does not set up any claim to use this water as of right, and where the plaintiffs have an adequate remedy in damages. Had there been a claim of right on the part of the defendant, or had there been evidence, from which the Court could reasonably infer that there was any intention on his part to repeat the act complained of, or probable ground for believing that the act would be repeated, then the plaintiffs might have been entitled to an injunction.

If the defendant's act itself showed that he intended to set up a claim of right, it would have been sufficient ground for an injunction; but the mere taking of a quantity of water on one occasion only, is not an act of such a nature as to shew his intention of asserting any claim of right, or of repeating the act.

We are, therefore, of opinion that the plaintiffs' claim for an injunction was rightly refused in this case.

There remains now to be considered, whether the Court was right in rejecting the claim for damages, on the ground of want of jurisdiction.

The claim for an injunction could not have been brought before a Village Judge, and the question we have to decide, therefore, is, does the fact that one portion of a claim rightly brought before the District Court was dismissed, disentitle the Court to give judgment on another portion of the claim arising from the same cause of action, which might have been brought before a Village Judge? In our opinion, the claim for damages was incident to the claim for an injunction. Had the plaintiffs' claim been, as it might have been, an action claiming an injunction, and damages generally, wthout specifying the amount, there would have

been no question as to the jurisdiction, even though only one shilling damages were proved. If the plaintiffs had succeeded in establishing their claim to an injunction in consequence of the wrongful act of the defendant, in our opinion the Court would have jurisdiction to award damages, occasioned to the plaintiffs by that wrongful act, even though less than £5 were claimed; and we do not see that the fact that the plaintiffs do not succeed in establishing their right to an injunction, takes away from the District Court the jurisdiction which they would have had, if the claim for an injunction had succeeded. The cause of action is the same; and we do not think that the intention of the Cyprus Courts of Justice Order, 1882, is that a person should be driven to bring two actions in two separate Courts, in respect of the same cause of action. If the causes of action had been entirely distinct, the case would be different. If the plaintiffs for instance had claimed an injunction, and £3 due on a promissory note, we think the Court would have been right in dismissing the latter claim as not within their jurisdiction. We are, therefore, of opinion that the District Court had jurisdiction to entertain this claim for damages.

There does not appear to be any finding by the District Court on the facts; but under Order XXI., Rule 21, the Supreme Court has power to draw inferences of fact, and to give any judgment which it shall appear to the Court ought to have been given. It appears to us to have been established, that the defendant did take this water as alleged by the plaintiffs, and that they have suffered the damages they state, amounting in the aggregate to 15*s.* 4½*cp.*

With regard to costs, as the appellants only succeed on the minor part of their appeal, we think that each party should bear their own costs of appeal. With regard to the costs in the Court below, as the plaintiffs might have brought the claim, on which alone they have succeeded, before a Village Judge, we shall direct the defendant to pay their costs on the scale allowed before a Village Judge. The judgment of the District Court must, therefore, be reversed, and judgment entered for the plaintiffs for 15*s.* 4½*cp.* with costs on that scale.

Appeal allowed.