BOVILL, C.J. & SMITH, J. 1892. July 6.

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

CHRISTODOULO SEVERI AND COMPANY *Plaintiffs,*

v.

KYRIAKO ANDONIOU AND OTHERS *Defendants.*

MANDAMUS—WILFUL INJURY TO A STORE—CAROBS IN STORE—"HOUSE"—"CROPS STANDING OR OTHERWISE"—MALICIOUS INJURY TO PROPERTY LAW, 1891.

A store of carobs belonging to the plaintiffs having been maliciously destroyed by fire, the plaintiffs called upon the defendants, who were the Commission of the village within the confines of which the store was situate, to appoint experts to assess the damage done, and to furnish them with a certificate accordingly. The defendants refused.

In an action for mandamus.

HELD: That a store was not a "house," and that the carobs stored therein were not "crops" within the meaning of the Malicious Injury to Property Law, 1891.

ACTION for a mandamus.

The facts sufficiently appear from the judgment of the District Court which was as follows:—

Plaintiff was the owner of a store at Ayios Ambrosios, which on the 5th November, 1891, was totally destroyed by fire, being, according to plaintiff's claim, at that time stored with a very large quantity of carobs, ready for sale, which were destroyed at the same time.

Defendants are the commission of the village, and plaintiff sues for the issue of a writ of mandamus to compel them, under the provisions of Ordinance No. XX. of 1891, to make investigation and enquiry concerning the destruction, and assess the damages consequent thereon.

The action is brought under Ordinance No. VII. of 1890.

It is necessary for plaintiff to show that the investigation and enquiry, and consequent assessment, he asks for constitute a public duty, which defendants are bound to perform: that they have neglected or refused to perform it, after a due demand by him for its performance before action brought: that he has a right to its performance by them: and that there is no other effectual legal method of enforcing that right.

Plaintiff claims investigation and inquiry and assessment, both as to the damage done to the store, and also as to that done to its contents: and the first question would seem to be, whether the store and its contents, or either of them, come under the definiton of property given in the Ordinance, so as to throw on defendants the "public duty" of carrying on an investigation, and making an assessment, as the Ordinance provides. The Ordinance is described in its title as one to prevent the malicious injury to *property*, and there is in the Ordinance no definition of what "property" means in precise terms: but Section 1 appears to restrict the operation of the Ordinance to those kinds of property which are included amongst "*houses*, fences, "trees or plantations . . . . *crops whether standing* "*or otherwise* . . . . animals . . . . etc." As a definition clause, the wording seems to me unfortunate. I cannot think it was intended by an act "to prevent injury to property," to exclude buildings intended expressly for the custody of property—and I am prepared to hold that a store, of the kind described in the evidence in this case, is covered by the definition—though it is quite arguable that it is not a house, unless something intended for the housing of goods may be so described. However, the defendants have admitted their liability as regards the store, for they have, since action brought, held an investigation as to, and assessed the damage done to, it.

Whether carobs stored up for sale are included in the definition is, of course, quite another question. It was argued for the defence: first, that they are not "crops" at all, for that by the Ordinance cereal or sown crops only are intended: secondly, that even if crops at first, they cease by being stored for sale, to be crops any longer, and become "merchandise."

I can see nothing in the nature of things to prevent the word "crop" being used in quite its ordinary signification to include carobs. Olives, oranges, potatoes, and many other things which are regularly harvested, are commonly called crops, and I have myself heard the word applied to carobs in this country. Neither can I see that the act of putting them in a store to keep them till they can conveniently be sold, alters their nature as crops, nor that the fact that they may be "merchandise," prevents them

from being crops any longer. "Merchandise," I suppose, is applicable to describe anything which is commonly the subject of sale. *Standing* crops are frequently sold, and the fact that they might be called merchandise, would not cause them to be improperly described as "crops." Carobs being "crops," I think carobs stored for sale are still crops—not standing, but "otherwise." Nothing had been done to change their nature—such as grinding. This being so, the public duty of defendants to investigate under the Ordinance and assess the damage maliciously done by persons unknown to store and crop, is clear. It is proved that they refused to do it after demand. If they were bound to do it, plaintiff's right to have it done follows as a matter of course: and in my opinion he had no other means of legally enforcing its performance than by the action he has brought.

Two other points were taken for the defence:—

1st. That malice was not proved;

2nd. That the provision by Section 10 of a monetary penalty for the neglect of their duty by the Commission, precludes the remedy by mandamus provided by the Ordinance.

On the 1st point I think it only necessary to say that the presumption of malice in this case is so strong as practically not to need proof: and further that in no case is such proof required—for express malice proved would make the Ordinance useless, by disclosing a person against whom a proper remedy could be had, without recourse to its provisions.

On the last point I am also clear. The provision of a means for punishing a person for neglect of his legal duty, is not "an effectual method provided by law" to compel him to perform that duty, but something quite different.

I am of opinion that a writ of mandamus must issue to compel the defendants to make investigation and enquiry concerning the injury or destruction done to the plaintiff's store, and the contents thereof, by fire at Ayios Ambrosios on or about the 5th November, 1891, and to assess the damage caused thereby in accordance with the provision of Ordinance No. XX. of 1891. Whether or not the assessment already made by them of the damage to the

store is to stand, is a matter for this Court to consider, after the issue to plaintiff of certificate contemplated by the Ordinance.

The defendants must pay the costs of this action.

The Greek and Turkish judges both agree to this judgment, but they wish to point out that the Greek and Turkish translations of the word "crop" in the vernacular versions of the Ordinance, are much more restricted in their meaning than the English word, and literally taken would not include carobs.

Defendants appealed.

Diran Augustin for the appellants contended that a store was not a house, and that carobs stored in it by the plaintiffs for the purposes of their trade, were not "crops whether standing or otherwise," within the meaning of the Malicious Injury to Property Law, 1891. [In answer to a question by the Court, Mr. Lascelles, who appeared for the respondents, admitted that almost the whole of the carobs in the store had been purchased by the plaintiffs.]

Lascelles for the respondents, contended that a wide construction must be put on the words of the law, which is intended to provide compensation for malicious injury to property. The defendants have furnished a certificate of value of the store.

Judgment: The plaintiffs, who sue as a firm, claim a mandamus directing the Commission of the village of Ayios Ambrosios, to appoint experts to assess the damage done to their store and the carobs therein, by a fire which occurred on the 5th November, 1891, and to furnish them with the written certificate of the injury, and the assessed amount of damage, in accordance with the provisions of Section 2 of the Malicious Injury to Property Law, 1891.

The object of the law, no doubt, was to provide compensation for injuries to property maliciously caused by persons unknown, but Section 1, of the law limits the kinds of property in respect of malicious injuries to which compensation can be claimed, to "houses, fences, trees or plantations situate on private lands, crops whether standing or otherwise, or to animals, or irrigation works, or apparatus connected therewith." A subsequent clause defines animals, irrigation works, and apparatus.

BOVILL, C.J. & SMITH, J.

CHRISTODOULO SEVERI AND COMPANY v. KYRIAKO ANDONIOU AND OTHERS.

We are of opinion that the word "house," must, in the absence of anything in the context to show that a different meaning is to be assigned to it, be held to have the ordinary meaning of a dwelling house, and that it does not include a building such as that in question, which is not intended, or used for a dwelling house, but is intended and used only as a store for merchandise. If the defendants have given the plaintiffs a certificate of the value of this store, the plaintiffs are not entitled to the mandamus they ask for in respect of it.

As regards the carobs which were stored in this building, it is admitted that they had (with the exception of an insignificant amount) been purchased by the plaintiffs and, it seems clear from the evidence, that they were thus acquired and stored in the course of their trade. We are of opinion that produce thus acquired and stored, does not come within the words "crops whether standing or otherwise," but that it has ceased to be a crop within the ordinary meaning of the word.

Appeal allowed.