

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

HUSSEIN MEHMET ALI AND SALI  
OMBASHI AHMET*Plaintiffs,*

v.

PAPA CHRYSOSTOMO PAPA YANNI *Defendant.*

SMITH, C.J.

&amp;

MIDDLE-  
TON, J.  
1892.

No. 10.

NUISANCE—OVERLOOKING FROM ROOF OF HOUSE—MEJELLE,  
ARTICLES 1200, 1202 AND 1207.

The defendant, a neighbour of the plaintiffs, was in the habit of going on the roof of his house, from which the whole courtyard of plaintiff's house, of which some of the inhabitants were women, was visible. The defendant never at any time gave notice to the inhabitants of plaintiffs' house of his intention of going upon his roof.

HELD (upholding the decision of the District Court): That defendant must be restrained from so using the roof of his house, unless he gave timely notice to the plaintiffs of his intention of so doing.

APPEAL from the District Court of Nicosia.

The plaintiffs sued the defendant to restrain him from using the roof of his house so as to overlook the premises of the plaintiffs, occupied and used by the women of the family. The defendant pleaded (1) that his using the roof of his house did not constitute an overlooking within the meaning of the law; (2) that his house was older than that of the plaintiffs; (3) that he always warned the plaintiffs of his intention whenever he went up on his roof.

The District Court found that defendant's roof did in fact overlook the whole courtyard of the plaintiffs, that there was not sufficient evidence to shew which of the two houses was the older, and gave judgment for the plaintiffs. It appeared also from the evidence that defendant never did warn his neighbours of his intention of using his roof.

The defendant appealed.

*Economides* for the appellant.

The question for the Court is whether the roof of a house is one of the places contemplated by the law. Anyone may use his own property as he likes, unless his user causes extraordinary injury or nuisance to his neighbour. Article 1202 of the Mejellé only contemplates overlooking from a window. Plaintiffs have themselves to thank for putting

SMITH, C.J. their well, washing-place and bath in such a position that  
&  
MIDDLE- they can be overlooked by defendant, and must protect  
TON, J. themselves according to Article 1207.

HUSSEIN *Diran Augustin* for the respondents.

MEHMET ALI This is a case of extraordinary nuisance according to  
AND SALI Articles 1200 and 1202 of the Mejellé. It is no hardship  
OMBASHI for defendant to have to call out when ascending his roof.  
AHMET

"  
PAPA CHRY- *Judgment:* We are of opinion that the judgment of the  
SOSTOMO District Court is right. The plaintiffs claim to restrain  
PAPA YANNI defendant from making use of his roof. The District Court  
have found that defendant's roof does overlook the whole  
of plaintiffs' courtyard. If so, there is no doubt in our  
minds that plaintiffs' premises which women have occasion  
to use, are visible from defendant's roof. Article 1200  
of the Mejellé enacts that extraordinary nuisance may arise  
in any way, while Article 1202 is general in its terms as  
to the form of overlooking. It is not necessary for the  
defendant to make use of his roof, though such use is very  
common in Cyprus, and, therefore, it is not necessary for  
us to call on defendant to erect screens. The District Court  
were of opinion that it was sufficient for defendant to give  
notice before ascending to his roof. We are of the same  
opinion, and as this is not apparent in their judgment, we  
order that the judgment be amended in this respect.

*Appeal dismissed.*