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With regard to the costs of this action, it appears to us that the plaintiff's intention was to dispose of this yard to Schonou, that he has now repented, and seeks to obtain the property back again, and whilst admitting his legal right to have possession of the property restored to him, we do not think that we ought to make the defendants pay the costs.

The judgment of the District Court will, therefore, be reversed, and the appeal allowed without costs.

Appeal allowed.

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

GEORGE CHAKALLI *Plaintiff,*

v.

PAULO IOUANNOU KALLOURENA *Defendant.*

IMMOVABLE PROPERTY—ARAZI-MIRIE—VERBAL AGREEMENT TO SELL—VALIDITY OF CONTRACT—BREACH OF CONTRACT—MEASURE OF DAMAGES—RES JUDICATA—SPECIFIC PERFORMANCE—SALE OF LANDS LAW, 1885, SECTIONS 7 AND 9—UBI JUS IBI REMEDIUM.

A verbal agreement to sell arazi-mirié may constitute a valid contract, for the breach of which an action to recover damages may be maintained.

Where a legal right is shewn to exist, the Courts have the power of affording an appropriate remedy for a contravention of that right, even in the absence of any express provision in the law.

APPEAL from the District Court of Nicosia.

Appellant in person.

Diran Augustin for the respondent.

The facts and arguments sufficiently appear from the judgment.

Dec. 31. *Judgment:* In this case the plaintiff appeals from a judgment of the District Court of Nicosia dismissing his claim to recover damages for the defendant's breach of contract.

The facts which were proved in the District Court were as follows. The plaintiff owned 66 donums of land at Petra which he wished to sell. In August, 1894, the land was put up for sale by auction, but only £23 was bid. The plaintiff would not sell the land for this, £25 being the lowest price he was willing to accept.

As he was leaving the village, the defendant followed him and offered £25, which the plaintiff accepted, and it was arranged that on October 1st the defendant was to come to Nicosia, for the purpose of paying the money, and

having the land registered in his name. Payment was to be effected partly in cash, and partly by a bond to be given by defendant.

The defendant did not come into Nicosia on October 1st, and has refused to pay the money or have the land registered in his name.

On the 14th November, 1894, the plaintiff commenced an action against the defendant for the recovery of £25, the value of the land the defendant had agreed to buy.

This action was dismissed by the District Court of Nicosia, on the ground that there had been only an agreement for the sale of the land, which had never been carried out, and that the purchase moneys could, therefore, not be recovered.

The plaintiff, therefore, brought this action claiming damages for the defendant's breach of contract. The District Court dismissed the action, as appears from the Judges' note, on the ground "that there is nothing in "*Turkish Law and nothing in Cyprus created law which* "provides for the enforcement of a verbal agreement for "the sale of land, consequently, no remedy in damages for "non-performance of such."

From this decision the plaintiff appeals, on the ground, that the verbal agreement entered into, between him and the defendant, was a perfectly legal one, and that there has been a clear breach of it by the defendant, for which the plaintiff is entitled to recover damages.

For the respondent it was argued, that the matter was *res judicata:* that as the law requires, for the purposes of sale of arazi-mirié property (to which category plaintiff's land belongs), a written declaration on the part of the vendor and vendee to the effect, that one has agreed to sell land and the other to buy it for a specified consideration, to be produced to a Land Registry officer, before a sale is concluded, that no action for damages can be brought, until this formality is complied with: and that the agreement the parties must, from the nature of the case have come to, before this declaration can be so made, is to be considered as merely a preliminary arrangement equivalent to an offer only to sell, which has no binding effect, and does not constitute a valid contract. It was also urged, if any effect is to be given to a verbal contract, the Sale of Lands Law, 1885, which provides for the specific performance of contracts for the sale of immovable property, will be practically annulled.

With regard to the first argument of the respondent's counsel, that this matter is *res judicata*, we cannot find that any decision was given on the point by the Court below; but we fail to see any principle on which the judgment given in the former action could be held to be a bar

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to the plaintiff's claim in the present action. It is true that the parties were the same, and both actions arise out of the same transaction: but in the former action, the claim was for the recovery of the purchase money of the property agreed to be sold, and in the present action, the claim is for damages for breach of the defendant's agreement to accept a transfer of the property, and pay the purchase money on the 1st October.

These appear to us to be two distinct causes of action, and the fact that the Court held in the one case that the purchase money could not be recovered, inasmuch as the formalities of the law necessary to constitute a sale, had not been complied with, and, therefore, the purchase money was not payable, in no way debars the plaintiff from claiming damages for the breach of the defendant's agreement, that he would comply with those formalities and pay the purchase money.

With regard to the second point, that no action for damages will lie for breach of an agreement entered into for the sale of land, the District Court has held, that there is nothing in the Turkish Law or in Cyprus Statute Law providing for the enforcement of a verbal contract, and consequently, no action for the recovery of damages for the breach of such a contract.

We may observe, with regard to the word "verbal" that if the agreement come to between the plaintiff and defendant constitute in other respects a valid contract, the fact that it was not put into writing makes no difference. Article 69 of the Mejellé specifically declares that a written contract has the same force and effect as a verbal one.

We do not think that because there is nothing specifically contained in the law enabling an action for damages for breach of an agreement to sell land to be brought, that it necessarily follows that no action can be brought to recover damages, provided that the contract is a valid contract.

On general principles, every breach of a contract is an infringement of a right, for which an action may be brought, and if no substantial damage can be proved, nominal damages are recoverable; and it is not, therefore, from this point of view so much a question, as to whether the law has or has not prescribed a particular form of remedy for the breach of a legal right; but whether there is any legal right which has been infringed. We should have supposed that the maxim *ubi jus ibi remedium* was as applicable to an Eastern system of law as to a Western, and that consequently, if it be once established that a man has a legal right, it would follow as a matter of course that there must be a means of maintaining and vindicating that right, and

a remedy in case he is hindered in the exercise or enjoyment of it. We should have supposed, therefore, that if it were established that a valid contract has been entered into between two parties, and that a breach of that contract by one party had taken place, the other party in vindication of his right, would have a right to call upon the party breaking the contract, to indemnify him for all loss occasioned by his breach of contract.

We will proceed now to enquire whether a valid contract has been proved to exist in this case ; and secondly, whether there is anything in the Ottoman Law which either expressly provides that an action for the recovery of damages for the breach of it cannot be sustained ; or if nothing specific be contained in the law, whether there is anything which impliedly forbids the application of that fundamental legal maxim to which we have adverted above.

Did the agreement of the plaintiff and defendant then constitute a valid contract, apart from the question of the necessity of obtaining the consent of the Land Registry officer, in order to effect the transfer of the legal possession of the property, a point we shall deal with hereafter? In the first place we must remark, that it had all the essential elements necessary to constitute a valid contract. So far as we are aware, the only definition of contract is that contained in Article 103 of the Mejellé which defines contract to be : " The undertaking and promising of a thing by " the two parties, and consists of the conjunction of offer " and acceptance." This definition occurs in the opening chapter of the book dealing with sales ; but it is perfectly general in its terms, and seems to us to be a definition, which would apply to any kind of contract. The parties to it were of full age and of sound mind, there was an offer by one to sell, and an acceptance by the other to take, a specified piece of land for a specified consideration, with a condition, that the price should be paid, and a transfer of the legal possession of the land made, at a specified date. The object the parties had in view, was a perfectly legal one, and as we have already said in the case of *Michail Gavrilidi v. Sava Georghi and another*, C.L.R., *ubi supra*, p. 142, we can see no reason for holding, that any illegality attaches to such agreements. It is said, however, that the law recognizes no rights or obligations as arising from these contracts, in the case of the sale of arazi-mirié, until the consent of the Land Registry officer to the sale, has been obtained : but that the agreement is to be considered an inchoate agreement, until this consent has been obtained, when the contract becomes operative, and material rights and obligations are acquired and incurred by the parties to it.

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It is of course obvious that the agreement of the parties alone is inoperative to pass any right of possession to the arazi-mirié agreed to be sold, because an essential element is wanting, viz.: the consent of the Land Registry officer, as representing the Beit-ul-mal in which the reversionary right to the land itself is vested. Although this is so, we do not see why the agreement of the parties as between themselves should not give rise to mutual rights and liabilities. The consent of the Land Registry officer being required by the law, the agreement is, doubtless, made on the basis of that consent being obtained, and if for any reason the consent of that officer be withheld, for reasons independent of both parties, it probably would be held, that both parties would thereby be freed from their obligations under the contract: but that case is very different to the case where one of the parties to the agreement deliberately refuses to do what he has undertaken to do, viz.: attend before the Land Registry officer for the purpose of taking the step necessary to enable the officer to give his consent, that is to say, for the purpose of declaring that he has agreed to purchase the land.

The Cyprus Statute Law has, as we pointed out in our judgment in the case we have already referred to, recognised that certain rights and obligations do arise under such agreements, before any assent of the Land Registry officer has been obtained. A vendee may, under the Sale of Lands Law, 1885, obtain specific performance of the contract against his vendor, provided the contract be in writing, and he has taken certain steps pointed out by the law. The Courts have power too, instead of making an order for the specific performance of the contract, to order the vendor to pay damages to the vendee for his refusal to transfer the property to him: and the vendor, although he has no corresponding right to force his vendee to take the property, has the right of recovering damages from the vendee for his refusal to take the property.

The Ottoman Law too, recognized the liability of the person, who has agreed to buy the arazi-mirié property of a judgment debtor on a sale by auction, to make good any damage resulting from his subsequent refusal to have the property transferred to him. *See* Article 10 of the Law on Forced Sales of 27 Chaban, 1276. We see no reason in principle, why there should be any distinction between the case where a person agrees to buy property at auction, and the case where he agrees directly with the possessor of the land.

The liability of the person, who has thus agreed to buy a debtor's land at auction, is reaffirmed by Section 65 of the Civil Procedure Amendment Law, 1885.

In these instances it appears, therefore, that the law contemplates that these agreements are not only not illegal, but that certain rights and liabilities may be in the one case, and are in the other, created when they have been entered into.

It appears to us that the legislature, in passing the laws we have quoted, did not intend to lay down, that in these particular instances only should legal rights and liabilities be created by the agreements of the parties, but rather it was assumed, that such agreements were capable of giving rise to legal rights and liabilities, and the particular rights and liabilities arising in certain cases were pointed out.

This is obvious from the language of Section 7 of the Sales of Land Law which says: "Nothing in this law "contained shall be construed as depriving any Court of "the right to award damages for breach of a contract for "the sale of immovable property, where the Court shall so "think fit, in lieu of ordering specific performance of the "contract." The power of the Court to award damages for breach of a contract, before the parties have made a declaration before a Land Registry officer, is clearly assumed to exist.

We, therefore, think that we are justified in the conclusion we come to, that agreements for the sale of arazi-mirié property, though inoperative to effect any transfer of the possession of the property, are capable of giving rise to mutual rights and obligations on the part of the persons entering into them, in other words, that they are valid contracts.

The conclusion we here come to is in conformity with the decisions of this Court in the case we have above referred to, *Michail Gavrilidi v. Sava Georghi and another* (*ubi sup.*), and in the case of *Theodoulo Zenobio v. Meirem Osman*, C.L.R., Vol. II., p. 168, where in giving judgment the Court said, speaking of contracts such as the one in question: "A man "may validly contract with another to sell him his pro- "perty, and under the contract the person agreeing to buy "may pay a part of the purchase money. *Such a contract* "*is good as a contract* and has been recognised as a valid one, "inasmuch as it is capable of specific performance here "under the provisions of the Sales of Land Law, 1885."

If then the agreement made for the sale of arazi-mirié is a valid contract, is there any reason why damages should not be recoverable for a breach of it? In principle, as we have already said, we can see no such reason. The District Court says that damages are not recoverable because the law does not specifically authorise the remedy in damages; but it is obvious, we think, that this is not decisive of the point. Many cases arise, more frequently, perhaps, in actions not brought on contracts, but for breaches of a legal

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right (and we do not see why the principle enunciated by the District Court should not, if applicable at all, be applicable to both), in which the Courts are asked to apply, and do apply, remedies which are not specifically mentioned by the law. To take a case that not infrequently arises as an example: A. takes water to which he is not entitled for the irrigation of his field, and thereby deprives B. who has the right, of the user of the water. B., commonly brings an action for an injunction and damages, and the Courts give or withhold the relief claimed according to the facts proved. There is nothing contained in the law, so far as we are aware, which authorises the Courts specifically to grant either an injunction or damages; but the right to do so, we think, unquestionably exists; and as it is not specifically provided for in the law, the right must spring from the inherent right of the Court to afford that relief which justice requires should be applied for the remedy of a wrong.

The law lays down the principle, that one man may not usurp the property of another, but it is silent in the particular instance we have cited as to whether a plaintiff's remedy is to recover the estimated value of the water taken by a wrong-doer, or the amount of damages he has actually sustained by a defendant's wrongful act. The Courts have, without question, held that the latter is the equitable and just remedy.

It may be argued, with reference to this instance, that the Mejellé clearly lays down the principle, that one person has no right to take the property of another, and hence arises the power of the Courts to apply an appropriate remedy in each particular case: whereas no general principle is laid down in the law, that one party to a contract has no right to break that contract, and this brings us to the consideration of the question, whether there exists any reason why damages cannot be awarded by the Courts for breach of contract generally.

The Mejellé contains, amongst the statement of general principles, none to the effect that the breach of every agreement imports a damage: and in looking through its various books dealing with sale, leases, etc., we do not call to mind a single section in which the right to recover damages for refusal to fulfil an obligation is mentioned.

There are some instances to be found in the law with regard to which it is not unreasonable to infer that the law contemplated a remedy in damages. For instance, Article 392 says, that when the contract which constitutes that species of sale, to which in the Turkish text the name of "Istisna" is given (which apparently is regarded as a kind of sale of the labour of a workman), is concluded, neither party can depart from it. The law is silent as to the remedy to be applied for a breach of such a contract, but as neither

party can legally depart from the contract, some remedy must have been intended to be applied. Only two kinds of remedy occur to us, viz.: either specific performance or damages.

It is conceivable, of course, that the person who agreed to make the article might be ordered by the Court to make it according to his agreement, and imprisoned in default of disobeying the order of the Court; but this might not prove an adequate remedy for the damage sustained by the other party to the contract, and a remedy in damages is far the most satisfactory and appropriate remedy to be awarded for such a breach of contract. By the time the article had been made, by order of the Court, the need for it might have passed, or if the person ordered to make it proved obdurate he might prefer to remain in prison. In this case the other party to the contract would gain nothing by having the person who had broken the contract kept in prison, and although he might have sustained considerable pecuniary loss by not getting the article he had bargained to have, delivered to him, he would, if specific performance be the only remedy, not be able to recover any damages.

The obligation to pay damages is specifically recognised in certain cases, such for instance, as the hirer of a thing misusing it in a manner not contemplated by the person letting the thing; but no mention is made in the law of such cases as the vendee claiming damages for the non-delivery of a thing sold, or a lessee claiming damages for the refusal or neglect of his lessor to deliver up possession of premises, agreed to be let, at a specified time. In speaking of a sale, we are not here referring to a commercial transaction, an action to recover damages in respect of a breach of which the Commercial Court would have had jurisdiction to entertain. In both classes of cases we have mentioned above, considerable pecuniary loss might be inflicted by the breach of the agreement; and it seems to us to be contrary to natural justice and equity, that the person who has suffered the loss should not have a legal remedy. The law cannot intend that a man should be able to take advantage of his own wrong.

In the appendix to the Commercial Code, a law which provides for the relegation of disputes concerning commercial matters—which are defined in the law—to the Commercial Courts, is a chapter which in the French translation is headed "Des dommages et intérêts." The right of one party to a contract to recover damages for its breach, is clearly recognized, and, though the language of this chapter is quite general and would apply in terms to a breach of every agreement, it appears probable from its being included in the law dealing with the Commercial Courts, that it is intended to confer the right to award these "dommages et intérêts" upon those Courts only, and, therefore, to those matters over which those Courts have jurisdiction.

It is not very clear even from the wording of the sections in the chapter, whether the law intends to lay down the principle that damages can be recovered for breaches of agreement, or whether this principle is assumed and the law intended to point out in what cases damages are or are not recoverable, and how they should be computed. Section 93 is the only one which appears to lay down the principle. The French translation of this section is literally identical with Section 1147 of the French Code Civile, which latter section is intended to form an exception to the general principle laid down in Section 1142 of that Code, and to provide that damages are not recoverable, where the default in fulfilling an obligation arises from circumstances independent of the person by whom it should have been fulfilled. The Turkish text, however, renders it doubtful whether it is not intended as an enunciation of the principle itself, and it is, perhaps, safer to assume that it is so intended. The argument, of course, to be founded on this, is, that as in a certain specified class of cases the law has provided that damages are recoverable, no damages are recoverable in other classes of cases.

With regard to this, however, we must observe that the object of the appendix to the Commercial Code is to provide for the establishment of commercial tribunals and to define their jurisdiction and their procedure with regard to certain matters, and we find it hard to believe that a necessary conclusion from the insertion of the provisions regarding the damages arising from the breach of commercial agreements is, that in the cases of the breach of other agreements, damages are not recoverable.

Article 7 of the law of 4 Mouharrem, 1286, in defining the jurisdiction of the Daavi Courts recognises their power to award "dommages intérêts" without, however, defining the cases in which these "dommages intérêts" are recoverable, and it is, of course arguable, that the "dommages intérêts," here alluded to, are those specifically mentioned in the Mejellé to which we have before alluded.

However, this may be, we are very strongly of opinion that wherever a legal right exists, the Courts must have jurisdiction in case of a contravention of that right, to apply such a remedy, as the justice of the case may require. The maxim that there is no legal wrong without a remedy, seems to us from the necessity of the case to be the foundation of any system of law, and we shall hold it to be of application here. We have already given our reasons for the opinion we hold that this agreement *quâ* agreement was a valid one, it is admitted that there has been a breach of it, and we, therefore, hold, that the defendant is liable in damages.

We proceed, therefore, now to consider what damages the plaintiff has proved in this case.

The true measure of damages in this case appears to us to be, the difference in value between the £25, agreed to be given for the land by the defendant, and its market value on the 1st October, when he failed to fulfil this contract.

The plaintiff did not, so far as appears from the evidence, as a matter of fact, make any attempt to sell the properties subsequently to the 1st October, 1894, but at the date of the hearing of this action, in October, 1895, he puts the value at about £10. The one other witness called for the plaintiff, Mr. Limbouri, says that the plaintiff has lost about £15, but without assigning any reasons for this opinion. The witnesses for the defendant estimate the present value of the land at from £18 to £20. It is possible that if the land had been sold in October, 1894, it would again have realised £25, and it appears to us that there was no evidence as to what its market value then was. Had it been then sold by plaintiff he would, in our opinion, have been entitled to recover from the defendant the difference (if any) between the £25 and the price actually obtained. There being no evidence as to what the measure of damages is, we must hold that the plaintiff is entitled only to nominal damages, and adjudge that he recovers the sum of 10 paras from the defendant.

With regard to the costs, although the plaintiff has succeeded in establishing the principle for which he contended, he has not succeeded in establishing that he was entitled to substantial relief, and under those circumstances, we shall make no order as to costs.

We may, perhaps, observe that we do not agree with the argument that the effect of deciding that a verbal agreement to sell arazi-mirié constitutes a valid contract, will be to make "the Sales of Land Law, 1885," a dead letter. A party to an agreement who wishes to be in a position to avail himself of the provisions of that law must, of course, be careful to see that his contract is put into writing, and that the other provisions of the law are complied with.

Neither do we concur in the view, that the effect of such a decision will be either to discourage registration or to multiply litigation.

The fact that a contract is a valid one, in no way gives a purchaser, without registration, the right to the legal possession of the land, and as to the prospective increase of litigation, if a man sustains any damage by reason of a breach of contract, we think he ought to be able to recover the amount of that damage. If he can prove none, and is only entitled to nominal damage, the prospect of an award of 10 paras without costs is hardly likely to induce many persons to embark upon litigation.

Appeal allowed. Judgment for the plaintiff for 10 *paras without costs.*