

With regard to the claim for interest, the plaintiffs have for years suffered the defendant to retain possession of some of the property which he took from them, and as to other portions of the property, there is no evidence as to when he deprived them of it, and he alleges that, although he has given them notice not to interfere with any of it, he has not actually retaken possession of all.

Under these circumstances, we do not think that we should order the defendant to pay any interest, and our judgment will be that the judgment of the District Court be set aside, and that the defendant do pay to the plaintiffs the sum of 16,400 *p.* at the rate of 132 to the £ and the costs of this action.

Appeal allowed.

SMITH, C.J.
&
MIDDLE-
TON, J.
—
MYRIANTHE
HJ. YANNI
MARKOULI
AND YANNI
GEORGI
KOPTERO
v.
YANNI HJ.
MARKOULI.
—

[SMITH, C.J. AND FISHER, ACTING J.]

HADJI SAVA PAPA YEORGI *Plaintiff,*

v.

HADJI PAPA ELEFThERIO AND HADJI
AGAPIO HADJI ELEFThERIOU *Defendants.*

SMITH, C.J.
&
FISHER,
ACTING J.
1894.
Sept. 3.

JURISDICTION—CYPRUS COURTS OF JUSTICE ORDER, 1882, SECTIONS
28 AND 29—CLAIM OVER £5.

Plaintiff sued defendants to recover a sum of 1,170*cp.* due on a bond, with interest and costs.

No interest was mentioned in the bond, and at the settlement of issue it was admitted by plaintiff that £3 had been paid on account, thus reducing the sum due to less than £5.

HELD (reversing the decision of the District Court): That the claim was within the jurisdiction of the District Court.

APPEAL of plaintiff from the judgment of the District Court of Nicosia, dismissing his action with costs.

The action was brought on a bond for payment of a sum of 1,170*cp.* said to be due thereon, interest and costs.

The bond contained no stipulation for the payment of interest, and defendants pleaded payment of £3 on account, thus reducing the amount due below £5.

Plaintiff admitted the payments.

The District Court gave judgment, dismissing plaintiff's claim on the ground that the amount due was under £5, and that the Village Judge Court had exclusive jurisdiction in the matter.

Plaintiff appealed.

SMITH, C.J. *Chakalli*, for appellant. The action was properly brought
& in the District Court. The claim is for over £5 on the face
FISHER, of it. Had such a claim been preferred in the Village
ACTING J. Judge Court, the Court could not have entertained it.

HJ. SAVA
PAPA
YEORGIH
v.
HJ. PAPA
ELEFTHERIO
AND HJ.
AGAPIO HJ.
ELEFTHERIOU.

Artemis, for respondents. The action was properly dismissed. Payment of £3 was admitted at the issue, and this reduces the amount due under £5.

Judgment : We are of opinion that the judgment of the District Court is wrong, and must be set aside.

Section 29 of the Cyprus Courts of Justice Order, 1882, defining the jurisdiction of District Courts, lays down that the District Court shall have jurisdiction in all "Ottoman actions . . . except such Ottoman actions as are within the jurisdiction of a village judge."

Section 28 of the same order, gives the Village Judge jurisdiction to hear and determine "all Ottoman actions . . . (a) in respect of any debt, damage, or demand, where the amount of such debt, damage, or demand, is not more than £3,"—subsequently, in accordance with the provisions of the same order, increased to £5.

It is clear that the claim in this action, as disclosed by the writ of summons, was one which the District Court had, and a Village Judge had not, jurisdiction to entertain : and we are of opinion that the fact that subsequently to the issue of the writ it appears, either by the admission of the plaintiff, or from the evidence adduced at the hearing, that only such a sum is due as the plaintiff might have recovered before a Village Judge, does not take the case out of the jurisdiction of the District Court. We are of opinion that the question of jurisdiction must be decided by the claim preferred in the writ ; and with the claim as disclosed in this writ, a Village Judge would clearly have no power to deal.

If the Court considers that the action has been unnecessarily brought in the District Court, it can deprive plaintiff of his costs. We set aside the judgment of the District Court and remit the action to the District Court for hearing. The costs of the hearing in the Court below will be costs in the cause. Costs of this appeal to be paid by respondents.

Appeal allowed.