

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

CHARITOS AND CHRYSANTHOS, IEROMONACHI  
AND MANAGERS OF THE MONASTERY OF AYIOS  
NEOFYTOS *Plaintiffs,*

v.

HADJI VARNABAS PAPA MARCO AND OTHERS  
*Defendants,*

AND

CHARITOS AND CHRYSANTHOS, IEROMONACHI  
AND MANAGERS OF THE MONASTERY OF AYIOS  
NEOFYTOS *Plaintiffs,*

v.

HADJI VARNABAS PAPA MARCO AND OTHERS  
AND GREGORIOS, EGOUMENOS OF THE MONAS-  
TERY OF AYIOS NEOFYTOS *Defendants.*

CONTRACT FOR SALE OF UNGATHERED CROP—RIGHT OF THIRD  
PERSON NOT A PARTY TO-SET ASIDE.

Defendant Gregorios, by contract in writing, purported as Egoumenos of the monastery, to sell to the other defendants all the carobs of certain trees belonging to the monastery, and the other defendants agreed to buy the same at a price mentioned, to be paid after gathering the crop. Plaintiffs, denying the right of Gregorios to so sell, on the ground that he had been dismissed by the Archbishop from the office of manager, and that they had been appointed to fill such office, sued the defendants, other than Gregorios, to set aside the contract. Gregorios was added as a defendant by order of the Court. The action was instituted while the crop was still ungathered. On an objection raised by plaintiffs' counsel, that the Court could not entertain the question of the validity or otherwise of the dismissal of Gregorios, this being an ecclesiastical matter not cognisable by a civil Court.

HELD in the District Court: That plaintiffs were entitled to set aside the contract.

HELD on appeal (reversing the judgment of the District Court): That plaintiffs could not maintain an action to set aside a contract to which they were not parties.

APPEAL of defendants from the District Court of Paphos.

*Artemis, (Pascal Constantinides with him),* for the appellants.

*Macaskie,* for the respondents.

The facts and arguments sufficiently appear from the judgment which is as follows:—

*Judgment:* This action comes before us on appeal from the judgment of the District Court, ordering the setting aside of a so-called lease, made between the defendant Gregorios and the other defendants to the action, and directing the defendants, with the exception of Gregorios, to pay interest to the plaintiffs on a sum of money in Court.

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

Sept. 6.

Sept. 13.

SMITH, C.J.  
 &  
 FISHER,  
 ACTING J.  
 CHARITOS  
 AND  
 CHRYSAN-  
 THOS  
 v.  
 HJ. VARNA-  
 BAS PAPA  
 MARCO  
 AND OTHERS.

The circumstances under which the action arose appear to be as follows: The defendant Gregorios is the Egoumenos of the monastery of Ayios Neofytos, and on or about the 15th August, 1893, he purported to sell, and the other defendants agreed to buy the carobs of all the carob trees belonging to the monastery of Ayios Neofytos which were situate within the boundaries of certain villages. On the 15th August the document which the District Court of Paphos has ordered to be set aside was drawn up. This document in terms declares that Gregorios has sold these carobs for £80 sterling, and that the other defendants accept the sale and are bound to pay the above mentioned sums to Gregorios as soon as the collection of the carobs is completed, and a further condition contained in this document states that the person who breaks the conditions shall pay damages to the other to the extent of £20.

Prior to the date of this document, the Archbishop of Cyprus had purported to dismiss the Egoumenos from the sole management of the monastery properties, and had purported to appoint the two plaintiffs as managers of those properties.

On the 29th August the plaintiffs commenced this action against the defendants, other than Gregorios.

By the writ of summons they claimed that the document of the 15th August, which is described as a document "leasing the fruit of the carob trees" should be set aside, and that the defendants should pay £200, the value of the carobs, in case the defendants proceeded to gather the crops.

On the 1st September the plaintiffs appear to have been authorised by a Judge of the District Court to collect the carobs and sell them and pay the proceeds into Court. It does not appear whether this order was drawn up, but no copy of it is attached to the file of proceedings.

On the 3rd November, the day fixed for the settlement of the issues, the claim for £200 was withdrawn, and the matter adjourned to the 6th, when certain issues were fixed.

The question of the right of the plaintiffs to sue the then defendants, without joining the Egoumenos Gregorios, was then raised, and an issue was settled on this point and also as to whether Gregorios' dismissal by the Archbishop was valid.

Other issues were fixed which it is not material to mention, and the hearing of the action was fixed for the 21st June.

There is no note of what took place at the hearing of the 21st June, beyond the names of the counsel who appeared, and a statement that the hearing was adjourned, that the Egoumenos might be joined as a defendant, and an order joining him as defendant appears to have been drawn up on the same day. No amended writ appears to have been filed, as required by Order IX., Rule 12, nor is there any

note on the file of proceedings to show that the Court ordered that an amended writ need not be filed. SMITH, C.J.

However this may be, the defendant Gregorios appeared on the 9th July, 1893, and other issues were settled. FISHER, ACTING J.

Amongst the other issues was one similar to that previously settled, as regards the other defendants, viz.: as to whether he had been rightly dismissed. CHARITOS AND CHRYSANTHOS

The action again came on for hearing on the 25th July. v. HJ. VARNAS

The first proceeding, as appears from the notes, then appears to have been that one of the defendants was called and examined by Mr. Theodotou to prove that his name had been affixed to the so-called lease by his order. BAS PAPA MARCO AND OTHERS.

It does not appear at whose instance this witness was called, nor for whom Mr. Theodotou, who examined him, appeared, nor does there seem to have been any necessity to call the witness as the making of the lease appears to us to have been admitted at the time of the settlement of issue.

The next step appears to have been that Mr. Theodotou raised a preliminary objection to the competency of the Court to deal with the question whether the Abbot was legally dismissed or not, and on this objection the Court gave the judgment appealed against.

At the hearing of the appeal, the appellants' counsel contended, amongst other things, that the claim on the writ of summons disclosed no cause of action, and it appears to us that this contention was well founded.

The transaction between Gregorios and the other defendants appears to us to have been not a lease of any property, but a sale of an ungathered crop. The document drawn up on the 15th August is, in terms, a declaration that he has sold the carobs to them. It makes no mention of the person by whom the crop is to be gathered, and it may be that, if the crop was to be gathered by the defendants, the sale of the carobs to them would be held to include a license to them to go to the trees and gather the carobs. But we are unable to see that it can be regarded either as a lease of the carobs of the carob trees, as it is sometimes described, or a lease of the trees themselves. It appears to us to be merely, as we have said, an out-and-out sale of an ungathered crop. On what ground can it be contended that the plaintiffs, who were no parties to the document, have the right to come to the Court and ask for such a document to be set aside? We can conceive of no such right, and no authority has been quoted to us to show that such a right exists. It may be that, under the circumstances, the plaintiffs would have been entitled to maintain an action for an injunction on the ground of the threatened interference of the defendants with the carob trees. But this is not a claim for an injunction, and it is not necessary for us to decide the matter. This is a claim by a third

SMITH. C.J. party to set aside a contract of sale to which he is no party,  
 & and in our opinion such a claim is not maintainable.  
 FISHER. It may be that the defendants who were first sued, may  
 ACTING J. have a claim for damages under the contract against the  
 CHARITOS defendant Gregorios, and that, if this contract be set aside  
 AND in this action, they would be unable to prosecute their  
 CHRYSAN- claims, as they would be met by the objection that the  
 THOS contract had been set aside by a judgment of the Court.  
 v.  
 H.J. VARNA- It, therefore, appears to us that the present action was  
 BAS PAPA misconceived, and that, whatever claim the plaintiffs  
 MARCO might have lawfully maintained against the defendants,  
 AND OTHERS. or any of them, they had no right to ask for the relief they  
 did in the present action.

Very long and interesting arguments were addressed to us as to the nature of this monastery and as to the right of the Archbishop to dismiss the Egoumenos from the management of its properties.

Owing to the view which we take of this case, it is unnecessary for us to deal with these arguments or to give any decision on the point raised.

It is also unnecessary for us to deal with the irregularities which, the appellants' counsel contended, took place at the hearing as to the refusal of the Court to allow him to examine and cross-examine witnesses, or to decide as to the degree to which his clients' interests were thereby prejudiced. He alleges that he took the objection that this action could not be sustained at the commencement of the hearing on the 25th July, but that the Court over-ruled it. No note of the point seems to have been made, or of the decision of the Court thereon. There appears to be no law or rule of Court which obliges a Judge to take a note of points of law that are raised, but it would greatly facilitate the work of the Supreme Court, in hearing actions on appeal, if the Judge's notes of the proceedings contained a note of the points of law raised by either party.

The respondents' counsel admits that that portion of the judgment which orders payment of interest from the date of the issue of the writ in this action on the sum of £94 5s. 5cp. (the amount for which the carobs were sold by the plaintiffs, and which was paid into Court under the order of the 1st September, 1893), cannot be sustained, as there was no claim for interest in the writ.

In our opinion the whole judgment should be set aside and the plaintiffs' action dismissed with costs.

We may observe that the title of the judgment and proceedings on appeal appear to be defective, as, under Order XXVIII., Rule 2, after the Egoumenos Gregorios was added as defendant, these documents should have been entitled both with the original and amended title of the action.

*Appeal allowed.*