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there is no procedure by which that order can be erased from the Court records; nevertheless the proceedings were held to be a nullity and no bar to the institution of a subsequent charge in respect of the same offence.

In our opinion Section 52 of the Cyprus Courts of Justice Order, 1882, which enacts that no person shall be tried twice for the same offence, means that where a person has been tried by a Court having jurisdiction to try him and has been acquitted or convicted by a proper and lawful judgment, *the acquittal or conviction is a bar to any further* trial for the same offence.

We decide, therefore, that the plea of autrefois convict has not been sustained.

The accused then pleaded not guilty to the information, and was tried, convicted, and sentenced to death.

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ARGHIRO HADJI LOIZO AND OTHERS *Plaintiffs,*

v.

NAILE HANOUM *Defendant.*

UPROOTING GROWING CROPS—DAMAGES—CLAIM FOR, WHERE CROP SOWN BY TRESPASSER—MEASURE OF DAMAGES—LAND LAW, ARTICLES 21 AND 22—MEJELLE, ARTICLES 907 AND 986.

An owner of land on which trespassers have sown a crop must not uproot or destroy such crop, but should take legal steps to procure the uprooting of the crop by the proper officer.

The measure of damages which the trespasser is entitled to, where the owner has uprooted crops so sown by the trespasser, is the lowest value the crop would have had when standing in the field ripe for cutting, and not the value the grain might have when harvested and brought to market.

APPEAL of plaintiffs from a judgment of the District Court of Nicosia.

The facts and arguments sufficiently appear from the judgment of the Supreme Court.

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

Macaskie, for the respondent.

Sept. 13.

Judgment: The plaintiffs in this action sought to restrain the defendant's interference with a piece of land of which they claim to be the registered owners, and to set aside any registration that may exist for this land in the defendant's name. They also claim damages for the act of the defendant, or her agents, in uprooting a crop of wheat sown by them upon the disputed land.

The plaintiffs' case appears to be that they purchased the land in dispute from Mr. Vitalis or his nominee in 1892, and their case appears to be based entirely upon the registration they then obtained, there being no question as to whether they or their predecessor in title acquired any right by 10 years possession. This claim is founded on the fact that one of the boundaries contained in their kochan is land of "Shukri and Hussein," and that unless the land in dispute belongs to them they will have no boundary Hussein at all. If the plan prepared on behalf of the defendant be correct, we may observe that even if the disputed land as shown on that plan be awarded to the plaintiffs, they will still have no boundary Hussein.

The defendant's defence is, that she has interfered with no land included within the boundaries of the plaintiffs' kochan, and, incidentally, it was contended for her, in the course of the case, that the plaintiffs have no boundary Hussein, and that the entry of this man's land, in their registration as a boundary, was a mistake. If the plan of the disputed land prepared on behalf of the defendant be correct, there was no need for her to raise this by way of defence, as the land shown in that plan as disputed does not adjoin the land of Hussein, though if the plan prepared on behalf of the plaintiffs be correct, it does.

The District Court gave judgment for the defendant, their judgment being apparently influenced by some proceedings in a former action, which, it is admitted, have nothing to do with the present case, but the Court finds as a fact that the plaintiffs' land is accurately described on the plan prepared on behalf of the defendant. The Court also dismissed the plaintiffs' claim for damages.

The plaintiffs appealed, and it was contended for them that the judgment was based upon the proceedings in the former action which had nothing to do with the case: that the whole registration in the defendant's name was wrong, for reasons which we will presently state, and that, even if the land in dispute were held to be the defendant's, the plaintiffs were still entitled to damages in respect of the uprooting of the crops.

With regard to the first contention, we may say that if we came to the conclusion that the judgment of the District Court was otherwise justified by the evidence, we should not interfere with it, because the Court had given weight to extraneous matters.

With regard to the second point, the facts alleged appear to be these. It is said that the defendant was prior to 1886 registered as the sole possessor of land in the neighbourhood of that in dispute, or including it, it is not quite clear

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which. In the new registration which took place in that year, her land was included in one registration with that belonging to the heirs of her deceased husband, Hadji Ahmet Eff., Potamiali. She subsequently applied to the Land Registry Office and requested that the registration might be amended by registering her as the sole possessor of the land she held prior to 1886, and the heirs of Hadji Ahmet Eff. as the sole owners of the lands descended to them from their father. The Land Registry officials, in consequence of her request, went to the spot, and instead of complying with her request and identifying the land for which she had been registered prior to 1886, and effecting a new registration of that in her name, made a division of the lands which belonged to her and the heirs of Hadji Ahmet Eff., according to the extent of land owned by her and the heirs, respectively. It does not appear to be contended that this division was unfair, but that the whole registration was a mistake.

We made enquiry at the Land Registry Office, as we were requested to do, and we find the state of the case to be this.

Naile Hanoum was in 1291 registered as the sole possessor of 266 donums of land at Chumlekji chiftlik, her kochan being numbered 54; Hadji Ahmet Eff. and Mehmet Arif Eff. were also registered as the owners of 266 donums at Chumlekji chiftlik, in equal undivided shares, the number of their registration being 50. The proportion of land then held by Naile Hanoum to that held by Hadji Ahmet Eff., if the latter's share were divided, would be as 2 to 1. In the year 1886, the registration of the whole piece represented on the defendant's plan was effected in the names of Naile Hanoum and the heirs of Hadji Ahmet Eff., this registration purporting to be founded on kochans Nos. 54 and 50 of the old registration. This was undoubtedly a mistake, and how it arose it is difficult to say. Hadji Ahmet Eff. was then dead, and it may have arisen owing to Naile Hanoum having the charge of his estate, though this is only conjecture.

There were other lands comprised within kochans 54 and 50, which appear to have been similarly registered. This registration subsisted until 1891, when Naile Hanoum asked that the registration might be amended, and that she might again be registered as the sole owner of the land described in kochan 54. An official of the Land Registry Office was sent out to the spot, and in the presence of a person who represented the heirs of Hadji Ahmet Eff. effected a division between her and the heirs as we have above mentioned. Why this was done, we have been unable to ascertain, but it appears to have been consented to by both parties.

Raghib Bey, one of the heirs of Hadji Ahmet Eff., is said not to have been present at this division, though we do not understand whether it is denied that the person who represented the other heirs represented him also. It is not contended that he was ignorant of this division. At all events he never appears to have raised any objection to it or to have asked for it to be set aside. On the contrary, he appears to have adopted it, for he subsequently sold to Mr. Vitalis his undivided share in the property that had been so divided. Raghib Bey's share in the inheritance of Hadji Ahmet Eff. was subsequently divided, and the land shown upon the plans allotted to him, or rather to his vendee, Mr. Vitalis. It is on the former division that the land in dispute is contended by the plaintiffs to have been given to the heirs of Hadji Ahmet Eff. and not to the defendant. It appears to us that it is not open to the plaintiffs to take exception to that division now: but if it were, they cannot at one and the same time claim to hold the lands which they have acquired under the division and take exception to the division itself.

On the question of fact as to whether the land in dispute is the plaintiffs' or the defendant's, we think the evidence adduced justified the Court in coming to the conclusion that the disputed land was the property of the defendant and not of the plaintiffs.

There remains only to be considered the question whether, notwithstanding that the land is the property of the defendant, she is liable to pay the plaintiffs the damages they claim for uprooting the crop on 32 donums of land.

The laws quoted to us, as bearing on this point, are Articles 21 and 22 of the Land Code and Article 907 of the Mejellé.

Article 907 says that, if a person sows the land of another of which he is unlawfully in possession, the rightful possessor, on recovering possession of his land, is entitled to recover by way of damages what is termed in the text the "noksan ars" (قـان رض) which is defined in Article 886 to be the difference in the rental value of the land before the sowing and after the sowing.

If Article 907 can be held to apply to Arazi Mirié, it would appear to be in direct conflict with Article 21 of the Land Law, which says, that the possessor on recovering back his land has no right to claim any rent or compensation or the "noksan ars." We may observe that in the case of Arazi Mirié we should be bound by the provisions of Article 21 of the Land Code on this point: but the question does not arise here, as the defendant is not claiming anything from the plaintiffs by way of "noksan ars" or otherwise.

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Article 907 of the Mejellé does not appear to us to affect the question for our decision. Article 21 of the Land Code provides that where land which has been taken possession of and cultivated wrongfully and on which the proper dues have annually been paid, has been recovered through the proper official after trial, neither the official nor the person who has recovered this land have the right to receive from the person who wrongfully took possession any rent or "noksan ars."

Article 22 proceeds to deal with the crops that have been sown on the land so wrongfully taken possession of, and it says, that, when such land has been recovered, the person who has recovered it, *i.e.*, the rightful possessor, can, through the proper officer, compel the person who took possession of it in the manner aforesaid, to uproot any crops or plants planted by him and which have come up, but he has no right to appropriate such crops or plants himself. It is contended for the defendant that this article does not apply, but only regulates the right of the lawful possessor to ask for damages, and does not affect his right to uproot the crops, whilst, on the other hand, plaintiffs' counsel contends that the language of the article shows the intention of the law to be that the lawful possessor on recovering possession has no right himself to uproot the crops.

It appears to us that the law contemplates, that when a wrong-doer trespasses on land in the lawful possession of another, the latter shall proceed to enforce his rights by the proper legal means, that is to say, by legal proceedings in a Court, and if he does so, can get the crop sown upon the land by the trespasser uprooted through the proper official.

It may be that one, and perhaps the main reason, why the intervention of an official is requisite, is that the Government is interested in all crops grown upon Arazi Mirié, inasmuch as it is entitled to a tithe and, therefore, interested in seeing that the crops come to maturity. If the official refuses to interfere, the law is silent as to whether the lawful possessor could then rightfully uproot the crop.

It appears to us that the lawful possessor has no right to take the law into his own hands and seize or appropriate the crop himself.

When the law points out a means by which the lawful possessor may obtain the uprooting of the crop, *i.e.*, through the medium of the competent official, it must, we think, be taken to mean that he is not justified in adopting other means of uprooting the crop, for example, by uprooting it himself, otherwise the provisions in the law would be useless and superfluous.

In the present case the defendant, when the plaintiffs first commenced to plough the land, might have brought an action to restrain them and obtained an interim injunction restraining them until the hearing of the action. Instead of following this course, she waited until the crops had grown to a height of about nine inches, and then uprooted them on her own responsibility without taking any legal proceedings to establish her right to the property in which the crops were growing. In this course we cannot think that she was justified, having regard to what we conceive to be the intention of the law. By the competent official, it seems probable that the law intends an official of the Land Registry Office, and there may be some difficulty in carrying out the provision : but it seems clear that the possessor of the land has no right himself to uproot the crops.

The Land Code is largely founded upon the principles of the Sherie Law, and the principle of the Sherie Law is, that it is not lawful to cause an injury in order to repair an existing wrong.

By an Imperial Iradé of 1302, where the seed sown on the land has not come up, the rightful possessor may, if he chooses, acquire the ownership of the seed, by paying its value to the person who has sown it : but if he does not do this, he must wait until the crop springs up and then can get it uprooted through the medium of the competent official, or suffer the person who has sown it to reap the crop himself. This Iradé is not in force here, but it certainly strengthens the view we take of the law that the seed sown upon another's land is the property not of the owner of the land, but of the person who sowed it. The lawful possessor of the land has no right to seize the crop himself ; and it appears to us that the possessor of the land may seize it within the meaning of the law, even though he makes no beneficial use of it. By uprooting it, as she did, the defendant deprived the plaintiffs altogether of the crop which, in the eye of the law, was their property.

We, therefore, feel it necessary to hold that the defendant is liable in damages to the plaintiffs, and the question then arises as to what the measure of the plaintiffs' damages is. We have come to this conclusion with great reluctance, because we consider it to be clear that the plaintiffs are the wrong-doers throughout. When they were ploughing the land, they were warned to desist, as the land was claimed by the defendant, but in spite of the warning they persisted in their action, and wrongfully kept possession and sowed the land which the Court has found to be the property of the defendant. It is unfortunate for the defendant that she was not advised to commence legal proceedings at once against the plaintiffs, when she might, after getting a

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judgment in her favour, have procured the crop to be uprooted. The plaintiffs, of course, would have been entitled to take possession of the crop so pulled up, though it would not have been of much value to them, unless it chanced to be ripe.

As she took no legal steps to enforce her rights, the crop remained, in the eye of the law, the property of the plaintiffs, and they would have been entitled to reap it. The measure of damages appears to us to be the value the crop would have had at the time when it stood in the field ripe for cutting, and not the value that the grain when threshed out and brought to market would have. There is no evidence before the Court as to what the value of these 32 donums of wheat was, and we must remit the action to the District Court for both parties to lay such evidence before the Court.

Taking the view we do, and as the Judges of the District Court apparently did, of the plaintiffs' acts, we think justice will be done by the Court awarding to the plaintiffs the very lowest value which competent and disinterested persons who know the land and the nature of the soil would estimate a crop of standing wheat to be worth.

Our judgment, therefore, will be, that the judgment of the District Court, in so far as it dismissed the plaintiffs' claim for damages be set aside, and that the action be remitted to the District Court for further hearing as to the amount of damages the plaintiffs are entitled to recover.

Although the plaintiffs have succeeded in the appeal, they have only succeeded on one portion of their claim, and regarding as we do, both parties to this proceeding to be in fault, we shall direct each party to bear his own costs of this appeal.

Judgment varied. Action remitted to District Court for evidence as to damage.