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The other question which was argued on the appeal was, whether or not the order of the District Court of Nicosia of the 22nd June was a "judgment" and constituted the Plaintiff a "judgment creditor" of Maria, in the sense in which those terms are used in Law VIII of 1894, so as to enable the Plaintiff to register under that Law. As it is not necessary to decide this for the purpose of disposing of the appeal we had better give no opinion on it.

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November 24

[HUTCHINSON, C.J. AND TYSER, J.]

PAULI HAJI DEMETRI, *Plaintiff,*

v.

ANASTASSI HAJI DEMETRI, *Defendant.*

MULK IMMOVEABLE PROPERTY—INFORMAL SALE—RIGHT TO PROFITS WHICH HAVE ACCRUED BEFORE SALE SET ASIDE—INFANT.

The Plaintiff obtained against the Defendant, who was his brother, a writ of partition of certain mulk property occupied by the Defendant under an informal sale from their father, and under the partition had certain of the property allotted to him. The Plaintiff now claimed the profits of the property allotted to him for 15 years past.

HELD: *that he was not entitled to the profits of the property allotted to him.*

A person holding mulk immoveable property as vendee under an informal sale without opposition cannot be made to account for the profits.

When the legal owner recovers such property from the person so holding it, he is entitled to the profits from the date of the service of the writ.

APPEAL of the Plaintiff from the judgment of the District Court of Larnaca.

The claim was to recover the value of 15 years' produce of certain trees alleged to be the property of the deceased father of the Plaintiff and Defendant.

At the hearing of the case no witnesses were called; the facts were admitted, and, so far as they are material, are as follows:

1. Plaintiff and Defendant were children of the same father.
2. In 1876 their father sold to the Defendant by an informal sale certain property including the trees in question.
3. In 1886 the father died leaving children and a widow.
4. Plaintiff was a posthumous child born after the death of his father.
5. Plaintiff had no guardian.
6. In 1895 the Plaintiff brought an action for partition, and in 1903 judgment was given in his favour, and the trees, the produce of which was in question, were allotted to him as part of his share.
7. The Defendant had been in the enjoyment of these trees for a period of 15 years.

8. From the date of the informal sale until the issue of the writ in the action for partition no one had opposed the occupation of the Defendant.

The question to be argued was stated to be, " Has Plaintiff on these facts a right of action in damages ?"

The District Court dismissed the action.

Rossos for the Appellant:

The Defendant did not take the produce *bonâ fide*, because he knew the property was registered in his father's name. His right to enjoy as purchaser was only for the life time of the vendor. After the partition action was brought the Defendant was a trespasser. The Plaintiff is entitled to his share of the produce.

He cited Mejellé, Arts. 1064, 1073, 1037, 798, 903.

Christinou *v.* Queen's Advocate, 1 C.L.R., 46; Michael *v.* Sava; 3 C.L.R., 140.

Themistocles for the Respondent:

Defendant is not a trespasser. He is a *bonâ fide* possessor. No question of ownership. An unregistered owner is not entitled to profits.

Judgment: If the intention of the parties was to raise the question whether the Plaintiff could on the facts admitted recover the sums claimed by him in the action, it is clear that he could not do so. *December* 2

His claim is for the profits made from his divided share during the years in which it was undivided.

This he would not be entitled to recover. Nor would the amount calculated on that basis be any measure of the amount to which he would be entitled, if he is entitled to anything at all.

He could under any circumstances be entitled only to a share of the whole profit made from the whole estate.

What that was is not shewn on the admitted facts. The loss on the rest of the property might have exceeded the profits on the share which was allotted in the partition action to the Plaintiff, in which case his share of the whole would be nothing.

The point argued by Mr Rossos appears to be that the Defendant on the death of his father, or, if not, after the bringing of the action for partition, was a trespasser so far as regards the share allotted to the Plaintiff at the time of the partition, and that therefore an action for damages would lie.

He argued before us that the share of the Plaintiff while in the hands of the Defendant was like a thing deposited for safe keeping, (Mejellé, Art. 1087), and that therefore the benefits derived from that share belong to the Plaintiff, (Mejellé, Art. 798).

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Now if the property in the hands of the Defendant was like a thing deposited for safe keeping it is quite clear that the Defendant was not a trespasser.

Moreover the death of the father did not put an end to the Defendant's tenancy under the informal contract of sale.

Some contracts, *e.g.*, a loan for use, (Mejellé, Art. 807), become annulled by the death of either party.

But that is not so with an informal sale. It is certainly not annulled by the death of the purchaser. Nor in our opinion is it annulled by the death of the vendor.

If the heirs do not use their right as registered owners to take the property from the purchaser, he continues in possession as of right under the contract and at the expiration of the time prescribed by Law can claim to be registered as owner.

Therefore after the death of the vendor the Defendant continued to hold as purchaser; he was not a trespasser nor did he hold as joint owner; and we can see no ground for saying that there accrued to the Plaintiff at the time of the vendor's death a right to share in the produce.

The fact that the Plaintiff is a minor, although it entitles him to assert his right to set aside the informal sale after the expiration of a time when he would otherwise be barred, will not enable him to claim as though his right had been asserted before it really was.

His claim, if any, must therefore arise from the time when he asserted his right by the issue of a writ.

After the issue of the writ in the partition action we are of opinion that the Plaintiff must be regarded as joint owner in the property.

He had asserted and given notice to the Defendant of his right to share in the property and to set aside the informal sale.

The Defendant was not a trespasser; but after the issue of the writ he held as joint owner, and was liable to account to the Plaintiff for his share of all the profits from the estate of the father in his possession under the informal sale.

The Defendant therefore is not liable in damages as a trespasser. There is no claim for an account, and no evidence or admission that any profits were made out of the whole estate by the Defendant.

Therefore the appeal must be dismissed with costs.