

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

IN THE MATTER OF THE PETITION OF ANTONI  
YANAJI HAJI SOPHIA,

AND

IN THE MATTER OF THE MALICIOUS INJURY TO  
PROPERTY LAW, 1894.HUTCHIN-  
SON, C.J.  
&  
TYSER, J.  
1905

Nov. 21

MALICIOUS INJURY TO PROPERTY LAW, 1894 (VI. OF 1894) SEC. 2—MUKHTAR  
AND COMMISSION—NOTICE—LAW OF VILAYETS, ART. 58.*The provisions of Section 2 of the Malicious Injury to Property Law are sufficiently complied with if a notice given to one member only of the Commission by the petitioner reaches all the members.*

This was an appeal of the petitioner from the judgment of the District Court of Limassol dismissing the petition on the ground that the petitioner had failed to comply with the provisions of Section 2 of the Malicious Injury to Property Law, 1894, requiring notice to be given to the Commission of the village.

Section 2 is in the following terms:—

“Where any damage or destruction has been caused to property maliciously by persons unknown, and the owner thereof shall desire to obtain compensation under this Law, notice of such damage or destruction shall be given by him, or on his behalf, as soon as possible to the Mukhtar and Commission of the village within the lands of which the property is situate or the damage has been caused.”

“Should the damage or destruction be caused to property situate within the lands of more than one village, notice thereof, as aforesaid, must be given to the Mukhtars and Commissions of every such village respectively.”

At the trial the only evidence as to the notice being given was that of the petitioner, who said “I reported the damage to the village Commission of Kato Kivides.” \* \* \* \* “I informed Kato Kivides Commission on the following Monday” \* \* \* “I informed the Mukhtar and one Aza of Kato Kivides.”

The District Court found that Kato Kivides was the village liable and the judgment of the Court on this point was confirmed on appeal. The District Court further held that by Art. 58 of the Law of Vilayets a village Commission consists of not less than three members; that there was no evidence to shew that the Commission of Kato Kivides consisted of less than three members; that the petitioner said “I informed one Aza of Kato Kivides” and that therefore he had not given notice to the Commission of the village.

The only question for decision was whether sufficient notice had been given to comply with the provisions of Section 2 which is set out above.

*Artemis* for the petitioner argued:

That it was not proved that there was more than one Aza. He referred to Law III of 1892.

*Menardos* for the Respondent argued:

That the seal of the Commission is to be kept by the elder Aza (Sec. 11, Law XV of 1901); therefore there must be more than one Aza.

HUTCHIN-  
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Dec. 23

*Judgment:* CHIEF JUSTICE: There is no evidence as to how the Commission of Kato Kivides is constituted.

It is stated in the judge's notes that the Advocate for the village of Kato Kivides cited Sec. 2 of the Law; but it is not expressly stated that he raised the objection that due notice was not given to the Commission; from the cross-examination, however, and the reference to Sec. 2, and from the way in which the Court dealt with the case I conclude that he did so.

The District Court found that Kato Kivides was the village within the lands of which the property was situate.

The majority of the District Court held that, as by law a Village Commission consists of not less than three members, and there was no evidence to show that Kato Kivides Commission consists of less than three members, the petitioner had failed to comply with Sec. 2 of Law VI of 1894, and dismissed the petition.

The Law does not state any special mode of giving notice to the Commission, nor the object of the notice, nor does it require the Mukhtar or the Commission to do anything upon receiving the notice. But no doubt the provision was inserted for the protection of the villagers and to give the Mukhtar and Commission the opportunity to at once enquire into the circumstances under which the damage was said to have occurred.

In my opinion the requirement that "notice shall be given to the Commission" is not satisfied by giving notice to one of the Azas where the Commission is composed of two or more Azas, unless there is some evidence that the other Aza or Azas became aware of it. This Law enables the complainant to obtain compensation from persons who are presumably innocent; and it is reasonable that he should comply strictly with the provisions which are intended for the protection of those persons. And if the Legislature had intended that notice need only be given to one of the Azas it would probably have said so.

I infer from the evidence to which I have referred that there was probably more than one Aza of the Commission of Kato Kivides and that the petitioner did not himself give notice to more than one of them.

But the law only requires notice to be "given by him or on his behalf;" and it is enough if there is sufficient evidence that the notice which was given to the Mukhtar and the one Aza reached all the members of the Commission. The evidence as to this is not so clear as it might very easily have been made, probably because the defence did not make any real point of the objection.

The petitioner however stated that he had "informed the Village Commission;" one member of the Village Commission was called as a witness, but was not asked any question about this; and there is no evidence in disproof of the petitioner's statement that he had informed the Commission, unless it be his own statement in cross-examination that "I informed the Mukhtar and one Aza." I think, though I have had considerable doubt about it, that there is here sufficient evidence that notice of the damage was given to the Commission.

I think therefore that the judgment appealed from should be set aside. We assess the damages at £16, and give judgment that £16 and the

costs of the petitioner in the District Court and of the appeal be paid to him by the tax-paying inhabitants of Kato Kivides.

TYSER, J.: It is difficult to ascertain what is the meaning of the term "Commission" as used in this Law.

The District Court think that it is the body formed in accordance with the provisions of Art. 58 of the Law of Vilayets (1 Destur, 608, 609.)

That Section provides that in every village for every community in the village there shall be an assembly of elders (Ikhtiyar Mejlissi) composed of not more than twelve and not less than three persons; that these members (azas) shall be elected in accordance with the regulations of Chapter V of the law; and that in every village the Imams of the Mussulman inhabitants shall ex-officio be members of the assembly of elders of their Community.

By Art. 54 of the same law: In every village for every community of the inhabitants there are to be two Mukhtars each elected according to Chapter V; but if any community of the inhabitants in a village be of less than 20 houses, there shall only be one Mukhtar for it.

By Art. 60: The eldest of the Mukhtars shall always preside over the assembly of elders.

If the term "Commission" in the law of 1894 means the assembly or council of elders constituted in the law of Vilayets, a Commission must consist of three to twelve elected members, the religious heads of the Community and the Mukhtar.

But the law of 1894 speaks of the Commission of a village; whereas the Vilayet law provides for a council for every community in a village.

Legislation since the British occupation is as follows:—

Law IV of 1878, Sec. 5, and Law XV of 1891, deal with the functions and appointment of Mukhtars.

Law III of 1892 is only in force in villages to which the High Commissioner in Council has ordered it to be applied, or which petition for its application, and as far as I can ascertain from the Gazettes is not in force in Kato Kivides.

It appoints certain dates for the election of members, and if no election takes place, the Commissioner appoints persons resident in the village not exceeding three in number to act as *Village Commission*.

The Law XXIII of 1899 refers to this Law but there is nothing in it material to this case. There is nothing in any of these laws which constitutes a Village Commission unless Law III of 1892 does so.

The term "Village Commission" has been used in other laws, and the Council of Elders has been referred to in various terms. But I cannot gather from them what legally constituted body is referred to.

Law VI of 1885: The term "Mukhtar and Azas of the village" is found.

Law XI of 1887: the term "Mukhtar and Azas of the village" is again found.

Law XIV of 1889: the term "Mukhtar and Azas of the village" is again used.

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Law XX of 1891: defines the term "Village Commission" as used in that law to mean "the Mukhtar and Azas of any village."

Law III of 1892: the term "Village Commission" as used in that law is defined to mean "the Village Commission as at present constituted by the law together with the Mukhtar of the village."

In laws passed after the commencement of Law X of 1901, the term "Village Commission" means "the persons who are recorded in the office of the Commissioner of the District as being the Azas for the time being of any village."

Now the fact is that there is no law constituting a Village Commission (except Law III of 1892 which does not seem to apply to Kato Kivides), but there seems to have grown up a system of calling the Mukhtar and Azas, that is to say, the members of the Council of ancients of the communities in villages, the Mukhtar and Azas of the village.

Probably in the small villages of Cyprus there would often only be one community and the Mukhtar and council of elders for the community would be the Mukhtar and council of elders for the village.

Subsequently the legislature seems to have used the term "Mukhtar and Azas of the village" to represent this body, and in the Law XX of 1891 the term "Village Commission" was invented to describe this body. There seems to have been some idea that "Aza" means "elder;" it merely means "member." The Turkish word for "elders" is "ikhtiyar."

In the Turkish law of Vilayets there is no mention of a Village Commission—the term always is Council of Elders—some Members of this Council were elected, the religious chief of the body was ex-officio a member and the elder Mukhtar presided.

I am not prepared to find as matter of law that a Village Commission is constituted in all respects in the same way as a Council of elders.

I am not prepared to say that it always has three or any other number of elected members.

There is no proof given that in this case there was as a fact more than one member.

The Plaintiff swore that he gave notice to the Commission and there is no proof that there was any member of the Commission to whom he did not give notice.

For this reason I should hold the notice sufficient.

Even if there were more than one member of the Commission I am satisfied that all of them had notice.

If notice to one did in fact come to the knowledge of all immediately after it was given, it could hardly be contended that notice was not given to all the members of the Commission; it certainly would be received by them all.

It is for the Court to say whether it is satisfied that the notice reached a person standing in such a relation to the Commission that it can infer as a fact that the Commission had notice.

Here one Aza of the Council was served and also the Mukhtar. The Respondents bring no evidence to shew that any of the Azas of the Council did not receive notice. On the evidence I am satisfied that all the Azas, however many there may be, did receive notice.

I give no opinion as to what would be the effect of giving notice to one Aza in a case in which it was proved that other members of the Council did not in fact receive notice.

I am of opinion therefore that the notice is sufficient. It has already been decided that Kato Kivides is the village liable.

As to the amount of damage there are two assessments. One at £22 the other at £10 11s. Probably the amount of damage lies between the two estimates. I find therefore that the amount of damage is £16. Judgment for the Plaintiff for this amount with costs here and in the Court below.

*Appeal allowed.*

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PHILOTHEOS ARCHIMANDRITES

*Plaintiff,*

v.

BASIL PETRI

*Defendant.*

EX-PARTE XENOPHON CHRISTODOULOU.

HUTCHIN-  
SON, C.J.  
&  
TYSER, J.  
1905  
} Dec. 9

JUDGMENT CREDITOR—MEMORANDUM OF JUDGMENT—SALE BY MORTGAGEE—PROCEEDS OF SALE BY SHERIFF—PRIORITIES—LAW VIII OF 1894, SEC. 9—LAW IX OF 1896, SEC. 10.

*A judgment creditor who has placed a memorandum of judgment on the property of his judgment debtor which was subject to a mortgage, has no special rights over the proceeds of the sale of the property when sold by the mortgagee.*

APPEAL by Xenophon Christodoulou from the order of the District Court of Nicosia of 14th October, 1905, dismissing his application to set aside an order made by that Court on the 10th January, 1905, for payment of £3 1s. 8cp. to the Plaintiff Philotheos.

The Plaintiff Philotheos and the applicant Xenophon were both judgment creditors of Basili.

On 23rd November, 1903, Xenophon placed a memorandum of his judgment on certain immovable property of Basili;

On 19th December, 1904, that property was sold in execution under a writ obtained by another judgment creditor of Basili, who had a mortgage on the property prior to the judgments of Xenophon and Philotheos; and after payment of what was due on that writ there was a balance from the proceeds of sale of £3 1s. 8cp. in the hands of the Sheriff;

On 28th December, 1904, Philotheos applied to the Court for an order to attach the £3 1s. 8cp. towards payment of his judgment debt;

On 29th December, 1904, attachment issued on Philotheos' application;