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

ABDUL JELAL IBRAHIM, *Plaintiff,*

v.

SALIH SUBHI AND ANOTHER, *Defendants.*

NEIGHBOURS' RIGHTS—EXCESSIVE DAMAGE—MEJELLE, ARTS. 1198 and 1200.

It is not necessary to prove excessive damage when there is a trespass on the property of another. The Defendants built a house, the drip from the roof of which fell on the threshing floor of the Plaintiff. The Plaintiff did not prove excessive damage.

HELD: *that the Plaintiff was entitled to an injunction to restrain the Defendants from allowing the drip to continue.*

This was an appeal by the Plaintiff from the judgment of the District Court of Nicosia.

The facts were as follows:—

The Defendants bought a stable near the Plaintiff's threshing floor, the roof of which was so constructed that the drip from it did not fall on the threshing floor.

The Defendants erected on the site of the stable a shop from the roof of which the drip fell on the threshing floor.

The claim in the action was for an order on the Defendant to put a stop to the damage caused by the dripping of the water from his roof on the Plaintiff's threshing floor.

The Court found that there was no " excessive " damage such as is contemplated in the Mejellé and dismissed the action.

Chacalli and *Sadreddin* for the Appellant.

They cited Mejellé, Arts. 20, 31, 96, 1192, 1194, 1200 and 1201.

Artemis for the Respondent, argued:

That there was no excessive damage, that an injunction could not be granted unless there was excessive damage, that there was no difference between the drip from the roof and the dust from a threshing floor, Mejellé, Art. 1200.

Judgment: CHIEF JUSTICE: In my opinion it is not necessary to prove actual damage in such a case as this, *i.e.*, where the Defendant is turning water into the Plaintiff's land. It is a case of trespass, and a trespass which, if persisted in sufficiently long, would give the Defendant a right by length of user to do what he is doing.

In my opinion Art. 1198 and those following deal with acts which a man does on his own property, such as, making smells or noises or blocking out light, which are not actionable unless they cause damage to his neighbour. They do not refer to acts which are a trespass on another's property, such as entering on it, or throwing or placing on it water or sewage or stones or dust.

Although Art. 1231 only says that a person cannot make his drip fall on the " house " of another it does not impliedly legalise the turning of rain water from the roof of a new house on to a neighbour's garden or field or yard.

HUTCHINSON, C.J. & TYSER, J.

ABDUL JELAL IBRAHIM v. SALIH SUBHI

TYSER, J.: The term "damage" is used in two senses. Sometimes it is used to denote the infringement of a right (injuria), and sometimes to denote a loss or damage (damnum) sustained consequent on an act, which act may be an infringement of a right (injuria) or not.

The infringement of a right without loss or damage may give a right of action.

Where a person complains of acts done by a neighbour on the neighbour's property, his only right is that he should not be subjected to excessive damage by reason of such act. There is no right infringed unless there is excessive damage.

Mere damage without the infringement of a right does not give a right of action.

In this case the Defendants are committing a trespass on the land of the Plaintiff and that is an infringement of the Plaintiff's rights. If there were damage the Plaintiff could recover compensation for it, and whether there be damage or no, the Court will always grant an injunction where the trespasser wrongfully claims a right to continue the trespass.

If the Court refused to grant an injunction the trespasser might obtain a prescriptive right to do the act of which the Plaintiff complains.

Appeal allowed and judgment entered for the Plaintiff with costs of appeal and in the Court below.

Appeal allowed.

HUTCHINSON, C.J. & TYSER, J. 1905

Dec. 8

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

OSMAN BEY HASSIB BEY AND ANOTHER *Plaintiffs,*

v.

HAJIRE SALIH AND MUSSA EMIN ALI *Defendants.*

RULES OF COURT—ORDER IX R. 7—INFANT—DEFENDANT—GUARDIAN AD LITEM.

Where it appears that the Defendant to an action is a minor, the Court should appoint a guardian for the purposes of the action.

If the Defendant is a Mussulman it is not necessary that application should be made to the Qadi for the appointment of such guardian.

This was an appeal from the judgment of the District Court of Paphos.

The Plaintiffs sued the Defendants on a bond. On the appearance of the parties for settlement of issues it appeared that the writ was served on the uncle of the Defendant Mussa, with whom Mussa was living, it being alleged that Mussa was only 16 years of age.