

HUTCHIN-
SON, 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.

HUTCHIN-
SON, 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.

Sami Effendi, Ordinary Judge, sent the case to the full District Court. The full District Court refused to settle issues on the ground that a guardian should be appointed and that the Qadi should appoint the guardian.

The Plaintiffs appealed.

Pavrides for the Appellants.

The Court gave judgment that the case should be remitted to the District Court with directions that, if it appeared as was alleged that the Defendant Mussa was an infant, that Court should appoint a guardian *ad litem*, and, if it did not so appear, that the Court should, on due proof of service of the writ of summons on the Defendants or on their appearance, proceed to settle the issues or give judgment as the case might require.

Appeal allowed.

HUTCHIN-
SON, C.J.
&
TYSER, J.

OSMAN BEY
HASIB BEY

v.
HAJIRRE
SALIH
AND
MUSSA
EMIN ALI

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

PAPA PHILIPPO HAJI MICHAEL AND OTHERS *Plaintiffs,*

v.

CHRISTODOULO GEORGIADES AND ANOTHER *Defendants.*
EX-PARTE: PAPA PHILIPPO HAJI MICHAEL AND OTHERS.

HUTCHIN-
SON, C.J.
&
TYSER, J.
1905

Nov. 15

COSTS—PARTY AND PARTY—TAXATION—SPECIAL AGREEMENT.

On taxation between party and party, a party cannot recover for costs a sum which he has neither paid nor is liable to pay.

Where there is an agreement between advocate and client to conduct an action for a gross sum the client can only recover in taxation between party and party the amount fixed by the agreement or so much thereof as is allowed in taxation.

This was an application on behalf of the Plaintiffs that fees for advocates and instructions to advocates, higher than those contained in the scale of costs, should be allowed, the case being one of unusual difficulty.

Artemis for the Applicants stated that he was the advocate for the Applicants, that he had no right to claim these higher rates from his clients. That if the amount allowed in taxation was less than the amount his client had agreed to pay him, he then would have a claim on his client. That if the amount allowed in taxation exceeded the amount agreed to be paid by his client, that the surplus would belong to the advocate and the client would get no benefit.

He stated further that advocates do agree to conduct proceedings for costs recovered on taxation from the other side, and that if such an agreement existed, they would feel justified in applying for fees on a higher scale.

Theophani Theodotou opposed the application.