

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

HAJI MUSTAFA EFFENDI HAJI AHMED EFFENDI,
Plaintiff,

v.

REES-DAVIES AS KING'S ADVOCATE, *Defendant.*HUTCHIN-
SON, C.J.
&
TYSER, J.
1906

March 12

GOVERNMENT, CLAIM AGAINST—PROCEDURE—IN RESPECT OF WHAT MATTERS
ACTIONS AGAINST THE GOVERNMENT CAN BE HEARD—CYPRUS COURTS OF
JUSTICE ORDER, 1882, SEC. 44—FORM OF CLAIM—FORM OF JUDGMENT.

*In an action against the Government "the King's Advocate" is the Defendant
and not the person who happens to fill the office at the time the action is brought.*

*The claim against the Government should be for a declaration of the Plaintiff's
right.*

The Government cannot be sued for damages for an alleged wrong.

The Court will not grant an injunction against the Government.

This was an appeal from the District Court of Paphos.

The facts so far as material were as follows:—

The Plaintiff was the owner of certain field over which there existed a
public right of way from time immemorial.

The Government made a road along the place where the old right of
way had existed, but made it wider than the old road had been.

The Plaintiff claimed amongst other things, (1) an order to restrain
the Government of Cyprus from interfering with his field, (2) that the
Government might be compelled to destroy the road opened through his
field, and (3) costs.

The District Court gave judgment that the Government be restrained
from interfering with so much of the said land as had been trespassed
upon by the excessive extent of the public way, and ordered that the
injunction be suspended for three months to enable the Government to
acquire the land, and refused to order the destruction of the way which
was in excess of the public right of way, and ordered that the Plaintiff
should recover half his taxed costs.

The Plaintiff appealed.

Artemis and Pascal for the Appellant argued that as the Court found
there was a trespass, it ought to have granted an immediate injunction
and ought not to have suspended it for three months.

Amirayan for the Respondent.

Judgment: The action is brought under Sec. 44 of the Cyprus
Courts of Justice Order, 1882, and the consent required by that section
was obtained.

Both the title of the action and the claim in the writ are wrong.

An action under Sec. 44 must be against "the King's Advocate,"
and not against the person who happens to fill the office at the time the
action is brought.

As to the claim, it should be not for an order directing the Govern-
ment to do or refrain from doing something, but for a declaration of the
rights of the Plaintiff.

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It should set out shortly the facts and state the Plaintiff's claim.

In this case for example, the claim should have stated that the Plaintiff was owner of the land, that the Government had placed a road on the land, there being no right to put such road there, and it should have claimed a declaration that the Plaintiff was entitled to the part of the field upon which the Government had placed the road.

Sec. 44 of the Order in Council enacts that no claim against the Government shall be entertained unless it is an action of the same nature as claims which may be preferred against the Crown in England under The Petitions of Right Act.

Now it is a maxim of English Law that the Crown, *i.e.*, the Government, can do no wrong, and no claim for damages for a wrongful act can ever lie against the Government.

The procedure by Petition of Right is applicable where the Government has through misinformation or inadvertence possessed itself of the lands, goods or money of a subject; the object of the petition being to obtain restitution, or compensation, where restitution cannot be made. It is also appropriate when a claim arises out of a contract, as for goods supplied to the Government or for the public service: (Broom's Constitutional Law, 239).

The procedure in England in such a case is governed by the Petitions of Right Act. The claimant presents his petition to the Government; and, if the Government assents to its investigation by a Court of Law, it is brought before a Court; the Court declares what are the rights of the petitioner, and the Government acts on that declaration.

The Law in Cyprus is similar to the Law in England. No claim against the Government will be entertained unless it is of the same nature as a claim which might be brought against the Crown in England. Therefore no claim for acts other than those hereinbefore mentioned will lie. So also the consent of the High Commissioner must be obtained to the action being brought.

Consent having been obtained an action can then be brought against the King's Advocate, as nominal Defendant. Any judgment or decree given or made in such an action is a judgment or decree which binds the Government, the claim being made against the Government, and therefore the Court should not give a judgment or make a decree which it would not make against the Government.

The Court will not grant an injunction against the Government. It would be idle to do so, because the injunction could not be enforced. The judgment must be in the form hereinafter set out. There can be no mandatory injunction to remove the road in such a case as this.

The argument raised in the appeal that the injunction ought not to have been suspended is bad. No injunction should be granted at all.

Judgment should be in the following form:—

The action of the Plaintiff coming on this day to be argued before this Court by the consent of His Excellency the High Commissioner in the presence of advocates for the Plaintiff and for the King's Advocate.

On hearing what was alleged by the said parties this Court doth declare that the Plaintiff is entitled to (the land mentioned in the writ) and to hold the same free from interference save so much of the said land which lies within a space of land comprised within the present Eastern (or Agia Marina) side of the existing public way and a line drawn parallel to it at a distance of $3\frac{1}{2}$ feet therefrom and this Court doth further declare that the Plaintiff is entitled to be paid by the Government half the costs of the action in the District Court.

No costs of appeal.

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

POLICE,

Plaintiff,

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PROCOPI HAJI YOSSIFI,

Defendant.

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—
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CRIMINAL CODE, ART. 260—FINE AND IMPRISONMENT.

Under Art. 260 of the Criminal Code the Court may inflict a fine or imprisonment or both.

Appeal from the decision of the Nicosia Magisterial Court.

The Appellant was convicted of making a disturbance under Art. 260 of the Criminal Code.

It was his first offence and he had a good character and the Court sentenced him to three days imprisonment and a fine expressing its opinion that that was the lowest punishment it could inflict.

Pascal for the Appellant.

Judgment: Art. 260 of the Criminal Code means that persons who commit the offence described by that article are punished by fine and they are also punished by imprisonment. It does not mean that both punishments must necessarily be inflicted but that the person convicted may be sentenced to fine or imprisonment or both. A comparison of Art. 260 with Arts. 255 and 258 makes it clear that the legislator in this case did not intend that both punishments should necessarily be inflicted.

Imprisonment remitted and in all other respects conviction and sentence affirmed.