

[HUTCHINSON, C.J. AND FISHER, ACTING J.]

ANTONI THEODOTOU AND OTHERS,

Plaintiffs,

v.

PHILOTHEUS, ARCHIMANDRITE OF THE
ARCHBISHOPRIC OF NICOSIA,

Defendant.

HUTCHIN-
SON, C.J.&
FISHER,
ACTING J.
1906

July 18

PRACTICE—FRIVOLOUS AND VEXATIOUS ACTION—CLAIM FOR BARE
DECLARATION.

The Courts will not entertain an action for a bare declaration, where no damages, injunction or other relief is claimed, and where effect can only be given to the declaration by further proceedings against persons not parties to the action.

The Plaintiff claimed against the Defendant a declaration that a report of the result of an election made by the Defendant as presiding officer under Sec. 20 of the Education Law, 1905, was invalid. No damage, injunction or other relief was asked for.

HELD: that the action was frivolous and vexatious and ought to be dismissed.

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

The facts appear from the judgment and are more fully referred to in the case of the *Committee of the Greek-Christian Schools of Nicosia v. Antoni Theodotou and others*, reported on pp. 35-6 of this volume.

Theodotou for the Appellants.

G. Chacalli for the Respondent.

Judgment: CHIEF JUSTICE: The Plaintiffs by their writ claimed that the report which the Defendant, purporting to act under Sec. 20 of the Education Law, 1905, made to the Commissioner of Nicosia of the result of an election of a School Committee may be declared invalid, on the grounds that no lawful election was held, and that the report was not true, and that it did not comply with the requirements of the law, and that the Defendant was not entitled to act as presiding officer at the election.

The District Court at the trial, without taking any evidence, dismissed the action on the ground that the matters in issue were all *res judicatae*, having been in issue and adjudicated on in another action in which the same persons were parties.

There was no evidence or admission as to any former action, and therefore the judgment appealed from cannot be supported on the ground on which it proceeded.

But I think there is another ground on which the action might rightly have been dismissed.

The Defendant purported to act as presiding and returning officer at an election of a School Committee, and he made a report that the election had been duly held and that certain persons had been elected. The election took place on the 18th of June, 1905; the report was made on the 23rd of June and the writ in this action was issued on the 13th of December, 1905.

HUTCHIN-
SON, C.J.
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DRITE OF
THE ARCH-
BISHOPRIC

The Plaintiffs allege that the report was false, and ask for a declaration that it was invalid. They do not ask for any further or other relief: no damages, no injunction, no order of any kind.

The result, if the Court should give judgment for the Plaintiffs, would be futile: the parties would be just where they were before the writ was issued. No one else would be bound by the judgment. And if the Plaintiffs wanted any order against the persons whom this Defendant reported to have been elected, they would have to sue those persons and would be no better off than if they had obtained no judgment in this action.

For the reasons above given I am of opinion that this action is frivolous and ought to have been dismissed by the District Court on that ground. This appeal should therefore be dismissed and the Plaintiffs should pay the cost of it.

FISHER, ACTING J., concurred.

Appeal dismissed.

TYSER, C.J.
&
FISHER,
ACTING J.
1906

Nov. 26

[TYSER, C.J. AND FISHER, ACTING J.]

MOLLA MUSTAFA HAJI AHMED, Plaintiff,

v.

ABDUL-KADIR HASSAN AND ANOTHER, Defendants.
ABDUL-KADIR HASSAN AND ANOTHER, Plaintiffs,

v.

MOLLA MUSTAFA HAJI AHMED, Defendant.

PREScription—IMMOVABLE PROPERTY LIMITATION LAW, 1886—EFFECT OF REGISTRATION ON PRESCRIPTION.

A. K. was the registered owner of immovable property (assumed for the purpose of the judgment to be Mulk). M. M. had enjoyed undisputed adverse possession of the property for over 15 years. The evidence showed that A. K. was not lawfully entitled to be registered.

HELD (per Tyser, C.J.): that an action by A. K. against M. M. for the recovery of the property was not maintainable.

The effect of the Immovable Property Limitation Law, 1886 (No. IV of 1886) considered.

The case of Ali Effendi Hassan v. Haji Parasketou Sava (1892) (2 C.L.R., 58) commented on.

These cases were appeals from the District Court of Nicosia.

The actions were taken as cross actions.

In one action (No. 913 of 1904) Mulla Mustafa Haji Ahmed was the Plaintiff and Abdul-Kadir Hassan and Mehmed Ibrahim were the Defendants.

In the other action (No. 1 of 1906) Abdul-Kadir Effendi Molla Hassan and five others were the Plaintiffs and Molla Mustafa Haji Ahmed was the Defendant.

Both actions were in respect of the same piece of land.