

TYSER, C.J.
&
BERTRAM
J.
1909
} May 3

[TYSER, C.J. AND BERTRAM, J.]
PAPA VASILIO SOLOMOU

v.

A. K. BOVILL AS PRINCIPAL FOREST OFFICER.

PRACTICE—SETTLEMENT OF ISSUES—POWER OF SINGLE JUDGE TO STRIKE OUT
CASE AS DISCLOSING NO CAUSE OF ACTION.

ACTION AGAINST PUBLIC OFFICER IN OFFICIAL CAPACITY—FOREST DELIMITATION
LAW, 1881, SECS. 6 AND 7.

Plaintiff sued the Defendant, as Principal Forest Officer, claiming an injunction to restrain him from interfering with certain immovable property, and an order calling upon him to replace certain forest curns, alleged to have been removed, to their original position. The President of the Court, at the settlement of issues, struck out the case on the ground that no such action would lie.

HELD: That the order not being an order dismissing the case on its merits, the President was competent to make it.

An action will not lie against an officer of the Government in his official capacity to restrain him from doing, or to order him to do official acts.

A person who is aggrieved by the official action of an officer of the Government whom he alleges to have deprived him of his immovable property should either bring an action against the Government claiming the restitution of the property, or sue the officer personally for trespass.

This was an appeal from a decision of the President of the District Court of Nicosia, sitting as a single Judge for the settlement of the issues in the action.

The claim in the action was that the Defendant be restrained from interfering with the Plaintiff's field, and that the Defendant should be ordered to rebuild a cairn at the place where it was built at the time of the delimitation, from which for unknown reasons it was said to have been removed.

The President dismissed the action on the ground that it was in fact an action against the Government, and that as such it was not properly brought.

The Plaintiff (by consent) appealed to the Supreme Court.

Theodotou for the Appellant. The President had no right to strike out the case at the issues. An issue should have been settled for the full Court. Further, the action is rightly framed, being based upon the precedents of *Loizo v. The Principal Forest Officer* (1892) 2, 102, *Haji Kyriako v. The Principal Forest Officer* (1895), 3, 87, and other cases.

The Court pointed out that these were all cases of contested delimitation reports brought under the special provisions of Secs. 6 and 7 of the Forest Delimitation Law, 1881, which did not apply to this case.

Amirayan for the Respondent was not called upon.

The Court dismissed the appeal.

Judgment: THE CHIEF JUSTICE: In this case the object of the action is admittedly to recover a part of the forest, within the cairns now existing which purport to delimit the State forest.

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The real question is whether the property in dispute is State property, or the property of the Plaintiff.

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The Plaintiff's advocate says he cannot get permission to sue and he brings this action to try and get his case decided.

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The question is whether he has succeeded in framing an action that will lie.

The Defendant is entitled, "A. K. Bovill in his capacity as Principal Forest Officer, of Nicosia."

If this action is against the "Principal Forest Officer," the "Principal Forest Officer" is not a legal person. No action lies against the "Principal Forest Officer."

If this action is against A. K. Bovill, there is nothing alleged at the settlement of the issues for which A. K. Bovill in his personal capacity is liable.

It is not alleged that he has committed any wrong, or that he is under any contractual obligation.

Where it is clear that an action is defective by reason of the fact that the Defendant is not an existing being in the sight of the law, or that it does not disclose a legal claim against the person sued, it would be an abuse of the process of the Court to send the matter on to trial.

The Judge was right in dismissing the action at once. The appeal is accordingly dismissed with costs.

BERTRAM, J.: I agree. There is no question that the President had jurisdiction to dismiss this action. Exception was taken at the settlement of the issue to the form of the action, and an order was made dismissing the action on this point of form. This was consequently not an order dismissing the action on its merits, and under Arts. 207 of the Courts of Justice Order, 1882, the President was perfectly competent to make it.

Further I think that, not only had the President jurisdiction to make this order, but that it was made rightly.

This action in its present form could not proceed. It is neither an action against a private individual nor an action against the Government, but seems an attempt to combine both. If the Plaintiff alleges that the Principal Forest Officer has committed a trespass on his property, there is nothing to prevent him from suing A. K. Bovill personally. In such a case it would be necessary for him to allege that A. K. Bovill, either personally or by his servants or agents entered

TYSER, C.J. upon the Plaintiff's lands and there committed the trespass complained
 & of. Equally, there is nothing to prevent him bringing an action against
 BERTRAM the Government, if he obtains the requisite permission. If he framed
 J. the Government, if he obtains the requisite permission. If he framed
 PAPA VASILII his claim in the right way I should be very surprised to hear that the
 SOLOMOV requisite permission was refused to him. The proper method of framing
 v. the claim in such cases has already been carefully explained by a
 A. K. BOVILL judgment of this Court in the case of *Haji Ahmed Effendi v. Rees Davies*,
 AS as *King's Advocate* (1906) 7 C.L.R., 29, and there is no need to repeat
 PRINCIPAL it here.
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Even if this action had been brought against A. K. Bovill personally, the claim as framed would not lie, for the second branch of the claim asks the Court to order the Defendant to do an official act, namely, to place a certain forest cairn in a particular place. The Court clearly cannot do this. See *Mozera v. The Director of the Land Registry Office* (1884) 1 C.L.R., 16.

The head note in that case is expressed in very wide terms, and it must be read in connection with the facts there under consideration. It says—"HELD: that the action being an action against a "Government official acting in his official capacity would not lie." The action in that case was a claim that a Government officer should be ordered to do an official act. The only cases in which the Court can make such an order are cases of *Mandamus*. If however a subject alleges that his rights have been violated by an official, and sues that official personally for damages, I am not aware, that, except in very special circumstances, it is any defence to the action that the Defendant was acting in an official capacity.

Appeal dismissed.

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IN RE AN ADVOCATE.

ADVOCATE—STRIKING OFF ROLL—PRINCIPLES OBSERVED BY COURT.

In exercising its jurisdiction to strike an advocate off the roll of the Court the principle by which the Supreme Court is guided is that it will not allow to remain on the roll of the Court a man who has been guilty of such conduct as to make it impossible for members of an honourable profession to associate with him in the ordinary transactions of their business.

It is not necessary to the exercise of the jurisdiction of the Court that the offence committed by the advocate should be a criminal offence, nor that it should be an offence committed by the advocate in his professional capacity.

Any misconduct which would constitute a bar to the enrolment of the advocate is sufficient to justify the Court in striking him off the roll of the Court.