

1979 June 4

[TRIANTAFYLIDIS, P., DEMETRIADES, SAVVIDES, JJ.]

MODESTOS PITSILLOS,

Appellant,

v.

ANDREAS HADJINICOLAOU AND OTHERS,

Respondents.

(*Civil Appeal 5583*).

ANDREAS HADJINICOLAOU AND ANOTHER,

Appellants,

v.

MODESTOS PITSILLOS,

Respondent.

(*Civil Appeal No. 5584*).

Damages—Assessment—Damage to almond trees by goats—Amount awarded varied in the light of the evidence.

Civil Procedure—Appeal—Notice of Appeal—Not given to one of the defendants—Appeal against him dismissed.

5 Appeal No. 5583, which was taken by the plaintiff in the Court
below, turned on the amount which was awarded to him by
way of damages caused to eighty-seven almond trees of his
by goats belonging to the defendants, the dismissal of plaintiff's
claim for C£10 damages, in respect of the destruction of a water
10 channel, and for C£8 wages and other expenses incurred by him
in repairing the damage to the earth around his said almond
trees; and appeal No. 5584, which was taken by the defendants,
was directed against the finding of the trial Judge as regards
their liability for the damage caused to the almond trees in
15 question.

Held, (1) that Civil Appeal No. 5583 has to be dismissed as a whole in so far as defendant 2 is concerned, because it appears that the plaintiff did not give notice of this Civil Appeal to this defendant.

(2) That the damages awarded to the plaintiff in respect of the damage caused to his almond trees should have been assessed, in the light of the evidence which was adduced before the trial Court, at least C£1 per tree and, therefore, the amount of damages of C£65.250 mils, which was awarded in this respect by the trial Court, is increased to C£87; that, also, on the basis of the uncontradicted evidence of the plaintiff, he was entitled to the amount of C£8 for wages and expenses; and that, on the other hand, the trial Judge was right in finding that there was no proof that any one of the defendants was responsible for the destruction of the water channel in the property of the plaintiff; accordingly appeal 5583 must be allowed to the extent indicated above.

(3) Regarding Civil Appeal No. 5584, the decision of the trial Judge that defendants 1 and 3 were liable for the damage caused by their goats to the almond trees of the plaintiff was fully warranted by the evidence adduced at the trial and, therefore, such appeal must be dismissed.

*Appeal 5583 partly allowed;
Appeal 5584 dismissed.*

Appeals.

Appeals by the plaintiff and the defendants against the judgment of the District Court of Nicosia (A. Ioannides, D.J.) dated the 21st April, 1976 (Action No. 189/74) whereby the defendants were ordered to pay £65.250 mils to plaintiff by way of damages caused to 87 almond trees.

Appellant in Civil Appeal 5583 and respondent in Civil Appeal 5584 appeared in person.

X. *Xenopoulos*, for respondents in Civil Appeal 5583 and appellants in Civil Appeal 5584.

TRIANAFYLLIDES P. gave the following judgment of the Court. The appellant in Civil Appeal No. 5583 has appealed against the judgment given in Civil Action No. 189/74, by the District Court of Nicosia, which the appellant had filed against the

respondents in the said Civil Appeal, as the defendants in such action. The will be referred to hereinafter as the "plaintiff" and the "defendants".

5 By means of the aforesaid judgment the plaintiff was awarded C£65.250 mils by way of damages caused to eighty-seven almond trees of his, at Kato Moni, by goats belonging to the defendants.

10 There was, also, given judgment in favour of the plaintiff and against the defendants for the amount of C£10 as remuneration of two valuers who assessed the damage which was caused, as above, to the almond trees of the plaintiff.

Furthermore, there was made an order directing defendant 1 to remove a water pipe from the property in question of the plaintiff.

15 On the other hand, there was dismissed a claim of the plaintiff for C£10 damages in respect of the destruction of a water channel in his said property and, also, a claim of the plaintiff for C£8 wages and other expenses which were incurred by him in repairing the damage to the earth around his aforementioned almond trees, which had been caused by the goats of the defen-
20 dants.

By means of Civil Appeal No. 5584 defendants 1 and 3 in the aforesaid action 189/74 challenged the finding of the trial Judge as regards their liability for the damage caused to the almond trees concerned.

25 These two appeals, Nos. 5583 and 5584, were heard together as they were made against one and the same judgment.

Civil Appeal No. 5583 has to be dismissed as a whole in so far as defendant 2 is concerned, because it appears that the plaintiff did not give notice of this Civil Appeal to this defendant.

30 We have perused carefully all the material in the record before us, and in the light of the arguments advanced by the plaintiff, who appeared in person, and by counsel for the defendants, we have decided that the judgment of the trial Court should be varied as follows:

35 The damages awarded to the plaintiff in respect of the damage caused to his almond trees should have been assessed, in the

light of the evidence which was adduced before the trial Court, at least C£1 per tree and, therefore, the amount of damages of C£65.250 mils, which was awarded in this respect by the trial Court, is increased to C£87.

Also, on the basis of the uncontradicted evidence of the plaintiff, we find that he was entitled to the aforementioned amount of C£8 for wages and expenses. 5

On the other hand, in our opinion, the trial Judge was right in finding that there was no proof that any one of the defendants was responsible for the destruction of the water channel in the property of the plaintiff. 10

Consequently Civil Appeal No. 5583 is allowed as against defendants 1 and 3 in so far as the increased amount of C£87 damages awarded for the damage caused by the goats of the defendants to the almond trees of the plaintiff are concerned, and, also, in respect of the amount of C£8 claimed by him as wages and expenses. In every other respect the said appeal is dismissed as against defendants 1 and 3. 15

Regarding the fate of Civil Appeal No. 5584, we find that the decision of the trial Judge that defendants 1 and 3 were liable for the damage caused by their goats to the almond trees of the plaintiff was fully warranted by the evidence adduced at the trial and, therefore, such appeal is dismissed. 20

There should be, also, an order as to the costs of both appeals in favour of the plaintiff and against defendants 1 and 3. 25

Civil Appeal No. 5583 allowed as against defendants 1 and 3 with costs; Civil Appeal 5584 dismissed with costs.