

purposely refrained from entering into any question of what would be the rights of the parties if there were no such judgment.

As a general rule of Law it is clear that rights of irrigation are governed by *ab antiquo* user, but we doubt whether user which had been discontinued for a substantial length of time would be such user as the Law contemplates. And, taking into consideration the status of Turkish tribunals in olden times, we doubt whether ancient Hujets, which have not been acted upon, are sufficient to establish rights which they purport to confer.

On these points however we give no decision.

The order of the Court is that the judgment of the Temyiz Court given in this action on the 28th day of February, 1880, be amended by altering the judgment as rendered in Turkish so as to correspond with the English version of the judgment written beneath it.

No order as to costs.

HUTCHINSON, C.J.
&
TYSER, J.
SADYK AND
OTHERS
v
PAPA
MICHAELI
YANNI AND
OTHERS

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

H. EKATERINA H. TIMOTHI

Plaintiff,

v.

POLYCARPO H. TIMOTHI

Defendant.

HUTCHINSON, C.J.
&
TYSER, J.
1902
Nov. 28

COSTS—DISCRETION OF COURT—LEAVE TO APPEAL—RULES OF COURT, 1886 ORDER 21, R. 29—CYPRUS COURTS OF JUSTICE ORDER, 1882, CLAUSE 38.

In directing the payment of costs under Clause 38 of the Cyprus Courts of Justice Order, 1882, the Court must act fairly and reasonably.

Where the direction as to costs is reasonable and fair, an application for leave to appeal under Order 21, R. 29 of the Rules of Court, 1886, will not be granted if the only ground for the application is, that the reason given for the direction is not a good reason.

APPEAL from the District Court of Larnaca.

Action to restrain the Defendant from interfering with a house to which the Plaintiff claimed to be entitled by length of possession.

The Plaintiff was not registered as owner of the house.

At the trial the Court gave judgment for the Plaintiff but refused to make any order as to costs, on the ground set out below, a note of the ground of the refusal being made in the record by the District Court after the notice of appeal was given, and being to the following effect:

“ In this Court we generally refuse costs, in cases where the Plaintiff
“ brings an action for a declaration of a right to be registered as owner of
“ real property, on the broad ground that a man, who has taken possession
“ without obtaining registration, knows that when he comes to ask

HUTCHINSON, C.J. " for registration at a future date disputes are likely to arise and law
 & " expenses to be incurred; and so we let him pay his own costs occasioned
 TYSER, J. " by the neglect of a proper legal precaution. We generally do the
 H. EKATERINA " same when the Plaintiff had no original right to registration, but
 H. TIMOTHY " claims by prescription, because a title by prescription is a privilege
 v. " for which a man ought to pay his own expenses."
 POLYCARPO
 H. TIMOTHY *Mr. D. Themistocle applied ex parte on behalf of the Plaintiff.*

November 28 *Judgment :* THE CHIEF JUSTICE: An appeal against a refusal to give costs can only be made by leave of this Court (Order 21, R. 29); and we can only give leave where it is shown that the refusal is " contrary to the provisions of any Law or Rule of Court or is based on any misconception of fact, or that any party is thereby ordered to pay any costs which have been incurred or occasioned by any other party without sufficient reason." It cannot be said that any of these requisites exist in this case. But it is said that the District Court has laid down an unreasonable principle; that it is the duty of the District Court, to which (under Sec. 38 of the Order in Council) the power is given to direct by which party the costs shall be paid, to exercise that power fairly and on reasonable grounds; and that the Court does not do so, and does not really exercise its discretion at all, when it lays down and acts on a rule that in a certain class of cases it will not generally give the Plaintiff costs, although he has been guilty of no misconduct and is entirely in the right, and succeeds on every issue raised in the action.

I agree that the Court must exercise the discretion entrusted to it in a fair and reasonable manner. And I do not think that the reason given by the President of the District Court for refusing costs to Plaintiffs in the classes of cases to which he refers is a sound reason. But that is a very different thing from saying that when he refuses costs for that reason he is not acting fairly and reasonably. He *does* exercise his discretion although his reason for exercising it in the way that he does may not be a good one. In my opinion therefore we have no power to give leave to appeal in this case.

TYSER, J.: I agree.

Application refused.

The case of *Mehmet Kiazim Yusuf and others v. Haji Hafuz Mustafa Faik Eff. and others* reported in pages 47-48 of the original edition is no longer of any importance.