BERTRAM, ACTING C.J. & HOLMES, ACTING J. 1908

July 8

[BERTRAM, ACTING C.J. AND HOLMES, ACTING J.]

REX

v.

ELIA LAMBI.

CRIMINAL LAW—WOUNDING CAUSING LOSS OF A MEMBER—LOSS OF AN EYE—ACCIDENTAL WOUNDING—OTTOMAN PENAL CODE, ARTS. 177 AND 183.

The accused threw a stone at the complainant who was retiring from a quarrel, and owing to the complainant happening to turn round at the moment, he received the stone in his eye, with the result that the sight of the eye was destroyed.

HELD: That the accused was rightly convicted under Art. 177 of the Ottoman Penal Code, and that the injury to the eye was not an accidental wound under Art. 183.

QUERY: Whether Art. 177 would be held to apply to a case in which the injury received could not reasonably have been foreseen by the person giving the wound or blow.

This was an appeal from the decision of the District Court of Kyrenia.

The accused became engaged in a quarrel with the complainant on the subject of a trespass committed by the complainant's sheep in the accused's barley. As the complainant was returning from the spot, the accused threw a stone at him. The complainant happened to turn round and received the stone in his eye, with the result that the sight of the eye was destroyed.

The District Court convicted the accused under Art. 177, and sentenced him to three years imprisonment, and £20 compensation.

The accused appealed.

Theodotou for the Appellant.
Amirayan for the Crown.

The arguments appear from the judgment.

The Court dismissed the appeal.

Judgment: There is no question that the inflicting of a wound or blow causing the loss of an eye is an offence within Art. 177 of Ottoman Penal Code. In Shemseddin Sami's dictionary, under the heading عضو " oudou " we find " oudou " means " each of the different parts of which a body is composed, such as the hands, the feet, the eyes, the ears, the lungs, or the stomach," and if there were any doubt on the subject it would have been removed by the passage cited by Mr. Amirayan from Halil Rifat's Commentary, p. 284.

The real question which we have to decide is whether the facts in this case disclose an offence under Art. 177 or an offence under Art. 183.

These two articles are based upon Arts. 310 and 320 of the French Penal Code, and as in the Ottoman Penal Code the Turkish legislator has, generally speaking, adopted the scheme of the French Penal Code, the principles applied by French jurisprudence to the interpretation of the French Code are often of great assistance in dealing with our own.

Now it has been consistently held by the French Courts that in order to justify a conviction under Art. 310 it must be shown that the blow or the wound was given with a criminal intent. But this intent need not be a specific intent to inflict the actual injury occasioned. It is sufficient if there is an intent to injure. If an intent to injure, whether determinate, or indeterminate exists, French jurisprudence interprets the article as imputing to the criminal the actual result of his wrongful act, and punishing him accordingly.

It should be borne in mind that the French enactment contains an important word which is absent from the Turkish text—the word "*volontairement*," which originally existed only in the rubric of the French Code, and was transferred to the body of the law as the revision of 1832. Nevertheless, though there is nothing to correspond with the word "*volontairement*" in Art. 177, yet reading the article in connection with Art. 183, it seems probable that the application of the article should be confined to cases in which there was a criminal intention to injure.

Mr. Theodotou argues that the article should be subjected to a further limitation, and that where it appears that the result of the wound or blow was such that under the circumstances it could not have been reasonably foreseen, or taken into account by the person inflicting it, the article should be held not to apply, but that the injury should be considered as an accidental one under Art. 183.

He referred us to two cases decided by the Assize Courts in support of this view. The first was the case of *R.* v. *Michael Christodoulo* decided by the Nicosia Assize Court on January 16th, 1903. In that case a man was charged with causing the death of a girl under the addition to Art. 177. It appears that the girl, who complained of feeling ill, was lying down in the harvest field, and that the man kicked her with his foot to induce her to get up and resume her work. The girl was suffering from an enlarged spleen, and the kick burst the spleen, with the result that death ensued within a few hours. The Court directed the addition of a count under Art. 183, and the man was convicted under that article.

The second case was that of *R.* v. *Iossiff Ioannou* decided by the Limassol Assize Court in January of this year. In that case the King's Advocate, in opening the case to the Court, explained that the accused got into an altercation in his stable with the deceased, whom he suspected of coming to steal his chaff, and "either struck or pushed him." This man was also suffering from a highly enlarged spleen, so much so that according to the medical evidence, any sudden violence would be liable to have fatal results and he succumbed to the effects of the blow or push.

The King's Advocate, with the approval of the Court, added a count under Art. 183, and the case was dealt with under that article.

There are certainly some expressions in some of the French commentaries, which seem to suggest that where the result of the wound or blow was such that the person inflicting it could not have reasonably foreseen it or taken it into account, the case would come under Art. 320, even though an intention to injure existed,

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but no case is cited as having been decided on this principle and we have consequently no example of its application. It is possible that if such a case arose in this country, it might be considered a case to be dealt with under Art. 183, like the two cases mentioned above. It should however be noted that in neither of these cases is it clear that there was any intention to injure, though there may have been a technical assault.

In this case, however, we have come to the conclusion, after carefully considering the facts, that they do not come within the principle. If a man throws a heavy stone at another, who is retiring from a quarrel, at a level with his head, the risk of that other turning round and receiving the blow in the eye, is a risk which the assailant may be reasonably held bound to take into account, and the result is one which may justly be imputed to him.

There is no doubt an accidental element in the case, inasmuch as but for the accident of the man turning round he would not have lost his eye, but we do not think that the wound can be described as an accidental one within the meaning of Art. 183.

For these reasons we are of opinion that the appeal must be dismissed.

Appeal dismissed.

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IN RE A PETITION BY COSTA CONSTANTINIDES AND ANNA CONSTANTINIDES

AND

IN RE THE MALICIOUS INJURY TO PROPERTY LAW, 1894.

MALICIOUS INJURY—PROPERTY WITHIN MUNICIPAL LIMITS OF NICOSIA—"LANDS OF NICOSIA"—VILLAGE AS TERRITORIAL AREA—MALICIOUS INJURY TO PROPERTY LAW, 1894, SECS. 2 AND 20—MUNICIPAL COUNCILS LAW, 1882, SEC. 4.

By an order of the High Commissioner in Council, made the 24th June, 1882, in pursuance of the Municipal Councils Law, 1882, the municipal limits of Nicosia were defined so as to include, amongst others, certain lands of the village of Kuchuk Kaimakli.

HELD: That the said lands, so comprised in the municipal limits of Nicosia did not thereby become "lands of Nicosia" within the meaning of the Malicious Injury to Property Law, 1894, but remained lands of Kuchuk Kaimakli, and that the village of Kuchuk Kaimakli was consequently liable to pay compensation under the law in respect of property within such lands maliciously damaged by persons unknown.

The administrative system, which is the basis of the Malicious Injury to Property Law, 1894, is that of the village communal area administered by a Mukhtar and Azas, and for the purposes of this system the boundaries of any such area are not affected by an alteration of the municipal limits of a Municipality exercising authority within the area.

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

The petitioners presented a petition to the District Court praying for an order on the inhabitants of the village of Kuchuk Kaimakli