after the concordat has been made obligatory) " by the issue of an Ilam containing the confirmation of the agreement of concordat, the functions of the syndics cease." The point is really a point of procedure. According to the procedure now in force in our Courts, a judgment becomes operative not from the moment it is drawn up but from the moment it is pronounced. (See Order XVI rule 2. " Every judgment when entered shall be dated as of the day on which it was pronounced and shall take effect from that date.") The judgment can be drawn up *nunc pro tunc* and our own judgment will be subject to this being duly done.

Subject to this point the appeal is allowed with costs.

Appeal allowed.

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

GIULSUM OSMAN

v.

ZEHRA AHMED.

PRACTICE—AMENDMENT OF CLAIM—JUDGMENT—RIGHTS OF PARTIES AT TIME OF ACTION BROUGHT.

NUISANCE—OVERLOOKING—FALL OF PARTY WALL—ERECTION OF SCREEN AT JOINT EXPENSE——MEJELLE, ART. 1317.

A judgment determines the rights of the parties at the date of the issue of the writ.

An amendment of a claim cannot be granted unless it is justified by the circumstances existing at the date of the issue of the writ.

It is a condition precedent to the right of one co-owner of a fallen party wall under Art. 1317 of the Mejellé to an order of the Court for the erection of a screen at the joint expense of the co-owners so as to secure his house from overlooking, that he should have made an offer to the other co-owner to have the nuisance abated at their joint expense before action brought.

The Plaintiff brought an action claiming that the Defendant should rebuild a wall which the Plaintiff alleged to be her property and to have fallen by her negligence, on the ground that the fall of the wall subjected Plaintiff's house to overlooking. The Defendant denied the ownership of the wall. The District Court found that the wall was owned by the Plaintiff and Defendant in common and ordered the erection of a screen at the joint expense under Art. 1317 of the Mejellé.

HELD: (1.) That the order was not one that could be made in the action as it gave a remedy different from what was asked in the claim.

(2.) That no amendment could be made to the claim so as to enable the Court to make the order, inasmuch as at the date of the issue of the writ the Plaintiff had not offered to the Defendant to have the nuisance abated at the joint expense of the parties, and consequently was not entitled to the remedy accorded by Art. 1317.

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

TYSER, C.J. & BERTRAM, J.

GIULSUM OSMAN *v.* ZEHRA AHMED

The claim was for damages caused by the fall of a wall, said to belong to the Defendant and to have fallen through negligence and for an order for its re-erection, on the ground of overlooking. The Defendant at the settlement of the issues denied the ownership of the wall (asserting that it was the property of the Plaintiff), denied the alleged negligence, and denied the overlooking.

The principle issue framed was as to the ownership of the wall.

The Court, having heard the evidence and inspected the premises found as a fact that the wall was owned in common, and also that there was overlooking. It did not grant the claim as prayed, but purporting to act under Art. 1317 of the Mejellé,* made an order for the erection of a screen at the joint expense of the parties.

The Defendant appealed.

Artemis for the Appellant. This order cannot be made upon this claim. The onus of proving that the Defendant owned the wall was upon the Plaintiff. He failed to prove it, and I was entitled to judgment. Had the Plaintiff originally offered to erect a screen at our joint expense, I might very probably have consented.

Theodotou for the Respondent. This is a mere question of form. The Court has found that my house is subject to a nuisance and that the Defendant is at any rate partly responsible for abating it. If necessary, even at this stage, I ask for leave to amend. If I have not proved the whole of my claim, I have proved part of it and I am entitled to judgment *pro tanto*.

The Court allowed the appeal.

Judgment: We are of opinion that the judgment of the District Court is wrong and must be reversed.

It gives the Plaintiff something which she does not claim. She claims the enforcement against the Defendant of duties, which would fall on the Defendant if she were sole owner of the wall.

The Court have ordered the Defendant to perform a duty which might be incumbent on her as owner in partnership.

This duty falls upon one co-owner under Art. 1317 of the Mejellé only where the other co-owner has asked him to rebuild the wall at their joint expense.

At the time when the writ was issued this had not been done.

The judgment has to determine the rights of the parties at the time when the writ was issued.

We must therefore find that in this action the Defendant was not under any obligation by virtue of Art. 1317.

If the Plaintiff had been ready and willing at the time of action brought to do her share of the work and had asked the Defendant to do her share and the Defendant had refused, then if the claim had been properly made, the judgment of the District Court would stand.

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* Mejellé Art. 1317. "Where a wall which is between two houses falls down, and from the one of them the women's quarters of the other is seen, and if in consequence of what has happened the owner of the one has wished to build the wall at the common expense, and the owner of the other refuses he cannot be compelled to build. But the making by them of a screen between them of wood, or other material, at their joint expense, is enforced by the judge."

If this were the case, we should order an amendment, if asked for, subject to directions as to costs.

But no amendment would be of any use, because the Plaintiff was not ready and willing to do her share when she brought her action, and therefore could not, in this action, compel the Defendant to do her share.

The judgment must be reversed and the appeal allowed with costs.

Appeal allowed.

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

THE COMMITTEES OF THE ELEMENTARY SCHOOLS OF NICOSIA FOR THE YEARS 1905-1906, 1906-1907, 1907-1908,

v.

THE COMMISSIONER OF THE NICOSIA DISTRICT.
EX PARTE CHRISTODOULOS MICHAELIDES AND MICHAEL TOPHARIDES BOTH PERSONALLY AND AS TRUSTEES FOR THE CHURCH OF PHANEROMENE.

PRACTICE—MANDAMUS—RIGHT OF PERSONS AFFECTED BY ORDER OF MANDAMUS TO BE HEARD—ORDER IX RULE 11—MANDAMUS LAW, 1890.

Persons whose interests may be affected by the issue of an order of Mandamus to a public officer ought to have an opportunity of being heard before the issue of the order.

Such persons may be joined as Defendants under Order IX rule 11.

Where the persons applying to be heard are numerous, the Court should make an order for the conduct of the case by one or more of them in a representative capacity under Order IX rule 6A.

An action was instituted for an order of Mandamus against the Commissioner of Nicosia calling upon him to collect the arrears of education rate for the past three years. The Applicants, as rate-payers and as trustees of a church liable to pay a large sum for rates if the order issued, applied to be joined as Defendants, so as to be heard in opposition to the issue of the order.

HELD: That the Applicants were entitled to be joined as Defendants.

This was an appeal from a decision of the Nicosia District Court, confirming a decision of the President.

The action was a claim under the Mandamus Law, 1890, that an order of Mandamus should be issued against the Commissioner of the District of Nicosia calling upon him to collect the arrears of education rate, for the years 1905, 1906, 1907, which the Commissioner in view of the uncertainty which had prevailed as to the legal status of the Education Committee for those years had refrained from collecting.

The Applicants intervened both in their personal capacity, as rate-payers, and as Trustees of Phaneromeni Church, which in the event of the Mandamus issuing would be called upon to pay a considerable sum as education rate, and applied under Order IX rule 11 to be joined as Defendants in order that they might contest the legality of the claim made by the Plaintiffs.