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the purposes of administration and the second defendant must be protected in the absence of any allegation that he was a *mala fide* purchaser having knowledge that the sale was not made in due course of administration. In the result therefore the decree of the Appellate Court must be affirmed but in the circumstances of the case we shall make no order as to the costs of the Second Appeal.

APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Sadasiva Ayyar.

1912. July 29, August 2.

G. KARIBASAVANA GOWD (DEFENDANT), APPELLANT,

v.

N. VEERABHADRAPPA (PLAINTIFF), RESPONDENT.*

Damages in actions on tort, principle of assessing—Damages, too remote, cannot be recovered—Principle of assessing damages in actions on contract compared—Duty of plaintiff to take means to reduce the damages—Easements Act (V of 1882), sec. 33.

In a suit for damages sustained by the plaintiff in consequence of the defendant's obstruction of the plaintiff's right of way to his field, owing to which the plaintiff did not cultivate his lands, their Lordships *held* (1) that non-cultivation of the lands was too remote a consequence of the defendant's wrongful act of obstruction as the plaintiff had not shown that there were no other means of cultivating and that it was in consequence of the wrong that it was not reasonably possible for him to cultivate, (2) that damages for the loss of crops could not be given but that all that he was really entitled to was the extra cost which he would be put to for the cultivation of his land in consequence of the right of way being obstructed, and (3) that the plaintiff was entitled to substantial damages for interference with the evidence of his right.

'Sedgwick on Damages,' paragraphs 202 and 215 referred to.

Section 33 of the Easements Act (V of 1882) and *Baijnath Singh* v. *Tetai Chowdhry* (1901) 6 C.W.N., 197, applied.

Though the rule is the same in actions on contract and in tort, viz., that the damages which the plaintiff is entitled to must result directly from the wrongful act of the defendant and that no claim can be made to damages which are only too remotely connected with it, there may be differences in the application to actions on tort of this basic principle which is common to both kinds of actions; in a contract it is the duty of the plaintiff as a prudent man to take measures to reduce the damages as far as possible, for a breach of contract consists in the defendant's failure to do a certain act that he is bound to do

* Second Appeal No. 642 of 1911.

and it would be quite open to the plaintiff to take other measures to obtain the result he expected from the defendant's performance; a tort, on the other hand, may consist in the defendant's failing to do an act which he is bound to do or in doing one which he ought not to do or in preventing the plaintiff from doing an act which he is entitled to do.

SECOND APPEAL against the decree of N. LAKSHMANA RAO, the Subordinate Judge of Bellary, in Appeal No. 113 of 1909, presented against the decree of N. SOMAYAJULU SASTRULU, the District Munsif of Bellary, in Original Suit No. 112 of 1908.

The facts of the case are set out in the judgment.

C. V. Ananthakrishna Ayyar for the appellant.

The Courts below were wrong in presuming that because the usual right of way was obstructed, the plaintiff was entitled to make no attempts to cultivate. The plaintiff should have done the best he could and might then claim damages on the basis of actual loss owing to inability to cultivate properly or could claim the additional expenses of an extraordinary method of cultivation (Sedgwick on Damages, paragraph 208). Here the plaintiff had made no attempt whatsoever and claimed the whole value of his crop.

J. C. Adam for the respondent.

The facts showed and the finding was that for the plaintiff to have attempted to cultivate the field would have been altogether hazardous. The plaintiff could not in law be called upon to take steps entailing the risk of damages to person and property simply because his rights had been interfered with. But even if he should have done so the method of assessment of damages was wrong as the Courts below should have given him substantial damages for the obstruction of his right of way. [*Baijnath Singh* v. *Tetai Chowdhry*(1) and Easements Act, section 33.]

JUDGMENT.—The suit out of which this second appeal arises was instituted for the recovery of damages sustained by the plaintiff in consequence of an obstruction caused by the defendant of the plaintiff's right of way to certain lands of the plaintiff. A decree had been previously obtained by the plaintiff establishing his right of way but that decree was apparently under appeal at the time of the institution of contributory negligence and was therefore not entitled to recover any damage. He found that there was another way to the plaintiff's fields though it was less

(1) (1901) 6 C.W.N., 197.

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convenient than that which the defendant obstructed and that the plaintiff did not act rightly in not sowing his fields.

On appeal, the Subordinate Judge held that the other way which the plaintiff could have used was not one along which carts could pass during the rains, that it was sandy, that there were boulders here and there and that it was on the whole a hazardous route. To use his own words the plaintiff was not bound "to tempt his fate by attempting to get into his field through that hazardous round-about route." He was of opinion that the plaintiff was entitled to recover damages sustained by him by the lands lying waste. We may observe that the District Munsif found that the plaintiff's lands were really dry lands and that it was not necessary to pass to them during the rainy season. We cannot take the Subordinate Judge to have found that it was not reasonably possible for the plaintiff to avail himself of the other route to pass to his lands. The Subordinate Judge awarded a sum of Rs. 177 as damages for loss of crops. He did not give the plaintiff any damage for the injury sustained by him by the interference with his right of easement on the ground that it affected the evidence of his right. The defendant who has appealed from the decree of the Subordinate Judge contends that the damages have been assessed on a wrong principle and that the plaintiff is not entitled to damages for loss of crops. It is argued that the plaintiff was bound to diminish the damages he might sustain by the obstruction of the way by doing all that he reasonably could by finding another way to the lands he had to cultivate and he asks us to apply the same principle to the assessment of damages in an action on tort as would ordinarily apply to an action for damages for breach of contract. He draws our attention to paragraph 203 of 'Sedgwick on Damages.' It is not necessary to discuss at any length in this case how far the principle that the plaintiff is bound to avoid the damages caused by the defendant's breach of contract would be applicable to action on tort. But it cannot be denied that alike in actions on contract and on tort the damages which the plaintiff is entitled to must result directly from the wrongful act of the defendant and that no claim can be made to damages which are only remotely connected with it. This is in reality the basis of the rule that the plaintiff should avoid or diminish the damages as far as he could. The learned author cited by

the appellant observes: "It is frequently said that it is the *duty* of the plaintiff to reduce the damages as far as possible. It is more correct to say that by consequence which the plaintiff, acting as prudent men ordinarily do, can avoid, he is not legally damaged. Such consequences can hardly be the direct or natural consequence of the defendant's wrong, since it is at the plaintiff's option to suffer them. They are really excluded from the recovery as *remote*. In this view the doctrine would rest on the intervention of the plaintiff's will as an independent cause. *Ad hoc* he is not damaged by the defendant's act but by his own negligence or indifference to consequences." This principle applied to actions on contract would readily lead to the rule enunciated in somewhat different words that it is the duty of the plaintiff to reduce the damages as far as possible; for a breach of contract consists in the defendant's failure to do a certain act that he is bound to do. That failure by itself would not result in damages for it is quite open to the plaintiff if he could obtain the result which he expected from the defendant's performance of the contract by other measures which an ordinarily prudent man would adopt. A tort, on the other hand, may consist in the defendant's failing to do an act which he is bound to do or in doing one which he ought not to do or in preventing the plaintiff from doing an act which he is entitled to do. Therefore there may be differences in the application to actions on tort of the basic principle which is no doubt common to both kinds of actions, viz., the damages should be the direct consequences of the wrong complained of. In this case, the defendant's wrong consisted in his preventing the plaintiff from doing something that he was entitled to do. The mere prevention does not directly lead to the non-cultivation of the lands. The loss of produce was the result of the lands lying uncultivated. No doubt the plaintiff might show that in consequence of the wrong it was not reasonably possible for him to cultivate. But unless he could show this he could not claim the damages resulting from non-cultivation. In the same work, the learned author referring to the decided cases in support of his position says: "So too the loss of crops is not the proximate result of deprivation of an animal by which the owner intended to harvest the crops; consequently in an action for deprivation of the animal no compensation can be recovered for loss of the crop. So where through deprivation of the use of an agricultural machine or through a

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defect in it the owner loses his crops, such loss is too remote, and he cannot recover compensation for it. And loss of crops from loss of service of a servant or slave is too remote to be compensated in an action founded on the loss of service. It is, however, held that where no other assistance can be procured the plaintiff may recover compensation for the loss" (see paragraph 202). The true measure of damages in such a case is laid down in paragraph 215 of the same work. "The reasonable expenses of avoiding the consequences of the defendant's wrong are recoverable, and when the plaintiff fails to take proper steps, he is limited in his recovery on this head to what the cost of such steps would have been." Among the illustrations given to the rule the author mentions the case of obstruction of a right of way. He observes: "Where the defendant wrongfully refused to allow the plaintiff's vessel to proceed through a certain channel, the only practicable means of reaching its port of destination, it was held that the plaintiff might recover the expense of unloading the cargo by lighters. Where the defendant obstructed a river, and the plaintiff's vessel grounded upon the obstruction, the expense of getting off from and over the obstruction may be recovered."

We must hold that what the plaintiff was really entitled to in this case was the extra cost which he would be put to for the cultivation of his land in consequence of his right of way being obstructed and that the Subordinate Judge has assessed the damages on a wrong principle. At the same time we agree with the learned counsel for the respondent that the plaintiff would really be entitled to substantial damages for interference with the evidence of his right. See section 33 of the Easements Act and *Baijnath Singh* v. *Tetai Chowdhry*(1). The learned vakil for the appellant and the respondent's counsel have been able to agree on an amount which may be regarded as the proper award on the principle enunciated by us. We accept that amount and give the plaintiff a decree for Rs. 100 and costs on that amount in the Second Appeal. We do not interfere with the order of the lower Courts as to costs.

(1) (1901) 6 C.W.N., 197.