1963
Jan. 29,
March 7,
May 13,
June 6, 21, 28

—

MUVEDDET TOYGAR AND ANOTHER v. ALI RATIB

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

MUVEDDET TOYGAR
AND ANOTHER,

Appellants.

v.

ALI RATIB,

Respondent.

(Civil Appeal No. 4395).

Prodigals—Guardianship of prodigals—The guardian of a prodigal is a guardian of the property and not of the person of the prodigal—The guardianship of Infants and Prodigals Law, Cap. 277, *sections* 3 (2) *and* 9*—The guardianship of prodigals is not a matter of "personal status" within the meaning of Articles* 87, *paragraph* 1 (*c*) *and* (*d*), *and* 152 *of the Constitution—Therefore the matter falls within the jurisdiction of the District Courts and not within the jurisdiction of the Communal Courts provided by paragraph* 2 *of Article* 152 *of the Constitution.*

Prodigals—No application for the appointment of a guardian of the property of a prodigal shall be instituted or entertained unless the applicant shall have obtained and filed with the application the written consent of the Attorney-General therefor.

Constitutional Law—"Personal Status"—Meaning and scope within the ambit of Articles 87, *paragraph* 1 (*c*) *and* (*d*), *and* 152 *of the Constitution—The Zurich Agreement, point* 17, *second paragraph—At the time when this Agreement was made* (1959) *the expression "personal status" had a crystallized legal meaning in relation to Cyprus—And it was meant to refer to family status and family relations—Guardianship of prodigals under Cap.* 277 (supra) *is not a matter of "personal status" within the meaning of that expression under Articles* 87, *paragraph* 1 (*c*) *and* (*d*) *and* 152 *of the Constitution.*

On September 23, 1946 on an application (No. 7/46) to the District Court of Paphos, a certain Mehmet Reshat Djelal was declared a prodigal by the said Court and Mr. Ali Riza, the then Registrar of that Court, was appointed guardian of the prodigal under the relevant provisions of the guardianship of Infants and Prodigals Law, now Cap. 277. On January, 1947, Mr. Ali Riza was replaced by Mr. Ali Ratib as guardian. On September 30, 1959, the latter was replaced by virtue of an order of the same Court by Muveddet Toygar, the prodigal's daughter.

On December 8, 1961, the aforementioned Ali Ratib applied to the District Court of Paphos in the original application (No. 7/46, *supra*) for the removal of the aforesaid lady Muveddet Toygar from the guardianship on account of mal-administration and for an account ; and on December 12, 1961, he applied to the Court for an interim injunction restraining the said guardian from selling, mortgaging, transferring or in any way disposing of the prodigal's property in the District of Paphos.

Counsel for the guardian opposed this application and took the point that sections 2 (*b*), 3 (2), 7, 9, 10 and 23 of Cap. 277 (*supra*) and generally any Law providing for the appointment of a guardian of the property of a prodigal or for restrictions upon the management of his property is unconstitutional under Article 23 of the Constitution. He applied in due course that the matter be referred to the Supreme Constitutional Court for its determination under Article 144.1 of the Constitution.

The District Court acceding to that application reserved the question so propounded for the ruling of that Court (*i.e.* the Supreme Constitutional Court), which eventually in April 19, 1962, declared " that the definition of prodigal in section 2, and sections 3 (2), 7, 9, 10, 23 of the Guardianship of Infants and Prodigals Law, Cap. 277, are not unconstitutional ". (*See In re Ali Ratib of Ktima*, 3 R.S.C.C. 102).

On June 23rd, 1962, counsel for both parties appeared before the District Court of Paphos and agreed that Mr. Murat Housnou be appointed guardian together with the said Muveddet Toygar and the Court made a consent order accordingly and further ordered that the costs of both parties throughout be borne by the prodigal's estate.

Now, against this consent order the said Muveddet Toygar appealed to the High Court alleging that the District Court had no jurisdiction to deal with the aforesaid application by Ali Ratib for the removal of the guardian of the prodigal, could not give the order appealed against, and that the order is unconstitutional and invalid.

It was argued on behalf of the appellant that, *inter alia*, guardianship of a prodigal is a matter of " personal status " within the meaning of Articles 87, paragraph 1 (*c*) and (*d*), and 152 of the Constitution and, consequently, the District Court had no jurisdiction to appoint or remove such a guardian

since the Constitution came into operation (*i.e* 16th August, 1960) or at least since the Turkish Communal Court has been constituted (v. *infra*). Paragraph 1 of Article 87 of the Constitution grants to the Communal Chambers legislative power solely with regard to :—

(*a*) all religious matters ;

(*b*) all educational, cultural and teaching matters ;

(*c*) personal status ;

(*d*) the composition and instances (Βαθμοὺς δικαιοδοσίας–*dereceleri*) of courts dealing with civil disputes relating to personal status and to religious matters ;

(*e*) . . . (*f*) . . . (*g*) . . . (*h*) . . . (*i*)

Paragraph 2 of Article 152 of the Constitution provides :

" 2. The judicial power with respect to civil disputes relating to personal status and to religious matters which are reserved under Article 87 for the Communal Chambers shall be exercised by such courts as a communal law made under the provisions. of this Constitution shall provide."

The Turkish communal Court with power to deal with such matters as aforesaid commenced to operate by virtue of Law No. 8 of 1960, of the Turkish Communal Chamber, published on March 10, 1961, with retrospective effect from Independence Day *i.e.* the 16th August, 1960.

Section 3 (2) of the guardianship of Infants and Prodigals Law, Cap. 277, provides that a guardian of a prodigal is guardian only of the property and not of the person of the prodigal.

Section 9 of the same statute (Cap. 277) reads as follows :
" 9. (1) Every order appointing a person as a guardian of the property of a prodigal shall operate as prohibiting the prodigal from—

(*a*) suing, defending or compromising any action or other proceeding ;

(*b*) borrowing or receiving capital money or giving a discharge therefor ;

(*c*) selling, mortgaging, exhanging or otherwise parting with the possession of any of his immovable property, without the advice and consent in writing of his guardian.

(2) Every transaction or contract (other than a contract for necessaries) entered into by a prodigal in contravention of the provisions of this section shall be null and void, unless the other party thereto had no notice of the appointment of a guardian of the property of the prodigal.

(3) Any prodigal who enters into any transaction or contract in sub-section (2) mentioned (other than a contract for necessaries) without disclosing to the other party thereto that a guardian of his property had been appointed under this Law shall be guilty of an offence. Penalty : Imprisonment for three months or a fine of fifty pounds."

Section 23 (3) of the aforesaid statute (Cap. 277) reads as follows :—

" (3) No application for the appointment of a guardian of the property of a prodigal shall be instituted or entertained in any Court unless the applicant shall have obtained, and shall have filed with the application, the written consent of the Attorney-General therefor."

It appears that with the exception of the original application of the year 1946 (*supra*) the written consent of the Attorney-General required by that section was never obtained with regard to the subsequent proceedings set out hereabove.

The High Court in dismissing the appeal on the question of jurisdiction and reversing the order appealed from on the ground that the written consent of the Attorney-General was not obtained as required by section 23 (2) of Cap. 277 (*supra*) and after reviewing the history of the words " personal status " down to the Zurich agreement and the Constitution :—

Held, (1) notwithstanding the language used in the orders which had been made, the guardian with which we are concerned is not a guardian of the person but only a guardian of property as provided in Chapter 277, section 3 (2): " A guardian of a prodigal shall be guardian only of the property of the prodigal."

(2) (*a*) The Attorney-General traced the meaning of the words " Personal Status " from the origin of this term during the middle ages when in Italy each city was a city state. Each had its own law called at that time " Statuta " (In Greek " Thesmia "). This was related either to the person or to property and thus there was the distinction between " Statuta Personalia " (" Prosopika Thesmia ") and " Statuta Realia " (" Pragmatika Thesmia "). From Italy this spread

to France where the " Statuta Personalia " was " Statut Personel ", " Personal Status " ; and " Statuta Realia " was " Coutume Reélle " " Real Customs ". From France the concept spread to Holland and to the legal systems of many countries. (*See* Maridakis' Private International Law, 1950 edition, page 215). Cheshire's Private International Law, 4th edition, page 150, explains that " domicile " belongs to personal law which is called " Statut Personel ".

" There is disagreement upon two matters. What is the scope of the personal law, as it is called, and should its criterion be domicil or nationality ? In England, however, it has long been settled that questions affecting status are determined by the law of the domicil of the propositus and that, broadly speaking, such questions are those affecting family relations and the family property. To be more precise, the following matters are to a greater or lesser extent governed by the personal law :

The essential validity of a marriage.

The mutual rights and obligations of husband and wife, parent and child, guardian and ward.

The effect of marriage on property.

Divorce.

The annulment of marriage, though only a limited degree.

Legitimation and adoption.

Certain aspects of capacity.

Wills of movable and intestate succession to 'movables'."

(*b*) The Treaty of Lausanne made on July 24th, 1923, Article 42, contains this provision :

" The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities."

(3) (*a*) Coming to Cyprus, the words " Personal Status " have been extensively considered in *Tano* v. *Tano* (1910) 9 C.L.R. 94.

(*b*) Under clause 17 of the Cyprus Courts of Justice Order in Council 1927, which corresponded to the earlier Cyprus Courts of Justice Order in Council, 1882, defining "religious matters " :—

(*a*) Marriage.

(*b*) Divorce.

(c) Maintenance in relation to Marriage and divorce.
(d) (e) ... (f) ... ,

there was nothing about guardianship of infants and prodigals in this definition.

(c) The first law which made provision for the Turkish Family Courts was Law 3 of 1951. This was repealed by law 42 of 1954 and the provisions relating to Turkish Family Courts are to be found in Chapter 338 (The Turkish Family Courts Law, Cap. 338). Section 2 thereof says :—

" Religious Matters " means the following matters and no others concerning persons of the Moslem faith :—

(a) betrothal, marriage and divorce and matters incidental thereto ;

(b) maintenance in relation to marriage and divorce, including the maintenance of the children of the marriage ;

(c) The registration of vakfiehs."

(d) Vakfiehs do not relate to " personal status " but by the statute jurisdiction was given to the Turkish Family Courts to deal with it because the institution of vakfiehs is a matter which affects only the Turkish community. Section 8 (2) which was introduced for the first time gave jurisdiction to the Turkish Family Courts to exercise the powers conferred on the District Courts by the Guardianship of Infants and Prodigals Law in respect of infants and prodigals who are the issue of a marriage valid under the Turkish Family (Marriage and Divorce Law) Cap. 339, or where the infant or prodigal is not the issue of a lawful marriage and the mother is a Moslem of Turkish race. This is not because it relates to personal status but because it was thought that it would be more proper for the Turkish Family Courts to deal with these matters in the same way they were dealing with the registration of vakfiehs which is not a matter relating to personal status.

(4) When in 1959 the Zurich Agreement was made the expression " personal status " had a crystallised legal meaning in relation to Cyprus and it was meant to refer to family status and family relations. It is in this respect that it has been used in the Zurich Agreement in Point 17, the second paragraph of which reads as follows :—

" Tribunals dealing with civil disputes relating to questions of personal status and to religious matters, which are reserved to the competence of the Communal Chamber under Point 10, shall be composed solely of Judges belonging to the community concerned."

It is in the same sense that it has been used in paragraph 1 of Article 87 of the Constitution relating to personal status and the composition and instances of Courts dealing with civil disputes relating to personal status and religious matters.

A partial limitation of capacity ought not to be classified as personal status but as capacity. In the present case we are only concerned with the relationship created under the provisions of section 9 of the Guardianship of Infants and Prodigals Law, Cap. 277 (*supra*).

(5) The effect of the provisions of section 9 (*supra*) is that a prodigal cannot administer his property without the advice and written consent of his guardian, but he is free to marry divorce or adopt children without such consent. In these circumstances can it be said that this is a matter of personal status or capacity ? Undoubtedly this is a matter of capacity, *i.e.*, it is a partial limitation of capacity and no more.

(6) For these reasons the administration of property does not come within the meaning of personal status as it appears in Articles 87 (1) (*c*) (*d*) and 152 of the Constitution and, therefore, the District Court had jurisdiction to entertain the application made in this matter. The appeal on that ground must be dismissed.

Appeal on the ground of want of jurisdiction dismissed.

Held, (7) we give now our answer to the question raised at the hearing of this appeal on the 13th May last, which was as follows :—

" Are the present application of December, 8, 1961, and all subsequent proceedings void because the applicant did not obtain the consent of the Attorney-General before bringing the application ?"

The ruling is that the order made upon the Application of December 8, 1961, and all subsequent proceedings are void because the applicant did not obtain the Attorney-General's consent which, we hold, is required under section 23 (3) of Cap. 277 (*supra*).

(8) The judgment will not take effect until two weeks from and including to-day in order to give time to the Welfare Officer to apply to the District Court of Paphos for his appointment as guardian of this prodigal.

(9) In response to the question which has been addressed to us we direct that each party should bear its own costs and those of the respondent should be paid out of the estate but the appellant will have to bear his own costs in the circumstances.

Order of the 8th December, 1961, and all subsequent proceedings set aside on the above terms.

Cases referred to :

Tano v. *Tano* (1910) 9 C.L.R. 94.

Appeal.

Appeal against the judgment of the District Court of Paphos (Malyali D.J.) dated the 23.6.62 (Application No. 7/46) appointing Murat Housnou, Turkish Welfare Officer of Paphos, to act together with Muveddet Toygar as guardian of the prodigal Mehmet Djelal of Paphos and ordering that the costs of the parties to the application be borne by the estate of the prodigal including the costs of the Constitutional Court recourse.

Cur. adv. vult.

L. Clerides for the appellants.

H. Souleyman for the respondent.

The Attorney-General of the Republic Mr. Cr. Tornaritis with Mr. A. Gavrielides and Mr. V. Aziz, advocates of the Republic, as *amicus curiae.*

The judgment of the Court was delivered by :–

WILSON, P. : This is an appeal from the order of the District Court of Paphos made on June 23, 1962, appointing Murat Housnou, Turkish Welfare Officer of Paphos to act together with Muveddet Toygar as guardians of the prodigal Mehmet Djelal of Paphos and ordering that the costs of the parties to the application be borne by the estate of the prodigal including the costs of the Constitutional Court recourse.

The following are the facts. By an application filed on December 8th 1961, Ali Ratib of Ktima applied to the District Court of Paphos for an order—

(*a*) Muveddet Toygar, the guardian of the property of Mehmet Reshat Djelal, prodigal, to give an account of her administering the property of the said prodigal,

(*b*) the removal of Muveddet Toygar from the guardianship of the property because of her mal-administration and since the date of her appointment up to the date of the filing of the application and the manner of her administering the property as being to the detriment of and against the prodigal or because of misusing her power and authority of guardianship, and be replaced by any other person as guardian of the property of the prodigal that the Court may find fit.

On September 23, 1946, (Application 7/46) Mehmet Reshat Djelal was declared a prodigal by the District Court of Paphos and Mr. Ali Riza, the then Registrar of that Court, was appointed guardian.

On January 17, 1947, upon the application of Leman Mahmoud, Mr. Riza was replaced by Mr. Ali Ratib as guardian.

On September 30, 1959, the prodigal's daughter Muveddet Toygar upon her application was appointed as guardian and has been acting in that capacity since that time.

The prodigal's immovable properties are all situated within the District of Paphos and at the time of the appointment of his daughter as guardian both he and she were resident in Paphos.

The prodigal and his daughter moved from Cyprus to Turkey where at the date of the filing of the present application they were both living. In support of his application, the applicant alleges in his affidavit sworn on December 7, 1961, that the prodigal is the owner of several shops, fields and building sites to the value of £10,000. He alleges sale of part of the prodigal's assets at less than their proper value, that the proceeds of the sale were not paid into any bank in the name of the prodigal and that the guardian and her husband have spent the whole of the proceeds at their own wish and for their own benefit. He further alleges that the guardian and her husband were then in Cyprus trying to sell the remainder of the prodigal's property and that the guardian has caused damage to his (the prodigal's) interests. He, therefore, applies for a declaration that she is unable to administer the property and requests that another proper and able person be appointed in her place.

On December 12, 1961, he applied for an interim order restraining the guardian from selling, mortgaging or transferring or in any way disposing of the prodigal's property in the District of Paphos. The application was fixed for hearing on the same day and the order was granted and made returnable on December 27, 1961. The applicant was also ordered to give security in the sum of £500.

On December 27, 1961, Counsel for the guardian opposed the interim order and agreed to file an opposition within ten days, thereupon the hearing was adjourned until February 6th 1962. On this occasion the prodigal's counsel took the position that Chapter 277, sections 2 (*b*), 3 (2), 7, 9, 10 and generally any law providing for the appointment of guardian of the property of a prodigal or generally restrictions upon the management of his property was unconstitutional under Article 23 of the Constitution which reads as follows :—

> " 1. Every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right ".

On January 6th 1962 the guardian gave notice to the applicant that she wished the following point to be referred to the Supreme Constitutional Court for decision, namely that the sections of Chapter 277 above referred to and also section 23 thereof and generally of any law providing for the appointment of a guardian of the property of a prodigal or generally for restrictions upon the management of his property were unconstitutional. She also asked for a stay of the application in the District Court pending the decision of the Supreme Constitutional Court. The reference was said to be made under Article 144.

On January 18th 1962, the District Court reserved the question propounded for the ruling of that Court, and stayed all further proceedings in the District Court until after the former's decision.

On April 19, 1962, it declared the definition of " prodigal " under section 2 and sections 3 (2), 7, 9, 10 and 23 of the Guardianship of Infants and Prodigals Law, Chapter 277, are not unconstitutional. In the course of its reasons for judgment it said :

> " according to section 23, proceedings under Cap. 277 shall be commenced by application made by any person who shall satisfy the Court that the application is

made *bona fide* with a view to the benefit of the prodigal, provided that such applicant shall have filed with his application the written consent of the Attorney-General therefor. Since it is not only the Court which has to consider the application but also the Attorney-General who has to watch over the propriety of such applications, section 23, in effect, provides a two-fold precaution against any abuse. The Court fails to see how a provisicn for such strict safeguards ensuring a proper proceeding could in any way be unconstitutional ".

On June 23rd 1962, counsel for both parties to the applications appeared before the District Court Judge and agreed that Mr. Murat Housnou be appointed guardian together with the said Muveddet Toygar. Acting upon this consent, the Court made the following Order—

" This Court doth by consent hereby order that Murat Housnou Turkish Welfare Officer of Paphos be and is hereby appointed as guardian to act together with Muveddet Toygar as guardians of the prodigal Mehmet Reshat Djelal of Paphos ".

It also ordered that the costs of both parties throughout be borne by the prodigal's estate. The appeal is based on the following grounds :

1. The trial Court had no jurisdiction to deal with the application 7/46 by Ali Ratib of Paphos for the removal of the guardian of the prodigal ;

2. The Court could not, even if consent was given, deal with the application and or give the order appealed against ;

3. The said order in any case is unconstitutional and invalid.

Upon the hearing of the appeal before us, counsel for the appellant respondent contended that guardianship of a prodigal is a matter of " personal status ". If under Articles 87 (1) (*c*) and (*d*) and 152 of the Constitution, guardianship of the property of prodigals is a matter of personal status, the District Court has had no jurisdiction to appoint or remove such a guardian since the Constitution came into effect or at least since the Turkish Com-

munal Court has been constituted. Paragraph 1 of Article 87 grants to the Communal Chambers legislative power solely with regard to—

" (*c*) Personal Status ;

(*d*) The composition and instances of Courts dealing with civil disputes relating to personal status and to religious matters ".

Article 152 (2) provides :

" The judicial power with respect to civil disputes relating to personal status and to religious matters which are reserved under Article 87 for the Communal Chambers shall be exercised by such Courts as a communal law made under the provisions of this Constitution shall provide ".

The Turkish Communal Court with power to deal with such matters commenced to operate by Law 8 of 1960 published on 10th March, 1961 with retrospective effect from the 16th August, 1960.

Neither counsel were prepared to argue this point fully on January 29, 1963, when the appeal came on for hearing. Consequently it was adjourned until March 7, 1963, to give them the opportunity to prepare themselves and to permit notice to be given to the Attorney General in order that he might attend or be represented. We also asked counsel to consider the effect of failing to notify him of any of the applications which had been made in this matter.

On the last named date Counsel for the parties appeared as did the Attorney-General who provided the Court with very helpful assistance.

At the outset, notwithstanding the language used in the orders which had been made, the guardian with which we are concerned is not a guardian of the person but only a guardian of property, as provided in Chapter 277, section 3 (2) " A guardian of a prodigal shall be guardian only of the property of the prodigal ".

The Attorney-General traced the meaning of the words " Personal Status " from the origin of this term during the middle ages when in Italy each city was a city state. Each had its own law called at that time " Statuta " (in Greek " Thesmia "). This was related either to the person or to property and thus there was the distinction

between " Statuta Personalia " (" Prosopika Thesmia ") and " Statuta Realia " (" Pragmatika Thesmia "). From Italy this spread to France where the " Statuta Personalia " was " Statute Personel ", " Personal Status " ; and " Statuta Realia " was " Coutume Réelle " " Real Customs ". From France the concept spread to Holland and to the legal systems of many countries. (See Maridakis' Private International Law, 1950 edition, page 215). Cheshire's Private International Law, 4th Edition, page 150, explains that " domicile " belongs to personal law which is called " Statut Personel ".

> " There is disagreement upon two matters. What is the scope of the personal law, as it is called, and should its criterion be domicil or nationality ? In England, however, it has long been settled that questions affecting status are determined by the law of the domicil of the propositus and that, broadly speaking, such questions are those affecting family relations and the family property. To be more precise, the following matters are to a greater or lesser extent governed by the personal law :
>
> The essential validity of a marriage.
>
> The mutual rights and obligations of husband and wife, parent and child, guardian and ward.
>
> The effect of marriage on property.
>
> Divorce.
>
> The annulment of marriage though only a limited degree.
>
> *Legitimation and adoption.*
>
> Certain aspects of capacity.
>
> Wills of movables and intestate succession to movables."

The Treaty of Lausanne made on July 24th 1923, Article 42, contains this provision :

> " The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities."

Coming to Cyprus, the words " Personal Status " have been extensively considered in *Tano* v. *Tano* (1910) 9 C.L.R. 94, on appeal from a judgment from the District Court of

Larnaca. The only question was whether the adopted son of French parents, duly adopted according to the law of France, was entitled to inherit the mulk immovables of his father (as a lawful child) under section 43 of the Wills and Succession Law, 1895. It was held that the child, although legally adopted according to the Law of France, was not entitled to succeed to the mulk immovables of his father situated in Cyprus as a lawful child under the provisions of the said law on the ground that the lex situs applies to the exclusion of any question of status dependent on the law of a foreign domicil and that the lex situs does not contemplate the succession of an adopted son. At page 100, Bertram J. says :—

> " This seems to be the principle which is intended to be enunciated by Savvas Pasha (who as an ex-Minister of Justice may be taken as an authority on the principles recognized by the Ottoman Government) in his " Théorie du Droit Musulman, vol. 1 (p. 54), where he says :
>
> > " The Moslem conqueror . . . . .therefore without any offence against his religion (' sans pécher ') refers all questions relative to the ' statut personel ' of his non-Moslem subjects to the religious authorities of these latter "
>
> And again (p. 55) :—
>
> > " Questions relative to the ' statut personel ' are religious questions . . . . .The Moslem legislator . . . . . knows that they must be resolved by the religious tribunals of his non-Moslem subjects."
>
> " It is not easy to define the exact scope of the questions which the Turkish law in theory allows to be decided by the law of the religious community. I have given elsewhere my reasons for thinking that the phrase ' statut personel ' is not an exact description of the scope of these questions. In the almost complete absence of any authoritative jurisprudence on the subject, and in view of the divergence between theory and practice which is so well known a feature of Turkish administration, it would be hazardous to attempt an exact definition, but I think it may be roughly said that the scope of these questions corresponds to the sphere of matters incidental to marriage and family status.
>
> Such then is the position of the law with regard to non-Moslem Ottoman subjects."

Again at page 101 :—

> " The conclusion which seems to follow from this identity of practice is this, that just as in regard to non-Moslem subjects, the Turkish law allows questions of family status to be determined by the religious law of the subject's community, so in regard to foreign subjects it allows such questions to be determined by the law of the foreigner's State.
>
> I am confirmed in this conclusion by finding that it is also the conclusion adopted by a modern work on the Turkish Land System, which is the work of a lawyer who has practised in Turkey, and which I have always found to be both exact and serviceable whenever I have had occasion to consult it. I refer to " De la Propriété immobiliére en Droit Ottoman " by Nedjib H. Chiha."

The result is that when it becomes necessary to find the status of a person in a family, whether he is a lawful son or whether he is a lawful brother, the " statut personel " will be determined by the law of the person concerned. The law governing a person's status when there are matters relating to succession, who is going to administer the property, these are not matters of " statut personel " but matters of the ordinary law of the country which regulates all of these matters. If someone dies and leaves no son, or leaves his father or mother, whether a son is legitimate or not, that is a question of personal status, and having defined this one must look to the law of the State to see whether there are lawful heirs of the deceased.

Under clause 17, when the new Cyprus Courts of Justice Order in Council, 1927, was passed, which corresponded to an earlier Order in Council (1882) defining " religious matters "—

(*a*) Marriage,

(*b*) Divorce,

(*c*) Maintenance in relation to Marriage and Divorce,

(*d*) Inheritance and succession,

(*e*) Wills (vessiyet) including registration thereof,

(*f*) The registration of vakfiehs

there was nothing about guardianship of infants or prodigals in this definition.

The first law which made provision for the Turkish Family Courts was Law 3 of 1951. This was repealed by Law 42 of 1954 and the provisions relating to Turkish Family Courts are to be found in Chapter 338 (The Turkish Family Courts Law, Cap. 338). Section 2 thereof says—

> "Religious Matters" means the following matters and no others concerning persons of the Moslem faith :—
>
> (*a*) betrothal, marriage and divorce and matters incidental thereto ;
>
> (*b*) maintenance in relation to marriage and divorce, including the maintenance of the children of the marriage ;
>
> (*c*) the registration of vakfiehs."

Vakfiehs do not relate to 'personal status' but by the statute jurisdiction was given to the Turkish Family Courts to deal with it because the institution of vakfiehs is a matter which affects only the Turkish community. Section 8 (2) which was introduced for the first time gave jurisdiction to the Turkish Family Courts to exercise the powers conferred on the District Courts by the Guardianship of Infants and Prodigals Law in respect of infants and prodigals who are the issue of a marriage valid under the Turkish Family (Marriage and Divorce Law) Cap. 339, or where the infant or prodigal is not the issue of a lawful marriage and the mother is a Moslem of Turkish race. This is not because it relates to personal status but because it was thought that it would be more proper for the Turkish Family Courts to deal with these matters in the same way they were dealing with the registration of vakfiehs which is not a matter relating to personal status.

When in 1959 the Zurich Agreement was made the expression "personal status" had a crystallised legal meaning in relation to Cyprus and it was meant to refer to family status and family relations. It is in this respect that it has been used in the Zurich Agreement in Point 17, the second paragraph of which reads as follows :—

> "Tribunals dealing with civil disputes relating to questions of personal status and to religious matters, which are reserved to the competence of the Communal Chamber under Point 10, shall be composed solely of Judges belonging to the community concerned."

It is in the same sense that it has been used in paragraph 1 of Article 87 of the Constitution relating to personal status and the composition and instances of Courts dealing with civil disputes relating to personal status and religious matters.

A partial limitation of capacity ought not to be classified as personal status but as capacity. In the present case we are only concerned with the relationship created under the provisions of section 9 of the Guardianship of Infants and Prodigals Law, Cap. 277. That section reads as follows :

"9 (1) Every order appointing a person as a guardian of the property of a prodigal shall operate as prohibiting the prodigal from—

(*a*) suing, defending or compromising action or other proceeding ;

(*b*) borrowing or receiving capital money or giving a discharge therefor ;

(*c*) selling, mortgaging, exchanging or otherwise parting with the possession of any of his immovable property,

without the advice and consent in writing of his guardian.

(2) Every transaction or contract (other than a contract for necessaries) entered into by a prodigal in contravention of the provisions of this section shall be null and void, unless the other party thereto had no notice of the appointment of a guardian of the property of the prodigal.

(3) Any prodigal who enters into any transaction or contract in subsection (2) mentioned (other than a contract for necessaries) without disclosing to the other party thereto that a guardian of his property had been appointed under this Law shall be guilty of an offence. Penalty : Imprisonment for three months or a fine of fifty pounds."

Section 3 (2) provides that a guardian of a prodigal is guardian only of the property and not of the person of the prodigal.

The effect of the provisions of section 9 is that a prodigal cannot administer his property without the advice and written consent of his guardian, but he is free to marry, divorce or adopt children without such consent. In these circumstances can it be said that this is a matter of personal status or capacity ? Undoubtedly this is a matter of capacity, *i.e.* it is a partial limitation of capacity and no more.

For these reasons the administration of property does not come within the meaning of personal status as it appears in

Articles 87 (1) (*c*) and (*d*) and 152 and therefore the District Court had jurisdiction to entertain the application made in this matter. The appeal under No. 4395 on that ground must be dismissed.

However, it appears that the orders made in this matter, except the original order of September 23, 1946, may not have been properly made in that the Attorney-General was not notified and did not appear on this application subsequently made.

Section 23 (3) of the Guardianship of Infants and Prodigals Law, Cap. 277, reads :

> " (3) No application for the appointment of a guardian of the property of a prodigal shall be instituted or entertained in any Court unless the applicant shall have obtained, and shall have filed with the application, the written consent of the Attorney-General therefor."

Perhaps the present difficulties would not have arisen had the proper procedure been followed.

The question of the validity of the proceedings throughout, due to the failure to notify the Attorney-General of the first and all succeeding applications must be spoken to again, due to the fact that although we asked for submissions upon this point to be made by counsel for the parties, neither of them gave the Court any assistance although they had plenty of time to prepare themselves in response to the request of the Court.

The ground of appeal that the order appealed from is unconstitutional was not pressed or argued. We do not deal with it.

13th *May*, 1963. *Appeal dismissed.*

In addition to the reasons already given we give our answer to the further question raised on May 13, which was as follows :

> " Are the present application of December 8, 1961, and all subsequent proceedings void because the applicant did not obtain the consent of the Attorney-General before bringing the application ?"

The ruling is that the order made upon the application of December 8, 1961, and all subsequent proceedings are

void because the applicant did not obtain the Attorney-General's consent which, we hold, is required under section 23 (3) of Cap. 277.

The judgment will not take effect until two weeks from and including to-day in order to give time to the Welfare Officer to apply to the District Court of Paphos for his appointment as guardian of this prodigal.

MR. CLERIDES : Your Honours are not making any order for costs in the second appeal (No. 4395) because the appeal is in effect allowed ?

WILSON, P. : In response to the question which has been addressed to us (re Civ. Appeal 4395) we direct that each party should bear its own costs and those of the respondent should be paid out of the estate but the appellant will have to bear his own costs in the circumstances.