

FISHER,
C.J.
&
GRIM-
SHAW,
P.J.
1924
} April 12

FISHER, C.J. AND GRIMSHAW, P.J.]

IACOVOS NICOLAOU MONK

v.

KYRIAKO NICOLA AND OTHERS.

PRESCRIPTION—EFFECT OF ABSENCE—VOLUNTARY—COMPULSORY.

Facts are as follows :—

Plaintiff claims the division of certain properties left by his father and mother both deceased. Plaintiff went abroad voluntarily and stayed away twenty years. The District Court found that such absence could not be taken advantage of, when the absentee had knowledge that a period of prescription had commenced to run against him, before he left Cyprus.

The District Court gave judgment for defendants in respect of all the property left by the father, who died before plaintiff left, and also in respect of two out of the four items, whose division plaintiff claimed, which were left by their mother and which defendants claimed had been given to defendant No. 1, as dowry. As regards the other two items of the mother's estate the Court ordered division.

From this judgment plaintiff appeals.

For Appellant *Triantafyllides*.

For Respondents *Kyriakides*.

Judgment : Varying the judgment of the District Court as follows:—

In this case the judgment of the District Court, so far as the father's property is concerned, must be affirmed. It is clear that when a man has a right of action vested in him, he cannot by voluntarily quitting the country suspend the running of the period of prescription. So far as Arazi-Mirié is concerned, the wording of Art. 20 of the Land Code points to the view that the disabilities and circumstances that prevent the period running must be in existence at the time the period begins to run. There is no provision for suspension once the period has begun to run, except possibly in the case of compulsory absence on military service. As regards the Mulk property the general proposition that a man cannot by a voluntary act suspend the running holds good. As regards the mother's property the plaintiff was absent from Cyprus at the time the period of prescription began to run, he was not, and could not be, a party to the contract of dowry, and therefore he is entitled to claim partition of his mother's property.

The judgment of the District Court must therefore be varied and the appeal must be allowed to that extent, but without costs of appeal, and with half the costs in the District Court.