

FISHER,
C.J.
&
DICKIN-
SON,
ACTING P.J.
1921
June 21

[FISHER, C.J. AND DICKINSON, ACTING P.J.]

SAVA CHRISTODOULOU AND OTHERS

v.

MICHAEL CHRISTINAS AND OTHERS.

LEGITIMACY—BURDEN OF PROOF—SUBSEQUENT MARRIAGE OF PARENTS—CANON
LAW.

In this case Plaintiffs claim as the legal heirs of one A. to have registered in their names the properties which are registered in the name of A.

The Defendants oppose this and base their opposition on the grounds that they are the legal heirs of C. who was the legitimate son of A.

Plaintiffs deny C. was the legitimate son of A., and the only material question the District Court had to decide was whether C. was the legitimate son of A. or not.

The District Court placed the burden of proving that C. was legitimate on the Defendants.

The facts are as follows:—

A. cohabited with a woman B. for several years and during that period B. gave birth to C. Subsequently A. and B. married and C. was brought up by them together.

The District Court gave judgment for Plaintiffs and the Defendants now appeal.

For Appellants (Defendants) *Triantafyllides*.

For Respondents (Plaintiffs) *Stavrinakis*.

Judgment: Where a man and a woman have cohabited together and during that period a child was born and subsequently these people have married, there is a presumption that the child was the child of the husband and therefore by Canon Law became legitimate by the subsequent marriage; and anybody who seeks to gain a benefit from the supposed illegitimacy of such child, must assume the burden of proving such illegitimacy and adduce the clearest evidence of denial of parentage on the part of the husband, which alone can rebut the presumption. In this case the burden of proving legitimacy was wrongly placed on the Defendants, and notwithstanding two documents which were produced to support their case, the District Court found they were not satisfied that legitimacy had been proved, and they gave judgment for Plaintiffs. We, therefore, reverse the decision of the District Court and enter judgment for the Defendants (Appellants) with costs.