FISHER, C.J. & STUART, P.J. 1921

December 6

[FISHER, C.J. AND STUART, P.J.]

YIOUSUF ZIA MOUSTAFA

v.

THE KING'S ADVOCATE.

JURISDICTION—FORM OF ACTION AGAINST THE EVQAF DEPARTMENT—C.C.J.O. (1910) CLAUSE 2.

A full District Court (three Judges) tried the above action and gave judgment for Defendant, from which judgment the Plaintiff appealed.

For Appellant *Chrysafinis.*

For Respondent the *Assistant King's Advocate.*

HELD: That inasmuch as Clause 2 of the C.C.J.O., (1910) requires actions against the Government to be treated in all respects as foreign actions, the Court, which tried the action and gave judgment, had no jurisdiction to do so. We do not say that we are finally deciding that in all actions brought against the Delegates of Evqaf the King's Advocate must be named as the Defendant, but we hold that where he is so named the action must be tried as a foreign action.

We therefore allow the appeal and remit the case to the District Court for trial by the President.

FISHER, C.J. & STUART, P.J. 1921

December 9

[FISHER, C.J. AND STUART, P.J.]

CHRYSANTHOS PARASKEVA

v.

POLYDOROS NICOLAIDES.

JURISDICTION—WAIVER—WRIT IN FORCE—RULES OF COURT, ORDER III. RULES 12–14—RESIDENCE, ORDER II. RULE 2., ORDER VII. RULE 8.

In this case the District Court dismissed the Plaintiff's claim for want of jurisdiction. From this judgment Plaintiff appeals.

For Appellant *Panayides.*

For Respondent *Triantafyllides.*

The writ of summons was originally issued on 20th July, 1911, and made returnable on September 11th, 1911, which date was altered to June 1st, 1914, and the writ was served on May 5th, 1914.

Defendant is a Cypriot, but has resided abroad since 1891. He was served whilst on a holiday in Cyprus in 1914. When the case came up for settlement of issues, Defendant did not appear and after several adjournments issues were settled on December 8th, 1914.

Various relatives and friends on March 12th, 1915, appeared on behalf of Defendant and made statements. The Court adjourned the case to June 1st, 1915, and again to June 8th and July 6th. On July 6th, 1915, the District Court, in Defendant's absence, heard the proof of the claim and gave judgment for Plaintiff by default. On October 9th, 1915, Defendant applied to get this judgment set aside as he " had a good defence," and on Defendant furnishing security for costs the Court set aside the judgment.

On 29th November, 1919—four years later—Plaintiff applied for the case to be heard, and after many adjournments on the 16th February, 1920, issues were settled, and Defendant filed a counterclaim.

The case was fixed for hearing on 26th October, 1920, and at the trial the District Court gave judgment dismissing the claim for want of jurisdiction as Defendant was resident abroad.

Judgment: In this case there is fundamental jurisdiction and the only question is whether at this stage of the case we are driven to say that all proceedings are bad in consequence of something in the Rules of Court.

The District Court has dismissed the action merely on upholding what was then the sole objection namely that the Defendant was not resident in Cyprus at the time the action was instituted. Even if this were a good objection in itself had no other proceedings occurred it might be urged that the action being one for misrepresentation, the misrepresentation was made to the Plaintiffs at their place of residence, viz., Nicosia, and the last words of the Rule would save the situation. But what are the circumstances? The Plaintiff issued the writ, and got judgment by default, and then, *at the instance of the Defendant* himself, the judgment is set aside and the proceedings began *de novo* and a counterclaim, of which the Court took no notice, is set up by him, all this on a writ which he now asks the Court to hold is bad. He did not—as he might have done, claim to have the whole proceedings set aside for want of jurisdiction, but he applies to have it set aside and says " I have a good defence," (see proceedings.)

It seems to me that the Defendant has submitted to the jurisdiction and waived such protection (if any) which the Rules of Court might have afforded him. But there is one Rule especially insisted upon,

FISHER, C.J. & STUART, P.J.

CHRYSANTHOS PARASKEVA *v.* POLYDOROS NICOLAIDES

Order 7, Sec. 8 (p. 686). "So far as an absent Defendant is concerned," that clearly points to proceedings in default of appearance and does not apply in this case. There are further points not necessary for us to deal with.

The result is that the parties to the action are before a Court which has fundamental jurisdiction over them and there is no rule of Court which under the circumstances obliges us to say that that Court has no right or jurisdiction to proceed with the case. We therefore allow the appeal and remit the action for trial by the District Court on the merits, and direct the Defendant to pay the costs of the hearing before the District Court and of the appeal in any event.

FISHER, C.J. & STUART, P.J. 1922

January 5

[FISHER, C.J. AND STUART, P.J.]

POLYXENI CHRISTODOULOU AND ANOTHER

v.

1. MAHMOUD BEKIR
2. BEKIR KAMBER
3. HEIRS OF HAJI STEFANI PAPA GREGORI
4. DEMETRI PETROU

INHERITANCE—CHRISTIAN OR MOSLEM HEIRS—ILAM OF SHERI COURT—EFFECT OF—JURISDICTION OF DISTRICT COURT—C.C.J.O. 1882, CLAUSE 20.

Appeal by Plaintiffs from a judgment of a District Court dismissing the claim of Plaintiffs.

The facts are as follows:—

The Plaintiffs and first two Defendants are brothers and sisters, all the children of Christallou Karamanou of Drenia, and it is in respect of her property that the action is brought. Christallou had, up to some eighteen years before her death, been a Moslem, and then was known by the name of Sunduz, afterwards she changed her religion and later had the two Plaintiffs and a third child called Demetri. These were all baptized as well as Christallou and her husband.

For some seventeen years or so after Christallou's death the Christian children had undisputed possession of all Chrystallou's property, the Moslem children having apparently lived quite apart from the Christian family.