

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

November 22

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

REX

v.

ANTONI TOWLA.

APPEAL—ASSIZE COURT CONVICTION—C.C.J.O. OF 1882, CLAUSE 51.

Appellant was convicted by an Assize Court of being in possession of certain property reasonably suspected of being stolen under Law 1 of 1886, Sec. 20.

The Court was comprised of three Judges—the Acting Chief Justice and the two Ordinary Judges of the District Court.

For Appellant *Theodotou*.

For Crown the *Assistant King's Advocate*.

Theodotou : Submits the general words in clause 51 of Cyprus Courts of Justice Order are qualified by Clauses 138, 141.

HELD: No appeal lies from a conviction by an Assize Court.

Appeal dismissed.

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

YOUSSUF ZIA MOUSTAFA

v.

THE KING'S ADVOCATE.

SHERI COURT—ILAM—ACTION FOR ENFORCEMENT BY DISTRICT COURT—LAW 10 OF 1885, SEC. 95—DISTRICT COURT MAY REFUSE TO ORDER ENFORCEMENT—FINAL APPOINTMENT OF MUTEVELLI RESTS WITH THE EXECUTIVE—JEHETS—BERAT.

The facts are as follows:—

Hafiz Moustafa Youssuf was Mutevelli of a vaqf. He died 38 years ago, and his son Ali Ismet, the brother of Plaintiff, succeeded him and remained Mutevelli up to his death in 1917. Then the Evqaf authorities took possession of the properties and declared the property to be Evqaf Mazbouta. At the same time Plaintiff went to the Sheri Court and obtained an Ilam that he was the proper person to be appointed Mutevelli and that he was entitled to get the control of the property. The Evqaf Department (Delegates of Evqaf) refused to appoint Plaintiff as Mutevelli. Plaintiff brought this action to recover the control of the property.

The President (sitting alone as in a foreign action) gave the following judgment:—

“ Plaintiff claims against the Crown, suing the King’s Advocate, a declaration that he, as Mutevelli, is entitled to hold and enjoy certain property now in the possession of the Evqaf, also accounts and interest.

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“ The Evqaf is admitted by the Assistant King’s Advocate to be a Government Department. The claim is founded on an Ilam of the Sheri Court. The Sheri Court’s jurisdiction is limited to matters and disputes (religious) between Moslems.

“ *This Court is not a Court of appeal from the Sheri Court; therefore the merits or demerits of the Plaintiff’s claim to be Mutevelli are not and cannot be under consideration. But the Sheri Court has no power to execute its own Ilams except through this Court, which must therefore necessarily have jurisdiction to decline to enforce an Ilam if it considers it proper so to do. The matter is therefore reduced to this:*

“ Is this Ilam one which this Court should enforce? For that in effect is what is being asked.

“ To my mind it would be absurd if a person were allowed to go to the Sheri Court and obtain a judgment there and then come to this Court and claim that by virtue of it (and its righteousness cannot be contested) he could dispossess the Government or one of its Departments. The petition therefore fails.

“ *Judgment for Defendant with costs.*”

From this judgment the Plaintiff appeals.

For Appellant *Chrysafinis* and *Fehmi*.

For Respondent the *Assistant King’s Advocate*.

Judgment: Affirming the judgment of the District Court.

Appeal dismissed.