

[NETTLETON, C.J. AND GRIMSHAW, P.J.]

## KING'S ADVOCATE

v.

HASSAN EFFENDI HAJI ALI HAVANIK, AS MUTEVELI OF THE  
VAQF OF THE DECEASED HAJI ALI HAVANIK.

PROCEDURE—DELEGATES OF EVQAF—EVQAF DEPARTMENT—MINISTRY OF EVQAF  
—MEDJLISS' IDARE—MUDIR OF EVQAF—MUHASSEBEDJI.

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} May 1

*The King's Advocate sued defendant (inter alia) for an account of his administration of the funds of the vaqf of Haji Ali Havanik. The defence was technical.*

1. *That the District Court had no jurisdiction, that it was a matter for the Sheri Court :*
2. *That the King's Advocate was not the proper person to sue as it was a religious matter.*

*Issues on this matter were framed as follows :—*

1. *Has the King's Advocate a cause of action against defendant ?*
2. *Has the District Court jurisdiction ?*
3. *If yes, what sum is due by defendant to plaintiff ?*

The District Court decided:—

“ As regards issue 1, we find that the administration of Evqaf devolved upon the British Government to whom the administration of the Island was delegated by the Turkish Government, therefore the King's Advocate is the proper person to sue in this case.

“ The defendant argues that the proper person to sue is the Muhassebedji, but it is quite clear from the judgment of the Supreme Court in *Mehmed Salahi v. Ahmed Houloussi*, 2 C.L.R., p. 125, that the Muhassebedji has no power to deal with property belonging to Pious Foundations and has therefore no *locus standi* to bring an action independently of the Department of Evqaf.

“ As regards issue 2, it is quite clear that the District Court has jurisdiction to entertain this action.

“ We order the defendant to render accounts of his administration from 1st July, 1921, to 1st July, 1922, to the Medjliss Idaré of the District of Limassol.”

From this judgment the King's Advocate appeals.

*King's Advocate* in person.

*Midhat Bey* for Respondent.

*Judgment :* In this case the defendant is Mutevelli of the vaqf of the deceased Haji Ali Hanavik of Limassol. The vaqfieh is not before us, but from what has been said it would appear that the income of the

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property was to go in part to the Mutevelli, in part to keep in repair the dedicated property, and as to the balance to maintain the water pipes of the Turkish cemetery and discharge the Municipal taxes thereon, and purchase necessaries for the Mosque of Arnaoudia.

The King's advocate is the plaintiff and claims, in the first place, a definite sum of money, secondly that accounts of the administration of this vaqf should be rendered to him, and, thirdly, payment to him of any sum found due on taking these accounts.

The defendant denies that the plaintiff has any cause of action against him, and contends that if the plaintiff has a cause of action that the Ordinary Courts had no jurisdiction and that the action should have been instituted before the Sheri Court.

The cause was tried in the District Court of Limassol where it was held that the King's Advocate was the proper person to sue, and that the Court had jurisdiction to hear the action. The President, District Court, thereupon ordered the defendant to render accounts of his administration to the Medjliss Idaré of the District of Limassol. From this order the plaintiff has appealed to the Supreme Court.

We propose to deal first with the question of jurisdiction, and on this point we have no doubt whatever. We entirely agree with the judgments of Tyser, C.J. and Fisher, J., in *Haji Arif Effendi v. Cade and another*, reported in Vol. X. of the Cyprus Law Reports on pp. 123 and 124. By clause 20 of the C.C.J.O., 1882, the jurisdiction of the Sheri Court is restricted to cognizance of religious matters concerning persons of the Mussulman faith. Any question, therefore, concerning the temporal needs of a mosque official, as was the question in *Haji Arif Effendi v. Cade*, or concerning the due administration of property and income as is the question here, although the property may be mevqufé, must be outside the jurisdiction of the Sheri Court. Therefore, as this question does not fall within the special province of that religious Court, but essentially appertains to the normal equitable jurisdiction of this Court, we can hold definitely that the action has been brought before the right tribunal.

To determine whether the King's Advocate has any cause of action against the defendant or any *locus standi* to maintain in this action is more difficult. We must consider the different categories of vaqfs and the different ways in which the Government is concerned with their administration. To reach a correct decision it is necessary to consider how the Ottoman Law stood prior to 1878, and then to take note of any modification made by Cyprus Statute Law.

It seems clear that vaqfs may be divided into three classes according to the way in which they are administered. First there are Evqaf Mazbouta, which are administered directly by the State: secondly, there are Evqaf Mulhaka, which are administered by special Mutevellis, but which remain under the supervision of the State; and lastly, there is the unimportant category of Evqaf Mustesna which are managed solely by special Mutevellis without any interference by the State.

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The manner of the administration of the vaqf depends in the main upon the dedication. Evqaf Mazbouta can only be dedicated by the Sultan or his family: but vaqfs can also become Mazbouta upon the extinction of the line of the Mutevellis appointed by the dedicator, if the State seizes their administration.

The second category is the normal type of vaqf: the dedicated property is administered by the Mutevelli who is generally of the family of the dedicator, and the income of the property must go as dedicated by the dedicator. Generally substantial advantages are reserved to the Mutevelli as well as to the sacred objects of the vaqf.

The third category is entirely exceptional and comprises vaqfs made by certain high functionaries or by persons who had received the title of conqueror (Ghouzat). We need not consider it further.

But the distinction between Mazbouta and Mulhaka must be clearly drawn—in the former the State directly controls the revenue of the property; in the latter the State can only superintend the Mutevelli, who is in a position very similar to that of a trustee in English law, who is also one of the *cestuis que trustent*, otherwise beneficiaries.

The Ottoman State exercised its power of administration and supervision over the vaqfs in this country prior to 1878, through one of the Government Departments known as the Ministry of Evqaf. This Ministry of Evqaf had taken the place of the various authorities such as the Grand Vizir or Grand Mufti whom formerly a dedicator might appoint to superintend his vaqf.

This Ministry of Evqaf apparently exercised its control over the vaqfs through local agents known as Mudirs. Subsequently the functions of the Mudirs were carried out by officials referred to as Muhassebedjis, a word which apparently means accountant. (See 2 C.L.R., 122).

According to the law or regulation of 19 Djemaziel Akhir, 1280, the Mudirs administered Mazbouta vaqfs for the State and superintended

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Mulhaka vaqfs, but had to have their accounts passed and certified by the District Council of the locality in which the vaqf was situated known as Medjliss Idaré.

This position was not altered by the change of government in 1878. Under the Convention with Turkey of that year the administration of this Island was assigned to the British Government. All powers exercised by the Ottoman State over this Island thereupon were vested in the British Government. Among these powers obviously must be included that above mentioned power of administration and superintendence over vaqfs formerly vested in the Ministry of Evqaf. And these powers still remain in the British Government, for the Annexation of 1914 did not deprive the Government of any of its powers.

As a matter of detail the British Government agreed in the Annex to the Convention of 1878, that two Delegates of Evqaf, one to be nominated by the Ministry of Evqaf in Turkey, and the other to be nominated by the British authorities should superintend the administration of Mussulman religious property.

The Cyprus (Mussulman religious property) Order in Council, 1915, made no alteration in the law applicable to vaqfs although it altered the method of appointing the two delegates entrusted with the superintendence of Mussulman religious property.

We hold therefore that the Government's right to superintend Mulhaka vaqfs (i.e., Nazaret) is still part of the law applicable in this Island. Therefore by section 43 of the C.C.J.O., 1882, the King's Advocate is the proper person to bring an action on behalf of the Government to enforce this right, and if he asks for the accounts to be rendered to himself he is entitled so to do.

A necessary feature of supervision is the inspection of accounts. The King's Advocate has asked that accounts should be rendered to him. The learned Judge of the Court below following apparently certain words of the above-mentioned law or regulation of 19 Djemaziel Akkir, 1280, has ordered the accounts to be rendered to the Medjliss Idaré of Limassol, and thus in effect has refused to grant the plaintiff the relief he has asked for and has ordered something which was not asked for. In this we think he must be wrong: even if the Law of 19 Djemaziel Akkir, 1280, applies in its entirety, it does not take away the State's right of Nazaret or supervision. From section 11 of that law it would appear that the State official, the Mudir, had to obtain the accounts himself and then pass them on for examination by the Medjliss Idaré.

It may be that the State official who has taken his place, has this duty of handing on the accounts to the Medjliss Idaré, to perform, which would obviously be interested in the working of charities established in its District. But that is not a question to be decided now. Perhaps on some other occasion the point may arise for decision, and we shall then have to investigate how far this particular law may be treated as still binding on the Courts of this Island.

Obviously the law has been modified considerably; for one thing the officials referred to in it as Mudirs have ceased to exist.

All that we have to decide now is whether or not the State has a right to see these accounts, and we are not concerned with any duties there may be cast on the State officials or the State as to handing these accounts to other persons or corporations to examine. Therefore we vary the order of the Court below and order that accounts as asked for in the claim be rendered to the plaintiff.

As to the money claim we consider that no case has been made out on the material before us for payment of any sum by the Mutevelli to the Government. All the income from the vaqf in the hands of a Mutevelli of a Mulhaka vaqf must, it would seem, go in accordance with the terms of dedication.

But in any event no evidence as to the method of applying the income is before us, and we make no order in this connection.

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