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With these cases before us and the case of *Sellar v. Bright*, 91, L. T. 9, which definitely says that the Court of Appeal cannot assent to the proposition that a single judge can impose upon the Court of Appeal the obligation to hear an appeal which is out of time, we think that we ought to hold that the application in this case should not have been made in the way it was, and that the order made thereon cannot stand.

Following the above findings the order of the 26th July, 1939, made *ex parte* and extending the time for giving notice of appeal is reversed. And the notice of appeal and the service of such notice under such order are set aside. Costs to defendant of this application agreed on at £8 8*s*.

The order of the 26th July, 1939, *made ex parte and extending the time for giving notice of appeal is reversed, and the notice of appeal and the service thereof under such order set aside.*

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[CREAN, C.J., AND GRIFFITH WILLIAMS, J.]

THE AYIA MARINA CHURCH, OF DHIORIOS, BY ITS COMMITTEE, *Plaintiffs-Respondents,*

v.

IBRAHIM HALIL AGHA AND ANOTHER, *Defendants-Appellants.*

(*Civil Appeal No.* 3672).

POSSESSION OF ARAZI-MIRIE (STATE LAND) BY ECCLESIASTICAL CORPORATIONS—RIGHT TO SUE—REGISTRATION IN NAMES OF TRUSTEES—ARTICLE 122 OF THE OTTOMAN LAND CODE—SECTION 12 OF THE IMMOVEABLE PROPERTY REGISTRATION AND VALUATION LAW, 1907, AND SECTION 3 OF THE ECCLESIASTICAL PROPERTIES LAW, 1935.

Appeal by the defendants from a judgment of the District Court of Kyrenia in an action brought by the plaintiff Church for encroachment by the defendants on a piece of land of Arazi-Mirie category standing registered in the name of a person as trustee for the Church.

HELD: (*By Crean, C.J.*) :—

(1) *An ecclesiastical corporation, to maintain an action for trespass on state land claimed by them, must prove by evidence* :—

(i) *That the annexation of the land in dispute is recorded in their name in the Imperial archives at Constantinople; or*

(ii) *That the land belongs to them* ab antiquo, *and is registered in the Central Office of Land Registration at Nicosia; or*

(iii) *That the land passed into their possession by lawful means, and is registered in the name of a person as trustee for the Church; or*

(iv) *That they were in possession of the land for ten years prior to the year* 1891.

(2) *That the evidence adduced by the plaintiff Church did not prove any of the above requirements.*

HELD: (*By Griffith Williams, J.*) :—

(1) *That an ecclesiastical corporation cannot own by deed land of Arazi-Mirie category ;*

(2) *That the law will not recognize the annexation of any state land to any ecclesiastical corporation unless its annexation is recorded in the Imperial archives at Constantinople ;*

(3) *That section* 12 (3) *of the Immoveable Property Registration and Valuation Law,* 1907, *does not apply to land of Arazi-Mirie category ;*

Case of Sophronios Egoumenos of Kykko Monastery v. The Principal Forest Officer (*C.L.R., Vol. I, p.* 111) *followed.*

(4) *That the Ecclesiastical Properties Law,* 1935, *protects the possession of Ecclesiastical Corporations who were in actual possession of land for ten years prior to* 1891.

Ch. D. Demetriades for the appellants.

C. S. Constantinides for the respondents.

The facts and points of law involved appear sufficiently from the judgments.

CREAN, C.J.: An action was brought in the District Court of Kyrenia by Ayia Marina Church of Dhiorios against Ibrahim Halil Agha and his wife Doudou Hussein Mustafa for an injunction to restrain them from interfering with a piece of land alleged to be part of a field of the above Church. In the Statement of Claim £10 damages is claimed by the plaintiffs for such interference, and the following other remedies are sought by them:—

(*a*) An order for the cancellation of any registration in the name of the defendants in respect of this land; and

(*b*) An order directing the rooting out of the standing crop sown by defendants on the piece of land which is in dispute.

The action was instituted in the name of the Committee of the Church, and the members thereof are:—Papa Eftychio Constantinou, Petros G. Pashardi, Nicolas I. Haji Savva, Matheos Nicola and Costas P. Petronda.

The defendants filed a defence to this claim, and in it they deny that the Ayia Marina Church is the owner by title, prescription or otherwise of this piece of land. And that the defendants are not entitled to bring the action in its present form.

There are other grounds set out in the defence, which appear to be reasonable, but I do not intend to set them out in detail; because, if the first ground is substantial, then it is unnecessary to consider them. In effect, the first ground is, that the plaintiffs have not shewn that they have any legal title to this land, in other words, they are not the owners of it. And not having proved any legal title, they failed to produce evidence of ten years' possession prior to 1891 such as is required by the

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Ecclesiastical Properties Law of 1935 before an action such as this can be instituted.

A counterclaim is also filed by the defendants in which they say: If the land in dispute were included in plaintiffs' registration No. 2782, such should be cancelled in so far as the land in dispute is concerned, because it belongs to the defendants by lawful possession, prescription, or under their title Registration No. 2593 of the 15th June, 1933. A declaration of their ownership is also claimed by the defendants, and costs.

The pleadings in the case shew clearly what the issues before the District Judge were.

In his judgment the judge says no claim has been made for the cancellation of the title-deed of the plaintiffs for having been wrongly issued. It seems to me that the counterclaim of the defendants clearly asks for such cancellation. And in his judgment the District Judge makes no order at all on the counterclaim. If the counterclaim were not sustained by the defendants, it should have been formally dismissed with costs, but it is completely ignored.

I think I am bound to say that it is most desirable that the pleadings in every case should be read carefully by the judges of the District Courts, as pleadings are supposed to, and very often do, clarify and concentrate the issues, and so, if carefully read, should be of immense assistance to the judge in giving his decision.

The facts of this case are that one Petros Pashardis, who is one of the plaintiffs herein, got himself registered as the owner of a field of about 171 donums under a registration No. 2782. In his evidence he says he possesses this property on behalf of the Church of Ayia Marina, and that the small piece of land in dispute in this case, which the defendants have tilled, is included in that registration; hence the plaintiffs' claim for an injunction in regard to it.

The registration numbered 2782 by the above-named Petros Pashardis was effected on the 22nd February, 1939, that is, less than three weeks before this action was instituted, and, as I have already said, the area of it was 171 donums or thereabouts. This registration was evidently effected on account of the defendants cultivating a piece of land which the plaintiffs claim was their property and which they allege is included in their registration numbered 2782. It is said by the plaintiffs that the extent of the defendants' encroachment on their land is 23 donums, but the defence says that the land claimed by them is only 6 donums in extent and valued for about £3. The judgment is given however

in favour of the plaintiffs for 20 donums, which seems peculiar when only 6 donums are in dispute.

From the evidence of the surveyor, the land is Arazi-Mirié, and was registered by Petros Pashardi, as trustee for the Church, by right of prescription. It is stony and uncultivated, and on part of it there is a heap of stones in a circle which, the plaintiffs suggest, is the ruin of a church. It appears that on the 14th of September of each year a priest and one of the trustees used to take an ikon into the field, and the people from the village came and kissed it; and in addition to the above ceremony the annual fair for the district was held there.

This is the evidence as to the land claimed by plaintiffs as being attached to a church and as to their possession of it. There is a good deal of evidence given by the plaintiffs' witnesses which shews that this land was a sort of village common or merah on which shepherds from round about grazed their flocks. It appears from the evidence that some of the shepherds had permits, and some had not.

A clerk in the Land Registry Office, Kyrenia, called as a witness for the plaintiffs says that this land claimed by the plaintiffs was recorded on the 23rd May, 1931, under the Compulsory Registration Law in the name of the Church of Ayia Marina. It is also said by this witness that the land in question is shewn by the Taxes Book to belong to the Church, and further he states that before 1920 the land was recorded in their name " by undisputed possession more than 30 years." This clerk goes on to say that the information from which the record in 1931 was made, was given by Pavlos Iacovides which, I suppose, is the Pavlos Iacovides, Mukhtar of the village of Dhiorios, who gives evidence at the trial, and who on cross-examination says he knows this land for the last 20 years. The reason given by this witness from the Land Registry Office why the land was registered in the name of Pashardis was because he was one of the trustees of the Church and because no registration of Arazi-Mirié land in the name of a church can be effected.

From what I have already said, I think, it appears clear that the plaintiffs claimed an injunction to restrain the defendants from interfering with a piece of land of about 23 donums and for damages and other remedies. That the defendants admit cultivating 6 donums only, and only claim to have a title to that extent, and that the judge gave judgment in favour of the plaintiffs for 20 donums. The appeal before us has been lodged against that decision, and a cross appeal has been filed by the plaintiffs, but in view of the opinion I am about to express it will not be necessary to say what the grounds of such cross appeal are.

The grounds of defendants' appeal are, namely: that the judge did not consider the point that was argued before him which was, that even

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if the registration in favour of plaintiffs numbered 2782 was in accordance with law it gave the plaintiffs no right against any person interfering with the property so long as the plaintiff Church did not establish what Law 1 of 1893 or Law 3 of 1935 require. And further that the plaintiff Church, although they alleged possession of the property in dispute, did not prove such possession as is requred by the above laws which deal with ecclesiastical properties.

In arguing the appeal I gather that Mr. Demetriades submits in the first place that there was no evidence before the Court that the plaintiffs, the Ayia Marina Church, were the legal owners of the property as to which they claim an injunction.

It is admitted that the land in dispute is Arazi-Mirié or state land, that is, land the ownership of which can always revert to the state. Being state land it is argued for the defendants that the Ayia Marina Church cannot claim the ownership of it unless they produce evidence that the annexation of it to their church is recorded in the Imperial archives at Constantinople.

This argument is based on Article 122 of the Ottoman Land Code, and it is translated at p. 116 of Vol. I of the Cyprus Law Reports in the case of *Sophronios Egoumenos v. The Principal Forest Officer*. In that case the judges of the Supreme Court say that they have given their utmost care and attention to seeing that they were accurately informed of the meaning of Article 122, and after doing so, they say the article means that the law will not recognize the annexation of any state land to a monastery as monastery property, unless its annexation is recorded in the Imperial archives.

There is no suggestion or claim by the Church that they can produce such a record, therefore, if that were their only means of shewing a title to ownership of this land in dispute they have failed.

But it is not their only title to ownership, for they claim this land *ab antiquo*, or from a time, I suppose, whereof the memory of man runneth not to the contrary. If that is so, it is argued by Mr. Demetriades for the defendants, the plaintiffs must prove that it was shewn by evidence to belong *ab antiquo* to the Ayia Marina Church and registered at Nicosia. This, it is submitted, is the law, as laid down by section 12 (2) of Law 12 of 1907 which is called the "Immoveable "Property Registration and Valuation Law, 1907," and it repealed the Titles Registration Law, 1885, except sections 11, 12 and 13 which form section 12 (2), (3) and (4) of the above Law of 1907.

Before the Court below there was no real evidence, so far as I can see, that this land belonged *ab antiquo* to the plaintiff Church, or that it was registered in Nicosia, though it has been said on their behalf that it

did belong to them; and it is submitted by Mr. Constantinides that the proof of this, is the circle of stones, or, as he calls it, the ruins of the church standing on the land. This argument can hardly be taken seriously, and, if it be taken seriously, one can only say that it is most shadowy evidence to offer in proof of an alleged fact. And as there is no further evidence in support of the allegation that this property belonged *ab antiquo* to the Church, I would say the plaintiffs have failed to establish a claim under section 12 (2) of Law 12 of 1907.

Notwithstanding that the plaintiffs failed to establish that the land in dispute belonged to them *ab antiquo*, it was open to them under section 12 (3) of the same law to prove that the land passed by lawful means into their possession, and if they did so they were entitled to have themselves registered as owners. This section reads:—

"All immoveable property, other than that belonging *ab antiquo* "to any church or monastery, which shall have passed by lawful "means into the possession of any church or monastery shall be regis- "tered in the name of some person as trustee for the church or "monastery."

According to the law as laid down in *Gavezian v. Pandeli* (C.L.R., Vol. III, p. 256) that would have been a matter of great difficulty, as it had always been held that there were no lawful means by which Arazi-Mirié land could pass into the hands of a church or monastery, and that the only property which could be considered as annexed to a church or monastery was property as so annexed in the Imperial archives at Constantinople.

In this judgment of the Supreme Court in *Gavezian's* case the case of *Sophronios Egoumenos v. The Principal Forest Officer* (*supra*) is referred to, and in referring to it the following words are used:—"The Supreme "Court did not hold that section 12 was entirely inoperative inasmuch "as it is possible that there may be immoveable property other than "Arazi-Mirié which may pass by lawful means into the possession of a "church or monastery." This probably meant that mulk immoveable property could be passed by lawful means into the possession of a church or monastery.

I think then that section 12 (3) of the Law of 1907 means that if it were possible for a monastery or a church to acquire immoveable property by lawful means and become the legal owner of it, the monastery or church is entitled to have that property registered in the name of some person as trustee for the church or monastery.

As there is no evidence that the plaintiffs acquired this property by lawful means they have failed to prove a title in accordance with

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section 12 (3) of Law 12 of 1907, and so there is only one more method in which they could have shewn that they were entitled to bring this action and that was by virtue of the several Ecclesiastical Properties Laws from 1891 to 1935.

These laws were passed to make temporary provision for protecting the claims of the ecclesiastical corporations to certain properties in Cyprus. The preamble of the first law of 1891 says that questions have arisen as to the rights of ecclesiastical corporations with regard to the tenure of land in Cyprus and it is expedient pending the settlement of such questions that ecclesiastical corporations should not be disturbed in the enjoyment of any immoveable property of which they are now actually in possession. This law was to remain in force for two years, and at the end of the 2 years the 1893 law was passed and since then several others up to the 1935 law.

The main force of these enactments is that in any action brought by an ecclesiastical corporation in respect of trespass upon cultivated lands in the possession of such corporation evidence of title need not be produced, but evidence of possession by itself shall be sufficient to enable the ecclesiastical corporation to maintain the action.

The section of the 1935 law relevant to this case is section 3 which says:—

" In any action brought by an ecclesiastical corporation in respect " of any interference with or trespass upon any cultivated lands in the " possession of the corporation, it shall not be necessary for the plaintiff " to produce evidence of his title to such cultivated lands, but evidence " of ten years' possession alone shall be sufficient to enable the corpora- " tion to maintain the action against any person interfering with the " lands, even if he is the registered owner in the books of the Land " Registry Office:

" Provided that the privileges conferred by this section shall not " apply to any lands of which any such corporation has taken possession " after the 22nd day of May, 1891."

Strange to say, the main authority on which counsel for the Church relied was the case of *Haji Kyriakou v. Manuel* reported in the C.L.R., Vol. X, at p. 14. And the judge seems to have considered it as one of the principal reasons for his decision. I think it is clear from the record of the present case that counsel for the defendants relied almost entirely on the fact that the plaintiffs were an ecclesiastical corporation and therefore their position was a peculiar one and quite different from an ordinary plaintiff. And he pointed out that there were specific laws applicable to actions brought by ecclesiastical corporations.

The case of *Haji Kyriakou v. Manuel* (*supra*) is between two private individuals, and therefore had no relevancy whatever to the points raised by the defence.

From section 3 of the Law of 1935 it is clear, I think, that the plaintiffs must prove that they were in posesssion of the land they claim for 10 years prior to the year 1891, that is, from the year 1881 which is 59 years ago.

And when the law says they must prove that they were in possession of the property it does not mean that they need prove they were the legal owners of it with a good title to it. Evidently it was realized that the position of ecclesiastical corporations as to land was a doubtful and uncertain one, and so these different laws were passed to protect their position, and facilitate them in restraining people from interfering with property they were actually in possession of.

For the defence it is said that the plaintiffs had not even possession of this land and that what evidence was given does not prove possession by them. Undoubtedly there was evidence that they gave permits to shepherds to graze on it, but at the same time there is evidence given by their own witnesses that others grazed their flocks on this land without permission; consequently, I think, it would be difficult to hold on this evidence that these were acts of ownership.

The law seems to be that possession is shewn, in the case of land, by suitable acts of ownership done upon the land to the exclusion of other people claiming possession, and to bring themselves within that, counsel for them submits that in addition to the giving of permits to graze they cut timber, prosecuted people for trespass. And, that they went once a year to the circle of stones or chapel as it is called by the plaintiffs, where an ikon was carried and an annual fair was held there. To call the collection of stones already referred to as chapel is, I think, a little bit hopeful on the part of the plaintiffs as their own witness describes it as " consisting of a heap of stones in a circle."

The evidence as to the other acts of ownership is, in my opinion, so unconvincing and meagre that I would not feel justified in calling them acts of ownership. Apart from that, however, even if they did amount to the plaintiffs showing possession they were bound to prove by section 3 of Law 3 of 1935 that they had been in such possession for the last 59 years, and in no part of the evidence do I see such an allegation made, nor in the pleadings do I see any such claim.

My opinion is, that the plaintiffs have failed to prove such possession as is required by the above law of 1935. And in the absence of that, and in spite of their registration 2782 their claim should have been dismissed, consequently this appeal is allowed with costs.

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But notwithstanding this decision it may be, that the plaintiffs have a good title to this land. But the evidence offered by them on the trial of the action in the District Court did not prove that title, nor did it prove such possession as is required by the Ecclesiastical Corporations Laws.

On considering the defendants' counterclaim I think, in the absence of more evidence, it should be dismissed, but without costs; and by this decision the cross appeal automatically fails, and so must be dismissed with costs.

GRIFFITH WILLIAMS, J.: This is an appeal from a judgment of the District Court of Kyrenia in which the Church of Ayia Marina of Dhiorios was adjudged to be the owner of a field of Arazi-Mirié land held by one Petros G. Pashardi under registration 2782 on behalf of the Church.

The action was brought by the Church in the name of the members of its Committee (and the Locum Tenens of its President) against the defendants, man and wife, for an encroachment on the land contained in their registration, and asking shortly for (*a*) an injunction to restrain the defendants from interfering with their land, (*b*) compensation for damage, (*c*) and an order for cancellation of any registration in defendants' name in respect of the part of land in dispute. Besides setting up title by deed the plaintiff Church claimed to hold by " lawful long " possession, prescription and/or otherwise."

The defendants said in their defence, *inter alia*, that the land in dispute was registered in the name of defendant 2 under registration No. 2593 of Dhiorios village and/or that it belonged to the defendants by long, lawful possession, prescription and/or otherwise. They denied that the plaintiffs had ever exercised any kind of possession over the land in dispute.

From the evidence it appeared that the Church only obtained their registration No. 2782 on the 22nd February, 1939, in fact after the time when they admit that defendants had begun to exercise possession over the disputed land. Indeed as the writ in this action is dated 13th March, 1939, it seems reasonably sure that Registration No. 2782 was obtained by the Church, in the name of a member of its Committee (to comply with section 12 (3) of the Immoveable Property Registration and Valuation Law—No. 12 of 1907), for the sole purpose of bringing this action. This view seems to be particularly supported by their counsel relying in this Court chiefly on the principle laid down in *Haji Georgi Haji and another Kyriacou v. Kyriaco Manuel* (C.L.R., Vol. X., p. 14) namely that: " A Court cannot refuse to enforce a registered title " on the ground that the registration was made erroneously, where

"there is no claim to set aside the registration by a person lawfully "entitled to be registered for the property in question." He argued that since the Church had obtained rightly or wrongly a registered title—and it seemed to be fairly conclusively proved that appellants had encroached on land included in registration No. 2782, which was not also in their own registration 2593—that title was good against anyone who did not claim and establish a better title in that action; that the appellants had claimed to hold the land by their title 2593, but that the land in dispute was not included in that title. That the appellants could not establish any right by long possession as the District Judge did not believe the witnesses called by them to prove this.

Assuming that the respondents establish that by registration they have a good *prima facie* title to the land they claim, under registration 2782, they will be entitled to succeed against any who cannot produce a better title or proof that they are entitled to be registered and to have any existing registration set aside. Now since the registration produced by the appellants on which they chiefly rely (as appears from the evidence) does not include the land in dispute, the respondents must succeed if they can establish a *prima facie* claim to the land in dispute. But the appellants have argued that the respondents cannot even by registering the land in the name of a trustee on their behalf acquire *prima facie* ownership of land of the category Arazi-Mirié; and that the land in dispute being Arazi-Mirié they have no right to rely upon their title by registration.

It is indeed the case that mere registration of land by the Land Registry unlawfully to an ecclesiastical body could not give that body any title to the land.

If then the Church as an ecclesiastical corporation is under the disability of being unable to own any Arazi-Mirié land, no document purporting to give a title to such land issuing out of the Land Registry can have any effect at all or be regarded in a Court of Law as *prima facie* evidence of any right or title to the property. The fundamental point for decision is the position of the ecclesiastical corporation regarding Arazi-Mirié land and their rights in it. The question of whether or not the Church exercised possessory rights over the land in question can scarcely arise, as the Church claims by deed. If the Church cannot hold land of this category neither registration nor possession will avail.

The Court is therefore called upon to decide the fundamental question of whether it is lawful for an ecclesiastical corporation to own land of the category known as Arazi-Mirié. If it is not lawful, it is clear that this action was not maintainable and that the appeal should be allowed.

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Now the land law of Cyprus is the Ottoman Land Code as varied by laws passed since the British Occupation. The fundamental principle of this law seems to have been that the ownership of all land was in the state, and that the state allowed the surface of this land to become the property of individuals, but to be inalienable from them without consent of the state—for which a fine or payment must be made to officers of the Government. Should the owner die without heirs, the property would revert to the state and be regranted to the further profit of the state. This principle of ultimate ownership of land by the State provided wisely and effectively against land getting into the dead hand of any corporation with perpetual succession; and as regards ownership of land such corporations do not seem to have been recognised. In the archives at Istambul certain lands were registered as belonging to certain monasteries and other buildings; but these lands were rather reserved by the Government for the use and enjoyment of the dwellers in such buildings, than property under the ownership or at the disposition of any corporation housed in such buildings. The corporation whether ecclesiastical or Mohammedan did not hold by deed and could not dispose of such property.

The only article of the Land Code dealing specifically with the rights of monasteries—which may be taken to be the same for any ecclesiastical corporation—is No. 122. According to Fisher's version the translation of this article is as follows:—

" Land attached *ab antiquo* to a monastery registered as such in the " Imperial archives (Defter Khané) cannot be held by title-deed; " it can neither be sold nor bought. But if land after having been held " *ab antiquo* by title-deed has afterwards passed by some means into " the hands of monks; or is in fact held without title-deed, as appur- " tenant to a monastery the procedure as to state land shall be applied " to it, and possession of it shall be given by title-deed as previously."

Here it is recognised that certain land which from time immemorial had been annexed to a monastery and of which the annexation had been registered in the Imperial archives could not be held by deed and could not be bought and sold. That is to say, this kind of land is inalienable since it is held by the state for the use of the monastery in perpetuity. Then the article goes on to deal with land held by deed (tapu) of the kind of land that can be sold and bought and to which the title is transferable, it says:—" This land which was originally held by " tapu has fallen into hands of monks and held without tapu as annexed " to a monastery shall be treated as other state land and shall as " before be made to be held by tapu." The purpose of the latter part

of this article was clearly to keep fluid the ownership of state land and prevent it passing out of the control of the state. It had the same object as had the Statute of Mortmain in Plantagenet England. Under the Ottoman Code a monastery or body of monks was incapable of owning land; but land could be held by the state for its benefit, that is to say, that land registered in the archives. And under the Titles Registration Law, 1885 (now 1907) property of a class the corporation may own can be held for them by a trustee.

But the question of whether or not an ecclesiastical corporation can own Arazi-Mirié land in its own name or in the name of a trustee has already been decided for Cyprus in the case of *Sophronios Egoumenos of Kykko Monastery v. The Principal Forest Officer* (C.L.R., Vol. I, p. 111). In an able judgment in that case the whole position of the law as to the holding of land by or on behalf of ecclesiastical corporations is reviewed, and in it the Court gives its version of the meaning of Article 122. It is as follows:—

"As we understand this article, it means that the law will not "recognize the annexation of any State land to a monastery, as monas- "tery property, unless its annexation is recorded in the Imperial "archives; and that where the right to possession of State lands has "been granted to individuals, and any owner of it has purported to "dedicate it to pious uses, the dedication is in the eye of the law "inoperative, and the right to possession remains vested in the person "who so purported to dedicate it, and descends to his heirs on his "death. Such right could not be handed over by him to any grantee, "without the permission of the competent authority (Article 36), "and must either remain vested in him or his heirs or revert to the "State."

After this the judgment went on to analyse the Turkish Land Law and to show that the main object throughout is the safeguarding of the reversionary rights of the State. Hence the Court decided that ownership of Arazi-Mirié land in a monastery will not be recognized by law.

I do not think I could improve on or add to the very clear and comprehensive exposition of the law contained in that judgment, and can only say that I find myself in complete agreement with it. The position now is quite unchanged from the time when that case was decided. There is no means by which ecclesiastical corporations can hold Arazi-Mirié land save by virtue of the Ecclesiastical Properties Law, 1935, which protects the possession of ecclesiastical corporations who were in actual possession of land for ten years prior to 1891. And there is no means by which they can lawfully acquire land of this category. If a trustee owns Arazi-Mirié land he may hold it during his lifetime as

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trustee for the church; but on his death it passes to his descendants freed from the trust, and is not transferable to another trustee under the Immoveable Property Registration and Valuation Law, 1907. The effect of section 12 of this Law (then section 12 of the Titles Registration Law, 1885) is considered at length in the *Kykko Monastery* case I have referred to.

From what I have already said it follows that the plaintiff-respondents, having failed to prove any right to the land in dispute themselves, could not maintain an action for trespass to the land against anyone else. The appeal will therefore be allowed with costs here and in the Court below, and the cross appeal will be dismissed.

Appeal allowed with costs here and in the Court below.

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Oct. 30,
Nov. 6 & Dec. 2.

[CREAN, C.J., AND GRIFFITH WILLIAMS, J.]

THE CYPRUS PALESTINE PLANTATIONS COMPANY LIMITED, *Plaintiffs-Respondents,*

v.

OLIVIER & COMPANY (CYPRUS) LIMITED, *Defendants-Apellants.*

Civil Appeal No. 3678.)

CIVIL PROCEDURE—APPLICATION FOR AN INTERIM ORDER TO RESTRAIN A COMPANY FROM DISTRIBUTING ITS PROFITS OR FUNDS—EX PARTE ORDERS—SECTIONS 4 (1) AND 8 (1) OF THE CIVIL PROCEDURE LAW, 1885.

Appeal from an Interim Order of the District Court of Larnaca restraining the defendant Company from distributing its profits.

HELD: (1) *That under no circumstances will the Court, at the request of a mere creditor, interfere with the internal affairs of a limited liability company :* Mills v. Northern Railway of Buenos Ayres Company (*Ch. A.C., Vol.* 5, *p.* 627) *followed.*

(2) *The fact that the plaintiffs claim from the defendants damages amounting to more than their nominal capital, is not a "peculiar circumstance" ; nor would the probability of the defendants distributing their profits on account of the action be a proof of "urgency," to warrant the making of an* ex parte *order under section* 8 (1) *of the Civil Procedure Law,* 1885.

HELD, *also : (By Griffith Williams, J.):—*

(3) *That the Court has no power under section* 4 (1) *of the Civil Procedure Law,* 1885, *to make an order affecting property not itself the subject of the action.*

J. Clerides with *M. C. Economakis* for the appellants.

M. Houry with *G. Vassiliades* for the respondents.

The facts and points of law involved appear sufficiently from the judgments.

CREAN, C.J.: This is an appeal from an order of the District Court made on the 15th March, 1940. By this order Olivier & Co. Ltd.,