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" by the Roman and Hindu Systems, admitting of an affiliation which " has no reference to consanguinity or legitimate descent. A child " whose illegitimacy is proved beyond doubt, by reason of the marriage " of its parents being either disproved or found to be unlawful, cannot " be legitimized by an acknowledgment. Acknowledgment has only " the effect of legitimation where either the fact of marriage or its " exact time, with reference to the legitimacy of a child's birth, is a " matter of uncertainty." (Ameer Ali, p. 222.) In delivering the judgment of the Privy Council in *Habibur Rahman Chowdhury v. Altaf Ali Chowdhury* (48 Indian Appeals 114) Lord Dunedin referred with approval to the " very learned judgment of Mahmood, J.," and cited the following passage from the judgment of Lord Atkinson in an earlier case before the Privy Council[1] which their Lordships declared was a clear and conclusive view of the principle in question. " If this be so, " the rule of Mohammedan Law applicable to the case is well established. " No statement made by one man that another (proved to be illegitimate) " is his son can make that other legitimate, but where no proof of " that kind has been given such a statement or acknowledgment is " substantive evidence that the person so acknowledged is the legitimate " son of the person who makes the statement provided his legitimacy " be possible." The question of law raised in the present appeal has long ago been put to rest by decisions of the Privy Council. The Sheri Judge's statement of the law that the father made his illegitimate son his heir by an acknowledgment was clearly wrong, and for the reasons given above we think this appeal should be allowed and the decision of the Court below set aside.

Appeal allowed and the decision of the Court below set aside.

[1] *Sadik Husain Khan v. Hashim Ali Khan.*

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[FUAD AND GRIFFITH WILLIAMS, JJ.]

ZEKIYE TAHIR AND ANOTHER, *Plaintiffs (Respondents),*

v.

YUSUF MEHMED, *Defendant (Appellant).*

(Sheri Appeal No. 30).

CYPRUS COURTS OF JUSTICE ORDER, 1927, CLAUSE 17 (c)—SHERI TRIBUNAL'S JURISDICTION IN MATTERS OF MAINTENANCE IN RELATION TO MARRIAGE—CIRCUMSTANCES IN WHICH THE FATHER OF A MARRIED SON IS LIABLE TO MAINTAIN HIS SON'S FAMILY—EXTENT OF SUCH LIABILITY.

One Hassan Oktay, who is the husband of plaintiff No. 1, father of plaintiff No. 2, and son of defendant, left Cyprus some time before the institution of the action without making any provision or leaving any means for the maintenance of the plaintiffs.

The plaintiffs brought an action in the Sheri Court of Famagusta against the defendant for an order directing him to pay a certain sum of money for their maintenance, with right of recourse to his son in the future. The Sheri Judge decided that the defendant was liable for the maintenance of the wife and the child of his absent son and ordered him to pay them a certain sum of money each month. The defendant appealed.

HELD: (1) *That all actions for maintenance referable in any way to a Moslem marriage come within the purview of clause 17 of the Cyprus Courts of Justice Order,* 1927, *and are within the jurisdiction of the Sheri Tribunals ;*

(2) *That where a married son has gone away without leaving any means for the support of his wife and children his father is liable for their maintenance if in affluent circumstances and able to afford the expenditure ;*

(3) *That the father's liability for maintenance, where it exists, is not confined to the children but extends to the wife of his absent son.*

M. Zekia for the Appellant.

M. Fadil for the Respondents.

The facts of the case and arguments of counsel appear sufficiently in the judgment.

Judgment of the Court was delivered by Mr. Justice Fuad.

Judgment : FUAD, J.: This is an appeal from the decision of the Sheri Judge of Famagusta-Larnaca.

Hassan Oktay, who is the husband of plaintiff No. 1, father of Plaintiff No. 2, and son of defendant, left Cyprus some time before the institution of this action without making any provision or leaving any means for the maintenance of the plaintiffs.

He is supposed to be in England but his address is unknown. The plaintiffs brought this action against the defendant for an order directing him to pay the 2*s*. and 1*s*. per day respectively for their maintenance with right of recourse to his son in the future.

The record shows that the Issues settled were two:—

1. Are plaintiffs entitled to claim maintenance from the defendant, and
2. If yes, what amount ?

In his address to the Sheri Judge at the conclusion of the evidence the counsel for the defendant raised a third point to the effect that the Sheri Tribunal had no jurisdiction to entertain this action. The Sheri Judge held that he had jurisdiction and decided that, under the circumstances, the defendant was liable for the maintenance of the wife and the child of his absent son, and assessed the amount he should pay to the plaintiffs at 10*s*. and £1 per month respectively. The defendant appealed.

The counsel for the appellant before us admitted the facts of the case, but argued that this action should not have been brought in the Sheri

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Tribunal because its jurisdiction was confined, so far as maintenance orders were concerned, to actions between husband and wife and between parents and children.

Clause 17 (1) of the Cyprus Courts of Justice Order, 1927, in recognizing and confirming the jurisdiction of the Sheri Tribunals restricts it to religious matters mentioned in the clause itself, and with regard to maintenance confines it under 17 (1) (*c*) to " maintenance in relation " to marriage and divorce." This phrase is open to a much wider interpretation than the one which counsel for the appellants submits should be given to it. All actions for maintenance which are connected with, result from, have reference to, or could be ascribed to a marriage under Moslem Law or any cause of action for maintenance which has as its source such a marriage, would come within the purview of this sub-clause. So an action by which a Moslem woman married to a man who has left the Colony, claims maintenance for herself and her child from her father-in-law, in consequence of her marriage with his son, would clearly be an action for " maintenance in relation to marriage." So, in our view, the Sheri Judge was right in holding that he had jurisdiction to try this action.

The counsel for the appellant further argued before us that one of the conditions precedent to ordering a man other than the husband to maintain the wife of another with right of recourse to the husband, was that the husband should be proved to be an " absentee " in its peculiar legal sense in Moslem Law which means that his place of residence is unknown. In this case the wife knew the husband was in England but did not know his address. Therefore, the counsel submitted, the husband was not an " absentee." It is clear from the writ of summons and the submissions of the counsel for the respondents that the action is based on the provisions of the Sheri Law which deal with the case of a husband who leaves his country of residence and goes away without leaving any means for the support of his wife and children. In such a case it would seem it is not necessary to prove that the husband's place of residence is not known or that he has disappeared. The only essential condition which must be proved before any maintenance can be claimed from the father of the husband is that he (the father) is in affluent circumstances and must be able to afford the expenditure. The Sheri Judge held that this was the law and he based his decision on this point on " Clear and authoritative Fetwas " but did not cite them for our guidance. We, therefore, found it necessary to make a study of the Sheri Law governing this point from authorities which are not easy of access: hence the delay in delivering this judgment.

We found the following authorities which support the decision of the Sheri Judge that when a husband leaves his country of residence without leaving any means for the maintenance of his wife and children the husband's father, if able to do so, will be ordered to maintain his son's wife and children with right of recourse to his son:—

1. Kitabulhidane by Ibrahim Eff., the author of Ahkamulevkaf, Chapter of Fetvas, section 155.
2. Durru Mukhtar and Kinye on which the Fetva Emini of Cyprus based the Fetva which he issued and which is an exhibit in this case.
3. Behjetul Fetava, p. 122.
4. Netijetul Fetava, p. 102, based on the Fetvas of the famous Sheyhiluslam Mehmed Pirizade.
5. Jeridei Ilmiye, No. 33, issued by authority of the Sheyhulislamiyet in Constantinople in 1335 of the Hejira.
6. The Fetva of the Fetva Emini of Cyprus.
7. References to the same principle in Kenz and Nikaye.

The publication mentioned by the counsel for the appellant which contains certain statements to the effect that the father of the husband is responsible for the maintenance of the children but not of the wife, who should look for maintenance to her own father, does not cite the authorities on which these statements are based. In all Sheri matters there are conflicting authorities, but we observe that the preponderance of authority that we have been able to find is on the side of the Sheri Judge and we see no reason why we should interfere with his decision given in favour of the respondents against the appellant. The principle governing the idea of making the father of the husband responsible seems to be due to the Moslem custom of accepting the wife into the husband's family, thus severing her connection with her own family. The husband's family takes under its protection the woman who has married one of its male members. Under the Moslem Law at present in force a father cannot make a testamentary disposition of more than one-third of his estate; so the son is bound to inherit a share from the property of which the father will die possessed. A father maintaining the wife and children of his absent son under an order of the Sheri Court with a right of recourse to the son would be spending money on the wife and children of the son out of that portion of his estate which would eventually devolve on the son. If he is reduced to poverty there would be no estate, no inheritance and no liability in law to maintain the wife and children of his son. As circumstances alter, the father, who is held liable, can apply to the Sheri Court to vary or cancel the order.

Appeal dismissed with costs.

1939 March 1.
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REX v. MUSTAFA KARA MEHMED.

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

IN THE MATTER OF THE COURTS OF JUSTICE LAWS, 1935 AND 1938, SECTION 24, AND OF CERTAIN QUESTIONS OF LAW RESERVED FOR THE OPINION OF THE SUPREME COURT BY THE ASSIZE COURT OF NICOSIA IN THE CASE

REX

v.

MUSTAFA KARA MEHMED.

INTERPRETATION OF CLAUSES 143 AND 144 OF THE CYPRUS COURTS OF JUSTICE ORDER, 1927.

The above-named defendant was charged before the Assize Court of Nicosia in February, 1939, *with the murder of one Sureyia Salih of Nicosia. At the close of the case for the Prosecution doubts arose as to the correct interpretation of Clauses* 143 *and* 144 *of the Cyprus Courts of Justice Order,* 1927, *and the Assize Court, acting under section* 24 *of the Courts of Justice Laws,* 1935 *and* 1938, *reserved two questions for the opinion of the Supreme Court, the text of which is as follows :—*

"1. *Does the phrase in Clause* 143 *of the Cyprus Courts of Justice Order,* 1927,
" '*Insufficient to support the conviction of the accused of an offence,' mean*
"*insufficient in law, if believed, to satisfy the requirements of the law as to*
" quantum *of evidence ; or does it mean, insufficient, taking into consideration*
"*the demeanour and credibility of the witnesses, etc., to satisfy the Court, beyond*
"*reasonable doubt, that the accused committed an offence, so as to enable the*
"*Court, if nothing more be heard, to convict ; or should some other interpretation*
"*be placed upon the phrase?*

"2. *Does the phrase in Clause* 144 *of the Cyprus Courts of Justice Order,* 1927,
" '*Not sufficient to justify a conviction' bear a meaning in any way substantially*
"*different from the phrase in Clause* 143 *quoted in question* 1 *above?* "

The answers of the Supreme Court are given in the judgments.

Vedad and Pietroni for the Defendant.

The question for the Court is the interpretation of Clauses 143 and 144. The Legislature could easily have stated " legal evidence " instead of " insufficient evidence " if they had intended that " legal evidence " was to be the test. Clause 143 is intended to cover those cases, where the Court, after considering all the circumstances, including the demeanour and general credibility of the witnesses, is unsatisfied with the case and comes to the conclusion, without hearing the advocate on either side, that it is unsafe to convict; and Clause 144 deals with cases, where the Court not having acted on its own motion, yet might be convinced after argument, that it would not be justified on the evidence before it, assuming that nothing further was adduced, in convicting the accused. In either of such cases it is the duty of the Court to acquit the accused.