

[JACKSON, C.J., AND HALID, J.]

MEHMED NABI, *Appellant*,
v.
 HIFZIYE AHMED, *Respondent*.
 (Sheri Appeal No. 42.)

1944
 June 26
 MEHMED
 NABI
v.
 HIFZIYE
 AHMED.

Jurisdiction of Sheri Tribunals—“Maintenance in relation to marriage and divorce”—Clause 17 of the Cyprus Courts of Justice Order, 1927—Sheri Appeal No. 12 overruled.

The Sheri Tribunal of Nicosia made an order that the appellant was to contribute to the maintenance of his deceased brother's daughter. In a former, exactly similar case (Sheri Appeal No. 12), it was decided by the Sheri Tribunal of Appeal, in 1931, that that case was within the jurisdiction of a Sheri Tribunal, since it arose as a “natural consequence of marriage”. By clause 17 of the Cyprus Courts of Justice Order, 1927, the jurisdiction of Sheri Tribunals is restricted to certain specified matters and among them “Maintenance in relation to Marriage and Divorce”. The question for decision was therefore whether or not maintenance by a paternal uncle of his deceased brother's children was within a Sheri Tribunal's jurisdiction to order.

Held: The words “maintenance in relation to marriage and divorce” in clause 17 of the Cyprus Courts of Justice Order, 1927, restrict the kinds of maintenance of which a Sheri Tribunal may take cognizance, to the immediate parties to a marriage or divorce. The Moslem religious obligation of a paternal uncle to maintain his deceased brother's minor children is not an obligation for “maintenance in relation to marriage or divorce” within the meaning of clause 17. Decisions of the Sheri Tribunal of Appeal are not binding on the Supreme Court.

Appeal from the Sheri Tribunal of Nicosia—Kyrenia.

A. Essad for the appellant.

Fadil N. Korkut for the respondent.

The facts of the case are set forth in the judgment of the Court which was delivered by:

JACKSON, C.J.: This is an appeal from a decision of the Sheri Tribunal of Nicosia ordering the appellant to contribute to the maintenance of his deceased brother's daughter.

Before considering the grounds of appeal we felt obliged to draw the attention of the advocates of both parties to the provisions of Clause 17 of the Cyprus Courts of Justice Order, 1927, which restricts the jurisdiction of Sheri Tribunals, or “Mahkeme-i-Sherié” as they are called in the clause, to the cognizance of religious matters, as therein mentioned, concerning persons of Mussulman faith. The clause then goes on to provide that “the expression ‘religious matters’ shall mean and be restricted to the following matters and no others”. Then follows a list of certain matters including “Maintenance in relation to Marriage and Divorce”.

We said that we would like to have the assistance of both advocates on the question whether the claim made in the Sheri Tribunal against the appellant as a paternal uncle of the respondent was or was not a claim for “Maintenance in relation to Marriage and Divorce”. If the claim did not fall within that description it would not be one which the Sheri Tribunal had jurisdiction to entertain, and we felt it necessary to dispose of this question before proceeding to the consideration of the grounds of appeal, notwithstanding that an allegation of the absence of jurisdiction in the Sheri Tribunal was not among them. Having heard the advocates on both sides, we adjourned the hearing of the appeal in order that we might take time to consider this particular question.

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The appellant's advocate drew our attention to Sheri Appeal No. 12 which was decided by the Sheri Tribunal of Appeal on the 18th April, 1931. That Tribunal was the Tribunal of Appeal from decisions of the Sheri Tribunals until it was replaced by the Supreme Court by section 2 of the Cyprus Courts of Justice Order, 1927, (Amendment No. 2) Law No. 36 of 1935. In that appeal a Sheri Tribunal had ordered the payment of maintenance to certain minor children by their paternal uncle, and the Tribunal of Appeal expressly considered the question whether or not the claim was excluded from the jurisdiction of the Sheri Tribunal by clause 17 of the C.C.J.O., 1927. It will be observed that the relationship upon which the Sheri Tribunal based the obligation of maintenance in that case was the same as in the case now before us. The Sheri Tribunal of Appeal held that the claim in that case was within the jurisdiction of a Sheri Tribunal since it arose as "a natural consequence of marriage". Although decisions of the Sheri Tribunal of Appeal are not, in our opinion, binding upon us, we would naturally regard them with the greatest respect as decisions of a religious tribunal composed of members of the Mussulman faith and established, for as long as the tribunal lasted, for the express purpose of finally determining appeals from Sheri Tribunals. The question before us is, however, a question of the interpretation, not of a religious precept of the Mussulman faith, but an Order of the King-in-Council, a question that must, in our opinion, be answered by the application of the ordinary rules of legal interpretation.

It will be observed that section 17 of the Order already quoted is clearly a restriction of the jurisdiction previously exercised by Sheri Tribunals. Until the Order of 1927 came into operation the jurisdiction of those tribunals was defined by section 20 of the C.C.J.O., 1882. This clause was itself a restriction of jurisdiction previously exercised by Sheri Tribunals and limited it to "the cognizance of religious matters concerning persons of the Mussulman faith". Clause 17 of the Order of 1927 still further limited the jurisdiction of these tribunals by restricting it to the cognizance of those religious matters which are expressly mentioned in the clause "and no others". The clause then mentions a number of matters, including for example Marriage and Divorce, without express limitation in regard to those matters. But in mentioning Maintenance the clause does not specify simply "Maintenance" without qualification but "Maintenance in relation to Marriage and Divorce". That description would seem to be clearly intended to restrict to some extent the kinds of maintenance of which a Sheri Tribunal was thereafter authorized to take cognizance. If no restriction was intended it would have been sufficient simply to specify "Maintenance" without qualification and so to leave Sheri Tribunals free to consider all those obligations for the maintenance of others which the Mussulman faith imposes on its members. In Sheri Appeal No. 12, to which we have already referred, the Tribunal of Appeal considered that a paternal uncle's religious obligation to maintain his deceased brother's minor children was "a natural consequence of marriage" and therefore within the description used in clause 17 of the Order, but every obligation which the Mussulman religion recognizes for the maintenance of blood-relations, whatever the degree of relationship within "the prohibited degrees" must be traceable, at some point or other to

marriage, either to a single marriage or to a succession of marriages. The reference to "Maintenance in relation to Marriage and Divorce" in clause 17 of the Order clearly includes the actual parties to a marriage, existing or dissolved, and consequently, if the wide interpretation given to this reference by the Sheri Tribunal of Appeal is accepted, it would be necessary to read the description "Maintenance in relation to Marriage and Divorce" as including all the obligations for the maintenance of others that the Mussulman faith imposes on its members. In other words, it would be necessary to read the description in the Order as though it consisted simply of the word "Maintenance" and as though the words "in relation to Marriage and Divorce" were not there. We cannot think that this is a correct interpretation of the description used. Some meaning must be given to the actual words that the description contains and consequently, in our opinion, some restriction must be held to have been imposed on the class of claims for maintenance of which Sheri Tribunals had previously been empowered to take cognizance.

It would not be at all easy to deduce from the words used in clause 17 of the Order the exact limits of the jurisdiction of Sheri Tribunals in the matter of maintenance, and we have no intention of going beyond what is necessary for the purposes of the actual case before us. But the clearly restrictive character of this provision of the Order compels us to the view that an obligation of maintenance arising from the particular relationship which the appellant bore to the respondent in this case is not an obligation for "Maintenance in relation to Marriage and Divorce" within the meaning of the Order, and consequently not a matter of which the Sheri Tribunal was authorized to take cognizance.

We are fully aware that, as a result of this decision, a number of obligations for the maintenance of others which the Mussulman faith imposes on blood-relations will not be enforceable in Sheri Tribunals. We recognize also that our decision will necessarily alter the practice which has been followed by Sheri Tribunals for many years and was confirmed by the decision of the Sheri Tribunal of Appeal in 1930 to which we have referred. We cannot escape these consequences in view of the construction which we have felt compelled to place upon the meaning of clause 17 of the Order, and if the consequences are unfortunate it will be for other authorities to provide the remedy. We can only point to those provisions of the Cyprus Criminal Code Order in Council, 1928, which, under the heading of "Offences relating to Marriage and Domestic Obligations" imposed limited obligations for the maintenance of children and parents which are enforceable in the ordinary Courts and without regard to the faith of the persons concerned.

For the reasons we have given we think that this appeal must be allowed and the decision of the Sheri Tribunal quashed together with the order of the Tribunal as to costs. But since the ground upon which we have come to that conclusion is not one which either party to this appeal has raised and since it involves considerations of some legal difficulty we make no order as to costs.

Appeal allowed.

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