BOVILL, C.J. & SMITH, J. 1884.

June 7.

[BOVILL, C.J. AND SMITH, J.]

IBRAHIM MEHMET *Plaintiff,*

v.

HADJI PANYIOTI KOSMO AND OTHERS *Defendants.*

PRESCRIPTION—REGISTERED LANDS—UNDISTURBED POSSESSION FOR TEN YEARS—LAND CODE, ARTICLE 20.

The defendants had had uninterrupted possession for ten years of lands registered in the names of other persons.

HELD: That the defendants had obtained a valid title to the land by prescription although they had not been registered as possessors during their ten years' occupancy.

APPEAL from the District Court of Nicosia.

The plaintiff was the lessee of the Morphou Chiftlik and brought this action claiming an injunction restraining the defendants from cultivating certain pieces of land which were proved to be part of the mera of the Chiftlik.

The defendants proved that they had had ten years' quiet enjoyment of the lands they had cultivated and the Court dismissed the action, holding that they had acquired a valid title by prescription.

The plaintiff appealed.

The Queen's Advocate for the appellant contended (1) that in order to acquire a valid title by prescription the defendants must have had occupation accompanied by registration for ten years; and (2) that as the owners of the Chiftlik resided in Constantinople prescription did not run against them.

Rossos for the respondents. It was not clearly proved that the lands cultivated by the defendants were within the boundaries of the Chiftlik lands. Some of the defendants were registered as the possessors of portions of the land they cultivated. The plaintiff cannot take advantage of the absence from Cyprus of the owners of the Chiftlik because up to about 13 years ago it was the property of the Sultan. The owners always had representatives at the Chiftlik.

Dec. 12. *Judgment:* This case comes before us on appeal from the judgment of the District Court of Nicosia, dated 21st November, 1883.

The plaintiff, on behalf of the owners of the Morphou Chiftlik, sought by this action to restrain the interference of the defendants with certain pieces of land which were alleged to form part of the mera of the Chiftlik. In support

of his claim the plaintiff produced a tapou sened for the mera of the Chiftlik and alleged that the lands held by the defendants were within the boundaries of the mera as described in this tapou sened.

The defendants alleged they had never known of any mera of the Chiftlik and proved that the lands now claimed had been held by them or their forefathers for many years and that some of them held kochans for part of these lands. The matter having been referred to the Director of Survey to report to the Court as to the boundaries of the mera and the position of the defendants' lands, the Court came to the conclusion upon the report furnished to them that the whole of the lands held by the defendants were within the boundaries of the mera as described in the plaintiff's tapou sened, but held that as the defendants had had undisputed possession for ten years they had acquired a good title by prescription, and gave judgment for the defendants.

Against this decision the plaintiff appealed, and it was contended by the Queen's Advocate on his behalf that the judgment was wrong on two grounds ; first, that undisputed possession alone for ten years is not sufficient to create a good title by prescription, but the possession must be possession with a tapou title ; and, second, that as the owners of this Chiftlik had been resident at Constantinople up to four years ago, the defendants' possession would not operate to give them a valid title by prescription. With regard to this latter contention it is, perhaps, sufficient to say that it is based on Section 20 of the Land Code, the effect of which, so far as it relates to the present point under consideration, is that where " the owner of property has been proved to be absent on a journey in a distant country," a person who has possessed himself of the property cannot acquire a valid title by possession for ten years. So far as we are aware, it is not suggested that the absence of the owners of the Morphou Chiftlik has been absence on account of a journey, and the facts as stated to us by the Queen's Advocate negative this suggestion altogether. It appears from the statement of the Queen's Advocate that 13 years ago this Chiftlik was sold by the Sultan, whose property it then was, to Mehmet Pasha ; on Mehmet Pasha's death, 8 years ago, it descended to his daughter, and about 7 years ago was sold to Mehmish Pasha, who has since died, and whose heirs are now the owners of the Chiftlik. Up to about 4 years ago the owners were resident in Constantinople, and it is impossible to say that either the Sultan or the above-mentioned owners of the Chiftlik have been absent in a distant country on a journey. We therefore think that they are not entitled

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to set up their absence in order to prevent the time of prescription running against them.

The first contention, however, raises a most important point and one that has given us much greater difficulty to decide. The question for our decision is whether the true meaning of Section 20 of the Land Code is that a person who has possessed land with a tapou title for ten years without dispute thereby acquires a valid title by prescription; or that a person who has possessed without dispute for 10 years land for which some other person has a tapou title, thereby acquires a valid title by prescription. The plaintiff contends that the former meaning is the true one.

The French text runs "A moins d'excuses valables . . nulle action sera reçue en justice touchant des terres dont la possession par tapou aura existé sans conteste pendant un laps de temps de dix années." If this be a correct translation of the Turkish text it would certainly leave little doubt that the view contended for by the plaintiff, that mere possession for ten years was insufficient to give a title by prescription is the correct one, and that in order to acquire such a title the person claiming by prescription must have held for ten years with a tapou title. The Greek text is to the same effect as the French; but it must not be forgotten that both the Greek and the French texts are but translations, more or less correct (and in the case of the French text not infrequently defective and incorrect) of the Turkish text, and that it is the Turkish text alone which contains the law. With a view to coming to a correct decision in this case we have caused very careful translations of the original text to be made with the following result: we are informed that while the Turkish text may possibly bear the meaning contended for by the plaintiff and given to it in the Greek and French translations, its more natural and ordinary meaning is, that a title by prescription may be obtained by an undisputed possession for ten years to lands for which a tapou has at some time or other been given; that is to say, that where lands, for which some person (presumably the person mentioned as the true owner) has a tapou title, have been held by another for 10 years without dispute, the latter obtains a valid title by prescription. We are informed that the Turkish word *tapoulé*, translated in the French "possedé par tapou," is almost unquestionably an adjective qualifying the word Arazié, and pointing out the class of lands with which this section is dealing, and that, if we may coin a word, the correct translation would be "tapoued lands" which have been possessed without dispute for 10 years, etc. It is pointed out to us that if the meaning be, as contended for by the plaintiff, "lands

possessed by tapou for ten years," etc., the Turkish words used would almost certainly have been ﻪ ba tapou, the Persian word *ba* meaning "*with*" or "*by*," and in support of this view it is most significant that, so far as we can ascertain, wherever in the law mention is made of a person holding land by a tapou title and translated by the French "possedé par tapou" the words used in the Turkish text are "ba tapou,"—held with a tapou. Section 20 is the only one, so far as we can ascertain, where tapou lands as a class are mentioned, and here we find not the words "*ba tapou*," but the word "*tapoulé*." We have therefore come to the conclusion that the French and Greek translations are misleading on this point and that the true meaning of Article 20 is, that where lands held by one person by a tapou title have been in the undisputed possession of another for 10 years the latter obtains a valid title by prescription. We think that the word "tapoulé" has been introduced to make it more certain than it would otherwise be, that the article is dealing with the whole class of tapou lands, in contradistinction to Article 78, which gives a person who has had undisputed possession for 10 years a right to the land as against the Government. It was contended on behalf of the appellant that there can be no possession which the law will recognise without the consent of the Government, of which the tapou is the ordinary evidence, having been obtained, and that any person who has taken the actual possession of land is a mere intruder; but Article 78 seems to suppose the case of a person acquiring by simple possession for 10 years the legal right to possession as against the Government and we see no reason why there should be any distinction in principle between the possession which gives a prescriptive title as against the Government and the possession which gives a title against a private individual. For these reasons we are of opinion that the judgment of the District Court was right and must be affirmed. The respondents' counsel contented himself with maintaining that the lands which the defendants held were not within the boundaries of the mera at all, and it was arranged that we should go out to make a local enquiry ourselves. We went to Morphou and ascertained that the report of the Director of Survey was quite correct and that the whole of the lands held by the defendants were within the boundaries of the mera described in the plaintiff's tapou sened.

We must therefore dismiss this appeal with costs, but direct that the costs occasioned by our local enquiry be paid by the defendants.

Appeal dismissed.