

BOVILL,  
C.J.  
&  
SMITH, J.  
1883.

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

YERASIMO PAPA NICOLA

*Plaintiff,*

*v.*

GEORGI LOUKA

*Defendant.*

—  
May 29,  
June 1.  
—  
YERASIMO  
PAPA NICOLA  
*v.*  
GEORGI  
LOUKA.  
—

NATIONALITY—OTTOMAN SUBJECT—GREEK SUBJECT—INHERITANCE—PROTOCOLS OF LONDON, 9TH MARCH, 1836—LAW ON OTTOMAN NATIONALITY OF JANUARY 19TH, 1869—VIZIERIAL ORDER, 25 ZILHIDJE, 1281.

A. an Ottoman subject, left Cyprus about the year 1865 and resided in Greece, where, it was alleged, that he complied with certain formalities which entitled him to be regarded by the Hellenic Government as an Hellenic subject. He subsequently returned to Cyprus where he died.

HELD: That as A. was not a person who had acquired Hellenic nationality either under the protocols of London or the law on Ottoman nationality of the 19th January, 1869, and as his alleged acquisition of Hellenic nationality had neither been specially authorized nor specially recognized by the Ottoman Government, his status as an Ottoman subject remained unchanged in Ottoman territory.

THE plaintiff sued the defendant before the Daavi Court of Limassol to recover the property left by one Yanni, deceased.

The plaintiff was the brother and the defendant the nephew of the deceased, who died unmarried.

The defendant, who was an Hellenic subject, alleged that the deceased had acquired Hellenic nationality and that consequently he was entitled to succeed to the property to the exclusion of the plaintiff.

The Daavi Court of Limassol gave judgment in favour of the defendant, dismissing the plaintiff's claim.

The plaintiff appealed to the Temyiz Court.

The defendant not appearing on the day fixed for the hearing of the appeal, the Temyiz Court gave a judgment by default, reversing the decision of the Daavi Court.

The defendant subsequently made opposition to their judgment under Article 74 of the Code of Commercial procedure.

The matter was still pending before the Temyiz Court when the Cyprus Courts of Justice Order, 1882, came into operation, and under Clause 160 of that Order the case was transferred to the Supreme Court.

The matter came on for hearing on the 29th May, 1883.

*Divan Augustin* for the defendant in support of his opposition.

*Pascal Constantinides* for the plaintiff.

*Judgment* : The question for decision in this action is—who is entitled to inherit the immoveable property of Joanni, who was by birth an Ottoman subject, but who is alleged by the defendant to have validly acquired Hellenic nationality ?

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This question arises by reason of the contention of the defendant that the immoveable Mulk property of a foreigner descends on his death to his heirs of the same nationality. The plaintiff contends that whatever nationality the deceased may have been recognised to possess in the Hellenic Kingdom this does not affect his status in the Ottoman Empire if the Ottoman Government have not assented to the change of his nationality, and it appears to us that the point to be decided rests upon the question whether the deceased was to be considered in the Ottoman Empire as an Hellenic subject.

The material facts of the case are as follows : The deceased being an Ottoman subject possessing immoveable property (Mulk and Arazi) in the Ottoman Empire, left his home about 1865 and resided in Greece for some time. It is alleged that he there complied with certain formalities which entitled him to be regarded by the Hellenic Government as an Hellenic subject. He then returned to his native country and continued to hold the land he possessed prior to his leaving his home, and after residing in his native country for some 14 or 15 years, he died, his nearest relatives at the time of his death being a brother, who is an Ottoman subject, and the children of a deceased sister, some of whom are Ottoman subjects and one an Hellenic subject.

Under these facts we have to decide whether the deceased acquired the status of an Hellenic subject with respect to the Ottoman Government. It is the inherent right of every sovereign state to refuse to allow its original subjects to shake off their allegiance or to divest themselves of the nationality of their birth, and to regulate the conditions under which its subjects shall be permitted to acquire a foreign nationality which it will recognize : in another country he may acquire another nationality ; but this will not affect his status as a subject of the country of his birth, so far as the Government of that country is concerned.

A person who is an original subject of any State may acquire a foreign nationality which will be recognized in a foreign country ; but if he acquire such foreign nationality in any other manner than in compliance with the regulations laid down by the Government of his own country, that Government is in no way bound to recognize him as a foreigner, but may continue to regard him in all respects as one of their own subjects.

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So far as we are able to ascertain there are only two legal means by which Ottoman subjects have, generally speaking, been able to acquire Hellenic nationality: 1st, under the protocol of London, and 2nd, under the law of 1869. [Leg. Ott., Vol. I., p. 7.]

The means of acquiring Hellenic nationality afforded by the protocols of London affect only those who left Ottoman territory to acquire Hellenic nationality prior to the middle of the year 1837, and the provisions of the law of 1869 are not retrospective. If any other Hellenic naturalizations of Ottoman subjects are to be held binding on the Ottoman Government, they must have been either specially authorized before or specially recognized after they took place.

In the case before us it is clear that the deceased did not acquire Hellenic nationality either under the protocols of London or by the law of 1869, and it is not suggested that he had any special authority from the Sublime Porte to acquire such nationality.

It is however contended that his Hellenic nationality was specially recognized by the Ottoman Government after his return to Cyprus, and in support of this it was alleged, though it was not proved, that the deceased was exempted from the payment of the Bedel Askerieh. Assuming this to be the case, we do not think that this affords evidence of a recognition of the deceased by the Ottoman Government as an Hellenic subject. We should ourselves have come to this conclusion having regard to the fact that the deceased resided and held Mulk property in the Ottoman Empire, which would have been directly in opposition to the law were he to be regarded as an Ottoman subject who had acquired a foreign nationality, but our opinion has been greatly strengthened by the perusal of a Vizierial order, dated the 25 Zilhidje, 1281, which, after stating that many Ottoman subjects who have emigrated to Greece have on their return to the Ottoman Empire claimed to be regarded as Hellenic subjects, directs that they shall be exempt from the payment of personal taxes, but shall be liable to the payment of all taxes on land held by them, and that, notwithstanding their exemption from the payment of personal taxes, they are not to be regarded as Hellenic subjects, but as persons whose nationality shall, pending a settlement of the question by the two Governments, be considered as uncertain. No settlement of this question has been arrived at, unless it be by the law of 1869 above referred to, which however does not affect the position of Ottoman subjects who prior to the date of that law had acquired a foreign nationality without authority.

It therefore appears to us that such persons are from a legal point of view still to be regarded as Ottoman subjects, and that the deceased thus being at the time of his death an Ottoman subject, the plaintiff's claim in this action must prevail.

For these reasons therefore our order is that the opposition of the defendant be rejected and that the judgment of the Temyiz Court, given by default on the 8th November, 1882, be confirmed, and that the defendant pay to the plaintiff all costs of and occasioned by this appeal and this opposition.

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

YOUANNI ANTONIADES

*Plaintiff,*

v.

MARIOU CATSARIDES

*Defendant.*

BOVILL,  
C.J.  
&  
SMITH, J.  
1884.  
—  
May 21.  
—

RES JUDICATA—CONTRADICTORY JUDGMENTS—ORDER OF SHERI COURT 1289—JUDGMENT OF DAAVI COURT 1292.

The predecessor in title of the defendant in the year 1289 obtained an order of the Sheri Court restraining the plaintiff from exercising a certain right of way. In 1292 the defendant herself brought an action against the plaintiff claiming the same relief, relying on the order of the Sheri Court as evidence of her right. The Daavi Court dismissed her action and no appeal was made against this judgment.

HELD (in an action brought by the plaintiff against the defendant to restrain her from interfering with the same right of way) that the defendant by bringing her action before the Daavi Court must be taken either to have abandoned any rights she might have claimed under the order of the Sheri Court, or that the Daavi Court must have considered that order not to be binding and that therefore the judgment of the Daavi Court against which no appeal had been made was decisive of the matter.

APPEAL from the District Court of Paphos.

The plaintiff brought this action to restrain the defendant from interfering with his right of way over defendant's land.

The defendant relied upon an Ilam of the Sheri Court obtained by her predecessor in title in the year 1289, in an action brought by him against the plaintiff, whereby the latter was ordered not to make use of the right of way.

The plaintiff relied upon the fact that in the year 1292 the defendant had herself brought an action in the Daavi Court of Paphos claiming the same relief as was claimed by her predecessor in title before the Sheri Court and that