

SMITH, C.J.

&
MIDDLE-
TON, J.
1893.

Feb. 20.

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

MEHMET SALAHI

Plaintiff,

v.

AHMET HOULOSSI AS MOUHASSEBEDJI

OF EVKAF

Defendant.

MOUHASSEBEDJI OF EVKAF—POWERS AND DUTIES OF—ILAM OF
SHERI COURT—INSTITUTION TO JIHATS—DELEGATES OF EVKAF
—CYPRUS COURTS OF JUSTICE ORDER, 1882, § 39—THE CIVIL
PROCEDURE AMENDMENT LAW OF 1885, SECTION 80—LAW OF
16 SEPHER 1290—LAW OF 19 DJEMAZUEL-ACHIR 1280—
ANNEX TO THE CONVENTION BETWEEN GREAT BRITAIN AND
TURKEY OF THE 4TH JUNE, 1878.

The Mouhassebedji of Evkaf has not the power to institute a person to a vacant Jihat even although the Ilam of the Cadi of Cyprus declares such a person to be lawfully entitled to hold the office.

An Ilam of the Cadi of Cyprus recorded that the office and duties attendant to a certain Jihat, had been thereby conferred on the plaintiff. The defendant when called upon to do so, declined to confer the said office on the plaintiff on the ground that as Mouhassebedji he had not the power.

HELD: That the Court would not enforce such an Ilam by imprisoning the defendant, as it was clear that in his capacity of Mouhassebedji the defendant had no power to institute the plaintiff to such office.

APPEAL from the District Court of Nicosia.

The plaintiff applied to the District Court, to enforce an Ilam of the Cadi of Cyprus according to the provisions of Section 39 of the Cyprus Courts of Justice Order, 1882, and Section 80 of the Civil Procedure Amendment Law of 1885.

The District Court dismissed the application, and the plaintiff appealed.

The facts and arguments sufficiently appear from the judgment.

Pascal Constantinides for the appellant.

Law, Q.A., for the respondent.

Judgment : This is an appeal from an order of the District Court of Nicosia, dismissing an application made by the plaintiff to enforce obedience to an order made by the Sheri Court of Nicosia, under the provisions of Clause 39 of the Cyprus Courts of Justice Order, 1882.

The action was brought by the plaintiff against the defendant, as Mouhassebedji of Evkaf, claiming that the offices of Keeper, Trustee and Superintendent of the Tekké of Aziz Effendi be given to the plaintiff, and that the properties and Vakoufs belonging to the said Tekké, being in the possession of Ahmet Houloussi Effendi, the Mouhassebedji, be returned to the plaintiff.

According to the Ilam given by the Cadi of Cyprus, it appears that on the hearing before the Sheri Court, the question as to whether the plaintiff was entitled by right of descent to the offices he claimed was gone into ; and the Ilam decided that " the said offices together with the duties " appendant thereto, have been conferred on the said " Salahi Effendi and that the matter has been recorded " accordingly."

An application was then made to the District Court to enforce this Ilam in the manner provided by Clause 39 of the Cyprus Courts of Justice Order, 1882.

The District Court appear to have had doubts as to whether it could be enforced against the defendant, but directed that an endorsement as required by sub-section 1 of the clause above referred to, should be made on the Ilam, and that the copy so endorsed should be served on the defendant.

The defendant having apparently failed to comply with the Ilam, an application was made for an order on the defendant to show cause why he should not obey the order of the Sheri Court.

We assume that this was intended as a proceeding under sub-section ii. of Clause 39 of the Order in Council, though it should have been in form of an application for an order of the defendant to show cause why he should not be punished for his disobedience.

The defendant appeared in obedience to this order, and was examined on oath.

He states in his evidence that he is Mouhassebedji of Evkaf ; that the offices and duties which he is ordered to

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SMITH, C.J. deliver up to the plaintiff and not in his hands: that
 & "appointments to Evkaf are not in his hands; that if this
 MIDDLE- "Court were to order him to give them up to Salahi Effendi
 TON, J. "he could not do so." He also states that he "as Delegate
 MEHMET "of Evkaf with the British Delegate has control over all
 SELAHI "Vakouf properties in Cyprus, including the Tekké."
 v. "After hearing this evidence the Court declined to make
 AHMET any order. The note of the President of the Court runs,
 HOULOSSI. "On this evidence the Court considers that it is unable
 "to give its order for execution, as it is declared on oath
 "that the Mouhassebedji cannot quâ Mouhassebedji carry
 "it out. Ordered that execution be stayed of said Ilam."

"Application dismissed with costs."

We do not quite understand what is meant by the direction that the execution of the Ilam is to be stayed. If the Court was unable to execute the Ilam, it appears to us that it could not direct execution to be stayed, and the proper procedure would have been, merely to decline to punish the defendant for disobedience to the order, and to dismiss the plaintiff's application.

Against this order the plaintiff appeals, and it is contended on his behalf that the Ilam of the Sheri Court in effect directs the defendant to hand over to the plaintiff the offices he claimed; that the defendant never took any objection, at the hearing before the Sheri Court, that he was not properly sued as defendant, that he has as a matter of fact, sued and been sued as Mouhassebedji of Evkaf on matters connected with Evkaf property on several occasions before the District Court, and that he is, therefore, competent to carry out the Ilam of the Cadi.

Arguments were addressed to us both on the part of the plaintiff and defendant, as to whether the Ilam of the Cadi, which purports to appoint the plaintiff as Trustee, etc., of this vakouf, is a valid appointment or not, it being contended for the defendant, that it is not competent for the Cadi to make such an appointment.

If the view of the District Court be correct, viz. : that the Mouhassebedji has no power, either to institute any person to such an appointment, or to hand over to him the property appertaining to the office, it would of course be unnecessary for us to go into the question of the competency of the Cadi, by his Ilam, to make such an appointment.

We reserved our decision in order to have an opportunity of examining the law, and ascertaining what are the legal powers and duties of the Mouhassebedji.

We have made a careful examination of the laws relating to matters connected with the subject of vakoufs contained in the Destour, and have been unable to find any which regulates the duties of the officials known as Mouhassebedjis.

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The law of 19 Djemazuel Achir 1280, deals with the duties of the "Mudirs of Evkaf," who appear to be the local agents of the Minister of Evkaf, or Evkaf Department in Constantinople. Their duties appear to have been purely administrative, and, in conjunction with the Mejliss Idaré, they appear to have exercised a general supervision over vakouf properties and the accounts of the trustees, reporting direct to the Evkaf Treasury in Constantinople.

We do not find that they had any authority whatever as to the conferring of offices on the persons entitled to hold them, or the institution of such persons to sacred offices.

In the instructions issued under the law dated 10 Sepher 1290, [Destour, Vol. III., p. 500] we find the first reference we have been able to discover to the Mouhassebedji. In these instructions the Mudir of Evkaf is not named, but the Mouhassebedjis are spoken of as performing apparently the same kind of duties as those performed by the Mudirs, and it appears probable from a perusal of these instructions, that the Mouhassebedji simply took the place of the official who used formerly to be styled "Mudir."

Nothing is contained in these instructions as to the duties of a Mouhassebedji, and if it be not the fact that the duties of the Mouhassebedji are the same as those formerly discharged by the Mudir of Evkaf, we are quite at a loss to know what they are. In a regulation dated July, 1290, which was introduced to alter the amount of the fees payable under Section 48 of the law of 1280, the Mouhassebedjis are spoken of as the persons entitled to take the fees formerly taken by the Mudir of Evkaf. And this appears to confirm our view that the Mouhassebedji has taken the place of the Evkaf Mudir. It appears to us, therefore, that the Mouhassebedji has no power to confer upon or institute the plaintiff to the office he claims.

SMITH, C.J. By the annex to the Convention of the 4th June, 1878,
 &
 MIDDLE- by virtue of which the Island of Cyprus was assigned "to be
 TON. J occupied and administered by England," it was provided,
 — — that a Mussulman resident of the Island shall be named
 MEHMET by the Board of pious foundations in Turkey (Evkaf) to
 SALAH superintend in conjunction with a Delegate to be appointed
 v. by the British Authorities, the administration of the pro-
 AHMET perty, funds and lands belonging to mosques, cemeteries,
 HOULOSSI. Mussulman schools and other religious establishments
 — existing in Cyprus.

By virtue of this annex to the convention, the superintendence of the properties belonging to pious foundations in Cyprus is vested in the two Delegates of Evkaf to be appointed as above mentioned; and no further or greater powers than he possessed previously to the British Occupation has, so far as we are aware, ever been conferred on the Mouhassebedji. His powers and duties, whatever they were, appear to us to remain unaltered, and we are unable to see that he has any power either to institute a person to any office, as we have said above, or to deliver over the possession of any property, which a person holding that office may, by virtue of his office, be entitled to hold or administer.

The defendant in this case happens also to be the Mussulman resident in the Island appointed by the Board of Evkaf in Constantinople to superintend together with the British Delegate the property of the religious foundations in Cyprus; but he is sued in his capacity as Mouhassebedji, attention has not been directed to the part that he is also a Delegate of Evkaf, and it appears to us that any proceedings taken against the Delegate of Evkaf to be binding, must be taken against both the Delegates jointly. Mr. Pascal has called our attention to the fact that in several actions, brought in the District Courts, the Mouhassebedji has both sued and been sued as representative of the Evkaf, in matters relating to property forming part of Vakoufs in Cyprus. This no doubt is so; no objection was ever taken, so far as we are aware, to the form of these actions, and attention was not directed to the point, or it is probable that amendments would have had to be made in those proceedings. In the present case the point is taken directly that the Mouhassebedji has neither control over the appointment to offices, nor power to deal with the property

belonging to pious foundations in the way claimed in this action, and it appears to us that the point is a good one, and must prevail.

Taking this view of the case, it is unnecessary for us to devote any attention to the arguments of the learned counsel who appeared before us, as to the facts of the case, or as to whether such appointments as those in question can be conferred by the Ilam of the Cadi alone, without any other formality. The latter is a question which appears to us on our perusal of the law to be full of difficulties ; but we do not wish it to be supposed that we have by this judgment in any way impugned the validity of the Ilam of the Cadi. As a judgment of the Sheri Court it is of course entitled to great respect ; and we have here only decided that it is not within the power of the Mouhassebedji to do what is claimed of him in the proceedings before the Sheri Court, and that consequently he has shewn good cause why he should not be committed for contempt. Assuming that the Ilam of the Cadi constitutes a valid appointment to the offices claimed by the plaintiff, it may be that he may be entitled to enforce these rights in other proceedings, but on this point it is unnecessary for us to offer any opinion.

We, therefore, are of opinion that this appeal must be dismissed ; but under the circumstances we shall not order the appellant to pay the respondent's costs. It appears that the respondent never raised any objection when he appeared in the Sheri Court that he was improperly sued in this matter, and though there appears to be a considerable divergence of opinion as to the nature and course of these proceedings, the respondent must, we think, have been aware that some claim was being made against him.

Appeal dismissed.

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