

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

ON APPEAL FROM THE DISTRICT COURTS.

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

THE HEIRS OF NIKOLA HADJI DIMITRI
DECEASED

Plaintiffs,

v.

CHRISTALLOU HADJI NIKOLAKI
KYRIAKO NIKOLAOU
ANDONI NIKOLAOU
ELENI NIKOLAOU AND
MARIOU NIKOLAOU

Defendants.

SMITH, C.J.
&
MIDDLE-
TON, J.
1894.
Jan. 4

LEGITIMACY—ACKNOWLEDGMENT OF CHILDREN BORN OUT OF
WEDLOCK—“CHRISTIAN LAW.”

The question of the legitimacy of Christian Ottoman subjects is to be decided by the laws of the church to which their parents belong.

N., an Ottoman subject and a member of the Eastern Church, cohabited with C., a member of the same church, and had by her several children whom he acknowledged to be his.

HELD (reversing the decision of the Court below): On the authority of the judgment of the Privy Council in *Athanassi Happas and others v. Evdoxia Yanni Parapano and another*, that the legitimacy of the children must be decided by the laws of the Eastern Church, and that as under the laws of that church they could not be rendered legitimate by acknowledgment, they had no right to succeed to the estate of N.

APPEAL from the District Court of Larnaca.

The action was brought to recover possession of the movable and immovable property left by one Nikola Hadji Dimitri, deceased.

The defendant Christallou claimed to be the wife of the deceased and the other defendants were his children by her.

It appeared to be admitted before the District Court, that if the defendants were not the wife and legitimate children of the deceased, the plaintiffs were entitled to succeed, and the onus of proof was said to be on the defendants.

SMITH, C.J.
 &
 MIDDLE-
 TON, J.
 HEIRS OF
 NIKOLA HJ.
 DIMITRI
 v.
 CHRISTAL-
 LOU HJ.
 NIKOLAKI
 AND OTHERS.

The defendants produced evidence to shew that Christallou had lived for a considerable number of years with the deceased as his wife, and that he had on several occasions acknowledged the other defendants to be his children.

Christallou was not called as a witness, and no attempt was made to prove that she had ever been married to the deceased : whilst on the other hand, evidence was adduced to shew that she had, previously to her cohabitation with him, been married, according to the rites of the Greek Church, to his uncle Andoni.

The defendants, other than Christallou, practically relied on the acknowledgment of their father.

The District Court gave judgment in favour of the defendants.

The plaintiffs appealed.

Diran (*Chakalli* with him), for the appellants. There was insufficient evidence of their legitimation : Christallou had been married to the deceased's uncle, and no marriage could have been validly contracted between her and the deceased.

Templer, Q.A., for the respondents. The evidence that the deceased acknowledged the children to be his was ample. Even if Christallou could not have contracted a valid marriage with the deceased, yet he could render them legitimate by acknowledgment. In the case of *Athanassi Happas and others v. Evdoxia Yanni Parapano and another* (C.L.R., Vol. II., p. 33), the Supreme Court decided that the Ottoman Law regulated the question as to whether children had been made legitimate. The Court may infer marriage from the long cohabitation of the deceased with Christallou, though, I admit, the fact of a marriage having taken place, was not relied upon in the Court below.

Diran replied.

The Court reserved judgment pending the decision of the Privy Council in the case of *Athanassi Happas and others v. Evdoxia Yanni Parapano and another* (*ubi sup.*).

April 6.

Judgment : We are of opinion that this appeal must be allowed and the judgment of the District Court reversed.

The action was brought to recover the estate of one Nikola Hadji Dimitri, deceased, which is in the possession of the defendants.

The defendant Christallou lived with the deceased for some years as his wife ; and the other defendants are the offspring arising from this connection. It appears to be admitted that the plaintiffs are entitled to the inheritance of the deceased, unless the defendants succeed in establishing that they, or any of them, are his legitimate heirs.

There was no suggestion made on their behalf in the Court below that the defendant Christallou was ever married to the deceased, and so far as the other defendants are concerned, their claim to succeed as his legitimate children is founded solely on the fact that he acknowledged them to be his children. With regard to Christallou, therefore, we can see no ground on which the judgment of the District Court could be supported. It is doubtful, indeed, whether she could validly have contracted a marriage with the deceased, inasmuch as she had been previously married according to the rites of the Eastern Church to the deceased's uncle, and it is contended before us that, according to the canons of the Eastern Church, that fact would be a bar to a valid marriage between her and the deceased. However, that may be, there was no suggestion that such a marriage had ever taken place, though Christallou could have been called to establish it, if it had in fact taken place.

SMITH, C.J.
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We reserved our decision in this case until we learned the result of the appeal to the Privy Council in the case of *Athanassi Happas and others v. Evdokia Yanni Parapano and another* (C.L.R., Vol. II., p. 33). We have now received a copy of the judgment in that case reversing the decision of this Court.

The judgment in that case lays down that the legitimacy of a Christian Ottoman subject in Cyprus is to be determined by the "Christian Law." We find some difficulty in understanding what meaning is to be attributed to the expression "Christian Law." There are different Christian sects in Cyprus, and difficulties may arise in determining what is the "Christian Law" to be applied in cases where the parties to a proceeding belong to different churches. To what ecclesiastical superior, for instance, should a dispute be referred, the parties to which belonged to the Roman and to the Greek Church, respectively?

However, in the present case, all parties to this action are members of the Eastern Church, and according to our understanding of the judgment of the Privy Council the question of the legitimacy of the defendants, other than Christallou, is to be determined not by the Ottoman Law, but the canons of the Eastern Church. It is not contended that by the canons of the church these defendants would be rendered legitimate by the simple acknowledgment of their father that they were his children, and for these reasons we must hold that they have failed to establish their legitimacy, and that the plaintiffs are entitled to judgment.

Appeal allowed.