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

SMITH, C.J. & MIDDLETON, J. 1895.

NICOLA HADJI CONSTANTI AND OTHERS *Plaintiffs*,

v.

THE PRINCIPAL FOREST OFFICER *Defendant.*

March 22.

"MERA"—GRANT OF BY GOVERNMENT—"IALAKS" AND "KISHLAKS"—GRANT OF ARAZI-MIRIE FOR PURPOSES OF CULTIVATION BY MUTESSARIF—LAND INCAPABLE OF CULTIVATION—TARLA—METROUKE—MALLIEH REGISTER—ESTOPPEL—STATE FORESTS—DELIMITATION—THE LAND CODE, ARTICLES 2, 32, 96 AND 121—THE WOODS AND FORESTS DELIMITATION ORDINANCE, 1881, SECTIONS 1 AND 8.

In the year 1263, the Kaimakam-Mutessarif of Cyprus granted a considerable area of arazi-mirié to certain inhabitants of Z., on condition that if it were cultivated by them they should pay tithe. Owing to its saltness, the land was incapable of cultivation. In the year 1869, this land was registered by the Land Registry official of the day as mera of the village of Z., subject to the payment of an annual verghi of 36 piastres, the former grantees not objecting, and the land was used as pasture land of the village of Z. until the year 1893. This tax was always paid by the village when demanded by the Government up to the year 1888. In 1889, the Government issued a circular to the effect that no village meras would be recognised as existing in Cyprus. In the year 1893 the land was included by the Delimitation Commission within a State forest.

HELD: That whether this pasture ground be, strictly speaking, a mera, or whether it be an ialak or kishlak, under the circumstances the Government is estopped from saying that this is not a pasture land assigned as such to the inhabitants of Z., and that it must be excluded from the limits of the State forests.

APPEAL from the District Court of Limassol.

Templer, Q.A., for the appellant.

Kyriakides for the respondent.

The facts and argument sufficiently appear from the judgment.

Judgment: This is an appeal from a judgment of the District Court of Limassol, directing that a piece of land situate near the village of Zakaki, and which is described on the writ of summons as being about 100 donums in extent, be excluded from the delimitation of the State forest. *April* 22.

In the writ of summons the piece of land in question is claimed as the mera of the village of Zakaki; and at the hearing of the action, evidence was called to prove, on behalf of the plaintiffs, that the land had been purchased in the

year 1263 by certain inhabitants of the village from the Kaimakam of Limassol, and a document was produced bearing a seal which the first witness, Nicola Hadji Constanti, said was the seal of Hassan Bey, the Kaimakam. The witness also said : " We had this land before : but a stranger " came who was trying to have the land registered in his " name, so we were told we had the privilege to buy, and so " we did. We tried to cultivate the land, but it was salt " and nothing would grow. When we found it was no good " to grow crops we used it as pasture land. In 1869 an " official came and left all the land and registered it as mera " and assessed us at 36 piastres a year as taxes."

The other evidence in the case was directed to show that the inhabitants of Zakaki had for many years exercised an exclusive right of mera over this land. A Land Registry official was called to prove that he was unaware that meras are registered in the Tapu books. He proved that this mera was entered in the Government mallieh books, the entry showing that it was exclusively for the inhabitants of Zakaki, and that the verghi payable in respect of it was 36 piastres a year.

On these facts the Court gave judgment for the plaintiffs, holding, as we understand, that there was a valid sale in 1263 to the persons named in the document of sale, and that one of those persons was a plaintiff in this action, and that, without deciding whether the other plaintiffs could make good their claim to this land as a village mera, it was wrongly included within the limits of a State forest.

From this judgment the defendant appeals, and it was contended for him that there was no proof of the authenticity of this document : that even if it be authentic, the holders of it ought to have exchanged it for a Tapu kochan : that the document itself, if genuine, shows that the land was granted for the purposes of cultivation, a condition which had not been fulfilled, and that the Government were entitled now to include the land within the boundaries of the State forest.

For the respondent it was contended that the land was granted under the document of 1263 as a village mera, though it was admitted that this did not appear on the face of the document itself : that registration of village meras was not necessary or customary, and that as the Government had in 1869 recognised the land as forming a village mera, and had received from that year down to 1888 the tax assessed upon it, they could not now turn round and refuse to recognise the land as a village mera.

With regard to the authenticity of the document, the statement of Nicola Hadji Constanti that it was the signature of the Kaimakam Hassan Bey stood unchallenged. The

gentlemen who represented the defendant did not even address a question in cross-examination to the witness as to his means of knowledge, and it seems to us that if the defendant chose to allow the evidence to go unchallenged and uncontradicted that he cannot complain if the Court considered its authenticity established, as it was justified in doing.

What the precise meaning of the document is, it is not very easy to say. According to the translation put in by the defendant, and which we have had carefully compared with the original, and corrected in one or two particulars, we incline to the view that the object of the grant was for the purposes of cultivation. The document says that the persons, who are named, have applied to purchase so many "donums of the khali mera lands . . . . and that the "said 'mera' has been sold" . . . . and concludes: "Therefore the above-mentioned Moslems, etc., are the "possessors of the said field (tarla) . . . . and on their "cultivating the same year by year they will pay the tithes "to the Government on reaping any titheable produce": The use of the word "tarla" seems to imply cultivation, and the evidence of Nicola Hadji Constanti is that the grantees tried to cultivate it, and that finding it impossible, they used it as mera. But whatever the precise meaning of the grant may have been, it appears to us that it was a grant to certain named individuals, whilst it is claimed in the writ of summons as a village mera. It seems to us that this claim is inconsistent with any claim that any of the persons named in the document, or their heirs, could maintain. There is nothing contained in the document itself from which the inference can be drawn that the Kaimakam-Mutessarif was purporting to grant a village mera, but, on the contrary, the land is purported to be granted to certain named possessors as "tarla," which seems to exclude the idea of a village mera. Looking to the evidence in the case that an official in 1869 came and registered the land as mera, and assessed the annual payment to be made in respect thereof at 36 piastres a year, a proceeding which was acquiesced in without any objection on the part of the persons named in the document of 1263, or of the heirs of any who may have been dead, it appears to us that these grantees, or heirs of deceased grantees, having acquiesced in this arrangement, and in the land having been used as a village mera from the year 1869 down to the time when it was delimited in the State forest, must be taken to have surrendered any personal rights that they might have claimed under the document of 1263.

The question then remains, is this a village mera: and, if so, should it, for that reason, be excluded from the State forest? It appears to us that it cannot be said this is an

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ab antiquo village mera, as it would in that case be metrouké, and the Kaimakam-Mutessarif could not have sold it in 1263. The plaintiffs do not impeach the validity of this sale, but, on the contrary, rely upon it, and it seems to us that they impliedly admit that this was not a metrouké mera in that year. If this be the case, has it become a village mera subsequently? We have searched in vain through the Land Law and the various laws and instructions used subsequently to that law to ascertain how a mera may be assigned to a village. It was argued for the defendant that such a mera can only be assigned or granted by Imperial firman, but no authority was cited to us for the statement. If the land which was to be granted as mera was arazi-mevat, then we think that, applying the same principle as is applicable to the case of arazi-mevat granted for cultivation, the permission of the Sovereign should be obtained. That permission, at all events since the passing of the Land Code, can be given by the Land Registry officials. But there is this distinction between the cases of arazi-mevat granted for the purposes of cultivation, and a grant of it as metrouké mera, that in the former case the land becomes arazi-mirié, and a right of reversion is vested in the Beit-ul-mal whilst in the latter case the right of reversion, practically would never arise.

With regard to arazi-mirié, certain officials, such as the Malmudirs, Defterdars, etc., were regarded in the position of the owner of the land for the purpose, doubtless, of making grants of it, and subsequently the officers of the Defter Khané were substituted for them in this respect. The piece of land in the present case appears to us to be arazi-mirié land. It is described in the document of 1263 as being "in the village of Zakaki," meaning probably within the village lands of Zakaki, and some of its boundaries appear to be cultivated lands, so that we think we are justified in assuming it to be of the category arazi-mirié. The facts with regard to it are, that in the year 1869, some years prior to the English Occupation of the Island, an official came who fixed its boundaries and "registered" it as mera exclusively for the inhabitants of the village of Zakaki. It was so entered in the Government register kept for the purposes of mallieh, and the amount of the tax payable in respect of it was paid whenever it was demanded down to the year, 1888. It is thus quite clear, whoever the official mentioned may have been who registered this as a village mera in 1869, that both the Ottoman and English authorities adopted and ratified his act, and, this being so, we are justified in assuming that he was such an official as stood in the position of the owner of the land. Is there then anything in the law which would prevent the action of the official, recognised and adopted as it has been, operating as

a grant of a village mera? As we have said, we can find nothing whatever in the law as to the granting of a metrouké mera, but we see no reason in principle why a mera should not be capable of being granted to the inhabitants of a village. Take, for example, such a piece of land as the present which is incapable of cultivation, and, therefore, of producing any revenue to the State from tithe: it seems only natural and reasonable that such land should be granted for the purpose for which alone it is fitted—that is, to serve as a pasture ground. The question then arises, how could it be so granted? Were it capable of cultivation it seems to us undoubted that it could be granted by the Land Registry officials for the purpose of cultivation, and we think that, as it is not capable of cultivation, it might have been so granted as a pasture ground to an individual and held by Tapu: but we feel great difficulty in arriving at a conclusion as to whether it could have been so granted to the inhabitants of a village generally.

The law seems to stand in this way. The Land Registry officials are regarded as the owners of the soil: with regard to certain matters the law expressly confers certain powers upon them. They may consent to sales, to the erection of buildings, or the planting of trees or vines upon arazi-mirié; and they may consent to the cultivation of arazi-mevat. With regard to certain other matters, the law expressly forbids them to act. Thus, they may not consent to the erection of buildings to form a village or quarter, which according to Article 32 of the Land Code requires the firman of the Sultan. It seems, too, that they could not consent to the conversion of arazi-mirié into mulk under Article 2 of the Code, but that a firman of the Sultan is required for that purpose: and under Article 121 the mulknamé of the Sultan is required before arazi-mirié can be made vakf. In Cyprus since the Convention of June, 1878, acts required by law to be performed by the Sultan could, doubtless, be validly performed by H.M. the Queen, or those to whom she has delegated her powers, *i.e.*, the High Commissioners of the island. The law being silent as to whether a pasture ground could be assigned by the Land Registry officials to a village, is such an act to be considered as one that could be validly done by them? It may be said, on the one hand, that they have only the powers expressly conferred upon them by the law, and, on the other, that the rights of the Sultan and the State are vested in them to exercise: that they are to be regarded as owners of the land (*sahibi arz*): that certain limitations have been imposed upon them of which the granting of a pasture ground to a village is not one, and that, therefore, they are authorised to make such a grant. It is by no means an easy matter to decide which is the correct view to take of this matter; but on the whole

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it seems most consistent with principle to decide that they would not have such a power. In one instance they are authorised to consent to the change of land from one category to another, *i.e.*, from arazi-mevat into arazi-mirié; but we do not think that they would be authorised to consent to the change of arazi-mirié into arazi-metrouké by which the reversionary rights of the State would be practically extinguished.

But, if it be the fact that the "registration" of this land as a village pasture ground in 1869 by the official was an act which he could not validly do, we have to consider whether this act could not be ratified and adopted by the State so as to disentitle the Government now to deny that this land is a village mera. The land is arazi-mirié, the *rakabè* or servitude of which belongs to the State, and if the State chose to grant or assign it to a village as mera on any terms it chooses, we do not see how any one could object to it, or why such a grant or assignment should not be held to be valid as against the State. The evidence with regard to this, is that it is entered in the Government register for mallieh purposes as a village pasture ground, and that the annual tax of 4*s*., at which it was assessed, has been paid by the inhabitants of Zakaki from 1869 to 1888, whenever demanded. It appears to us that this is an acknowledgment on the part of the English Government, and on the part of the Ottoman Government which preceded it, that this land has been assigned to the villagers of Zakaki as a pasture ground, and that it is not open to the Government now to turn round and say that it has not been so assigned.

It does not appear to us that this is land which, had it been granted to an individual to hold by Tapu, would have been improperly granted within the meaning of the Emir-namés produced to the Court below, as being forest. We do not think that, apart from the definition of forest land contained in the Woods and Forests Delimitation Ordinance, 1881, the land could be regarded as forest or would in 1869 have been regarded as forest within the meaning of the Ottoman Laws and Regulations then in force. There are no forest trees upon it though there are said to be a few juniper bushes scattered about it: whilst during the winter a large portion is said to be under water.

It seems to us, therefore, that if on principle the officials of the day were authorised to grant it as a village mera, they acted wisely and beneficially as regards the State in granting it as a village pasture and reserving an annual payment to the State. Inclining to the view that on principle they had no such right, we hold that the State recognised and adopted the act, and cannot now after the lapse of all these years, when it has remained registered in

the State register as a village pasture ground, and when the annual tax has been accepted from the inhabitants, be heard to say that it is not a pasture ground assigned to the inhabitants of the village of Zakaki. It has been said that the registration in the mallieh books is not a registration of title: and this, of course, is so as regards an individual possession of land, the registration of which must be in the Tapu books. But we can find nothing in the law or the regulations as to the registration of metrouké; and it seems to us that on principle these would not be registered in the Tapu registers, as they are not held by Tapu. The entry in the mallieh books for so many years appears to us to afford good evidence of an acknowledgment on the part of the Government that this land has been assigned to the village of Zakaki as a mera.

In using the word "mera," we do not wish it to be assumed that we consider this a mera as distinguished from an "ialak" or "kishlāk." The distinction between these kinds of pasture grounds is neither very clear nor very easy to understand.

Both mera and ialaks and kishlaks may be metrouké, or may be held by Tapu. In the case of *ab antiquo* metrouké, kishlaks and ialaks the law provides that taxes are to be taken from the persons using them, and no such provision appears to exist in the case of *ab antiquo* metrouké meras. *Ab antiquo* metrouké, ialaks and kishlaks may be cultivated by the consent of the inhabitants of a village, whilst meras apparently cannot, as the law provides that they shall remain as meras always. What the actual physical distinction between the pasture ground termed a mera and those that are termed ialaks and kishlaks is, it is extremely hard to say. It is worthy of note that the law in speaking of *ab antiquo* metrouké, ialaks and kishlaks refers to their being registered in the Imperial Defter Khané, and with regard to meras of the same description, no reference is made to any such registration. We find a reference to similar registration with regard to other metrouké properties on which taxes are payable, viz.: places assigned for markets and fairs; and a similar absence of any mention of registration of other metrouké properties in respect of which no taxes are payable, *e.g.*, such places left for the use of the inhabitants of a village as are mentioned in Article 94 of the Land Code, and the village threshing-floors mentioned in Article 96. From the wording of the law it appears to us that the registrations referred to existed at the date of the Land Code: such registrations are said by the commentators on the Land Code to exist in Constantinople at the present day. It would appear as though the registration of metrouké property were intimately connected with the payment of taxes, as it

certainly is remarkable that the only classes of metrouké property in connection with which registration is spoken of are those where a tax is said to be payable. We only refer to this matter because we do not wish it to be understood that we decide this pasture land to be mera in contradistinction to an ialak or kishlak. But whatever the proper designation to be given to the word "mera," we do not see why the State cannot grant arazi-mirié as a mera on any terms it pleases, or why it cannot, under circumstances such as the present, be taken to have assented to this particular land, whether it should be termed mera or ialak or kishlak, being assigned to the inhabitants of the village on the terms of their paying 36 piastres per annum.

We understand the meaning of the words "mera," "ialak" and "kishlak" to be that the particular land forming the mera or ialak or kishlak is assigned, and not merely the rights of pasturage over such land. This being so, it seems to us that the land itself, and not the mere right of pasturage, was assigned to the inhabitants of Zakaki, and that, therefore, they are persons whose rights are affected under Clause 8 of the Woods and Forests Delimitation Ordinance, 1881. Taking the view we do of this case, we are of opinion that the judgment of the District Court declaring that this piece of land should be excluded from the State forest was correct, though we do not agree with the grounds on which the judgment proceeded.

The appeal must be dismissed with costs.

Appeal dismissed.