[MIDDLETON, ACTING C.J. AND LASCELLES, ACTING J.]

GIORGHI MICHAIL FRANCOUDI *Plaintiff,*

v.

THE HEIRS OF HERACLI MICHAILIDES *Defendants.*

NATIONALITY—OTTOMAN OR RUSSIAN SUBJECT—PARTITION—ARAZI-MIRIE—MULK—REGISTRATION—MAFKUD—ABSENCE FROM CYPRUS—PRESCRIPTION—LAND CODE, ARTICLES 20, 56, 57, 74, 75 AND 110—LAW CONCERNING THE CONFISCATION OF PUBLIC LANDS, NO. 14 OF 1885—CONVENTION BETWEEN RUSSIA AND TURKEY ON THE QUESTION OF NATIONALITY, DATED 30TH APRIL, 1863 (VOL. V., P. 393, LEG. OTT.)—PROTOCOL (VOL. I., P. 22, LEG. OTT.)—LAW CONCEDING TO FOREIGNERS THE RIGHT TO HOLD IMMOVABLE PROPERTY IN THE OTTOMAN EMPIRE, DATED 7 SEPHER, 1284 (VOL. I., P. 19, LEG. OTT.)—LAW ON OTTOMAN NATIONALITY, DATED 6 CHEWAL, 1284 (VOL. I., P. 7, LEG. OTT.)—SPECIAL LAW ABOUT THE ESTATE AND LANDS OF FOREIGNERS EXCEPTED IN ARTICLE 1 OF THE LAW 7 SEPHER, 1284 (DATED 25 REBIUL-ACHIR, 1300).

Where a double registration for the same land exists in the books of the Land Registry Office, and the registration prior in date is clearly founded on a false basis, while that of subsequent date is *prima facie* founded on a good one, the latter will over-ride the former which will be cancelled.

G., an Ottoman subject, left Cyprus in 1834, and in the year 1872 in Russia, was formally admitted to the privileges of a Russian subject, but without the sanction of the Imperial Ottoman Government. In 1893 G. returned to Cyprus, and claimed the partition of certain immovable property there, as forming part of the estate of G.'s father. G., during his entire absence from Cyprus, had not been within 18 hours journey of the Island.

HELD: As regards the mulk property (the evidence being insufficient to prove that the arazi-mirié property ever formed part of the estate of G.'s father), that G. was not prescribed by lapse of time from bringing his action for the partition thereof.

HELD ALSO: That G. had not divested himself of his Ottoman nationality so as to disentitle him to hold or inherit immovable property in Cyprus.

APPEAL from the District Court of Limassol.

Rossos for the appellant.

Pascal Constantinides for the respondent.

The facts and arguments sufficiently appear from the judgment.

Judgment: The claim in the writ in this case is, that an order of partition should be issued by the Court, for the division of certain immovable property set forth on the

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back of the writ, and common to the plaintiff and the defendants, the plaintiff claiming to be entitled to two-ninths of the mulk and one-third of the arazi-mirié.

It would appear that plaintiff is the son of Michail Francoudi, who died in 1839, leaving as heirs, the plaintiff, two other sons Heracli and Neocli, and three daughters Christallou, Evanthia and Maria.

The two defendants, Michail and Evterpe, are the children of Heracli and consequently nephew and niece of the plaintiff, while the defendant Terezou is the widow of Heracli and mother of the other two defendants.

In the year 1834, the plaintiff then being 13 or 14 years old, left Cyprus and resided in Egypt, Turkey and Russia, till the year 1893, when he returned to the Island and made this claim to a share in what he alleged was his father's property, in the possession of the defendants.

On the day appointed for the taking of the issues the plaintiff appeared in person and admitted that he was a Russian subject, which was not denied or disputed on behalf of the defendants. Plaintiff also alleged that at the Yoklama in 1292, he was registered for the property a share of which he claims. For the defendants it was denied that Michail Francoudi died possessed of any of the properties claimed, and also that any of the mulk property claimed was in their possession. It was admitted for defendants that some of the lands claimed were in their possession, but by virtue of kochans in their names. It was further alleged that the registration in plaintiff's name was wrong, and that plaintiff's claim was prescribed, and reliance was placed on Articles 56 and 110 of the Land Code to defeat it.

The issues finally settled by the President and agreed to by the parties were :—

(1) "Is action prescribed ?"

(2) "Plaintiff being a foreign subject, can he inherit "from his father ?"

(3) "Father's death having occurred in 1839, could "plaintiff then have inherited ?"

(4) "Has plaintiff lost right of inheritance by not "coming to Cyprus within three years of his father's "death ?"

(5) "Did Michail Francoudi die possessed of these "properties ?"

(6) "Are they any of them in possession of defen-"dants ?"

On the hearing of the action the only witnesses called by the parties were the plaintiff and Michail one of the defendants.

The plaintiff deposed that, although only seven years old when he left his village of Anoyira for Limassol, he knew all his father's properties, and that on his return to Cyprus he went round some of the properties with the defendant Michail and found them in his (defendant's) possession, and that he was present when defendant (Michail) leased olive trees belonging to plaintiff's father.

The plaintiff also stated " the properties " (meaning, we presume, the properties of which he claims a division), were in the possession of the defendant. He did not, however, produce his certificate of search, or state specifically that the properties he saw in company with the defendant are those described in that document.

The defendant Michail, on the other hand, testified that the arazi-mirié lands set out on the back of the summons, except Nos. 26 and 29 (which were in the possession of the heirs of Christallou) were in his possession, but denied that any of the olive trees claimed were in his possession. He further deposed as to the carob trees described in kochans Nos. 1079, 1080, 1092, 1098, 1101 and 1100, that they were all in his father's possession before his death, and shewn to him by his father's agent as part of the inheritance. As regards the other carob trees claimed, he does not appear to have given any evidence, but concludes by saying that he could not say " if the properties he got from his father " were got from his (Heracli's) father."

The District Court, which consisted of the President and Mr. Rossides, does not appear to have entered any findings on the issues and was divided in opinion. Mr. Rossides considering that by Articles 74 and 75 of the Land Code, the plaintiff had lost his rights, while the Government by granting kochans to the defendants had, practically, exercised their right to confiscation under those articles. The President apparently thought that Articles 56 and 57 of the Land Code only applied to the case of absent heirs whose existence was unknown, while Articles 74 and 75 would only defeat plaintiff's claim if the Government had done some act of confiscation. As to Article 110 the President did not consider it applied, inasmuch as plaintiff was not a foreign subject at the time his father died, and there was nothing to shew when he became one; that Heracli knowing of plaintiff's existence must have admitted his right at the Yoklama, and consequently that plaintiff was entitled to a share in such of the properties as are admitted to be in the defendant's possession. As a result, judgment was entered for the defendants and the action dismissed.

The plaintiff appealed and his learned advocate taking the issues one by one contended: (1) that plaintiff had already been recognised by the proper authority as the

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registered owner, and that being absent from Cyprus his claim could not be prescribed; (2) that plaintiff was still an Ottoman subject in spite of his assertion to the contrary; (3) that his father's death taking place in 1839, his share of his father's estate devolved upon him then; (4) that plaintiff was known to be alive in 1860, and consequently Article 56 of the Land Code would not apply to him; (5) that the properties claimed were registered in the name of the heirs of Michail Francoudi and must, therefore, have belonged to Michail Francoudi at one time; (6) that Michail Michailides admitted possession of all the lands claimed, except those under Nos. 26 and 29; (7) that the terms of Article 110 of the Land Code were not applicable to the plaintiff, inasmuch as by Clause 9 of the Convention between Russia and Turkey dated 30th April, 1863 (Vol. V., p. 393, Leg Ott.), it was agreed that when the Sublime Porte should accord to foreigners the power to acquire immovables in Turkey, Ottoman subjects who had become Russian subjects, should have full liberty to enjoy this power, and although nothing can be found to shew that Turkey accorded this right to Russia, yet, there is no doubt, it was accorded; (8) that Articles 74 and 75 of the Land Code, which is dated 1858, were repealed by law 14 of 1885, and could not, in any case, apply to the plaintiff, and finally submitted that in default of evidence on the point, the Court were bound to treat the plaintiff as an Ottoman subject in view of the decisions of the Supreme Court, and the law as laid down in the law of 1869 on Ottoman nationality.

For the defendants it was contended, that if the Land Code did not apply to this case, there was no other law known to the learned advocate which did; that plaintiff's absence continued after the passing of that Code, and that under Article 56 the plaintiff had clearly lost his right, as the meaning of that article must be that a person would lose his rights if he shewed no sign of being alive within three years, and plaintiff gave no signs of life till 1860, that this contention is confirmed by Articles 74 and 75, and that the whole principle of the Land Code is that forfeiture should occur, if land be left uncultivated for three years; that even if lands had reverted to the State that was a question between the State and defendants, and the State had recognised defendants by its registration of the lands in their names; that if plaintiff relied on Article 20 of the Land Code, then he admitted the applicability of the Code to the case and was barred by the other articles; that, although Articles 74 and 75 were repealed, any rights plaintiff may have had were prescribed before that repeal: as regards the contention of plaintiff's advocate that plaintiff was still an Ottoman subject in spite of his assertion to the contrary, the plaintiff must be bound by the admission he

had made, and if he had not become a Russian subject before 1855, he could not now as a Russian subject hold land in the Ottoman Empire, as the the Protocol of 1868 is subsequent to the Convention of 1863, and, moreover, there is no evidence that Russia has ever subscribed to the Protocol, and plaintiff was also originally an Ottoman subject.

As regards the mulk property there was no evidence that the trees were grafted in the lifetime of plaintiff's father, or that he had possession of the lands claimed at his death, and that finally, plaintiff's registration is by virtue of possession found at a Yoklama and not by inheritance.

The first question that it appears to us we have to determine is, whether the property in which plaintiff claims a share was actually the property of his father in his possession at his decease in the year 1839, and secondly whether the whole or part of it is now in the possession of the defendants.

At the time of the taking of the issues the plaintiff produced a search certificate from the Land Registry Office at Limassol, which, although not formally put in evidence, appears to have been admitted by the defendants' advocate as a document which was before the Court. The plaintiff's advocate seemed to think this document shewed that at the Yoklama in 1292, plaintiff was registered for a share of all the property, both mulk and arazi-mirié, set out in it.

We have, however, applied to the Land Registry Office at Limassol for copies of the original registration from which this certificate was obtained, and we find that all the mulk property mentioned in it was registered in November, 1292, at the first Yoklama in the names of the children of Michail, while all the arazi-mirié was, at the Yoklama in the year 1279, registered in the names of Neocli, Heracli and Georghi by Hak-i-karar.

It will thus be seen that the plaintiff's title to the mulk is apparently derived by inheritance while his registration for the arazi-mirié is founded upon alleged possession on his part, and it will, therefore, be necessary to consider his claim to the two different species of property separately.

It will be convenient to discuss his claim to the arazi-mirié property first, and to ascertain what proof there is that these lands ever belonged to plaintiff's father.

From the registration itself we gather that he and his two brothers were registered by Hak-i-karar, in other words that they had satisfied the Land Registry officials that they had possessed and cultivated these lands for the period prescribed by law without interruption.

This from the plaintiff's own evidence must have been impossible, so far as he is concerned, but assuming that he had done so, this does not shew that the lands in question ever belonged to his father.

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In support of the contention, therefore, that the lands belonged to plaintiff's father we have only the broad statement of the plaintiff that he knew his father's properties when a boy of seven, and found some of them in the possession of the defendant Michail when he went to Anoyira in 1893, while he does not even say, if the properties he knew are those described in the registration by virtue of which he makes his claim, and this is unsupported by any "intekalié" registration, and opposed by the denial of the defendants, that plaintiff's father died possessed of any of the properties of which the plaintiff claims a share.

It was for the plaintiff to prove to the Court beyond a doubt, that the lands he claimed a share of formed part of his father's estate, and after having been absent from Cyprus for nearly sixty years he comes back and asks the Court to give him a share in certain lands, practically on his own unsupported statement that they at one time belonged to his father.

It may be said that the Court should draw the inference that the lands belonged to his father, inasmuch as the registration of 1279 is in the names of plaintiff and his two brothers, but he himself informed us that he had at one time three sisters, all of whom, we presume, would have been entitled to share in the arazi-mirié property of their father, and if the lands, for which plaintiff was registered in 1279, came to him by inheritance, then those sisters or their descendants at that time ought, surely, to have appeared in the registration as joint owners with the brothers.

This, however, is not so, and one can hardly assume that because plaintiff and his two brothers are registered for certain lands by Hak-i-karar that those lands formerly belonged to their father, even though plaintiff clearly said so, which he does not. The plaintiff, it is true, says he knew his father's properties and could point out all the lands, but he neither can nor does give any description of them; and when we remember that he left the Island at fourteen years of age and came from Anoyira to live in Limassol at the age of seven, only visiting his village once or twice afterwards, it would be somewhat dangerous to rely on the vague and unsupported assertion of the plaintiff alone. We are, therefore, of opinion that the plaintiff has not proved that the arazi-mirié lands, for which he was registered in 1279, ever formed part of his father, Michail's estate.

The plaintiff, however, may contend that the terms of his writ of summons would cover a claim on his part, to be considered a part owner of the lands for which he was registered in 1279, by virtue of Hak-i-karar, and that as this registration still exists in his name, he is entitled to a partition of these lands if found in the possession of the defendants.

It is clear, however, from his own statement, that it was impossible for the plaintiff to have acquired a right of possession in the way alleged in the registration, as he was entirely absent from Cyprus from the year 1834 to the year 1893, and there is no evidence that anyone was cultivating the lands in question, for or on his behalf, during the period in question. It is true that the father of the defendants, Michail and Evterpe, wrote to the plaintiff in 1860 that their paternal property was in the hands of their sister Christallou, who was cultivating them and living by them, but there is nothing to shew that the property which Christallou was cultivating, is the lands described in the registration of 1279 in the plaintiff's name, or that she continued to cultivate them after the year 1860.

If, therefore, the plaintiff was wrongly registered for these lands in 1279, and this came to the knowledge of the Government, as represented by the Land Registry Office, there was nothing in our opinion to prevent the Land Registry officials *amending that registration, in accordance with the information* in their hands shewing who were the persons rightly entitled to be registered. (See *Hadji Louka Loizo and others v. P.F.O.*, p. 99, Vol. II., C.L.R.).

From a comparison of the lands comprised in the certificate of search with the copy of the registration in defendants' names furnished to us by the Land Registry Office at Limassol, it would appear that all the lands comprised in that certificate were, in the year 1886, registered in the names of the defendants, Michail and Evterpe, by inheritance from their father Heracli. The registration in the names of these defendants appears to be based on a certificate of the village that the lands in question had been in the possession of their father for forty years, and that they were his heirs. We have, therefore, to decide whether the registration of 1279, which is clearly based on a false ground, is to prevail over the registration of 1886, which, *prima facie*, is good and well founded.

There can be no doubt from the evidence of the plaintiff himself that he was never entitled to be registered in 1279, on the grounds alleged in his registration, and there is nothing to shew that the father of the defendants, Michail and Evterpe, was not in possession of the lands in question for the period of forty years as alleged in the certificate of the village.

If, therefore, he was in such possession for the period alleged, there can be no doubt, in default of evidence to the contrary, that his heirs would be entitled to be registered as they are. We must, therefore, hold that this subsequent registration over-rides the old and faulty one, and that the plaintiff is no longer entitled to be registered for the lands he claims partition of.

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It is also very doubtful if his brother Neocli had a right to be registered, as from plaintiff's own evidence given before us, we learn that Neocli was absent in Alexandria in 1858 or 1859, and still lives there, while the only one of the three brothers, who apparently continued his residence in Cyprus, was Heracli, the father of the defendants Michail and Evterpe. We, therefore, think that plaintiff has shewn no title to the lands in question even under his registration of 1279.

As we are of opinion that the plaintiff has not proved that these lands ever belonged to his deceased father, Michail Francoudi, it is not necessary for us to deal with the arguments addressed to us by his advocate on the assumption that he had proved them to belong to plaintiff's father.

We then come to the question as regards the mulk properties.

From the registration of these properties in 1292, we gather that at the Yoklama the plaintiff was registered for two-ninths and his brothers and sisters for seven-ninths of the mulk properties therein set out. A note appearing on the original registration states "it has been proved by "the evidence given by the members of the Village Council "that on the death of Michailidi, their father, of a total of "nine shares, two shares devolved on Heracli, two shares "on Neocli, two shares on Giorgaki, one share on Christallou, "one share on Evanthia and one share on Mariou."

This shews pretty conclusively that the properties in question were considered in the village at that time as the property of plaintiff's father Michail, and were accordingly "newly registered" as it is called, in the books of the Land Registry Office as the properties of his children according to their respective legal shares.

Is the plaintiff then debarred from claiming his share in these properties (assuming them or any of them to be in the possession of the defendants) either through his prolonged absence from Cyprus, or by reason of his having purported to become a Russian subject?

We must primarily hold that the articles of the Land Code relied upon are not applicable to mulk properties.

Is the plaintiff then prescribed from bringing this action as regards the mulk properties by reason of the fact that he took no steps to assume possession of them from the death of his father in 1839 till he arrived in Cyprus in 1893?

It appears that plaintiff left Cyprus in 1834, and according to his own statement did not commence correspondence with his brother Heracli before the year 1858, and there is no evidence that between those dates he was heard of or known to exist.

According to the Hanifeea doctrine of the Sheri Law, as found in the Hedaya, the plaintiff was, between those two dates, a " Mafkud " or missing person, viz. : one who had disappeared, and of whom it was not known whether he was living or dead. Of such persons it is said, that their right of inheritance from a relation dying during their disappearance cannot be established during their disappearance, and that their portion is held in suspense, and they do not obtain a property in it, because their being in life is doubtful. In other words there is no devolution of estate upon them while they continue " Mafkud."

If this be so the plaintiff's right to inherit did not devolve upon him till the year 1858, and consequently his right to bring an action was not ascertained till that date, and according to Article 1667 of the Mejellé prescription does not commence to run until the day on which the object of the action is exigible.

It may be interesting here to note that, according to the compilers of the Hedaya, who favour the Hanifeea doctrine, a " Mafkud " cannot be deemed to be defunct until 90 years after his disappearance.

The law of prescription, however, applicable to the case of mulk properties, is to be found in Articles 1660, 1663 and 1665 of the Mejellé. From these articles we gather that an action as regards mulk is prescribed after the lapse of 15 years from the time when the right of action arises, but if a plaintiff is in a country separated by a journey of 18 hours from the country in which his opponent is resident, prescription does not begin to run until that disability of absence is removed.

In this case the plaintiff from the time of his departure from Cyprus in 1834, was never (according to the evidence), within the distance mentioned in the law of the defendants or their predecessor in title.

We must, therefore, hold that the plaintiff is not debarred by prescription from making this claim to a partition of the mulk properties of his father, assuming them to be in the possession of the defendants.

We now come to the question of nationality. It was objected by the advocate for the defendants that, as plaintiff had at the taking of the statements of the matters in dispute and during the hearing of the action in the District Court, admitted and contended that he was a Russian subject, it was not open to him before us to abandon that admission and claim Ottoman nationality.

We, however, considered it necessary to ascertain for ourselves what was the actual status of the plaintiff as regards nationality, in view of the fact that it was possible

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he might be regarded as a Russian subject in Russia, and an Ottoman subject while in Ottoman territory.

We felt also that his simple and unexamined admission, that he was a Russian subject, did not conclude him from maintaining that in Turkish territory he had not divested himself of his Ottoman nationality.

On our examination of the plaintiff, we discovered that in 1872, he appears to have obtained in Russia the status of a Russian subject, without having divested himself of his Ottoman nationality, by authority of the Imperial Government of the Ottoman Empire, according to the terms of Article 5 of the law (dated 6 Chewal, 1285—19th January, 1869), on Ottoman nationality.

The plaintiff is still, therefore, an Ottoman subject so far as the Ottoman Empire is concerned, and in the Ottoman Empire his rights and liabilities are subject to the law prevailing there.

It has been urged upon us by the advocate for the defendants that by the latter part of Article 1 of the law (dated 7 Sepher, 1284—or 1868), conceding to foreigners the right to hold immovable property in the Ottoman Empire, the plaintiff being an Ottoman subject by birth, and having changed his nationality, was debarred from the privilege of holding immovables until a special law should be promulgated regulating the rights of such persons, that no such special law had been passed, and that inasmuch as he was a Russian subject by change, and that Russia had not been proved to have adhered to the Protocol found in the 1st Vol. of the Leg. Ottomane, p. 22, that plaintiff was absolutely prohibited from holding immovable property in the Ottoman Empire.

We have most carefully considered the latter part of Article 1 of the law of 7 Sepher, 1284, in connection with the law of 1869 on Ottoman nationality and have come to the conclusion, that taken together, the change of nationality mentioned in Article 1 must mean a change that is authorised by the Imperial Government.

From a perusal also of the explanatory circular of the Sublime Porte, dated 26th March, 1869, we find that it insists emphatically on a distinct and detailed compliance with the law of 1869, and lays down that any form of naturalisation undergone by an Ottoman subject in a foreign country, shall be considered as absolutely null, void and non-existent, unless it has been previously authorised by Imperial Iradé. It also points out that the onus of proof of change of nationality rests on the person claiming such foreign nationality, and in the absence of such proof a person shall be treated and considered as an Ottoman subject whenever he is in Ottoman territory.

If the meaning of these laws were not as we consider it to be, we should be driven to the conclusion that Ottoman subjects were not to have the rights and privileges of Ottoman subjects, as Article 5 of the law of 1869 distinctly says that the assumption of a foreign nationality, without Imperial sanction, is absolutely null and void, and that in the absence of such sanction, a person shall continue to be considered and treated in all points as an Ottoman subject.

If, therefore, he is to be treated in all points as an Ottoman subject, how can he be deprived of his right to hold immovable property in the Ottoman Empire?

Moreover, if the Ottoman Government intended to deprive its subjects, who had attempted without authorisation to change their nationality, of their rights as Ottoman subjects to hold immovables in the Ottoman Empire, when it still called and considered them Ottoman subjects, it appears to us that it should have done so in distinct terms and not by inference. That it might have intended to do so seems to us likely, as by Article 2 of the law of 25 Rebiul-Achir, 1300, entitled, "A special law about the estates and "lands of foreign persons excepted in the 1st article of the "law about the right of property," which is, undoubtedly, the special law alluded to in Article 1 of the law of 7 Sepher, 1284: "Those who have changed their nationality, with-"out having received official permission from the Ottoman "Empire divesting them of their allegiance, are deprived "of the right of property, (we presume immovable property "as ἰδιοκτησία is the word used in the Greek text), and "inheritance in Ottoman countries."

The words there "have changed," must mean "have attempted to change" their nationality, as the law of 1869, says, change without permission is null and void and of no effect.

This law has, however, no application to the question before us, inasmuch as it was passed after the British Occupation, and we have only alluded to it to shew what in our opinion might have been the intention of the Ottoman Government in 1284, and how that intention, if it ever existed, was not supported by the terms of the law as it stood.

We are, therefore, of opinion that the plaintiff by reason of his assumption of Russian nationality in Russia in 1872, is not debarred from asserting his claim as an Ottoman subject to inherit and hold immovable property in Ottoman territory, to wit, Cyprus, and that he is entitled to a partition awarding him two-ninths of all the mulk properties described in the writ of summons as registered in 1292, in the names of himself and co-heirs, which may be found in the possession of the defendants.

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There remains now only the question whether the mulk propeties, appearing in the plaintiff's name under the registration of 1292, are all or any of them in the possession of the defendants.

The defendant Michail admits that certain of the carob trees under Nos. 1079, 1092, 1080, 1098, 1101 and 1100 are in his possession, but denies that any of the olive trees are so.

Whether the defendant in denying the possession of the olive trees is merely denying the actual or legal possession it is difficult from the evidence to say. He may mean that they are in the possession of the persons to whom he has leased them, although he is receiving the rent of them.

Under these circumstances we consider it advisable that further evidence should be taken in the District Court to ascertain which of the mulk properties, or what portions of such properties described in the writ of summons are actually in the possession of the defendants.

Subject to this, our judgment will be for the defendants as regards the arazi-mirié properties, and for the plaintiff as regards the mulk properties, and the judgment of the District Court will be varied accordingly.

Nothing was alleged either in the District Court or before us with regard to the defendant Terezou's interest in, or action with respect to, the property of which the plaintiff claims partition. It is clear that, as regards the arazi-mirié, she would have no interest whatever, but, as regards the mulk, she would, it is conceived since her husband, Heracli, died in July, 1883, have a right to a share in any mulk property of which he died possessed. It was not proved that she was either in possession of, or registered for, or had interfered with any of the property in question, but as a party interested in the partition of mulk which she has, perhaps, hitherto looked on as forming part of the estate of her deceased husband, Heracli, she was properly made a defendant and she will have the opportunity of protecting her rights upon the enquiry hereafter as to what portions of the mulk property registered at the Yoklama in 1292, in the names of the heirs of Michail are in the possession of the defendants.

As the appellant has only partly succeeded on his appeal we shall order that each party pay their own costs of the appeal.

Appeal allowed. Judgment of the District Court varied.