SMITH, C.J. & MIDDLETON, J. 1895. Dec. 2.

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

APKAR GAVEZIAN AND OTHERS *Plaintiffs,*

v.

SAVOURI PANDELI AND OTHERS *Defendants.*

MONASTERY—ECCLESIASTICAL CORPORATION, ARAZI-MIRIE IN POSSESSION OF—RIGHT TO SUE—REGISTRATION IN NAMES OF TRUSTEES—OCCUPATION FOR TEN YEARS—REGISTERED AND UNREGISTERED CLAIMANTS—LAW REPEALED WHILE ACTION PENDING—LAND CODE, ARTICLE 122—THE TITLES REGISTRATION LAW, 1885, SECTIONS 12 AND 13—THE LAW TO MAKE TEMPORARY PROVISION TO PROTECT THE CLAIMS OF ECCLESIASTICAL CORPORATIONS TO CERTAIN PROPERTIES IN CYPRUS, 1891, SECTIONS 1 AND 2—THE ECCLESIASTICAL PROPERTIES LAW, 1893, SECTIONS 1 AND 3.

The Ecclesiastical Properties Laws of 1891 and 1893, do not enact any lawful means by which immovable property may be annexed to a monastery, but simply provide temporary protection to the actual possession of ecclesiastical corporations, until some means of evidencing title are provided.

Proof of ten years actual possession of arazi-mirié by an ecclesiastical corporation is sufficient to entitle such corporation to an injunction to restrain interference with such lands, so long as the Ecclesiastical Properties Law, 1893, is in force, even though such interference be by, or on behalf of, a person registered for such lands.

A law expiring or repealed is, as regards its operative effect, in the absence of express provision to the contrary, considered as if it had never existed, except as to matters past and closed.

Where, during the pendency of an action, a law which affects the rights of parties thereto is repealed, and its provisions re-enacted with amendments by another law, the latter, and not the former law, is applicable to the matters in dispute in the action.

(*Sophronios Egoumenos of Kykko Monastery v. The Principal Forest Officer*, C.L.R., Vol. I., p. 111, distinguished.)

APPEAL from the District Court of Kyrenia.

Templer, Q.A., (*Pascal Constantinides* with him) for the appellants.

Diran Augustin (*Artemis* with him) for the respondents.

The facts and arguments sufficiently appear from the judgment.

Dec. 31. *Judgment:* The plaintiffs in this case sued as and being the trustees of the Armenian Monastery, and claimed in their writ of summons an injunction, to restrain the interference of the defendants with certain pieces of land described in the summons, and further, that any registration in the names of the defendants for these lands should be set aside.

At the settlement of the statement of the matters in dispute the interference of the defendants (with the exception of one against whom the action was afterwards dismissed), was admitted: but it was contended, that the lands belonged to the defendants, and were registered in their names.

The only issue fixed material to this appeal was "for proof that the place where the trench was dug belongs to the plaintiffs," the act of interference being the filling up of a trench dug by the plaintiffs to mark their boundary line.

At the hearing, the plaintiffs produced in support of the title of the Armenian Monastery to these lands, a judgment of the Daavi Court, dated the 30th May, 1290, in which the trustees of the Armenian Monastery obtained judgment in their favour, in an action brought by them against certain persons, who, like the defendants in the present case, were inhabitants of the village of Ayios Ambrosios, for an alleged trespass on the lands of the monastery, and two kochans, dated 1290, which were issued in the names of the two trustees of the monastery, in conformity with the decision of the Daavi Court. A large body of evidence was heard on behalf of the plaintiffs to the effect that from the date of the Daavi Court judgment to the year 1892, when this action was brought, the agents of the Armenian Monastery had had undisturbed possession of the lands in dispute.

For the defence three of the six defendants were called, who produced their kochans, some being Yoklama kochans, dated 1288, and two being issued by the Land Registry Office in 1891, to Michail Hadji Sava, on a purchase at public auction of the land of Hadji Nicola Hadji Sava.

We infer that Michail Hadji Sava is identical with the person sued as "Hayali Mouletto," though he is not called as a witness himself, the kochans being produced by Kyriako Hadji Sava sued as Kyriako Mouletto, who states that he is the brother of "Hayali Mouletto."

The three defendants and five other witnesses, called on behalf of the defence, depose to the fact that the defendants have had uninterrupted possession of the lands in dispute for the past 25 to 30 years.

At the close of the defendants' case, the President of the District Court inspected the lands in dispute, his view being, by consent of both parties, taken to be an inspection by the Court.

The District Court found, as facts, that the land in dispute in this action is the same as that in dispute in the Daavi Court action: that the evidence of possession of the land in dispute by the agents of the Armenian Monastery

was true, and that given on behalf of the defendants, that they had had uninterrupted possession of the same property, was false : that the lands in question were registered in the names of two persons, who in 1280, were the trustees of the Armenian Monastery property, and that it was not established that the registrations, in the names of the defendants, related to the lands in dispute. Judgment was, thereupon, entered for the plaintiffs in accordance with the claim in the writ.

From this judgment the defendants appealed, and it is contended for them that the judgment is both wrong in point of law and against the weight of evidence.

It is argued that as the plaintiffs sue as trustees of the Armenian Monastery the only evidence of title to the property that can be received in support of their claim is evidence that the property is registered as attached to the monastery in the Imperial Archives at Constantinople ; that the law passed in 1891, entitled " A law to make temporary provision to protect the claims of Ecclesiastical Corporations to certain properties in Cyprus," and " The Ecclesiastical Properties Law, 1893," have in no way altered the liability of the plaintiff to produce this evidence ; and that whatever rights the two trustees, in whose names the lands are registered, have acquired by reason of the registration, are personal rights, which they must enforce by an action brought in their own names.

Unless the law of 1891, which was in force at the date when this action was instituted, has effected an alteration in the pre-existing law, we agree with the appellants' counsel that the only evidence on which the plaintiffs could succeed in the present claim would be evidence that the lands in dispute are registered in the Imperial Archives in Constantinople as annexed to the Armenian Monastery, and we proceed then to enquire whether the law of 1891 has relieved the plaintiffs from the obligation to produce this evidence. Section 2 of this law enacts that : " So " long as this law remains in force, in any action brought " by an ecclesiastical corporation in respect of any trespass " upon any cultivated lands in the possession of such corpo- " ration, it shall not be necessary for the plaintiff to produce " evidence of his title to such cultivated lands, but evidence " of possession alone shall be sufficient to enable such " ecclesiastical corporation to maintain such action against " any person in whose name such lands are not registered " in the books of the Land Registry Office, or who is not " entitled to have the same so registered," etc.

The argument addressed to us by the Queen's Advocate on behalf of the appellants is that by the word " possession " is meant legal possession, *i.e.*, possession evidenced by proof

that the land is registered in the Imperial Archives at Constantinople as annexed to a church or monastery, and that, consequently, although the law says that an ecclesiastical corporation need not produce evidence of title, but that evidence of possession shall be sufficient, that evidence of possession must be evidence of title, and that, consequently, the law is meaningless and nonsense.

This argument which is, certainly, a startling one, is founded upon the judgment of the Supreme Court, in which a certain construction was placed by the Court upon the words of Section 12 of "The Titles Registration Law, 1885," and it is contended that the judgment of the Court in that case is conclusive as to the meaning of the word "possession" in the law of 1891. The case referred to is that of *Sophronios Egoumenos of Kykko Monastery v. The Principal Forest Officer*, C.L.R., Vol. I., p. 111, decided by the Supreme Court on the 15th January, 1891.

Section 12 of the Titles Registration Law, 1885, says: "All immovable property, other than that belonging *ab* "*antiquo* to any church or monastery, which *shall have* "*passed by any lawful means into the possession* of any "church or monastery, shall be registered in the name of "some person as trustee for such church or monastery," etc.

Section 13 of the same law apparently contemplated that arazi-mirié could pass by lawful means into the possession of a church or monastery; but the Supreme Court held, under Article 122 of the Land Code, that there were no lawful means by which arazi-mirié could pass into the possession of a church or monastery, but that the only property which could be considered as annexed to a church or monastery was property registered as so annexed in the Imperial Archives at Constantinople.

The Supreme Court did not hold that Section 12 was entirely inoperative, inasmuch as it is possible that there may be immovable property other than arazi-mirié, which may pass by lawful means into the possession of a church or monastery.

Turning now to the law of 1891 which came into force on the 31st August, 1891, we find it entitled "A law to make temporary provision to protect the *claims* of Ecclesiastical Corporations to certain properties in Cyprus," and the preamble says that questions have arisen as to the rights of ecclesiastical corporations with regard to the tenure of land in the Island of Cyprus, and it is expedient that pending the settlement of such questions, ecclesiastical corporations should not be disturbed in the enjoyment of any immovable property of which they are now actually in possession; and the law then enacts in Section 1 that it shall remain in force for two years and no longer, and

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proceeds in Section 2 to enact that in any action brought by an ecclesiastical corporation in respect of trespass upon cultivated lands in the possession of such corporation, evidence of title need not be produced, but that evidence of "possession alone" shall be sufficient to enable the plaintiff to maintain the action.

Having regard to the preamble, which states the object and intention of the legislature to protect ecclesiastical corporations against disturbance of their enjoyment of immovable property *actually* in their possession and to the wording of Section 2, it appears to us to be too clear for argument, that by the word "possession" is meant not legal possession, *i.e.*, possession by virtue of registration, but actual possession by mere holding of the property. It appears to us to have been clearly the intention of the legislature, that pending a settlement of the questions that had arisen as to the tenure of land by ecclesiastical corporations, such bodies should not be disturbed in their occupation of cultivated lands which they were actually in enjoyment of. So long then as the law of 1891 remained in force, ecclesiastical corporations were entitled to maintain an action, to restrain any interference with cultivated land of which they had the actual possession or enjoyment, without proof of any title on their part. Matters were temporarily to remain in *statu quo*, until the legislature passed some enactment dealing with the mode of registration of properties claimed by monasteries. Questions of legal title were to remain in abeyance, and proof of occupation was to be sufficient to entitle ecclesiastical corporations to temporary protection. This being clearly the intention of the law, the fact that the Supreme Court placed a certain construction upon the words of a section of a different law seem to us to have nothing to do with the case. The words of that law were different, and the intention of the legislature in passing that law was different. The legislature there was contemplating such a passing of property by lawful means into the possession of a monastery, as would constitute the monastery the legal possessor of the property, and entitle the monastery to have the property registered in the name of some person, as trustee, for the monastery. We use the word monastery as the law of 1885 uses it, instead of the more appropriate expression ecclesiastical corporation. The law of 1891 does not enact any lawful means by which immovable property may be annexed to a monastery, but simply provides temporary protection to the actual possession of ecclesiastical corporations, until some means of evidencing title are provided. The right of third parties must remain temporarily in abeyance, when actual possession by an ecclesiastical corporation is established. Under the provisions of this law then it

appears to us that the plaintiffs as trustees of the Armenian Monastery would have been entitled to maintain this action against the defendants without adducing any evidence that the lands, in respect of which they claimed to restrain interference on the part of the defendants, had been annexed to the monastery, and were registered, as so annexed, in the Imperial Archives at Constantinople. The law of 1891, however, did not give ecclesiastical corporations protection against a person, who was registered as the possessor of the land, or who was entitled to be registered, and had this law continued in force, it would have become necessary for us to consider whether the defendants had established that they were either registered as the possessors of the lands in dispute, or entitled to be so registered. The District Court found as a fact that the defendants had not established that the kochans they produced did refer to the lands in dispute : but we are relieved from considering this question by the fact that during the progress of this action the law of 1891 was repealed and the Ecclesiastical Properties Law, 1893, was passed. This circumstance raises a curious point for our decision.

The action was instituted on the 20th October, 1892, and after the settlement of the issues came on for hearing on the 11th January, 1893. There were several adjournments of the hearing, and the plaintiffs' case was concluded on the 1st June, 1893. On that day the Ecclesiastical Properties Law, 1893, which had passed the Legislative Council of Cyprus on the 22nd May, came into force.

By this law, the prior law of 1891 is specifically repealed and its provisions substantially re-enacted with two important modifications. The first is that evidence of ten years' possession of cultivated land by an ecclesiastical corporation is apparently required, and the second is that temporary protection is granted to ecclesiastical corporations in respect of lands they have actually so possessed, even against persons who are registered as the owners of such lands.

After the conclusion of the plaintiffs' case a very long adjournment seems to have taken place, as the case came on again for hearing on the 2nd January, 1894, when the law of 1893 had been in force for a period of six months. Judgment was given in the action on the 26th September, 1894, nearly sixteen months after the law of 1893 came into force. What then is the effect of the repeal of a law during the hearing of an action which was in force at the time of the institution of the action ? The rule which we find in a text-book of considerable authority—Maxwell on the Interpretation of Statutes—is that when an act expires or is repealed, it is, as regards its operative effect, considered in the absence of provision to the contrary as if it had never

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existed, except as to matters and transactions past and closed. In this law of 1893 there is no provision made for any matters pending at the date it came into force, and it is obvious that this transaction was not past and closed, as judgment was not given for nearly sixteen months after the law of 1891 was repealed. This rule seems to us to be a sound one, and is one we should adopt here, and it, therefore, appears to us that the law of 1893 is applicable to this case, and that the plaintiffs, as trustees of the Armenian Monastery, are entitled to maintain this action against the defendants, if they have established that they have had, on behalf of the monastery, ten years' possession of the land in dispute, even though the defendants' kochans do refer to these lands.

With regard to the question of fact, as to whether the plaintiffs have had possession of these lands for upwards of ten years, the evidence adduced on their behalf was to the effect that they had had possession without dispute from the date of the action in the Daavi Court in 1280 up to the time when the present action was instituted, a period of considerably over ten years. The Judges of the District Court state in their judgment that they believe this evidence, and disbelieve that adduced on behalf of the defendants, which was to the effect that they, and not the plaintiffs, had had undisputed possession of the lands. Such a finding of fact is one, which we should have much difficulty in setting aside in any case, and having carefully read through the very voluminous notes in this case, it appears to us that the District Court was amply justified in their finding. The evidence of possession on behalf of the plaintiffs appears to us to be much stronger than that of the defendants.

We, therefore, think that the plaintiffs, as trustees of the monastery, have the right to have an order restraining the defendants from interfering with the property mentioned in the writ of summons, so long as the law of 1893 remains in force, and that the order of the District Court should have been to this effect.

But for the Ecclesiastical Properties Law, 1893, the objection raised by the appellants' counsel that any action to enforce the rights granted to the trustees of the Armenian Monastery by virtue of the registration effected in the names of Melikjian and Aghop Husep must be enforced by an action brought in the names of those persons, if they still live, or in the names of their heirs if they be dead, would appear to be well founded. So far as the defendants themselves are concerned, it does not appear to us that even if we were going to decide upon the title of the Armenian Monastery to these lands, it matters much to them whether the lands are legally annexed to the monastery or are in

the eye of the law to be regarded, as in the legal possession of Melikjian and Aghop. The question as to whether the Government has, or has not still, a right of reversion to these lands, interests the Government, but does not appear to be of any moment to the defendants. If it was necessary for us to decide the question of title, we might exercise the powers conferred upon us by the Rules of Court, and direct that the names of Melikjian and Aghop be substituted for those of the present plaintiffs, without doing any injustice to the defendants.

However, as the trustees of the monastery have sued, and the property is claimed on behalf of the monastery, it appears to us that, without deciding the question of the title to these lands, the plaintiffs are entitled to the injunction they claim temporarily.

There is a claim in the writ of summons for any registration existing for these lands in the names of the defendants to be set aside, and the District Court by its judgment has ordered any such registrations, if they exist, to be cancelled. There is no evidence that any such registrations do exist, and the judgment in this respect appears to us to be embarrassing. In any event, we should not make any such order, as the only ground on which we consider the present plaintiffs entitled to the relief they claim being under the Ecclesiastical Properties Law, 1893, and as we have already explained, this relief being only temporary in its nature, founded on the actual possession of the plaintiffs for ten years, the plaintiffs have no right under this law to ask for the cancellation of any registrations existing in the names of other persons. It may, of course be, that by proof of possession of land for ten years by an ecclesiastical corporation, the rights of a registered owner may prove possibly to be barred in the absence of proof of infancy, lunacy or absence. That is a question it is not necessary for us to discuss for the purposes of this judgment. It is sufficient for us to decide that the plaintiffs have established a right to an injunction, though a temporary one, and have not the right in this action to ask for any registration to be set aside.

We shall, therefore, vary the judgment of the District Court by directing that the injunction ordered remains in force only so long as the Ecclesiastical Properties Law, 1893, remains in force, and by omitting the direction as to the cancellation of any registrations in the defendants' name.

With regard to the costs of the appeal, we think the appellants have not succeeded substantially in their contentions, and the respondents are, therefore, entitled to their costs.

Judgment of the District Court varied.