

The conclusion is that the succession in this case is governed by the Canon Law, under which the infant defendants are clearly legitimate. Taking this view, their Lordships are relieved from considering a question which has given some trouble in England, viz.: the question whether the right to inherit follows from the establishment of legitimacy, because the right to inherit is clearly dealt with by the Hatti Humaïoun and the law of 1884. They are also relieved from considering any question of Mohammedan Law, or the effect to be given to the deed of gift. In their opinion the Supreme Court should have dismissed the appeal, and they will now humbly advise Her Majesty to make a decree to that effect. They do not think it right to disturb the directions of the Courts below as to costs, but they are of opinion that the respondents should pay the costs of this appeal.

J.C.  
 PARAPANO  
 AND OTHERS  
 v.  
 HAPPAZ  
 AND OTHERS.

*Appeal allowed.*

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

PETRO KAMBERIAN

*Plaintiff,*

v.

HADJI YANNI KOUSETH

*Defendant.*

SMITH, C.J.  
 &  
 MIDDLE  
 TON, J.  
 1895.  
 Jan. 5

PRACTICE—ORDER ON REFERENCE TO REFEREES—ARBITRATION—  
 POWER OF COURT—ORDER XXII., RULES OF COURT, 1886—  
 CLAUSE 37 OF THE CYPRUS COURTS OF JUSTICE ORDER, 1882.

In making an order of reference of matters of account in dispute in an action to referees under Rule 1 of Order XXII. of the Rules of Court, 1886, the Court has not power in the first instance to name the referees to whom the matters in dispute are to be referred.

APPEAL from the District Court of Nicosia.

This was an action in which the plaintiff claimed the rendering of an account by the defendant, or in the alternative the sum of £400, alleged to have been deposited as capital by the plaintiff in a partnership business which had existed between the parties and was dissolved in August, 1894.

Upon the case coming on for the settlement of issues, counsel on both sides agreed that it was advisable that the accounts in dispute should be referred to some persons agreed on by the parties, but disagreed as to their selection, number and powers.

The President, before whom the case for the settlement of issues came, adjourned the case before the full Court who, purporting to act under Rule 1 of Order XXII. of the Rules of Court, 1886, made an order appointing two persons

SMITH, C.J. by name as referees to examine the accounts and directing  
 & that the referees should report within 15 days of the  
 MIDDLE- date of the service upon them of the order.  
 TON, J.

—  
 PETRO  
 KAMBERIAN  
 v.  
 HJ. YANNI  
 KOUSETH.  
 —

The defendant appealed.

*Economides* for the appellant. I appeal against that part of the order which directs certain persons to act as referees. The Court appointed these referees on its own motion. The plaintiff's counsel proposed that each party should appoint a referee and agree on an umpire. I objected to the appointment of an umpire. As the parties could not agree, the Court thought it was at liberty to appoint, and made an appointment of certain persons in its order of reference. I submit that it is only after failure by the parties to appoint referees after an order of reference that the Court has power to appoint, and that the District Court has exceeded its authority in appointing them in the first instance. Refers to Clause 37 of the Cyprus Courts of Justice Order, 1882, and Rules 1 and 4 of Order XXII. of the Rules of Court, 1886.

*Artemis*, for the respondent, contended that the District Court could itself appoint referees in the first instance with or without the consent of parties.

*Judgment* : We are of opinion that so much of this order of the District Court as makes an appointment of referees, and limits the time within which such referees are to report to the Court, must be set aside. Under Clause 37 of the Cyprus Courts of Justice Order, 1882, it was only possible for the Courts *with the consent* of parties to an action to refer matters in difference between them to arbitration, in which case the award was final and conclusive, or, under the last two paragraphs of that clause, to record an agreement of reference to arbitration *by consent* of matters not in dispute in an action which afterwards might be enforced on such terms as the Court thought just. By Order XXII. of the Rules of Court of 1886, the powers of the Courts were enlarged and a specific power under Rule 1 was conferred of referring matters of account in dispute in an action to referees to report to the Court. The second paragraph of that rule lays down what is to be specified in the order of the Court making the order of reference, and by its wording shows clearly that the Court has no power by its order in the first instance to appoint the referees. If, however, we refer to Rule 4 of the same order, this is more clearly emphasised. Sub-section (c) says : " Each party  
 " may appoint one or by agreement more than one referee  
 " . . . . and in such case may agree between them  
 " upon an additional referee . . . . or they may agree  
 " upon a sole referee . . . . "

Sub-section (d) goes on to say : “ If at the expiration of the time or of the extended time by any order limited for the appointment of referees . . . . no referee . . . . shall have been named, or if each party shall have named a referee or referees . . . . , but no additional referee . . . . shall have been named, the Court or a Judge thereof may appoint any person as referee . . . . whom it may consider a fit person, and who consents to act as referee . . . . and to be bound by any order the Court may, after the reference . . . . , think right to make as to the amount of fees and expenses chargeable by him in connection with the reference . . . . and the making of a report thereon.”

SMITH, C.J.  
&  
MIDDLE-  
TON, J.  
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KOUSETH.  
—

The meaning of this we take to be, that each party may appoint one or more referees, and in that case they may name another referee by agreement who is supposed to represent the interests of both parties, but not to act as an umpire. If, however, the parties cannot agree on this third person, or neglect to appoint any referees within the time limited by the order, then the Court or a Judge may intervene and appoint a referee.

The referees or referee so appointed will, after examining the accounts, report to the Court, and upon the hearing of the action and inspection of the report, any of the items may be objected to by either party, and the Court will decide with regard to these items upon such evidence as may be adduced by either side. The Court has also further and other powers conferred on it by the second paragraph of Rule 5 of Order XXI. We have gone thus elementarily into the procedure to be followed in such cases, as there appears to be some confusion as to the meaning under the rules of a reference to referees, as distinguished from a reference to arbitration.

The distinction between the two proceedings would appear to be that, if matters are referred to arbitration the award is, *prima facie*, final and conclusive, whereas, if referred to referees, the report of the referees may be confirmed, annulled or varied.

We are, therefore, of opinion that the order of the District Court to bring it within the terms of Rule 1 of Order XXII. must be varied, in so far as it names the persons to be appointed referees and limits the time within which the persons are to report. The names of these persons will be omitted from the order, and it will be so framed as to limit the times within which referees are to be appointed by the parties and to lodge their report with the Registrar of the District Court. The costs of this appeal will be costs in the cause.

*Order varied.*