

That case is no authority as to the effect of these Regulations. As to the point really decided in it, it has been subsequently dealt with by the legislature in the Laws IV of 1886 and V of 1887 ⁽¹⁾.

The case is no authority against our decision on the Regulations about Tapu seneds and the Law 28 Rejeb, 1291.

The appeal must be allowed, with costs both here and in the District Court; but as it is right that the Defendants should be enabled to put forward their claim in a proper form, there will be a stay of execution for one month to enable the Defendants to bring a cross action, and if within that time the Defendants bring their cross action no execution will issue without the leave of the Court.

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HAJI ARAKLIDI HAJI SYMEON AND OTHERS
AS COMMITTEE (Ἐπίτροποι) OF THE CHURCH
OF AGIO DOMETI,

Plaintiffs,

v.

PAPA CHRISTODOULO H. GEORGI,

Defendant.

JURISDICTION—DISTRICT COURT—ECCLIASTICAL MATTERS—BERAT OF ARCH-
BISHOP OF CYPRUS, ARTS. 9 AND 45—CRIMES AND OFFENCES CONTRARY TO RELIGION
—RELIGIOUS MATTERS—CYPRUS COURTS OF JUSTICE ORDER, 1882, SECS. 21 AND 29.

The Plaintiffs, the Committee of the Church of Agio Dometi, claimed an injunction to prevent the Defendant (who was priest of the Church and who, as they alleged, had been suspended by the Holy Synod), from trespassing upon the Church by opening it with a new key without leave and officiating therein without right.

Held: that the District Court had jurisdiction to try the case.

This was an appeal by the Plaintiffs from the judgment of the District Court of Nicosia by which that Court decided that it had no jurisdiction to hear the action.

The claim in the writ was in the following terms:

“The said Plaintiffs claim by the said action that you shall not trespass upon the Church of Agio Dometi, by opening it without the leave of the Committee and with a new key and performing services in it without right.”

At the settlement of issue the Advocate for the Plaintiffs stated that the Defendant had been suspended by the Synod of the Orthodox Church in Cyprus and also by the Church Committee of Agio Dometi and for that reason he asked that the claim be granted.

(¹) By Sec. 3 of Law IV of 1886, it is enacted that an action for the recovery of immovable property, of which some person in whose name the same has not been registered has had undisputed adverse possession for the period of prescription, shall be maintainable, where the person instituting it has during some part of the time aforesaid been lawfully entitled to be and has been actually registered as the owner thereof.

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The defence, so far as material, was to the following effect:

1. That the Church Committee by Ecclesiastical and Archbishopal Rules had no right to interfere with the duties of the priest in spiritual matters.
2. That by the Canonical Rules of the fourth Œcumencial Synod the priest must be suspended by a competent Synod.
3. That the Synod now existing in Cyprus is not competent, because, while three Bishops are required, only one Bishop takes a part in it, and because other members who sit in the Synod are not lawfully appointed, and there are not enough legal members to make a complete and legal Synod.
4. That a Synod, if competent, can only suspend a priest for offences laid down in the Canon Law, and cannot try a priest if his accusers are not impartial or if they are actuated by party questions.
5. That the Court had no jurisdiction to try the case, which is of an Ecclesiastical nature: it is for the Ecclesiastical authority to try the matter.
6. That the Plaintiffs wanted to execute the judgment of the Synod and not so much to restrain the Defendant.

The issues settled were, so far as they are material to this report, in the following terms:

1. Has the District Court jurisdiction to hear this case, or (*sic*) to dismiss it for the Ecclesiastical authorities to deal with ?
2. Has the Defendant been suspended from his duty as priest by the Plaintiffs as Village Church Committee acting by authority of the Synod ?
3. If so suspended has the District Court the jurisdiction to enter into the causes for his suspension, or into the alleged rights or wrongs of Defendant, or to question the competency and validity of the Church Committee or of the Synodical body who so suspended him from his priestly duties ?
4. If the District Court has no jurisdiction to enter into the matters mentioned in the third issue, has the Court jurisdiction to make the restraining order asked for, so as to carry into effect or execution the said decision of suspension by the Plaintiffs acting under the authority of the Synod ?
5. (a) Was the Defendant suspended on sufficient grounds ?
(b) Were the Plaintiffs and the Synod competent tribunals to deal with the Defendant ?
6. Are the Plaintiffs acting under the authority of the Synod; and, if so, are they entitled to bring this action either by themselves or by the authority of the Synod ?

7. Is the Synod as at present constituted *de facto* a valid and competent body to suspend the Defendant ?

At the trial no evidence was given, and the Court, after reading the record and issues and hearing Counsel on either side, decided that it had no jurisdiction. The Court stated that it was asked to deal with a priest in contumaciam and to carry into execution the sentence of the Synod, and that the case disclosed a purely Ecclesiastical dispute, and added that, in any event, on reading the Archbishop's Rules the Court was of opinion that the trustees of the Church were not the proper persons to sue.

Artemis, (*Pascal* and *G. Chacalli* with him), for the Appellants:

The claim is that the Defendant should not trespass on a Church. It is not an Ecclesiastical matter. The Court ought to hear evidence.

Theodotou, (*Kyriakides* and *Severis* with him), for the Respondents:

The claim is to prevent Defendant from celebrating mass.

No question about property. Because the Defendant is a priest the Civil Court has no jurisdiction. The Ecclesiastical authority can enforce its decision to suspend the Defendant by excommunication and unfrocking him. The Church Committee have no authority to interfere with a priest. The Church Committee could prevent a layman committing a trespass on the Church, or a priest who had been unfrocked. In such cases the Civil Courts would have jurisdiction, but in the case of a priest the Civil Courts have no jurisdiction until he is unfrocked.

Cyprus Courts of Justice Order, 1882, Sec. 21; Hatti Humayoun, 1856; 3 C.L.R. 74. The Plaintiffs seek the execution of a decision of the Synod.

Judgment: THE CHIEF JUSTICE: This is an appeal by the Plaintiffs from the judgment of the District Court of Nicosia of the 17th July, 1903.

The claim in the writ is to restrain the Defendant from "trespassing in the Church of Agio Dometi by opening it without leave of the trustees and by means of new keys, and by celebrating services in it without right."

The Plaintiffs sue as the *'Επίτροποι*, i.e., trustees or Committee of the Church.

At the settlement of issues they stated that the Defendant, who is described as a priest, had been suspended by the Synod of the Orthodox Church in Cyprus, and by the Church Committee of the village of Agio Dometi. For the defence it was contended: (1) that the Plaintiffs are only three out of the five persons forming the Church Committee; (2) that the Committee has no right to interfere with the duties of the priest in spiritual matters; (3) that the Synod is not competent to act because it must include three Bishops, whereas only one Bishop is sitting in the

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present Synod, and in fact there is no Synod at all; (4) that this is an Ecclesiastical question, to be dealt with by the Ecclesiastical authority, and that the District Court has no jurisdiction to try a case which is of an Ecclesiastical nature; and, (5) that the right persons to sue, if any, are the Synod.

Several questions of law and of fact were settled as the issues; but the only one which it is necessary to mention for the purpose of this appeal is the first, which was whether the District Court has jurisdiction to hear the case.

The District Court, without hearing any evidence, held that they had no jurisdiction, being of opinion that this is "a purely Ecclesiastical dispute."

They decided, that is, that the Court would have no jurisdiction to adjudicate on this claim even assuming that the Plaintiffs are the duly appointed trustees of the Church and that the Defendant was lawfully suspended by a duly constituted Synod and was thereupon interdicted by the trustees.

This is, as the Defendant's Advocate admitted, a decision that if a priest, who has been lawfully suspended and interdicted from acting as such by the proper authority, nevertheless insists on entering the Church and performing religious services in it, the Courts of Law cannot prevent him. The Defendant contends, as he must do if this decision is right, that the only remedy is for the Ecclesiastical authority (if there is one) to censure him and, in the last resort, to excommunicate and disfrock him; when he has been disfrocked and turned into a layman, then, it is said, and not before, can a Court of Law interfere to stop his trespassing.

According to this view there is no lawful means whatsoever of preventing a priest who has thus been suspended and interdicted, if he persists in entering the Church whenever he pleases. I suppose the decision must be the same if, instead of using a false key, he were to break through the door or window in order to get in. That is to say, he has a legal right to enter and hold services in the Church whenever he pleases.

The only authority to which we have been referred in support of this view that the Court has no jurisdiction is a Greek translation of the Berat granted to the late Archbishop of Cyprus, dated 1282 (A.D. 1866), which it is said reserves certain classes of cases for the decision of the Ecclesiastical authorities.

We are asked to assume that the Berat is still in force for this purpose, and that the Greek version of it is a correct translation. But even if that be so, there is nothing in the Berat, so far as I can see, to justify this view. The only parts of it which I can find that are in any way in

point are Arts. 9 and 45. Art. 9 says that clerics committing certain offences may be punished according to the religious customs of the Church. Art. 45 directs that no one is to interfere with the Christians in the conduct of matters which concern their religion and with their direct possession and management of their properties.

The phrase "religious matters," as was pointed out in the cases of *Ahmet Effendi v. Behaeddin Effendi*, C.L.R. IV, p. 40, and *Muride Sabri v. Dervish Effendi* (4th January, 1902), is somewhat vague; but in the absence of any authority as to its meaning it would seem to be clear that a claim to restrain a man from trespassing in a Church is not a religious matter, any more than a claim to restrain him from trespassing on a field or to make him pay damages for cutting trees belonging to the Church would be a religious matter.

In my opinion the District Court took a mistaken view of the cause of action. They said, "we are asked to deal with a priest in *contumaciam*, and to carry into execution the sentence of the Synod." But that is not so. The writ of summons asks the Court to restrain a man from trespassing in a Church which the plaintiffs say he has no right to enter in the way that he does without their leave. He is a priest; I do not suppose that he would contend that every priest has a legal right to enter every Church whenever he pleases, but only that he is the priest of this particular Church and that as such priest he has a right to do what is complained of; while the Plaintiffs allege that he has been suspended by the proper Ecclesiastical authority and therefore has no more right to do so than any other priest or any layman would have.

The District Court said that this is asking the Court "to carry into execution the sentence of the Synod," and that the judgment for which the Plaintiffs ask would be analogous to a writ of execution for enforcing a judgment of the Sher' Court. That is a mistake, arising from the use of the word "execution" in two senses. A judgment is not a writ of execution, nor in any way analogous to it. A judgment may have the effect of enforcing or, if we use the words in their ordinary non-technical sense, of "carrying into execution" a decision of some other person or body; but that does not make it resemble a "writ of execution." If, instead of a Synod suspending a priest, this had been a case of a Club Committee suspending a member of the Club from his membership, and then asking the Court to restrain him from trespassing in the Club, it would hardly have occurred to any one to argue that the Court had no jurisdiction because it was being asked "to carry into execution the sentence of the Committee."

Prima facie the District Court has jurisdiction to try a case of trespass. The questions whether the Plaintiffs are the right persons to sue, and

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whether the Synod has power by the Rules of the Church to suspend or disrook a priest, and whether the Synod has suspended or disrooked the Defendant, are questions which the Court would have to decide in cases which might easily arise. For example, it would have to decide them, as the Defendant's Advocate admitted, if the body which suspended the Defendant had gone a step further and had excommunicated and disrooked him. So also if the action were about an inheritance and the question arose whether a marriage celebrated by a person in the position of this Defendant, or by a person who had been excommunicated by a body calling itself the Synod, was a lawful marriage. They would be no more and no less "purely Ecclesiastical" or "religious" than they are now. In order to answer some of them the Court might have to enquire what is the Rule of the Church on such or such a point: just as it might in another case have to enquire what was the Rule of the Sher' Law, or of some foreign Law, on a particular point: but the necessity of having to make that enquiry would not oust its jurisdiction.

The District Court, after holding that it had no jurisdiction, added that, if it had jurisdiction, the Plaintiffs would not be the proper persons to sue but that the Synod ought to have been the Plaintiffs.

The Court merely referred, in support of that opinion, to some Rules issued by the late Archbishop in 1892. The point does not seem to have been argued on the Plaintiffs' side, nor any evidence to have been given on it beyond the production of some copy or alleged copy of these Rules by the Defendant, which does not appear to have been proved or admitted; and I think that the District Court ought, when the case comes on for trial, to hear evidence and argument upon it and not to treat it as already decided; and even if it were rightly decided there would still remain the seventh issue, which was, "are the Plaintiffs acting under the authority of the Synod, and, if so, are they entitled to bring this action?"

In my opinion the District Court had jurisdiction to try this action.

The judgment of the District Court must therefore be set aside and the action remitted to that Court for trial. The Defendant must pay the costs of this appeal. Costs in the District Court to be costs in the cause.

TYSER, J.: To determine whether the Court has jurisdiction to try this case it is necessary to see: (1) what is the jurisdiction of the District Court; and, (2) what are the questions to be tried.

The Law setting out the jurisdiction of the District Court is contained in Sec. 29 of the Cyprus Courts of Justice Order, 1882.

By that section the District Court shall have jurisdiction to hear and determine all actions in which the Defendant is an Ottoman subject,

except such actions as are within the exclusive jurisdiction of the Village Judge, or as are within the exclusive jurisdiction of a Mussulman Religious Court as limited by that order.

By that section, subject to the exceptions contained therein, the District Court has jurisdiction to hear and determine all actions against an Ottoman subject in which the right sought to be enforced or the wrong sought to be remedied is such as may be investigated by a Court of Law, and in which the remedies sought are such as may be applied in a Court of Law.

Is there any other matter taken out of the jurisdiction of the District Court by any other Law in force in Cyprus ?

As to Sec. 21 of the Cyprus Courts of Justice Order, 1882, referred to by Mr. Theodotou, by that section the jurisdiction of the Nizam Courts is transferred to the Courts established by the Order in Council, but the jurisdiction of the new Courts is not limited to the jurisdiction exercised by the Nizam Courts or the other Courts mentioned in that Section. It is therefore immaterial to enquire what cases were excepted out of the jurisdiction formerly exercised by those Courts.

If any cases were excepted, the only sort of enactment to which we have been referred as setting out those exceptions is the Berat of the late Archbishop.

Neither the Berat nor any certified copy of the Berat has been produced before us, but there has been placed before us what purports to be a Greek translation of the Berat, and we have been asked to regard this Greek version as a correct representation of the terms of the original Berat.

A translation in English is to be found also at the end of the volume of Excerpta Cypria of which Mr. C. D. Cobham is the author, and from the head note by that distinguished linguist it appears that he found it necessary to modify or explain the Greek translation. I cannot help thinking that the Turkish might have been produced before the Court; anyhow there was no proof that it could not be produced, and in the absence of such proof I should be extremely reluctant to decide on secondary evidence such as this translation is that the Court was by the Berat deprived of jurisdiction it would otherwise have.

Assuming the Berat to be now in force and to be in the terms set out in the translation in evidence I will next consider what effect it would have on the jurisdiction of the Court to hear this case.

Mr. Theodotou referred us to Art. 9 of the Berat. From a perusal of the Berat it is clear that no other article has any application in the case.

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There appears to be no material difference, between the Greek and English translations as regards this article.

Article 9 is in the following terms:

(I cite from Mr. Cobham's translation):

"When any of the Metropolitans, Bishops, Abbots, Priests and others, monks and the like are found guilty of crimes and offences contrary to their religion, let them be punished according to the custom of their religion (but without change in kind or degree in the punishment assigned by the Penal Code), so that they may repent and declare that they will never again fall into such error, and let no one else interfere in matters of this kind."

I do not understand Mr. Theodotou to contend that by virtue of that section a priest could not be tried in the ordinary Courts for a breach of the Criminal Law, or that in an ordinary civil action, *e.g.*, if he were debtor on a bond, a priest could not be sued in the ordinary Courts.

If he does so contend, his contention is contrary to all precedent.

I understand Mr. Theodotou to limit the application of Art. 9 of the Berat to crimes and offences of priests, etc., contrary to their religion—what the learned President of the District Court describes as Ecclesiastical matters.

Assuming that by Art. 9 of the Berat a Court cannot entertain an action against a priest in Ecclesiastical matters, the question arises what is an Ecclesiastical and what a temporal matter, and whether the present is an Ecclesiastical matter or not.

It would be easy to give an example of each, but not so easy to say what is the dividing line between a temporal matter and an Ecclesiastical matter.

By way of illustration, if the application were to suspend a priest because he was teaching heretical doctrine, that would clearly be an Ecclesiastical matter. On the other hand if the priest were charged with arson by burning a Church, that would in my opinion be within the cognizance of an ordinary Criminal Court, although it might also subject the priest to Ecclesiastical censure.

The District Court seem to have come to the conclusion that the Defendant was liable to Ecclesiastical penalties if he had infringed an order suspending him from officiating and that no legal rights infringed by such act of the Defendant could be enforced in the Civil Courts.

I do not know whether or no the Defendant would be liable to further Ecclesiastical penalties, or whether there is any existing authority which could excommunicate the Defendant.

If it be so, the liability to Ecclesiastical penalties is not a bar to the prosecution of legal rights in a Civil Court.

By way of example, suppose the Archbishop of Cyprus sued someone for taking from him a Church, as mentioned in Art. 4 of the Berat, would it be any answer on the part of the Defendant if he said, I am a priest and liable to Ecclesiastical penalties and therefore you cannot sue?

I am of opinion that it would be no answer, and the fact that the Defendant is liable to Ecclesiastical penalties does not deprive the Court of jurisdiction.

An act may be an offence contrary to religion and may also give rise to claims enforceable in the Civil Courts alone.

To determine whether a case is within the jurisdiction of the Civil Courts or not we must see what is the remedy sought and what is the wrong complained of or the right sought to be enforced.

In this case the claim is for an injunction to prevent the Defendant wrongfully entering the Church and conducting himself therein in such a manner as he has no right to do.

The alleged wrongful conduct in the Church is the officiating in the services.

Now if the Defendant were a layman and the immoveable property in respect of which the wrongful appropriation was made were an ordinary house there seems no doubt that the Civil Court could entertain such a claim, and that it could grant the injunction prayed on proof of the Plaintiffs' right as owners or otherwise to sue, and the act of the Defendant.

This case only differs from the one supposed by the fact that the property is a Church and the Defendant a priest.

If therefore this case is to be considered as exempted from the jurisdiction of the Civil Courts by virtue of Art. 9 of the Berat, it must be because the property in dispute is a Church, or because the Defendant is a priest or by reason of the combination of the two facts.

It could not be contended that a trespass by a layman upon a Church was a matter of which the Civil Courts could not take cognizance, therefore the mere fact that the property is a Church is not sufficient.

Neither can it be contended that the mere fact that a priest is Defendant will oust the jurisdiction of the Courts.

I cannot see how the two facts combined can take the case out of the jurisdiction of the Civil Courts.

It is not as if the claim were to suspend a priest from officiating for some alleged breach of a civil duty. If that were the case the Plaintiffs would be asking the Civil Courts to apply a remedy which can only be

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applied by the Ecclesiastical Courts, and the Civil Courts might be unable to entertain the claim.

It is not a claim for an injunction to prevent the priest from entering the Church and officiating, because he preaches heretical doctrines or has committed some other Ecclesiastical fault: that would be asking the Civil Court to apply a legal remedy to prevent an Ecclesiastical fault of which the Civil Court does not take cognizance.

There is some difficulty in this case because the Plaintiffs have not alleged under what authority or right they claim to exclude the Defendant.

In the title of the action the Plaintiffs are described as suing as Committee of the Church; but the Court has no judicial knowledge of the powers of such a Committee, and it is not alleged that as Committee they have any property in or authority over the Church building.

The defendant has however taken no objection to this. If he had done so, it might have been a ground for dismissing the action, but not a ground for refusing to hear it.

For the purpose of this judgment we must assume (as indeed was admitted by the Counsel for the Defendant) that the Plaintiffs have some authority over or property in the Church.

They claim an injunction to prevent what is an alleged unlawful appropriation.

They do not base their claim on any crime or offence contrary to the Defendant's religion which he may or may not have committed.

Their claim must be taken to be based on a legal right alleged to be vested in them as Committee to prevent the Defendant from doing the acts of which they complain.

If they fail to prove that right their action will be dismissed; but I can see no reason why the Court should refuse to hear them.

It cannot be said that the wrongful entry into a Church by a priest and wrongfully conducting services is solely a crime or offence against religion. I can conceive a case in which it might not be any crime or offence at all, but simply an act done to assert a right claimed. This may be such a case. But Art. 9 of the Berat only refers to crimes and offences against the religion of the priest: it cannot confer exclusive jurisdiction to try cases in which such crimes and offences do not arise.

The principal subject matter of the action is an alleged wrongful act such as is within the cognizance of the Civil Courts and the remedy claimed is one which the Civil Court alone can give.

There is nothing in the claim made to take the case out of the jurisdiction of the Civil Courts.

But it seems to have been thought that, although the principal subject of the action might not be an Ecclesiastical matter, the issues raised questions which were Ecclesiastical matters and that therefore the Court should refuse to entertain the claim.

It is not a true proposition of Law that in every case where the principal matter is within the cognizance of the temporal Court the fact that an Ecclesiastical question is incidentally involved in the trial will deprive that Court of jurisdiction.

In this case there do not seem to be any issues which would interfere with the jurisdiction of the Civil Court.

The question whether the Committee of the Church can sue in this action by themselves may depend on the Rules and Canons of the Church, but there is no reason why a temporal Court should not look at those Rules and Canons to see what are the rights of the Committee.

Another issue, whether the Defendant is suspended, depends on the judgment of an Ecclesiastical Court. The same question might arise in a charge of assault in a case in which the priest or the Committee asserted his or their alleged rights by the use of force.

The judgment of a competent Ecclesiastical Court in such a matter is a judgment on the status of the priest and is conclusive.

On the production of the judgment the temporal Court would decide in accordance with it without entertaining any question of an Ecclesiastical nature, or entering into the causes for his suspension.

As to whether the Ecclesiastical Court which suspended the Defendant is a tribunal properly constituted, there is no doubt that a temporal Court could hear evidence on this point.

If the tribunal was not properly constituted there was no suspension.

The question may depend on Ecclesiastical Laws and Canons; but it is not a question of a crime or offence contrary to religion, so as to come within Art. 9 of the Berat.

The Defendant's Counsel is in error in representing this as an action to enforce the decision of an Ecclesiastical Court. It is in effect an action to assert rights alleged to arise in consequence of the decision of the alleged Ecclesiastical Tribunal.

There is no resemblance between this action and an application for a writ to enforce a Sher' Court decision.

In my opinion there is nothing in the facts stated at the settlement of issue or in the issues raised from which it can be said that the case is within any exclusive jurisdiction conferred on the Ecclesiastical Courts by the Berat of the late Archbishop.

No other Law has been cited which could deprive the Civil Court of jurisdiction.

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For these reasons I am of opinion that the judgment of the District Court should be reversed.

In the above judgment I have assumed that the Berat of the late Archbishop is still in force. It has been unnecessary to consider what effect the Cyprus Courts of Justice Order, 1882, has on the Berat, or what is the effect of the death of the Archbishop.

The Court below after deciding that it had no jurisdiction seems to have examined certain evidence produced by the Defendant, and without hearing evidence on behalf of the Plaintiffs to have given judgment that the Plaintiffs are not the proper parties to sue.

That judgment as to that issue will be no bar to trying the issue when it comes before the Court again.

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[HUTCHINSON, C.J. AND TYSER, J.]

CONSTANTINO P. DIANELLO,

Plaintiff,

v.

MURID EFFENDI AHMED EFFENDI,

Defendant.

IMMOVEABLE PROPERTY—SALE IN EXECUTION—INADEQUATE BID—LAW XVI
OF 1889, SECS. 3, 6.

The Defendant applied to stay proceedings under a writ for the sale of immoveable property on the ground that the amount bid was not adequate to the value of the property, and his application was refused because he did not produce the verghi register, the Judge refusing to hear other evidence as to the value of the property.

HELD: that the Defendant was entitled to prove the value of the property by evidence other than the verghi register.

This was an appeal from the District Court of Nicosia reversing the decision of Mitzis, O.J., whereby the said Judge had dismissed an application to stay proceedings under a writ for the sale of immoveable property on the ground that the bid was inadequate to the value. The learned Judge so decided because the Defendant had not produced the verghi register to shew the value therein; and he refused to receive other evidence of value.

Artemis for the Appellant:

The Defendant must prove the inadequacy of the bid by the production of the verghi registers.

Kyriakides for the Respondent:

The value in the verghi register is too low. The Defendant is entitled to prove the real value of the property by experts.

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Judgment: Section 3 of the Law XVI of 1889, enables the debtor where a writ for the sale of immoveable property shall have issued and the highest amount bid for all or any of the property shall be inadequate