

HUTCHIN-
SON, C.J.
&
TYSER, J.

MICHAELAKI
L. TRIANTA-
PHYLLIDES
v.
STYLLI
SOLOMO

Now the mortgaged property is the immoveable property of the debtor; and Sec. 48 provides that, where immoveable property to be sold consists in whole or in part of a house, there shall be left to or provided for the debtor sufficient house accommodation. This proviso applies to all immoveable property, and contains no exception of immoveable property which has been mortgaged, and we do not think it at all likely that the Legislature meant to introduce such an exception by Sec. 53. Sec. 53 provides a means of procedure for realising property which is mortgaged, but does not confer upon the creditor a right to take property which he could not take under Sec. 48.

As the house is the only house of the debtor and no house accommodation is left or provided for the debtor the application must be refused.

It is unnecessary to consider the other points raised in the Court below.

Appeal dismissed.

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&
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1905
April 8

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

ELENI ANTONI STRATOURA,

Plaintiff,

v.

YEORGHI YAKOUMI,

Defendant.

MARRIAGE, LEGALITY OF—ORTHODOX GREEK—CHRISTIANS LAW, PROOF OF—
QUESTION OF FACT.

In an action for maintenance, the Plaintiff claiming to be the wife of the Defendant, the Defendant pleaded that by the laws of the Orthodox Greek Church the marriage was illegal. Both Plaintiff and Defendant were members of the Orthodox Greek Church.

HELD: that the Court could not take judicial cognizance of the laws of the Orthodox Greek Church relating to the legality of marriages and that they must be proved to the Court as facts.

APPEAL from the District Court of Famagusta.

The Plaintiff claimed to be the wife of the Defendant and sued him for maintenance.

The Defendant pleaded that the marriage was not legal as it had not been contracted with the leave of the Church Authorities.

The facts were as follows:—

The Defendant was engaged to marry the elder sister of the Plaintiff. They had exchanged words and had each sent a handkerchief to the priest to be blessed, but had not been both present in Church, or exchanged rings, or had the special blessings usual in betrothals read.

While so engaged the Defendant eloped with the Plaintiff. They were married by a priest and lived together for five months. After that the Defendant deserted the Plaintiff.

There was conflicting evidence as to whether the Plaintiff was betrothed to the Defendant's sister, and as to whether a marriage was legal without a license.

Myrianthi for the Appellant cited Armenopoulos, p. 48, Krassa p. 96.

Michaelides for the Respondent: Plaintiff must prove marriage lawful. Question of fact. If question of Law Canon, 39., Pedalion.

The Court gave judgment as follows:—

Judgment: The Plaintiff in this case alleges that she is the wife of the Defendant and she seeks in this action to recover maintenance from him.

The Defendant in his defence admits that he married the Defendant but pleads that the marriage was not legal, and says that in consequence of the illegality of the marriage he is not responsible for maintenance.

The Plaintiff denied that the marriage was illegal.

The Defendant raised other defences but this was the only point argued before this Court.

The majority of the District Court (Mr. Makrides dissenting) found that the marriage was illegal—the learned President gave a written judgment which is in the following terms:—

“ Mr. Makrides, O.J., is of opinion that the marriage between Plaintiff and Defendant is a legal one and that the Defendant is liable to contribute to the maintenance of the Plaintiff and would fix the amount at 10s. a month from 10th November, 1903. As regards this amount the other members of the Court agree if the marriage is valid, but we think it is not valid and that this claim should be dismissed. We hold that a license is an essential preliminary to the legality of a subsequent marriage ceremony, unless one of the parties to the marriage has afterwards obtained from the Bishop or other Ecclesiastical Authority an approval of the marriage, such approval being obtained after due enquiry into the circumstances. Such approval

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HUTCHINSON, C.J. " may or may not be given, but until it is given the marriage is not a
 & " legal one.
 TYSER, J. " *Claim dismissed. No costs.*"

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The majority of the Court seems to have regarded the question as to what was necessary to make the marriage lawful according to the Canons of the Orthodox Church as a question of law, and after the hearing to have consulted the Bishop of Kyrenia as to what was the law of the Church in this matter and to have given their decision on that law as though it were a law of which the Court took judicial cognizance.

In this we think they were wrong. The Orthodox Greek Church is not in any way a State Church in Cyprus nor is it regulated so far as regards matters such as marriage by State laws.

The Greek Church of Cyprus although Autokephalous seems to rely largely on laws or canons in force in other branches of the Orthodox Greek Church of the origin of which we have small information, and which may perhaps be liable to changes of which the Court could have no official information. The Court will not take judicial cognizance of such laws. The law must be proved in the Court as a fact.

Therefore questions of the legality of a marriage between Orthodox Greek Christians must in our opinion be treated as questions of fact to be decided upon the evidence in each particular case, and we are further of opinion that the Court did wrong in consulting outside the Court an expert in the law however eminent.

The evidence of such an expert would be highly valuable in deciding the question of fact as to whether or not the marriage was legal, but it must be given in Court and the witness must be submitted to cross-examination like any other witness.

We have read through the evidence given before the Court below and we see nothing in that evidence which would justify a finding that the marriage ceremony which was performed by a Greek Orthodox priest was illegal.

The grounds on which the Defendant contended that the marriage was illegal were: (1) there was no Bishop's license; (2) that the Defendant was betrothed prior to the marriage to the sister of the Plaintiff.

The evidence in our opinion does not show that the Defendant was betrothed to the sister nor does it prove that a Bishop's license is necessary to the validity of a marriage.

We find therefore as a fact that the marriage was lawful, allow the appeal, and give judgment for Plaintiff for 10s. a month from the 10th November, 1903, with costs of appeal and in the Court below.

Appeal allowed.