As regards the Defendants' claim to the user of the water for irrigation purposes, it really is not a distinct claim on which the Court can adjudicate. It is only part of a claim that the Defendants may take the water and sell it and make such use of it as they like. It must fall with the other part of the claim.

If a party to a dispute wishes to assert an *ab antiquo* right based on reciprocal dealings from time immemorial under Art. 124 of the Land Code, he should set out what is the mutual dealing as to irrigation between himself and the other party to the dispute from time immemorial, or rather what has been the manner of dealing as regards the lands of which he and the other party are owners.

In this case for example the Defendants should have set out the *ab antiquo* arrangement as regards the lands of the village of Nesou and the lands of the Chiftlik, and stated that the Plaintiffs were villagers of Nesou. Any *ab antiquo* manner of dealing with the water for purposes of irrigation which they proved under such a defence would justify any user of the water made which was in accordance with it.

As to damage, we are of opinion that there is sufficient legal damage to entitle the Plaintiffs to the injunction which they claim. The taking of the water for purposes other than those for which they are allowed by the law to use it, coupled with a claim of right to do so, is sufficient for that purpose.

We do not think however that the Plaintiffs have proved any substantial pecuniary damage.

Judgment reversed and appeal allowed with costs of appeal and below.

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

MUSTAFA SHEFKI EFFENDI, *Plaintiff*,

v.

REBIA HANUM AHMED RASHID, *Defendant.*

JURISDICTION—SHER' COURT—LAW VII OF 1894, SEC. 47; LAW X OF 1885, SEC. 80—ADMINISTRATION OF ESTATE OF DECEASED MOSLEM—WILL.

The Qadi, administering the estate of a deceased Moslem, one of whose heirs was absent from Cyprus, found that the Plaintiff was entitled to one-third of the estate under a will of the deceased.

HELD: *that the Qadi had jurisdiction to adjudicate on the validity of the will for the purposes of administering the estate. On an application under Sec. 80 of Law X of 1885, the applicant applied that the Court should give a judgment in the form of a declaration that the Plaintiff was entitled to one-third of the immovable property of the deceased.*

HELD: *that the Court could not upon an application under that Section give such a judgment.*

This was an appeal from a decision of the District Court of Famagusta dismissing an application for execution of an Ilam of a Qadi, made in the administration of the estate of a deceased Moslem, whereby the Qadi found that the applicant was entitled to one-third share of the estate of the deceased by virtue of a will.

HUTCHINSON, C.J. & TYSER, J.

MUSTAFA SHEFKI EFF. v. REBIA HANUM AHMED RASHID

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The District Court dismissed the application on the ground that the claim was based upon words alleged to have been uttered by the deceased and alleged to be a will, and was a claim for a Civil Court to deal with and not within the jurisdiction of a Qadi's Court.

A. K. Artemis for the Appellant.

Th. Michaelides for the Respondent.

Judgment: The Qadi was administering the estate of a deceased Moslem one of whose heirs was absent from Cyprus. Whether or no the Qadi had jurisdiction over such matters under the Cyprus Courts of Justice Order, 1882, he undoubtedly has jurisdiction under the Law VII of 1894.

The claim under the will arose in the course of administering the estate and it was necessary to decide it for the purpose of administration. It follows that the Qadi who has power to administer the estate must have power to decide on the claim.

A will may be relied on as evidence of a right to property either in a Civil Court or in a Sher' Court; and in cases within the jurisdiction of either Court, the Court in which the claim is made must in either case decide on the validity of the alleged will, if it is contested.

The Court cannot refuse execution on the ground that the Sher' Court had no jurisdiction to adjudicate on the claim; but there is another difficulty.

The Applicant claims execution of an Ilam giving him one-third of the movable and immovable property of the deceased.

But it does not say from whom the movable property is to be recovered, and it is not proved who has the property.

As to the immovable property there is no statement as to what immovable property is involved, nor how it is registered, nor is there any information about it.

The Ilam is in effect a mere declaration that the applicant is entitled to one-third of the estate of the deceased man. It makes no order on any one or about any property.

We put the case in the paper for further consideration and asked Mr. Artemis what writ or order he asked for. He said that the applicant does not seek any writ or order to carry out the decision of the Qadi as regards the movable property; that the movables are in the custody of the Qadi and that as to them no writ is necessary.

As to the immovables Mr. Artemis asks the Court to make an order that will enable the applicant to obtain registration of his one-third share. Mr. Artemis does not suggest any one to whom the Court should direct its order; neither can we see what form the order should take.

It was suggested that the Court should give a judgment in the form of a declaration that the applicant is entitled to be registered, as the Land Registry would act on that judgment.

We are of opinion that the Court cannot make such declaration. It would be a declaration against the heirs; but the heirs are not parties to any action before the Court.

Under Sec. 80 of the Law X of 1885 the Court may issue writs or make orders, but has no authority to give judgments or make declarations of right.

The application must therefore be refused.

Probably however if the Applicant takes the Qadi's Ilam and a copy of this judgment to the Land Registry Office, effect will be given to the Ilam.

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

HAJI YANKO NICOLAIDES, *Plaintiff,*

v.

ELENE NICOLA KOTIRI, *Defendant,*

AND

ELENE NICOLA KOTIRI AND OTHERS *Plaintiffs,*

v.

HAJI YANKO NICOLAIDES, *Defendant.*

IMMOVABLE PROPERTY—DOUBLE REGISTRATION—ESTOPPEL.

The owner of land duly registered is entitled to that land, although there may be a second registration for that land, unless, by reason of something he has done or otherwise, he is estopped from asserting his right.

Appeal from the judgment of the District Court of Nicosia.

These were two actions which were heard together. The following are the facts:—

In 1277 one Constanti Petri was registered for a piece of land as Arazi Mirie.

In 1292 Christofi Constanti, the son of Constanti Petri, was registered at the Emlak Yoqlama for part of the same land, as a garden.

No amendment was made in the registration of Constanti Petri.

It appeared from the evidence that this garden had been given before 1292 by the father to the son on his marriage.

There was also evidence that the trees of the garden were no longer in existence.

In 1900 under an order of Court the land for which Constanti Petri was registered as above stated was sold and was purchased by one Nicola Haji Yanni.