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

NICOLAOS J. DIMITRIOU AND HELENE F. ZANETTOS

v.

THE KING'S ADVOCATE.

CLAIM AGAINST THE GOVERNMENT—LAW IN FORCE IN CYPRUS—"FOREIGN ACTION"—CLAIM FOR RECOVERY OF UNAUTHORISED TAXATION—PRINCIPLES OF OTTOMAN AND ENGLISH LAW—COURTS OF JUSTICE ORDER IN COUNCIL, 1882, CLAUSES 3, 21, 25, 44—MEJELLE, ARTS. 3, 19, 20, 50, 58, 72, 1610, 1684—LAW OF 29 SAFER, 1292—LIMITATION ACT (21 JAC. I., C. 16) 1623.

PER TYSER, C.J.: *In actions by an Ottoman subject against the Government of Cyprus the Courts apply Ottoman law (as modified by Cyprus Legislation) on the principle that all actions between the Government of a country and its subjects must be determined by the law of the country.*

Such an action is neither an Ottoman action nor a foreign action, but is outside the classification of the Order in Council.

The fact that English law is applied in actions in which a Defendant is not an Ottoman subject does not make English law the law of the country for the purpose of actions against the Government.

PER BERTRAM, J.: *In all actions against the Government (not relating to immoveable property) the Courts apply English law as modified by Cyprus legislation.*

The intention of the Order in Council was (except as to immoveable property) to set up a dual system of law as the law of the country, i.e., Ottoman law, in all actions "in which the Defendant is or all the Defendants are an Ottoman subject, or Ottoman subjects," and English law in all actions "in which the Defendant or any Defendant is not an Ottoman subject." This classification was intended to be exhaustive, and an action against the Government belongs to the latter category.

The origin and history of "foreign actions" in the judicial system of Cyprus investigated and explained.

BY THE COURT: *Neither according to English law, nor (since the constitutional rights accorded to the people of Cyprus by the Cyprus Legislative Council Order, 1882), according to Ottoman law, is the Government entitled to impose a pecuniary burden upon a subject as a condition of his enjoyment of a statutory privilege, even though the Government may have a discretion to give or withhold the privilege.*

PER TYSER, C.J.: *According to Ottoman law, if the Government (though acting in good faith) exacts from a subject the payment of a sum of money as a condition of a privilege, which the subject is entitled (if he is accorded such privilege at all) to receive without such payment, such payment may be recovered back, even though it has been made without protest for a long series of years (not exceeding 15), and in pursuance of an express undertaking, which the Government insisted on the person giving before the privilege was granted.*

PER BERTRAM, J.: *According to English law money voluntarily paid under a mistake of law cannot be recovered back, but this principle does not apply to a case in which a man pays money upon a demand made* colore officii *as a condition of a right to which he is lawfully entitled without such payment, such payment not being under the circumstances considered voluntary. Where however he enters into a bond binding himself to make the payments, and makes them under the obligation of the bond the payments are not recoverable.*

The Limitation Act (21 Jac. I., c. 16) 1623, applies to actions against the Government, and the time within which such payments are recoverable is limited to six years.

TYSER, C.J. & BERTRAM J.

NICOLAOS J. DIMITRIOU AND ANOTHER v. KING'S ADVOCATE

BY THE COURT: *A bond according to the English form is not in Ottoman law an "acknowledgment in customary form" within the meaning of Art.* 1610 *of Mejellé so as to be conclusive on the person making it.*

An acknowledgment that a certain sum will be due in the future upon a contingency is not a valid acknowledgment according to Ottoman law.

D. and E. Ottoman subjects resident in Cyprus, applied to the Government in 1892 *for licenses to manufacture tobacco under the Tobacco Regulations,* 1292. *The Government informed the applicants that licenses would be granted to them on condition of their paying an annual license duty of* £55 *a year, as a contribution to the cost of supervision of their factories. The applicants consented to this condition and entered into bonds in the ordinary English Form binding themselves to pay this license duty In* 1896 *the license of E. was transferred to his widow and subsequently to his daughter, the Plaintiff Helene Zanetto, and in* 1899 *the form of the bond was changed, and a new bond was given binding the licensee only to conform to the laws and regulations in force for the time being. In* 1908 *the licensees discovered that the Government were not entitled to impose the license duty*

HELD: PER TYSER, C.J. (*applying Ottoman law*), *that all the payments of license duty in both cases within* 15 *years were recoverable without interest.*

PER BERTRAM, J. (*applying English law*), *that only such payments as had been made in respect of the license originally granted to E, as had been made within the previous six years were recoverable* (*without interest*) *and that the payments made by D. were not recoverable.*

Where a District Court is equally divided, the claim must be dismissed on the principle Semper præsumitur pro negante.

NOTE.—"*In view of the alterations effected by the Cyprus Courts of Justice Amendment Order,* 1910, *which now regulates actions against the Government, it has been thought unnecessary to print the judgments in this case.*"

TYSER, C.J. & BERTRAM J. 1909 *Nov.* 26

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

ANTONI ENGLEZAKES, *Plaintiff,*

v.

IOANNI LOIZOU, *Defendant.*

IMMOVABLE PROPERTY—EXECUTION—FORCED SALE—MERGER OF ARAZI-MIRIE IN MULK—PERMISSION TO ERECT STRUCTURE ON ARAZI-MIRIE—RIGHT OF PURCHASER OF SITE TO REQUIRE REMOVAL—MEJELLE, ART. 831.

The doctrine of Gavrilides v. Haji Kyriako (4 *C.L.R.,* 84) *that an Arazi-Mirié site on which mulk property is situated has no separate existence, being for the time being merged in the mulk has no application to mulk in respect of which the occupier is neither registered nor entitled to be registered.*

The owner of Arazi-Mirié who has allowed another person to erect a structure upon his land, is in the position of a person who has lent his property for use, and is entitled at any time to demand the removal of the structure.

An owner of Arazi-Mirié sold a piece of his land to his son in order to enable him to build a mandra. The son built a mandra and remained in possession of it many years but never had it registered in his name. Subsequently the whole property, including the site of the mandra was sold at a forced sale to the Plaintiff.

HELD: *That the Plaintiff was entitled to the removal of the mandra.*

This was an appeal from the judgment of the District Court of Papho.

The claim of the Plaintiff was for an injunction restraining the Defendant from interfering with a field of five donums in extent