sort of payment. The deceased spoke of the bond not as a gift but as something due to the Plaintiff, and on receiving it the Plaintiff took immediate steps to secure her rights by putting it in suit.

Whatever might be the conclusion of the District Court on these questions, I do not think that it would be a conclusion which we should disturb.

As there seems some doubt whether the District Court have considered these questions of fact in the light of the principles we have indicated, I concur in the judgment of the Chief Justice (with which generally I desire to express my agreement) that the case must be remitted to the District Court for the purpose he has specified.

Case remitted to District Court.

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

MARIOU KYRIAKOU CHRISTOPHI
v.
SAVA KYRIAKO CHRISTOPHI.

FAMILY LAW—INHERITANCE—CHANGE OF RELIGION—RIGHT OF MOSLEM DAUGHTER TO SHARE IN INHERITANCE OF CHRISTIAN FATHER—WILLS AND SUCCESSION LAW, 1895, SECS. 13, 43.

The circumstances enumerated in the Wills and Succession Law, 1895, as incapacitating a person, otherwise qualified, from succeeding to an inheritance under that law, are intended to be exhaustive, and cannot be supplemented either from the Sher' law, or from the law of the religious community of the deceased.

In the administration of an estate of an Ottoman Christian difference of creed no longer constitutes an incapacity to succession.

A daughter of Orthodox Christian parents married a Moslem and lived with him for 20 years under a Moslem name, without attending the religious rites of her original community.

HELD: *That (even assuming that a formal renunciation of Christianity and acceptance of Islam could be presumed from these facts), such a change of religion did not disqualify her from succeeding to a share in the estate of her deceased father.*

This was an appeal from a judgment of the District Court of Nicosia.

The Plaintiff claimed a share in the estate of her deceased father, as one of his heirs. The Defendants disputed her claim on the ground that she had lost her rights of inheritance by adopting the Moslem religion. The Plaintiff denied that she had adopted the Moslem religion and claimed to be still a Christian.

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The Plaintiff was a baptised Christian, but married a Moslem (since deceased) and lived with him 18 years as his wife. She ceased to attend church, and veiled herself, and either assumed or received the name Ayshe. She herself however declared she was still a Christian and appeared in Court in Christian attire. She said: "When I went to "my husband's village I wore a veil, as it was a Turkish village, to please "him. . . I am called Mariou at my village. I don't know if they "call me Ayshe. I never went to the Qadi or Hoja, or before witnesses, "to declare I am a Turk, because I am a Christian. I never kept the "Ramazan by fasting. I am and always was a Christian."

The clerk of the Qadi proved that on the 14th April, 1892, a marriage permit was issued to the woman's husband for his marriage to her under the name of Ayshe Abdullah. He did not know who applied for the permit, but said that such permits were issued on a village certificate that the woman referred to was a Moslem. He admitted however that a Moslem might marry a Christian woman without the latter changing her religion.

Two fetvas from the Mufti of Cyprus were admitted in evidence, the one declaring that it was lawful for a Mahommedan to marry a Christian woman, the other that "a Christian is recognised a Mahom-"medan when he utters the words: 'I am a Mahommedan.'"

The District Court found that from the woman's conduct she must be taken to have abandoned the Christian religion, and were of opinion that she in consequence thereby in effect became a Moslem, and that by so doing she lost her right of inheritance in the moveable and immoveable property left by her deceased Christian father.

On these grounds they dismissed the action.

The Plaintiff appealed.

Christophides for the Appellant. There is no real proof that this woman ever became a Moslem. But even if she did, the estate of her deceased father descends according to the Law of 1895. The law regards the estate as a sort of legal personality, governed as a single whole by a fresh law superseding the old. The religion of the deceased person is alone material. The law says nothing about the religion of his heirs.

Theodotou: From the woman's change of name, a change even extending to the name of her father, from her neglect of the rites of her church, and from the Qadi's permit a formal acceptance of Islam may be presumed.

It could never have been the intention of the Legislature to remove the bar to inheritance arising from difference in religion with regard to the mulk property of Christians, and yet to leave this bar untouched in the case of the estates of Moslems, and also, even as regards Christians with respect to Arazi-Mirié, (see Land Code, Art. 109). The Law of 1895 did not abolish this fundamental principle of the Sher'. It did abolish in express terms the bar to inheritance resulting from difference of nationality (Sec.12) and by implication it left untouched the bar resulting from difference of religion.

The Court allowed the appeal.

Judgment: THE CHIEF JUSTICE: This appeal must be allowed, and on a very short and simple ground.

In defining the orders of succession to property not disposed of by will, the Law of 1895, in Sec. 43, says: "Subject to the provisions "*in this law contained* as to the incapacity of persons to inherit any "property of a deceased person . . . the person or persons who "on his death shall become entitled to the legal portion of his property ". . . shall be as follows."

It is clear therefore that the only incapacities to succession to which we are entitled to look are those enumerated in the law itself. Those incapacities must be taken as exhaustive, and we are not entitled to supplement them by adding incapacities derived from some other system of law outside the Law of 1895 itself.

This abolition of difference of religion as a bar to succession is entirely in accordance with that more enlightened standard that now prevails on this subject in the civilised world generally. Mr. Theodotou says that we must not impute that enlightened standard to the Legislature of Cyprus. I prefer to believe that the Legislature did not include difference of religion among the incapacities to succession under the law because it wished Cyprus to fall into line on this matter with the civilised nations of the world.

The appeal must be allowed with costs.

BERTRAM, J.: I agree.

There are two questions to be decided in this case, one a question of fact, the other a question of law.

The first question is, was this woman in fact a Moslem? Mr. George Young in his "Corps de Droit Ottoman," Vol. II, p. 10, says: "Le "rôle important que joue le culte dans l'état civil des sujets Ottomans "rend necessaire un acte formel consacrant et notifiant le changement

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"de réligion." * Assuming that some formal declaration of belief is required, is there any evidence of it in this case? Mr. Theodotou says it can be presumed from the circumstances which he mentions. I confess that if a formal declaration of belief is necessary, I should hesitate to presume it from these circumstances, inasmuch as none of them are inconsistent with the woman never at any time having expressed a belief in the divine mission of the Prophet.

The second question is this:—Assuming that she became a Moslem, did this difference of religion constitute a bar to inheritance? The Law of 1895 enumerates certain bars to inheritance, and says that subject to these the property of a deceased Christian shall be divided in a particular manner. Mr. Theodotou wishes to introduce a fresh bar derived from the Sher'. It is one thing to interpret a particular word or expression of a Statute by the principles of a particular system of law—as the word "illegitimate" was interpreted in *Parapano v. Happaz* (1894) 3 C.L.R., p. 69. It is quite another thing to introduce into the Statute a positive provision of that system of law, as to which the Statute itself is silent. In my opinion the Law of 1895 was intended to be as far as possible a complete code, exhausting the subject. The Sher' law, or the religious law of a community may be used to interpret its provisions, but not to add to them.

As to the special provision with regard to difference of nationality to which Mr. Theodotou has alluded, I can only suppose that this was inserted because the law applies not only to the property of Ottoman

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* Mr. Young cites as his authority for this statement, "Résumé de Fetvas émis à ce sujet par le Cheik ul Islam, traduits par M. Block, ancien secr. oriental de l'Amb. d'Angleterre." This "Resumé de Fetvas" (a copy of which has been obtained from Constantinople), seems to be rather in the nature of a general Memorandum on the subject prepared by Sir Adan Block. It does not seem, however, to contain anything justifying the sentence above quoted. The only passages bearing upon the subject seem to be the following:

"Is she (*i.e.*, a Christian woman who has expressed a desire to become a Moslem) "allowed to wear the dress of a Mohammedan woman, before she has made her "declaration of faith in the Administrative Council?

"If she has attained her majority she has the right to wear any dress she pleases. "In the case in point one may add that according to the religion of Islam, as "soon as one has expressed a desire to become a Moslem, one *de facto* becomes so, "since any person who recognises the unity of God and the mission of Mahomet "is *de facto* a Moslem. The official formalities have to do only with the publication "or registration of the fact that the person has changed his or her religion.

"Can one of the parties to a Christian marriage free himself or herself from "the obligations contracted by that legal union for life by expressing a desire "to embrace Islamism?

"If there is only an intention or desire to embrace Islamism it has no effect "but if the woman says she has become a Moslem by believing in the unity of "God and the mission of the Prophet, she becomes thereby a Moslem without "even so declaring before the Administrative Council according to the law "of the Sher', she is considered a Moslem."

Christians, but also to certain categories of the immoveables of foreigners. The devolution of these on death is governed by the law of the Ottoman State, and according to that law, a Frenchman cannot inherit from a German, or a Greek from an Ottoman subject, and *vice versa*. Possibly the section was inserted to make it quite clear that this principle was not part of the Law of Cyprus under the new Statute.

I agree that the appeal must be allowed with costs.

Appeal allowed.

The case of *Annou Georghiou Tzapa v. Togli Michael Tzolaki* reported in pages 73-82 of the original edition is no longer of any importance.