

[TYSER, C.J. AND HOLMES, ACTING J.]

MAROUDIA PAVLIKKA,

Plaintiff,

v.

MICHAEL PAVLIKKA,

Defendant

TYSER, C.J.
&
HOLMES,
ACTING J.
1910
March 26

FAMILY LAW—MARRIAGE—LEGITIMACY—EVIDENCE—PRESUMPTION IN FAVOUR
OF MARRIAGE—'OMNIA PRÆSUMUNTUR PRO MATRIMONIO

When a marriage is shown to have been celebrated all conditions necessary to its validity are presumed to have been complied with, until the contrary is proved

Plaintiff claimed to be the legitimate child of a certain Pavlikka Pavlou deceased, and in that capacity to be entitled to a share in his immovable properties. It was proved that in 1850 a marriage was celebrated between Pavlikka and Plaintiff's mother and that the Plaintiff was the child of this marriage

It was not proved that the episcopal license, said to be necessary according to Ecclesiastical law to the validity of a marriage, was issued for the celebration of the marriage in question but no evidence was given negating the possibility that it had been duly issued

Held That the license must be presumed to have been duly issued

This was an appeal from the District Court of Famagusta

The action was brought to establish the right of the Plaintiff to a share in the immovables of one Pavlikka Pavlou, deceased, as his legitimate daughter. The legitimacy of the Plaintiff was contested. It was proved that the Plaintiff was the offspring of a marriage celebrated in 1850, between the deceased Pavlikka and Plaintiff's mother, and the question at issue between the parties was the validity of this marriage.

It appeared that Pavlikka was originally a shepherd attached to the Monastery of Eghousa, and Plaintiff's mother, Marikou, was a "Kalorka" of the Monastery. They eloped together, and, upon the orders of the manager of the Monastery, a marriage was celebrated between them, "so that Pavlikka should not destroy and abandon Marikou." The marriage was celebrated by a priest, in the church of the Monastery, and a "koumbaros" and "koumbara" and other persons were present.

Evidence was given as to the subsequent conduct of the parties, which, though not relevant to the issue, throws some light upon the conditions under which they lived upon the standpoint of the populace of the village with reference to marriage and divorce, and as to the likelihood of the proper ecclesiastical formalities being complied with.

Five or six years after the marriage Pavlikka detected his wife in an act of infidelity with one Ianni Kopelario. He thereupon applied to a priest Haji Papa Haji Nikola to marry her to this man, undertaking himself to get a divorce. The priest applied to one Zacharouthi, who was the agent of the Exarch, and who was said to be in a position to

TYSER, C.J. "do as he liked." This man said, "I am the Bishop and I am the
&
HOLMES, Exarch. You must marry them." The priest accordingly performed
ACTING J. the ceremony.

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After this Pavlikka went abroad, where he married another wife, and the Defendant was the offspring of this marriage. Ultimately Pavlikka returned to Cyprus, Defendant being then a baby. It did not appear whether Plaintiff's mother was still alive when Pavlikka married the mother of the Defendant, but the Plaintiff did not contest the legitimacy of the Defendant.

With regard to the validity of the marriage between Pavlikka and Marikou in 1850, evidence was given by the Secretary of the Holy Synod of Cyprus that according to Ecclesiastical law a marriage celebrated without the license of the Bishop of the diocese is not valid, unless subsequently validated by the Bishop.

No evidence was given by the Plaintiff to prove that the necessary license was issued in this case, and no evidence was given by the Defendant to negative the possibility that it was issued.

The District Court dismissed the action, and gave judgment as follows:

"We are not satisfied that the marriage of Pavlikka and the mother of the Plaintiff was a legal one, although we have no reason to doubt that a ceremony of marriage did take place as alleged by the witnesses of the Plaintiff. We therefore hold that the Plaintiff has not proved her legitimacy."

The Plaintiff appealed.

Neoptolemos Paschales and *Agathangelos Papadopoulos* for the Appellant. The Circular of the Oecumenical Patriarch of 1893, and of the Holy Synod of the Church of Greece, which declare the license of the Bishop essential to the validity of a marriage have no force in Cyprus. They are not in accordance with Canonical Law, and are repudiated by the best authorities. *Nikodemos Melas*, *Ἐκκλησιαστικὸν Δίκαιον*, pp. 24, 25, 831, 846, 848, 885. *Krassa*, *Οἰκογενιακὸν Δίκαιον*, pp. 94, 97, 134. *Paparegopoulos*, *Οἰκογενιακὸν Δίκαιον*, pp. 74, 75. In any case the burden of proof is on the other side.

Chacalli and *Loizo* for the Respondent. The circulars referred to are declaratory in nature and are good evidence of the law of the church. The issue in this case is the legitimacy of the Plaintiff and it is for her to establish it.

The Court allowed the appeal.

Judgment : THE CHIEF JUSTICE: In this case it is proved as a

fact that a marriage ceremony took place, but the Court says it is not satisfied that it was a legal marriage.

Two points are raised: (1) that a license from the Archbishop is necessary; (2) that no such license was obtained.

As to the first point, which is of great importance to the Orthodox Community, it is a point of ecclesiastical law, which seems to create some difficulty. The Patriarch of Constantinople and the Holy Synod of Greece have decided in the affirmative, and the form of the circulars seems to be declaratory rather than enacting. Certain learned authors say that the circulars are *ultra vires*. I do not know what they mean. I know of no canons limiting the powers of the Synods. There may be such. If there are, I am not aware at present how these Courts can declare a decision of the Holy Synod on church matters *ultra vires*.

It is not however necessary to decide this point.

The Court having found that a marriage ceremony was performed should in my opinion have presumed that the marriage was legal.

It was on the Defendants to prove that the marriage was illegal.

Assuming that a license was necessary there is no evidence to show that a license was not obtained.

The marriage was not secret; many people were present; objection is only raised to it after a very long interval.

It appears that when there was a question of marrying the woman again, the priest required Pavlikka to get a divorce. He must therefore have thought that the marriage was legal.

The people of the Carpas are no doubt a wild people and marriages are conducted by persons who may well make default in giving proper information.

It is more likely that such default would be made than that the priest would act uncanonically.

If no Carpas marriage were to be held good unless the Bishop's license could be proved, this would land the community in hopeless difficulty. The marriage took place 50 years ago. The issue is on the Plaintiff to prove his legitimacy. It might be impossible to prove that an old marriage like this was correctly performed in every detail.

The judgment of the District Court must be reversed and judgment entered for the Plaintiff with costs here and below.

HOLMES, J., concurred.

Appeal allowed.

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