

1955  
Nov. 21  
VINCENT  
DELLA TOLLA  
v.  
FIDIAS S.  
KYRIAKIDES

has increased in value many times since the sale) should escape from his bargain or be in a better position than any other promissor who has failed to perform his promise when he could do so. The Court must say to such a person: Having acquired a small strip of land by way of exchange and at little or no cost, you have the power substantially to perform your promise, and you must do so; for the contract is not void or impossible to perform and the general rule of Law applies, namely, that a man must fulfil his promise, or pay damages for his failure to do so; even though the performance costs him something more than he foresaw.

For these reasons, the order of the trial Court dismissing the suit is set aside. The plaintiff is entitled to damage estimated on the value of two building sites one of which has a frontage on the bye-pass, less the contract price of £200 and the cost of a road giving access to the second site. On this basis the Court awards the plaintiff £1,400 damages with costs here and below.

1955  
Dec. 9  
ISMET ARIF  
v.  
KIAMIL  
HUSSEIN.

[HALLINAN, C.J. and ZEKIA, J.]

(December 9, 1955)

ISMET ARIF of Pano Lefkara, *Appellant*,

v.

KIAMIL HUSSEIN of Orta Keuy, *Respondent*.

(*Turkish Family Court Appeal No. 3/55*)

*Turkish Family (Marriage and Divorce) Law, 1951—  
Maintenance after divorce — Wife not destitute—  
Maintenance granted under Sec. 33.*

Notwithstanding the provisions of section 31 of the Turkish Family (Marriage and Divorce) Law, 1951, a Court under section 33 of that Law may, when granting a divorce, order maintenance even when the wife, as a result of the divorce, has not become destitute.

Appeal by claimant from the judgment of the Turkish Family Court of Limassol (Action No. 13/55).

*H. Orek* for the appellant.

*L. Clerides* for the respondent.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C. J.: In this case the claimant-appellant sued her husband for divorce and a decree was granted by the trial Court on the ground that relations between the parties had become so strained as to make their lives together impossible or intolerable. The Court awarded compensation of £50 to the wife and it is against that

award and the refusal of the Court to grant maintenance that the wife has appealed.

1955  
Dec. 9

ISMET ARIF

v.  
KJAMIL  
HUSSEIN.

We are not disposed having regard to the financial circumstances of the husband to increase the award of compensation. The trial Court refused the application for maintenance on the ground that under the provisions of section 31 of the Turkish Family (Marriage and Divorce) Law of 1951 maintenance would only be payable if the wife had become destitute by reason of the divorce. We agree with the trial Court that an order for maintenance under that section in the circumstances of the case should not be made. We permitted the appellant to amend the grounds of appeal in order that this Court might consider whether maintenance could be granted under section 33, which was repealed and replaced in 1954 by section 3 of Law No. 63 of 1954. The material part of the new section provides that the Court may, when granting a divorce, order a husband to provide maintenance for the wife. In submitting that it was not the intention of the legislative authority to permit maintenance to be granted under the circumstances of this case, counsel for the respondent has argued that the intention of the new section 33 (1) (a) is merely to give the Court power to exercise powers of a District Court under the Infants and Prodigals Law as to the custody of the infants and it was not the intention of the legislative authority to give the Court power to grant maintenance when making a decree of divorce. The short answer to this submission is that to adopt such a construction would be completely to ignore the clearest wording of the statute.

It was also submitted that this section 33 (repealed and replaced in 1954) is repugnant to the provisions of section 31. This may well be so but it is a well established principle that where two provisions in a statute are repugnant the one which has been most recently enacted should prevail.

*For these reasons in our view the Court has power when granting a divorce to make an order for maintenance even when the wife as a result of the decree has not become destitute.*

We have considered what would be the proper sum to order as maintenance in this case and in our view the husband must be ordered to pay the sum of £3.0.0 a month for one year from the judgment of this Court on appeal. No order as to costs.