HUTCHINSON, C.J. & TYSER, J.

MEHMED HAJI HASSAN v. MEHMED ALI ZAIM

The order will be that the order of the District Court of the 20th December, 1902, be set aside, and, in lieu thereof, that four-fifths of the proceeds of the immoveable property of the Defendant sold under the writ of 30th December, 1899, be paid to the Applicants, the heirs of Haji Papa Ianni Marcou, in satisfaction of their judgment against the Defendant, and that the Plaintiffs pay the costs of the Applicants of the application to the District Court and of this appeal.

TYSER, J.; I agree.

HUTCHINSON, C.J. & TYSER, J. 1903 *April* 30

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

ZEHRA KHANIM AND W. COLLET AND MEHMED SADYK (DELEGATES OF EVKAF), *Plaintiffs,*

v.

CONSTANTI DIANELLO AND MICHAEL BAKIRJIDES (TRUSTEES OF THE PHANEROMENE CHURCH), *Defendants.*

VAQF—DEDICATION—BUILDINGS ERECTED ON VAQF LAND, PROPERTY IN—EXTENSION OF INHERITANCE—LAW 19 JEMAZI-UL-AKHIR, 1280—REPORT ON PIOUS ESTABLISHMENTS 1 JEMAZI-UL-EVVEL, 1284—LAW 15 ZILQADE, 1292—EMIRNAME 23 REBI-UL-EVVEL, 1293.

There can be a valid dedication (Vaqf) of property, although there is no Vaqfieh.

Buildings erected by the Mutasarrif (a) with the consent of the Muteveli, on ijareteinlu land, formerly vahidelu and converted, are the property of the Vaqf.

On the extension of inheritance, the fee of three per centum must, in such a case, be paid on the value of the site and houses.

The Law 15 Zilqade, 1292, does not authorize an application for the extension of inheritance of a part of a property without the consent of the Muteveli.

This was an appeal from a judgment of the District Court of Nicosia, dated 20th January, 1903.

The question for decision in the action was, whether the Defendants were entitled to extension of right of inheritance in respect of an ijareteinlu vaqf site, without paying any fee in respect of the value of buildings erected by them on the site.

The facts are as follows:

The Plaintiff Zehra Khanim is the Muteveli of Ali Ruhi Vaqf.

The Plaintiffs, Collet and Mehmed Sadyk, are the Delegates of Evqaf appointed by virtue of the Annex of the 1st July, 1878, to the Convention between England and Turkey of the 4th June, 1878.

The Defendants are trustees of the Agia Phaneromene Church.

The vaqf is a mulhaqa vaqf, and is possessed of certain land in Nicosia.

This land was formerly a garden with two rooms and trees on it and was at one time mevqufe property of the vahidelu category.

(a) The Mutasarrif is a person who has a limited ownership in property, *e.g.*, a holder of ijareteinlu property.

In 1888 Emine Khanim (the then Muteveli) applied that the land might be converted into mevqufe property of the ijareteinlu category, for the purpose of turning the land into a buildigs inte.

This application was granted.

In 1889 the property was registered as ijareteinlu. After the conversion of the property from the vahidelu category into the ijareteinlu category, there were transfers of the tenancy.

About 1892 the Defendants jointly with two other persons as Committee of the Phaneromene Church, with the consent of the Muteveli, became tenants (mutasarrif) of the garden, with the rooms and trees upon it, by purchase from one Georgios Papadopoulos.

Since 1892 the Defendants have built shops on the land in question at the expense of the Church.

The value of the site and shops together was £4,000 and the value of the garden alone was £1,800.

In 1898 an application was made to the Land Registry Office on behalf " of the trustees of the Phaneromene Church " for extension of inheritance, in accordance with the Law, of a garden registered under kochan No. 78 of 1893.

The application was accompanied by the kochan, which is for " a " garden 149 pics long and 128 pics wide, and two rooms joined together, " and one water wheel with a tank and various trees," and the registered owners are " Constantino Dianellos, Matheos Lukaides, Demetri Petrides and Michael Bakirjides, as trustees of Phaneromene Church."

By a Vezirial Order, dated the 23 Rebi-ul-Evvel, 1293, an extension fee of three per centum is imposed on the extension of inheritance of ijareteinlu property.

It is in the following terms:

" A verbal order has been issued addressed to the Ministry of Imperial " Evqaf stating that, according to an Imperial Irade, there is to be taken " once, as a fee on extension, three per centum on the value of musaqafat " and musteghillat, the right of devolution by inheritance of which is, " pursuant to the special Law, extended on application and at option." (*See* 4 Destur, p. 421).

The Defendants claimed that the right of inheritance ought to be extended on payment of three per centum on the value of the land alone.

The Plaintiffs claimed that the Defendants should pay three per centum on the value of the buildings erected on the land as well as on the site.

The claim in the action was for £120, or in the alternative for an injunction restraining the Defendants from applying to the Registrar General for registration of extension of inheritance.

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The issue settled was in the following terms:

"On the grant of extension of inhertiance should the fee of three per "centum be levied on the capital value of the site alone, or upon the "capital value of the site and buildings which have been erected "thereon."

"In the former event it is agreed that the judgment shall be for the "Plaintiffs for £54 payable on the grant being made of extension of "inheritance of the site alone; and in the latter event for £120, payable "on the grant being made of extension of inheritance of the site and "buildings together."

The District Court (Izzet Effendi dissenting), gave judgment for £54, on the ground that it was only the site in respect of which the application for extension of inheritance was made, and that the three per centum must be assessed on the value of the site alone.

Sevasly (*Sadreddin Effendi* with him), for the Appellants:

The percentage ought to be calculated on the value of houses and land.

Buildings are assessed in estimating the ijare muejele; Law 4 Rejeb, 1292, Arts. 8 and 9; 3 Destur, p. 459; Ongley, p. 243.

Buildings are always treated as belonging to the vaqf.

No exception is made in Law 4 Rejeb, 1292. *See* also Report of Council of State to Sultan dated Jemazi-ul-Evvel, 1284 (1 Destur, p. 232; 2 Ott. Cod., p. 1230).

Pascal Constantinides (*Artemis* with him), for Respondents:

The Defendants are entitled to claim extension of inheritance of the property in their kochan. They are not compelled to ask for extension of inheritance of buildings as well.

It is optional not compulsory; 15 Ziqade, 1292, (Ongley, p. 257; 2 Ott. Cod., p. 1239; 3 Destur, p. 462).

The buildings are not vaqf because there has been no dedication, and no Vaqfname. (Omer Hilmi's Evqaf Laws, Arts. 25, 44, 88).

The buildings are the property of the Respondents. (Omer Hilmi's Evqaf Laws, Arts. 268, 409, 415).

Mr. Sevasly in reply:

Whether the buildings are vaqf or not, the vaqf is authorized to levy three per centum on the value.

THE CHIEF JUSTICE after stating the facts as above set out continued as follows:

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Judgment: Dealing first with the reason given by the majority of the District Court, which was also a ground on which the Defendants greatly relied here, I think that if the buildings belong to the vaqf, they

and the site on which they stand must be regarded as one property, and the tenants (*i.e.*, the Defendants) cannot separate them. It may be that in the case of two distinct houses belonging to the same vaqf the tenants might be entitled to claim extension as to one without the other; but they cannot separate the site from the building or the building from the site. This also is the only view which is consistent with Sec. 8 and 9 of the Law of 4 Rejeb, 1292, hereinafter quoted.

On the other hand if the buildings are not vaqf but are the mulk property of the Defendants and it is of the site only that the inheritance is extended, I think that the value of the site only must be taken into account.

It is necessary therefore to decide whether the buildings belong to the vaqf or not. And to do this we must see how an ijare vahidelu vaqf can be converted into an ijareteinlu vaqf and what are the consequences of the conversion, and what is the Law generally as to the ownership of buildings erected on an ijareteinlu vaqf site.

In Omer Hilmi's Treatise on the Laws of Evaqf, Sec. 275, it is stated that " the Muteveli cannot, contrary to the condition of the dedicator, " let property at an ijaretein which has been dedicated under the " condition that it should be let at a vahide rent. But in case musaqafat " vaqf property, directed to be let at a vahide rent, falls down, and the " property of the dedication has not sufficient income to repair it, and " no one can be found to rent it at a vahide rent and repair it, setting " off the expenses against the rent, then the Muteveli may, with the " approval of the Sultan, let that musaqafat for ijaretein."

In Sec. 38 of the Law of 19 Jemazi-ul-Akhir, 1280, (Cobham, Laws of Evqaf, p. 16), regulating the administration of vaqf property, it is declared that " the conversion of ijare vahide vineyards, gardens, " musaqafat and the like without the sanction of the Sheri and the issue " of an Imperial Irade is absolutely unlawful." The only other authority to which we have been referred on this subject is a statement of the Law in a Report of certain Commissioners to the Sultan, dated 1 Jemazi-ul-Evvel, 1284, which is printed in Vol. I. of the Destur published in 1289, and of which a Greek version is contained in Vol. II., p. 1230, of the Othomanikoi Kodekes. This Report states that most musaqafat and musteghillat vaqfs in Constantinople and other large cities in Rumelia and Anatolia are under the ijaretein system, but were originally of the ijare vahide category; that when the owner of a mulk site built on it a house and dedicated the rent to a philanthropic object, if the house was burnt or otherwise destroyed the tenant was not bound to repair and rebuild, and often the vaqf had not funds to do so, and consequently many such properties became ruined; and that in the time of Sultan Suleiman it was decided that, when a man wished to become

tenant of vaqf property, it should be given into his possession upon payment to the vaqf of a small sum called ijare muajele and on condition that he should also pay a yearly ijare muejele, and that he should be liable to repair, and that whatever he should build with the consent of the Muteveli should be a gift to the vaqf and so that he should hold it for his life, with power to transfer his interest, and that on his death it should pass to his children only. The Report then goes on to say in effect that this system has worked well but has not been quite satisfactory, and it recommends an extension of the Law of inheritance with regard to mazbuta vaqfs of the ijaretein class, which recommendation was apparently carried out by the Law next referred to.

By a Law which is not dated in the Destur, but is apparently referred to in a later Law as dated 13 Safer, 1284, and is dated in the Leg. Ott. 7 Safer, 1284, the right of inheritance of *mazbuta* vaqfs held in ijaretein was extended, at the option of the tenants, to parents and brothers and others on certain terms.

By a Law dated 4 Rejeb, 1292, (6th August, 1875), the right of inheritance to *all* musaqafat and musteghillat vaqfs held in ijaretein was extended to parents, brothers, sisters, and husbands and wives on certain terms; and it is enacted by Sec. 8 that the ijare muejele shall be re-assessed on the site only where the property has been burnt or destroyed after the ijare muejele has been fixed; and by Sec. 9 that " if, after the ijare muejele has been fixed, buildings are erected on sites on which the buildings have been burnt or destroyed, and on sites on which there were no buildings originally, they shall be re-assessed in their present form."

By an Imperial Decree of 15 Zilqade, 1292, the application of the last mentioned Law is declared to be optional to the owners of property who desire it.

And by the Emirname of 1293 before mentioned, a fee of three per centum is ordered to be taken on the extension of inheritance under the last mentioned Law.

This garden was converted from the vahide into the ijaretein category in 1888, upon the application of the Muteveli and after the proper authorities and consents had been obtained; and it was bought in 1893 by the trustees of the Phaneromene Church, who afterwards built the shops on it. It appears that the object which the Muteveli had in view in making the application was that shops might be built on the site, for which purpose she herself had not sufficient funds. It is clear therefore the shops were built with the consent of the Muteveli.

The Report of the Council of State seems to show that, at the date of the Report, in the opinion of its authors, buildings erected with the consent of the Muteveli on a vaqf site which has been converted from

the ijare vahide into the ijaretein class belong to the vaqf. And Sec. 8 and 9 of the Law of 4 Rejeb, 1292, seem to assume that any buildings erected on an ijaretein site must belong to the vaqf.

We were referred however to an express authority to the opposite effect in Omer Hilmi's Treatise on the Laws of Evqaf. Omer Hilmi was President of the Civil Side of the Court of Appeal in Constantinople, and his Treatise was published in Constantinople in 1890, and a translation of it into French was published there in 1895. It is said that the book has been suppressed in Constantinople; but I do not know that that is the fact. In Title " O," dealing with " Repairs and buildings in relation " to vaqfs," the author states in Sec. 415; " if a person, not being the " Muteveli, erects a building on vaqf land at his own expense, in every " case the building is his property, whether he declares and causes it to be " witnessed at the time of the building that he was building for himself or " keeps silence." And in the Title " F," " about musaqafat and muste- " ghillat vaqf properties held in ijaretein," he says, in Sec. 268, that " if " the owner of an ijaretein vaqf site wishes to erect a building on it with " the intention that it should be his own property, the Muteveli can " prevent him," and then goes on to say what are the rights of the parties if he does build without the consent of the Muteveli.

Omer Hilmi's statement of the Law as to ownership of buildings erected with the consent of the Muteveli on an ijaretein vaqf site appears to me to be irreconcilable with the statement contained in the Report of 1284. The latter is printed in the Destur, which is an authorized collection of the Laws of the Ottoman Empire. The Report, so far as I can judge from translations of it, states what is the Law at the date of the Report, as to the ownership of such buildings on land converted from ijare vahide into ijaretein; and there is no trace of any change in the Law afterwards. Omer Hilmi's statement in Sec. 415 refers to all vaqfs, without any exception. It is hardly possible that Omer Hilmi should not have read this Report, which was published in the Destur several years before his Treatise was published; and it is very strange that, if he had read it, he should have printed a statement contradicting it in a material point without any reference to it. Whatever may be the explanation it seems to me that there is a contradiction and that I must choose between the two authorities, and that the authority contained in the Destur is the higher of the two. I therefore hold that the buildings in this case belong to the vaqf.

I also hold that the tenants of the land on which the buildings were erected are tenants of the buildings in the same manner as of the land; for when it is said that the buildings are " a gift to the vaqf " it must be meant that they go with the land on which they are built.

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The only other point to which I need refer is the argument for the Defendants that there is no vaqfieh with regard to the buildings and that therefore they cannot belong to the vaqf, because there can be no dedication without a vaqfieh. I am unable to assent to that argument; for if the Law is, as I have held that it is, that buildings erected under the circumstances in which these were erected are a gift to the vaqf, the gift cannot be defeated by the neglect to procure a vaqfieh.

I think therefore that the answer to the issue settled by the District Court should have been that the fee of three per centum is to be levied on the capital value of the site and buildings, and that judgment be entered for the Plaintiffs for £120 and the costs of the action and of the appeal.

TYSER, J.: I will first consider Mr. Pascal's argument that if the buildings are vaqf, the Defendants are entitled to an extension of right of inheritance to the site alone, because if that argument succeeds it will not be necessary to consider the other arguments. He argued that the application was for an extension of inheritance to the site only.

The property in the Defendants' kochan, which was forwarded with the application for extension of right of inheritance, as therein described, is " a garden 149 pics long and 128 pics wide, and two rooms joined " together, and one water wheel with a tank and various trees."

The application is for an extension of inheritance of " a garden." A garden is not a building site. Therefore no application for an extension of right of inheritance to a building site has been made. But assuming that the land and buildings are both vaqf and that an application has been made for extension of right of inheritance to the land alone, I am of opinion that such extension cannot be granted without the consent of the Muteveli.

If Mr. Pascal's contention were correct the land and buildings might become separated on the death of the registered possessor to the detriment of the vaqf.

The possessor of a vaqf ijareteinlu property cannot divide it without the consent of the Muteveli, (Omer Hilmi, Art. 238), and I am of opinion that he cannot without that consent obtain extension of inheritance of the site of a property omitting the buildings upon it, because it would be a division of the property so far as the title to the property is concerned, and would in time almost necessarily lead to the houses and site being held by different owners.

It is contended that the Law makes the extension of inheritance optional and therefore the possessor has the option to demand extension for part of the property. In my opinion this argument is not well founded.

The Law of 15 Zilqade, 1292, was intended to remove the compulsion to extend the inheritance imposed by the Law of 4 Rejeb, 1292, and not to alter the Law in other respects.

As to the argument that there can be no reason why the possessor should not get extension of inheritance of one of three houses in the same kochan, in my opinion it is not a question as to whether there is one or many kochans, but a question of whether a vaqf property, which is one, is being divided.

There can be no doubt as a matter of fact that a house and the site on which it stands are one property.

Mr. Pascal did not contend that the Muteveli consented to the extension of inheritance being given for the site alone, nor does there appear to be any evidence of such consent.

Mr. Pascal's second contention is that the buildings are not vaqf but mulk property and that for this reason their value must not be taken into consideration in estimating the amount to be paid under the Law of 23 Rebi-ul-Evvel, 1293.

To decide this question it is necessary to consider the facts. So far as they have been given to us they are as follows:

1. The vaqf is a mulhaqa vaqf.
2. The site was originally a garden with two rooms and trees on it.
3. This garden and the things on it were converted into ijareteinlu, having previously been vahidelu vaqf.
4. About 1892 and after its conversion into ijareteinlu the Defendants jointly with two other persons, as Committee of the Phaneromene Church, bought the garden with rooms and trees on it from one Georgios Papadopoulos.
5. Since 1892 the Defendants have built shops on the site in question.
6. At the trial of the action in the District Court, Mr. Sevasly, the Advocate for the Plaintiffs, did not deny that the buildings belonged to the Phaneromene Church. In the Court of Appeal he admitted that they were built from Church funds.

On these facts Mr. Pascal contends that as the buildings were erected at the expense of the Church, they cannot be vaqf unless there is a vaqfieh. He cites Arts. 25, 44 and 88 of Omer Hilmi as applicable to this case.

These articles do not support Mr. Pascal's contention that a vaqfieh is necessary for a valid dedication.

A vaqfieh is a document setting out the terms of the dedication and containing the decision of the Judge that the dedication is binding. (*See* Omer Hilmi, Arts. 25, 111.)

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It can only be necessary, if it is necessary for dedication to have a decision of the Judge that the dedication is binding, or if it is necessary for a dedication to be contained in a vaqfieh.

As to the decision of the Judge, in some cases it is necessary in order to make the dedication binding. For example, where the dedicator becomes insolvent after the dedication. (Omer Hilmi, Art. 121.)

In some cases the decision is binding without any such decision. For example, where a man has built on vaqf land and made a gift of the buildings to the vaqf. (Omer Hilmi, Art. 123.)

In this case there is no application to set aside the dedication, if any exists, and the absence of a judicial decision that there is a binding dedication is immaterial.

The decision is not necessary for a valid dedication.

There is no Law which requires that the terms of the dedication must be set out in a vaqfieh. Therefore there can be a valid dedication without a vaqfieh.

No doubt as a rule the Law requires some evidence of dedication before a property can be considered vaqf. Mere intention to dedicate is not sufficient. (Omer Hilmi, Art. 54.)

I will now consider whether there is evidence of dedication in this case.

In the case of buildings erected on vaqf land it appears to be the view of Omer Hilmi that, except where the Muteveli builds, the dedication must be express, (Arts. 410, 414 and 415).

In this case there is no evidence of express dedication after the buildings were completed.

I will next consider the Law as to building on vaqf land, to see if there is any dedication of the houses, or gift of them to the vaqf in this case such as the Law recognizes.

The Law as to the ownership of buildings erected on vaqf land is laid down by Omer Hilmi as follows:

If the building is erected with the consent of the Muteveli the builder can make it vaqf (Arts. 72 and 85). From this we must infer that it is the opinion of the learned writer that a building so erected belongs to the builder, otherwise he could not dedicate it. (Omer Hilmi, Art. 63).

If it is erected without the consent of the Muteveli, the Muteveli has the right to pull it down; therefore we must infer that in this case also the building, in the opinion of the learned writer, is the property of the builder. (Ibid.).

The rule as to building without the consent of the Muteveli is specially stated for ijareteinlu vaqfs in Art. 268 of the Treatise.

At the end of Art. 268 the learned author says that the Law is that where the possessor of the ijareteinlu site erects a building with the intention that it shall be his own property, without the leave of the Muteveli, the Muteveli cannot claim that the building is the property of the vaqf, solely by reason of there being a condition in the title-deed for the land, that whatever the possessor builds should be a free gift to the vaqf.

The only other Law dealing with the ownership of buildings erected on vaqf land is that recited in the Report of the Commission on the extension of inheritance of vaqf ijareteinlu properties in the first Volume of the Destur, p. 232.

The Commission in their Report say that, on the ground that it had become necessary to extend the time of possession of the tenant of vaqf properties, it was decided that the system should be " that when a person " desired to have the occupation and enjoyment of a place which was " vaqf property, it should be given into his possession, after having " paid the vaqf a small sum of money called ijare-i-muajele, with the " condition of his paying each year something to be called ijare-i-mue- " jele, and that repairs should fall on him, and whatever he should " build by permission of the Muteveli should be a free gift to the vaqf, " and upon the terms that he should hold it himself for his life time, " with permission to transfer his tenant right to another, and that on " his death it should pass in equal shares to his male and female children " and no further."

Now this Law does not conflict with the statement contained in Art. 268 of Omer Hilmi because the one refers to building with the consent of the Muteveli and the other to buildings erected without his consent, and the one refers to a condition in the title-deed of a tenant in ijaretein and the other to the Law on the conversion of vahidelu vaqf into ijaretein vaqf.

It does however appear to be in conflict with Arts. 72 and 85 of Omer Hilmi's Treatise, if they are to be taken as applying to all buildings erected with the consent of the Muteveli, whatever may be the terms under which they were erected, and whatever may be the category of vaqf to which their site belongs.

I doubt whether this can have been the intention of the learned author. There appears in other articles of his Treatise a certain amount of inaccuracy or want of precision in his statement of the Law. However that may be, in the case of conversion of vahidelu vaqf into ijareteinlu I should prefer to follow the statement of the Law applicable to the particular instance of such conversion, rather than the general rule laid

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down by Omer Hilmi, which if correct in some instances, is not made with reference specially to the particular case of such a conversion.

The Report in the Destur moreover is published in the official Law book of the Empire, and for this reason it is entitled to be regarded as correctly stating the Law.

Now the garden in this case had been converted from vahidelu vaqf into ijareteinlu.

Therefore, according to the Law as recited in the Destur, if the buildings in question had been made with the consent of the Muteveli by the person in possession when the property was converted into ijareteinlu, they would be the property of the vaqf. The person who acquired the tenancy by purchase would be in no better position.

The Defendants have acquired the tenancy by purchase.

Were the buildings made with the consent of the Muteveli? It would in my opinion be a sufficient consent on the part of the Muteveli, if he consented that the mutasarrif, at the time of the conversion, should hold the land as a building site, because such consent must be taken to extend to an assignee, since the mutasarrif is entitled to make an assignment during his life, by the terms on which he holds the property by virtue of the conversion.

It has been proved to-day that the conversion into ijareteinlu was carried out at the request of the Muteveli for the purpose of turning the land into a building site.

If that evidence had not been given I should have thought on the evidence that the Defendants had received the consent of the Muteveli to the erection of the buildings.

If the buildings were made without the consent of the Muteveli it is doubtful whether the destruction of the garden would not have rendered the tenancy liable to forfeiture. (*See* Mejellé, Art. 533).

Further it appears from the kochan produced before us that the assessed value of the garden was 10,500 piastres and the sale price was 178,260 piastres. It further appears that the trustees began after the purchase to build. And it is stated by Mr. Pascal that the trustees erected the buildings in the knowledge and sight of the Evqaf officials. It is alleged by Mr. Sevasly that the Defendants bought from the Plaintiffs, and, by Mr. Pascal that the site was bought by the Defendant trustees with the consent of the vaqf.

The inference I draw is that the Defendants took the property as building land. The Muteveli consented to the transfer to them, and to the land being transferred to them as a building site.

That being so I am of opinion that the buildings were erected by the Defendants with the consent of the Muteveli within the meaning of the

Law, and that by the terms on which the land is held the buildings must be regarded as a gift to the vaqf, and that there is such dedication as the Law recognizes.

Further it is clear from the Report of the Commission that it would make no difference if the tenant in ijaretein was under the impression that the buildings which he erected would be his own property.

For the Commission, in recommending that the right to inheritance should be extended, and commenting on the existing state of things which it is desirable to amend by the extension of inheritance, say: "And whereas it does not seem proper that in case a man dies without "children his wife or grand-children should be cast out into the street "from the house he has built, thinking that it was simply like his own "property, it not having come into his mind that what he was doing "with his own labour was a free gift to the vaqf."

Now this is a recital of the Law applicable to properties held in the same tenure as the garden in question is held by the Defendants. Therefore it would make no difference if the Defendants thought or intended that the buildings they erected were to be their own property.

Moreover there is no evidence that the Defendants made the buildings under that supposition.

There is no evidence from which we can infer the intention of the Defendants at the time they built, and no evidence of any custom or usage, or of any special contract made by the Muteveli at the time of the conversion of the estate into ijareteinlu, or at any other time if that would make any difference. Therefore we must hold that the houses are the property of the vaqf in accordance with the terms of the Law cited. And it is clear from the Law of 4 Rejeb, 1292, Sec. 9, that they are held on the same tenure as the land on which they are built.

It is unnecessary to consider Mr. Sevasly's argument that if the buildings are not vaqf the Plaintiffs are entitled to three per centum on their value.

There is one point which was not raised before the Court, and which I notice only for the purpose of showing that I do not give any decision upon it. It is that the Defendants whom it is sought to restrain from seeking extension of inheritance are only two out of four persons registered as owners of the property in question.

If the application for extension is made by these two only, as no explanation of this has been given to the Court it is impossible for me to say whether there is anything in the special circumstances of the case which justifies the application. I notice that the four persons in the kochan are described as trustees of the Agia Phaneromene Church.

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I am not aware of any Law by virtue of which this fact would make any difference. If the right of the Church does not expire with the right of the registered proprietor, it is difficult to see why the extension of inheritance was sought. On these points I give no opinion because they were not raised by either side before us.

It must not however be supposed that in giving judgment according to the agreement of the parties I give any judgment on these points.

The judgment given in accordance with the agreement of the parties will not bind the Land Registry Office on these points, nor will it bind persons who are not parties to the action, except in so far as the decision on the point of Law is binding on this Court.

The judgment is for the Plaintiffs for £120 payable on the grant being made of extension of inheritance of the site and buildings together.

The Plaintiffs to have the costs in this Court and the Court below.

HUTCHINSON, C.J. & TYSER, J. 1903 *November* 16

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

NEOCLE SARIPOGLOU, *Plaintiff*,

v.

J. B. GOODING, *Defendant*.

EX PARTE MARIA NASRI.

JURISDICTION—DISTRICT COURT.

A District Court has no jurisdiction to make an order cancelling the registration under Law VIII of 1894 *of the judgment of another District Court.*

This is an appeal by the Plaintiff from an order made by the District Court of Famagusta on the 26th November last directing that certain memoranda lodged by the Plaintiff on the property of Maria Nasri in Famagusta District be removed.

The facts so far as material to this judgment are as follows:

The Plaintiff, being a judgment creditor of the Defendant under a judgment dated 23rd of March, 1903, of the District Court of Nicosia in an action in that Court, had obtained a writ of attachment of a debt due by Maria Nasri to the judgment debtor; and, on the appearance of the parties in pursuance of that writ, the District Court of Nicosia on the 22nd June, 1903, ordered "that Maria Nasri, debtor to the Defendant in the sum of £25, do pay to the Plaintiff in this action the said sum of £25 in satisfaction of the judgment issued in this action and dated 23rd March, 1903."

The Plaintiff then lodged the memoranda above mentioned, treating this order as a judgment and himself as a judgment creditor of Maria