

Privy Council Appeal No. 130 of 1920.

Edgar Gout and another - - - - - *Appellants*
v.
Jivian Cimitian - - - - - *Respondent*
Jivian Cimitian - - - - - *Appellant*
v.
Edgar Gout and another - - - - - *Respondents*
(*Consolidated Appeals.*)

FROM

HIS BRITANNIC MAJESTY'S SUPREME COURT FOR EGYPT (HOLDEN AT
CAIRO).

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 17TH NOVEMBER, 1921.

Present at the Hearing :

LORD SUMNER.
LORD PARMOOR.
LORD WRENBURY.
LORD CARSON.
SIR ARTHUR CHANNELL.

[*Delivered by* LORD CARSON.]

The only question to be decided in this case is as to whether the plaintiff became, as he claims, a British subject by virtue of the Cyprus Annexation Order in Council, 1914, and the Proclamations and Order in Council issued thereunder.

The action was brought by the plaintiff against the defendant, Mr. Gout, His Majesty's Vice-Consul, who was at all material times acting Consul at Cairo, and the defendant, Mr. Geary, who is now His Majesty's Consul at Cairo, claiming a declaration that the plaintiff, his wife and children were entitled to the renewal

of their registration in the register of British subjects kept in the office of the Consulate at Cairo.

The plaintiff was born at Kaiserie, in the Ottoman Dominions on the 7th March, 1878, of Ottoman parentage, and he lived at Kaiserie until the year 1893, when he came to reside in Cairo. He carried on business in Cairo as a tobacco merchant from 1893 to 1913. He went to Cyprus in December, 1913, according to his own evidence, because he was ill, and went for a change to Nicosia and stayed there 23 months. He was ill for three or four months, and after three or four months he brought his family there and remained there for twenty-three months. While there he used to send wine to his brother in Egypt. He rented a house monthly. During his absence from Egypt his business there was discontinued. Whilst the plaintiff and his family were in Cyprus, the Cyprus Annexation Order in Council was passed on the 5th November, 1914, whereby it was ordered that from and after the date thereof the Island of Cyprus should be annexed to and become part of His Majesty's Dominions, and the said island was annexed accordingly. On the same day a Proclamation was issued by the High Commissioner for Cyprus relative to the British nationality of Ottoman subjects born and then resident in Cyprus, whereby it was proclaimed :—

“ that under and by virtue of the said Order in Council the following provisions have effect :—

“ (1) Ottoman subjects born in Cyprus and now resident in Cyprus are British subjects.

“ (2) Ottoman subjects not born in Cyprus are allowed one year from the date of this proclamation within which to leave Cyprus. Ottoman subjects mentioned in this proclamation who do not leave Cyprus within the said period of one year will, on expiration of the said year, be British subjects.”

That proclamation was revoked by a subsequent proclamation by the High Commissioner, dated the 3rd March, 1915, whereby he proclaimed that :—

“ Under and by virtue of the said Order in Council the following provisions have effect :—

“ (1) All Ottoman subjects resident in Cyprus on the 5th November, 1914, have become British subjects.

“ (2) Any Ottoman subject resident in Cyprus on the 5th November, 1914, desiring to retain Ottoman nationality may by notice under his hand elect to do so within one month of the coming in operation of this proclamation, and any such person electing so to do must leave Cyprus within two months after the date of his election and take up his residence elsewhere, failing which he would be treated as a British subject.”

The plaintiff and his family continued to reside in Cyprus after the issue of that proclamation until the month of October, 1915, without having given any notice, as mentioned in Section 2, of the said proclamation. He then returned to Cairo having received a passport, in which he was described as a British subject, from the High Commissioner for Cyprus, and on the 4th October he was registered as a British subject in His Majesty's Consulate at Cairo, and a certificate of registration signed by the defendant,

Mr. Gout, was issued to him. Later in the year, in the month of December, his wife and his son also returned to Cairo, and were duly registered as British subjects in the said Consulate and their names endorsed on the said certificate of registration. The registration seems to have been duly renewed on the 22nd January, 1916, 12th January, 1917, and 10th January, 1918. He seems also on his return to Cairo to have resumed his business. On the 27th November, 1917, the Cyprus Annexation Amendment Order in Council, 1917, was passed, and after reciting the said proclamation on the 3rd March, 1915, proceeded as follows :—

“ And whereas doubts have arisen as to the effect of the said Order in Council of the 5th November, 1914, upon the nationality of Ottoman subjects who were in Cyprus on the date thereof and as to the proper interpretation of the provisions of the said proclamation regarding the grant of British nationality to Ottoman subjects resident in Cyprus at that date.”

and it is then ordered as follows :—

“ The following persons shall be deemed to have become British subjects under and by virtue of the Cyprus Annexation Order in Council 1914, and the proclamation of the High Commissioner of the 3rd March, 1915.

“ (1) (a) Any Ottoman subject who was ordinarily resident and actually present in Cyprus on the 5th November, 1914.”

In January, 1919, the plaintiff applied to the defendant, Mr. Gout, for renewal of registration as a British subject, and was refused, whereupon the plaintiff commenced this action, as before stated. The case was tried in his Britannic Majesty's Supreme Court for Egypt at Cairo, and judgment was given on the 2nd January, 1920. The acting Judge found as a fact that the plaintiff was “ resident ” in Cyprus on 5th November, 1914, within the meaning of the proclamation of the 3rd March, 1915, but held also that he was not “ ordinarily resident ” there within the meaning of the Order in Council of 27th November, 1917. He held, however, that the plaintiff became a British subject under the first Order in Council and the two proclamations already referred to, and from that judgment the defendants have appealed, and a cross appeal has been entered by the plaintiff against the finding that he was not “ ordinarily resident ” in Cyprus. It has been argued before us that upon the facts as stated the plaintiff was not “ resident ” in Cyprus on the 5th November, 1914, within the meaning of the Proclamation of the 3rd March, 1915, and also was not “ ordinarily resident ” within the meaning of the Order in Council of May, 1917. Their Lordships are of opinion that, if there is any difference between “ resident ” and “ ordinarily resident,” the case must be decided in accordance with the terms of the Order in Council of 1917, which was meant to correct any doubts as to the meaning of the previous proclamations, and that that Order in Council must be given effect to so far as it corrects or changes the previous proclamation. The appellants contended that in construing the Order we ought to apply the same consideration as in determining the case of domicile, but their

Lordships are of opinion that the words "ordinarily resident" cannot be interpreted by such considerations and must be given their usual and ordinary meaning. The plaintiff was no doubt present in Cyprus as required by the Order in Council on 5th November, 1914, he had been there with his family for several months, and although he went there originally because he was ill, and wanted the change of air, he had stayed on and brought his family to live with him after he had recovered, and he continued to live there for nearly a year after the annexation, carrying on business there, and took no steps under the proclamation or Order in Council to retain his Ottoman nationality. Under these circumstances their Lordships are of opinion that the plaintiff was "ordinarily resident" and "actually present" in Cyprus on the 5th November, 1914, and has consequently made out his case that he is a British subject. The acting Judge at the trial states that it was officially brought to his notice that the plaintiff had in fact not gone to Cyprus in December, 1913, for his health, but that he had been deported from Egypt for being engaged in running contraband, *i.e.* hashish. No evidence was given of the order of deportation or for what period it was to be enforced, but their Lordships are of opinion that the motive which caused him to leave Cairo and take up his residence in Cyprus is immaterial to the questions which they are called upon to decide. There were other questions argued before the trial Judge relating to the power of the court to issue a writ of mandamus to the defendants, they being Consular Officers, and as to the propriety of the issue of such a writ. These questions were, however, left undecided by the trial Judge, and the Board is not asked to express any opinion upon them. Their Lordships are of opinion that the appeal fails and should be dismissed, and that the cross appeal against the finding that the plaintiff was not "ordinarily resident in Cyprus" should be allowed, and they will humbly advise His Majesty accordingly. There will be no order as regards the costs.

In the Privy Council.

EDGAR GOUT AND ANOTHER

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JIVIAN CIMITIAN.

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(Consolidated Appeals.)

DELIVERED BY LORD CARSON;

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