

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Pitts  
v. La Fontaine from the Supreme Consular  
Court, Constantinople, delivered 11th May  
1880.*

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Present :

SIR JAMES W. COLVILE.  
SIR BARNES PEACOCK.  
SIR MONTAGUE E. SMITH.  
SIR ROBERT P. COLLIER.

At the close of the argument in this case, it was admitted that the Appellant had established his right to some relief in respect of the extraordinary and complicated proceedings in the Supreme Consular Court of Constantinople which are the subject of appeal. The question which their Lordships reserved for consideration was what relief, having regard to the peculiar nature of the case, the limited powers of the Consular Court over the subject matter, and the rights which other parties have acquired, they could recommend Her Majesty to grant. In order to determine the question it is desirable to consider shortly what were the position and rights of the different parties concerned when the proceedings impeached were commenced.

In the year 1860, the Appellant, and three persons, viz., Thomas Browne Morton, Emanuel Petrocockino, and John Bell, who then carried on the business of shipowners and chandlers in partnership under the style of Morton and Bell, were the joint owners of the beneficial interest in a piece of land in the island of Prinkipo, in the

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Sea of Marmora, upon which they erected a steam flour mill and bakery. Foreigners being at that time incapable of holding land in Turkey, the whole estate stood in the name of Ellen Jani, then the wife of Emanuel Petrocockino, and an Ottoman subject, though her husband was apparently a Greek subject, as its ostensible owner. But she, by a declaration of trust, dated the 23rd of May 1863, and registered in the Supreme Consular Court, declared it to be the property, as to three fourths, of Messrs. Morton and Bell, and as to one fourth of the Appellant, and that it was held by her to their use, and to be dealt with according to their order.

On the 25th of May 1863, Morton and Bell mortgaged their three-fourth shares of this property to Paul Homère, or Homero, a Greek subject, for 3,000*l.* by the instrument which is set out at p. 10 of the Supplemental Record. That instrument contained an agreement, on the part of the mortgagors, not to raise any more money on their said property; and gave a power of sale to the mortgagee in the event of their failing to pay the interest regularly, and the principal in three years; and to it was added a declaration by the Appellant that his co-proprietors, Messrs. Morton and Bell, were free to dispose of their three fourths of the flour mill and bakery above mentioned.

In 1867, John Bell died, and George Bishop Marshall joined the firm, of which the style was changed to T. B. Morton & Co.

In 1868, Petrocockino died, and in 1869 his widow became the wife of the Appellant.

It does not very clearly appear on the record how, upon the above changes in the firm of Morton and Bell and T. B. Morton & Co., their share of the property in Prinkipo was dealt with. It would seem, however, that some interest in that share was assured to the estate of Petro-

cockino, since, under the arrangement for working the mill which subsisted between the 15th March 1869 and the 30th March 1872, the Appellant was to receive one half instead of one fourth of the profits, on the terms of making over half of what he so received to Mrs. E. Petrocockino. Whatever, however, may have been the interest of Petrocockino's estate, it was necessarily subject to the mortgage of 1863, to which he was a party.

In 1873, Thomas Browne Morton and George Bishop Marshall, the then partners in T. B. Morton & Co., became insolvent, and in the month of August of that year made an arrangement for the liquidation of their affairs under Part VI. of "The Bankruptcy Act, 1869," which then regulated the proceedings of the Consular Court as a Court of Bankruptcy; and the Respondent, Edward La Fontaine, was duly appointed the trustee under that liquidation. The interest of the insolvents in the Prinkipo property, so far as it was property divisible amongst their creditors, accordingly became vested in the Respondent, whose duty it was to realize it for the benefit of the estate, but the three-fourth shares of the property which originally belonged to the firm of Morton and Bell, being subject to the mortgage of 1863, on which 2,000*l.* were still due, he could not sell more than the equity of redemption in those shares except with the concurrence of the mortgagee. Nor could any question that might exist or arise between the insolvents and their co-proprietor, the Appellant, be determined except in a suit against him properly framed for that purpose. It is necessary to state these elementary principles in order to consider and test the regularity of the proceedings which were actually had.

The first proceeding is that of the 23rd of April 1874. It is called a petition, but it does not so

much resemble a petition in bankruptcy as a suit brought by the trustee in liquidation against Ellen Jani Pitts, as sole Defendant. After stating that she became the legal owner of the property only in order to comply with the Ottoman law as it previously existed, and that the equitable ownership was in the Appellant and in the insolvents, in the proportions of one fourth and three fourths, and that the three fourths were subject to the mortgage to Homère, and further stating the title of the Plaintiff as trustee under the liquidation, and that it was necessary that the three-fourths share belonging to the insolvents should be sold and the mortgage discharged, in order that the balance remaining due should be paid over to the general creditors of the estate of T. B. Morton & Co., it prayed that the Defendant might be decreed to sell the said land, flour mill, and bakery under the supervision of the Court, and to pay into Court three fourths of the proceeds arising from the sale thereof,—clearly contemplating a compulsory sale by her of the whole of the joint property, though she might be allowed to retain one fourth of the price in trust for the Appellant. On being served with this petition Mrs. Pitts took objection to the jurisdiction of the Court, and obtained, on the 8th of May 1874, a rule to show cause why the petition should not be dismissed, with costs, for want of jurisdiction of the Court over the subject matter, the same being real or landed property in the Empire of Turkey. On the 10th of May 1874 this rule was discharged, with costs, such costs being, with the consent of the parties, fixed at seven guineas.

The grounds on which this order was made by the late Sir Philip Francis, the then Judge of the Consular Court, appear at p. 5 of the Supplemental Record. If the Defendant had remained Mrs. Petrocockino, it seems pretty clear that the

Court would have had no jurisdiction over either her or the land ; but by her intermarriage with the Appellant she had become a British subject, and Sir Philip ruled that, though he might not be able to transfer the property, he could, by a decree *in personam* against the Defendant, order and compel her to sell it under the supervision of the Court.

The petition or suit afterwards came on for hearing on the 18th day of July 1874, when the Court made the first of the orders impeached. This, in terms, ordered the Defendant, Ellen Jani Pitts, to sell the land, flour mill, and bakery known as the Prinkipo steam flour mill, and, in order thereto, to publish the advertisement set forth in the order, for the sale of the property by public auction, unless previously disposed of by private contract, referring to the Plaintiff for further particulars. It further ordered that all the purchase money arising from the sale of the said property should be paid into Court, and that the said Ellen Jani Pitts should pay such costs as should, on taxation, be allowed.

The other and subsequent orders against which the Appellant sought and obtained Her Majesty's leave to appeal are those of the 27th March, the 13th, the 17th, and the 28th of June, the 2nd and the 15th of July, the 13th and 27th of August, the 25th of October, the 23rd of November, the 3rd and 16th of December, all in the year 1878, and the 7th of January and 5th of February in the year 1879.

It should, however, be observed that before the earliest of these latter orders was made certain other proceedings took place, in consequence of a claim to the three-fourth shares in question which the daughters of Petrocockino had sought to establish in the Turkish Court of the Sheik-ul-Islam. They seem to have obtained a decree of that Court in their favour in the month of July 1874,

and the object of the proceedings in question, which, for the most part, consisted of correspondence between the Consular and Turkish authorities, containing threats of diplomatic pressure, was to induce the latter to give effect to the order of the 18th of July 1874, notwithstanding the decree of the Court of the Sheik-ul-Islam. No sale was, however, made by the Defendant under the order of July 1874. It appears that sometime in the year 1876, a sale by private contract of only the three-fourth shares of the Prinkipo property which were comprised in the mortgage was made by the Respondent, as trustee under the liquidation, with the sanction of the Court, to one Constantinidis as the agent acting on behalf of the mortgagee; and the main object of the subsequent proceedings, now under appeal, was to put him, as the purchaser under that contract, into full possession of the property at Prinkipo. Nor do their Lordships think it necessary to say more of this claim of the daughters of Petrocockino, who, not being parties to the proceedings in the Consular Court, or to this appeal, cannot be affected thereby, than that their rights, whatever they may have been, were apparently subject to those of the mortgagee.

The order of the 27th March 1878 was made on the application of the Respondent. It was in terms an order for the ejection on the 30th of March of the Defendant, Mrs. Pitts, from "the Prinkipo steam flour mill" (meaning apparently the whole of the joint property), condemning her in the costs of and incident to the application.

The order of the 13th of June 1878 was also made on the Respondent's application, and on an affidavit made by him that though certain formalities had been gone through, with the object of giving possession of three-fourths of the mill to Constantinidis in compliance with Turkish

law, the Appellant was still, *de facto*, in possession. The order was that the mill be closed.

Both these orders were made *ex parte*, though ordered to be served on the Defendant.

The last order seems to have brought the Appellant as a party actor into Court; and on the 27th of June he moved for a rule to show cause why it should not be set aside.

The grounds of his application, as shown by his affidavit at p. 11 of the Original Record, were that he was the owner of one fourth of the mill; that Constantinidis had purchased the other three fourths, obtained possession of the same, and signed a protocol to that effect; that nevertheless the Respondent, the trustee, had applied for and obtained the order for closing the mill; that the Appellant was the sole owner of two ovens attached to the mill; that he and his partner, one Xenachi Xenos, were under contract to supply the Russian troops at San Stefano with bread; that they had large quantities of flour and other property in the mill, and would be seriously injured by the closing of it; that Constantinidis had attempted to close the mill, but that the Turkish authorities, who seem to have taken a correct view of the rights of the parties, had, on the protest of the Appellant, refused to do so, declaring that regular proceedings should be taken by Constantinidis. Upon these facts, as appears by the Judge's note at p. 12 of Record, the Appellant insisted that the Respondent, as trustee under the liquidation, had ceased to have any interest in the mill, or a *locus standi* for asking for the order to close it. The rule was refused; and it appears, at p. 19 of the Supplemental Record, that on the 20th of June the Consular Court communicated its order of the 13th of June 1878 to the Turkish authorities, and requested them to give effect to

it by closing the mill. The mill was accordingly closed, and the seals of the Court put upon it.

On the 28th of June 1878, the Appellant moved the Consular Court for leave to appeal to Her Majesty in Council against the order of the 13th of June 1878; but his application was refused, on the ground, as appears by the Judge's note at p. 20 of the Supplemental Record, that the order in question was a necessary consequence of Sir Philip Francis' order of July 1874.

On the 2nd of July 1878, the Appellant moved that the moveable property then under seal at the flour mill should be let free at the disposal of the proprietors; that the two ovens, which were not, as he contended, included in the order for closing the mill, should be let open; that a proper person should be appointed to take care of the engine and machinery of the mill; and that he should be allowed to work the mill for a sufficient time in order to grind the wheat then lying there. The Court refused to grant even a rule to show cause.

The next order under appeal is that of the 15th of July 1878, and, on that occasion, the Appellant and the Respondent seem to have been, for the first time, brought in presence of each other. On the 10th of July, the Appellant moved, on an affidavit filed the day before, and setting forth the damage he was likely to sustain, that proceedings in the matter should be suspended, and that the mill and ovens and separate buildings should be re-opened, until security for such damages should be given to the satisfaction of the Court. On this, the Court granted the rule to show cause, of the 11th July, which is set out at p. 19 of the Record. On the 15th of July 1878 the Respondent put in an affidavit, in which he admitted that he had received from Con-



stantinidis the whole of the balance of the purchase money which remained due after the satisfaction of the mortgage, and showed cause against the rule. The Court, on the same day, made an order which, after erroneously stating that the rule had been obtained by the Defendant, Ellen Jani Pitts, discharged it, and ordered her to pay the costs of a proceeding to which, in fact, she was no party (Record, p. 20). On the same day, this order was communicated to the Turkish authorities, who were informed that it had that day been decided that the closing of the mill had been properly and legally effected. On the 19th of July, the Respondent obtained an order that certain persons named by the Court should make an inventory of the moveable property contained in the mill, and report upon the condition of the machinery. They made their report on the 26th of July, from which it appears that the value of the goods was about 3,090 Turkish liras.

In August, the Appellant renewed his attempt to get the mill re-opened, and, on the 6th of August 1878, obtained a rule to show cause why it should not be re-opened, the whole purchase money of the three fourths having been paid. On the 13th of August that rule was discharged, the costs on this occasion being ordered to be paid by the Appellant. On this occasion, too, the Counsel for the Respondent contended that the Appellant, who was seeking to protect his property, had no *locus standi*, because he was not a party to the suit (Supplemental Record, p. 25).

Thus far, the mill seems to have been, in a manner, placed in *custodia legis*, having been closed and sealed up under the orders of the Consular Court, carried into effect at the instance of that Court with the aid of the Turkish authorities. This state of things, however unjust and irregular as regarded the Appellant, does not

appear to have satisfied the Respondent, who next proceeded to obtain exclusive possession of the whole of the joint property for the purchaser of the three fourths, viz., Constantinidis.

On the 22nd of August, the Respondent moved that, the purchase money having been wholly paid, the keys of the mill, which were in the hands of an officer of the Court, should be delivered to Constantinidis on behalf of Paul Homero, the owner of three fourths of the mill; that the Defendant, Mrs. Pitts, should be ordered to remove the flour and other materials in the mill (which the Respondent, in his affidavit, said he concluded were claimed by the Appellant as his property), upon filing, within 14 days, an affidavit stating that the said property belonged to her and her husband, and that he consented to such removal. The Court made an order to this effect; and added a direction that, in default of Ellen Jani Pitts removing the flour and other materials within 14 days from the date of the order, the same should be sold by public auction, and the proceeds of the sale paid into Court to abide the further order of the Court. This order was made *ex parte*, but was directed to be served on the Defendant, Ellen Jani Pitts. On the 24th of August she filed an affidavit, stating that she had no further concern in the mill; that the flour and other materials directed to be removed belonged not to her, but to her husband and his partner, Xenos, and that she could not interfere with them.

The direction in the order for the sale of these materials, and the payment of the proceeds into Court, was apparently thought too strong even by the Respondent and his advisers, for on the 19th of September he obtained an order that that part of the order of the 22nd of August should be discharged.

In the meantime, however, he had, on the

18th of September, given notice to the Appellant that, unless he removed his goods, they would be put into the public street at his risk and peril.

This notice led to various proceedings in the way of protest, correspondence, &c. In the course of these a report as to the condition of and damage done to the goods stored in the mill was made by surveyors appointed by the Consular Court (Record, p. 34), and served on the Appellant and Respondent, and the seals of the Court were about this time again put upon the mill, in consequence, it is said, of the refusal of Constantinidis, to whom the keys had been delivered, to open it. This led to the order of the 25th of October (the next of those under appeal), by which the Court refused to grant the application of the Appellant for the re-opening of the mill, in order that proper care should be taken of the engine and goods stored therein. The ground of the refusal (as stated at p. 33 of the Supplemental Record) was that the Appellant "had disobeyed the order of the Court, and "had not removed his goods from the premises "as directed," a somewhat singular reason for keeping the mill sealed and closed against him.

On the 23rd of November the Court, on the application of the Respondent, granted a rule against the Defendant Ellen Jani Pitts, calling upon her to show cause why the seals of the Court affixed on the Prinkipo flour mill should not be removed; why the Respondent should not be at liberty to remove the goods, not belonging to him, and then in the mill, into a warehouse at Prinkipo, unless the same should be removed by Joseph Pitts, the husband of the Defendant; and why the Respondent should not be at liberty to retain 30 tons of coal then in the mill to cover the expenses of such removal if made by him.

The Defendant on the 29th of November filed an affidavit, disclaiming as before all interest in the mill or goods, or power in the matter of their removal; and on the 3rd December the Court made an order absolute, whereby it ordered, 1st, that the seals should be removed forthwith, and full possession of the mill be given to George Constantinidis acting for Paul Homère; 2ndly, that unless the goods not belonging to the Plaintiff (the Respondent), and then in the mill, should be removed by the Appellant within four days from the service of the order on the Defendant, the Respondent should be at liberty to remove the same into a warehouse at Prinkipo; and, 3rdly, that the Defendant should pay the costs of and incident to the order. In supporting the rule Nisi, the Counsel for the Respondent for the first time put forward the pretension that the Appellant having been in possession of the whole mill for four years and more his clients had, according to the Turkish law, "the right to possession for their term of years."

On the 10th of December, the Appellant obtained a rule to show cause why the order of the 3rd December 1878 should not be set aside, so far as one fourth of the mill, and the goods stored therein which belonged to him and his partner Xenos, were concerned. But on the 16th December the Respondent showed cause against this rule, which was discharged, with costs, the order of the 3rd of December being expressly confirmed by the Court.

It appears by the declaration of David de Castro, filed in the Court on the 20th of December 1878, that in pursuance of the order of the 3rd December he, in concert with the Turkish authorities, had that day removed the seals of the Court, and given full possession of the mill, of the engine and machinery therein, and bakery to Constantinidis.

The remaining two orders relate exclusively to the ovens which the Appellant claimed as belonging to him exclusively. On the 7th of January he applied for a rule to show cause why the two ovens at Prinkipo, in the locality called Nizam, forming a separate building from the Prinkipo flour mill, its bakery, and its ovens, of which possession had been given to Constantinidis, should not be forthwith returned to the Appellant. In the first instance the Judge of the Consular Court refused to grant the rule. He subsequently changed his mind, and communicated to the Appellant's Counsel his intention to grant one. The Appellant said the rule he moved for had been refused, and declined to accept what was now offered. Nevertheless the Judge caused the rule Nisi, which is at p. 52 of the Record, to be drawn up, and sent to the Appellant, and, after several adjournments, finally discharged it, on the non-appearance of the Appellant, on the 5th of February 1879. The result of the above proceedings seems to have been that Constantinidis obtained exclusive possession of the whole mill and premises, including the ovens, which the Appellant claims as his exclusive property.

Without dwelling upon the minor irregularities which might be pointed out in many of the above proceedings and orders, their Lordships have to observe that, in so far as they affected or purported to affect the one-fourth share of the Appellant, and his rights therein, or were directed to the end, in which they culminated, of expelling him from the mill, they are all open to the fatal objection that they were had and made in a suit to which he was not a party, and in which many of the issues which they purported to decide could not properly be raised or determined.

The only nominal parties to the suit were the trustee under the liquidation, as Plaintiff, and Ellen Jani Pitts, as sole Defendant. Personally she had

no interest in the suit. She was a bare trustee, in whom the whole of the joint property was nominally vested, in order to satisfy or evade the law of Turkey. The suit was defective in making her, even in that character, a Defendant without joining her husband, and if that irregularity be waived so far as her character as trustee is concerned, that waiver would not make her the representative of her husband *quoad* his beneficial interest in the joint property, or give the Court, in a suit so constituted, jurisdiction over it. In one instance his right to intervene for the protection of his interests seems to have been questioned by the Respondent on the ground that he was not a party to the suit. Again, to what was the trustee in liquidation entitled as Plaintiff in the suit? He had acquired the interest of the bankrupts in the property, and it was his duty to realize it for the benefit of the general creditors of the estate; but that interest being subject to the mortgage of 1863, he could not call upon the Court to sell even the three-fourth shares comprised in the mortgage in the absence and without the concurrence of the mortgagee. Nor could the Court, with the concurrence of the mortgagee, sell more than what was comprised in the mortgage.

If again it had power to compel the Defendant, by virtue of its jurisdiction over her personally, to do whatever might be necessary, under the Turkish law, to effect or give effect to such a sale, and to put the purchaser under it into possession, such possession would nevertheless be limited to an undivided share to the extent of three fourths of the property, and, from the nature of the subject matter, would not be exclusive. This done, the interest of the Respondent would cease. The Court had no power to sell the one-fourth share of the Appellant, or to eject him, if in actual possession, or his wife, as trustee

of his one fourth, from the mill. Any questions that might exist or arise between him and the new purchaser of the three-fourth shares, as to their respective rights in the joint property, would have to be determined in a suit between them, properly framed and instituted in the proper *forum*; and, lastly, the Defendant, on a decree being made against her as trustee, would, according to the usual course of justice, be entitled to her costs, instead of being condemned to pay the costs of the proceeding against her.

On the face of it, the order of the 18th July 1874 sins against many of the principles just laid down. The petition on which it was founded prayed for a sale of the whole property, though it asked that only three fourths of the price should be paid into Court. The order went further, and directed that the whole of the proceeds should be paid into Court, *i.e.*, that the property of a man not before the Court should be sold, and the proceeds of it paid into a Court which, in the matter of the bankruptcy, had not the semblance of jurisdiction over him. It was, apparently, made in the absence and without the concurrence of the mortgagee of the three fourths of the property, and the Defendant (the Appellant's wife) was ordered to pay the costs of and incidental to the proceeding.

Some of these objections have, no doubt, since disappeared or become immaterial. It has already been stated that the sale was not made by the Defendant under the order in question; that it was made some time in 1876 by the trustee in liquidation by private contract, with the sanction of the Court; that it was a sale of the three-fourth shares only; and was made to Constantinidis as the agent of the mortgagee Homero. Such a transaction may be taken to be equivalent to a sale by order of the Court, with the concurrence of the mortgagee, at which the latter was allowed

to become the purchaser. The Appellant, therefore, has no substantial grounds for impeaching the sale, if so understood, and he has disclaimed any wish to disturb it. He retains, however, the right to impeach this first, as well as the subsequent proceedings against which he has appealed, in so far as they have injuriously affected his rights and interests in the Prinkipo property, or purported to do so.

One of the subsequent orders, the effect of which has already been stated, may have been made before Constantinidis was put into even joint possession; the others were all made after that event. The formalities mentioned in the affidavit of the Respondent of the 13th June 1878, already referred to, are then said to have been gone through, in pursuance of the order of the 27th of March 1878, and therefore after its date. This order of the 27th of March 1878 is nevertheless open to the objection on the part of the Appellant, that, even if made before such constructive possession was given, which seems doubtful, it is in terms an order for the ejection of the Defendant, Ellen Jani Pitts, from the Prinkipo flour mill generally, and consequently for her ejection from the one-fourth part, which, if in possession at all, she held for the Appellant.

All the remaining orders appealed against, whether for the closing of the mill, and putting the whole property *in custodia legis*, or for giving exclusive possession of it to Constantinidis, seem to their Lordships to have been improperly made, either at the instance of the Plaintiff (the Respondent), in violation of the rights of the Appellant, or in disregard of his right to appeal from and claim relief against such orders, on the ground that they injuriously affected his interests. On the delivery of possession, actual or constructive, to Constantinidis, the interest of the trustee under the liquidation in the property presum-



ably ceased. Some passages in the affidavits of the Respondent, or in the notes of the arguments of his Counsel, indeed seem to assume that under the contract of sale he was under an obligation to put Constantinidis into actual possession of the whole mill. Such an obligation, however, if it existed, was one which he had no power to incur, or to perform, in derogation of the rights of the Appellant. Nor can it be assumed in the absence of the contract of sale, which is not to be found in the Record, that such an obligation had been really incurred. It has been before stated that any questions which subsisted or might arise between Constantinidis and the Appellant, as joint owners of the mill and other property, ought to have been litigated and determined between them in the manner already indicated. That there were questions of this kind appears abundantly on the Record. Such, for instance, were on the one hand the claim of the Appellant to an exclusive property in the two ovens and the separate building in the locality called Nizam, and on the other the suggested right of Constantinidis under the Turkish law to the exclusive use and possession of the mill during a term of years. It appears to their Lordships that Constantinidis, instead of litigating these questions fairly, has sought to get them indirectly determined in his favour, by the proceedings taken in the Consular Court in the name and at the instance of the Respondent; that the Respondent has, from some motive or another, become his instrument, and lent himself to that course of action; and that the Court has improperly sanctioned it by the orders in question.

That the Appellant has suffered grievous wrong by reason of these irregular proceedings is unquestionable. He has been wrongfully put out of possession of his property, in a country where

a British subject is likely to encounter peculiar difficulties in regaining the possession of which he has been unjustly deprived. In addition to this, it is clear that his moveable property (the flour, &c.) stored in the mill has been greatly damaged. It is unhappily impossible for their Lordships, in the peculiar circumstances of this case and on this appeal, to give him full and adequate relief. They cannot, having regard to the power of the Turkish authorities over the land, and to the fact that Constantinidis is not subject to the jurisdiction of the British Consular Court, absolutely direct a restoration of possession, still less can they deal with the question of damage done to the moveable property. They are, however, bound to do what they can, and the order which they propose to recommend Her Majesty to make is to the following effect, viz. :—

Declare that the orders of the 18th of July 1874 and the 27th of March 1878 are void and of no effect against the Appellant, and order that the same be set aside in so far as they affect or purport to affect his interest in the Prinkipo property, or direct the payment of costs by the Defendant Ellen Jani Pitts, his wife.

Declare that all the orders under appeal subsequent to the orders of the 27th of March 1878 were irregularly and improperly made, and order the same to be reversed and set aside.

Declare that the Appellant, or his wife Ellen Jani Pitts as trustee for him, ought to be restored to the possession of one-fourth share of the Prinkipo property, but without prejudice to any of the questions between him and Constantinidis, as the purchaser of the other three-fourth shares of the said property, or any person claiming by virtue of the sale to such purchaser, including the claim of the Appellant to the exclusive ownership of the two ovens in the locality called Nizam, mentioned in the rule Nisi of the 7th of

January 1879; and order that the Consular Court do take all such proceedings as are within its jurisdiction, in order to effect such restoration of possession.

Order that all costs which may have been paid under the orders under appeal, either by the Appellant or by the Defendant Ellen Jani Pitts; his wife, be repaid to him.

Declare that the Appellant is to be at liberty to take such proceedings as he may be advised against the Respondent, or any other person, to obtain restoration of his property above mentioned; and also in respect of the damage done to his moveable property stored in the mill, by reason of the closing of the said mill, or the subsequent removal of such property or otherwise sustained by him under any of the orders under appeal.

Order the Respondent to pay to the Appellant all such costs as were incurred in the Consular Court by him, or his wife (the Defendant Ellen Jani Pitts), of and incidental to all the orders under appeal, or of opposing the rules upon which such orders were made, except the costs of the rule of the 7th January 1879, and of the order of the 5th of February 1879, made thereon; such costs to be taxed by the Consular Court. And also order that the Respondent do pay the costs of this Appeal.

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