

It is clear from the case of *Juma v. Halil Imam* (1899) 5 C.L.R., 16, that a person who has neither a gochan nor a right to a gochan cannot challenge a trespasser. Much less can he challenge a person armed with a gochan. And if the Defendant is not entitled to challenge the Plaintiff's gochan by cross-action, still less can he do so by way of defence.

*Appeal allowed.*

TYSER, C.J.  
&  
BERTRAM,  
J.  
—  
HAJI  
GEORGI  
HAJI  
KYRIAKOU  
AND  
OTHER  
v.  
KYPRIANO  
MANUEL

[TYSER, C.J. AND BERTRAM, J.]  
HARIT EFFENDI HASSAN FEDAYI

TYSER, C.J.  
&  
BERTRAM,  
J.  
1910

v.  
MULLAH MUSTAFA MULLAH HUSSEIN KOUMBI.

December 2

ACKNOWLEDGMENT OF DEBT—AGREEMENT TO BREAK THE LAW—MEJELLE, ART. 1610—AGREEMENT FOR PAYMENT OF UNQUALIFIED PERSON FOR PRACTISING AS ADVOCATE—"PRACTISING AS AN ADVOCATE"—ADVOCATES' LAW, 1894.

*Defendant by an agreement in writing appointed the Plaintiff as his agent to effect the partition of certain properties in which he was interested, to engage an advocate in the event of litigation, to conduct his business in the Land Registry Office, and to carry out any compromise that might be come to in any matter in dispute, and undertook to pay him £30 for his services.*

*HELD: that this agreement was not illegal, as engaging an unqualified person to practice as an advocate, inasmuch as the services to be rendered were neither among the services enumerated in the definition of "practising as an advocate" in the Advocates' Law, 1894, nor such services as in the nature of things could only be rendered by an advocate, and that consequently a bond given in pursuance of this agreement was enforceable.*

*SEMBLE: The Court will not enforce an acknowledgment of debt though in customary form within Art. 1610 of the Mejelle if it is shown that it is given in pursuance of an agreement retaining an unqualified person to practice as an advocate.*

This was an appeal from a judgment of the District Court of Nicosia disallowing a claim for £30, made under an agreement, for certain services rendered by the Plaintiff to the Defendant.

The agreement was as follows:—

"I hereby appoint Ahmed Harit Effendi Fedayi Effendi as my agent for the sum of £30, authorising him to divide with my co-shareholders the properties which came to me by inheritance from the late Naim Bey Mehmed Agha Koumbi Hassan; and if any action is brought before the Court either on my behalf or against me to appoint an advocate to conduct the case; and to supervise any business I may have at the Land Registry Office, and if there is any necessity for me to make a compromise with any of my co-shareholders to carry it out accordingly."

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The Defendant gave the Plaintiff a bond for £75, which included an item of £30 as payment for the services above contracted for, but the Court disallowed this item, on the ground that in so far as the bond related to this item it was "not valid for want of consideration" because Plaintiff was not a duly qualified person to perform the "alleged services."

The Plaintiff appealed.

*Severis* for the Appellant.

*Jemal Effendi* for the Respondent.

The Court allowed the appeal.

*Judgment* : This case seems a very plain one. The District Court seems to have thought that this bond was not, enforceable, or was only partly enforceable because it was given in pursuance of an illegal agreement. This is not what the Court has said. What it has actually said is, that it is "not valid for want of consideration, because Plaintiff was not a duly qualified person to perform the alleged services." But what it presumably meant was that the Plaintiff illegally agreed to act as the Defendant's advocate, not being qualified to do so, and that consequently the Court would not enforce the bond in so far as it was given to secure a sum due to him under this illegal agreement. If it were shewn that under the agreement the amount in question was payable for services which could only be rendered by an advocate, so that it was in effect an agreement entered into in order to break the law, no doubt the judgment of the District Court would have been quite justifiable. In the case of *Kalava v. Basilou and Ioannides* (1907) 7 C.L.R., 67, a bond for £500 was given to secure the performance of an agreement for the unlawful exportation of unlawfully excavated antiquities, and the Court refused to enforce the bond, as being given in pursuance of a conspiracy to break the law. If therefore a bond was given in pursuance of an agreement that a man should illegally practise as an advocate, the Court would no doubt refuse to enforce it. Or if, without any such agreement it was given as payment for an unlawful act, as for example a murder, the position would no doubt be the same.

The question is, therefore, were the services which were to be rendered in this case services which can legally be rendered only by an advocate? Now, the services which can legally be rendered only by an advocate are specified in Sec. 11 of the Advocates Law, 1894. They are:—

1. Appearing before a Court or Judge and conducting a case or proceeding for any other person;
2. Attending at the office of a Court for the purpose of taking any proceeding on behalf of any other person;

3 Preparing for reward certain specified classes of documents to be used in legal proceedings

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This Section is not necessarily exhaustive, and if in any case it was shewn that any person had exercised functions which though not specified in the Section were in the nature of things functions which could only be properly exercised by an advocate, we should probably hold that the same principles would apply to such a case. But in this case the services to be rendered are specified in an agreement which is in writing and they are as follows:—

1. To carry out a partition of certain properties in which the Defendant had inherited a share;
2. To appoint an advocate to conduct any necessary litigation,
3. To supervise any business the Defendant might have at the Land Registry Office in connection with the partition,
4. To carry out any compromise that might be effected with any of the other co-owners.

There is nothing in any of these services which is either specified in Sec. 11 among the services which must be rendered exclusively by advocates, nor are they services which in the nature of things can only properly be rendered by an advocate.

There is nothing whatever illegal therefore about the agreement, and there is no reason why a bond given to secure a sum due under the agreement should not be enforced. The appeal must therefore be allowed, and judgment entered for the Plaintiff for the full amount claimed

*Appeal allowed.*

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

BASILI KOUTSOUDI

v.

CHRISTOFI IOANNI.

TYSER, C.J.  
&  
BERTRAM,  
J.  
1910  
December 8

EXECUTION—SALE OF IMMOVABLES—WRIT OF SEQUESTRATION—EXEMPTION OF HOUSE ACCOMMODATION—CIVIL PROCEDURE LAW, 1885, SEC. 71—ORDER XVIII, RULE 19

*An application for a writ of sequestration in substitution for a writ of sale of immovable property can only be made after the writ of sale has actually issued and must be supported by sworn evidence showing that the rents and profit of the property to be sequestrated will satisfy the judgment debt within three years*

*The writ should direct some person named therein to enter upon the property in question, and collect the rents and profits and pay them to the judgment creditor in discharge of his debts*

*In applications for the issue of a writ of sale of immovables the provision of Order XVIII, rule 19 (said to have fallen into abeyance) must be strictly observed.*