FISHER, C.J. & GRIM-SHAW, P.J.

REX v. THEODOROS PAPA YORGHI

power to provide penalties of a reasonable amount (Maxwell's Interpretation of Statutes, 3rd. Edn. p. 417.) What precisely would be the extent of that power it would be difficult to say, but a penalty which is ten times as great as the maximum penalty provided by section 14, which provides for cases in which fraud is of the essence of the offence, would certainly seem to be in excess of the power conferred by the Law. The conviction therefore will be altered to a conviction of an offence under section 14, and the appellant must pay a fine of £10 or suffer three months imprisonment in default. The order for forfeiture is of course cancelled, no provision for forfeiture being made by section 14.

FISHER, C.J. & GRIM-SHAW, P.J. 1923

November 13

[FISHER, C.J. AND GRIMSHAW, P.J.]

MICHAEL G. NICOLAIDES

v.

MARIKKOU LOIZOU.

BOND—MORTGAGE—COLLATERAL AGREEMENT—PREMATURITY.

Appeal of plaintiff from the judgment of a District Court dismissing the claim of plaintiff.

The facts appear sufficiently from the judgment of the District Court which runs as follows:—

Judgment: In this case the plaintiff claims the sum of £160 on a mortgage bond dated the 11th April, 1922, and payable on the 11th April, 1923. This bond was made under the following circumstances:—

A certain Costi Louroudjati—the son of the defendant—was in financial difficulties and applied to the plaintiff for help. The plaintiff obtained for Costi Louroudjati a loan from Mr. Selim Sassin of £450. This loan was repayable by Costi Louroudjati in two years from the 11th April, 1922, and was guaranteed by the plaintiff and others. It was a condition of the bond that if the interest on this bond was not paid at the end of the first year this bond should become due. In order to cover himself the plaintiff was given by the defendant the mortgage bond which is the subject of this claim. At the end of the first year Costi Louroudjati did not pay the interest on the bond of £450 to Mr. Sassin. On the other hand there is no evidence that he was ever asked to pay. Mr. Sassin admits he never wrote to him. All he says is that he went to his shop three or four times and found it closed and then informed the guarantor. The guarantors paid the interest amounting to £45 on the 21st May, 1923.

The question before the Court is whether in these circumstances the plaintiff can recover on the mortgaged bond of £160. Now Art. 1610 of the Mejellé lays down that an acknowledgment of debt in customary form is conclusive. In *Sotiriou v. Zissimou* 8 C.L.R., p. 20, this article was considered; it was held, that, it is open to a person, bound by such an acknowledgment, as against the person to whom it was given, to show the condition on which according to the real agreement between the parties, it was to become enforcible.

Now the bond in this case was given as a security in case the guarantors should be called upon to pay the sum of £450 which they had guaranteed to Mr. Sassin. The guarantors have not been called upon to pay this sum of £450. In fact the interest has now been paid and hence Mr. Sassin has no cause of action in respect of this bond of £450. This case would therefore come within one of the qualifications to the doctrine that an acknowledgment of debt in customary form is conclusive and which qualifications are mentioned by Mr. Justice Bertram in his judgment. The case of *Christofi Haji Nicola v. Haji Michaili Haji Pavlou* is equally in point.

In these circumstances in view of the fact that the guarantors have not been called upon to pay, we do not consider that the time has yet arrived when the bond of £160 is enforcible by action. As to whether the power of attorney which the defendant gave her son was sufficient authority for him to contract this mortgage on behalf of his mother, we need not speculate in view of our decision on the other point. There must be judgment for the defendant with costs.

Paschalis and *Triantafyllides* for Appellant.

Clerides for Respondent.

Judgment: Upholding the judgment of the District Court.

Appeal dismissed with costs.