

[FISHER, C.J. AND STUART, J.]

HEIRS OF YANCO MICHAIL PAMBOULO

v.

MARIA A. ANASTASSIADES.

FISHER,  
C.J.  
&  
STUART, J.  
1923  
March 28WILLS AND SUCCESSION LAW, 1895—LAW OF 17 MUHARREM 1284—DOCUMENT  
PURPORTING TO DISINHERIT.

*By a document executed by the deceased father of the parties, and the Defendant and her intended husband, under which certain Arazi-Mirié and mulk property was given to the Defendant by her father, it was declared that the Defendant was disinherited from succeeding to any of his property after his death. He died intestate.*

HELD: *That the document could not operate to defeat the Defendant's right of succession to Arazi-Mirié under the Law of 17 Muharrem 1284, nor, subject to her complying with the proviso to Sec. 40 of the Wills and Succession Law, 1895, as regards property other than Arazi-Mirié, could it defeat her claim to share in the other property of which her father died possessed, inasmuch as it purported to operate as a will and affect the disposal of his property after his death.*

This was an appeal from a judgment of the District Court of Nicosia.

The Defendant was the daughter of the deceased Yanco Michail Pamboulo and sister of the Plaintiffs. In contemplation of the Defendant's marriage an agreement called a document of dower was drawn up and executed under which her father (1) gave her a house and other property, and (2) agreed to transfer certain land (Arazi-Mirié) to her in lieu of paying her a certain sum of money, a portion of which had been advanced to him by her. The marriage took place and the Arazi-Mirié was transferred to the Defendant.

The document contained a clause to the following effect:

“ Maria is thus disinherited from the whole of the paternal estate.”  
On the death of the father the Plaintiffs brought an action claiming, *inter alia*, to restrain the Defendant from interfering with the Arazi-Mirié of which their father had died possessed. On this part of the claim the District Court gave judgment in the following terms: “ The Plaintiffs in this case rely upon a document of dower (exhibit A.P.1), in “ which the Defendant in consideration of what she was then about “ to receive contracted not to claim anything in her father's property “ after his death. This was a contract and not a will requiring the “ formalities of the Wills and Succession Law, 1895, to be complied “ with. We find no reason why the Defendant should not contract “ as she purports to do in A.P.1. Under these circumstances we find “ for the Plaintiffs as claimed in Part I. of the claim together with “ costs.”

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The Defendant appealed.

*N. Paschalis* (*Panagides* with him) for Appellant.

Document is a bare declaration, no consideration for it and moreover in conflict with law of inheritance. He referred to Case XI. on p. 89 of Macnaghten's Principles and Precedents of Mohammedan Law (Ed. 1825).

*N. G. Chrysafines* (*Clerides* with him) for the Respondent.

Contract binds Appellant. She took the benefit of it. She must bring into hotchpot the value of the Arazi-Mirié she took.

*N. Paschalis* in reply.

*Judgment*: We have to consider in this case whether in consequence of the "document of dower," which the Defendant signed and under which she has taken benefits, she is precluded from sharing in the distribution of her deceased father's estate and from succeeding to any share of the Arazi-Mirié of which he died possessed.

Under the Wills and Succession Law, 1895, which was held in *Della v. Haji Michail*, C.L.R., VI., 23 not to apply to Arazi-Mirié, the estate of deceased, who died intestate, is distributable amongst the parties to this action. The Arazi-Mirié descends in accordance with the Law of 17 Muharrem, 1284. What is the effect of the document of dower? The Defendant seeks to retain the benefits she received under it and also to have the benefits of succession under the laws mentioned, and were this a case to which English equitable doctrines applied in determining the rights of the parties there might be a question to be argued, as to part of the property at all events, whether the Defendant was not put to her election whether she would take against the document and surrender the benefit she took under it, or hold on to what she took under the document and surrender anything she would otherwise take by inheritance from the property of her father.\*

We do not think, however, that we are called upon to discuss that. The question in this case is whether the document can take effect so as to deprive the Defendant of rights which she would otherwise have under the two laws referred to.

This document is in the nature of a settlement of property by the father on his daughter on her marriage by which he purported to affect the disposition of his property after his death, that is to say, it is a

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\* For a case in England in which a testator purported to devise land in Turkey giving rise to a case of election see *Haynes, v. Foster* 1901, 1 Ch., 361.

document intended to take effect after his death and to affect the disposition of property by cutting out one of the persons to whom by law it would descend. In our opinion that is invalid so far as he is concerned. It is in the nature of a will in so far as it affects such of his property as is affected by the Wills and Succession Law, 1895, and conflicts with the law of 17 Muharrem, 1284, so far as it seeks to affect the descent of the Arazi-Mirié. Therefore, in so far as the document purports to disinherit the Defendant at the instance of her father it fails. The question then arises whether the fact that the document is in form a contract, to which the Defendant was a party and under which she has benefited, makes any difference.

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Can she contract herself in this way out of the benefits which the law decrees she shall derive from her father's property after his death? Can she in effect by taking a share in the transaction enable her father to do what he would otherwise be precluded by law from doing? We do not think she can. This is not a case in which for good consideration moving from the Plaintiffs the Defendant agreed to transfer to them the benefits she might thereafter receive from her father's estate, and if it were it does not follow that the Court would hold that to be a contract which would bind her except perhaps in so far as it obliged her to refund anything she had received from the Plaintiffs as a condition of her enjoying what she had been paid to forego.

The finding of the District Court therefore, in our opinion, cannot be supported. In our opinion the Defendant is not precluded from inheriting her share in the Arazi-Mirié of which her father died possessed, nor from succeeding to her portion of her father's estate which has become distributable under the Wills and Succession Law, 1895.

At the settlement of issue the Defendant admitted that she was bound under Sec. 40 of the Wills and Succession Law, 1895, to bring into hotchpot all that she had received under the document other than Arazi-Mirié, and, although the question of whether any terms are put upon her by that Section when inheriting her share of the Arazi-Mirié was not strictly before us, the point was dealt with in argument and we are of opinion that, inasmuch as the devolution of the Arazi-Mirié does not depend on the Wills and Succession Law, 1895, Sec. 40 cannot apply to it.

*Appeal allowed.*