[SMITH, ACTING C.J. AND TEMPLER, ACTING J.]

SMITH, ACTING C.J. & TEMPLER, ACTING J. 1888.

HJ. YANNI PAPA NICOLA *Plaintiff,*

*v.*

CHRISTODULO YANNI *Defendant.*

June 4.

MISTAKE OF FACT ARISING FROM MISTAKE OF LAW—IGNORANTIA JURIS HAUD EXCUSAT—AGREEMENT—MEJELLE, ARTICLE 1610.

Where parties enter into an agreement under a mutual misconception as to their respective rights, the agreement is liable to be set aside as having proceeded on a common mistake.

APPEAL from the District Court of Paphos.

Mariou Haralambo died in 1882, leaving her husband the defendant, and two uncles, one of whom is the plaintiff, surviving her; but neither children, parents, brothers nor sisters. The deceased left property consisting of arazié, mulk and moveables. After her decease a dispute arose between the plaintiff and defendant as to the division of the property, and eventually on the 16th November, 1882, an agreement was drawn up and signed by the parties by which a certain partition of all the estate was agreed to, and defendant thereby bound himself to pay the sum of £150 if he interfered with plaintiff's possession of the property so assigned to him. Five years afterwards the defendant brought an action against the plaintiff to recover possession of the lands assigned to plaintiff by the agreement, and the Court gave judgment in accordance with the claim. Thereupon plaintiff brought this action claiming half £150 on the ground of the breach of the agreement as regards the lands.

The District Court dismissed the action.

The plaintiff appealed.

*Pascal Constantinides*, for the appellant: I appeal on two grounds: (1). There was no issue settled in the District Court. (2). There was no fraud. The defendant admitted making the agreement but alleged that the plaintiff had deceived him. The Court was not justified in annulling this agreement except on the ground of fraud (Article 1610 Mejellé).

*Respondent*, in person: The plaintiff knew he was not entitled to the lands and he and his brother deceived me.

*Judgment:* This is an appeal from the judgment of the District Court of Paphos dismissing the plaintiff's claim to recover £75 said to be due under a contract dated November, 1882. July 24.

The circumstances under which this document was drawn up are the following:—

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The defendant married the niece of the plaintiff. On the decease of the defendant's wife, her property, moveable and immoveable, was divided between the plaintiff, his brother Sava and the defendant.

On the division of the immoveable property, the document above referred to was drawn up. It specifies the lands, including apparently both arazié mirié and mulk properties, to be given to the plaintiff and his brother as their shares, and ends with an engagement on the part of the defendant to pay them £150 if he disturbs them in their possession of the property so assigned to them. The defendant submits that subsequently to the date of the document he brought an action against the plaintiff and his brother and recovered possession of certain fields described in the document.

We understand that by these fields is meant the arazié mirié properties.

The plaintiff thereupon commenced this action and the District Court gave judgment against him, on the ground that they could not be certain that both parties had acted in good conscience. We have had some difficulty in ascertaining what the meaning of the reason given by the District Court is, but in the view we take of this case it is unnecessary to consider it further.

Two objections were raised to this judgment: (1) that there was no issue settled and (2) that the Court could only set aside the document on the ground of fraud, and that there was no sufficient evidence of fraud.

With regard to the first objection, we have perused the proceedings which took place on the settlement of the statement of the matters in dispute, and find that after the plaintiff stated his claim, the defendant admitted the facts stated by the plaintiff, and then proceeded to allege that the plaintiff and his brother came to him, and informed him that they had ascertained on enquiry at the Tapou Office that they were entitled to share equally in the lands, that the villagers suggested that they should divide the lands without reference to the Tapou Office and that he then consented to a division of the lands.

The defendant also alleged that the moveable property of the deceased had been divided between the plaintiff, his brother and himself at the time of the death of the deceased.

The plaintiff does not appear to have specifically admitted or denied the allegations of the defendant, and no further proceedings at the settlement of issue took place. Strictly speaking, there were no facts in dispute between the parties,

and no issue to settle, and the matter was referred by the Judge to the District Court. On the following day the parties appeared before the Court. There is a very short note of the proceedings before the District Court, but we gather from it that the proceedings, on the settlement of issue, were read over and that the Court considered the only question to be decided was, whether the document was entered into by mistake; and a date was fixed for the defendant to prove that the document was entered into by mistake. The meaning of these proceedings appears to us to be that the statement of the matters in dispute was practically settled before the Court. The action seems to have proceeded on this understanding and both parties seem to have been aware what the matter in dispute really was. No application was made by the plaintiff for any other issue to be settled, and though the proceedings in this case appear to have been somewhat informal, it does not appear to us that the plaintiff was in any way prejudiced. The main object of the settlement of an issue, *i.e.*, to make both parties aware of what is really in dispute between them, appears to have been accomplished, and we must therefore decline to set aside this judgment on the ground that no issue was settled.

With regard to the second point, the Court below seem to have had considerable difficulty in making up their mind as to whether the parties were both acting in good faith when this document was drawn up. There seems to be no very satisfactory evidence of fraud on the part of the plaintiff, and the question we have to decide, is whether this document, entered into when both parties were ignorant of their legal rights, can be allowed to stand. We have looked through the Mejellé but can find nothing that helps us in a solution of this question. This is not such a case as is provided for by Article 1610 of the Mejellé quoted by Mr. Pascal where the signature to an acknowledgment of debt is denied, and where there is some suspicion that the document is a forgery, and the supposed debtor is called upon to swear that he is not indebted.

We must therefore decide this case upon general principles. It is a well grounded rule that every one is presumed to know the law, and that, in general, persons who have acted in ignorance of the law must abide by the consequences.

This rule is probably of universal acceptance in all countries, and indeed it is difficult to see how the business of every day life could be carried out in the absence of such a rule, as it is impossible to foresee to what extent the excuse of ignorance might not be carried. There are, however, some well defined exceptions to this rule. There

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is a well known rule of the Civil Law. Non videntur, qui errant, consentire, and this rule is founded alike on common sense and common justice. Where two persons have entered into a contract in material error as to circumstances material to it and its consequences, such a contract would appear, on general principles, invalid.

Again, there is a well known class of cases decided by the Courts in England on principles somewhat analogous. We allude to that class of cases where the Courts have decided it would be inequitable to enforce transfers and agreements relating to property which have been made or entered into by a party in ignorance or misconception of his own right to the property. Thus we find that it "has been laid down as unquestionable doctrine, that if a party acting in ignorance of a plain and settled principle of law, is induced to give up a portion of his indisputable property to another under the name of a compromise, a Court of Equity will relieve him." And again, "where the party acts upon the misapprehension that he has no title at all in the property, it seems to involve in some measure a mistake of fact: that is of the fact of ownership arising from a mistake of law. A party can hardly be said to intend to part with a right or title of whose existence he is wholly ignorant, and if he does not so intend, a Court of Equity will, in ordinary cases, relieve him from the legal effect of instruments which surrender such unsuspected right of title."

The present case seems to us to be one to which the principles above stated should apply. It seems to us to have been assumed on both sides that the plaintiff and his brother were entitled to share with the defendant in the arazié mirié left by the defendant's wife, and that this document was not intended in any way as a compromise of disputed or doubtful rights. The defendant's engagement was entered into on the mutual understanding that he was entitled only to one-third share of the arazié mirié, and, but for this understanding, would not have been entered into at all. A transaction like the present one, in which an ignorant peasant binds himself in a penalty of £150 to respect the terms of a document so entered into, is one which we regard with great suspicion, and we therefore consider that he is entitled to be relieved from his engagement to pay the £150.

It was contended before us that the document was intended as a compromise of the right of the plaintiff in all the inheritance left by the defendant's wife, *i.e.*, in both the moveables and immoveables: but it seems to us from a perusal of the document that this is not so, and that it only embraces the immoveable property. The defendant alleged at the time of the settlement of the matters in

dispute that the moveables were divided at the time of the death of his wife, and the plaintiff not having denied this allegation must be taken to have admitted it. It seems clear too from the evidence taken before the Court, that the moveables were divided between the plaintiff, his brother, and the defendant.

For the reasons above stated, we are of opinion that the judgment of the District Court must be affirmed, and that the appeal must be dismissed with costs.

*Appeal dismissed.*

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[BOVILL, C.J. AND TEMPLER, ACTING J.]

NICOLA L. GEORGHIADES AND OTHERS — *Plaintiffs,*

*v.*

YOUSSOUF ZIA — *Defendant.*

MUNICIPAL COUNCIL—DECLARATION OF MEMBER—UNAVOIDABLE CAUSE PREVENTING MAKING OF DECLARATION—PENALTY—APPLICATION OF PENALTY—MUNICIPAL COUNCILS' ORDINANCE, 1882, SECTIONS 43 AND 99.

Section 43 of the Municipal Councils' Ordinance, 1882, provides that if any unqualified person shall act as President, Vice-President or Member of a Municipal Council he shall "for every such offence forfeit the sum of £20, such sum to be recovered with full costs of suit by any person who will sue for the same." By Section 99, when the application of any penalty is not otherwise provided for, any portion thereof not exceeding one-half may be awarded to the informer, etc.

HELD: That the words of Section 43 do not import any application of the penalty to be recovered thereunder; and that under Section 99 not more than one-half of such a penalty can be awarded to an informer.

APPEAL from the District Court of Larnaca.

Action to recover the sum of £20 as a penalty for having acted as Vice-President of the Municipal Council of Larnaca without having made the declaration required by Section 38 of the Municipal Councils Law, 1882, within seven days of the date of election as a Municipal Councillor.

An election of members for the Municipal Council of Larnaca was held on the 22nd March, 1888, at which the defendant was elected a member; and on the 30th March he made a declaration in the form required by Section 38 of the law. That section provides that if any person elected a member shall neglect to subscribe the declaration within seven days from the date of his election, unless prevented by illness or other unavoidable cause, he shall cease to hold office.