some hydrochloric acid which corroborate this woman's story as to the hocus pocus of magic which he worked on them. The witness Kyriacos Michael (6th prosecution witness) stated that the 1st appellant had suggested introducing to him a girl to whom he could get married. He states: "On one occasion he (the 1st appellant) stated that he knew a certain Androulla to whom I could get married. He said, "You can come to my house to meet her". The following day accused brought with him to the P.W.D. yard witness 2 and he said that that was the girl about whom he had spoken." Joseph Poutros, 8th prosecution witness, said: "Few days later accused 1 came up to me again and told me that he could do magic and he possessed supernatural powers. I took this as a joke and did not pay attention. He said he could take to his house any woman". This witness also said that the first appellant had said that he could "turn the water into acid and make it foam". The trial Court accepted both the evidence of Kyriacos Michael and Poutros.

Although we are unable to say this evidence is sufficient for us to say that there was no substantial miscarriage of justice in convicting the appellant on the 6th count, that is, the charge relating to Panayiota Perdiki, we consider that properly directed a reasonable jury would have without doubt convicted both the appellants on the 4th count which relates to the offence committed on Androulla. *The conviction of the appellants on all counts except the 4th count must be quashed. We see no reason why the sentence on each appellant in respect of the 4th count should be disturbed. Sentences to run from date of conviction.*

[HALLINAN, C.J. and ZEKIA, J.]
(January 7, 1956)

PANAYIOTIS STYLIANOU MYRIANTHOUSIS
alias
TAKIS STYLIANOU MYRIANTHOUSIS, *Appellant,*

v.

DESPINA PETROU, *Respondent.*

(Civil Appeal No. 4146)

Contract — Breach of promise — Minor not competent — Contract void—Section 11 of Contract Law—Common law excluded — Custom not a source of law usage repugnant to statute——Recognition of contract by Greek Orthodox Tribunal unavailing.

The plaintiff sued for breach of promise. At the time of the promise she was under 18. Section 11 of the Contract Law specified the persons competent to contract and includes every person who "has attained the age of eighteen years."

The trial Court held that despite section 11, the contract made by the minor was not void; the common law of England applied; the contract was voidable not void and the minor could sue thereon.

Upon appeal,

Held: (1) A person who does not come within section 11 is by inference not competent to contract and under section 10 (1) such agreement is void. The common law of England not applicable.

Universal Advertising and Publishing Agency and others v. Vouros (19, C.L.R., p. 7); and Markou v. Michail (19, C.L.R., 282) distinguished. Mohori Bibee v. Dhurmodas Ghose (19 Times Law Reports, 295) applied.

(2) Even if the religious law of the parties recognised contracts of marriage where one party is a minor, section 34 of the Courts of Justice Law, 1954, only saves matters of marriage and family status, but does not affect claims based on contract. Apart from section 34, custom is not a source of the law administered in the District Court of Cyprus. Usage can modify a contract but not, as in this case, where its application would be repugnant to statute law.

Appeal allowed.

Note: Section 11 of the Contract Law now amended by Law No. 7 of 1956: Marriage Contracts by infants as in English Law are now voidable and not void.

Appeal by defendant from the judgment of the District Court of Limassol (Action No. 514/55).

G. P. Cacoyannis for the appellant.

H. Maounis for the respondent.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C. J.: In this case the defendant-appellant promised to marry the plaintiff-respondent who accepted his promise. At the time of this contract to marry the plaintiff-respondent was a girl under 18 years of age. The appellant later repudiated his promise on the ground that the respondent was an epileptic. The trial Court found that the appellant, having failed to prove the epilepsy, was not justified in repudiating his promise. The Court further held that despite the provisions of section 11 of the Contract Law (Cap. 192) a contract entered into by a minor is not void under the Contract Law and that the common law of England should be applied under which a contract to marry is not void but only voidable and that the minor could at her election sue thereon.

Section 10 (1) of the Contract Law provides that "all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object ..." and section 11 provides: "Every person is competent to contract who — (a) has attained the age of eighteen years ... Provided

that a married person shall not be deemed to be incompetent to contract merely because such person has not attained the age of eighteen years". When considering these sections in their judgment the trial Court said: "Now, we went very carefully through the whole of this part of the Contract Law and we were unable to find any provision that a contract entered into by a minor is a void contract, so we have to look into the English common law . . ." [We are unable to accept this view because although sections 10 and 11 tell us what are the essential ingredients in an agreement so as to make it a contract, and also who are the persons competent to contract, nevertheless, by inference, a person who does not come within the provisions of section 11 is not competent to contract; and by inference, under section 10(1) an agreement made with a party who is not competent to contract is not a contract and is therefore void. In our view the legislative authority has provided that a contract entered into by a minor is void; nor, reading these sections, is there any ground for holding that it was the intention of the legislature merely to reproduce the common law, and therefore in our view the common law principle that infants' contracts in general are voidable rather than void should not in this case be applied. Indeed, the legislative authority appears to have had in mind the desirability of not avoiding certain infants' contracts when it enacted the proviso to section 11, making competent married persons under the age of eighteen to contract; and when it also enacted section 68 of the Contract Law concerning necessaries supplied to persons incapable of contracting.]

The interpretation which we have placed on this section may be compared with the decision of this Court in the case of the *Universal Advertising and Publishing Agency and Others* v. *Vouros* (19, C.L.R., p. 7), where it was held that section 31 of the Civil Wrongs Law (Cap. 7) in providing for the tort of passing off goods had not made provision for the cognate tort of passing off a business; and since no provision has been made for the latter tort an action lay for this tort at common law. A comparison may also usefully be made with the case of *Markou* v. *Michail* (19, C.L.R., 282), where it was held that section 73 of the Contract Law merely reproduces the general principle of the common law for assessing damages in contract, and therefore the gloss or exception to this rule contained in the common law regarding damages in cases of breach of promise should be applied in Cyprus. This section reproduces section 73 of the Indian Contract Law, concerning which Pollock & Mulla, (6th Edn., 418) have the following note: "The intention was plainly to affirm the rule of the common law as laid down in the Court of Exchequer in the leading case of *Hadley* v. *Baxendale*".

Section 11 of our Law corresponds with the section 11 of the Indian Contract Law and the interpretation of the

Indian section was considered by the Judicial Committee of the Privy Council in 1903. Prior to that date the High Court in India had endeavoured to avoid construing the section so as to make minors' contracts void since to do so would involve a wide departure from the English common law which it was the general purpose of the Indian Act to embody. However, in the case of *Mohori Bibee* v. *Dhurmodas Ghose* (19, Times Law Reports, 295) it was decided by the Privy Council that the section must be given its literal interpretation and that infants' contracts are void. In the course of their judgment their Lordships said at page 296:

> "Having regard to the various sections of the Indian Contract Act 1892 dealing with the case, their Lordships were satisfied that the Act made it essential that all contracting parties should be 'competent to contract', and expressly provided that a person who by reason of infancy was incompetent to contract could not make a contract within the meaning of the Act. In the present case there was not any such voidable contract as was dealt with in section 64; the Act provided, in clear language that an infant was not a person competent to bind himself by a contract of that description."

It was submitted for the respondent that even if the common law of England was not applicable because of the express provision of section 11, nevertheless there existed in Cyprus a custom which formed part of the religious law of the Greek Orthodox Church that recognised contracts of marriage even where one of the parties was under the age of eighteen. The short answer to this submission is that the law to be applied by the District Court is set out in section 33 of the Courts of Justice Law (No. 40 of 1953). This does not include local custom as a source of law. It is true that the following section, section 34, saves the law of certain religious communities in matters of marriage and status; but this saving in no way affects the law of contract or any claim in damages arising therefrom.

In holding that custom is not a source of law in this territory it is necessary to distinguish usages which may be proved to modify the terms of a contract. As stated in 10 Halsbury, second edition, 35-36: "A rule of conduct amounts to a usage if so generally known in that particular department of business life in which the case occurs, that, unless expressly or impliedly excluded, it must be considered as forming part of the contract". In several sections of our Contract Law express reference is made to usage. In the present case the respondent cannot rely on usage since, as stated in the same volume of Halsbury, at page 42: "No usage however exclusive will be allowed to prevail if it be directly opposed to positive law . . . for

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to give effect to a usage which involves a defiance of the law would be obviously contrary to fundamental principle." For the reasons already stated, to hold that a local usage made promises of marriages where one party is a minor voidable but not void, would be contrary to the express provisions of sections 10 and 11.

Since we are of the opinion that the respondent's claim must fail because the contract she relies on is void, it is unnecessary for us to consider whether the appellant's defence that the respondent was an epileptic is well founded.

This appeal must be allowed and the respondent's claim dismissed.

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CHARLES K. JOHNSON

v.

THE TEMPERATURE LTD.

[HALLINAN, C. J. and ZEKIA, J.]
(January 7, 1956)

CHARLES K. JOHNSON of Nicosia, *Appellant,*

v.

THE TEMPERATURE LTD., Fulham (England),

Respondents

(Civil Appeal No. 4147)

Sale of Goods—Contract Law, Cap, 192, sections 73, 119 to 124 — Implied conditions or warranties — Quality and fitness of goods sold—Breach of warranty of quality—Opportunity of inspection—Reasonable time for purpose of inspection — C.I.F. contract — Passing of property — Right of rejection — Measure of damages — General and special damages—Fresh evidence—Remittal by Supreme Court upon appeal.

The plaintiff bought from the defendant company, who were manufacturers and sellers of air-conditioners established in England, an air-conditioning plant for his hotel in Nicosia, through the defendants' agent in Cyprus on a C.I.F. contract.

There was no express warranty as to the fitness of the plant but the buyer's purpose was communicated to the seller. The trial Court found that the plant was defective at the time of sale, and that it was neither fit for the purpose for which it was ordered nor merchantable.

The plaintiff kept the plant for 7½ months after its arrival in Cyprus before rejecting it, and he then claimed the refund of the purchase price and general and special damages for breach of agreement and/or breach of warranty.

During the trial the parties agreed the special damages recoverable if the plaintiff were held to be entitled to reject the plant; but through an oversight, the plaintiff did not sufficiently prove special damages if his claim to reject the goods was dismissed.