[SMITH, C.J. AND MIDDLETON, J.]

HARALAMBO PANAYI SOTIRI *Plaintiff,*

v.

EUTHIMIA MICHAIL SOTIRI *Defendant.*

ACKNOWLEDGMENT OF DEBT—POWER TO FALSIFY—PROMISSORY NOTE IN CUSTOMARY FORM—PART CONSIDERATION—GIFT OF MONEY—FRAUD—MEJELLE, ARTICLES 1589 AND 1610.

A. on the 3rd of April, 1889, gave B. her nephew, a promissory note for £150, in the customary form, due one year after date. B. had advanced A. only £7 as against the note. No fraud or force had been practised on A. to induce her to sign the note nor did it appear that any fraud or forgery existed in the note itself.

HELD: In an action brought by B. against A. to recover the amount of the note that the note was an acknowledgment of debt within the terms of Article 1610 of the Mejellé so as to bind A. and her heirs to the payment thereof, without the power of denying the debt it purported to represent.

HELD FURTHER: That the giving of the note by A. was not a gift of money, but the undertaking of an obligation to pay money at a future time.

APPEAL from the District Court of Limassol.

Pascal Constantinides for the appellant.

Economides for the respondent.

The facts and arguments sufficiently appear from the judgment.

Judgment: In this case the plaintiff sued the defendant to recover the sum of £150 alleged to be due on a bond dated 3rd April, 1889, falling due on the 13th April, 1890. Dec. 2.

At the time of the settlement of the statement of the matters in dispute, the defendant admitted making the bond, but stated that she had only received from the plaintiff the sum of £7 and that she gave the bond to plaintiff, who is her nephew, as a favour as she had no children, and she contended that under the circumstances she was not liable to pay the money.

SMITH, C.J. & MIDDLETON, J.

HARALAMBO PANAYI SOTIRI v. EUTHIMIA MICHAIL SOTIRI

The plaintiff contended that as defendant admitted the making of the bond she was bound by it.

The District Court after hearing the evidence of defendant and her witnesses, came to the conclusion that there was some evidence of fraud according to Article 1610 of the Mejellé, and gave judgment for the plaintiff for £7 only, the amount they found had actually been advanced.

Against this judgment the plaintiff appeals, and it was contended on his behalf that as the defendant admitted the making of the note, she must under Article 1610 of the Mejellé be bound by it; that she had not pleaded either forgery or fraud, and that whatever the previous decisions of this Court had been in cases between the persons in whose favour such a bond has been made and the heirs of the person making it, so long as the maker be alive, the rights of the parties must be regulated strictly by Article 1610 of the Mejellé. It was also contended that the making of this bond constituted a valid gift of the moneys secured by it.

For the respondent it was contended that it had been established that the bond had been made on condition that it should not take effect until after the defendant's death, and that this fact brought the case within the principle of the cases heretofore decided by the Supreme Court. The respondent's counsel further contended that under Article 1589 of the Mejellé it was open to the defendant to deny the debt mentioned in the bond. He admitted that he was unable to reconcile Article 1589 with Article 1610, and in effect left it to the Court to make a choice between the two. He further contended that the making of the bond was not a gift of money, but only an obligation to pay it at a future time.

With regard to the latter point we have no hesitation in deciding in favour of the contention of the respondent's counsel, that the transaction is not a gift of money, but an obligation to pay it at a future time.

The other points raised in argument are more difficult of solution. We have already had occasion to discuss at some length the meaning of Articles 1589 and 1610 of the Mejellé, in our judgment in the case of *Louka Hadji Andoni Pieri v. Eleni Hadji Yanni and another* (ubi sup. p. 153) and it is not necesary for us to recapitulate here what we there

said. According to all rules of construction we are bound to give such a construction to these articles, which apparently conflict in their terms, as will best serve to harmonize the two. We think that the only way to do this is to hold that Article 1589 lays down a general rule, and that Article 1610 lays down an exception to it. Applying that principle to the present case, we must hold the defendant liable, unless she has established fraud which would vitiate the whole matter.

As we said in the judgment of this Court in the case we have above referred to, the fraud mentioned in Article 1610, must, on the proper construction of that article, be confined to fraud in the document itself; and it appears to us, therefore, that the judgment of the Court cannot be supported on the ground on which it was given. We do not, however, think that if there be evidence of fraud practised on the plaintiff, if for instance there be evidence that the making of the document had been procured by some deceit or trick, that the Court would be precluded from giving the defendant relief. Fraud must be held to vitiate everything to which it attaches. After perusing the evidence taken in the Court below, however, we do not think that any such fraud is shewn as to enable the defendant to be relieved from the consequences of her own act. As she herself says "I gave him the bond as I wished "to adopt him as my son, and I did not wish my property "to pass into any strangers hands." She told Mr. Zeno that "she had received no money but the person to whom "the bond was given was her nephew, and by it she wanted "to reserve to him part of her property." She also says she gave the bond "on the understanding that he would "leave me the owner of my property until my death." But she does not go the length of saying that this was the plaintiff's understanding as well as her own, or that any agreement to the effect that the bond should not be enforced in her lifetime was as a matter of fact entered into. As she herself says, "I never supposed the plaintiff would sue "me soon after the bond was due. I thought he would "content himself with taking the property after my death." It is very probable that this was her supposition, but that is a long way from saying that the plaintiff obtained the execution of this bond by fraud, or under such circumstances as would either amount to fraud, or render it inequitable

SMITH. C.J. & MIDDLETON, J.

HARALAMBO PANAYI SOTIRI v. EUTHIMIA MICHAEL SOTIRI.

on his part to take these proceedings. If there were evidence that he had taken this bond on the condition that he would not enforce it in her lifetime, the case would be different. It is not without reluctance that we feel ourselves bound to order defendant to pay £150 to the plaintiff when as a matter of fact she only received £7; but if persons with their eyes open and with full comprehension of the nature and consequences of their acts, like to enter into transactions of this nature, they must not be surprised if the Courts take them at their word, and hold them bound to fulfil the obligations they have entered into.

Our order, therefore, must be that the judgment of the District Court be varied and that the defendant pay to the plaintiff the sum of £150 instead of the sum of £7. As there appears to be no reason why this appeal should not have been brought on before, we shall not order interest to be paid on the sum of £143 from the date of the judgment of the District Court. The respondent must pay the appellant's costs.

Appeal allowed.