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

BOVILL, C.J. & TEMPLER, ACTING J. 1891. Dec. 9

THEOGNOSIA HARALAMBO *Plaintiff,*

v.

PARASKEVA HARALAMBO AND HADJI PETRI CHRISTOFI (AS HEIRS OF HADJI DESPINOU ARGHIRO, DECEASED) *Defendants.*

BOND—ACKNOWLEDGMENT OF DEBT—BOND GIVEN TO DEFEAT RIGHTS OF INHERITANCE—MEJELLE, ARTICLES 1589 AND 1610.

D. gave a bond to the plaintiff for £200 which contained an acknowledgment that she had received that sum from the plaintiff. No money had in fact been advanced by plaintiff, but the bond was given in consideration of an agreement by plaintiff to maintain D. The plaintiff was one of D.'s heirs and the Court found that the bond was given to defeat the rights of inheritance of D.'s other heirs.

HELD: That the bond was an acknowledgment of a debt, but was nevertheless void as made with the intention of defeating the law regulating the rights of inheritance.

APPEAL from the District Court of Nicosia.

Action to recover £200 due on a bond made by Hadji Despinou, on the 30th March, 1889, and due on the 30th March, 1890, to the order of the plaintiff.

The defendants admitted that Hadji Despinou made the bond but pleaded that she was out of her mind, that the bond falsely stated that the consideration was money lent, and that the bond had been given to defeat their rights in the inheritance of Hadji Despinou whose whole estate did not amount to £200 in value. The plaintiff was one of the heirs of Hadji Despinou.

It was proved by the evidence of the witnesses present at the time the bond was made that the deceased made a declaration before them that she owed the plaintiff £200 and she signed the bond. She also said that she had intended to transfer a house to the plaintiff, but that, as they could not find the money necessary to pay the fees of transfer, she made the bond instead.

It was further proved that the plaintiff and the defendant Paraskeva had agreed to maintain the deceased and that a bond for £50 was given to Paraskeva: the agreement

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referred to the bonds, and stated that in case, after the death of Hadji Despinou, the bond for £200 was held to be null and void, the bond for £50 should be void also. There was no evidence that the deceased was of unsound mind.

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The District Court gave judgment for the defendants, on the ground that they were entitled under Article 1589 of the Mejellé, to call upon the plaintiff to prove, that she had really advanced the money to the deceased to secure the repayment of which the bond professed to be given, and that as the plaintiff had not adduced any evidence to prove this, she was not entitled to recover.

The plaintiff appealed.

Collyer, Q.A., for the appellant: The making of the note was admitted. It was proved that the deceased was of sound mind and also that there was a consideration for the making of the note, *i.e.*, plaintiff agreed to maintain the deceased. If any consideration is shown it is sufficient under Article 1589 of the Mejellé.

Pascal Constantinides, for the respondent Hadji Petri Hadji Christofi: The plaintiff and the other defendant, Paraskeva, came to an understanding to defeat the rights of the other heirs; and the Court will not allow such a transaction to hold good. There was no evidence that the plaintiff did anything for the defendant as consideration for the bond.

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Judgment: This is an appeal from the judgment of the District Court of Nicosia, deciding, in effect, that where a deceased person has given a bond to one of his heirs, the other heirs can, after the death of the deceased, dispute the validity of the bond and require the heir in whose favour it was made to prove the existence of the debt purported to be secured by it.

The action is brought on a bond given by Hadji Despinou to the plaintiff on the 30th of March, 1889, for the sum of £200, payable to the order of the plaintiff on the 30th of March, 1890.

Defendants are sued as the heirs of Hadji Despinou, and although it is denied by plaintiff's counsel at the time of the settlement of issue, it is nevertheless proved by one of the witnesses for the plaintiff, that she is also one of the

heirs of Hadji Despinou. There is no precise evidence as to the date of the death of Hadji Despinou, but it would appear that she died about a year after the bond was given, and this action was, therefore, commenced very shortly after her death. According to the evidence no money passed at the time of the making of the bond, and it is tolerably manifest that the bond was given as an inducement to Theognosia to maintain deceased during her lifetime, and that the statement in it that the deceased owed Theognosia £200 is perfectly baseless.

Under these circumstances the District Court has held that the plaintiff's claim to recover on the bond must be dismissed. We do not clearly follow the grounds of that decision, because from the President's notes it would appear that he was of opinion, that if plaintiff relied on the bond she must be called in support of it, and that opportunity should be afforded for that to be done. Subsequently, however, on production to the District Court of the judgment of this Court in the case of *Dimitri Solomo and Marikou Elia*, heard by this Court on the 30th December, 1889, the District Court appears to have considered that the plaintiff had had her opportunity of giving her evidence and had not availed herself of it, and that under the circumstances they should follow the judgment in *Dimitri Solomo and Marikou Elia*, and on that ground dismiss the action.

The Queen's Advocate, on the hearing of the appeal, urged that the plaintiff on the pleadings had a right to judgment; that it had been proved that the deceased was of sound mind; that on the evidence there was no reason to say the bond was illegal, and that there was a good consideration for it. We are of opinion that although the questions of fact in dispute may be somewhat meagrely stated, the question which is stated, viz.: is it (the bond relied on) a lawful bond, may be reasonably taken to mean, "has the plaintiff a legal right to recover from the defendant on that bond."

The Queen's Advocate urges further, that the bond was given on a good consideration, and we understand him to mean a consideration which would, according to English Law, be sufficient to support the validity of the document, and he contends that it is good as against the deceased

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debtor's estate for the full amount expressed to be secured by it. He does not admit that the articles of the law on acknowledgments apply to this document; this, as he suggests, being something more than a written acknowledgment of debt: but he contends, that if it be a written acknowledgment of debt, then the defendants, being persons claiming through Hadji Despinou, are in no better position than she could have been; that, under Article 1610 of the Mejellé, the deceased could not deny the debt and that her heirs cannot do so.

These seem to be the leading objections to the judgment, and in support of it, it is urged, that it is in conformity with our judgment in the case above referred to, and that if we are to allow the plaintiff to recover on this bond, we are allowing the laws of inheritance to be entirely set at defiance.

The case is a somewhat interesting one, because it is a common thing for peasants and poor people to act as Hadji Despinou has acted in this case. As old age and decrepitude comes upon them they go to that one of their heirs on whom they have most reliance and give a bond for a considerable amount in consideration of that heir undertaking to maintain them during the remainder of their lives. Then on the death of the person who has given the bond a dispute arises, as in the present case.

We are of opinion that documents, such as that which is before us, are written acknowledgments of debt within the meaning of the articles of the Law on Acknowledgments, and that in an ordinary case, the articles which have been cited and commented on before us, must take effect, in relation to such documents, in accordance with their plain words; but we feel that to give effect to them in such a case as this, is merely to hold that the law deliberately sanctions transactions which can entirely defeat the Law of Inheritance.

The law allows a person to make a gift of his property, and recognises a proceeding of a very curious and remarkable nature called "Nefii Mulk," by which a person can confer a right of property on another, without making an actual gift or delivery. The law distinctly mentions a *gift* made on condition that the recipient shall maintain the giver

during his life. In all these cases the giver deliberately divests himself of the immediate ownership or possession of the property which is given; and it may be said that in cases such as that before us, the pretended debtor gives the holder of the bond a right to compel payment of the money secured by the bond, if he (the giver of the bond) lives beyond the time when the so-called bond purports to fall due. We are, however, strongly impressed with the fact, that in cases such as these, the whole transaction is intended to confer a benefit which is not to take effect until the death of the person conferring it, and, whatever may be the apparent nature of the documents employed or the meaning of the words used in them, there can be no doubt whatever that the whole and sole intention is to confer on one heir, to the prejudice of others, some greater right than the ordinary law allows of.

On that ground we are of opinion that, although regarded as a simple aknowledgment of debt, such a document as that before us cannot be attacked, it is, nevertheless, competent for any heir to attack it on the ground that it forms part of a transaction designed merely to defeat the Law of Inheritance. That it is in fact contrary to the policy of the law, and a fraud on the heirs who do not purport to be benefited by it.

That this is the case in the present instance, and that it was never intended that Hadji Despinou should be called upon to pay the £200 during her lifetime, is put beyond doubt by the evidence as to the bond for £50 given to the defendant Paraskeva, and his reasons for insisting on that bond being given; and, viewing this document as part of such an illegal transaction as we have stated, we must find that it is of no effect as against the heirs, and for that reason confirm the decision of the Court below and dismiss this appeal; but, as the point is new, and it appears to us that in this case there has been a good reason for coming to the Court of Appeal, we shall make no order on the appellant to pay the respondent's costs.

Appeal dismissed.