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

BOVILL, C.J. & SMITH, J. 1892.

March 23.

ATHANASSI HAPPAS AND OTHERS *Plaintiffs,*

v.

EVDOXIA YANNI PARAPANO AND ANOTHER *Defendants.*

LEGITIMACY—CHILDREN BORN OUT OF WEDLOCK—ACKNOWLEDGMENT OF ILLEGITIMATE CHILDREN—CANON LAW—LEGITIMACY BY SUBSEQUENT MARRIAGE—GIFT OF MOVABLE PROPERTY TO INFANT CHILDREN—DELIVERY, MEJELLE, SECTION 851.

According to the Mahomedan Law a man cannot by acknowledgment render legitimate his offspring arising from an illicit intercourse.

J., an Ottoman subject domiciled in Cyprus, and a member of the Roman Church had four children by the defendant E., whom he subsequently married according to the rites of the Roman Church, and acknowledged these children to be his. According to the Canon Law the children were rendered legitimate by the subsequent marriage of their parents.

HELD, 1st: That the children were not rendered legitimate by his acknowledgment of them; and

2nd. That the question of their legitimacy must be determined by the Ottoman Law and not by the law of the Church to which they belong.

A gift of the whole of deceased's movable property to his infant children held good to the extent of one-third of the value of his estate, notwithstanding that no delivery had been effected.

APPEAL from the District Court of Larnaca.

The action was brought to obtain an account of the estate of Joseph Happas, deceased, who died at Larnaca on the 4th June, 1890, and to recover two-thirds of the value of the estate.

The plaintiffs are brothers and sisters or representatives of deceased brothers and sisters of Joseph Happas, and the defendants are the widow of the deceased and the guardians of her infant children.

The plaintiffs alleged that the four infants Maria, Teresa, Anna and Rosa having been born before the marriage of Joseph Happas with the defendant Evdoxia had been

BOVILL, C.J. & SMITH, J.

ATHANASSI HAPPAS AND OTHERS v. EVDOXIA YANNI PARAPANO AND ANOTHER.

celebrated, were illegitimate, and were, therefore, excluded from any share in the inheritance of their deceased father, that the defendant Evdoxia was entitled to one-third of the inheritance, and that they as the next of kin were entitled to the remaining two-thirds.

On the part of the defendants it was admitted (1) that the four infants were born out of wedlock, but it was contended that Joseph Happas, being a Roman Catholic, they had been made legitimate by the subsequent marriage of their parents, according to the law of the Church; (2) that Joseph Happas had made them ligitimate by his declaration that they were his children; and (3) that he had made a valid gift to the infants of the whole of his movable property.

It was admitted or proved in the District Court that Joseph Happas was an Ottoman subject and a member of the Roman Church; that he lived for some years with the defendant Evdoxia as his wife; that subsequently to the birth of the four infant children he married Evdoxia according to the rites of the Roman Church; that he had on various occasions acknowledged them as his children, particularly at the time of their respective baptisms, at the time of his marriage, and in a declaration made before the Cypriot Judges of the District Court shortly before his decease. A document purporting to give all his movable property to the children and made during the illness of which he died was also put in evidence on behalf of the defendants, as well as two promissory notes or bonds representing moneys belonging to the deceased on deposit at the Imperial Ottoman Bank, which were endorsed by him and handed to the defendant Evdoxia, in order that she might, on behalf of the infant children, receive the money represented by the promissory notes or bonds from the bank.

The arguments of the advocates for the respective parties sufficiently appear from the judgment of the District Court, which was as follows:—

1891. *March* 21.

Judgment: This is a case relating to the succession to the estate of Joseph, or Beppo Happas, who died at Larnaca on the 4th June, 1890, possessed of considerable property.

The plaintiffs are brothers and sisters, or representatives of deceased brothers and sisters, of the deceased. The defendant Evdoxia is the widow of the deceased, and the defendants Maria, Teresa, Anna and Rosa are the infant children of the deceased.

The plaintiffs, in substance, claim that these infant defendants should be excluded from the succession on the ground of illegitimacy.

It is admitted that Joseph Happas was an Ottoman subject and that all the infant defendants were born before the marriage of their parents. It has been proved that Joseph Happas married the defendant Evdoxia according to the rites of the Roman Catholic Church on the 3rd January, 1888.

It is contended, however, on behalf of the defendants: *First*, that inasmuch as Joseph Happas was a Roman Catholic, the legitimacy of his children must be tried by the religious law of the faith to which he belonged—that is, by the Canon Law of the Roman Church—and that in the events which have happened these children have been legitimised. *Secondly*, that even if this question be tried by Ottoman Law, the acknowledgment by Joseph Happas of the infant defendants as his children has legitimised them. *Thirdly*, that Joseph Happas executed a valid donation of his property in favour of the defendants shortly before his death.

All these pleas are traversed by the plaintiffs, who, on the day of hearing, put in a further plea that the infant defendants are not in fact the children of the deceased.

As to this last plea, none of us see any reason for doubting that these children are the children of the deceased.

The first point we have to decide is, whether the legitimacy of these children is to be determined by the Canon Law or by the Ottoman Law. In other words: Does the term "legitimate" in the Intestate Succession Law of 1884, mean legitimate according to Ottoman Law or legitimate according to the religious law of the parties concerned.

So far as we can discover, before the law of 1884 the Ottoman Law of succession (feraiz) was universally applied to the non-Moslem subjects of the Porte in Cyprus. No

BOVILL, C.J. & SMITH, J.

ATHANASSI HAPPAS AND OTHERS v. EVDOXIA YANNI PARAPANO AND ANOTHER.

instance to the contrary has been cited to us nor are we able to discover that any such case exists.

Even foreign subjects are amenable to the Ottoman Law of succession, where immovable property in the Empire is at stake (Law 7 Sefer, 1284, Leg. Ott., Vol. I., p. 21).

Even at the present day the jurisdiction of the Patriarch and Metropolitans of the Orthodox Church seems to be confined, as formerly, to questions of marriage, divorce, alimony, dower, wills, and certain questions affecting Christian schools and the discipline of the clergy (Vizierial circular, 23 Jemal el Achir, 22nd January, 1891 (?).) There is no reason for supposing that the law of 1884 made any change in the law of legitimacy. We think if such change had been intended, express words would have been used.

Mr. Rossos relies chiefly on the *Hatti Humayoun of* 1856 *par. xviii.* (Leg. Ott., Vol. II., p. 19) and on the "considerations" appended to the Hatti Humayoun. The first authority is to the effect that certain special cases as those of succession may "on the demand of the parties" be remitted to the religious tribunals. This appears to us to be a permissive enactment which has no application to a case like the present.

We are, therefore, of opinion that the legitimacy of these children must be tried by Ottoman Law. Now by the Ottoman Law, a man may in certain cases legitimise his children. It is necessary in order that children may be so legitimised that the father should acknowledge the children as his own: that the ages of the parties should admit of the party acknowledged being born to the acknowledger: that the person acknowledged should not have been already proved to be the offspring of another (Baillie Digest of Mahomedan Law, p. 408).

It appears to us that all these conditions have been complied with. The deceased on several occasions—notably at the baptisms of his children; on his marriage, and by the declaration he made before the Judges of the District Court—acknowledged the infant defendants as his children.

It is objected on behalf of the plaintiffs that, in the declaration the deceased made before the Judges of the District Court, he described the children as his "φυσικὰ τέκνα" and such an expression constitutes an acknowledgment that they are illegitimate, which according to Moslem Law would be enough to exclude them from the succession. We cannot hold that an expression like this occurring in a document in which the deceased solemnly appoints these children as his heirs is capable of such a construction.

On this point both parties have produced a fetva, neither of which, as we understand them, is exactly in point. That produced by the defendants, so far as it goes, favours the view we have taken. That produced by the plaintiffs supposes that Joseph Happas had formally acknowledged the infant defendants to be illegitimate. There is no evidence that he ever did so, and it is clear that his intention was exactly the reverse.

We are, therefore, of opinion that, according to the Moslem Law, the infant defendants have been acknowledged by the deceased as his children and have been thereby legitimised.

The question yet remains whether children so legitimised are "legitimate" within the meaning of the law of 1884. We are of opinion that it is impossible to distinguish between legitimate and legitimised children. "Legitimate" merely means recognised by law.

It may be well to observe that if this question had been tried according to the Canon Law, the result would have been the same: illegitimate children being legitimised by the subsequent marriage of their parents (Filii illegitimi naturales legitimantur per subsequens matrimonium inter parentes eorum legitime contractum, Prompta Bibliotheca Canonica I., III., p. 481).

It does not appear to us necessary to consider to what extent, if any, the deceased has made a donation of his property.

We are of opinion that the action must be dismissed. Having regard to the difficulty of the case, the majority of the Court are of opinion that no costs should be allowed.

Against this judgment the plaintiffs appealed.

BOVILL, C.J. & SMITH. J.

ATHANASSI HAPPAS AND OTHERS v. EVDOXIA YANNI PARAPANO AND ANOTHER

Collyer, Q.A., for the appellants.

The District Court was right in holding that the Ottoman Law and not the Canon Law is to be applied to this case; but according to the Ottoman Law a man cannot legitimise children whom he expressly states, as the deceased did in this case, were the result of an illicit intercourse. Where a Moslem declares children whose descent is unknown to be his, a presumption of their legitimacy is thereby raised, unless something to the contrary is proved. Here the deceased admitted that the infant children were his, and that they were born out of wedlock: hence their descent is known and he cannot render them legitimate by his declaration.

With respect to his alleged gift to the infants, on which the District Court gave no decision, I contend that it was not valid as there was no delivery: in any event the gift cannot hold good for more than one-third of the inheritance.

He cited McNaughten's Principles, p. 90.

Neil Baillie's Mahomedan Law of Inheritance, p. 23.

Mejellé, § 879 and § 1601.

Rossos, for the respondents.

The Ottoman Law recognises marriages contracted according to the religious faiths of the persons contracting them; and, therefore, will recognise all the consequences resulting from such marriages. If one effect of such a marriage be to legitimise offspring born before marriage, then the Ottoman Law recognises the offspring as legitimate.

The Hatti Humayoun, § 18, says that matters such as the present are to be sent to the patriarchs for decision, *i.e.*, for decision according to the religious faiths of the persons interested.

The acknowledgment of the infants by the deceased was good.

Mejellé, § 67, gives as an example of an acknowledgment, just such a case as the present. Who can a man legitimise if not an illegitimate child?

As to the gift, as the children were living in the house with the deceased, delivery is not necessary, Mejellé, § 851. The endorsement of the bonds and the handing them to Evdoxia to receive the money for the infants, is sufficient delivery of the moneys represented by the bonds.

The Queen's Advocate replied.

This is an appeal from the District Court of Larnaca dismissing the plaintiffs' claim. The claim on the writ is very inartificially worded, but we must take it to be a claim that defendants may give an account of the estate of Beppo Happas, deceased, and that the plaintiffs may receive two-thirds of the estate.

1892. *April* 30.

Judgment: The circumstances under which this claim arises are fairly simple, and are as follows: The deceased, Beppo Happas, who was an Ottoman subject, cohabited with the defendant Evdoxia and had by her four children. Subsequently to the birth of the youngest of these children, he married Evdoxia according to the rites of the Roman Church, and afterwards died leaving Evdoxia his widow and the four children already mentioned, who are the defendants Maria, Teresa, Anna and Rosa, him surviving.

The plaintiffs are brothers and sisters, and descendants of brothers and sisters of the deceased, and they claim that the children of deceased being born out of wedlock are illegitimate and not entitled by inheritance to any portion of the deceased's estate: that the defendant Evdoxia, as widow, is, under the circumstances, entitled to one-third of the estate (under the Intestate Succession Law of 1884), and that they, the plaintiffs, are entitled to the remaining two-thirds of the estate.

All the facts on which the claim depends were in effect, if not actually, admitted; but for the infant defendants it is contended that they were acknowledged by the deceased to be his children in such manner as to constitute them his lawful heirs according to the principles of the Moslem Law.

It is further argued that the question of their legitimacy is to be determined by the Canon Law of the Roman Church, and it is claimed that, even if they be found to be not legitimate, the deceased by acts *inter vivos* gave all his movable property to his children. These gifts are disputed by the plaintiffs.

BOVILL, C.J. & SMITH, J.

ATHANASSI HAPPAS AND OTHERS v. EVDOXIA YANNI PARAPANO AND ANOTHER.

The District Court has decided that the question of legitimacy must be decided on the principles of the Moslem Law, and that the Canon Law of the Roman Church cannot be applied; and it has further decided that the acknowledgment of his children by the deceased has constituted them his lawful children according to the principles of the Moslem Law, and on that ground has dismissed the plaintiffs' claim, giving no decision as to the validity of the alleged gifts of deceased's movable property.

Against this judgment the plaintiffs appeal, contending that the District Court has rightly refused to apply the principles of the Canon Law, but has adopted a mistaken view of the Moslem Law in deciding that the children of the deceased Happas and defendant Evdoxia, who were notoriously born out of wedlock, and for the purposes of this action admitted to be so, can be made legitimate by any sort of acknowledgment. On that ground they seek to have the judgment set aside, and they contend that the alleged gift to the children is not valid.

The respondents contend that the judgment of the District Court is right as regards the acknowledgment of the children having made them legitimate, but they say that if we should hold that this is not the case, they rely on the Canon Law of the Roman Church, under which they contend that the children became legitimate on the marriage of their parents, and that, if the State recognises the marriage for any purpose, it must recognise it for all purposes, and further they rely on the validity of the gift by deceased to the children.

We proceed in the first place to consider whether the judgment of the District Court is correct in deciding that the infant defendants were legitimised by the deceased's acknowledgment of them.

Counsel for the appellants contends that it is not correct, inasmuch as acknowledgment of a child creates a presumption that such child was born in wedlock, unless it appears from independent evidence that this is not the case.

The respondents' advocate contends that every acknowledgment of a child renders it the lawful child of the acknowledger, unless the acknowledgment is accompanied by a

declaration that the child acknowledged is the child of fornication, in which case there is disavowal of the child.

Our understanding of the Mahomedan Law is, that the intercourse of a man with a woman who is neither his wife, nor his slave, is unlawful and absolutely prohibited; and that, when there is neither the reality nor the semblance of either of these relations between the parties their intercourse is termed "zina" or fornication.

Where there exists between a man and woman the relation of husband and wife, or of master and slave, or such semblance of either of these states of relation as the Mahomedan Law recognises, their children are either admittedly the lawful children of the man, or capable of being made so by his acknowledgment.

The semblance of marriage, or of the relation of master and slave, must be such as to cast a doubt on the illegality of the connection, and it is only in that case that an express acknowledgment by the man will establish the descent from him of a child, the fruit of the intercourse. But when a man has had illicit intercourse with a woman, and she is delivered of a child, the descent from him is not established, even though he should claim it or acknowledge it.

In the case before us, the children of Beppo Happas were admittedly the result of intercourse between him and Evdoxia, at a time when there was neither marriage nor semblance of marriage between them, and according to our view of the law they cannot be made legitimate by any acknowledgment.

The various passages of the law referred to by Mr. Rossos' appear to us all to harmonise with the view we take, if they be read as applying to those cases where the law allows of an acknowledgment.

It has been urged upon us that the evidence of continued cohabitation, and of acknowledgment, is, according to the Moslem Law, evidence that the offspring are legitimate. We do not think it is so. According to the Moslem Law, where a man has acknowledged children, born to him by a woman with whom he has cohabited, his acknowledgment will raise a presumption of marriage; but this presumption

need not prevail, where there are other circumstances which weigh against it; as in this case, where we have it admitted that subsequent to the birth of the children their parents were married, which is a fact, which in the absence of other evidence, excludes the presumption that these children were born in wedlock.

We consider, therefore, that the decision of the District Court on the question whether the children were made legitimate by acknowledgment is wrong, and it becomes necessary to consider whether the plaintiffs' claim can be resisted on some other ground.

The next question to consider is whether the status of the children of deceased and Evdoxia, is to be determined by the Canon Law of the Church of Rome.

On this subject Mr. Rossos has contended, that by the laws of the Church of Rome the infant defendants were rendered legitimate by the marriage of their parents; and that, as the Ottoman Government recognises the validity of a marriage of its Christian subjects, when celebrated in accordance with the rites of the church to which they belong, it must be taken to assent also to all the consequences, which, according to the laws of the church, would result from such a marriage.

Counsel for the plaintiffs says this argument is not tenable; and that the Ottoman Government, in recognising the validity of marriages, celebrated according to the rites of Christian churches, has done nothing to indicate that it intended to give authority to any laws on parentage different to those which affect its Moslem subjects.

We feel that it is extremely improbable that the Ottoman Government should have consented to confer on its Christian subjects any larger privileges, with regard to the legitimising of children, than belong to its Moslem subjects, and as we have already stated, our view of the Mahomedan Law is, that the intercourse of a man with a woman who is neither his wife nor his slave is unlawful and absolutely prohibited, and that, if a child is manifestly the fruit of fornication, it cannot be made legitimate.

In Neil Baillie's Digest of the Mahomedan Law we find it laid down, (Chapter X. "Marriage of Infidels" p. 178, 179 original edition) that, in general, "marriages of infidels

" (zimmees), are lawful if sanctioned by their religion " ; and that " if the wife of an infidel were " unlawful to him," " (that is by the Moslem Law), by being his mother or " sister, for instance," such a marriage (according to the Hanifite doctrine, which prevails in the Ottoman Empire) " is valid as between the parties : " but it does not appear that the law will recognise all the consequences of such a marriage, for the author continues : " There are no mutual " rights of inheritance between them arising out of such " marriages."

Further we find it laid down in the same work, p. 174 : " Zimmees or infidel subjects of a Mussulman power do " not subject themselves to the laws of Islam, either with " respect to things which are merely of a religious nature, " such as fasting and prayer, or with respect to such tem- " poral acts, as though contrary to the Mahomedan religions " may be legal by their own, such as the sale of wine or " swine's flesh—because we have been commanded to " leave them at liberty in all things which may be deemed " by them to be proper, according to the precepts of their " own faith. Wherefore, with respect to all such acts, " zimmees are on the same footing as aliens, but from these " is to be excepted zina, or illicit intercourse between the " sexes, that being held universally and by all sects to be " criminal."

It appears to us necessary to conclude that infidel subjects of a Mahomedan power must be subject to the laws of Islam, except with regard to those matters where the governing authority has specially exempted them.

There are abundant indications in the Mahomedan Law that a marriage of any of its infidel subjects, celebrated in accordance with the rites of their own Church, will be regarded as valid by a Mahomedan power.

That question is not disputed and we may take it to be settled law.

There is, however, the further question raised in this case, whether the marriage of an infidel subject of a Mahomedan power will carry with it, in the eye of the State, all the consequences that are attributed to it by the law of the Church, according to the rites of which the marriage is celebrated.

BOVILL. C J. & SMITH J. — — ATHANASSI HAPPAS AND OTHERS v. EVDOXIA YANNI PARAPANO AND ANOTHER.

We not only find no indication that this is the case, but on the contrary, we gather from the passage we have already quoted from Neil Baillie's work on Mahomedan Law that *it is not the case, that if the wife of an infidel is unlawful* to him, the Mahomedan Law may nevertheless recognise the marriage itself, but will not recognise any mutual rights of inheritance between the husband and wife, and that fornication is unlawful for all subjects of a Mahomedan power.

It is suggested that the concessions contended for have, in the case of Ottoman subjects who are not Moslems, been given by the Hatti Humayoun, and the special laws and regulations which were promulgated to carry out, in specific cases, what the Hatti Humayoun lays down generally.

All that can be learnt from the Hatti Humayoun itself, is what is contained in Article 18, which says that certain special actions, such as relate to rights of inheritance between two Christians may, if the parties concerned desire it, be referred to the Patriarch, or the heads or councils of the respective communities in order that they may be disposed of by them.

Mr. Rossos argues from this, that such an action as that now before us, would, in the Ottoman Empire, be referred, if either of the parties desire it, to the Patriarch, and that *in Cyprus it should, therefore, be disposed of by applying* those laws which the Patriarch would apply to it.

Counsel for the plaintiffs, on the other hand, contends that actions of the class referred to in this Article 18, are to be referred to the heads of the Church only on the consent of all parties concerned ; and that that is the plain meaning of the language employed in the article.

We do not find any law or regulation which settles the power and authority of Roman Catholic Patriarchs generally ; but those laws and regulations which have been promulgated would appear to show, that the jurisdiction conferred on the heads of Christian Churches, is one that can only be exercised by consent ; for example, in the Firman granted to the Armenian Roman Catholic Patriarch it is said, that " any disputes relating to rights of inheritance " between members of the Roman Catholic community " shall, if by consent both parties apply to the Patriarchate, " be dealt with and disposed of according to justice."

Also in the law respecting the Greek Patriarchate in Article 2 it is said: "Where special disputes between "two Christians, such as rights of inheritance, have, on "the application of the parties concerned, been referred "to the Patriarchate, they shall be dealt with and disposed "of by the said council."

Our view is that the contention of the plaintiffs' counsel is correct. The words employed in the Hatti Humayoun according to their literal meaning, necessitate that all persons interested should consent before the special classes of actions referred to in Article 18, come within the jurisdiction of the heads of any religious body.

We cannot imagine any ground on which the Ottoman authorities should forbid their Courts to dispose of disputes between their own subjects, when they are called on to settle them, though they may reasonably say that if the parties elect to go to another tribunal, that tribunal shall have jurisdiction to settle the matter in dispute.

We believe this to be the meaning of the Hatti Humayoun. The regulations promulgated under it confirm our view, and for these reasons we consider that the Canon Law of the Church of Rome cannot be applied to the determination of the question whether the infant defendants are legitimate or not.

Under these circumstances it is manifest that the plaintiffs, who are admitted to be the brothers and sisters, and issue of deceased brothers and sisters of the deceased Happas, are with deceased's wife, the persons entitled to inherit his property not disposed of by gift in his lifetime or by will, and that they are entitled to call upon the defendants for an account of their dealings with the deceased's estate.

The infant defendants claim that a large proportion of the deceased's estate passed to them by gift in his lifetime, and we will proceed to consider whether any valid gift was made by the deceased. The evidence on this matter is, that two days before his death, the deceased made a written declaration that he gave the whole of his movable property to his four infant children.

The "movable property" is detailed in this document, as "all the movable property which I possess, or which "shall be found in my possession, whether consisting of

BOVILL, C.J. & SMITH, J.

ATHANASSI HAPPAS AND OTHERS v. EVDOXIA YANNI PARAPANO AND ANOTHER.

"money, or bonds, or other securities for money, or of "goods or furniture in the house in which I live, or of any "movable article." The document continues and "espe- "cially I give to them all the money which I have deposited "in the Imperial Ottoman Bank at Larnaca, amounting "to about £2,450 capital, and the interest, and by these "presents I authorise the Direction of the said Bank, "either to newly inscribe the money in the names of my "four children, whose mother Evdoxia is their natural "guardian, and who represents them, or if the said Evdoxia "prefers it, then the Bank will deliver to her the above "mentioned sum, upon her delivering to them the bond "which I have acquitted, and I give to my above mentioned "daughters the sum of about 15,000 francs, that is to say "as much money as I have on deposit and to receive from "Tardieu of Marseilles and I give all other sums to my "said daughters."

It is clear that the deceased intended to make a gift of all his movable property to the infant defendants, and the only question which remains with regard to this gift is, whether it was necessary that it should be completed by delivery.

With regard to the money in the Ottoman Bank. The cashier of the Bank states in evidence, that Happas had two bonds from the Bank, one for £2,000 and the other for £500, that he (the witness) was present when deceased acquitted the bonds and handed them over to his wife, telling her to receive the money; that Evdoxia came to the Bank for the money, but that the manager informed her that the bonds were not due; and that, at the time he gave his evidence, they had not been paid.

We do not know how the deceased could more effectually have made delivery of this money, and we are of opinion that in making delivery of the securities for its repayment, he must be held to have completed the gift by an actual delivery of the money itself.

With regard to the remainder of the movable property, there does not seem to have been any delivery, but it is contended that delivery was not necessary, as the gift in this case comes within the provisions of Article 851 of the Mejellé. The only objection to this contention that presents

itself to us, is, whether the father of illegitimate children is such a person as is referred to in this Article, but on a consideration of the Turkish text, we are of opinion that he is. The Turkish text of this Article says, that delivery is not necessary when the gift is made to an infant by its guardian, or by the person educating and controlling him.

We do not think the meaning of this Article is that the class of persons who may make complete gifts to infants without delivery is restricted to those defined by the law as guardians; but rather that, where any person stands in the position of parent or guardian to an infant, his gift to such infant is valid without delivery.

We, therefore, are of opinion that the whole of the deceased's movable property was given to the infant defendants. But, as the gift was made by the deceased during the course of his illness of which he died, this gift must be limited to one-third of the value of the entire estate of the deceased.

It will, therefore, be necessary to take an account and valuation of the entire property of which deceased died possessed. So much of the property as consists of movables will belong to the infant defendants up to the value of one-third of the entire estate. Of what is left, after satisfying the claim of the infants, one-third will go to the defendant Evdoxia, and the plaintiffs will be entitled to the residue.

Appeal allowed.