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

SMITH, ACTING C.J. & TEMPLER, ACTING J. 1891. July 23.

J. M. ZACHARIADES & Co. *Plaintiffs,*

v.

HOULOUSSI BEY MUFTIZADE *Defendant.*

Ex parte IBRAHIM ALI.

INTERPLEADER—SALE OF ANIMALS—WHEN PROPERTY PASSES TO VENDEE—DELIVERY—MEJELLE, SECTIONS 167, 262 293, 294 AND 297.

I. purchased certain sheep from the defendant and paid the purchase money. The sheep were allowed to remain in defendant's possession under an agreement entered into between him and I.

HELD (reversing the judgment of the District Court): That the property in the sheep had vested in I. on the payment of the purchase money, even if no delivery of them had been effected.

HELD ALSO: That the facts proved amounted to a delivery of the sheep to I.'s agent.

APPEAL from the District Court of Nicosia.

The plaintiffs obtained judgment against the defendant for £202.1.2 on the 11th June, 1891.

In satisfaction of this judgment, the Sheriff seized a flock of sheep which were found in the defendant's possession.

Ibrahim Ali claimed the sheep as his.

For the claimant, evidence was adduced to the effect that in January, 1891, the sheep were sold to him in consideration partly of an old debt due to him by the defendant, partly of a fresh advance of money and partly in consideration of the claimant discharging a debt due from the defendant to a third person. The claimant sent his nephew to take formal possession of the sheep, which was effected by his touching and counting them. They were then handed back to the defendant under a written agreement made between him and the claimant, that he should have the custody of the sheep in consideration of receiving half the profits derived from the flock. It was not denied that the transaction between the defendant and the claimant was *bona fide*.

The District Court refused the application of the claimant that these sheep should be exempted from the sale, and should be handed over to him, on the ground that there

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

J. M. ZACHARIADES & Co. v. HOULOUSSI BEY MUFTIZADE. *Ex parte* IBRAHIM ALI

had been no delivery of the sheep to the claimant, and that the sale to him was consequently not complete.

The claimant appealed.

Collyer, Q.A., for the appellant: If delivery be essential to the validity of the sale, the fact that the claimant's nephew went and touched the sheep and counted them is a sufficient delivery. No fraud is alleged in this case. The claimant has paid his money for these animals and is entitled to them as against the judgment creditor.

Pascal Constantinides for the plaintiff, the respondent: Delivery is essential to complete a contract of sale. *Archimandrite Filotheo v. Haralambo Christofides and others* (not reported). I do not allege any fraud on the part of the claimant or the defendant, but the sheep have never ceased to be his property, and, therefore, were rightly taken in execution.

July 25. *Judgment*: This is an appeal from the order of the District Court of Nicosia, deciding that a flock of sheep found in the possession of the defendant are his property, and not that of the claimant Hadji Ibrahim, and that they were rightly seized in execution of the judgment in this action.

The facts proved on behalf of the claimant are, that in January last he agreed to buy and the defendant agreed to sell to him the animals in dispute for the sum of £70. The consideration for the sale was money paid, partly to the defendant and partly to a creditor of the debtor, and the satisfaction of an old debt owing from the defendant to the claimant. The claimant's nephew proceeded to the flock to take formal possession, which he says he did by touching and counting the animals, which were then left in the defendant's possession in virtue of an agreement entered into between him and the claimant, by which he undertook the charge of the flock on condition of receiving half the profits derived from it. It is not alleged on behalf of the plaintiffs that either the sale to the claimant, or the contract by which the animals were left in his possession were fraudulent, or intended to defeat the rights of other creditors; though it has been pointed out on their behalf how extremely undesirable a thing it is that persons should be allowed to be in the possession of goods ostensibly as their owners, and thus be in a position to obtain credit. It is not, however, alleged that the plaintiffs were in this particular case misled.

The only question we have to decide in this case is, whether the property in these sheep had passed to Hadji Ibrahim in consequence of the sale. The District Court have found that the sale in this case was not complete, as there was no delivery of the sheep to the claimant.

We are of opinion that, even if there had been no delivery of the sheep, the property in them had passed to the claimant. Under the articles in the Mejellé regulating the contract of sale, it appears to us that the contract is completed by offer and acceptance (Article 167) and that the vendor has the right to retain the goods until the price is paid, and then that he is bound to deliver them (Article 262). The law appears to contemplate that the property in the goods passes to the vendee when the price is paid as under Article 297. If the price has been paid, but no delivery of the goods made, and the vendor has died insolvent, the goods do not form part of his assets but the vendee is entitled to take possession of them. Article 293 must refer, we think, to cases in which the goods remain in the vendor's hands and the price has not been paid, and Article 294 to cases in which the goods have been delivered to the vendee who has not paid the price; there would certainly be no need for an enactment that a vendee who had paid the purchase money and had received the goods must bear the loss if the goods afterwards perished. It is admitted in the case before us that the price had been paid, and, in the absence of fraud, we think that the property in these goods had passed to the claimant. If it were necessary to decide the point, we think that there had been a sufficient delivery of these sheep to the agent of the claimant. Under Article 263, delivery is completed by the vendor giving permission to the vendee to take possession in such a way that there is no obstacle to his doing so. In the present case the claimant's agent went to the farm where the sheep were. The animals were brought out and touched and counted by him, and then put back again. He had gone to the farm for the express purpose of taking delivery of them, and we think that there was a sufficient delivery of them under the law.

The case of the *Archimandrite Filotheo v. Haralambo Christofides and others* (Supreme Court, 19 December, 1888), appears to us to be distinguishable from the present case. In that case certain animals found in possession of

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

J. M. ZACHARIADES & Co. v. HOULOUSSI BEY MUFTIZADE. *Ex parte* IBRAHIM ALI

a judgment debtor were claimed by a man who said that they had been pledged to him. Two objections were raised to his claim, (1) that the animals had never been delivered to him, and (2) that the transaction was fraudulent. It is quite clear under Article 706 of the Mejellé that the contract of pledge is not complete without delivery. The Court decided against the claimant, either on that ground or because the transaction was a fraudulent one, entered into to defeat the rights of creditors.

For the reasons we have given above, we are of opinion that the claimant in this case has made out his title to the animals, and we must reverse the order of the District Court and direct that the animals be handed over to him.

Appeal allowed.

SMITH, ACTING C.J. & TEMPLER, ACTING, J. 1891. *July* 23.

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

CONSTANDINO DIANELLO *Plaintiff,*

v.

KYRILLOS PAPADOPOULOS AS BISHOP OF KYRENIA *Defendant.*

CONTRACT BY BISHOP—RESPONSIBILITY OF PROPERTY OF SEE—ASSENT OF ARCHBISHOP TO CONTRACT—VOLUNTARY SUBSCRIPTIONS.

C., a bishop, promised certain subscriptions to a school, raising the money for that purpose by giving a bond, the payment of which was guaranteed by the plaintiff. C. died, and the plaintiff, having been compelled to pay the bond, brought an action against the defendant who had succeeded C. in the bishopric.

HELD: That the debt not having been incurred by C. for the necessities of the See, the defendant was not liable to pay the debt out of the income of the See.

APPEAL from the District Court of Nicosia.

The plaintiff sued to recover monies paid by him as guarantor of a bond given by Chrysanthos, late Bishop of Kyrenia, deceased, to the Anglo-Egyptian bank.

The late Bishop of Kyrenia in order to pay certain subscriptions promised by his predecessor and himself to the school at Nicosia, borrowed monies from the bank,