

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

SOTIRI PIERI ON BEHALF OF HIS INFANT
CHILDREN, ETC.*Plaintiffs,**v.*

KOUMI HADJI PIERI

*Defendant.*SMITH, C.J.
&
MIDDLE-
TON, J.
1895.
April 18.ARAZI-MIRIE—SALE OF, TO AN HEIR BY A PERSON DURING THE
COURSE OF AN ILLNESS OF WHICH HE DIES—ASSENT OF CO-
HEIRS—DONATIO MORTIS CAUSA—THE LAND CODE, ARTICLE
120—MEJELLE, ARTICLE 393.

By Article 120 of the Land Code alienation of arazi-mirié by a person during the course of an illness of which he dies made with the permission of the competent authority is valid, whether such alienation be made to an heir of the alienoer or to a stranger.

APPEAL from the District Court of Kyrenia.

Rossos for the appellant.*Sevasti* for the respondent.

The facts and arguments sufficiently appear from the judgment.

Judgment: The point presented for our decision in this case is an exceedingly short and simple one. The question is what construction is to be placed on Article 120 of the Land Code which states that alienations of arazi-mirié made by a person during the course of the illness of which he dies are valid, having regard to the provisions of Article 393 of the Mejellé, which provides that if a person upon his death-bed sells "a thing" to one of his heirs, this sale cannot take effect without the consent of the other heirs.

April 22.

The facts are, that Hadji Pieri Koumi, when on his death-bed, caused certain arazi-mirié property to be transferred into the name of his son, the defendant. This transaction took the form of a sale, and the registration was effected by means of a power of attorney given by the deceased to one of the witnesses, Papa Yanni Papa Theodulo.

This transaction is attacked on behalf of the plaintiffs, who are the grandchildren of the deceased, on the ground that it is invalid, as made by the deceased on his death-bed and not assented to by the plaintiffs. It was argued for the plaintiffs that Article 120 of the Land Code was not intended to alter, and had not altered, the general principle to be found in the Mejellé as to the restriction on gifts and sales made by a person during the course of his last illness, whether to heirs or strangers; and that the language of this article shows that it is intended to apply to the case where transfers are made to strangers only.

SMITH, C.J. We have considered the meaning of the article, and have
 & come to the conclusion that we cannot place upon it the
 MIDDLE- meaning attached to it by the appellant's counsel. The
 TON, J. wording appears to us to be perfectly general and to include
 SOTIRI PIERI all transfers, whether made to an heir or a stranger.

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 v.
 KOUMI If it was not intended to alter the general principle of the
 HADJI PIERI. Sheri Law which is contained in Article 393 of the Mejjé
 — (assuming that that article includes the case of the sale of
 arazi-mirié property), there does not appear any reason why
 the article should be enacted in the Land Code at all. It is
 quite explicit in its terms and it appears to us to have
 been enacted that such a transfer as that made in this case shall
 be a valid one.

For these reasons we think that the judgment of the
 District Court was right, and that this appeal must be dis-
 missed with costs.

Appeal dismissed.
