[MIDDLETON, ACTING C.J. AND LASCELLES, ACTING, J.]

MIDDLETON, ACTING C.J. & LASCELLES, ACTING J. 1895.

AGOP OHANNES *Plaintiff,*

v.

SERPOUHI STEPANIAN AND OTHERS *Defendants.*

July 22.

ACKNOWLEDGMENT OF DEBT—CONSIDERATION—DOCUMENT GIVEN TO DEFEAT RIGHTS OF INHERITANCE—INFERENCE OF FACT THAT DOCUMENT NOT TO TAKE EFFECT TILL AFTER DEATH OF THE OBLIGOR—RENEWAL OF MONETARY OBLIGATION—DEBT TO BE PAID AFTER DEATH—MEJELLE, ARTICLE 1610.

V., in the year 1891, gave her husband A. a document by which she acknowledged that she owed him the sum of £90 to be paid three years after date. V. at the time the document was given owed A. nothing, but sometime previously to the date of this document, A. had expended a sum equal to or exceeding £90 in purchasing shares in a house of which V. was part owner, and in repairing and improving the same, and had eventually registered the house entirely in V.'s name. It was found as an inference of fact that the parties to the document intended that the sum mentioned in it should not be paid till after the death of V. V. died in the year 1892 without having paid any of the money acknowledged to be due.

HELD (distinguishing the case from *Louka Hadji Andoni Pieri v. Eleni Hadji Yanni and another*, Vol. II., p. 153, C.L.R., and *Theognosia Haralambo v. Paraskeva Haralambo and another*, Vol. II., p. 22, C.L.R.): That the document being given as a renewal of a monetary obligation which at one time had existed, was an acknowledgment of a debt within the terms of Article 1610 of the Mejellé, and binding on V. and her heirs for the payment thereof, and was not void as made with the intention of defeating the law regulating the rights of inheritance, nor intended to take effect as a bequest to an heir.

APPEAL from the District Court of Nicosia.

G. Chakalli for the appellants.

D. Augustin for the respondent.

The facts and arguments sufficiently appear from the judgment.

Judgment: This is an action brought by the widower of one Varvari Boghos, deceased, against her other heirs to recover the sum of £90 and legal interest thereon from the date of action, alleged to be due by the deceased by virtue of a document given by the deceased on the 1st August, 1881. *Sept.* 10.

The defendants denied that there was any consideration given for the document, and alleged that the plaintiff had received full payment from his wife's estate and could not, therefore, call on the other heirs to contribute.

The plaintiff, on the other hand, asserted that he had purchased and repaired a house for the deceased with his own moneys, that deceased left nothing at her death, and that if she did so the defendants were at liberty to take their share.

The issues settled and agreed to by the parties were :—

(1) " Plaintiff to prove consideration."

(2) " Defendants to prove satisfaction as alleged."

The facts of the case appeared to be that the deceased owned a share in a house in Nicosia, that the plaintiff purchased the other shares in the house and had them registered in the name of deceased, and that he at his own expense repaired and brought water to the house, that the money he so spent in purchase of the shares and repairs, etc., amounted to £115.

All this seems to have taken place before the plaintiff went to Paphos in 1888, leaving his wife, the deceased, in Nicosia.

In the year 1891, the deceased sent to the plaintiff the document which is the subject matter of this action, signed by her on the 1st August, 1891, and a translation of which runs as follows :—

" Good for £90 only.

" Although I am registered in the books of the Land Registry Office as the owner of a house (together with its running water), situate in Saatchilar Street, in Arab Ahmed Quarter, Nicosia, bounded on one side by Mariam Philipos, on two sides by public road, and on the fourth side by Marinos, yet as in reality the said house has not been purchased by me, but has been purchased and acquired by my husband, Agop Ohannes, with moneys belonging to him, I owe my said husband, Agop Eff. Ohannes, the aforementioned sum of £90 to be paid three years after date, and I hereby declare that, with the help of God, I shall fully pay him the said sum of £90 in cash, in witness whereof I have given this bond to the order of my said husband.

Dated 1st August, 1891.

Signed by Certifying Officer on behalf of Varvari Agop Stepan."

The plaintiff's wife appears to have suffered from an internal complaint in 1888, and though perhaps, not in very good health, does not appear to have been seriously ill when she signed this document.

On the 14th May, 1892, the plaintiff's wife died, leaving the house registered in her name, and apparently certain articles of jewellery which her husband and father had given her. Beyond the house, this jewellery and some clothing, the deceased apparently left nothing.

Evidence in support of these facts was given in the District Court who entered judgment for the plaintiff for £90 without costs.

From the notes of the judgment, appearing on the file of proceedings, we gather that the District Court were of opinion that the plaintiff had expended the money which he declared in evidence he had expended, and that the admission in the document was, therefore, true, that the document was given as a mere protection to plaintiff to enable him to recover from her estate moneys he had expended thereon, or in " plain words " that it was made by a person in favour of one of her heirs, and not intended to be enforced till after the death of the maker, but distinguishing the case from the case of *Theognosia Haralambo v. Paraskeva Haralambo and another*, Vol. II., p. 21, C.L.R., the District Court held that the document was a true acknowledgment of debt due by the deceased to the plaintiff which her estate was bound to discharge before the heirs were entitled to inherit.

The defendants appealed and for them it was contended, (1) that the document was given without consideration, inasmuch as the deceased owed the plaintiff nothing at the time it was given, he having made a complete donation of the house to his wife, without any stipulation, long previous to the date of the document ; (2) that it was given to defeat the law of inheritance, and it was, therefore, void on the ground of public policy, and that the finding of the District Court that the document was not intended to take effect till after the death of the deceased supported this contention ; (3) that the District Court were justified in this finding from the circumstances that the sum in the document was not payable for three years, that the house was an absolute gift to deceased, and that deceased had no property at all. The main contention of the defendants' advocate was, however, that the document was given entirely to defeat the law of inheritance.

For the plaintiff it was argued that this was a perfect acknowledgment of a debt based on good and sufficient consideration ; and that if the house was given to the deceased by the plaintiff, the document in question is evidence of a revocation of that gift by mutual consent. It was also argued that there was not evidence to shew that it was the intention of the parties that the document should only take effect after the death of the deceased, but that the real intention was, that deceased should, when she was able to do so, reimburse her husband for what he had expended on the house.

It is not in evidence when the plaintiff transferred the house to his wife, but it is clear that it must have been so transferred before the document sued on was given by her.

This being so, it is manifest that at the time the document was given there was no debt due by the deceased to her husband which could have been recovered in a Court of Law. Apparently the plaintiff was either desirous of making what he considered to be a provision for his wife, or with some other object, cancelled all the expenditure he had incurred in purchasing and repairing the house, by conferring it on her unconditionally by registration in a legal manner.

Subsequently, we may we think assume, that the plaintiff became aware that if his wife pre-deceased him, the property found registered in her name would not revert to plaintiff solely, but would be divisible between him and the other heirs in shares as the law directs.

Consequently, the large sum spent by plaintiff on the house would practically be in a great measure for the benefit of these other heirs, and there is little doubt that plaintiff and deceased both desired that the document sued on should prevent this happening.

We have, therefore, now to consider what is the legal effect of such a document which, although it may have been intended to take effect only after the death of the obligor, yet was given to revive a monetary obligation, [according to the plaintiff's evidence and there is no evidence to the contrary], which had at one time actually existed.

The first point that arises is, what is the nature of the document in question. There can be no doubt, we think, that the document is *prima facie* a written acknowledgment of debt the law regulating which is contained in book 13 of the Mejellé.

There can be no question also that the acknowledgment was duly signed on behalf of the person purporting to make it, that she was of sound mind at the time, and that she was not in a state of mortal illness, and that there was no fraud in the making of it.

The next point that seems to arise is, is this an acknowledgment which can be falsified ? According to the ruling in *Louka Hadji Andoni Pieri v. Eleni Hadji Yanni and another*, Vol. II., p. 153, C.L.R., if it is a written acknowledgment made in accordance with the terms of Article 1610, that is to say, if made in an official, legal or customary form, it cannot be falsified. It would be difficult in this case to say that the document did not comply with these provisions.

There is, moreover, evidence to shew that a considerable benefit had at one time been bestowed on the obligor by the obligee, and the document itself shews that its object was to revive this as an obligation in the shape of a debt. In the three cases of *Dimitrio Solomo v. Marikou Elia*, not reported, *Theognosia Haralambo v. Paraskeva Haralambo and another* Vol. II., p. 21, C.L.R. and *Louka Hadji Andoni Pieri v. Eleni Hadji Yanni and another*, Vol. II., p. 153, C.L.R., that have been at present decided as regards the law of acknowledgment it has been found as a fact that the acknowledgment in question were not true, in other words that they admitted debts to be due which never existed. The case under consideration is different, as although it is clear no debt in law existed at the time the document was given, yet it is equally clear that plaintiff had gone to considerable expense in purchasing, repairing and endowing his wife with a house previously to her giving him the document in question.

As a general rule it is not reasonable, that one person should do another a kindness voluntarily and then charge him with a recompense.

In the present case the only evidence that the deceased requested her husband to do what he did is that of the husband, who says in cross-examination: "She always knew I would charge her with the cost of the repairs."

The deceased, however, gave her husband the document in question, which being in itself a due and legal acknowledgment of debt, according to Article 1610, the question of consideration does not arise.

This case would, moreover, appear to be different to the case of *Louka Hadji Andoni Pieri v. Eleni Hadji Yanni and another*, inasmuch as here money was actually paid by the obligee on behalf of the obligor to an amount which equalled, if it did not exceed, the sum of £90 set forth in the acknowledgment.

It was not, therefore, a gratuitous acknowledgment absolutely, as in the cases quoted.

If, therefore, the document was given to secure a sum of money which had at one time been actually paid by the obligee on behalf of the obligor and never repaid, and if the obligor chose by a formal acknowledgment to admit that that payment amounted to a debt, and in so doing no fraud is committed on other creditors, it would be difficult to say, even if the ultimate result be to deprive the other heirs of the obligor of part of their inheritance, that such an acknowledgment is void on the grounds of public policy, as being intended to defeat the law of inheritance.

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It cannot be said that the sole object the parties had in view was to defeat the rights of the defendants as heirs, but rather to prevent the defendants from obtaining the benefit of money which had actually been spent by the plaintiff on behalf of his wife—to benefit her estate it is true—but with no intention that the defendants as collateral heirs should reap any increased advantage thereby.

There then arises the point whether it was intended that this document should only take effect after the death of the deceased, and, if so, what would be its legal effect. The District Court have held that this inference was to be drawn, and considering the wording of the document, the time to elapse before it became due, and the circumstances under which it was given, it is extremely difficult to say the District Court were not justified in their finding on this point.

We have, therefore, an acknowledgment of a debt given by a person on whose behalf money was actually paid by the person to whom the acknowledgment was given, but which *debt* the parties contemplated might not be paid till after the death of the person giving the acknowledgment.

There would appear to be nothing in the law which prevents persons agreeing that a *bona fide debt* should be paid after the death of the debtor, and we must, therefore, hold that the judgment of the District Court is right and dismiss the appeal.

Having regard to the difficulty and peculiar circumstances of the case, we think that each party should pay their own costs of this appeal.

As regards the defendants' contention in the District Court that the plaintiff had taken more than his share of the deceased's jewellery, and, in so doing, had recouped himself wholly or in part on the document claimed on, this was not seriously contended for before us, nor does the evidence sustain such a contention. On the other hand, it is clear that any jewellery which the plaintiff or deceased's father may have completely given to the deceased during her lifetime, forms part of her estate and is divisible amongst the heirs in accordance with their respective legal rights.

Appeal dismissed. Each party to pay their own costs.