

SMITH, C.J.
&
MIDDLE-
TON, J.
1895.

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

REGINA

v.

SHEIK HADJI HAFIZ.

Feb. 27.

OBTAINING SIGNATURE TO A VALUABLE SECURITY BY FALSE AND FRAUDULENT PRETENCE—OBTAINING MONEY BY FALSE AND FRAUDULENT PRETENCE—INFORMATION—POWER OF SUPREME COURT—OTTOMAN PENAL CODE, ARTICLE 233—THE CRIMINAL APPEAL LAW, 1889, SECTION 6.

The defendant by a fraudulent and false pretence induced the prosecutor to sign a bond as security for the payment of money by the defendant to some third persons. The prosecutor was sued on the bond and was compelled to pay the sum secured to the persons to whom the security was given.

HELD : That the defendant had not obtained either money or a valuable security from the prosecutor by means of a false and fraudulent pretence within the meaning of Article 233 of the Ottoman Penal Code.

APPEAL from the District Court of Nicosia.

Diran Augustin for the appellant.

Templer, Q.A., in support of the conviction.

The facts and arguments sufficiently appear from the judgment of the Supreme Court.

March 7.

Judgment : The defendant has been convicted by the District Court on an information which charges that on or about the 1st day of November, 1887, at Nicosia, he "obtained by fraudulent means the security of one Kiamil "Hadji Hassan," the information being laid under Article 233 of the Ottoman Penal Code.

The facts appear to be that in November, 1887, the defendant was desirous of becoming Mutevelli of a certain vakouf, the property of which appears to have consisted of a sum of £37, loaned out to some person or other at interest. Before handing over to the defendant the securities representing the money, the Evkaf authorities required him to enter into a security bond guaranteed by some solvent person. The defendant applied to the prosecutor Kiamil Hadji Hassan and asked him to sign a bond as his surety. The prosecutor at first refused, but on the following day the prisoner came to him again and showed him four mulk kochans for property apparently registered in the prisoner's name. The prosecutor thereupon signed the bond which the defendant produced, and in his evidence before the District Court states that he would not have become surety had the defendant not shown him these mulk kochans.

The defendant was appointed Mutevelli of the Vakouf, and in 1892 was called upon to produce his accounts when a deficiency of 7,549*p.* was found. The defendant and the prosecutor were jointly sued upon the bond given by the defendant to the Evkaf authorities and judgment recovered for £41 9*s.* 5*p.* and £4 5*s.* costs. The defendant failed to pay the amount, and the prosecutor Kiamil was forced to pay.

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The prosecutor then sued the defendant and recovered judgment against him, and on his endeavouring to obtain execution of the judgment by sale of the properties registered in the defendant's name, and which were comprised in the kochans shown to him in the year 1887, the defendant objected that the properties were idjaré vahidé and could not be sold. It then transpired that the defendant had made these very properties vakouf in the year 1882, retaining in his hands the mulk title-deeds and giving no notice to the Land Registry Office of the fact that he had made the property vakouf, inasmuch as we find that he subsequently purported to sell one house and mortgage others under these mulk titles, which he would not have been able to do had the Land Registry officials been aware that the properties were idjaré vahidé. With these transactions we have, however, nothing to do, the sole point for our consideration being whether, on the facts proved on behalf of the prosecution in this case, the defendant has committed an offence under Article 233 of the Penal Code.

It appears to us that what the defendant did, was this. He fraudulently induced the prosecutor to affix his signature to an undertaking to be responsible for the repayment to the Evkaf of the amount of the securities entrusted by them to the defendant: that on the security of this undertaking he received two bonds from the Evkaf authorities, and, on his failing to repay the amount when called upon to do so, the prosecutor was forced to pay, and did pay the amount.

A literal translation of Article 233 from the Turkish text runs as follows: "Any person who by using any fraud or pretext by way of swindling takes from the hands of another person the possession of his money, emlak, negotiable documents, bonds or other goods, shall be imprisoned from three months to three years," etc. The expression "from the hands of another person" need not, of course, be construed literally, the article, no doubt, meaning that a person who obtains from another by fraudulent means the possession of any of the description of properties mentioned in the article is to be punished with imprisonment.

Now, it is quite clear that the defendant has not committed the offence mentioned in the information. If by the words "obtained the security of Kiamil Hadji Hassan," are meant that he obtained by fraudulent means the actual

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document of security, then the offence charged is not borne out by the evidence, inasmuch as the defendant himself was in possession of the document, and only induced the prosecutor to affix his signature to it. Under Section 6 of the Criminal Appeal Law, 1889, the Supreme Court has power to find a convicted person guilty of any offence which it appears to the Court he has committed, provided that a conviction for such an offence would not render the prisoner liable to a greater punishment than might have been inflicted for the offence of which he was convicted by the District Court. We might under this section, therefore, if the evidence warranted it, convict the defendant of obtaining by fraudulent means the moneys of the prosecutor.

We, however, are of opinion that it is not possible to convict the defendant of any such offence. He did not, as a matter of fact, obtain the moneys of the prosecutor at all, inasmuch as he never had any money from the prosecutor. What he did was, as we have said before, fraudulently induce the prosecutor to sign a surety bond under which the prosecutor was ultimately compelled to pay certain moneys to the Evkaf authorities. We do not see how it can be said that he obtained the securities from the Evkaf authorities by fraudulent means. So far as they were concerned, the security bond which the defendant induced the prosecutor to sign was perfectly good, and they sued upon it and recovered from the prosecutor the moneys due under it. It appears to us, therefore, that the defendant obtained money by fraudulent means neither from the prosecutor nor from the Evkaf authorities, and cannot, therefore, be convicted of an offence under Article 233 of the Penal Code. ■

We may observe that the English Law as to obtaining goods by false pretences is very similar to the law contained in the Ottoman Penal Code on the subject, that is to say, that it is necessary that money or some chattel has been obtained by false pretences. The English Law contains a specific provision making it an offence for a person to obtain fraudulently and by false pretences the signature of another person to a document in order that the same may be used, converted into or dealt with as a valuable security. There would have been no need for this express enactment, if such a case fell under the law as to obtaining money or goods by false pretence.

Some such enactment appears to us to be necessary here in order that a person who has committed such a fraud, as the prisoner in the present case, may be made amenable to justice. It appears to us that the prisoner in this case has been guilty of fraud, and we much regret that the law does not allow us to inflict punishment upon him.

Conviction quashed.