HUTCHINSON, C.J. & MIDDLETON, J.

1900
March 23

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

MICHALAKI AND OTHERS, AS HEIRS OF PANARETOS IOANNIDES, DECEASED, *Plaintiffs*,

v.

H. PANAYIOTI PERDIO, *Defendant*.

APPEAL—PRACTICE OF SUPREME COURT—FINDING OF DISTRICT COURT ON THE FACTS AGAINST THE EVIDENCE—PRINCIPLE ON WHICH SUPREME COURT WILL ACT—QUESTION OF FACT—ORAL EVIDENCE—DOCUMENTARY EVIDENCE—PRESUMPTION.

In order to obtain a reversal of the finding of a District Court on the facts laid before it, it must be shewn, that the decision was one which, viewing all the evidence reasonably, the Court could not have arrived at.

APPEAL from the District Court of Nicosia.

Artemis (*Kyriakides* with him), for the Appellants.

Economides (*Pascal Constantinides* with him), for the Respondent.

The claim in this case was for the return of certain bonds, furniture, jewellery, securities and monies alleged to have been appropriated and retained by the Defendant before and after the death of Panaretos Ioannides, late Archimandrite of Kykko Monastery, as against the Plaintiffs, his lawful heirs.

For the purposes of this report it is not necessary to say more than that the main questions of fact appealed on involved the value as evidence of a statement in writing made by the Plaintiff's deceased predecessor in title and admitted without objection; the genuineness of a receipt alleged to have been signed by the same deceased person; and the issue, as to whether certain bonds drawn payable to the Defendant, were, in fact, drawn οἰκονομικῶς and really belonged to the deceased and not to the Defendant.

The Supreme Court before proceeding to pronounce on the facts made the following observations:—

April 10 *Judgment*: It will be convenient to preface our discussion of the facts and arguments referred to by Advocates in their contentions before us by drawing attention to the presumption we start with, and the principle which guides us in considering whether we should interfere with the decision of a District Court solely on a question of fact. That presumption and principle were in respect to oral testimony laid down by us in the case of *Marcouli and others *v.* Rossos, decided by this Court

on the 22nd June, 1899, and although in this case part of the material on which the Court founded its decision was documentary, what we said in that case equally applies to the oral testimony here. Starting with the presumption that the District Court came to a correct conclusion on the facts, in order to obtain a reversal of such finding, it must be irresistibly shewn, that the decision was wrong; or, to put it in other words, that the decision was one which, viewing all the evidence reasonably, the Court could not have arrived at. We believe that it is not our duty to decide which side preponderates on a mere balance of evidence, but the Appellant must prove a case which admits of no doubt whatever. The language of the principles we enunciate is not our own, but proceeding as it does from the mouths of members of the highest tribunal in the United Kingdom, we believe that we are warranted in adopting it as a standard on which to work in Cyprus in circumstances similar to those in relation to which it was spoken.

. . . . . .

Appeal allowed. Judgment of the District Court varied.

*The Supreme Court in giving judgment in this appeal said as follows:

In cases of this description where the question is purely one of fact, it has been the practice of this Court, as indeed it is the practice of the Appeal Courts of the United Kingdom, not to interfere with the verdict of the Court which tried the case, and heard the witnesses and saw their demeanour, unless some very strong ground is adduced to shew that the verdict is against the weight of the evidence. That this is a most salutary practice there can be no doubt, as a perusal of the notes of evidence, taken with the most utmost accuracy, cannot possibly convey to the mind of a Judge the same impression which the oral examination of the witnesses and their demeanour under that process would have made upon the same Judge, if it had been his duty to hear the case in first instance.

The presumption this Court starts with, is that the decision of the Court below on the facts is right and it is for the Appellant to shew that the conclusions come to by the Court appealed from are erroneous. In a case like this where the whole matter turns on the credibility of certain witnesses, it is obvious that the District Court is in a far better position to judge of the value of their testimony than we are. We are of course not oblivious of the fact, that quite apart from manner and demeanour, there are other circumstances which may shew whether a statement is credible or not, and we should not hesitate to act upon such circumstances, if, in our opinion, they warranted us in doing so.