[HUTCHINSON, C.J. AND TYSER, ACTING J.]

DEMOSTHENES TALIADOROS AND ANOTHER, *Plaintiffs.*

v.

HEIRS OF NICOLA CH. LAMPE. *Defendants.*

GUARANTEE—CONTRIBUTION—"CAUTION SOLIDAIRE"—"ΑΛΛΗΛΕΓΓΥΩΣ"—JOINT AND SEVERAL.

D., Y. and N. signed a document constituting themselves "caution solidaire" to a Bank for an overdraft carrying interest for six months given by the Bank to X. N. died before the end of the six months. X. was unable to pay the whole amount due, and D. and Y. paid the balance, and then sued N.'s heirs to recover one-third of the sum so paid.

HELD (*varying the judgment of the District Court*) that N.'s heirs were liable to pay the sum claimed.

APPEAL from the District Court of Limassol.

Economides for the Appellants.

Pascal Constantinides (with him *Artemis*) for the Respondents.

Hutchinson, C.J.: This is an appeal by the Defendants from a judgment of the District Court of Limassol. *Jan. 26*

The claim is for £77 16s. 8 c.p., being one-third of £233 10s. 6 c.p. paid by the Plaintiffs to the Imperial Ottoman Bank for the debt of one Neophyto Lampe, which debt the Plaintiffs and the deceased Nicola guaranteed jointly and severally by a letter dated 15th July, 1895: and also for interest.

The defendants denied that Nicola was a guarantor: and alleged that, if he was, the guarantee was renewed after his death without any communication with them, and so his estate was released; and they did not admit that the Plaintiffs had paid the sum which they alleged they had paid.

The issues settled were: 1, "was Nicola a surety in the bond" (meaning the letter of guarantee), "and was the bond for six months: "and is the Defendant responsible if the bond was renewed after six "months?" and 2, "have the Plaintiffs paid off the sums they allege. "and, if so, can they claim anything from the Defendants?"

The letter of guarantee bears the signatures of the Plaintiffs and of Nicola; and Nicola's signature is amply proved to be genuine. The letter is on a printed form, with names and figures and dates written in, and runs as follows:

HUTCHINSON, C.J. & TYSER, ACTING J.

DEMOSTHENES TALIADOROS AND ANOTHER v. HEIRS OF NICOLA CH. LAMPE

Banque Impériale Ottomane,
En Ville.

Messieurs

Vous avez bien voulu accorder à Monsr. Neof. Ch. Lambis suivant votre de ce jour, dont j'ai pris connaissance, un crédit en compte courant de £stg. 300 . . (trois Cents) portant intérêt à Neuf ⁰/₀ l'an, pour un terme de six mois, à partir d'aujourd'hui.

Nous declarons, par le présent engagement, Nous constituer caution solidaire de Monsr. Neof. Ch. Lambi à votre profit pour toute somme dont il sera votre débiteur du chef de ce compte-courant, et Nous obliger, en conséquence, à vous rembourser le solde débiteur de dit compte à toute époque ou il deviendra exigible

Limassol, le 15 Juillet, 1895.

Δ. Ταλιαδόρος.
Νικόλαος Χρ. Λαμπή.
Ἀλέξανδρος Χρ. Λαμπή.

There had been previous guarantees of the same kind by the same parties, and the one immediately before that of the 15th July, 1895, was dated 3rd January, 1895, and was precisely the same in every respect except as to the date and the sum guaranteed, which was £500. This was superseded by the one of 15th July, 1895, in which the sum guaranteed was reduced to £300, the principal debtor, Neophyto, having agreed to give a mortgage to the Bank for the balance of £200.

Nicola died on the 29th July, 1895. At or before the end of the six months for which the guarantee was given the Bank called upon the Plaintiffs and Neophyto to pay the sum due. What was the precise effect of the negotiations with the Bank Manager is not clear: the Manager is not now in Cyprus, and the correspondence, if there ever was any, has not been produced. But at any rate it is proved that there was no new guarantee in writing, and that the Bank never "gave delay." to Neophyto or the Plaintiffs, *i.e.*, never did anything to bind it to give time or not to sue. The Bank kept doing its best to recover the amount due. Neophyto paid some part of it, and the balance was paid by the Plaintiffs in instalments, their first payment being made on the 2nd December, 1897, and the total of their payments being £233 10s. 6 c.p. During all this time no notice of what was being done was given to the Defendants, nor was any claim made on Nicola's estate, either by the Bank or by the guarantors.

The District Court found that there had been no express or implied release of Nicola's estate, and that the Plaintiffs had paid the amount

which they alleged they had paid; it held that the Plaintiffs had a right to contribution from Nicola's estate, and gave judgment for the Plaintiffs for £77 16s. 8 c.p., with interest thereon at 9% from the date of service of the writ of summons on the Defendants to final payment.

It was argued for the Appellants in this Court that " when one surety " pays the debt he has no right of contribution from his co-surety. The " right of contribution is specially given by the French and other Laws: " it is not given by Turkish Law."

No express provision on the subject of contribution between co-sureties has been pointed out to us, and we have not been able to find any, in the Ottoman Law. Both parties referred to Art. 647 of the Mejellé; and the Plaintiff's Advocate also relied on Art. 250 of the Commercial Code as recognizing the existence of the principle of contribution.

I think that Art. 647 of the Mejellé refers to three different forms of guarantee by two or more persons: one, where the guarantors give their guarantee to the creditor independently of each other, on different occasions or in separate documents; the second, where they guarantee the debt jointly; and the third, where each guarantor guarantees the amount for which his co-guarantors are liable. The third form I think is intended to be that which in Greek is called ἀλληλεγγύως, in French *Caution Solidaire*, and in English " joint and several: " the effect of which is that the creditor can sue all or any one or more of the guarantors for the whole debt, so that practically each of them guarantees the amount which his co-sureties guarantee.

It appears to me that in any form of guarantee in which each of the guarantors is liable for the whole debt, any guarantor who pays the whole debt must (unless the contrary is expressly stipulated) be entitled to contribution from the others. For when he pays the debt he is entitled to stand in the shoes of the creditor and to have the benefit of all the securities which the creditor has for payment of the debt; and amongst those securities is the guarantee of the other guarantors. This is the principle on which the right to contribution in such cases is founded in English Law; the right existed under the Roman Law, and exists under the French Law; and the Commentary on Art. 647 in the Greek Edition of the Mejellé states that it exists in the Ottoman Law.

I conclude that the right exists in this case, where the guarantee is " solidaire " or " joint and several."

But whether that is so or not I think that the guarantee in the present case comes within the third of the three classes mentioned in

Art. 647, and that each guarantor is as regards the other guarantors a principal debtor for his proportion of the amount which is paid under the guarantee.

I agree with the District Court that there has been no release of Nicola's estate.

The only other point necessary to mention is one which was urged by the Defendant, relying on Sec. 639 of the Mejellé. This section says: "In the temporary guarantee the demand must be made on the guarantor "within the time fixed. As if one says, 'I guarantee for a month "from to-day;' the demand must be made to him within the month; "after the end of the month he is free." This seems to mean that when a man undertakes to be liable for another person's debt for a certain period, that must be construed to mean that if the debt is not paid and if demand is not made for it by the creditor from the guarantor within that period, the guarantor is released. But that is not the kind of undertaking which was entered into by the guarantors in this case: what they guaranteed was the payment of any advance that might be made during six months by the Bank to the debtor: and the amount for which they might be liable on this guarantee could not be ascertained until the six months expired, for the Bank might grant a further advance to the debtor at the last minute of the six months.

In my opinion therefore the estate of Nicola is liable to pay the Plaintiffs one-third of the sum which the Plaintiffs were bound to pay and did pay in respect of this guarantee. That sum the District Court rightly, I think, found to be £233 10s. 6 c.p.

In my opinion no interest is chargeable against Nicola's estate after the end of the six months.

The judgment of the District Court should be varied by omitting the interest allowed, *i.e.*, the judgment ought to be for £77 16s. 8 c.p. only, with the costs of the action.

As the Appellants have substantially failed on this appeal they must pay the costs of it.

Tyser, Acting J.:

In this case a contract in writing was entered into by Plaintiffs and the ancestor of the Defendants which is in French, the terms of which have been stated by the Chief Justice.

By that contract the Plaintiffs and the Defendants' ancestor became co-sureties for the debt of a person named Neophyto.

It is a recognised consequence of a contract in the form in which this contract was that each co-surety becomes surety for the payment by every other co-surety of his share of the amount guaranteed.

It follows from this that on payment by one co-surety of the share of another co-surety, he is entitled to recover the amount so paid from the co-surety whose share he has paid.

This is the contract and was the intention of the parties.

There is nothing in the Turkish Law which prevents such a contract being made.

The Plaintiffs have paid a sum which includes part of the share of the debt for which the Defendants' ancestor was primarily as between the co-sureties responsible.

Therefore, the Plaintiffs are entitled to recover.

The Defendants did not dispute their liability for interest during the six months for which the guarantee ran.

There has been no release of the Defendants' ancestor.

The Plaintiffs therefore are entitled to judgment for the amount stated by the Chief Justice.

Judgment of the District Court varied.