

Pascal : My client obtained judgment in January, 1903, and in May, 1903, he procured the registration of the property in the Defendant's name, and in August he obtained the order for sale. Ratib took no steps until we had incurred all the expense, and then, he applied to stop the sale.

Judgment : The Court stated the facts and proceeded :

The reason given by the District Court for its decision is that " as between two persons whose equities are otherwise equal the more diligent person is to be preferred." That was a principle which the English Judges in the " Equity " Courts applied as between persons who had only " equitable " rights and no " legal " rights. It would not in England have had any application to the case of a litigant who had a " legal " right. And here Ratib had a legal right to have Dilaver's property applied in payment of Dilaver's debt to Ratib.

With regard to the costs we do not see that Ratib has been guilty of anything which disentitles him to them. The right form of order for us to make will, we think, be that the sale proceed and that the proceeds be applied in paying in the following order of priority, (1) the costs of sale, (2) the Plaintiff's costs of obtaining the registration in the Defendant's name and of procuring the order for sale, (3) Ratib's debt and his costs of this application and appeal, (4) the Plaintiff's debt and costs.

HUTCHIN-
SON, C.J.
&
PARKER,
ACTING J.
—
ABDULLAH
HUSSEIN
v.
SELIM
DILAVER
—

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

HAJI HAFUZ ZIAI EFFENDI (QADI OF NICOSIA), *Plaintiff*,

v.

MEHMED NIDAYI EFFENDI HAJI OSMAN, *Defendant*.

HUTCHIN-
SON, C.J.
&
TYSER, J.
1905
—
April 14
—

POWER OF ATTORNEY—CONSTRUCTION—AUTHORITY TO BUY—AUTHORITY TO BORROW—SPECIAL POWER—GENERAL POWER—UNIVERSAL POWER.

The Defendant gave a document to H. Y. appointing him his irrevocable vekyl to recover claims, institute proceedings, buy property and sell and exchange, and generally to deal with and dispose of any of his affairs in Cyprus, and giving him full liberty to act in all matters according to his discretion in the Defendant's name.

The Qadi of Nicosia lent money to H. Y. and took a bond from him for the amount lent, such bond being made out in the name of the Defendant.

HELD: *that the document under which H. Y. was appointed did not authorise him to borrow money or give the bond in name of the Defendant and that the Defendant was not liable.*

This was an appeal from the District Court of Nicosia.

The action was originally brought in the name of " Qadi Hussein Effendi, Director of the Ottoman Orphans' Trust Fund, on behalf of the infant children of Ezder Halil, Hava Daoud and others."

HUTCHIN-
SON, C.J.
&
TYSER, J.
Haji Hafuz
Ziai Eff.
v.
Mehmed
Nidayi Eff.
Haji Osman

Qadi Hussein died and the present Plaintiff having succeeded to the office of Qadi was substituted for him as Plaintiff.

The Defendant, who resided abroad, appointed Haji Yussuf Effendi, his agent, under a document which was in the following terms:

“ I have appointed my uncle Haji Yussuf Effendi bin Haji Hassan Agha to be my irrevocable vekyl (under the Sher' law) and my general agent for the purpose of recovering any claim I have in the Island of Cyprus against individuals either due on a bond or otherwise and in case of need to institute proceedings and to be a party to such proceedings and to appear on appeal and to defend such appeal and in case of need to appoint another vekyl, to buy property in my name and if he thinks fit to sell, exchange and generally to dispose of any of my affairs I have in Cyprus and I give him full power to act in all matters according to his discretion in my name.”

Dated 30th March, 1901.

(Signed) Mehmed Nidayi Haji Osman,
Resident of St. Sophia quarter of Nicosia.

Haji Yussuf obtained an advance of money from the Ottoman Orphans' Trust Fund and gave a bond which after enumerating the trust estates out of which the funds were advanced proceeded as follows:

“ I have received as a vekyl of Mehmed Nidayi Effendi bin Haji Osman Effendi of Nicosia from the officer in charge of the Orphans' Estate the sum of £88 out of the funds belonging to the estates above enumerated for one year from the date hereof interest being payable thereon with the help of God at the expiration of that time should the said amount not be paid and any litigation before the Government be taken not only we shall pay all costs thereby incurred but interest at the rate of 10% until the date of final payment shall be paid by us. One house situated in St. Sophia quarter, Nicosia, Reg. No. 12,338, bounded by road, Mehmed Izzet Effendi, two sides Nidayi and co-shares; and again another house in Abdi Chaoush quarter, Nicosia, Reg. No. 12,337 bounded by road, Ahmed Izzet Effendi, Ayshe Hanoum, road, Fatma Mulla and M. Izzet Eff. 6/18th of which belong to Nidayi Effendi, and again another house in Abdi Chaoush quarter, Nicosia, Reg. No. 13,269 bounded by two sides road, Ahmed Izzet Effendi, Ayshe Hanoum, road, Fatma Mulla and M. Izzet Effendi the interest of Nidayi 6/18th, I have mortgaged all these by Vekyalet Devrieh and having thereby appointed Mehmed Nazim Effendi, clerk of Nicosia Sheri Court, to be vekyl with the authority in the event of its not being possible to pay the debt at the expiration of the time above appointed and to release the mortgage, to sell by public auction the mortgaged property and out of the proceeds to pay the said debt and to hand to me any balance there may

“ be and should there be any balance in respect of the debt it is our
 “ condition I shall be responsible to make good any deficiency. In
 “ testimony whereof I have given this sened to the officer in charge of
 “ the Orphans’ Estate.”

HUTCHIN-
 SON, C.J.
 &
 TYSER, J.

HAJI HAFUZ
 ZIAI EFF.

(Signed) Vekyl of Mehmed Nidayi,

18th January, 1902.

Haji Yussuf Haji Hassan.

v.
 MEHMED
 NIDAYI EFF.
 HAJI OSMAN

“ I guarantee to pay the amount stated in the above sened until the
 “ date of final payment.”

18th January, 1902.

(Signed) Haji Yussuf Haji Hassan.

There was no evidence that the Defendant ever received any of the
 money or any benefit therefrom.

Haji Yussuf died before action brought.

The Plaintiff claimed to recover the money due under the bond from
 the Defendant.

The Defendant denied the bond. The District Court gave judgment
 for the Plaintiff.

Sevasly and *Theophani* for the Appellant.

Kyriakides for the Respondent.

Sevasly: No authority to borrow.

Kyriakides: The power gives agent authority to act in all matters as
 he likes. It is a general power.

Judgment: THE CHIEF JUSTICE: When a question arises on a
 power of attorney whether the parties intended that the donee of the
 power should be able to do some particular act under the power, if the
 intention cannot be plainly gathered from the document, certain rules
 of construction have been established. One of those rules is that wide
 and general words ought to be construed with reference to the general
 objects for which the power was given, unless a contrary intention appears.

Here the wide general words at the end of the power, “ I give him
 “ full liberty to act in all matters according to his discretion in my name,”
 must be limited in accordance with that rule; the parties cannot have
 meant that Haji Yussuf should have power to bind Mehmed Nidayi by
 any act whatsoever, but only by any act done or purporting to be done
 for the purpose of carrying out the objects for which the power is
 expressed to be given. To carry out those objects it was not necessary
 to borrow money. And no express power to borrow is given. Therefore
 Haji Yussuf was not empowered by this document to borrow money.

The appeal should therefore be allowed and the judgment of the
 District Court set aside and the action dismissed, with costs in both
 Courts.

TYSER, J.: I am of the same opinion.

HUTCHIN- It is clear that none of the specific powers expressed in the document
SON, C.J. give authority to borrow. An authority to buy does not give an implied
& authority to borrow the purchase money.
TYSER, J.

HAJI HAFUZ The general powers at the end of the document must be read in
ZIAI EFF. subordination to the particular subject matter of the authority given, and,
v. must be construed and limited accordingly.
MEHMED

NIDAYI EFF. The particular subject matter of the document appointing Haji
HAJI OSMAN Yussuf as vekyl is to recover debts and buy and sell property, and the
general powers must be construed as limited to acts necessary for those
purposes.

The borrowing of money is not necessary for any of them and therefore is not included in the general powers.

There seemed to be some confusion in the use of the term " general authority " or " general power of attorney."

An authority may be either special or general. The terms are used in a variety of senses. The true distinction (as generally recognised) between a general and a special agent is this; a general agency does not *import an unqualified authority, but that which is derived from a multitude of instances, or in the general course of an employment or business; whereas a special agency is confined to an individual transaction.*

General agents are however to be carefully distinguished from universal agents, that is, from agents, who may be appointed to do all the acts, which the principal can personally do, and which he may lawfully delegate the power to another to do. Such an universal agency may potentially exist but it must be of the very rarest occurrence. *It would make the agent complete disposer of all the rights and property of the principal.* The Court will not from any general expressions, however broad infer the existence of any such universal agency. (See Story on Agency, Secs. 17, 18, 19, 21.)

The question to be decided is what is the intention of the parties.

The Plaintiff in effect contends that Haji Yussuf was made universal agent for the Defendant.

In my opinion the document under which he was appointed does not confer such authority.

Appeal allowed with costs.