[BERTRAM, ACTING C.J. AND HOLMES, ACTING J.]

BERTRAM, ACTING C.J. & HOLMES, ACTING J. 1908 July 6

REX

v.

GEORGHI COSTI KOULOUMBRIDES.

CRIMINAL LAW—SEDUCTION UNDER PROMISE OF MARRIAGE—OTTOMAN PENAL CODE, ADDITION TO ART. 200—AGE OF PUBERTY—"SINNI BULUGH"—"BALIGH"—"RESHID"—MEJELLE, ARTS. 943, 947, 986 AND 987.

CRIMINAL PROCEDURE—LOCAL JURISDICTION—OFFENCE COMPOSED OF SUCCESSION OF ACTS COMMITTED IN DIFFERENT DISTRICTS—JURISDICTION OF COURT OF DISTRICT IN WHICH OFFENCE FINALLY CONSUMMATED—*CYPRUS COURTS OF JUSTICE ORDER*, 1882, ARTS. 48, 49, 56 AND 89.

The prisoner seduced under promise of marriage a young woman of the age of twenty-one and afterwards refused to marry her.

HELD: That he was rightly convicted under the addition to Art. 200 of the Ottoman Penal Code.

The expression "age of puberty" (*sinni bulugh*) in Art. 986 of the Mejellé means "age of the attainment of puberty," and not "age of the duration of puberty."

The promise was made in the Famagusta District. The seduction took place in the Larnaca District. The refusal to marry was contained in a letter, which was alleged to have been written and posted in the Larnaca District, but which was received by the complainant in the Famagusta District.

HELD: That inasmuch as the offence was not finally consummated until the refusal was communicated to the complainant, and inasmuch as this communication took place in the Famagusta District, the Famagusta District Court had jurisdiction to try the case.

Appeal from the District Court of Famagusta.

The prisoner was convicted under the addition to Art. 200 of the Ottoman Penal Code of having seduced the complainant, a girl of twenty-one, under a promise of marriage and afterwards refusing to marry her. He was sentenced to two months imprisonment and a fine of £50.

It appeared that the promise (which was not disputed), was made at Varosia, in the Famagusta District, and that the seduction subsequently took place at Larnaca. The "refusal" consisted of a letter written by the prisoner to the complainant announcing his betrothal to another person. The letter was not produced having been destroyed by the recipient. It was not clear from the evidence where the letter was posted, but it was argued by the defence that the proper inference to be drawn from the facts was that it was posed at Larnaca. It was received by the complainant at Varosia.

Michaelides (*Paschales Constantindes* with him) for the Appellant.

Amirayan for the Crown.

The arguments appear from the judgment.

The Court dismissed the appeal.

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Judgment: With regard to the question of jurisdiction, which was raised for the first time on the hearing of this appeal, we have no doubt that the Famagusta District Court had jurisdiction to try the case. The elements constituting this offence were a series of acts which took place in different Districts, but there was no offence until the last of the series was completed.

The promise was not a criminal act, nor was the seduction by means of the promise. The act which consummated the criminal offence was the refusal to marry, and in our opinion this refusal was not complete until it was received by the complainant. It is true that in commercial correspondence, according to English law, a letter is considered as having been received as soon as it is posted, the Postmaster General being deemed to be the agent of the recipient for the purpose of receiving communications which in the ordinary course of business pass through the post. But there is nothing to constitute the Postmaster of Cyprus an agent to receive refusals to fulfil an engagement of marriage. Even though it were proved (which it is not), that this communication was posted at Larnaca it would not affect our judgment. In our opinion the offence was not finally consummated until the refusal of marriage (and this letter was rightly treated as tantamount to a refusal of marriage) was actually communicated to the complainant, and inasmuch as this communication took place at Varosia, we are of opinion that the Famagusta District Court was the right tribunal to try the case.

Under the circumstances it is not necessary for us to deal with the point raised by the Crown, that it was not competent to the Appellant to take exception to the jurisdiction of the District Court for the first time on the hearing of the appeal.

The principal question which we are called upon to determine is a question as to the interpretation of the addition to Art. 200 of the Ottoman Penal Code. According to that article a person who by a promise of marriages seduces a "*bikr baligha*" and afterwards refuses to marry her is liable to fine and imprisonment.

The expression "*bikr baligha*" in the official French version of the Code is translated by "*une fille ayant atteint l'age de puberté,*" and in the accepted Greek version by "*Παρθένος ἐνήλικος.*" It is contended by Mr. Michaelides that the expression "*bikr baligha*" means a virgin between the ages of nine and fifteen. He bases his contention on the Greek translation of Art. 986 of the Mejellé, which he maintains is an accurate rendering of the original, and which runs as follows:—

"*Ἀρχὴ μὲν τῆς ἐνηλικιότητος τῶν ἀρρένων εἶναι ἀκριβῶς ἡ ἡλικία δώδεκα ἐτῶν, καὶ τῶν θηλέων ἀκριβῶς ἐννέα, τὸ δὲ τέρμα εἰς ἀμφοτέρους ἡ ἡλικία ἀκριβῶς δέκα πέντε ἐτῶν.*"

He maintains that according to the true interpretation of this article a "*bikr baligha*" at the age of fifteen ceases to be "*baligha,*" and that as the young woman in this case is admittedly over fifteen the addition to Art. 200 of the Criminal Code does not apply. He argues that the article was intended for the protection only of virgins of very tender years; that after the age of fifteen they do not require the protection of the law, as at this point, in his view of the law, they emerge into the age of reason.

The answer to this argument is a simple one. From enquiries we have made we are satisfied that the expression "*sinni bulugh*" in Art. 986 of the Mejellé does not mean "*the age of the duration of puberty*" but "*the age of the attainment of puberty.*"

The meaning of this section of the Mejellé would appear to have been carefully considered by the Chief Justice in his translation of the Mejellé, and the version which the translators there put forward, seems to express the exact sense of the original.

"The beginning of the time of arrival at puberty is for males exactly twelve years of age and for females exactly nine years, and the latest for both is exactly fifteen years of age."

That this interpretation is correct is manifest from many points of view.

In the first place it is entirely in accordance with the primary meaning of the word "*bulugh.*" The primary meaning of the word "*bulugh,*" so we are informed, is "attainment," and for an illustration of its use in this sense we are referred to Art. 13 of the Orphans' Fund Law of 2 Shubat, 1287, where the words are, "the arrival of minors at the age (*sinni*) of reason (*rushd*) will be reckoned from their attainment (*bulugh*) of the age of twenty." See Destour 1, 280. O.K. 11, p. 979.

In the second place no other interpretation is consistent with the articles in the immediate context. According to Mr. Michaelides' suggested interpretation, a woman *ipso facto* becomes *baligha* at the age of twelve, just as she would cease *ipso facto* to be *baligha* at the age of fifteen. This is plainly inconsistent with Art. 985, which makes the attainment of *bulugh* coincident not with any particular age but with certain physical signs. Similarly by Art. 987 it is declared that a person in whom the ordinary signs of puberty do not appear before the age of fifteen is presumed at that age to have attained puberty. According to the interpretation of Mr. Michaelides such a woman would become *baligha* and cease to be *baligha* at the same moment.

In the third place the interpretation we have adopted is entirely in accordance with the original principles of Mohammedan law, which Mr. Michaelides, without quoting them, cited as being in his favour. The idea of puberty being a period commencing either at nine or twelve, or with the physical signs of puberty, and lasting until the age of fifteen is a fiction. The Moslem sacred law knows nothing of any such period. Puberty is not a period, any more than majority is a period. It is one of the stages of human life. The stages of human life which the Moslem law recognises are the following: The first occurs at the age of seven years, when a child who has hitherto been considered "*saghir ghair mumeyiz*" (a young person without discernment), attains discernment and becomes "*saghir mumeyiz*" (*πρόσηβος*) (see Mejellé, Art. 943, O.P.C., Art. 40. Savvas Pasha: Théorie du Droit Musulman I, p. 70). The second stage is the attainment of the period between the age conventionally fixed for puberty (twelve for boys and nine for girls) and the arrival of actual puberty. At this stage, young persons are known as "*murahiq*" and "*murahiqh,*" as the case may be (*ἐφήλικες*), see Mejellé, Art. 986. The third stage is the actual attainment of puberty (*bulugh*) or the age when it is legally presumed to have arrived.

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As has been observed above, the law does not take any account of the interval between actual physical puberty and this conventional final limit. The only further period which it takes account of at this point is the interval between the attainment of puberty (whether actual or conventional) and the final stage in a man's development the attainment of reason (*rushd*). The attainment of the age of reason is a point variously estimated by the early authorities. It is one of the numerous questions on which divergent views were entertained by the great Imam and his two disciples. Savvas Pasha, in the work above cited, seems to regard the age of twenty-two as its conventional limit. Special laws have assigned conventional limits for special purposes, as for example the Orphans' Law above cited, where the age of reason is conventionally fixed at twenty, and the Law of 8 Sheval, 1298, in which it is fixed at the completion of the twenty-first year. But according to the conclusion adopted by the compilers of the Mejellé, the attainment of the age of reason is a question of fact in each case to be determined by the guardian or the judge. Until this point is reached, the infant is continued under guardianship. But at this point he becomes "*reshid*" (*ὀρθοφρνῶν, ἐχέφρων*), a person capable of managing his own affairs. (Mejellé, Art. 947.)

This period—the interval between the attainment of puberty and the attainment of reason—is as a matter of fact sometimes spoken of as "the age of puberty" (*sinni bulugh*). See Savvas Pasha: Théorie du Droit Musulman I, 67. But we believe that there is no ground for suggesting that on becoming "*reshid*," a person ceases to be "*baligh*," any more than on becoming "*baligh*" he ceases to be "*mumeyiz*." On the contrary the theory is that the one qualification is added to the other. In the official form of Ilam issued in the Sher' Courts, recognising the attainment of the age of reason (*rushd*) of a person under guardianship, the words used are "*baligh ve rushdi bulughina munzam*," *i.e.*, "having attained puberty and reason being added to his puberty."

The stages of development recognised by Roman law correspond with some closeness to those of the Mohammedan law, and this is no doubt one of the points on which Mohammedan law assimilated and adapted Roman principles. Up to the age of seven, the infant was considered to be without *intellectus*. On entering his eighth year he was considered to have *intellectus*, but not *judicium*. Puberty, originally determined by natural phenomena (subject to a limit of eighteen years of age), was by Justinian conventionally fixed at fourteen for males and twelve for females. In the period approaching this point the child was known as *pubertati proximus*, an expression which roughly corresponds to "*murahiq*." The Romans, like the Moslem jurists, prolonged the period of incapacity beyond puberty, and continued the infant under a modified form of guardianship, which came to an end at the conventional limit of the age of twenty-five.

With regard to the final words of the addition to Art. 200, we would point out that the versions given in the official French translation, and in Sir Charles Walpole's translation of this translation, are alike inaccurate. The Greek translation is here a correct rendering of the Turkish text, which literally translated is as follows:—

"But for the issue of this sentence it is necessary that her being deceived by the promise of marriage be either confessed by the man, or proved by the party (taraf) of the girl."

It is not merely the promise, but the seduction by means of the promise that must be admitted or proved. Here the promise was admitted and the seduction denied, and in such a case it is obvious that (assuming that these words have any special significance) the difference between the two translations may be very material.

The appeal is dismissed with costs.

Appeal dismissed.

[BERTRAM, ACTING C.J. AND HOLMES, ACTING J.]

KYRIAKO A. LEFKARIDI, *Plaintiff,*

v.

LEONTARI GEORGIOU AND ZOITZA HAJI ANDREA, *Defendants.*

IMMOVABLE PROPERTY—REGISTRATION—QOCHAN—ADDITIONS TO VINEYARDS AFTER REGISTRATION.

A certain property was registered as a vineyard, there being a separate Arazi Mirie registration in the name of the same owner for the site on part of which the vines were planted. After the registration the owner planted additional vines on the same site. Subsequently the vineyard as registered was sold by order of the Court in execution of a judgment.

HELD: That the purchaser acquired the additional vines planted after the registration, as well as those which existed before the registration.

Macario Hieromonacho v. *Longinos Haji Christodoulo* (1905) 7 C.L.R., 9, followed.

This was an appeal by the Defendants from the judgment of the District Court of Larnaca.

The claim in the writ was to restrain the Defendants from interfering with eight donums of vineyard purchased by the Plaintiff at an auction sale.

The Defendants justified the alleged trespass under the leave and license of one Gabriel Georgiades, whom they maintained to be the purchaser under a previous auction sale.

Both sales were made upon the basis of old Yoklama registrations, in the name of the female Defendant.

It is not necessary to set out the facts of the case, which were of some complication.

It is sufficient to say that after a careful consideration of all the papers, the Supreme Court came to the conclusion stated in the