

Privy Council Appeal No. 101 of 1933.

Adib el Hinnawi - - - - - *Appellant*

v.

Yacoub Fahmi Abu el Huda el Faruqi - - - - - *Respondent*

FROM

THE SUPREME COURT OF PALESTINE

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27TH FEBRUARY, 1936.

Present at the Hearing :

LORD ATKIN.

LORD ALNESS.

LORD MAUGHAM.

[*Delivered by* LORD ALNESS.]

This is an appeal from a judgment of the Supreme Court of Palestine, dated 5th April, 1932, reversing a judgment of the District Court of Jaffa, dated 9th November, 1931, and entering judgment for the respondent against the appellant for the equivalent in Palestine currency of £E4,000, with interest and costs.

The action out of which the appeal arises was begun on 7th February, 1928, in the District Court of Jaffa by the respondent, who was the widower of one Fatmeh Mohamad el Hinnawi, against the appellant, as the heir of Fatmeh, claiming payment of the said sum of £E4,000, which was alleged to be due to the respondent upon a promissory note, dated 7th November, 1926, and interest. The defence offered by the appellant, called his "statement of reply", was in substance (1) that the promissory note was not executed by the said Fatmeh, and (2) that there was no consideration for the note.

On 18th March, 1928, the action was heard before the District Court of Jaffa, when it was dismissed on the grounds (1) that the promissory note was invalid, and (2) that in law the respondent was not entitled to establish that the deceased had made the note.

On 21st May, 1928, the respondent appealed from the said judgment to the Supreme Court of Palestine. On 5th February, 1929, that Court unanimously allowed the appeal, and set aside the judgment of the District Court. They remitted the action to the District Court for comparison of the finger prints on the promissory note with authenticated

finger prints of the deceased, and for hearing evidence with regard to the making of the note; and they further ordered that, in the event of the District Court being satisfied that the note was duly executed, the question whether consideration was given therefor or not should be taken into account, and a fresh judgment given.

On 31st March, 1929, the case again came on for hearing before the District Court of Jaffa, when evidence and argument were duly heard. On 25th July, 1929, the District Court found in fact that the finger print on the note was that of the deceased Fatmeh, and they entered judgment for the respondent against the appellant for £E4,000 and costs. The District Court, however, omitted to deal with the question of whether consideration had been given for the note, as, in the circumstances, they were directed to do.

On 3rd February, 1930, the appellant appealed from that judgment to the Supreme Court of Palestine. He pleaded *inter alia* that no consideration for the promissory note had been given, and pointed out that no decision on that matter had been given by the District Court. On 26th May, 1931, the appeal was heard by the Supreme Court of Palestine, when they remitted the case to the District Court of Jaffa, in order that the question whether consideration had been given for the promissory note might be considered, and, after evidence being given, if that should be thought necessary, be determined. The District Court heard evidence on the matter, and, on 9th November, 1931, they delivered judgment. They held that there was no real consideration for the promissory note, and, being of opinion that the services rendered to the deceased by the respondent were not equivalent to the value of the note, they dismissed the action.

The respondent appealed to the Court of Appeal, and, on 5th April, 1932, that Court allowed the appeal, set aside the judgment of the District Court, and entered judgment in favour of the respondent, with costs. The Court of Appeal held that the burden was on the appellant to show that no consideration had been given by the respondent for the note, and that that defence had not been made out. They further held that it was not for the Court of first instance to enquire into the adequacy of the consideration for the note, but to consider whether or not there had or had not been any consideration given.

By orders dated 26th May, 1932, and 17th September, 1932, the appellant obtained leave to appeal to His Majesty in Council, and the appeal has now been heard.

The appellant's counsel argued (1) that there was no consideration given for the promissory note, and (2) that the promissory note was obtained by undue influence on the part of the respondent—particularly in view of the relationship of husband and wife which subsisted at the date when the note was made between the respondent and the deceased Fatmeh.

With regard to the first ground of appeal, their Lordships are satisfied that consideration was given for the promissory note, and that the judgment of the Court of Appeal on that point is unassailable. They are further of opinion that, having regard to the terms of the promissory note, the alleged inadequacy of consideration affords no relevant answer to a demand made upon it. With regard to the plea of undue influence, their Lordships are of opinion that, inasmuch as the plea was not pressed in the Courts below, with the result that there is neither specific evidence nor any direct finding with regard to it, they are absolved from the necessity of dealing with the matter in detail now. It is manifest from the proceedings that it was open to the appellant to have urged the plea in the Courts below to an issue—in other words, to have claimed and obtained a judicial decision upon it. The appellant omitted to do this, and it is therefore quite impossible, in their Lordships' opinion, on the materials available to them, to set aside the judgment appealed against, and to affirm the plea of undue influence. Their Lordships are further of opinion that, having regard to the sum at stake between the parties, and to the protracted character of the litigation regarding it which ensued, it would not be reasonable or proper for the Board now to make a remit for enquiry into the question of undue influence, as they were invited by the appellant to do, and they must accordingly decline to take that course. In the circumstances recited, the appeal fails, and the appellant must pay the costs of it. Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

ADIB EL HINNAWI

v.

YACOUR FAHMI ABU EL HUDA EL
FARUQI

DELIVERED BY LORD ALNESS.

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