*Privy Council Appeal No. 37 of 1943*

**Shafiqa Bint Jamal Eddin Dasuki** - - - - *Appellant*

*v.*

**Sadr Eddin Et-Tibi and another** - - - - *Respondents*

FROM

## THE SUPREME COURT OF PALESTINE

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## JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH APRIL, 1945

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*Present at the Hearing:*

LORD WRIGHT
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* SIR JOHN BEAUMONT]

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This is an appeal from a judgment of the Supreme Court of Palestine dated the 8th December, 1941, setting aside a judgment of the District Court of Nablus dated the 27th July, 1941.

The appellant, as plaintiff in the suit, claimed from defendant No. 1 and defendant No. 2, the sum of £P.650. Her case was that she and her sister Aisha agreed to sell their shares in certain lands to defendant No. 1 through their uncle, defendant No. 2, who was acting as an intermediary, for the sum of £P.1,350; that the sisters only received £P.50, leaving a balance of £P.650 due to each sister. The objection that the sister of the plaintiff was a necessary party to the suit was abandoned at the trial. The plaintiff and her sister had executed before the notary public a power of attorney (Exhibit B), appointing three persons as their attorneys to effect the transfer of the land, and such power of attorney contained an admission in the following terms:—" We received the whole price in cash and in advance from the hands of the said purchaser at the time of signing this power of attorney."

In her statement of claim the plaintiff alleged, in effect, that a fraud was perpetrated upon her and her sister in so framing the power of attorney as to enable three persons to act " jointly and severally," and in the conduct of one of the attorneys who completed the transfer on behalf of the vendors by production of a copy of the power of attorney and without receiving the balance of the purchase money.

In their defence, the defendants relied on the admission in the power of attorney, and later by the agent in the Land Register, that the money had been paid in full, and claimed that such admission was conclusive. The alleged admission of the agent in the Land Register forms no part of the record.

At the trial, the District Court of Nablus heard the evidence of plaintiff and defendant No. 1, and, considering that from such evidence it was

doubtful whether the purchase money had been paid, decided to hear further evidence on a later date. Further evidence was accordingly heard, and the Court decided that the plaintiff had not proved the fraud alleged though the Judges considered the circumstances of the transfer suspicious. They held, however, on the evidence, that only £P.50 had been paid to the plaintiff and her sister and relied, in their judgment, on a statement by defendant No. 1 that he had paid part of the purchase money to the plaintiff and the rest to defendant No. 2, " without authority of plaintiff," words which their Lordships do not find in the transcript of the evidence of defendant No. 1. In the result the Court gave judgment against defendant No. 1 for £P.650 with costs, and dismissed the suit against defendant No. 2 without costs.

Defendant No. 1 appealed to the Supreme Court of Palestine, which allowed the appeal with costs. The view of the Supreme Court was that the plaintiff having failed to prove fraud was bound by her admission of the receipt of the purchase money in the power of attorney, and that the lower Court was wrong in allowing evidence to be given on the question whether the amount had been paid.

The question before the Board is whether the decision of the Supreme Court was right and, in that connection, certain provisions of the Mejelle are relevant. Their Lordships take the translation of Mr. Tyser. Article 79 provides that by his admission one is condemned. Article 1588 provides: " It is not lawful to go back from the admissions concerning the rights of people, so that after someone has said ' I owe so many piastres to such an one ' if he say ' I go back from my admission ' no attention is paid to it. He is judged by his admission." Article 1589 provides: " If anyone maintains that he has not spoken the truth in an admission which has been made, the person in whose favour the admission was made is made to take an oath that it is not false, for example, after a person has given a final voucher which says: ' I borrowed so many piastres from such an one ' if he says ' Although in truth I gave a voucher which says I borrowed those piastres, I have not received from him the sum of money mentioned up to the present time,' the person in whose favour the admission is made is made to take an oath that there has not been falsehood in the admission of the person."

It is clear from other portions of the Mejelle that great importance is attached to the taking of the oath. Book XV, chapter 3, deals with the administering of the oath to one of the parties. The oath has to be administered in a special form (Article 1743). It must be taken only in the presence of the Judge or his representative (Article 1744). The oath is only administered on the application of a party except in four instances which are not relevant to this case (Article 1746). In Civil actions when the oath is proposed to a person, who is bound to take the oath and he refuses, the Judge gives judgment based on his refusal (Article 1751).

It was argued before the Board that these provisions of the Mejelle were over-ridden by the Evidence Ordinance 1924, section 14, which provides " In a civil case either party may give evidence on his own behalf or be summoned to give evidence for the other party." Their Lordships are satisfied that the express enactments of the Mejelle as to admissions are not over-ridden by so general a provision, and, indeed, the contention to the contrary is inconsistent with the statement in the judgment of this Board in *Apostolic Throne of St. Jacob* v. *Saba Said* [1939], Palestine Law Reports page 528, that the legal effect of admissions in Palestine is to be found in the Turkish Code (the Mejelle), which provides in article 79 that " a person is bound by his own admission " and in article 1588 that " no person may validly retract an admission made with regard to private rights."

Their Lordships think that there was some irregularity in the proceedings in the District Court. The Court had to consider not only the effect of the admission of the plaintiff, but also the plea of fraud raised by her. If that plea had succeeded the admission by her would have been displaced, either on the general principle that fraud vitiates every transaction, or under

Article 1610 of the Mejelle. But when the plaintiff failed to establish fraud, the Court was left with her admission of the receipt of the money and, in their Lordships' view, the binding character of that admission could only be displaced by the plaintiff requiring the defendant to take an oath under Article 1589 that the admission in its exact terms was true. No doubt defendant No. 1 did give evidence which suggests that the admission was not true, but their Lordships are not satisfied that he was ever asked to swear specifically as to the truth of the admission under article 1589. Their Lordships have not forgotten that it was for the plaintiff to demand the oath, which she omitted to do, but this may well have been because the Supreme Court of Palestine had held in *Khadijeh Ismail Abu Khadra* v. *Amneh Khalil Abu Khadra* [1920] Palestine Law Reports 1 that an admission in an official document did not come within the meaning of article 1589 of the Mejelle, and that the defendant could not therefore be called upon to take the decisive oath to the effect that the plaintiff's admission acknowledging receipt of money before the Land Registrar was not false. This case is referred to in the judgment of the Supreme Court in *Zvi Gaber* v. *Migdal Insurance Company Limited* [1938], Palestine Law Reports 187, as of somewhat doubtful authority, though it is stated to have been followed. Their Lordships think that the decision was wrong. There is no exception in article 1589 of admissions made in official documents, nor do their Lordships see any good reason why there should be. That an admission is made in an official document may afford some guarantee that it is genuine, but not that the facts admitted are true. This would depend on evidence not generally available to the Public Officer concerned.

In these circumstances, their Lordships think that the fairest course is to remit this case to the District Court of Nablus with directions to allow the plaintiff an opportunity of requiring the defendant to take the special form of oath under article 1589 of the Mejelle that the admission made by the plaintiff and her sister that they received the whole price in cash and in advance from the purchaser at the time of signing the power of attorney (Exhibit " B ") is not false. If that oath is taken no evidence to prove the admission false will be admissible, and the suit will fail. If it is not taken, the Court will be free to act on the view which it formed upon the evidence and judgment will go against defendant No. 1.

Their Lordships will therefore humbly advise His Majesty that this appeal be allowed and that the case be remitted to the District Court of Nablus with the directions which their Lordships have indicated. The costs of the appeal to His Majesty in Council must be paid by the respondents. The costs of the proceedings in Palestine will follow the event.

(41132) Wt. 8077—[illegible] 5/43 D 1 G. 338

**In the Privy Council**

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**SHAFIQA BINT JAMAL EDDIN DASUKI**

*v.*

**SADR EDDIN ET-TIBI AND ANOTHER**

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DELIVERED BY SIR JOHN BEAUMONT

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
DRURY LANE, W.C.2.

1945