1982 March 5

[L. LOIZOU, STYLIANIDES, PIKIS, JJ.]

MAROULLA STYLIANOU POLYKARPOU,
Appellant-Plaintiff.

v.

SAVVAS POLYKARPOU, AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED POLYKARPOS STYLIANOU PEDOULOU AND OTHERS,
Respondents-Defendants.

(*Civil Appeal No.* 5981).

Civil Procedure—Practice—Action against estate of a person who died after the coming into operation of the Administration of Estates Law, Cap. 189—*Lies only against the personal representative of the deceased—Section* 34(7) *of Cap.* 189.

Contract—Written agreement—Circumstances under which extrinsic evidence may be admitted to contradict a statement embodied in a written agreement—Contract for sale of land—Consideration—Parol evidence to prove statement in contract as to payment of purchase price adduced on the initiative of the purchaser—Rightly admitted in the circumstances of this case.

Findings of trial Court—Court of appeal will not interfere with the verdict of the trial Court which had the advantage of hearing the witnesses and watching their demeanour—Unless some very strong ground is put forward establishing that the verdict is against the weight of the evidence—It is for the appellant to show that conclusions arrived at by trial Court are erroneous—In the instant case Court of Appeal satisfied that relevant findings of trial Court fully warranted by the evidence.

The appellant-plaintiff instituted an action against the administrator of the estate of her deceased grand-father and his five heirs claiming, inter alia, damages for breach of contract which she entered into with the deceased on the 3rd January, 1966. By the said contract the deceased sold to the appellant

the immovable property described therein at the agreed price of £1,000 which she paid to the vendor in cash. The deceased who died on 30.1.1967 failed to transfer the property to the appellant during his life-time; and the administrator of his estate transferred it in the name of the heirs. Hence the action.

The appellant at the trial adduced evidence about the signing of the contract by her grandfather and the payment by her to him of the £1,000, the price specified in the document as the consideration given by the appellant. The appellant who was 16–18 years old in 1966 had no money of her own; and she was provided with the amount of £1,000 by her father who according to evidence believed by the trial Court was in a bad financial condition.

The trial Court dismissed the action against the heirs on the ground of misjoinder having held that the estate was duly represented by the administrator; and after considering all the evidence it rejected as untrue the story of the appellant and her father that the amount of £1,000 was paid to the deceased and concluded that no sum whatsoever was paid to the deceased by the appellant and that the contract was void and of no legal effect for lack of consideration.

Upon appeal by the plaintiff it was contended:

(1) That the action could proceed against the heirs*.

(2) That the trial Court wrongly admitted and acted on parol-extrinsic evidence on the issue of consideration, contrary to the contents of the document, and wrongly decided that there was no consideration.

It was argued in this connection that the receipt clause, i.e. the contents of the document (the contract) to the effect that the deceased received the £1,000, raised an estoppel in favour of the purchaser and that the trial Court misdirected itself on the question of consideration by erroneously holding that the non-payment of the £1,000 amounted to want or lack of consideration.

(3) That the findings of the trial Court were not warranted by the evidence adduced.

* This ground was eventually withdrawn by the appellant.

Held, (1) that an action against the estate of a person who died after 1955, the date of the coming into operation of the Administration of Estates Law, Cap. 189, lies against the personal representatives of the deceased and no other person may represent the estate (see section 34(7) of Cap. 189).

(2) That it is the practice of an appellate Court not to interfere with the verdict of the trial Court which had the advantage of hearing the witnesses and watching their demeanour unless some very strong ground is put forward establishing that the verdict is against the weight of the evidence; that this is a most salutary practice there can be no doubt, as a study of the notes of evidence, even when taken with the utmost accuracy, cannot possibly convey to the mind of a Judge the same impression which the oral examination of the witnesses and their demeanour under that process would have made upon the same Judge, if it had been his duty to hear the case in first instance; that it is for the appellant to show that the conclusions arrived at by the Court, appealed from, are erroneous; that in a case where the matter turns on the credibility of witnesses, it is obvious that the trial Court is in a far better position to judge the value of their testimony than this Court is; that this Court is not oblivious of the fact, that quite apart from manner and demeanour, there are other circumstances which may show whether a statement is credible or not, and it should not hesitate to act upon such circumstances, if, in its opinion, they warranted its intervention; that having perused the record, this Court is satisfied that the relevant findings of the trial Court are fully warranted by the evidence; that as this Court is not persuaded that the findings of the trial Court were erroneous there is no valid reason for interfering with this judgment; that the contract of sale, which formed the foundation of the action, was a fictitious one entered into without consideration; that it was void for want of or lack of consideration; accordingly the appeal must fail.

Per Stylianides, J.:

(1) (*After dealing with the meaning of consideration vide* p. 190 *post*) That when a transaction has been reduced to, or recorded in, writing, extrinsic evidence is in general inadmissible to contradict, vary, add to, or subract from the terms of the document; that there are, however, several exceptions to this rule; that

though a deed imports a consideration, yet where this fact comes in question, it is generally allowable to inquire into it, notwithstanding any written averment.

(2) That a receipt for money, though contained in an instrument under seal, is not conclusive that the money has been in fact paid and parol evidence can be given of the non-payment of the whole or part of it (see Halsbury's Laws of England, 4th ed. Vol. 12 para. 1516).

(3) That a vendor is not estopped by a statement in the contract of sale that the purchase money had been paid; that parties to a deed are not estopped as between themselves from showing that the consideration had not in fact been paid; that it is open to a party, even where a document states what was the consideration, to prove that there was no consideration or that it failed or that it was paid in full or that it was other than that stated; that, therefore, the trial Court rightly admitted parol evidence on the issue of the consideration and the payment of the £1,000.

(4) That there is another factor militating against the appellant; that irrespective of any other consideration, the said extrinsic evidence was adduced on her initiative in an effort to prove the payment of the £1,000.

Per Pikis, J.:

(1) I cannot subscribe to the proposition that, whenever the consideration given is made an issue in the case, extrinsic evidence becomes automatically admissible to vary or contradict the terms of a document on the subject. Such a wide exception would 'neutralize the rule against parol evidence and would reduce the value of a written record as an authentic guide to the terms of the transaction.

(2) In reconciling the rule with its exceptions, the Court must balance two considerations:-

(a) The need for certainty in the management of the affairs of mankind, and

(b) the need for the unobstructed pursuit of truth.

(3) The rule and the exceptions thereto may healthily co-exist after balancing the aforementioned considerations in a way

that upholds, on the one hand, the efficacy of the rule, while leaving sufficient room to depart therefrom whenever the interests of justice so require. The answer lies in a logical co-ordination of the rule and the exceptions to it.

In my judgment, it is permissible to allow extrinsic evidence to vary or contradict written terms of an agreement with regard to consideration, in either of two cases:-

(i) When consideration is presumed but not stated in the document, or

(ii) where evidence is adduced prima facie, casting doubts on the correctness of a written statement on the subject of consideration.

Per L. Loizou, J.:

With regard to the circumstances under which extrinsic evidence may be admitted to contradict a statement in a written document, as on the facts of this case, on any view of the law, such evidence was rightly admitted to prove want of consideration, I do not feel constrained to pronounce on this rather delicate issue in the present case and I am content to leave the matter at that.

Appeal dismissed.

Cases referred to:

Emin v. *Turkish Bank of Nicosia Ltd. and Others* (1963) 2 C.L.R. 74;

Heirs of the late Theodora Panayi v. *The Administrators of the Estate of the Late Stylianos Georghi Mandrioti* (1963) 2 C.L.R. 167;

Currie v. *Misa* [1875] L.R. 10 Ex. 153 at p. 162;

Barton v. *Bank of N.S.W.*, 15 App. Cas. 379 at p. 381;

Equitable Fire and Accident Office v. *The Ching Wo Hong* [1907] L.J. 76(2) 31 at p. 32;

Turner v. *Forwood & Another* [1951] 1 All E.R. 746 at p. 748;

U Drive Company Limited v. *Panayi & Another* (1980) 1 C.L.R. 544 at p. 548.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Paphos (Kourris, P.D.C. and Demetriou, S.D.J.) dated

the 7th June, 1979 (Action No 656/77) whereby her action against the administrator of the deceased Polykarpos Stylianou Pedoulou for a breach of a contract entered into with the deceased was dismissed

L.N. Clerides with *A. Saveriades*, for the appellant.

E.M. Komodromos, for the respondents.

Cur. adv. vult.

L. LOIZOU J.: The first judgment will be delivered by Stylianides, J.

STYLIANIDES J.: This is an appeal by the plaintiff from the judgment of the Full District Court of Paphos dismissing the action.

Polykarpos Stylianou Pedoulou, late of Kato Pyrghos, passed away on 30.1.1967 leaving as his only heirs his five children. On 14.1.1969 letters of administration were granted to his son, Savvas Polykarpou.

The plaintiff instituted this action against the administrator of the deceased and his five heirs. The plaintiff is the granddaughter of the deceased, being the daughter of one of the sons of the deceased, namely defendant No. 3. Her claim was for a breach of a contract entered into with the deceased, executed on 3.1.1966, and alternatively for unjust enrichment.

By the said contract of sale the deceased sold to the plaintiff the immovable described therein situated at Kato Pyrghos at the agreed price of £1,000.– paid to the vendor in cash. The vendor undertook by the said contract to cause a title to be issued for the said property and transfer it in her name within two months. He failed to do so during his life-time and the administrator of his estate transferred the property in the name of the heirs and not in the name of the plaintiff. Consequently the present action whereby she claimed:–

(a) Transfer of the property described in the document, exhibit 4;

(b) Order of the Court restraining the defendants from alienating, selling or transferring the said property in the name of any other person except herself; and, alternatively,

(c) Over £5,000.– damages resulting from the non–transfer of the property and the unlawful possession thereof by the defendants contrary to the principle of unjust enrichment.

All the defendants, with the exception of plaintiff's father, defendant No. 3, denied and desisted the claim and in their statement of defence they contended:–

(a) That the action could not proceed against defendants 2–6, the heirs, as the estate is represented only by the administrator;

(b) That no amount was ever paid by the plaintiff to the deceased; and,

(c) That the document of 3.1.1966 is fictitious, void; that in effect it was a testamentary disposition made in contravention of the provisions of the Wills and Succession Law, Cap. 195.

The applicant at the trial adduced evidence about the signing of the said contract by her grandfather and the payment by her to him of the £1,000.– the price specified in the document as the consideration given by the applicant.

The Court in a well prepared considered judgment dismissed the action against the heirs, defendants 2–6, on the ground of misjoinder, holding that the estate was duly represented by the administrator. It was found by the Court that the amount of £1,000– was not paid and that no consideration was given by the plaintiff; therefore, the contract of 3.1.1966 was found to be void and of no legal effect.

The grounds of appeal as set out in the notice of appeal are:–

1. That the action could proceed against the heirs, defendants–respondents 2–6;

2. The trial Court wrongly admitted and acted on parol–extrinsic evidence on the issue of consideration, contrary to the contents of the document, and wrongly decided that there was no consideration; and,

3. The findings of the trial Court were not warranted by the evidence adduced and/or the evidence adduced was

not dealt with at all and/or that the trial Court did not direct its attention to evidence before it.

Ground No. 1—was rightly not proceeded with and withdrawn by Mr. Clerides, who appeared for the plaintiff for the first time before this Court.

An action against the estate of a person who died after 1955, the date of the coming into operation of the Administration of Estates Law, Cap. 189, lies against the personal representative of the deceased and no other person may represent the estate: (Section 34(7) of Cap. 189).

The joinder of the heirs in an action against the estate amounts to misjoinder, and the proper course is, where an objection is taken in the defence, for the interested party to apply to the Court to have the particular point of Law under Order 27 formulated and set down for hearing before the date of trial and not to wait until the date of the trial, when all the parties and their witnesses are before the Court, when considerable costs may be incurred. An application under 0.27 should normally be made at the stage of the summons for directions. (*Ahmed Mehmed Emin* v. *Turkish Bank of Nicosia Ltd. and Others*, (1963) 2 *C.L.R.* 74; *The Heirs of the late Theodora Panayi, i.e. Andreas Foti and two Others* v. *The Administrators of the Estate of the Late Stylianos Georghi Mandrioti, i.e. Socrates Stylianou Mandriotis and Another*, (1963) 2 C.L.R. 167).

Ground No. 2—It was strenuously argued by counsel for the appellant that extrinsic evidence is not admissible to contradict a written document; that a statement of admission may found an estoppel; that the receipt clause, i.e. the contents of the document (exhibit 4) to the effect that the deceased received the £1,000.–, raised an estoppel in favour of the purchaser–plaintiff, and that the Court misdirected itself on the question of consideration for erroneously holding that the non–payment of the £1,000.– amounted to want or lack of consideration.

The doctrine of "consideration" is well entrenched in our Contract Law. Consideration is, except as otherwise provided by s. 25 of the Contract Law, a necessary element for the validity of a contract. The concept of consideration is peculiar to the common Law. Consideration is defined in s.2(2)(d) of the

Contract Law, Cap. 149. The classic statement on consideration is found in *Currie* v. *Misa*, [1875] L.R. 10 Ex. 153, 162:-

> "A valuable consideration, in the sense of the Law, may consist either in some right, interest, profit or benefit accruing to the one party, or some forebearance, detriment, loss or responsibility given, suffered or undertaken by the other".

In *Williams on Vendor and Purchaser*, 4th edition, p. 47, it is stated:-

> "The parties to the contract and the property to be sold must, therefore, be sufficiently described, and the price or the means of ascertaining it, be stated".

The consideration in a contract of sale is not the promise to sell and the promise to purchase. The consideration moving from the purchaser in dealing with sale is undoubtedly the price. The price is one of the essentials of sale, and if a price is not settled by the agreement between the parties or agreed to be determined in a determination which does not depend upon the agreement between the parties, there is no contract.

When a transaction has been reduced to, or recorded in, writing, extrinsic evidence is in general inadmissible to contradict, vary, add to, or subtract from the terms of the document. There are, however, several exceptions to this rule. Though a deed imports a consideration, yet where this fact comes in question, it is generally allowable to inquire into it, notwithstanding any written averment.

In *Barton* v. *Bank of N.S.W.*, 15 App. Cas. 379, a Privy Council case, Lord Watson said at page 381:-

> "Where there is simply a conveyance and nothing more, the terms upon which the conveyance is made not being apparent from the deed itself, collateral evidence may easily be admitted to supply the considerations for which the parties interchanged such a deed; but where in the deed itself the reasons for making it, and the considerations for which it is granted, are fully and clearly expressed, the collateral evidence must be strong enough to overcome the

presumption that the parties in making the deed had truly set forth the causes which led to its execution".

In *Equitable Fire and Accident Office* v. *The Ching Wo Hong*, [1907] L.J. 76 (2) 31, Lord Davey in delivering the opinion of the Board said at page 32:-

"The Judicature Act provides that where the rules of Law and of equity differ, the rules of equity shall prevail. It is familiar Law that in equity a vendor was never held to be estopped by a statement in the conveyance that the purchase money had been paid or even by an indorsed receipt for the money signed by him so as to exclude the enforcement of the vendor's lien. Their Lordships think that in any case the parties should not be held in equity to be estopped as between themselves from showing that the consideration had not in fact been paid".

In *Turner* v. *Forwood & Another*, [1951] 1 All E.R. 746, Lord Goddard, C.J., at page 748 said:-

"Practically every bill of exchange which was ever drawn was for value received. When it is an accommodation bill, of course, no value has been received and, as between the parties who sue on it where the bill is not in the hands of a holder in due course, it is always open to the acceptor to say that no consideration ever passed for the bill, and that gives him a good defence. I do not see that there is any real difference in principle between the present case and one of a contradiction of the statement which appears on a bill 'for value received'. It always has been held that one can contradict that statement and show that no consideration has passed, and similarly to show that, whereas the consideration is stated to be nominal, the true consideration was a promise to pay a much larger sum".

In *A.C. Dutt on The Indian Contract Act*, 4th edition, at p. 292, we read:-

"It has become the established practice of the Courts in India, in cases of contracts, to require satisfactory proof that consideration has been actually received according to the terms of the contract; it has never been held that a contract made under seal, of itself, imports that there

is sufficient consideration for the agreement as is the case in English Law".

And further down:-

"It is open to a party, even where a document states what was the consideration, to prove that there was no consideration or that it failed, or that it was paid in full, or that it was other than that stated". (*Pandurang* v. *Vishwanath*, (1939) N. 20).

With regard to "receipt clauses" in *Halsbury's Laws of England*, 4th edition, Volume 12, the Law is stated as follows:-

"1516. *Conclusiveness of receipt.* A receipt for money, though contained in an instrument under seal, is not conclusive that the money has been in fact paid and parol evidence can be given of the non-payment of the whole or part of it".

The English Law of Property Act, 1925, is not applicable in Cyprus and the further statement of the Law in Halsbury based on the provisions of that Act, on which learned counsel for the appellant relied, does not obtain in this country.

In the light of the aforesaid pronouncements a vendor is not estopped by a statement in the contract of sale that the purchase money had been paid. Parties to a deed are not estopped as between themselves from showing that the consideration had not in fact been paid. It is open to a party, even where a document states what was the consideration, to prove that there was no consideration or that it failed or that it was paid in full or that it was other than that stated.

There is another factor militating against the appellant. Irrespective of any other consideration, the said extrinsic evidence was adduced on her initiative in an effort to prove the payment of the £1,000.-. (*U Drive Company Limited* v. *Panayi & Another*, (1980) 1 C.L.R. 544, 548).

The trial Court rightly admitted parol evidence on the issue of the consideration and the payment of the £1,000.-. We find no merit in this complaint of the appellant.

Ground No. 3—Polykarpos Stylianou Pedoulou died in his early 80's. Due to old age, illness and impairment of eye-sight

he was confined at his house and occasionally he was bedridden. The plaintiff in 1966 was 16–18 years old. She and her sister were looking after their grandfather. The latter constituted and appointed plaintiff's father as an attorney who, by gift, transferred in plaintiff's name on 4.2.1966 three immovables at Kato Pyrghos.

The plaintiff stated that her grandfather, who gifted her the three immovables, offered to sell to her the land on which his house was standing and which was worth more than £1,000.– for £1,000.– as she was looking after him. The plaintiff asked her father to provide her with the money; her father handed over to her £1,000.– in £5.– notes that she paid to her grandfather. Her grandfather, thereupon, informed her that he could not transfer the property to her because there was an interim order restraining him from alienating it issued in an action instituted against him by his daughter Eleni, defendant No. 5; consequently transfer was put off for a future date.

A few days later Ioannis Efthymiou (P.W.2) was called to the house of the grandfather, who prepared the contract of sale (exhibit 4). Efthymiou stated that he prepared the contract on the instructions of the old man who admitted that he had received the £1,000.–.

Takis Nicolaou (P.W.1), the Chairman of the Village Committee of Kato Pyrghos, on request went to the house of the old man with his official seal and, having been satisfied that the old man knew that contents of the document, helped the trembling vendor to affix his mark on it and the witness affixed his seal on the contract and signed thereunder. This witness stated that the deceased admitted having received the £1,000.–. He carried the contract with him and asked in his office Savvas Diomydes (P.W.5) to subscribe as a witness. Thereafter the contract was given to plaintiff's father, according to the mukhtar, in order to hand it to Efthymiou to subscribe his name as a witness. This the father of the plaintiff did and ultimately he kept the contract.

Stylianos Polykarpou (P.W.4), plaintiff's father, testified that when his daughter told him about the sum of £1,000.–, he took out of the drawer of a cupboard in his house, where he was keeping £3,000 – £4,000.– in cash, £1,000.– in £5.– notes

in order to pay it to the old man. When his daughter returned after paying the amount to the old man, he asked her whether she had obtained any receipt and her reply was in the negative. The plaintiff never signed the contract (exhibit 4).

There is no property corresponding to the description of the property mentioned in exhibit 4. The land in question was part of a major plot which was subdivided in 1976 pursuant to an order of the Court issued in 1960 but there is no house on the subplot which corresponds to the land described in the document (exhibit 4).

Plaintiff's father at the time, according to all the witnesses who testified before the trial Court, was heavily indebted. Actions were filed against him. He had resorted to the Agricultural Relief Court for relief. He was the head of a family of ten whom he maintained and supported. He was depicted in the evidence of all the witnesses as a person in bad financial condition.

The trial Court, after considering all the evidence before it—the contract of sale (exhibit 4), the admissions of the old man to Takis Nicolaou (P.W.1) and Ioannis Efthymiou (P.W.2), the evidence of the plaintiff and her father and the remaining evidence before it—rejected as untrue the story of the plaintiff and her father and concluded that no sum whatsoever was paid to the deceased by the plaintiff and that there was no consideration.

It is the practice of an appellate Court not to interfere with the verdict of the trial Court which had the advantage of hearing the witnesses and watching their demeanour unless some very strong ground is put forward establishing that the verdict is against the weight of the evidence. That this is a most salutary practice there can be no doubt, as a study of the notes of evidence, even when taken with the utmost accuracy, cannot possibly convey to the mind of a Judge the same impression which the oral examination of the witnesses and their demeanour under that process would have made upon the same Judge, if it had been his duty to hear the case in first instance. It is for the appellant to show that the conclusions arrived at by the Court, appealed from, are erroneous. In a case where the matter turns on the credibility of witnesses, it is obvious

that the trial Court is in a far better position to judge the value of their testimony than we are. We are, of course, not oblivious of the fact, that quite apart from manner and demeanour, there are other circumstances which may show whether a statement is credible or not, and we should not hesitate to act upon such circumstances, if, in our opinion, they warranted our intervention.

Having perused the record, we are satisfied that the relevant findings of the trial Court are fully warranted by the evidence. We are not persuaded that the findings of the trial Court were erroneous and we see no valid reason for interfering with this judgment. The contract of sale, which formed the foundation of the action, was a fictitious one entered into without consideration; it was void for want of or lack of consideration.

We directed our mind whether this fictitious contract of sale was in fact a contract of gift for natural love and affection. This course, however, is not open to us or to the plaintiff as she proceeded on the basis of a contract of sale and, therefore, it is too late in the day for her to propound that version.

In view of the foregoing this appeal is dismissed with costs.

PIKIS J.: I agree that the appeal be dismissed and go along with the order proposed by Stylianides, J. The evaluation of the evidence and the findings of the Full District Court set out in the lucid judgment of A. Kourris, P.D.C., as Stylianides, J. observes, cannot be faulted on any ground. On the contrary, the inferences drawn from the evidence, appear inescapable as it is aptly indicated in the judgment just delivered.

There is, however, one aspect of the judgment, concerning the exposition of the law, with which I differ though it leaves, for the reasons indicated below, the outcome of the appeal unaffected. It is the circumstances under which extrinsic evidence may be admitted to contradict or vary the terms of a written agreement, particularly those that relate to consideration, and generally the principle behind the exceptions to the rule that renders inadmissible the reception of parol evidence to contradict or vary written provisions of a contract. Below, I shall endeavour to outline my reasons for taking a more restrictive view of the exceptions than the one given.

A rule of evidence of considerable antiquity makes inadmissible the admission of evidence to contradict or vary the terms of a written agreement. The rule was evolved in order to lend certainty to daily transactions. Acknowledgment in writing was deemed to bar mistakes as well as inaccuracies. The rule is based upon the presumption that a written record truly and accuratedly records the facts stated therein. And, although writing is not indispensable for the validity of the transaction, the written record of it is presumed to be the best evidence of its terms. The rule has nothing to do with estoppel of any kind for it is not fastened to any representations. In due course, it was judicially recognised that a written document does not invariably reflect all the facts of a transaction, so, by way of exception, extrinsic evidence might be admitted for the purpose of either supplementing the terms of a contract, where subject to a collateral agreement, or illuminating its background in order to appreciate its terms in their proper perspective. But courts held fast to barring evidence at variance or in contradiction to the terms of a contract. Again this is subject to exceptions but the rules governing exceptions in this area are, to my comprehension, by no means clear. On the contrary, they are fraught with uncertainty.

I cannot subscribe to the proposition that, whenever the consideration given is made an issue in the case, extrinsic evidence becomes automatically admissible to vary or contradict the terms of a document on the subject. Such a wide exception would neutralize the rule against parol evidence and would reduce the value of a written record as an authentic guide to the terms of the transaction.

In reconciling the rule with its exceptions, the Court must balance two considerations:-

(a) The need for certainty in management of the affairs of mankind, and

(b) the need for the unobstructed pursuit of truth.

The rule and the exceptions thereto may healthily co-exist after balancing the aforementioned considerations in a way that upholds, on the one hand, the efficacy of the rule, while leaving sufficient room to depart therefrom whenever the interests

of justice so require. The answer lies in a logical co-ordination of the rule and the exceptions to it.

In my judgment, it is permissible to allow extrinsic evidence to vary or contradict written terms of an agreement with regard to consideration, in either of two cases:-

(i) When consideration is presumed but not stated in the document, or

(ii) where evidence is adduced prima facie, casting doubts on the correctness of a written statement on the subject of consideration.

I need not expand on this theme; but one or two obvious examples will help to illustrate the position. Parol evidence may be admitted in the face of evidence that a document was executed by one or both of the contracting parties when in a state of drunkenness or while labouring under a mental aberration. Such evidence would cast doubts on the correctness of the record; therefore, it would be both relevant and just to inquire further into the correctness and accuracy of statements made therein.

In the case before us, the issue of the correctness of the statement as to the payment by the appellant of £1,000.- in the proffered contract, was opened by the appellant, plaintiff before the District Court, evidently in order to lend force to the statement made therein that the appellant, then a minor, paid to the deceased the sum of £1,000.-; a statement prima facie of full purport. The trial Court rightly went into the issue and nothing advanced before us justifies our intervention.

There is nothing further I wish to add to what has already been said by Stylianides, J.

L. Loizou J.: I also agree that the appeal fails on both grounds and should be dismissed.

With regard to the circumstances under which extrinsic evidence may be admitted to contradict a statement embodied in a written document, as on the facts of this case, on any view of the law, such evidence was rightly admitted to prove want

of consideration, I do not feel constrained to pronounce on this rather delicate issue in the present case and I am content to leave the matter at that.

In the result the appeal is dismissed with costs.

Appeal dismissed with costs. 5