

ANDREAS PETSAS,
Appellant-Defendant,

v.

ELLI DEMETRIADOU,
Respondent-Plaintiff.

ANDREAS
PETSAS
v.
ELLI
DEMETRIADOU

(Civil Appeal No. 4969).

*Civil Procedure—Judgment debt—Execution—Instalment order—
Appeal and Cross-appeal—Court of Appeal not persuaded
that the trial Court's conclusion respecting appellant's ability
to pay his debt was not warranted by the material before it—
Ability to pay may be judged on inferences drawn from primary
facts—The Civil Procedure Law, Cap. 6, sections 86 and 91.*

Execution—Instalment order—See supra.

The facts sufficiently appear in the judgment of the Court, dismissing this appeal (and cross-appeal) against an instalment order of £8 monthly towards a judgment debt of £2,500 made by the trial Court under section 91 of the Civil Procedure Law, Cap. 6.

Appeal and cross-appeal.

Appeal and cross-appeal against an order made by the District Court of Nicosia (Evangelides and Ioannou, Ag. D.JJ.) dated the 9th March, 1971 (Action No. 3050/65) by virtue of which the defendant was ordered to pay a judgment-debt of £2,500 by monthly instalments of £8 each.

L. Clerides with *C. Adamides*, for the appellant.

L. Papaphilippou, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P.: In this case the appellant appeals against an order made by a Full District Court in Nicosia, under section 91 of the Civil Procedure Law (Cap. 6); by virtue of such order the appellant, who is the judgment debtor in civil action No. 3050/65, in respect of a judgment debt of £2,500 was ordered to pay to the respondent, the judgment creditor, £8 per month towards the judgment debt.

In dealing with the relevant application of the respondent—made under section 86 of Cap. 6—that the appellant

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be examined respecting his ability to pay the said debt, the Court below had before it the evidence of the appellant who stated that he was earning only £5 per week, as a slaughterer of animals in the employment of his own father, who is a butcher.

There was, on the other hand, before the Court the evidence of an inspector of the municipal slaughter-house to the effect that the average earnings of a person in an employment such as that of the appellant would be about £10-£12 per week.

It is clear from the decision appealed from that the Court did not accept the evidence of the appellant and that on the whole of the evidence before it, including evidence as to about how many animals the appellant's father was having slaughtered each week, it reached the conclusion that the appellant must be earning between £10-£12 per week. On that basis the order, which is the subject-matter of this appeal, was made.

While the appellant complains that the amount of £8 per month is in the circumstances, too high, the respondent has cross-appealed contending that it is too low and that it should be increased to more than twice as much.

It was submitted by counsel for the appellant that the Court below could not discard direct evidence about the appellant's earnings and act on inferences drawn from evidence not directly proving such earnings. We cannot agree with this submission; the Court had to decide the issue before it on the totality of the evidence and it was not precluded from drawing inferences from facts established to its satisfaction.

Counsel for the respondent has based the cross-appeal on evidence on record which, allegedly, shows that the way of life of the appellant was such as to indicate that his ability to pay is much greater than as found by the Court of trial. In our view no positive conclusion to that effect could have been drawn from such evidence.

In our opinion we should not interfere in any way with the decision of the Court below, because we have not been persuaded by either side that the conclusion respecting the ability of the appellant to pay his debt by means of monthly instalments of £8 each was not warranted by the material before the Court.

The appeal and the cross-appeal are, therefore, dismissed, with no order as to costs.

Appeal and cross-appeal dismissed. No order as to costs.