

The case of *Haji Akif Effendi v. Charles S. Cade and Moussa Irfan Effendi* reported in pages 122-124 of the original edition is no longer of any importance.

TYSER, C.J.
&
FISHER, J.
1918
February 12

[TYSER, C.J. AND FISHER, J.]
DEMETRIOS THEMISTOCLES AND ANOTHER
v.
VASSILI PANAGI CHANGARI.

SALE OF MORTGAGED PROPERTY LAW, 1890.—CIVIL PROCEDURE AMENDMENT LAW, 1885, SECS. 21, 30.

Where an action is brought claiming an order for the sale of mortgaged property and the Court gives judgment ordering the sale the Plaintiff is entitled to have the whole of the property comprised in the mortgage sold.

The provisions of Sec. 21 of the Civil Procedure Amendment Law, 1885, as to reservation of house accommodation do not apply to such a sale.

The facts sufficiently appear from the judgment.

The Appellant D. Themistocles in person.

The Defendant was not present nor represented and evidence of service of notice of appeal was given.

Judgment : In this case the District Court gave judgment in the action ordering the sale of the property included in the mortgage. This judgment, it is to be noted, was in accordance with Sec. 11 of the Sale of Mortgaged Property Law, 1890, and acting under the opinion expressed by this Court in *Kenan v. Skordi* (p. 70 *supra*) the Plaintiff took a copy of the judgment to the Land Registry Office asking that it might be given effect to. Thereupon the Land Registry Officer, purporting to act under Sec. 30 of the Civil Procedure Amendment Law, 1885, applied to the District Court for directions with regard to " writ of sale " etc., and after stating that the property under mortgage included two houses, and that it did not appear that the mortgagor (Defendant) had any other houses registered in his name, asked whether he might sell both houses. Upon the hearing of the application the majority of the District Court held that the proviso to Sec. 21 of the Civil Procedure Amendment Law, 1885, applied and replied to the application that " the houses in question may be sold subject to sufficient " house accommodation being retained for the judgment debtor and " his family." In our opinion the view embodied in that answer is wrong. The sale sought to be carried out at the instance of the Plaintiff is not a sale under a writ of sale of immoveable property, and it is not, therefore, in our opinion, a sale to which either Sec. 21 or Sec. 30 of the Civil Procedure Amendment Law, 1885, apply. Both those sections are embodied in Part VI of that Law, which portion of the Law is concerned solely with sales under writs of execution by sale of immoveable property, and matters incidental thereto. In the present case the Plaintiffs having taken a course expressly recognised by Sec. 11 of the Sale of Mortgaged Property Law, 1890, asked the Land Registry Office to give effect to a judgment of the District Court duly made, and not appealed from, ordering the sale of the mortgaged property comprised in a certain certificate of mortgage without any reservation. The two houses are included in that mortgage and should, in our opinion, be included in the sale in their entirety.

Appeal allowed.

TYSER, C.J.
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