

[TYSER, C.J. AND BERTRAM, J.]

JOSEPH CIRILLI AND SONS

v.

KYPRIANO CHRISTODOULOU,

ANASTASI PARASKEVA AND

THE HEIRS OF IANNI CHRISTODOULOU.

TYSER, C.J.

&  
BERTRAM,J.  
1910

November 21

PRESCRIPTION—CLAIM FOR EXECUTION OF JUDGMENT AGAINST IMMOVEABLES  
—INTERRUPTION OF PRESCRIPTION—"CLAIM IN THE PRESENCE OF THE JUDGE"  
MEJELLE, ARTS. 1660, 1666.—

*The "claim in the presence of the Judge" which has the effect of interrupting the running of a prescription under Art. 1666 of the Mejelle, means the claim itself in the proceedings in question.*

*The running of the prescription against the claim is not interrupted by the fact that a previous claim in the same matter was made, but was disposed of or not, or not pressed.*

*A claim to enforce a judgment against immoveables is prescribed after the lapse of 15 years from the date of judgment, notwithstanding the fact that a previous claim of the same nature may have been made and disposed of in the interval.*

This was an appeal from the District Court of Larnaca. The action was brought on the 10th October, 1888, and judgment was given on the 30th November, 1888.

The Plaintiffs were Joseph Cirilli & Sons of Larnaca. The Defendants are Kypriano Christodoulou, Yanni Christodoulou, and Anastasi Paraskeva of Cra, the first as a principal debtor, the others as guarantors.

Yanni Christodoulou died in 1892 and his heirs were added as Defendants in his place.

On the 28th October, 1909, the application of the Plaintiffs for the sale of the immoveable property of Yanni Christodoulou deceased now in the hands of his heirs was dismissed. It was against the order dismissing that application that this appeal was brought.

The judgment of the District Court was as follows:

"In 1888 the original debt was merged in a judgment and a judgment debt arose in favour of Plaintiff and against 3 persons jointly and severally, of whom Yanni Christodoulou was one.

"No proceedings had been taken to enforce this debt against Yanni since 1888 and this application will not be granted (Mej. 1660) unless something has happened to keep alive the right of the Plaintiff.

"It is extremely probable that Plaintiff who has for so long omitted to take any proceedings against two solvent debtors had for some reason abandoned his right against them. The only proceeding that has happened affecting Yanni or his heirs is an application

TYSER, C.J. " in 1898 to amend the title of the action by substituting Yanni's  
& " heirs after his death. This application seems to have been made  
BERTRAM, " for the sake of form.  
J.

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" Crambe, J., was asked to grant a writ of execution against  
" immoveables of Kypriano and he required the title to be amended.  
" The Defendants made no objection and did not attend. They  
" could not have objected and the proceedings did not affect them.  
" This proceeding did not seem to us to come under any head of matters  
" which prevent the prescription running."

*Neoptolemos Paschales* for the Appellants. Certain intermediate proceedings have been overlooked. In October, 1900, the Plaintiffs applied for the execution of the judgment against the immoveables of the principal debtor, Kypriano, and the present respondent Ianni appeared in the proceedings. Again on February 22nd, 1901, the Plaintiffs took out a summons demanding execution of the judgment against the immoveables of all three Defendants, and the two present respondents appeared in Court in answer to the summons. It is true that the only application actually made in Court, and then granted, was for the sale of a property belonging to Kypriano, but these proceedings constitute a claim in the presence of the Judge within the meaning of Art. 1666 of the Mejele and interrupt the running of the prescription.

*Artemis* for the Respondent, Ianni Christodoulou. The real application in these proceedings was against Kypriano. For over 15 years no claim has ever been made to enforce this judgment against my client.

The Court dismissed the appeal.

*Judgment* : It is clear that unless something has happened to keep alive the rights of the Plaintiffs they cannot after this lapse of time get execution against the immoveable property of the Defendants. *Cirilli & Sons v. Demetri* (1905) 6 C.L.R., 81.

Mr. Paschales for the Plaintiffs says that certain things have been done which distinguish this case from the former one.

He says that in 1900 and 1901 applications were made for the sale of immoveable property of the Defendants at Ora and that the heirs of Yanni Christodoulou appeared before the Court at the hearing of each of those applications. He says that these were claims made before a Judge within the 15 years prescribed by Art. 1660 and that this case comes within the provision of Art. 1666 of the Mejele enacts that if a person makes a claim from another once every few years in the presence of a Judge and if 15 years pass in this way and his claim is not decided this does not prevent the hearing of his claim.

The claims made in 1900 and 1901 were heard and decided. If those applications were by any chance still alive it might assist the Plaintiffs. But that those applications were heard and finished. The present is an entirely new application—a new “dawa”—and it is more than 15 years after the judgment and cannot be heard.

The appeal must therefore be dismissed with costs.

*Appeal dismissed.*

TYSER, C.J.  
&  
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JOSEPH  
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KYPRIANO  
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[TYSER, C.J. AND BERTRAM, J.]

HAJI GEORGI HAJI KYRIAKOU AND ANOTHER

v.

KYPRIANO MANUEL.

TYSER, C.J.  
&  
BERTRAM,  
J.  
1910  
December 2

IMMOVEABLE PROPERTY—OBLIGATION OF COURT TO ENFORCE REGISTERED TITLE.

*A Court cannot refuse to enforce a registered title on the ground that the registration was made erroneously where there is no claim to set aside the registration by a person lawfully entitled to be registered for the property in question.*

*Plaintiffs and Defendant both claimed title to a certain property by long possession, but neither had in fact acquired a prescriptive right. Plaintiffs nevertheless procured a Village Certificate and having obtained registration upon the basis of the certificate, sued the Defendant upon their qochan. The Defendant by a cross-action claimed a right to registration on the ground of prescription, but failed to prove his claim. The District Court (being equally divided) nevertheless dismissed the Plaintiffs' claim on the ground that their qochan had been obtained by a false certificate.*

HELD: that the Plaintiffs were entitled to the enforcement of their registered title.

This was an appeal from a judgment of the District Court of Nicosia.

The case consisted of an action and a cross-action. The title set up by both parties was based upon long possession, but as a matter of fact neither party had had undisputed possession long enough to constitute a prescriptive title. The Plaintiffs nevertheless succeeded in procuring a village certificate that they had been in possession of the land for the necessary period, and having obtained a qochan upon the basis of the certificate, sued upon the qochan. The Defendant by his cross-action claimed a right to set aside this qochan, and a declaration of his right to be registered on the ground of prescription.

The District Court (Holmes, P.D.C., and Makrides, J.) was unanimously of opinion that Defendant had failed to prove his claim to a prescriptive title, and the cross-action of the Defendant was accordingly dismissed. With regard to the original action however Holmes, P.D.C., being of opinion that the Plaintiffs' qochan was issued upon a false village certificate, held that Plaintiffs were not entitled to