

TYSER, C.J. to that effect and I can see no reason for holding that it must be held
&
FISHER, to impose such an obligation by necessary implication, especially in
J. view of the fact that to so hold would involve the view that on the
coming into force of that Law Art. 1642 of the Mejellé ceased to have
ELENI any force in cases such as the present, and that the Law had by
K. PAPA- implication imposed a burden on the estate of intestate persons to
DOPOULOS which they were not subject before.
AND
OTHERS
v.
THE LAW I think therefore that the Plaintiffs are entitled as heirs of the
UNION AND deceased intestate to recover the amount claimed in this action.
ROCK
INSURANCE
COMPANY

Appeal allowed.

TYSER, C.J.
&
FISHER, J.
1914
May 13

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

KIAMIL EFFENDI KENAN EFFENDI

v.

KYRIAKO D. SKORDI

SALE OF MORTGAGED PROPERTY—ACTION CLAIMING ORDER FOR SALE—PROCEDURE.

Where a Plaintiff claims on his writ of summons an order for the sale of property mortgaged to him by the Defendant and the Court makes such order the lodging with the Land Registry Office of an office copy of the judgment ordering the sale is sufficient authority to the Land Registry Office to sell the mortgaged property.

This was an appeal by the Plaintiff from an order of the District Court of Famagusta dismissing an application for an order to set aside a sale of immoveable property on the ground that there had been an "omission or irregularity" within the meaning of Sec. 42 of the Civil Procedure Law, 1885.

The Plaintiff was mortgagee of a house and yard belonging to the Defendant and brought an action to recover the amount of the mortgage debt, and to enforce the mortgage. Judgment was given for the amount claimed, and ordering the sale of the mortgaged property. The Plaintiff obtained a writ of execution directing the sale of the property included in the mortgage certificate, without any reservation, and the property was put up to auction and knocked down to one Demosthenes Eustratios for £10 10s., which was alleged to be little more than one-fourth of its true value. There was evidence that the mortgagor had added rooms to the mortgaged property after the date of the mortgage.

Halid Effendi for the Appellant. The effect of the decision of the District Court is that the purchaser is entitled to the property as added to since the mortgage. If so he has acquired it for a very inadequate price. The smallness of the price shews that there was

no idea on his part that he was buying the property with the additions. The evidence shews that there has been an irregularity entitling my client to have the sale set aside. He referred to *Pitsillo v. Crambe*, C.L.R., VIII, 118.

Chacalli for the Purchaser.

The Defendant in person.

Judgment: THE CHIEF JUSTICE: In this case the Plaintiff claimed (1) to recover 3,859*cp.* on a bond, (2) an order directing a sale of the property under Mortgage 5051/1910. There was no defence to the action and the Plaintiff obtained judgment (1) that Defendant pay to Plaintiff the sum claimed, (2) that the property described in Mortgage Certificate 5051/8.2.1910 be sold.

Upon this the Plaintiff applied for and obtained a writ of sale of immoveables in execution of his judgment, and by virtue of that writ the property mortgaged was sold. There was no sale of the mortgaged property under the order of the Court, to effect that it would only be necessary to lodge a copy of the judgment containing such order with the Land Registry Office.

The writ of execution was issued under the Civil Procedure Act, 1885, to carry into execution the judgment of the Court directing payment of the sum of money for which judgment was given.

It does not appear in the proceedings that the Court required any evidence as to the house accommodation left for the debtor as required by Order 18, rule 19. That Rule is a general rule and it is not sufficient to shew that the property is mortgaged. If property is mortgaged it can be sold by proceeding on the judgment in the proper way, but if the creditor elects to take a writ of sale of immovable property, both the Court and the creditor are limited in their powers by the rules and provisions of the law relating to writs of execution against immovable property.

There seems to have been an irregularity in this case leading to a misunderstanding as to what property was sold, and consequent loss to the execution creditor and to the debtor. The sale must be set aside.

FISHER, J.: I agree that there has been an irregularity in the sale and that it should be set aside, and I also concur with the opinion expressed by the Chief Justice, that the lodgment with the Land Registry Office of an office copy of the judgment ordering the sale of mortgaged property would have been sufficient authority to the Land Registry Office to carry out the sale.

Appeal allowed.

TYSER, C.J.
&
FISHER, J.

KIAMIL
EFFENDI
KENAN
EFFENDI

v.
KYRIAKO D.
SKORDI