

The case of *Police v. Haralambo Jossif* reported in pages 70-71 of the original edition is no longer of any importance.

TYSER, C.J.
&
FISHER, J.
1915

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

NICOLA KYRIAKOUDI AND ANOTHER

v.

March 17

MARIA PAPA LOIZOU AND ANOTHER, AS HEIRS OF GEORGI KAROUS, DECEASED; AND COSMA ANAYOTOU.

ACTION ON FOREIGN JUDGMENT—JURISDICTION OF COURTS IN CYPRUS—"ACTIO PERSONALIS MORITUR CUM PERSONA."

G. K. and C. A. were prosecuted before a criminal tribunal in France for fraud. A claim for damages was put in on behalf of N. K. as partie civile.

G. K. and C. A. were convicted and sentenced to terms of imprisonment and were ordered to pay damages to N. K.

C. A. unsuccessfully appealed against the judgment. Subsequently G. K. died.

In an action to recover the damages awarded by the judgment against C. A. and the heirs of G. K.

HELD: (1) *That the Courts in Cyprus are competent to entertain an action on a foreign judgment. (2) That the portion of the judgment awarding damages was severable from the remainder of the judgment and therefore not within the rule of international law which prohibits courts of justice from executing the penal judgments of a foreign court. (3) That, as regards the heirs of G. K., the action was to recover a judgment debt and therefore not within the maxim actio personalis moritur cum persona.*

This was an appeal from a judgment of the District Court of Larnaca dismissing the Plaintiffs' action.

The facts sufficiently appear from the judgments of the Chief Justice and of the District Court.

The judgment of the District Court was as follows:—

"In this case the Plaintiffs claim a sum of £189 8s. and some costs under a judgment of the Tribunal of the Seine dated 25th January, 1911, upheld (so far as the Defendant Cosma Anayotou who appealed is concerned) by the Appeal Court of Paris. Originally the sole Plaintiff was Nicola Kyriakoudi, but later, that is to say on the 1st July, 1914, the name of Kyriakoudi Nicola Kyriakoudes was added as co-Plaintiff.

"The issues were: (1) Are the judgments mentioned above evidence in the Court of Larnaca? (2) Is the sum claimed due by Defendant or Plaintiffs or either of them?

"For the Plaintiffs the two judgments were put in. Evidence was given that the Defendant Cosma Anayotou and the deceased Georghi Karous (whose heirs are now sued) were the persons ordered in those judgments to pay the sum of 4,735 frs. 50 cent. (£189 8s.),

“ jointly and severally, to the Plaintiff Kyriakoudi Nicola Kyriakoudes TYSER, C.J.
 “ as damages.

&
 FISHER, J.

“ Kyriakoudi Nicola Kyriakoudes swore that it was he who con-
 “ stituted himself *partie civile* before the Juge d’Instruction.

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“ When the case for the Plaintiffs had been closed we were bound
 “ to consider whether there was a case for the Defendants to answer.
 “ Firstly: with regard to the heirs of Georghi Karous, had the right
 “ of action survived the decease of Georghi Karous or did the maxim
 “ *actio personalis moritur cum persona* apply ?

“ This Court knew of no guiding principle in this respect to be
 “ found in Ottoman Law, or in the law or decided cases in Cyprus,
 “ and counsel for the Defendants could suggest none to us. It has
 “ been laid down by the Supreme Court that in the silence of Ottoman
 “ or Cypriot Law the Courts may rightly adopt the principle acted
 “ upon in such cases by the English Courts. (See *Karageorgiades v.*
 “ *Haji Pavlo & Sons*, C.L.R., V. at p. 41, and *Joachim v. Haji Christophis*
 “ *and another*, C.L.R., V. at p. 77).

“ This we have felt compelled to do in this case. Georghi Karous
 “ was adjudged to have committed a tortious act which was also
 “ a delict: the Plaintiff Kyriakoudi Nicola Kyriakoudes had consti-
 “ tuted himself *partie civile*, and at the same time Georghi Karous
 “ was sentenced to a term of imprisonment and judgment was given
 “ against him (jointly and severally with Cosma Anayotou) for 4,755 frs.
 “ 50 cent. as damages. Now these damages were not liquidated
 “ damages when claimed, and no attempt has been made to bring
 “ this action within the bounds of any of the exceptions to the rule.
 “ Therefore there is no case for the Defendants who are such as heirs
 “ of Georghi Karous to answer and the action against them must
 “ be dismissed with costs against both Plaintiffs jointly and severally.

“ As regards the Defendant Cosma Anayotou the case is of great
 “ simplicity. Art. 1821 of the Mejjellé says that ‘ the giving judg-
 “ ment upon . . . a written judgment given by the Judge of a Court,
 “ being according to rule, and free from suspicion of fraud or forgery
 “ is good.’ But what is meant by a Judge is laid down in Art. 1785:
 “ that is to say a Judge appointed by the Sultan; which as to Cyprus,
 “ we must read as appointed by His Majesty the King of Great Britain
 “ and Ireland in exercising his rights in Cyprus under the treaty of 1878.

“ Therefore we hold also as regards the Defendant Cosma Anayotou
 “ that there is no case to answer and the action against him must be
 “ dismissed with costs against both Plaintiffs jointly and severally.”

TYSER, C.J. *N. Paschalis* for the Appellant.

&
FISHER, J. This is not a penal judgment, see *Raulin v. Fischer*, 1911, 2. K.B., 93.

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He also cited *Westrope v. Georgiades*, S.C. May 30, 1912, Preliminary Issue No. 9*, and *Huntington v. Attrill*, 1893, A.C. 150.

Haji Ioannou for the Respondents.

The judgment sought to be enforced is that of a criminal court. Clause 49 of the Cyprus Courts of Justice Order, 1882, precludes District Courts from trying cases committed outside their districts and therefore they cannot have power to enforce judgments of a criminal court outside Cyprus.

Ottoman Law applies (Cyprus Courts of Justice Order, 1882, Clause 23). He cited Mejjellé, Arts. 1821 and 1785. (The Chief Justice referred to Art. 1849).

As regards the estate of Georghi Karous, the maxim *actio personalis moritur cum persona* applies.

The Plaintiff in this action was Nicola Kyriakoudi, and the damages were awarded to him. He never appeared in the French Court.

N. Paschalis in reply: I ask for judgment in favour of Plaintiff Nicola Kyriakoudi, he is the real Plaintiff, the second Plaintiff was his agent.

Judgment: THE CHIEF JUSTICE: The claim in this action is to enforce a judgment of a French Court.

Georghi Karous and Cosma Anayotou were prosecuted by the Procureur of the Republic before the Civil Tribunal of the Department of Seine sitting as a Correctional Tribunal and convicted Georghi Karous of swindling, and Cosma Anayotou as an accomplice.

The Plaintiff in this action, being the person injured by the swindling, put in a civil claim, at the same hearing, for damages. It appears that by Art. 3 of the Code d'Instruction Criminelle the Plaintiff was entitled to claim at the hearing of the charge or to bring a separate action.

* JOHN WESTROPE & Co.

v.
N. L. GEORGIADES.

ACTION ON FOREIGN JUDGMENT—EFFECT OF FOREIGN JUDGMENT IN CYPRUS.

The Plaintiffs were domiciled in England and the Defendant was an Ottoman subject domiciled in Cyprus. The Plaintiffs sued the Defendant in the High Court of Justice in England to recover a liquidated sum of money. An appearance was entered on behalf of the Defendant but no further steps were taken to defend the action and the Plaintiffs recovered judgment in due course for the amount claimed. The Plaintiffs brought an action on the judgment in Cyprus.

HELD: That the Defendant was precluded from entering into the merits of the action decided by the English judgment.