

[FISHER, C.J. AND STUART, J.]
MEHMED FEIZI AND ANOTHER

v.

HASSAN HILMI HUSSEIN AND ANOTHER.

FISHER,
C.J.
&
STUART, J.
1923
March 9

CIVIL PROCEDURE LAW, 1885, SEC. 4 (1)—INTERIM ORDER AFTER JUDGMENT.

Sub-section (1) of Sec. 4 of the Civil Procedure Law, 1885, does not empower the Court to make an order which is in effect an order to execute a judgment.

After judgment had been given against the Defendant for a definite sum of money a Court purporting to act under the said Sub-section made an order directing a third person to enter on the lands of a Defendant and dispose of the fruit of the Defendant's olive trees then about to be gathered to the highest bidder and pay the money into Court.

HELD: *That the order was not within the power given by the Sub-section, being in effect an order to execute a judgment by a method not authorised by Sec. 12 of the Law.*

This was an appeal from an order of the District Court of Nicosia. The facts sufficiently appear from the head-note and the judgment.

G. Houry for the Appellants.

G. N. Chrysafines for the Respondents.

Judgment: In this case the Plaintiffs obtained judgment on a money claim against the Defendants of the 21st March, 1922. On the 19th September an order was obtained by the Plaintiffs "that Salih Effendi Mehmed of Lefka do enter upon the lands of the first Defendant, Hassan Hilmi Hussein, and lease by auction not later than the 27th instant the fruit of thirty-four olive trees belonging to him under registrations (setting out numbers of registrations) unless the Defendant appear before this Court on the 27th September, 1922, at 8 a.m. and show cause why this order should not remain in force."

This order was obtained on an affidavit sworn on the day of the application by the Plaintiff, Mehmed Feizi, in which he deposed that the properties of both Defendants were mortgaged for large sums and that the fruit of the olive trees referred to was "going to be collected by the 28th instant."

The first Defendant appeared on the 27th September to show cause, and the District Court next day gave judgment continuing the order in force for one month from that day and ordered that the proceeds of the letting should be paid into Court. The formal order makes no mention of the limitation of one month. The Respondents' advocate sought to justify the order as being within the provisions of Sub-sec. (1) of Sec. 4 of the Civil Procedure Law, 1885, which enacts that "The

FISHER, “ Court may at any time during the pendency of any action therein
 C.J. “ make in the action an order for the sequestration, preservation,
 & “ custody, sale, detention, or inspection of any property being the
 STUART, J. “ subject matter of the action, or an order for preventing any loss,
 { “ damage, or prejudice which but for the making of the order might
 MEHMED “ be occasioned to any person or property, pending a final judgment
 FEIZI “ on some question affecting such person or property or pending the
 AND “ execution of the judgment.”
 ANOTHER

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The powers of the Court under that Sub-section are very wide but in the words of Davey, L.J., in *Harris v. Beauchamp Brothers*, 1894, 1 Q.B. at p. 809, they “do not authorise the Court to invent new modes of enforcing judgments, in substitution for the ordinary modes.”

This order seems to us to be in effect an order enforcing payment of the judgment debt by a method not authorised by Sec. 12 of the Civil Procedure Law, 1885, in which the modes of executing judgments are specified. It is in effect an order to procure money with which to satisfy the judgment, an order to sell the existing crop without any of the formalities or procedure prescribed for sale of moveable property in execution. In our opinion it is not within the powers conferred by the Sub-section cited.

Appeal allowed.