

FISHER,
C.J.
&
GRIM-
SHAW,
P.J.
1924
October 4

[FISHER, C.J. AND GRIMSHAW, P.J.]

SOPHRONIOS THEODOROU, *Plaintiff*,

v.

ANTONI HAJI THEODOROU, *Defendant*.

MARINA ELEFThERI & OTHERS, *Ex parte (Applicants)*.

CIVIL PROCEDURE LAW, 1885, s. 14 (d)—EXEMPTION FROM SEIZURE—DECEASED JUDGMENT DEBTOR—RIGHTS OF HEIRS.

HELD: *The heirs of a deceased judgment debtor against whom it is sought to execute the judgment are debtors within the meaning of section 14 (d) of the Civil Procedure Law, 1885, and entitled to the benefit of that provision.*

This was an appeal from an order of a District Court dismissing an application by the heirs of a deceased judgment debtor, claiming exemption from seizure under a writ of execution against moveables of a pair of oxen, which had devolved upon them as heirs of the deceased. All the other animals belonging to the deceased had been seized and sold before his death, and the oxen were the only animals of the applicants.

The District Court gave judgment as follows:—"We find that the pair of oxen sought to be exempted from sale in favour of the heirs of a deceased judgment debtor, on the ground that it is the only pair of oxen left by the deceased, do not come within the exemptions in favour of a debtor's family as provided in section 14 of Law 10 of 1885, in which special provision is made for the family with regard to other chattels."

For Appellants (applicants) *Chrysafinis*.

For Respondent (plaintiff) *Paschalis*.

Defendant absent (deceased).

Chrysafinis cited *Kakoyanni v. Selim* (4 C.L.R. 51).

Paschalis: In the case cited the action was against the heirs, and they were therefore judgment debtors.

Judgment: There is no dispute as to the facts of this case, and the question resolves itself into whether the heirs of a deceased person, whose liability to pay the judgment debt, to the extent at all events by which they have benefited by the decease of a judgment debtor, is not disputed, are debtors within the meaning of section 14 (d) of the Civil Procedure Law, 1885. In our opinion they are. The word "debtor" cannot be confined to the person who originally contracted the debt; it must include all those who are liable to be brought before the Court as

persons liable to pay the judgment debt and against whom the execution can be levied. This provision of the law is not aimed at protecting only the original debtor, it is based on economic grounds and aims at preventing people from being deprived of their means of livelihood and subsistence by the operation of the law of execution. That being so the pair of oxen must be taken as being within goods which "shall not be liable to be taken in execution," as provided in section 14 of the Civil Procedure Law, 1885. The question is who is now "the debtor" within the meaning of section 14. The person or persons liable to pay the judgment debt. The word debtor is not confined to the person who originally contracted the debt, but the persons who are liable, and the liability is not disputed in this case, to pay the persons in whose favour the execution operates. This mode of execution is not the only mode, but the provisions and limitations made as to the operation of this mode of procedure are on economic grounds, and the aim is to prevent persons being deprived of their means of livelihood and subsistence.

Appeal allowed.

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SOPHRONIOS
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[FISHER, C.J. AND GRIMSHAW, P.J.]

CHRISTODOULO D. HAJIPAVLO

v.

YEORGHIOS MARKOULLIS.

FISHER,
C.J.
&
GRIM-
SHAW,
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—

FARMER DEBTOR—SALE OF DEFENDANT'S IMMOVEABLE PROPERTY—EXEMPTION
—ESTOPPEL—PREVIOUS ORDER OF EXEMPTION—"SUFFICIENT LAND."

October 9

In this case plaintiff obtained judgment against defendant for £500 and now seeks to execute his judgment against the defendant's immoveable property. In a previous case, where the judgment debt amounted to about £5, the Court had, by consent, exempted the property, an order for the sale of which, is now sought. Defendant claims the benefit of Law 10 of 1885, proviso to section 21, and states he is a farmer, but admits in evidence that he has one son being educated in a good school and a daughter being trained in Athens.

The District Court gave judgment as follows:—

In this case the judgment creditor seeks an order of the Court directing the sale of the immoveable properties of the judgment debtor, the parties not having arrived at any agreement as to the lands to be exempted.