[BELCHER, C.J. AND DICKINSON, J.]

PENELOPE K. PAPADOPOULLOU

v.

1. SAVVA HARALAMBO
2. POLYXENI ANASTASSI.

July 6.

CIVIL PROCEDURE — EXECUTION — APPEAL — TIME — RULES OF COURT, 1886, ORDER XXI., RULE 30—CYPRUS COURTS OF JUSTICE ORDER, 1882, CLAUSE 32—RULES OF COURT, 1886, ORDER XXI., RULES 7 AND 9—CLERICAL ERROR, CORRECTION OF—"OR OTHERWISE"—EJUSDEM GENERIS—"ULTRA VIRES."

Rules of Court, 1886, Order XXI., Rule 30, runs as follows:—

"No writ of execution shall be deemed to be an order of a Court or a Judge, so as to enable any person to appeal against the same; and no order of a Court or Judge directing the issue of a writ of execution shall be subject to appeal; but where any person shall seek to obtain a stay of proceedings under any writ of execution, or to have the same set aside or amended on the ground of any alleged omission, mistake, irregularity, or otherwise in the writ or in any order directing the issue thereof, he shall apply to the District Court or a Judge thereof, and any order made on any such application shall be subject to appeal."

A judgment debtor, against whose property a writ of execution had been issued, applied under Order XXI., Rule 30, to a District Court to stay all proceedings under an order made by that Court directing the issue of the writ of execution and also under that writ of execution itself, on the ground that the order was made "by mistake or otherwise" because the order was bad in law.

HELD: An application under Order XXI., Rule 30, to stay all proceedings under an order of Court directing the issue of writ of execution and also under the writ of execution itself, on the grounds that the order was made by mistake or otherwise because the order is bad in law, cannot be said to be such a mere irregularity as is contemplated by the wording of that rule.

The validity of the rule itself questioned but not decided.

Case cited:—

Aggelidi v. *Ginghiz*, C.L.R., Vol. IV., p. 3.

APPEAL of the second defendant against an order of a District Court refusing to stay execution.

Kakoyannis for appellant.

Nicola Lanitis for respondent (plaintiff).

Respondent (defendant 1) in person.

BELCHER, C.J. & DICKINSON, J.

PENELOPE K. PAPADOPOULLOU v. 1. SAVVA HARALAMBO 2. POLYXENI ANASTASSI.

The judgment of the Court was delivered by the Chief Justice.

Judgment: This is an appeal by one of two defendants against an order of the full District Court, dated 30th October, 1926, refusing a stay of execution against her immovables. It came from a District Court as an application under Order XXI., Rule 30, Rules of Court, 1886, to set aside an earlier order of the same Court, differently constituted, made on the 25th June, 1926. The facts were that before the plaintiff applied for execution at all, she had been paid off by one Costa Gavrielides, not theretofore interested, and the application in June was made by her on an indemnity from and in the interests of Gavrielides, whose object was apparently to strengthen his position in a judgment already obtained by him against the first defendant in another action with which we are not here further concerned. When the application for execution was first made, it was opposed on the grounds firstly that the payment had left plaintiff without any interest in the matter, and secondly that in the circumstances of the plaintiff having been induced by the assignment to withdraw her notices against the first defendant and thus allow priority to Gavrielides, the second defendant would, if this execution went on, be unduly prejudiced in case she should in turn attempt to exercise her rights of indemnity against her co-defendant in his aspect as a co-debtor with her: for she could no longer stand in the shoes of the plaintiff. Those arguments were raised again before us on this present appeal.

Whatever, however, the second defendant's (appellant's) position on the merits, it is necessary to consider, in the first place, an argument addressed to us by respondent who claims that any appeal which may have been open to the appellant is now out of time. It takes this form: the application heard by the District Court in October was not based on such a mere irregularity in the order of June as Order XXI., Rule 30, contemplates; it was a substantive appeal on the merits and the District Court had no jurisdiction to deal with it, so that if the order of June were to be appealed against at all the appeal should have been to the Supreme Court, and even regarding the present appeal as one against the order of June it is out of time under Rules 7 and 9 of Order XXI., for it was received on the 15th November, 1926, more than four months after the June order, and there was no application to extend the time. It is true, says the respondent, that Order XXI., Rule 30, purports to take away the right to appeal to this Court against a writ of execution, and to substitute there-

for the lesser right to have mere errors corrected by the Court which ordered the writ to issue: but such provision, while it may have misled the appellant into failing to appeal against the June order when there was still time, must be *ultra vires* if it purports to take away the right of appeal to this Court: such a right, covering all decisions of District Courts, is given by Clause 32 of the Cyprus Courts of Justice Order, 1882, and cannot be taken away by rules purporting to be made by virtue of the same order: that an order directing the issue of a writ of execution is a decision (and, therefore, appealable) was decided in *Aggelidi* v. *Ginghiz*, C.L.R., Vol. IV., p. 3.

Now it is open to us to consider whether appellant's application in October (the order whereon is now appealed against) was or was not such an application as the last part of Rule 30 contemplates, without in the first place going into the question of the validity of the whole rule, for it may well be that part of the rule (the latter) is good though the first part may be bad: it is indeed no undue interference with the right of appeal against a formal error, to require the notice of the original tribunal to be drawn to it again, so that an appeal to a higher Court may perhaps be obviated.

But on examining the facts we do not think there was any question at all of error here. We consider that the words "or otherwise," though the phrase is not a well-chosen one in the particular context, must be read *ejusdem generis* with what precedes. The District Court in June had all the facts concerning Costa Gavrielides, on which are based the present arguments of the appellant, before it; it considered those facts and it gave its decision on them: what is suggested indeed is, not that it mistook the facts or that the order was other than that which it intended to pronounce, but that the decision itself was bad in law. If such could be appealed against, every decision could, and you would have the absurdity of an appeal on the merits to the tribunal which gave the original decision. Whatever Rule 30 means, it cannot mean that.

It is not necessary to consider whether Rule 30 is *ultra vires*, for it had no bearing on the facts of this case.

Inasmuch as appellant, for whatever reason, did not appeal to the Supreme Court against the order of June, it is unnecessary to consider his arguments based on the transfer of the beneficial interest in the judgment to Costa Gavrielides, for they could only have been adduced upon such an appeal; and indeed it could only be on such an appeal also that the validity of Rule 30 could be tested. The appeal must, therefore, be dismissed with costs.

Appeal dismissed.