

[BELCHER, C.J. AND LUCIE-SMITH, ACTING J.]

IN THE MATTER OF THE MUNICIPAL COUNCILS
LAW VIII. OF 1885,
AND
IN THE MATTER OF THE MUNICIPAL COUNCIL
OF NICOSIA,
AND
AHMED EFFENDI MISSIRLIZADE,

BELCHER,
C.J.
&
LUCIE-
SMITH,
ACTING J.
1927.

July 14.

Applicant,

Respondent.

PROCEDURE UNDER MUNICIPAL COUNCILS, LAW 8 OF 1885,
SECTION 76 — APPLICATION — AMENDMENT OF TITLE — CYPRUS
COURTS OF JUSTICE ORDER, RULES OF COURT, 1886—ORDER
IX., RULE 13—ORDER XX., RULE 5—CYPRUS COURTS OF
JUSTICE ORDER, 1882, ARTICLE 39, PART IX., CIVIL CASES.

Whilst building a house within the Municipal area the respondent constructed a platform outside the house which the Municipal authorities regarded as an obstruction. The Municipality proceeded against the respondent under the Municipal Councils Law of 1885, Section 76, by way of application. On the death of the respondent the Municipality applied for amendment of title under Rules of Court, 1886, Order XX., Rule 5, and Order IX., Rule 13.

Order XX., Rule 5:

“The proceedings on the hearing of every application with reference to the appearance of the parties . . . shall . . . be as nearly as may be the same as on the hearing of an action, the applicant . . . being regarded as in the same position as the plaintiff on the hearing of an action.”

Order IX., Rule 13:

“Where, by reason of death . . . occurring after the commencement of an action, the . . . liability of any party . . . to defend the action shall devolve upon any other person, the action may be continued . . . against any person on whom any such . . . liability . . . to defend the action shall have devolved as aforesaid on an order of the Court or a Judge thereof directing the continuance thereof between such parties in such capacities as may seem necessary.”

HELD: That the application to amend the title of the application was good.

HELD FURTHER: Where in a law a statutory offence is created and by the same law a special procedure is provided to give relief, that special procedure is properly employed.

Alecco Zenom v. Hafuze Hj. Ali (unreported) approved and followed.

BELCHER,
C.J.
&
LUCIE-
SMITH,
ACTING J.
—
MUNICIPAL
COUNCIL,
NICOSIA
v.
AHMED
EFFENDI
MISSIRLI-
ZADE.

Appeal by the respondent in an application from the decision of the District Court of Nicosia on a preliminary objection.

Behaeddin and Clerides for appellant (respondent in the application).

Chrysaftinis Senior for respondent (applicant).

The material facts are sufficiently disclosed in the judgments.

CHIEF JUSTICE: As to the point raised on the form of the proceedings, we ought, unless there is very good reason to the contrary, to follow the case of *Alecco Zenon v. Hafuze Haji Ali* (unreported as yet). It was there held, as I understand the decision, that section 76 of Law No. 8 of 1885 gave a Municipality the right in certain cases to avail itself of a procedure which was to be by way of originating application and not by way of writ: of that procedure the Municipality of Nicosia has availed itself here and we cannot, on this preliminary point and in the absence of any evidence as to the facts actually in dispute, say that it was wrong. If certain facts existed, it was entitled to proceed by application, that is clear, and it is too early for the other side to say that those facts do not exist. Then it is urged that this not being a writ, the proceedings cannot be amended under Order 9, rule 13, so as to substitute his heirs for the deceased defendant. But we think Order XX., Rule 5, may, without undue straining, cover this case so as to enable a Court in this kind of proceeding, by making the necessary amendment, to have the right parties before it at the hearing. It cannot have been intended by the Legislature in framing section 76 to render proceedings, which are to be enforced as a civil judgment, nugatory on death or such a change.

The appeal must be dismissed with costs and the case go back now to the District Court for determination on the merits.

LUCIE-SMITH, *Acting J.*: Two points are raised by this appeal:—

1. Is this matter properly brought before this Court by way of application? and
2. Does Order XX. Rule 5 give the Court power to amend the title of the application?

It has been contended by the appellants that the only remedy open to the respondent is by way of quasi-criminal proceedings. With this contention we are unable to agree.

It is quite clear that section 76 clearly contemplates civil proceedings by way of application and with this intention confers on the District Court all the powers conferred by Art. 39 of the C.C.J.O., 1882, for the enforcement of any order made by the District Court under section 76. Art. 39 of the C.C.J.O., 1882, comes under "Part IV.—Civil Cases"—"Chapter VII.—Jurisdiction of Courts in Civil Matters" of the Order in Council.

In view of the above and following the decision in *Alecco Zenon v. Hafuze Haji Ali* and another appeal, No. 2,129 of 19th March, 1921, we find that this matter is properly before the Court by application.

As regards the second point. Order XX., Rule, 5, reads "The proceedings on the hearing of every application, with reference to the appearance of the parties . . . shall . . . be as nearly as may be the same, etc." In the present case the application had come on for hearing before the amendment was asked for and issues had in fact been framed. Further, the amendment asked for is clearly with reference to the appearance of the parties. We therefore find that in this case the Court below was justified in proceeding as nearly as might be in the same way as at the hearing of an action, that is to say by following Order IX., Rule 13. The appeal must therefore be dismissed with costs.

Appeal dismissed.

BELCHER,
C.J.
&
LUCIE-
SMITH,
ACTING J.
MUNICIPAL
COUNCIL,
NICOSIA
v.
AHMED
EFFENDI
MISSIRLI-
ZADE.

[BELCHER, C.J., LUCIE-SMITH, J., SERTSIOS, J.]

REX

v.

MICHAEL SAVVA.

BELCHER,
C.J.,
LUCIE-
SMITH,
J.,
SERTSIOS,
J.
1927.
Oct. 26.

CRIMINAL PROCEDURE—QUESTION OF LAW RESERVED BY THE ASSIZE COURT, NICOSIA, UNDER CLAUSE 158 OF THE CYPRUS COURTS OF JUSTICE ORDER, 1927—AFTER CONVICTION ONLY.

Cyprus Courts of Justice Order, Clause 158:

"If any question of law arises on the trial upon information of any person for any offence not triable summarily, the Assize Court may in its discretion reserve such question for the Supreme Court"

If the Court by which any person is convicted for an offence not summarily triable reserves any question of law for the opinion of the Supreme Court"

The Assize Court of Nicosia, during the hearing of the trial of the above-named person, stayed the trial pending the decision of the Supreme Court on a certain question of law reserved under the Cyprus Courts of Justice Order, Clause 158.