

1929.
Nov. 18.
—
NICOLA
v.
DJABOURA.

[BELCHER, C.J., SERTSIOS AND FUAD, JJ.]

MAROULLOU ANTONI NICOLA

v.

ZANNETOS YIORGHI DJABOURA.

Civil Procedure—Maintenance action by wife—Judgment—Execution—Attachment—Law 10 of 1885, Part 8—C.C.J.O., 1927, Clause 40.

Plaintiff got judgment in the District Court against her husband for £12 in respect of past and 25s. per month as future maintenance. Defendant not paying, plaintiff obtained an order for his imprisonment under Clause 40 (vi.) of the C.C.J.O. 1927.

Held, that the original judgment was not an order "directing an act to be done" within the meaning of Clause 40 (i) and that the order for imprisonment must be discharged.

Appeal by defendant from order of District Court of Famagusta (No. 55/27).

Clerides for appellant.

Zannettides for respondent.

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

JUDGMENT :—

BELCHER, C.J. : The appeal must be allowed. Clause 40 does not contain words excluding judgments for the payment of money as does R.S.C., Order 42, Rule 7, its English counterpart, and, no doubt, source; but we cannot found upon that omission an interpretation which would render Section 81 *et seq.* of Law 10 of 1885 nugatory. It cannot make any difference that the original claim was for maintenance: the judgment is still one for the payment of money. If the plaintiff wishes to take proceedings with a view to defendant's imprisonment he must proceed under Law 10 of 1885: Clause 40 of the Order-in-Council is meant to provide for other cases and not to afford to the plaintiff a short cut which would enable him to dispense with the proof of means and ability to pay required by Cyprus Law.

Appeal allowed.