

## ANGELOS DASCALOPOULOS

v.

OTTOMAN BANK (No. 4).

*Civil Procedure—Judgment for monthly pension—Execution—Rules of Court, 1927, O. XVIII, rr. 3 & 4.*

Respondent obtained leave to issue execution for money due under a judgment for a monthly pension in Turkish gold pounds payable in Cyprus currency. Applicant moved to cancel the leave to issue execution and set aside a writ of movables issued on the ground that the judgment being declaratory and not an order for the payment of a sum of money could not be enforced by way of execution.

*Held*: that the judgment was not a declaratory one but an order upon the applicant Bank to pay every month to the respondent in Cyprus currency "a sum equal to 28.80 Turkish gold pounds" and was therefore enforceable by writ of execution.

Application by defendant in the action to cancel leave granted to issue execution for balance due on the judgment and to set aside the writ of movables issued in pursuance of such leave.

*Clerides* for applicant (defendant in action).

The judgment of the Court is simply declaratory; it does not order the defendant to pay any amount of money. Therefore it cannot be enforced by writ of execution, but only by an action. Under Order XVIII, Rule 4, of the Rules of Court, 1927, a writ of execution may be issued only when the judgment orders the recovery by a party or a payment to any person of money. This judgment not being for the payment of a sum of money cannot therefore be enforced by a writ of execution. Cites Halsbury's *Laws of England*, Vol. 18, p. 183, distinguishing between enforceable judgments and declaratory judgments. The Bank does not want on principle to have this judgment allowing plaintiff to issue execution for the amount due.

*Chryssafinis, Jr.*, for the respondent (plaintiff in action):

The Divisional Court in August, 1932, gave judgment for plaintiff for an amount of 28.80 Turkish gold pounds converted in Cyprus currency at the end of each month. This judgment has been confirmed by the Appeal Court in Cyprus and by the Privy Council early in May last. The Bank has delayed paying the amount due but promised settlement before the end of June. Payment was not made by that date and on 13th July the Bank made an application to the Court to interpret the judgment of the trial Court. Respondent thereupon applied for and obtained a writ of execution for the amount owing on the judgment. The Bank is acting in bad faith as is shown by the offer made to the respondent by Mr. Papachristopoulos on behalf of the Bank. (Counsel stated the details of the offer which are referred to in the judgment).

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The judgment as it stands finally determines the rights of plaintiff against the Bank as far as his monthly pension is concerned, and it is absurd to suggest that a successful plaintiff in that action has to bring twelve actions every year in order to decide the same points that have been decided by three Courts. The Bank acting *mala fide* and trying to coerce the plaintiff.

*Olerides* replied.

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JUDGMENT :—

THOMAS, Ag. C.J. : On the 2nd July leave was granted to the plaintiff in the action to issue execution for £71.19.0 being balance due upon the judgment. On the same day the Bank filed an application praying the Court to interpret or correct the judgment given on 8th August, 1932. This was withdrawn on the 4th July, and advisedly so. The application could only have been made as a result of error and misconception on the part of counsel who filed it. A party has no power to make such an application, and the Court has no jurisdiction to hear it. The fact that the Bank made no application to the Privy Council as to the form of the judgment or as to the way it was to be given effect to, shows that during the hearing of the appeal before the Privy Council up to and including the judgment it had never occurred to the Bank's learned counsel that there was anything in the judgment that required explaining or interpreting. The discovery on the part of the Bank that the judgment requires to be interpreted is therefore extremely recent and contemporaneous with the plaintiff's application for leave to issue execution following upon various delays and refusals by the Bank to pay the amount due. Having realized that its application to interpret the judgment was entirely misconceived, the Bank then made the alleged discovery that the judgment was one that could not be executed by the seizure of movables, and thereupon brought the two present applications, one to cancel the leave granted to plaintiff to issue execution and the other to stay execution, and set aside the writ already issued.

The first application is made under the Rules of Court, Order XVIII, Rules 3 and 4. The submission made by counsel for the applicant is simply this—that the judgment being only a declaratory judgment and not one ordering the payment of a sum of money, cannot be enforced by a writ of execution against movables. He referred to Halsbury's *Laws of England*, Vol. 18, p. 183, paragraph 493, which is as follows :—

“Judgments and orders are usually determinations of rights in the actual circumstances of which the Court has cognizance, and give some particular relief capable of being enforced. It is, however, sometimes convenient to obtain a judicial decision upon a state of facts

which has not yet arisen, or a declaration of the rights of a party without any reference to their enforcement. Such merely declaratory judgments may now be given."

The passage cited is almost conclusive against the party in whose favour it was cited. Under the English practice declaratory judgments are given under Order 54A where a "person claiming to be interested in a deed, will or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested." Order 25, Rule 4, applies to cases coming within Order 54A, and provides that the Court may make binding declarations of right whether any consequential relief is claimed or not. The notes to Order 25, in the *Annual Practice*, Rule 4, give examples of the cases in which declaratory judgments have been pronounced—declaration as to the validity of a contract which defendant threatened to enforce; declaration that defendants were not entitled to send sewage from their district into the plaintiffs' sewer without the consent of the plaintiffs; declaration that the owner of a dominant tenement had lost his right to light by making alterations in the tenement; a declaration that a Turkish judgment was invalid. These examples show the usual form of a declaratory judgment, which is something essentially different from the judgment given in the present case. The trial Court did, it is true, make a declaration that the plaintiff was entitled to (1) a monthly pension of 28.80 Turkish pounds gold, and (2) to the monthly instalment of his pension due on 31st January, 1932, and did so presumably because this was the precise form of relief claimed in the Writ of Summons and in the Statement of Claim. There was an alternative claim for £8,000 damages. What was the substance of the plaintiff's claim? It was a claim on a contract for a monthly pension, that is to say for a sum of money due at the end of every month. Plaintiff was wrong in my opinion in asking for a declaration for the payment of a sum of money every month. But because he employed the wrong term I do not think that would justify any Court in treating his writ and claim as an originating summons asking for a declaration of his rights under a contract with defendant Bank. His claim against the Bank in its essence is of a totally different nature: he claims by virtue of a contract with the defendant Bank to be paid a certain sum of money at the end of every month, and he asks the Court to order the Bank to pay him that sum every month when it becomes due; and the Court has given him what he asked for. The judgment of the trial Court must, in my opinion, be treated as an order upon the defendant Bank to pay the plaintiff every month "a sum equal to 28.80 Turkish gold

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pounds." These words of the judgment are of great importance as showing that the order of the Court was that the defendant Bank should pay plaintiff every month the equivalent of 28.80 Turkish gold pounds. In my view the judgment of the trial Court orders the defendant Bank to pay the plaintiff a sum of money every month. This judgment has been affirmed by the Privy Council and, following upon the Board's Report, an Order in Council was issued approving the judgment and ordering "the same be punctually observed, obeyed and carried into execution . . . and all other persons whom it may concern are to take notice and govern themselves accordingly." In view of what the plaintiff's claim is in substance, and in view of the precise terms of the Order in Council ordering the authorities in Cyprus to carry out the judgment, I think it is the merest quibble on the part of the defendant Bank to contend, as its counsel has contended before me on the hearing of the application, that the plaintiff cannot issue execution for money due on the judgment but that he must, if the amount is not agreed upon, bring an action every month in order to obtain what he was awarded by the judgment.

The plaintiff contends that the present application is made in bad faith after several unreasonable delays and promises to pay the arrears due, and is made solely for the purpose of putting more obstacles in the way of plaintiff recovering what is due to him under the judgment pronounced on 8th August, 1932. In confirmation of his charge of bad faith plaintiff's counsel repeated the substance of what he and the plaintiff stated before me a few days before on the application for leave to issue execution, that is to say what took place at an interview between the plaintiff accompanied by his counsel, and an advocate from Athens named Papachristopoulos. The Bank's counsel on the present application (Mr. Clerides) said he met this Mr. Papachristopoulos who told him that he came here on behalf of the Ottoman Bank in order to arrive at a settlement with the plaintiff. The plaintiff's account of his interview with Mr. Papachristopoulos is confirmed by his counsel who was present, and I accept it as a truthful account of what took place. The defendant Bank's representative from Athens informed plaintiff that, if he refused to come to terms, the Bank was ready to spend another £4,000 so as to prevent the plaintiff getting "at any early date or at all what is due to him under the judgment"; and that the plaintiff would have to bring a fresh action every month. He told plaintiff that a big sum of money would be offered in settlement if plaintiff was ready to sign a declaration to the effect that he was receiving at all material times his salary from the Bank in paper. For the purposes of deterring other employees and pensioners of the Bank—on the application for leave to appeal to the

Privy Council it was stated that there were in Cyprus nineteen pensioners alone—who might be so rash as to demand their salary or pension in gold from bringing actions, a signed statement by the plaintiff Dascalopoulos that he had always been paid his salary in paper would be worth a very large sum of money indeed. The offer made by the defendant Bank's representative Mr. Papachristopoulos that the plaintiff should in return for a large sum of money sign a document which would have the effect of nullifying the judgment of the Privy Council that Mr. Dascalopoulos's salary was payable in gold is a most dishonest and disgraceful proceeding reflecting the greatest discredit on the directors or officers of the defendant Bank who caused the offer to be made. There is no evidence before me to indicate that the local Manager of the Ottoman Bank had any knowledge whatever of the offer made by the Bank's agent from Athens, Mr. Papachristopoulos, or that he was in any way connected with it. The offer is a contempt of Court and I trust that it will be brought to the knowledge of the Privy Council. With regard to the charge against defendant Bank of bad faith in the present proceedings in fairness it should be said that the Bank's conduct has been remarkably consistent. In the course of the last nine years many similar actions against defendant Bank have come before me. They have all been characterized by the same tactics—applications for numerous adjournments, and after the lapse of much time, when no further adjournments could be obtained, applications on the flimsiest grounds for commissions to take evidence abroad—in fact every device, and shifty manœuvre to delay the hearing of the case—tactics which a straightforward litigant would never descend to.

I have dealt with the plaintiff's allegation of the defendant Bank's bad faith as it is very relevant to these proceedings, as showing systematic attempts to defeat by all means the judgment of the Privy Council that the defendant Bank are liable to pay plaintiff's pension in gold.

The Bank's present application to cancel the order for execution is based solely upon the submission that the judgment given in plaintiff's favour is a declaratory judgment I have given reasons above why I consider this submission misconceived. I should also add that the relief claimed in this application is relief which the Court has no power to grant.

The application to cancel the order giving leave to issue execution is dismissed with costs. The second application for a stay of execution on the ground that the judgment does not order the payment of any definite sum of money is likewise dismissed for reasons set out above.

*Applications dismissed.*

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