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was framed in this case. Section 162 provides for indecency in a *public place*. A charge stating that the indecency was committed *publicly* discloses no offence. The corresponding provisions of the Palestine Criminal Code (section 160 of Ordinance 74 of 1936) led support to the appellant's case.

The judgment of the Supreme Court decided—

(1) That no offence had been charged in the summons;

(2) That the evidence had only established indecent exposure "publicly" and not "in a public place"; and

(3) That the particular "public place" should, by reason of clause 82 of the C.C.J.O., 1927, be specified in the summons.

Appeal allowed: Conviction set aside.

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CHRISTODOULOS TSIGARIDES v. KYPRIS ELIA.

[STRONGE, C.J., AND THOMAS, J.]

CHRISTODOULOS TSIGARIDES

v.

KYPRIS ELIA

(*Appeal No.* 3603.)

Action upon judgment in Cyprus — Justifying circumstances.

Plaintiff brought an action on 23rd October, 1936, on foot of a judgment dated 10th December, 1921, with the object of preventing the prescriptive period of fifteen years specified in Article 1660 of the Mejellé from running out, in which action he claimed payment of the amount adjudged by the said judgment and the costs incidental to two writs of execution issued thereunder. The action was heard by a magistrate who dismissed it on the ground of *res judicata*, and the plaintiff appealed to the President of the District Court, who dismissed his appeal on the same ground. From this latter decision the plaintiff appealed to the Supreme Court.

Held, that an action upon a judgment obtained in Cyprus is permissible when there are justifying circumstances.

Appeal from the decision of the President of the District Court of Nicosia sitting on appeal from the decision of the Lefka Magistrate. (Appeal No. 2/37—Action No. 332/36.)

Charilaos Ioannides for appellant (plaintiff):

The cause of action in 1921 was a bond, whilst the cause of action now is the judgment obtained in 1921—a contract of record, which is a different cause of action. The judgment of 1921 created a new debt or obligation on which a new action lies. That judgment could not be satisfied by any means of execution down to the time when the new action was brought; but the new action is not a mode of execution: it is only an action of debt intended to keep alive the first judgment.

Phaedon Ioannides for respondent (defendant):

The new action is an attempt at execution of the 1921 judgment which is not permitted by law: section 13 of the Civil Procedure Law, 1885. The only modes of execution available are those provided by section 12 of that Law,

which in this case were not utilized in their entirety. The new action is on a *res judicata*. No action can be brought in Cyprus on foot of a judgment. The fifteen years had run out before the new action was heard, and the issue of the new writ of summons was not sufficient to stop the running out of that period: see decision in Appeal No. 3484.

Charilaos Ioannides in reply: The other modes of execution not made use of would have been of no avail as the judgment debtor had no property.

STRONGE, C.J.: This case involves a somewhat novel question—that is to say, whether an action in Cyprus can be brought on foot of a judgment already obtained in a previous action.

On the 14th November, 1921, the appellant issued a writ for £15.9.6 on a bond together with interest at 12%. Judgment was delivered on the 10th December, 1921, awarding him the amount claimed. On the 23rd October, 1936, the plaintiff issued a fresh writ—the writ in the present action—in which he claims (*a*) £45.17.3 as due to him by virtue of a judgment of the District Court of Nicosia, dated the 10th December, 1921, and (*b*) £1.16.0 for the costs of the issue of two writs of movables which were returned unexecuted.

Now, on the 20th February, 1922, he issued his first writ of execution and to that the Sheriff made a return of No Movables, so that it was fruitless. On the 9th August, 1929, the second writ of execution was issued and nothing was realized under that writ of execution, and the plaintiff further put in a certificate from the Mukhtar of the 21st November, 1936, certifying that on that date he had no movable property.

The object of the present action is stated quite clearly by Mr. Charilaos Ioannides to be that of preventing the prescriptive period of 15 years, specified in Article 1660 of the Mejellé, from running out, and the point is whether or not he can bring another action on the foot of an action in which he had already obtained judgment. There are three objections which are raised by Mr. Phaedon Ioannides to this and shortly put these three objections are: that the second action was not rightly brought because the matter is already *res judicata*; that the action on foot of the first judgment is really a form of execution; that the various forms of execution provided in Law 10 of 1885 are exhaustive since section 13 of Law 10 of 1885 says that no judgment shall be executed otherwise than in accordance with that Law. He also takes a further point which, I think, was not raised by him in the Court below, and that is that, inasmuch as the present action was not heard and disposed of on its merits before the period of 15 years lapsed, it is consequently, not maintainable.

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I shall deal with the last point first because it seems to me that it raises the only weighty objection to this appeal. The prescriptive period would have lapsed on the 9th December, 1936. As I have said, the writ in the present action was issued on the 23rd October, 1936. On the 10th November, 1936, both parties came before the magistrate for issues and the various counsel made their points for the plaintiff and for the defendant.

The next appearance before the judge was on the 8th December, 1936, one day before the prescriptive period had expired on which date Mr. Anastassiades adjourned it for lack of jurisdiction, both parties being present. Mr. P. Ioannides says that unless you have an actual judgment on the merits while the prescriptive period is still running, you cannot interrupt or extend the prescriptive period and that if the case only comes on for hearing after the expiration of the prescriptive period it is too late. I shall deal with the part of Mr. Ioannides' contention which is material. (Article 1666 of the Mejellé.) Now, so far as the present case is concerned, I have said that both parties were present with their counsel at the settlement of issues—so that there was a hearing to that extent in the presence of the judge, and besides that we have the fact of the presence on the 8th December, 1936, of both parties. The judgment in Civil Appeal No. 3484 which was relied on by counsel for the respondent affords him no support. I shall content myself with reading the following passage from it. "Article 1666 of the Mejellé, in our opinion, is authority for the proposition that a mere application filed in the registry of the Court is insufficient to prevent the running of the prescriptive period. That article contrasts quite clearly the hearing in the judge's presence with extra judicial claims made without a judge being present." In the present case, however, as I have stated, the demand and claim were made in the presence of the judge when both parties appeared before him for settlement of issues so judgment in Civil Appeal 3484 is not really to the point in the present case. I come back to the point as to whether you can maintain an action if you bring a fresh action on a judgment. The English authorities, and there are quite a number of them, all show clearly that in England such an action is maintainable—*William* v. *Jones* (1845), 67 R.R., p. 767; *Hodsoll* v. *Baxter* (1858), 113 R.R., 929; *Godfrey* v. *George* (1896), 1 Q.B., 48, are a few of the decisions to that effect. All those cases show that an action can be maintained after a judgment has already been got and as to the object of it being brought to keep alive the judgment, there are two cases referred to in the Annual Practice where actions expressly brought to keep alive judgments are referred to and leave was given to issue writs out of the jurisdiction, by Lawrance, J., and Walton, J.

Now, it is said that there is a difference between England and Cyprus in this respect; that though in England you may be able to bring a fresh action on the foot of a judgment already obtained, it is not so in Cyprus, where the modes of execution are exhaustively enumerated in Part 3 of Law 10 of 1885. I think that that objection is not a valid one because, when you bring a fresh action on the foot of a judgment already obtained, you are not, in point of fact executing, if I may say so, the judgment that you have already got. I am not satisfied that when a fresh writ is issued on the foot of the judgment already obtained that is a mode of execution at all. You are treating the judgment which you have already obtained as what it was said to be by Baron Watson in *Hodsoll* v. *Baxter*—" the highest form of debt." When you obtain a judgment you get what is called a contract of record, and there is an implied contract to pay the judgment which you have got, and it is on that judgment that you can bring action and not on the first claim which was originally brought. That is quite clear in this case because in the first action brought, the cause of the action stated in the writ was money due on a bond and in the second action the writ states the cause of action as money due on foot of a judgment. That being so, the objection that it is a mode of execution is disposed of completely. There is a third point raised by Mr. P. Ioannides, that the case is one of *res judicata*, because the object of the present action is in reality the recovery of money due to the plaintiff on a bond. But in the second or present action the cause of action is that the amount due to the plaintiff is not on a bond but on a judgment which he has obtained in the first action. Then, the question arises, must the appellant show that he has exhausted every form of execution—which is available to him ? Must he show that he has issued a writ for the sale of movables and that he has issued a writ of attachment and also applied for payment by instalments ? I don't think it is necessary to exhaust all the remedies by way of execution provided by law. Of course, if Mr. Charilaos Ioannides had come before this Court and it had transpired that there was a reasonable probability that the appellant could have obtained the amount of his judgment by some other means, it would have been otherwise, but when he comes before the Court and says—" I have resorted to all the possible remedies by means of which I could reasonably expect to realize anything," I think that he has done all that he could do.

In conclusion, of course, a person bringing an action on the foot of a judgment, must not bring it in such circumstances as would amount to an abuse of the process of the Court. In other words, if I may quote Lord Lindley, in

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Pritchett v. *English and Colonial Syndicate* (1899), 2 Q.B., 435: "If a person brings an action upon the garnishee order without any necessity he will run the risk of having it stayed as an abuse of the process of the Court, and probably have to pay the costs. It is obvious that if the amount to be paid can be obtained by execution but instead of that he incurs the expense of an action that is an abuse of the process of the Court." I think that every word there applies to this case with great force—here there is no evidence at all that the amount to be paid could have been met by any mode of execution. The time is nearly up, and he has obtained no satisfaction and there is no proof that he ever could have obtained it, and, therefore, I think that this appeal should be allowed.

THOMAS, J.: I am of the same opinion. This case brought before the Court was founded almost entirely on the question as to whether it was competent to bring the 2nd action. Both Courts below decided this point and said it was *res judicata*. Now the cause of action in the 1st case must be and becomes extinguished by the judgment. When it was pronounced that judgment constituted a new cause of action and created obligations which in the words cited by the Chief Justice form an obligation to pay the amount of the judgment. The action relies upon the judgment. I agree with the views expressed by the President of the Court, and for this reason, the appeal should be allowed with costs.

Appeal allowed and judgment entered for appellant.

[STRONGE, C.J., THOMAS AND FUAD, JJ.]

1937. Dec. 13.

REX v. ANTONI CONSTANTI TRAMBOULLI.

IN THE MATTER OF THE COURTS OF JUSTICE LAW, 1935, SECTION 24, AND OF FIVE QUESTIONS RESERVED FOR THE OPINION OF THE SUPREME COURT BY THE ASSIZE COURT OF FAMAGUSTA IN THE CASE

REX

v.

ANTONI CONSTANTI TRAMBOULLI.

Murder — Questions to be decided by Trial Court — Evidence to be taken into account in considering identification of remains and whether death was due to unlawful violence.

The above-named defendant was charged before the Assize Court of Famagusta in October, 1937, with the murder of his son, who has been missing since the beginning of March. Certain remains were found in a well early in July, which are alleged by the Crown to be those of the missing son. At the conclusion of the case for the Crown the Assize Court, acting under section 24 of the Courts of Justice Law, 1935, reserved five questions for the opinion of the Supreme Court, the text of which is as follows:—