[CREAN, C.J., AND GRIFFITH WILLIAMS, J.]

GEORGHIOS D. KOUNNA, OF VAROSHA, *Respondent*,

v.

THE ESTATE OF THE DECEASED KYRIAKOS G. PAMBORI, OF LIMNIA, *Appellant*.

(*Civil Appeal No.* 3612).

SECTION 14 OF THE CIVIL PROCEDURE LAW, 1885—EXEMPTION FROM SEIZURE—RIGHTS OF HEIRS—SEIZURE OF PROCEEDS OF SALE OF PROPERTY INHERITED BY THE HEIRS OF A DECEASED JUDGMENT DEBTOR.

The respondent brought an action and obtained a judgment against one Kyriakos G. Pambori who, some time later, died leaving a widow and certain infant children as his heirs. On his death his estate consisted of a field and a wheel-water, both subject to mortgage, and a pair of oxen. The pair of oxen passed to the heirs as property not liable to execution. The widow, shortly after the death of her husband, sold the pair of oxen and the proceeds of sale, together with the proceeds of sale of other property belonging to her personally, were eventually lodged in the Government Treasury. On hearing this the respondent made an application asking for an order enabling him to attach £18 out of the amount of money standing in the name of the widow. The application was granted by the Assistant District Judge of Famagusta, who ordered the Registrar of the Court to withdraw £12 15s., the proceeds of sale of the pair of oxen, from the Government Treasury and pay it to the respondent. On appeal his decision was confirmed by the President of the same Court, and the appellant made this appeal to the Supreme Court from the said orders of the lower Courts.

HELD: (1) *The heirs of a deceased judgment-debtor, who would be liable to pay the judgment debt, are debtors within the meaning of section* 14(*d*) *of the Civil Procedure Law,* 1885, *and entitled to the benefit of that provision.*

(2) *Property descending to the heirs of a judgment-debtor by virtue of a benefit, such as non-liability to execution, passes to the heirs at such time as other property would from an estate not indebted.*

(3) *When property not liable to seizure comes into the hands of the heirs of a deceased judgment-debtor, it becomes theirs absolutely, and in the event of its being sold by them the proceeds of sale are not attachable.*

J. Clerides for the appellant.

A. Gavrielides for the respondent.

Judgment of the Court was delivered by the Chief Justice.

CREAN, C.J.: This is an appeal from an order of the President of the District Court, Famagusta, made on appeal from an order of the Assistant District Judge, Famagusta, in action No. 612/30, allowing execution for the sum of £14 6*s*. (and costs of the application) against a sum of £12 15*s*. being part of a sum of £23 19*s*. standing to the credit of appellant in the Government Treasury, lodged there in action 256/32. The learned President of the District Court dismissed the appeal for reasons hereinafter appearing.

The facts of the case shortly were as follows:—

One Kyriakos G. Pambori died on the 29th December, 1930, owing the respondent a judgment debt, and leaving a widow Eleni and certain

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infant children as his heirs. On his death his estate consisted of a field and a wheel-water, both subject to mortgage, and a pair of oxen. No letters of Administration were taken out to the estate, but his widow shortly after his death, in conjunction with deceased's brother Antoni Pambori, sold the said oxen for £12 10*s*., and left the proceeds of their sale, besides the proceeds of sale of other property belonging to her personally, in the hands of the said Antoni. It has been suggested by counsel for appellant that the said Antoni was, with money so left in his hands, to buy for the said Eleni the field belonging to the estate, which was then subject to mortgage, when the same should be put up to auction. Whether or not this was so, the said Antoni retained the money and refused to return it to Eleni. She brought an action against him in the District Court, Famagusta, being action No. 256/32, in which she recovered judgment, as a result of which the sum of £23 19*s*. was paid by Antoni into Court in satisfaction of the judgment and lodged in the Government Treasury.

In 1930 the respondent brought this action against the said Kyriakos G. Pambori and recovered judgment on 23rd June, 1930, for £6 6*s*. with interest and £1 16*s*. costs. The said Kyriakos died on the 29th December, 1930, and on 27th July, 1931, respondent took out a writ of execution against the immoveable property belonging to his estate. This property, however, consisted only of a field which was subject to mortgage, and on its sale by the mortgagee there was no surplus to be applied in satisfaction of respondent's judgment debt.

In March, 1933, learning that there was a sum of money in the Treasury standing in the name of Kyriakos G. Pambori's widow Eleni, including the proceeds of sale of the said oxen, the respondent brought this application, asking for an order enabling him to attach £18 out of the £23 19*s*. in the Treasury which had been paid in in satisfaction of judgment in action No. 256/32.

On this application the Assistant District Judge made an order against the appellant for payment of £14 6*s*., *i.e.*, the amount of the said judgment debt of £6 6*s*. plus accumulated interest and costs due to respondent by the said Kyriakos G. Pambori, deceased, and £1 0*s*. 7*cp*. as costs payable on the application, and ordered the Registrar of the Court to withdraw £12 15*s*. from the Government Treasury out of the £23 19*s*. standing in name of the said Eleni, and pay it to the respondent. The £12 15*s*. represented the proceeds of sale of the said two oxen that had formed part of the estate of the deceased.

From this order the appellant appealed to the President, District Court, Famagusta-Larnaca. Counsel argued that these oxen were, during the lifetime of deceased, exempt from seizure in execution,

and that the benefit of this exemption passed to his heirs; and that when the oxen were subsequently sold by the widow they were not sold as part of deceased's estate but as property of the heirs; and that as such they were not subject to the debts of the deceased, and not liable to execution in respect of judgments obtained against him.

The learned President, District Court, while holding that prior to deceased's death the oxen were exempt from seizure, on the grounds that they afforded the deceased his means of subsistence, and that the benefit of this exemption from seizure passed to the heirs, went on to say:—

" If they were sold absolutely of the own free will of the heirs it " would seem that the oxen were not wanted as a means of livelihood " or subsistence and that any money realized from the sale is attachable."

" There is nothing to show that these animals were sold otherwise " than by the full free will and authority of the heirs. It seems clear, " therefore, that these oxen had ceased to be a means of livelihood and " the money obtained from their sale is clearly attachable."

Now, by section 14 of Law 10 of 1885 among those things made exempt from execution under a judgment was: " one pair of neat " cattle." So the cattle could not have been taken in execution against the original debtor under any judgment.

By section 57 of Law 20 of 1895 it is laid down that the heirs, who have accepted an inheritance, are liable to pay the debts of the deceased so far as the property of the deceased that has come into their hands is sufficient for the payment thereof and no further.

The case of *Sophronios Theodorou v. Antoni Haji Theodorou*, C.L.R., Vol. XII, p. 10, decided that in section 14 (*d*) of the Civil Procedure Law, 1885, the word " debtor " must be taken to include those heirs of a deceased debtor who would be liable to pay the judgment debt (to the extent at all events by which they have benefited by the decease of the judgment debtor); and that benefit of exemptions from seizure in execution would accrue to them. Hence the two bullocks in this action were not liable to be seized on the death of the deceased before passing to the heirs.

If at any time the original judgment debtor sells property not subject to execution for his debts, it is considered that he does not need that property as a means of livelihood and subsistence, and that consequently the proceeds of sale can be seized. Following this principle the learned President, District Court, has held that since the heirs have sold the two bullocks of their own free will, then the proceeds of sale can be seized, since the heirs remain liable to pay the debts of the deceased to

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the extent that they obtain benefit from his estate. This principle was applied in the Cyprus case of *Michael Tofallides and another v. Dervish Mehmed Ali*, C.L.R., Vol. XI, p. 3, where house property exempt from execution was mortgaged by the debtor and then sold by the mortgagee, and it was held that the balance of the proceeds of sale after payment of mortgage debt was attachable.

The present case, however, differs from that just cited in that the property was sold not by the original debtor but by the heirs after his death. At the time the deceased died the property in the bullocks passed to the heirs without carrying any liability for payment of the deceased's debts—since they could not be seized in execution—and we are unable to see how any liability could subsequently attach to the proceeds of their sale. The heirs were not personally liable, in the first instance, to pay the debt, and we think their liability under section 57 of Law 20 of 1895 must be limited to the extent to which such property as would be liable to execution by a judgment creditor might come into their hands. Once property not liable to seizure comes into the hands of the heirs it seems to us that it becomes theirs absolutely. Hence they can sell it without the proceeds of sale becoming attachable. It could not very well be held that the bullocks were to remain as long as they were alive in the hands of the heirs, a form of diminishing or contingent security for a judgment debt of the deceased; or that, should they at any time no longer be required for the maintenance or subsistence of the heirs, they could be seized and sold for a debt of the deceased. There must be some ascertainable time when property inherited by heirs becomes theirs absolutely; and we can see no reason why property descending to heirs by virtue of a benefit, such as non-liability to execution, should not pass to the heirs at such time as other property would from an estate not indebted.

For these reasons we thing this appeal should be allowed with costs.

Appeal allowed with costs.