

BOVILL,
C.J.
&
SMITH, J.
1885.

June 3.

[BOVILL, C.J. AND SMITH, J.]

KLEANTHI PENZICHES *Plaintiff,*

v.

HUSNI HALIL *Defendant.*

Ex pte. THE QUEEN'S ADVOCATE.

ENFORCEMENT OF ORDER—COMMITTAL OF ZAPTIEH FOR NON-PAYMENT OF DEBT—PAYMENT BY INSTALMENTS—ATTACHMENT OF PAY IN HANDS OF LOCAL COMMANDANT OF POLICE.

A zaptieh is not liable to arrest for civil debt, and a Court has no jurisdiction under Section 39 of the Cyprus Courts of Justice Order, 1882, to commit a zaptieh to prison for non-compliance with an order to pay a debt.

Prior to the passing of the Civil Procedure Amendment Law, 1885, a Court had no authority to direct the payment of a debt by instalments.

APPEAL of the Queen's Advocate from the order of the District Court of Kyrenia.

Action to recover £8 10s. and interest due on a bond given by the defendant, who was a zaptieh, to the plaintiff.

The plaintiff obtained judgment, and on 27th December, 1884, the District Court made an order directing the defendant to pay the amount due, by instalments of 6s. per month or 3s. per fortnight. This order was endorsed with a memorandum under Section 39 of the Cyprus Courts of Justice Order, 1882, to the effect that if the defendant failed to obey he was liable to be arrested and to have his property sequestered.

The defendant failed to pay.

On the 14th February, 1885, the Court made an order committing the defendant to prison for 10 days and directing the Commissioner of Kyrenia to retain 5s. per month out of the defendant's pay.

The Queen's Advocate applied to the District Court to set aside this order.

The Court refused.

The Queen's Advocate appealed.

Queen's Advocate in person. I object to this order on behalf of the police authorities on two grounds: (1) that this is really an attempt to arrest a zaptieh for a civil debt, and (2) that the Court had no jurisdiction to order the Commissioner as Local Commandant of Police to stop 5s. a month from the man's pay.

By Section 6 of the Cyprus Police Ordinance, 1880, a zaptieh is not liable to arrest for civil debt, and if this order of the Court is valid it enables a zaptieh to be arrested for debt and the provisions of the section and the object for which it was enacted, viz.: that a policeman should always be available for duty, are abrogated.

As to the second point, the Local Commandant of Police is no party to this action : he is entrusted by the Crown with 1s. per diem to hand to the policeman : but it is not a debt and can be stopped whenever the Crown chooses. Directly the man is imprisoned, the pay ceases.

Pascal Constantinides for the respondent. The order of the Court is a committal order for contempt which the Court had jurisdiction to make.

Judgment : We are of opinion that this appeal must be allowed.

We have to decide this case on the law which was in force prior to the passing of the recent law regulating the execution of judgments (the Civil Procedure Amendment Law, 1885,) which came into force on the 2nd April.

The order appealed against is an order refusing to set aside a previous order of the 14th February, 1885, committing the defendant to prison in default of paying a certain instalment of a judgment debt. This latter order was made to enforce a previous order of December, 1884, which orders the payment of the debt by instalments. We are unable to find that at that date the Court had any power to order the payment of a judgment debt by instalments, and if they had no such power their order was ultra vires, and the Court would have no authority to commit for disobedience of an order that they had no jurisdiction to make. The recent law has given power to the Courts to order payment of a judgment debt by instalments, but that law cannot be applied to the case before us. The law is quite clear that a zaptieh cannot be arrested for debt, and the order in the present case practically overrides that law, the intention of which clearly was that a zaptieh should always be available for duty.

The order on the Commissioner cannot be upheld. It is practically an order of attachment, and at the date when this order was made, viz. : 14th February, 1885, we are not aware that there was any power to attach money in the hands of a third person : and certainly not to attach monies in the hands of the Government whose agent the Commissioner or Local Commandant is.

The Local Commandant was never cited to appear and asked if he had any monies belonging to the defendant in his hands.

For these reasons we shall reverse the order appealed against and direct that the order of the 14th February, 1885, be set aside.

Appeal allowed with costs.

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