SMITH, ACTING C.J. & TEMPLER, ACTING J.

CONSTANDINO DIANELLO *v.* KYRILLOS PAPADOPOULOS AS BISHOP OF KYRENIA

far as the Queen's Advocate, and say that a bishop is unable to make the property of the See answerable in the hands of his successor for contracts he may have entered into. If, for instance, a man had been employed to repair the bishop's place, there seems to be no reason why after the death of the bishop, his successor should take the benefit of the work that had been done, without being under any obligation to pay for it. It is, however, not necessary to give any decision on these points in the present case, because it appears to us that the subscriptions promised by the late bishop Chrysanthos to the school at Nicosia cannot be regarded in any way as obligations on the See. They were purely personal matters for which the property of the See cannot be made answerable.

Appeal dismissed.

SMITH, ACTING C.J. & TEMPLER, ACTING J. 1891. *July* 25.

[SMITH, ACTING C.J. AND TEMPLER, ACTING J.]

HADJI AGGELI HADJI MARKOU *Plaintiff,*

v.

THE HEIRS OF OMER DAI SULEIMAN *Defendants.*

Ex parte TOSSOUMZADE MEHMET.

EXECUTION—IMMOVEABLE PROPERTY CHARGED WITH PAYMENT OF JUDGMENT DEBT—SALE AT INSTANCE OF ANOTHER CREDITOR —LIEN ON MONIES IN COURT—CIVIL PROCEDURE AMENDMENT LAW, 1885, SECTIONS 13, 14 AND 15.

A judgment creditor who has charged the immovable property of his debtor with the payment of the judgment debt, in accordance with the provisions of Section 13 of the Civil Procedure Amendment Law, 1885, has no lien on the purchase monies arising from the sale of the same property which has been sold in execution of a judgment at the instance of another judgment creditor of the debtor: but the land remains charged with the payment of his judgment debt.

APPEAL of Tossoumzade Mehmet from an order of the District Court of Larnaca, dismissing an application of Tossoumzade Mehmet to have certain monies arising from the sale of immovable property of the defendants, which had been sold in execution of the judgment, paid out to him.

Mumtaz Effendi for the appellant.

Diophanto for the plaintiff, the respondent to the appeal.

The facts and arguments sufficiently appear from the judgment of the Supreme Court which was as follows :—

This is an appeal of Tossoumzade Mehmet from the order of the District Court of Larnaca dismissing his application to have certain monies now in Court, or in the Land Registry Office at Larnaca, paid out to him.

The facts are shortly as follows : These monies are the proceeds of the sale of certain immovable properties forming part of the estate of Omer Dai Suleiman, deceased, which were sold in execution of the judgment in this action.

It appears that on the 27th of September, 1887, Tossoumzade Mehmet obtained judgment against Omer Dai Suleiman for £22.18.8 and costs and that there is now due under this judgment, as we gather from the statement of his advocate, the sum of £15.3.

In accordance with the provisions of Section 13 of the "Civil Procedure Amendment Law, 1885," Tossoumzade Mehmet lodged certain memoranda in the Land Registry Office at Larnaca, charging certain immovable properties of Omer Dai Suleiman with the payment of the judgment debt. These memoranda are dated respectively No. 188, of 26th October, 1887, No. 442, of 11th May, 1888, and No. 463, of 9th June, 1888.

Omer Dai Suleiman appears to have been also indebted to the plaintiff, Hadji Aggeli, and after his decease, the plaintiff, in February, 1889, appears to have obtained a judgment against his heirs ; in satisfaction of that judgment the plaintiff obtained an order of the Court for the sale of certain immovable property forming part of the estate of Omer Dai Suleiman. This property was sold, and the purchase money is now in the Land Registry Office at Larnaca, awaiting the order of the Court as to its disposal. Tossoumzade Mehmet claims that the property thus sold was the property charged with the payment of his judgment debt, and that he is entitled to have the proceeds of the sale paid out to him.

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The District Court has decided that he has no lien on this money and dismissed his application.

There is a dispute as to whether the whole of the property sold was comprised in the memoranda lodged by Tossoum-zade Mehmet; but it is admitted that the property described in memorandum No. 463, of 9th June, 1888, has been sold. If our decision should be in favour of the applicant, we should remit the case to the District Court, to enquire whether the other properties sold were comprised in the properties described in the other memoranda. If our decision is against the applicant it will, of course, not be necessary to do this.

The question for our decision is, therefore, whether owing to the fact that the applicant had charged the piece of land described in memorandum No. 463 with the payment of his judgment debt, he is thereby entitled to the proceeds of the sale of that property which has been sold under the order of the Court for payment of another judgment debt. There is nothing in the law itself which gives the applicant a right to a lien on this money, and we know of no principle which would enable us to treat the proceeds of the sale in the same way as though it were the property itself, and to decide that this money is affected by the charge. Had it been paid over to the plaintiff in this action, we know of no means by which the applicant could have recovered it from him. We are the more confirmed in our opinion that this is the correct view of the law by the fact, that, if the applicant is entitled to this money, his charge on the land would be extinguished. He cannot claim this money on the ground that he had a charge on the land, and at the same time assert that the property still remains subject to his charge upon it. If he is entitled to the money, it is only because that money represents the interest of the debtor in the land which was charged with the payment of the applicant's debt. But, in our opinion, notwithstanding the sale of the property, it still remains charged with the payment of the applicant's judgment debt.

Section 13 of the Civil Procedure Amendment Law, 1885, says a judgment creditor may *charge any property* in which the judgment debtor is beneficially interested with the payment of the judgment debt by leaving at the Land

Registry Office of the district, within which such immovable property is situate, a copy of the judgment together with a memorandum describing the property, and requesting that no transfer may be made of the property.

The effect of thus lodging a copy of the judgment and the memorandum is "to render the *immovable property* "*of the judgment debtor, mentioned in such memorandum,* "answerable for the payment of the judgment debt to the "extent of the beneficial interest of the judgment debtor "in such property." In our opinion the meaning of the law is, that, directly the memorandum is lodged, the property referred to in that memorandum is charged with the payment of the judgment debt to the extent of the debtor's interest in it, and that that charge can only be got rid of, either by payment of the judgment debt and by the giving of the notice required by Section 15 of the Law, or by a sale of the debtor's interest in that property in satisfaction of the debt with which the property is charged.

It is quite clear that the law never contemplated such a state of things as has arisen in the present case. It never contemplated that property charged with the payment of one judgment debt should be sold under the order of the Court for the payment of another. But that the true construction of the law is as we have stated above, appears to us to be clear from the wording of Section 13, and from a consideration of Section 14 of the Law.

Section 14 appears to contemplate a voluntary transfer of the property charged: and in that case, notwithstanding that the property may have been transferred to an innocent purchaser for value, the property still remains charged with the payment of the judgment debt, and may still be sold under the order of the Court in satisfaction of that debt.

This seems to confirm the view that when once the charge has attached, the property remains burdened until the charge is extinguished in one of the two methods we have mentioned above.

As the charge is not extinguished by a voluntary transfer but the land remains still bound in the hands of the transferee, we see no reason in principle why the charge should be extinguished when the sale has been involuntary.

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The law is silent as to what is the remedy of the purchaser in the case where the property charged has been sold under the order of the Court for payment of a judgment debt other than the one charged upon the property, but we see nothing in the law which leads us to the conclusion that the property is thereby freed from the charge which has attached to it.

The language of Section 14 of the law is very comprehensive. It says: "notwithstanding *any* transfer of the property which may thereafter be made into the name of any person other than the judgment debtor, such property may be sold by order of the Court in satisfaction of the judgment debt." These words are very wide and would include, *per se*, a transfer effected at a sale under an order of the Court: but the Section continues "*in such case* the "remedy of the person into whose name the same may "have been transferred shall be in damages only against "the person by whom the property was granted or assigned "to him." In a case like the present, there is, in strictness, no person who can be said to have "granted or assigned the property." The writ of execution is sufficient authority for the Land Registry officers to alter the registration of the property in the books of the office.

But we do not wish to decide that, because a case has happened which the law did not contemplate, therefore, the purchaser in this case has no remedy against anyone. It may be that he has a remedy against the person who procured the property to be put up for sale, but it is not necessary for us to decide that question, and we offer no opinion upon it.

It would be a monstrous hardship on the purchaser of this land, who has purchased it at a sale held under the order of the Court, that he should lose the money he has paid for the land. He is not in fault in any way. Of the parties before the Court the person really in fault is the applicant Tossoumzade Mehmet, who, having charged the property with the payment of his judgment debt nearly three years ago, has sat quietly down and done nothing to obtain the execution of his judgment. We do not know whether the sale has been finally carried out in this case, but the money is still under the control of the Court, and we hope that it will remain so, until the purchaser

of the property has had an opportunity of determining whether it is not possible to have the sale set aside, on the ground that the property put up for sale purported to be the unencumbered property of the judgment debtor, whereas the property which alone could be sold and was, as a matter of fact, sold, was the property of the judgment debtor subject to a charge to the amount of Tossoumzade Mehmet's judgment debt.

These are matters not before the Court and, contrary to our usual custom, we have gone perhaps already into questions which were not strictly necessary for our decision, but the case is an important one and we thought it right to go somewhat at length into our view of the law.

We cannot help feeling that it would be a grievous hardship on the purchaser in this case if, through no fault of his own, he is deprived of the property he has bought under an order of the Court, and remains without a remedy against anyone.

The decision in this case shows that an amendment in the law is extremely desirable both as to limiting a time within which land shall remain charged with the payment of a judgment debt, by the deposit of a memorandum and copy of a judgment at the Land Registry Office, and also in making provision for the protection of innocent purchasers, who buy property sold under an order of the Court. But our judgment must be that the decision of the District Court was right, and that the appeal must be dismissed, and the applicant Tossoumzade Mehmet must pay all the costs of the application.

We would say, in conclusion, that this is a case which ought to be arranged between the parties. Although the plaintiff, Hadji Aggeli, has succeeded on technical grounds in this appeal, it is clear that he has obtained the sale of property which he had no right to have sold, and he has no moral right to retain the proceeds.

Appeal dismissed.