

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

IN THE MATTER OF THE ESTATE OF
 ANDREA CHRISTODOULO DECEASED.
Ex parte CONSTANDINO J. KYTHRIOTI.

BOVILL,
 C.J.
 &
 SMITH, J.
 1892.
 July 25.

ADMINISTRATION—JUDGMENT CREDITORS—CONFLICTING CLAIMS
 —LAND CHARGED WITH PAYMENT OF DEBT SOLD UNDER
 ORDER OF COURT—DISCRETION OF COURT.

Immovable property, forming part of the estate of a deceased person, which was being administered under the provisions of the Infants Estate Law, 1884, was sold under an order of the Court. It then transpired that this property had been charged by a judgment creditor of the deceased with the payment of the judgment debt. The estate of the deceased was insufficient to pay the debt, and another judgment creditor applied that the proceeds of the sale might be divided rateably between him and the other judgment creditor, who had charged the property.

HELD (affirming the decision of the Court below): That the Court was justified in treating the sale as having been effected for the benefit of the latter, and in ordering the proceeds of the sale to be paid out to him.

APPEAL from the order of the District Court of Paphos.

Andrea Christodoulo died leaving certain heirs under disability, and his estate was administered under the Infants Estate Law, 1884. Certain immovable properties were sold under an order of the Court, and the moneys realised by the sale were in Court.

A judgment creditor, Yanni Nicolaidis, applied to the Court that the moneys arising from the sale of the immovable property might be paid out to him, and he alleged and proved that the properties sold had been charged by him with the payment of his judgment debt, in accordance with the provisions of the Civil Procedure Amendment Law, 1885. Constandino J. Kythrioti, who was also a judgment creditor, applied that the moneys in Court should be divided rateably between him and Yanni Nicolaidis, as the estate of the deceased was insufficient to pay both debts.

The Court ordered that the moneys in Court should be paid out to Yanni Nicolaidis.

Constandino J. Kythrioti appealed.

Economides for appellant. Yanni was not a privileged creditor and the Supreme Court has already decided in the

ROVILL, case of *Hadji Aggeli Hadji Markou v. the heirs of Omer Dai*
 C.J. & *Suleiman* (ubi sup. p. 10) and *Sophocli Hadji Haralambo*
 SMITH, J. *v. Hadji Loizo Michail Cazamia* (ubi sup. p. 52), that
 — where a judgment creditor has charged the land of his
 ANDREA debtor with the payment of his judgment debt, he thereby
 CHRISTO. acquires a right against the land only, and has no lien on
 DOULO the proceeds of the sale, if by any means the property has
 DECEASED. been sold. The creditors ought to be paid rateably.
Et parte

CONSTAN- *Pascal Constantinides* for the respondent Yanni Nico-
 DINO J. laides was not called upon.
 KYTHRIOTI. —

Judgment: We think the decision of the Court below was right, and should be affirmed. The case differs from the other cases of a similar nature that we have had before us on other occasions, inasmuch as the property was not sold for the benefit of any particular creditor, nor at the instance of any creditor whose interests were hostile to the creditor who had charged the land with the payment of his judgment debt. After the property had been sold under the order of the Court, in the administration of the estate of a deceased person, a creditor appears who says "I charged the land with the payment of my judgment debt, and I, therefore, ask that the proceeds of the sale may be handed to me." It is perhaps unfortunate that the Court was unaware of the existence of his charge before the order for sale was made, as otherwise the Court would have refrained from ordering a sale, and would have left the creditor to pursue the rights that he had acquired under the law. We think that under the circumstances, the Court was justified in regarding the sale as having been effected for the benefit of that creditor, who himself had the right to ask for the property to be sold. It was within the discretion of the Court so to hold, and we think it exercised a wise discretion.

The cases we have had to decide before, have been cases in which, notwithstanding that land has been charged with the payment of one judgment debt, it has by some means or other been sold at the instance of another creditor, and in those cases we have decided that under the law, the former has no right to follow the proceeds of the sale, but that the land still remains charged with the payment of his judgment debt.

Appeal dismissed.