

[SMITH, C.J. AND MIDDLETON, J.]  
 NIKOLA KATOUROFORTI *Plaintiff,*  
*v.*  
 NIKOLAO KALOUTA *Defendant.*  
*Ex parte SOPHOCLES P. ATHIENITI & Co.*

SMITH, C.J.  
 &  
 MIDDLE-  
 TON, J.  
 1895.  
 —  
 Oct. 28.  
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EXECUTION—INTERPLEADER—PARTNERSHIP FIRM—PARTNERSHIP  
 ASSETS SEIZED BY SHERIFF FOR SEPARATE DEBT OF ONE  
 PARTNER—INTEREST OF PARTNER IN PARTNERSHIP ASSETS—  
 PARTNERSHIP ACCOUNTS.

A judgment creditor of a debtor who is a member of a partnership is entitled in satisfaction of his debt to have the interest of his debtor in the partnership assets sold, this interest being what is found to be due to the debtor out of the assets of the partnership after the taking of the partnership accounts.

APPEAL from the District Court of Nicosia.

*Chakalli* for the appellant.

*Economides* for the respondents.

The facts and arguments sufficiently appear from the judgment.

*Judgment:* This was an appeal from an order made by the District Court of Nicosia, directing that certain goods seized by the Sheriff in satisfaction of the judgment obtained by the plaintiff in this action, should be delivered up to the claimants.

Dec. 3.

The action was brought to recover the rent of a shop for one year from 27th November, 1892 to 27th November, 1893, and the defendant not appearing, judgment went by default.

The Sheriff in execution of the judgment seized certain machinery and other goods in the shop. Athieniti & Co. applied that these goods should be exempted from the sale as they were not the goods of the judgment debtor, but of a partnership formed between themselves and the debtor, and that on taking the partnership accounts, Nikolao Kalouta had no longer any interest in the partnership assets.

It appeared from the notes of the evidence taken on the hearing of this application, that the partnership had been dissolved, and that there was a balance of assets over liabilities. The Court found that the property was the property of the partnership, and that the creditor of one of the partners had no right to seize it in execution, and directed the Sheriff to withdraw.

It was contended for the appellant, the judgment creditor, that there being a balance of assets over liabilities, he was entitled to satisfy his claim by seizure of one-half of the

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goods representing this balance: that he was unaffected by the accounts of the partners between themselves, and that the goods being the property of the judgment debtor at the time when the shop was leased to him, were liable, in any event, to satisfy the claim for rent.

We have had under our consideration the partnership agreement and the statement of the partnership accounts, taken by two gentlemen to whom the matter was referred by the Court. It appears that under the agreement, the partnership commenced on the 2nd September, 1891, and was to continue until 1st January, 1894. It would thus appear that the rent claimed by the plaintiff, is claimed in respect of a period during which the premises were occupied by the firm; but the advocates for both parties are agreed that the rent claimed was owing by Nikolao Kalouta solely, and was not a debt due by the firm.

It is not easy to understand from the agreement what the capital of the partnership consisted of; but it is clear that all the machinery and goods of Nikolao Kalouta were to form his capital, and that Athieniti & Co. were to deposit £1,250 and a further sum of £250, on which latter they were entitled to charge eight per cent. interest; which may possibly have been intended as a loan, but which is treated in the partnership accounts as capital.

It is clear that the effect of a partnership agreement is to make each partner a joint owner with the other or others in all the goods forming part of the partnership assets. The separate creditor of one partner is only entitled to sell in satisfaction of a judgment debt the interest of his debtor in the partnership assets. To ascertain what this interest is, it is necessary that the partnership accounts should be taken. It appears from the accounts of this partnership that the capital deposited by Athieniti amounted to £1,450, and the capital of N. Kalouta to £257 19s. 8cp. The liabilities of the partnership would appear to be £184 10s. 3cp. owing to the Imperial Ottoman Bank, and £13 9s. 2cp. owing to various creditors. The value of machinery, goods, etc., belonging to the partnership firm is estimated at £1,198 8s. 6cp.

Deducting from this latter amount the liabilities due from the partnership to the Bank, to Athieniti for his loan and to the other creditors, there remains a sum of £755 19s. 2cp. to meet the claims of the partners in respect of their capital.

The total capital being £1,708, viz.: £1,450 deposited by Athieniti and £258 by N. Kalouta, the loss incurred by the partnership amounts to £952. Under the partnership agreement profits and losses were to be equally divided, and it would thus appear that each owes to the firm the sum of £476.

To secure a proper division of the partnership assets, each partner has a right to have whatever may be due to the firm from his co-partners deducted from what would otherwise be payable to them out of the surplus assets of the firm ; and this right exists against any person claiming through any partner, and, therefore, against an execution creditor, as in the present case.

Here Athieniti has to receive £1,450 and owes the firm £476 : whilst N. Kalouta has to receive £258 and owes the firm £476.

It thus appears that N. Kalouta has nothing to receive from the firm, but, on the contrary, he is indebted to it, whilst Athieniti has to receive £1,450 and owing £476 is entitled to take £974 from the assets.

The respondent's advocate contended that N. Kalouta had drawn out a very considerable sum of money : but on examining the accounts it appears that these amounts were advanced to N. Kalouta before the commencement of the partnership, and, no doubt, formed part of the capital of Athieniti in the partnership when formed.

There is a clause in the agreement to the effect, that on the dissolution of the partnership, N. Kalouta is to take all the machinery, tools, etc., at a valuation, and Athieniti all the goods, whether dyed or not : but it appears to us that it was not the intention of the parties to agree that this division should take effect in any event. They can hardly have intended that the machinery and tools, which formed the entire capital of N. Kalouta, and should be reserved to him in any event ; but that they should be taken by him subject to the ordinary partnership accounts. These accounts shew that he no longer has any interest in the partnership assets, and in our judgment the order of the District Court was right and must be affirmed.

*Appeal dismissed.*

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