

SMITH, C.J.
&
MIDDLE-
TON, J.
1894.

Jan. 13.

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

OLYMPIA PERISTIANI AS HEIRESS, ETC.

Plaintiff,

v.

PANAYOTI LEFTERI

Defendant.

PROMISSORY NOTE—PRESCRIPTION—PAYMENT ON ACCOUNT—
MEJELLE, SECTION 1674.

The plaintiff sued to recover a sum claimed to be due under a promissory note dated 1869. A payment on account was alleged to have been made in 1883.

HELD : That the action was prescribed, and that the course of prescription was not interrupted by the alleged payment in 1883.

APPEAL from the District Court of Limassol.

The action was brought to recover 15,270 *p.*, being the balance alleged to be due under a promissory note dated the 21st October, 1869. Credit was given for several sums paid on account, the last of such payments being alleged to have been made in 1883.

The defendant pleaded that nothing was due under the bond.

At the hearing, the Court decided that under Section 1674 of the Mejellé, as there had been no acknowledgment of the debt in writing, the action was prescribed, and dismissed the plaintiff's claim.

The plaintiff appealed.

Pascal, for the appellant. I contend that this action is not prescribed, inasmuch as there was a payment on account of the debt in 1883. Part payment will interrupt the course of prescription. This promissory note cannot be prescribed, because it contains a condition for the payment of interest. The payment in 1883 was on account of both principal and interest : the condition was complied with in 1883 by a payment on account of interest ; and the action will not be prescribed until 1898.

Templer, Q.A., for the respondent. There is nothing in the law which provides that a part payment is a sufficient acknowledgment of the debt, so as to interrupt the course of the period of prescription, when once it has commenced to run.

April 14.

Judgment : The plaintiff in this case claimed the balance of a sum due under a promissory note dated in 1869, and other sums due by way of interest. At the settlement of

the statement of the matters in dispute, the defendant simply raised by way of defence that he owed nothing under the note. When the case came on for hearing, the question of prescription was raised, how or by whom does not clearly appear from the notes. For the plaintiff it was contended that the action was not prescribed, inasmuch as there had been several sums paid on account of the note, the last part payment having been made in 1883 : that these part payments having been made, the course of the period of prescription was interrupted, and that the action could not be prescribed until 1898, a period of 15 years from the last part payment. The District Court held that the fact of part payment did not interrupt the prescription, and gave judgment for the defendant. The judgment of the District Court appears to have proceeded upon the ground that part payment was not a written acknowledgment, such as is referred to in Article 1674 of the Mejellé. We may observe that Article 1674 does not seem to us to affect the question at issue in this case. This article is dealing with acknowledgments made after the period of prescription has expired, and not with acknowledgments made before, such as is relied upon in this case. It is not the right itself which is extinguished by lapse of time, but only the right of action which is barred ; and hence, when in an action, brought after the period of prescription has expired, a debtor acknowledges his indebtedness before the Judge, the latter may give judgment against him on his acknowledgment. Similarly, if after the period of prescription has expired, he makes an acknowledgment in writing, an action may be maintained against him, founded not on the original debt, but on his acknowledgment.

Two points were raised before us on behalf of the appellant : 1st, that the part payment in 1883 interrupted the prescription, and 2nd, that the note could not be prescribed because there was a condition to pay interest, and that the payment made in 1883 was on account of both principal and interest, and that the condition having been partly fulfilled, then the action, so far as the interest was concerned, would not be prescribed for 15 years from that date. With regard to these contentions, it appears to us that Article 1667 lays down the period from which prescription begins to run—the date on which the debt became exigible. Article 1663 says, that in the period of prescription is to be reckoned only the time which the plaintiff has allowed to pass without any valid excuse, and, therefore, if he be an infant or of unsound mind, or absent, or if his opponent be one of the rulers of the place, the period of prescription begins when these obstacles to his pursuing his rights are removed.

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SMITH, C.J. The law is silent as to the interruption of the period of
 & prescription by an acknowledgment of the debt or by part
 MIDDLE- payment, and we do not feel at liberty to read into it any
 TON, J. such provision. Reference was made to the fact that in
 ——— the French Law the prescription would be interrupted by
 OLYMPIA part payment, and no doubt this is so : but the French Code
 PERISTIAN contains a specific provision to this effect which is wanting
 P. in the Mejjellé.
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With regard to the second point, the note contained an agreement for the payment of interest, but it appears to us that the claim for interest stands on the same footing as that for the principal, and that if the latter is prescribed the former must be so also.

For these reasons we are of opinion that the judgment of the District Court in favour of the defendant must be affirmed.

Appeal dismissed.

SMITH, C.J.
 &
 MIDDLE-
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 1894.
 April 9.

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

RAGHIB BEY HADJI HASSAN *Plaintiff,*

v.

GERASIMO, ABBOT OF KYKKO *Defendant.*

PRACTICE—NOTES OF EVIDENCE—NOTES TAKEN BY REGISTRAR—
 CYPRUS COURTS OF JUSTICE ORDER, 1882, SECTIONS 166 AND
 167—RULES OF COURT, 1886—ORDER XXV., RULE 2—ORDER
 XXI., RULE 21.

The Cyprus Courts of Justice Order, 1882, Clause 166, provides that in every case, civil or criminal, the President, or, in his absence, one of the Judges shall take down in writing all oral evidence given before the Court.

HELD : That these words are imperative and not merely directory.

An action in which portions of the notes of the evidence of some of the witnesses were in the handwriting of the Registrar of the Court remitted to the District Court for the evidence of these witnesses to be retaken.

APPEAL from the District Court of Nicosia.

The action was brought to restrain the defendant from digging wells, which were alleged to be an infringement of the plaintiff's rights.

The District Court gave judgment for the defendant.

The plaintiff appealed.

Templer, Q.A. (*Macaskie* with him), for the appellant, raised a preliminary point that portions of the notes of the evidence of the witnesses were taken by the Registrar of the Court and not by the President.