

(HUTCHINSON, C.J. AND MIDDLETON, J.)

AHMET HADJI HASSAN DANDELEN, *Plaintiff,*
v.
 SULEIMAN IBRAHIM AND OTHERS, *Defendants.*

HUTCHIN-
 SON, C.J.
 &
 MIDDLE-
 TON, J.
 1898
 July 5

MOVEABLE PROPERTY, WRIT FOR THE SALE OF—STANDING CROPS—FRUIT GROWING ON THE TREE—GOODS AND CHATTELS—"MENKOUL"—THE CIVIL PROCEDURE AMENDMENT LAW, 1885, SECTIONS 21, 32, 33, 36, 37, 38—MEJELLE, ARTICLE 128—THE TITHE AND TAX COLLECTION ORDINANCE, 1882, SECTIONS 1, 2, 5, 6—THE INFANTS' ESTATES ADMINISTRATION LAW, 1894—THE WILLS AND SUCCESSION LAW, 1895.

A. having obtained judgment against B. for payment of a sum of money, took out a writ of seizure and sale of B.'s moveable property, and, under the writ, B.'s standing crops were seized.

HELD (affirming the order of the District Court): that standing crops are not "moveable property" within the meaning of Section 21 of the Civil Procedure Amendment Law of 1885, and could not be seized under the writ.

APPEAL from the District Court of Nicosia.

Theodotou for the Appellant.

Kyriakides for the Respondent.

The facts appear from the judgment.

Judgment: The Plaintiff, to enforce payment of a sum of money for which he had obtained judgment against the Defendants, took out a writ of seizure and sale of the Defendants' moveable property; and under this writ some of the Defendants' standing crops,—that is, crops not yet cut,—were seized. The Defendants thereupon applied to the District Court for an order exempting the standing crops from seizure: the Court made the order: and this appeal is from that order.

July 14

The Civil Procedure Amendment Law, 10 of 1885, Section 21, enacts that any judgment for payment of money may be enforced by, in the first instance, "a writ of seizure and sale of moveable property." The writ in this case was issued under the authority of that enactment, and was in the common form in use in the Cyprus Courts; and the question now raised is whether standing crops are "moveable property" within the meaning of that enactment. We are informed that the practice of the Sheriffs of the different Districts in this matter is not uniform: that under this writ some seize standing crops, and caroubs and olives and other fruit on the tree, while others do not.

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“Moveable property” is not a term of English law. One would expect that, if the Legislature had intended the writ to have the same operation as an English writ of *fi fa*, it would have used the well known English law term “goods and chattels.” Where we find it using a term apparently in some technical sense, but which is not an English technical term, the natural presumption is that the term is one of Turkish law. And upon inquiring whether “moveable property” is a Turkish law term and, if so, what it means, we find that there is a definition of ‘*menkoul*’ or “moveables” in the Mejjellé, in the book concerning sale, Article 128, which in Dr. Grigsby’s translation is as follows: “Moveable property is every thing which can be transferred from place to place, such as money, merchandise, animals, and things that can be measured and weighed.” This is not very clear; but we think that it would exclude anything which cannot be moved without cutting or breaking or severing from the soil, such as buildings and trees or crops not severed from the soil.

Definitions of “moveables” are given in the French Code Civil, Book ii., Title 3, Chapter 1, Section 520, and in the Egyptian Code, Chapter 1, Section 2; in both of these uncut crops and ungathered fruit are clearly excluded. And in the Ottoman Commercial Code, which is founded on the French Code, the terms “moveables” and “immoveables” are used (for example, in Section 241), in apparently the same sense as in the French Code.

If we look through the other enactments in our Statute Book to see whether the Legislature attaches any peculiar meaning to the term “moveables” we find that, in this same Law, Section 32 directs the officer executing this writ to seize “so much of the money, securities for “money, goods and moveable property” of the debtor as may be necessary; Sections 33 and 37 direct that the “goods and moveable property” so seized shall be sold; Section 36 regulates the procedure where “any moveable property” so seized is claimed by a third person; and Section 38 says what may be done where “any money, securities for money, goods or other moveable property” of the debtor are under the control of any other person. There is the same vagueness in the Tithe and Tax Collection Ordinance, 14 of 1882, which in Section 1 enacts that, in default of payment of tithe or taxes, the amount is to be levied by the seizure and sale of “the moveable property” of the defaulter; while Section 2, dealing with the manner of seizing and selling, directs the officer to seize “such of the goods and chattels” of the defaulter as he thinks sufficient and to keep “the goods so seized” for four days, after which “the said goods” are to be sold; and Sections 5 and 6

authorize the imprisonment of the defaulter or the sale of his immovables if "no sufficient moveable property" can be found. This ringing of the changes on "moveable property" and "goods" and "chattels," and the rest, seems only to show that these enactments are carelessly worded. If the term "goods and chattels" had been used throughout, it would have included growing crops and some other things (leaseholds, for instance), which are not "moveables"; but we cannot infer from the casual use of the technical term "goods and chattels" in a single place that the Legislature intended moveables to include all chattels.

In the Infants Estates Administration Law, 7 of 1894, and again in the Wills and Succession Law, 20 of 1895, it is specially provided that "in this Act" moveable property shall include crops; which looks as if the Legislature there thought that, without that special provision, crops would not be included. There is no other local enactment which appears to throw light on the sense in which the Legislature uses the term.

In Stephen's Commentaries on the Laws of England, 8th edition, Vol. 2, p. 4, the author proposes to use the term "moveables" as equivalent to "chattels personal," and says that they consist of goods, etc., "and vegetable productions, as the fruit or other parts of a plant when severed from the body of it, or the whole plant itself when severed from the soil." This might be taken as a guide to the meaning of the word if it is not used as the equivalent of the Turkish word *menkoul*.

In our opinion, however, "moveable property" in Law 10 of 1885 is used in the same sense as *menkoul* in Turkish Law, and does not include standing crops, and the order appealed from was right

Appeal dismissed.

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