HUTCHINSON, C.J. & MIDDLETON, J. 1901

March 5

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

ARISTIDES JOACHIM, *Plaintiff.*

v.

CHRISTODULO H. CHRISTOFI AND ANOTHER, *Defendants.*

AND

CHRISTODULO HARALAMBO, *Plaintiff.*

v.

TOULI H. CHRISTOFI AND ANOTHER. *Defendants.*

WRIT OF EXECUTION—RULE OF COURT—PROCEDURE—CONSTRUCTION—MEMORANDUM—REGISTRATION OF JUDGMENT—PRIORITY—ULTRA VIRES—UNEXECUTED—THE CIVIL PROCEDURE AMENDMENT LAW, 1894, SECS. 7, 16—THE REGISTRATION OF JUDGMENTS LAW, 1898, SEC. 2—CYPRUS COURTS OF JUSTICE ORDER, 1882, CLAUSE 209.

It is a principle of the construction of legislative enactments altering procedure that they should have a retrospective effect unless there is a good reason against such construction; or unless the new procedure would prejudice rights established under the old.

The Rule of Court of May 20th, 1899, No. 18 of Order XVIII. enacts that "Every writ of execution if unexecuted shall remain in force for one year unless "renewed in the manner hereinafter provided; but it may, at any time before its "expiration, by leave of the Court or a judge, be renewed by the party issuing it for "one year from the date of renewal, and so on from time to time during the con-"tinuance of the renewed writ; and a writ of execution so renewed, shall have "effect, and be entitled to priority, according to the time of its actual delivery:" this Rule must not be construed retrospectively.

HELD *that: a writ dated March 10th, 1898, which had not been completely executed up to the date of the publication of the Rule of Court was not put an end to by it.*

APPEAL from the District Court of Nicosia.

Economides for the Appellant.

Pascal Constantinides (with him *G. Chakalli*), for the Respondent.

The facts and arguments sufficiently appear from the judgment.

March 19 *Judgment*: This is an appeal from an order of the President of the District Court of Nicosia by consent of parties direct to the Supreme Court decreeing the appropriation of certain sums recovered on the sale of the Defendants' immoveables between the Plaintiffs in these two actions.

The Defendants were judgment debtors of Aristides Joachim in action No. 373 and of Christodulo Haralambo in action No. 341.

The Plaintiff in action No. 341 lodged a memorandum No. 420 attaching certain of the debtors' immoveables on 22nd October, 1896, and the Plaintiff in action No. 373 also lodged memorandum No. 439 on 12th November, 1896, attaching three of the same properties.

Both these memoranda expired on 31st December, 1899.

On the 10th March, 1898, Plaintiff in action No. 341 obtained a writ for the sale of the Defendants' immoveables; and on the 30th March, 1898, certain of the properties attached by him under Memo. No. 420, together with two others, were noted for sale under the writ; and on the 7th January, 1900, these were put up for sale, but, owing to some irregularity, the sale was cancelled, and subsequently these properties and three others were sold under the writ on 11th November, 1900.

On the 4th May, 1899, Plaintiff in action No. 373 lodged another memorandum No. 195 attaching the same properties as he had attached by No. 439 and all those sold under the writ of 10th March, 1898, except Nos. 446 and 4569.

The President was of opinion, having regard to the terms of Sec. 7 of the Civil Procedure Amendment Law, 1894, and the preamble to and 2nd Section of the Registration of Judgments Law, 1898, that property which had been attached for the period therein limited could not be again attached under the same judgment by another registration thereof, and that therefore so far as the second memorandum of the Plaintiff in action 373 affected properties attached by his former memorandum it was bad. He also held that the writ in question was dead under the Rule of Court of May 20th, 1899, at the date when the Defendants' properties were sold under it, even although it might be that it could not be executed before.

The result of these opinions, as the President put it, was that Plaintiff in action 373 would be entitled to the proceeds of such properties sold under the writ in action No. 341 as he had attached by his second memorandum only (if there were no prior claim on them), with the exception of one property No. 1250 which both parties agreed should be taken by Plaintiff in action No. 341.

The properties so attached for the first time by the second memorandum in action No. 373 were 3175, 3215, and 591. Nos. 3175 and 3215 realized 13s. The President does not mention No. 591 but it perhaps had been attached by some other creditor previously.

The order therefore of the District Court was that out of the proceeds of the writ in action No. 341, 13s. less the due proportion of expenses,

HUTCHINSON, C.J. & MIDDLETON, J.

ARISTIDES JOACHIM v. CHRISTODULO H. CHRISTOFI AND ANOTHER AND CHRISTODULO HARALAMBO v. TOULI H. CHRISTOFI AND ANOTHER

be paid to the Plaintiff in action No. 373; and £4 1s. to the Plaintiff in action No. 341; the balance from the general proceeds of the sale of the Defendants' property to be applied in further satisfaction of the writ in action No. 373.

It is admitted on both sides that if the writ of March 10th, 1898, was rendered of no force and effect by the Rule of Court of 20th May, 1899, and if the ruling of the District Court is right as to the memorandum, (and against this ruling there is no appeal), the order appealed against is correct: but that if the writ was not deprived of life by that Rule, then the Plaintiff in action No. 341 was entitled to the sum of £18 0s. 1 c.p. in addition to the sum of £4 0s. 1 c.p. admitted to be due to him.

The question therefore that we have to decide is, what was the effect of the Rule of Court of 1899 on a writ which was issued previously to the date of its publication, and which was in fact not executed on that date.

It was argued for the Appellant that the Rule was *ultra vires* as over-riding the substantive law, and that the Cyprus Courts of Justice Order, 1882, did not empower the making of a Rule of Court to limit the duration of the life of a writ; and Sec. 16 of the Civil Procedure Amendment Law, 1894, was relied on, as indicating that the process under a writ of execution could not be interfered with on other grounds than those therein laid down. It was also submitted that the writ was not " unexecuted " within the meaning of the Rule as it was in fact in course of execution. As regards the first point, we intimated during the argument that our opinion was that there was power to make such a Rule under the Cyprus Courts of Justice Order, 1882, inasmuch as it did not deprive a creditor of the fruits of his judgment, but only regulated the course of procedure to be followed in obtaining them, with a view to insure due diligence in the process.

For the Respondent it was contended that the writ in action No. 341 not having been executed until two years after its date was only enforceable against two pieces of property, as the others had been attached by memorandum.

As regards this point it is sufficient to say that the writ, which we have seen, being in general terms for the sale of all such property as may be found registered in the debtors' names, would, upon its being delivered to the Land Registry Office for execution, charge all properties which had not been attached by any one else previous to its issue.

The writ in this case having been delivered according to the endorsement by the Sheriff to the Land Registry Office on March 12th, 1898,

would therefore charge all the properties which were eventually sold under it, some of them having been already attached by Memo. No. 420 and the others not having been attached by any hostile memorandum until after that date.

We must, I think, assume that the writ was alive at least up to the date of the Rule of Court, 1899, as it was not stayed by the Court, nor had it been returned into Court under Sec. 16 of the Civil Procedure Law, of 1894, as it might possibly have been by the Land Registry Office, if there had been neglect or refusal to pay the necessary expenses of sale.

If the Rule of Court affected the life of the writ, it would affect it *immediately on the Rule's publication, and without any power of* resort to the saving clause in the Rule which enables an application to be made to the Court for renewal. Thus a creditor who had been as diligent as possible in obtaining the execution of his writ, might find himself, if he were delayed by the tardiness of the Land Registry Office, deprived of all the fruits accruing from the priority of his writ over adverse registration of judgments without any fault or negligence of his own.

This Court has in other cases, where no Ottoman or Cypriot legislative authority exists, availed itself of the principles acted on in the English Courts. In those Courts it is a principle of the construction of legislative enactments altering procedure that they should have a retrospective effect, unless there is a good reason against such construction: or unless the new procedure would prejudice rights established under the old.

In the case before us to hold that the Rule of Court of 1899 affected writs issued previous to its publication would prejudice the rights, as we have pointed out, of the most diligent creditor. We are therefore of opinion that the writ of March 10th 1898, was not put an end to by the Rule of Court of 1899, and that the Appellant in this case is therefore entitled to the proceeds of that writ unless the properties yielding them were duly attached by memoranda other than those imposed by the Plaintiff in action No. 373.

Under the circumstances it is not necessary for this Court to decide whether the word " unexecuted " in the Rule of Court must mean totally unexecuted, or if the President was right in his view of the law as regards the imposition of memoranda or registration of judgments. As regards the latter point without giving any decision we see no reason to doubt the correctness of his opinion.

HUTCHINSON, C.J. & MIDDLETON, J.

ARISTIDES JOACHIM v. CHRISTODULO H. CHRISTOFI AND ANOTHER AND CHRISTODULO HARALAMBO v. TOULI H. CHRISTOFI AND ANOTHER

Holding as we do, the Appellant would be entitled, amongst the rest, to the proceeds of properties Nos. 3175 and 3215, those properties having been charged by his writ on the 10th March, 1898, before they were attached by the memorandum No. 195 by the Plaintiff in action No. 373; and we do not understand the reason why the Appellant's counsel should admit they are the property of the Respondent, unless it be the smallness of their amount. The only properties attached by the Respondent previous to the date of the Appellant's writ were Nos. 2266, 105, and 1216; and these properties had been previously attached by the Appellant.

The result of our judgment therefore will be that the Plaintiff in action No. 341 will take all the proceeds of the properties sold under his writ, save, perhaps, the 13s. admitted by Mr. Economides to be payable to the other Plaintiff, and excepting also the proceeds of such of the properties as were validly attached by memorandum of registration of judgment by creditors other than the Plaintiffs in the two actions before us.

We shall not interfere with the order of the President as regards the costs of the application to him, but the Respondent must pay the costs of this appeal.

Appeal allowed. Order of the District Court varied.