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

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

MICHAEL SOLOMOU. *Plaintiff.*

v.

MARIKOU SAVA, AS HEIRESS OF DEMOSTHENES PETRI. *Defendant.*

March 11

TAXES—COURSE OF ACTION—REQUEST—COMPULSION.

Where A. pays taxes on immoveable property which it is incumbent on B. to pay, A. cannot recover the amount so paid by him from B. unless A. shews either that he did so at the express or implied request of B. or that he had been compelled to pay them.

APPEAL from the District Court of Nicosia.

Kyriakides for the Appellant.

G. Chakalli for the Respondent.

The facts and arguments sufficiently appear from the judgment.

Judgment: This is an appeal by the Defendant from a judgment of the District Court of Nicosia affirming a judgment of the Village Judge of Levka, and also from an order of the same District Court dismissing an application to rectify its previous judgment. *March*

The action was to recover 38¼ p. and 383½ p. paid by the Plaintiff for taxes on certain immoveable property from 1889 to 1899. The Defendant was sued as one of the heirs of her late husband Demosthenes Petri: so that the Plaintiff had to prove that Demosthenes was liable to pay him the amount claimed.

The property, as the evidence shewed, had been sold by the Plaintiff's wife to Demosthenes in 1890, and had been duly registered in Demosthenes' name in May, 1890. The Plaintiff's case must have been, although the Judge's notes do not state it quite fully, that, after and notwithstanding the sale to and registration in the name of Demosthenes, Demosthenes had not paid the taxes, but the Plaintiff had paid them.

Before the Village Judge the Defendant said that her husband had been dead for six years; and she also produced receipts for taxes, from which we infer that she alleged that her husband had himself paid the taxes. A sergi from the Land Registry Office was produced, which

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certified that the vergi, 14¾ p., on certain land in respect of which the Plaintiff claimed, was assessed on Demosthenes Petri in the year 1900: and the Village Judge inferred from this that Demosthenes had not paid this vergi until 1900, and he therefore gave judgment for 9 years' arrears of this vergi to be paid to the Plaintiff, with costs, out of the property left by Demosthenes.

On the appeal to the District Court the Appellant again asserted that Demosthenes had really paid these taxes; and the President, at the Appellant's request, sent a letter to the Land Registry Office, with the sergi, asking " when these taxes were first passed in the name of Demosthenes Petri:" in reply to which the Land Registry Office returned the sergi with the dates written in red ink,—simply substituting Arabic for the Turkish figures in the sergi. The District Court thereupon dismissed the appeal.

Afterwards the Appellant applied to the District Court to rectify its judgment, and tendered a certificate from the Registrar General to prove that the taxes had really been charged on Demosthenes ever since 1890. The Court properly refused this application, which was really an application to admit new evidence and rehear the case.

It is now admitted by the Plaintiff that the Defendant's assertion is true: that these taxes have been, from 1891 to 1899 inclusive, demanded from and paid by both the Plaintiff and the Defendant or her late husband. It is said this was due to a mistake of the Land Registry Office, which did not make the proper correction in the mallie books when the registration was made in Demosthenes' name in 1890. The Plaintiff urges however that the judgment of the Village Judge was right upon the evidence before him, and that it ought to stand; and he says he has already authorized the Land Registry Office to refund to the Defendant the amount of the taxes paid in mistake.

As this Court has power on the hearing of an appeal to admit fresh evidence, and as the Plaintiff now admits the fact which the Defendant has sought to prove, I think we ought to accept and act upon that admission, and that we ought consequently to set aside the judgment appealed against.

A Plaintiff claiming, as here, money which he has paid for taxes on property which belongs to the Defendant, is bound to shew that he paid it at the express or implied request of the Defendant; and probably in most cases if he shewed that he had been compelled to pay the taxes, and that the Defendant was bound by law to pay them, the Court might infer that the Defendant had impliedly requested or authorized him to pay. But the only thing that was proved before the Village Judge, so

far as appears from his notes, was that the Plaintiff had paid these taxes. There was nothing to shew that he had been obliged to pay them, or that Demosthenes had authorized him to pay them, or that Demosthenes was liable to pay them at the time when they were paid. In my opinion the Plaintiff had not proved his case and the Village Judge ought to have dismissed the action.

Probably none of this trouble would have arisen if the Plaintiff, instead of paying without question the taxes demanded of him, had explained to the proper officer of the Land Registry Office that he was no longer liable and that the land was now registered in Demosthenes' name.

The appeal must be allowed and the action dismissed. The Plaintiff must pay the Appellant's costs of the action and of the appeals to the District Court and to this Court; but the Defendant must pay the Plaintiff's costs of the application to the District Court for rectification of its judgment, the amount of the latter costs being deducted from the amount of the former.

Appeal allowed. Action dismissed.