agree in this, no polluted hand shall touch the pure fountain of justice. Whoever is a party to an unlawful contract, if he shall once have paid the money stipulated to be paid in pursuance thereof, he shall not have the help of a Court to fetch it back again. You shall not have a right of action when you come into a Court of Justice in this unclean manner to recover it back. *Procul, O procul este profani.*"

We are clearly of opinion that the principles here enunciated are part of the law of the country.

The appeal is dismissed with costs.

BERTRAM, J., concurred.

Appeal dismissed.

[TYSER, C.J. AND BERTRAM, J.]

AHMED HAJI HUSSEIN OF NICOSIA AND OTHERS (HEIRS OF HAJI HUSSEIN AGHA MEHMED BAKALBASHI, DECEASED) *Plaintiffs,*

v.

AHMED BESSIM EFFENDI HAJI HUSSEIN OF NICOSIA AND OTHERS (HEIRS OF HAJI HUSSEIN AGHA MEHMED BAKALBASHI, DECEASED), *Defendants.*

EX-PARTE MUSTAFA SHEFKI EFFENDI HAJI HUSSEIN.

PRACTICE—ORDER XVIII., RULE 6—ATTACHMENT OF DEBTS—ORDER XX., RULE 2—"FINAL ORDER AFFECTING INTERESTS"—EX-PARTE APPLICATION—FINAL JUDGMENT—JOINT JUDGMENTS AGAINST TWO DEFENDANTS—APPORTIONMENT.

A judgment may be a final judgment even though only part of it consists of a final order, and the remainder gives directions as to matters to be worked out in subsequent proceedings.

Execution may be based separately upon so much of a judgment as consists of a final order for the payment of money.

An order attaching a debt due to a judgment debtor is not "a final order affecting his interests" within the meaning of Order XX., rule 2, and may be made ex-parte.

The effect of a judgment against two debtors jointly is that each of them is liable to pay the whole amount, and execution can be issued against either accordingly.

This was an appeal from a judgment of the District Court of Nicosia dismissing an application by one of the Defendants to set aside an order for the attachment of a certain debt to satisfy the judgment in the above case made *ex-parte* by Mitzis, J.

The original action was concerned with various matters arising out of the administration of the estate of Haji Hussein Agha Mehmed Bakalbashi, deceased. On the 5th January, 1907, the Court delivered a judgment, which was subsequently duly entered, in the following form:—

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This action coming on for hearing in the presence of Counsel for Plaintiffs, Mr. A. Kyriakides, and of Counsel for Defendants, Mr. Sevasli, and upon hearing what was alleged by and on behalf of the parties respectively, this Court doth order and adjudge.

1. That the Ilam of the Chief Qadi cannot be disputed in declaring Plaintiffs to be co-heirs with Defendants, and that the said Ilam has a retrospective effect entitling the Plaintiffs to get their shares in Bakalbashi's estate but as part of the properties claimed have been sold or mortgaged by the Defendants thereon the Court cannot grant the first claim in the summons, without those persons who have rights by purchase and mortgage, being made parties to this action and this Court orders that a new issue be taken and the case be re-tried on this part of the claim.
2. With regard to claim 2nd the Court gives judgment against Defendants first and second for the £17 14*s.* 5*cp.* claimed by Plaintiffs as their share in the rents of the shop leased to Haji Pavlo Papadopoulos and received by the said first and second Defendants.
3. With regard to claim 3rd the Court orders the Defendants to give a detailed account to the Plaintiffs of the estate left by the deceased Bakalbashi, and the Court declares as regards certain items as follows:—

(*a*) £30 paid by Defendants to Haji Arif for his children was a valid gift.

(*b*) £50 Vakouf dedication by the deceased and £11 funeral expenses which sums Defendants have expended, are allowed in the account as debit against the estate.

(*c*) The Piroi, etc., transaction has nothing to do with the said estate so far as Plaintiffs are concerned. And this Court further orders that decision of costs be reserved is finally decided in the first claim (*sic*).

Given this the 5th day of January, 1907.

Drawn up this the 19th day of January, 1907.

On March 12th, 1907, Mitzis, J., on an *ex-parte* application on the part of the judgment creditors made an order attaching the sum of £17 14*s.* 5*cp.* being the surplus realised from the sale of certain immovable property of Mustafa Shevki Bakalbashi (one of the two Defendants affected by paragraph 2 of the judgment) then in the hands of the Sheriff.

Mustafa Shevki Effendi Haji Hussein Bakalbashi applied to the District Court to set aside the order. The Court dismissed the application and confirmed the order. The applicant appealed.

Chacalli for the appellant (with him *Sevasli*).

I have three points:

1. The judgment on which the order was based was not a final judgment. It was in effect merely an interlocutory order;

2. The order ought not to have been made *ex-parte* as it was one "affecting our interests." Order XX, rule 2;
3. My client was only liable for half of the judgment debt. This was not a joint and several judgment. The amount should have been apportioned.

Chrysafines, for the Respondent, was not called upon.

Judgment: Three points were taken in this case.

The first was that the judgment on which the attachment was based was not a final judgment. We are of opinion however that and in so far as it consists of an order for the payment of the sum of £17 14*s.* 5*cp.* the judgment was a final judgment. It is not necessary that all the orders comprised in a judgment should be final orders in order to make the judgment itself a final judgment.

The second point was that the order directing the Sheriff to pay over the sum in question to the judgment creditor ought not to have been made *ex-parte*. Reliance was placed on Order XX, rule 2, and it was argued that the order in question was a "final order affecting the interests" of the judgment debtor. We do not think that an order of this sort made in pursuance of a writ of attachment is such a final order. By "a final order affecting the interests" of a person, is meant not an order which may conceivably prejudice that person, but an order which affects his interests by finally determining his rights. A writ of attachment of debts is simply a method of execution, like a writ of sale of movable property. (See Law 10 of 1885, Sec. 12.) Both are regulated by Order XVIII, rule 6, and are governed by the same practice. It has never been suggested that either of these writs could not be issued without notice to the debtor. The order in this case is made under Sec. 77 of Law 10 of 1885, and under that section the Judge has power to require the attendance of the judgment debtor if he thinks that in the circumstances of the case he may be considered a "person interested," but a judgment debtor is not ordinarily to be considered such a person. The persons to whom the words are primarily intended to refer are persons who claim the property attached adversely to the judgment creditor.

The third point was that the judgment being on the face of it against two persons jointly, and not stating expressly that each person was severally liable for the whole, execution should only have issued to the extent of one-half of it against the property of each debtor. This contention is in our opinion unfounded. A final judgment is a final and conclusive determination of the obligations of the persons against whom it is directed. When it orders two or more persons to pay a sum of money it means that each of them is liable for the whole, although, of course, the judgment creditor cannot recover more than the amount of his judgment.

The writ of execution must in all cases follow the judgment. It is not competent for any ministerial officer, such as a Registrar or a Sheriff, or for any Judge making a consequential order, to vary the judgment by making an apportionment of it. If the persons affected by the judgment

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are entitled to an apportionment, it is for them to apply to the Court at the trial of the action and to secure that the judgment is drawn up in such a form as to preserve their rights. In England it has always been held that a person who held a judgment against two joint debtors could levy execution against the goods of either of them to the full amount, and it has been expressly decided, that in such a case, by analogy to this principle, a debt due to either of the joint debtors can be attached by the creditor to its full amount to satisfy the amount of his judgment. (*Miller* v. *Mynn*, 28 L. J.Q.B., 324.)

The appeal must be dismissed with costs.

Appeal dismissed.

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July 19

[TYSER, C.J. AND BERTRAM, J.]

SHEVKI CHAOUSH AND OTHERS, *Plaintiffs,*

v.

EMILE LAPIERRE, *Defendant.*

PRESCRIPTION—ABSENCE OF DEFENDANT—MEJELLE, ART. 1674—ADMISSION AND AVOWAL OF THE DEBT—WITHDRAWAL OF PLEA OF PAYMENT DURING HEARING.

A prescription is not interrupted by the absence of the Defendant in a foreign country. Absence of the Plaintiff is alone material.

At the issues in an action upon an acknowledgment the Defendant admitted the acknowledgment, but pleaded (1) *prescription,* (2) *payment through a person since dead. At the hearing the plea of payment was withdrawn.*

HELD: *that it was not incumbent on the Court, upon the withdrawal of the plea, to call upon the Defendant to state explicitly whether apart from prescription the debt was due or not.*

The withdrawal of the plea under such circumstances was not in itself an explicit admission and avowal within the meaning of Art. 1674 of the Mejellé, so as to neutralize the effect of the prescription.

Appeal from the * President of the District Court of Larnaca.

The Plaintiffs as heirs of Hussein Mustafa, sued the Defendant, upon a document, described in the writ of summons as a promissory note, the translation of which is as follows:—

Shakir Chaoush	1,528
Hussein Aga bin Mehmed	1,072
Hussein Mustafa	1,344
	3,944

* The Defendant not being an Ottoman subject the case was heard by the President alone, but the case was argued by the parties both in the District Court and on appeal on the basis of Ottoman law, presumably on the ground that the parties to the agreement intended it to be governed by Ottoman law. See Cyprus Courts of Justice Order in Council, 1882, Articles 24 and 25.