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AHMED HAJI HUSSEIN AND OTHERS v. AHMED BESSIM AND OTHERS

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.

TYSER, C.J. & BERTRAM, J.

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 At the hearing the plea of payment was withdrawn.*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.

This is to acknowledge that I have received from Shakir Chaoush of Famagusta 1,528 piastres and from Hussein Aga bin Mehmed 1,072 piastres and from Hussein Mustafa 1,344, total 3,944, being the value of stone supplied and it is my true debt to them.

I promise to pay the said sum within 12 days from the date of this bond, and if against hope I fail to pay and should they apply to the authorities I undertake to pay interest at the rate of 18 per cent. and also costs incurred therefor according to law; and this bond is given to the above mentioned persons.

3rd November, 1887.

Debtor,
(Signed) EMILE LAPIERRE.
(Signed) VIRGINIE DIACOMO,
Je garantie cette somme.

Witnesses:

AHMED AGA IZZET.

EDHEM AGA BIN AHMED AGA MEHMED VEFIK.

At the issues Defendant pleaded: (1) prescription, (2) payment through a person since dead. It appeared that the Defendant had left the Island in 1887 and only returned a few months before the action.

At the hearing the Defendant's Advocate withdrew the plea of payment, and the Court being of opinion that the absence of the Defendant prevented the prescription from running, gave judgment for the Plaintiff.

The Defendant appealed.

Agathangelos Papadopoulos for the Appellants.

It has already been decided that the absence of the Defendant is immaterial. *Muzaffer Bey* v. *Collet* (1904) 6 C.L.R., 108.

Michaelides for the Respondent.

The withdrawal of the plea of payment was tantamount to an explicit admission and avowal of the debt before the Judge. (Mejellé, Art. 1674), and this nullifies the prescription.

At any rate, in order to give effect to that section the Court should have called upon the Defendant to state explicitly whether apart from prescription he admitted the debt. (Cf. Commercial Code, Art. 146.)

Judgment: The judgment of the District Court in this case proceeded upon the assumption that the absence of the Defendant from Cyprus prevented the time limited for the prescription of his debt from running until his return. It has, however, already been decided by this Court that it is not the absence of the Defendant, but of the Plaintiff that suspends the prescription. The absence of the Defendant is immaterial. (See *Muzaffer Bey* v. *Collet* (1904) 6 C.L.R., 108.) The judgment therefore cannot be supported on this ground.

An attempt, however, was made to support it by reference to Art. 1674 of the Mejellé. It was said that by withdrawing through his Advocate the plea of payment, the Defendant had in effect "in the presence of the Judge admitted and avowed that there was still a right against himself in the way claimed by the Plaintiff."

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It was contended that it was the duty of the Court upon the withdrawal of the plea to call upon the Defendant to state explicitly whether apart from the prescription he admitted the debt or not—but the article referred to is not capable of this construction.

Without expressing any opinion on the general construction of the article, it is sufficient for us to say that in this case no admission was made at the issues—inasmuch as the Defendant pleaded that the debt was paid—and that the subsequent withdrawal of this plea is not necessarily tantamount to an admission. It probably merely meant that the Defendant recognised that he could not prove the plea, owing to the fact that his principal witness was dead.

Art. 146 of the Commercial Code does not apply to this document because it does not satisfy the requisites of a promissory note. See *Haji Eleni* v. *Theophanides*, 4 C.L.R., 12. *Imperial Ottoman Bank* v. *Limburi*, 4 C.L.R., 48.

The appeal is allowed and the judgment of the Court below is set aside with costs both in this Court and in the Court below.

Appeal allowed.

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Nov. 4

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

POLICE

v.

AGATHOCLI A. KOKKINI AND OTHERS.

OTTOMAN PENAL CODE—ART. 260—DISTURBANCE OF THE PEACE.

It is not necessary for a conviction for disturbing the peace under Art. 260 of the Ottoman Penal Code that it should be proved that the peace of the inhabitants was actually disturbed.

It is sufficient if the disorder complained of was of such a nature as to be calculated to produce this result.

This was an appeal from a conviction of the District Court of Larnaca.

The Defendants were convicted of an offence against Art. 260 of the Ottoman Penal Code.

The evidence showed that the Defendants chased the complainant through the village of Angastina to his house, shouting and throwing stones at him as they pursued him.

Agathocli A. Kokkini one of the Defendants appealed.

Pascal Constantinides for the Appellant.

In order to justify a conviction under Art. 260 of the Ottoman Penal Code it is necessary to show that the peace of the inhabitants was actually disturbed. The Greek translation accurately expresses the original " διαταράττοντες οὕτω τὴν ἡσυχίαν των κατοίκων." Here there was no evidence that the peace was disturbed.

Amirayan, for the Respondents, was not called upon.