The principles on which the Courts have dealt with this matter have been recently considered and explained in the case of *Haji Pascali* v. *Haji Toghli* (1907) 7 C.L.R., 76. Where it appears to the Court from the circumstances of the case that the intention of the parties was to evade the provisions of the law requiring registration, as for example from the fact that the purchaser has been put into possession and allowed to remain in possession without registration, the Court will not entertain any claim for damages by the breach of the contract, either by the vendor or the purchaser. On the other hand where the contract has been for the transfer and registration of the property in the regular manner, damages may be recovered for failure to carry out the agreement. I see no reason why the undertaking to register should appear expressly. It is not to be assumed that all parties to such contracts have an illegal intention to evade the registration laws. They must be presumed to intend to carry out the law, unless the contrary is shown. It is for those who allege the existence of such an illegal intention, to plead it at the settlement of the issues and to prove their plea at the hearing.

I concur in what the Chief Justice has said as to the measure of damages.

Appeal dismissed.

[TYSER, C J. AND BERTRAM, J]

GEORGE TH. ROSSIDES, *Plaintiff,*

v.

EMETULLAH HAJI TOSSOUN AND ANOTHER, *Defendants,*

MULLAH HUSSEIN ABDULLAH, *Respondent.*

ATTACHMENT OF DEBTS—CIVIL PROCEDURE LAW, 1885, SECS 21, 72, 80—DISPUTED DEBT—JURISDICTION OF SINGLE JUDGE—CYPRUS COURTS OF JUSTICE ORDER IN COUNCIL, 1882, ART. 207—FRAUD—ORDER XXI, RULE 21A.

The procedure for the attachment of debts under Part VII of the Civil Procedure Law, 1885, is not confined to cases where the debt is undisputed

The powers of the Court under such procedure may be exercised by a single judge

A judge exercising the powers of the Court, where the debt is disputed, may either try the dispute himself, or frame an issue for trial by the full Court

Where the dispute involves an issue of fraud, it is desirable that it should be referred to the full Court

The Plaintiff, having recovered judgment against the Defendant, issued a writ of attachment against the Respondent, and at the hearing alleged that the Respondent was indebted to the judgment debtor, asserting that the indebtedness arose out of a fraudulent arrangement entered into between the Respondent and the judgment debtor with a view to deprive the Plaintiff of the fruits of his judgment The Respondent disputed the indebtedness Oiconomides, J , sitting as a single judge of the District Court, tried the question, and having decided that the Respondent was indebted to the judgment debtor as alleged, ordered him to pay the amount of the debt to the Plaintiff.

HELD That the judge had jurisdiction to try the question of the alleged indebtedness, but that, inasmuch as the issue was one involving a charge of fraud, he ought to have framed an issue and sent the case for trial to the full Court

TYSER, C.J. & BERTRAM, J.

GEORGE TH. ROSSIDES v. EMETULLAH HAJI TOSSOUN

Appeal from the judgment of the District Court of Limassol.

The appeal arose out of a writ of attachment issued by the Plaintiff in the above action under the provisions of Part VII of the Civil Procedure Law, 1885.

The Plaintiff alleged that the Respondent to the writ, Mullah Hussein Abdullah was indebted to the judgment debtor, the Defendant in the action. His allegation was that Mullah Hussein Abdullah with a view to deprive him of the fruits of his judgment had fraudulently recovered a collusive judgment against the Defendant, and had obtained payment of the amount of his judgment on the terms that the amount so paid over should subsequently be repaid to the judgment debtor.

The proceedings under the writ of attachment took place before Oiconomides, J. The Plaintiff applied for an order that the amount of the alleged debt should be paid over to him. The Respondent, Mullah Hussein Abdullah, disputed the alleged indebtedness.

Oiconomides, J., tried out this issue of fact and found that the Respondent was indebted to the judgment debtor in the manner alleged to the extent of £11 and ordered this amount to be paid to the Plaintiff.

The Respondent appealed to the District Court. The District Court, by a majority, Oiconomides, J., dissenting, held that a single judge had no jurisdiction to try out an issue of fact as to the existence of a disputed debt, and remitted the case to Oiconomides, J., with a direction to settle issues for trial by the full Court.

The Plaintiff appealed.

Sozos for the Appellant.

Paschales Constantinides and *Chacalli* for the Respondent.

Judgment. CHIEF JUSTICE: The jurisdiction which is given to the Court under Part VII of the Civil Procedure Law of 1885, is in cases where the debtor is beneficially interested in any property, or where some person is indebted to the judgment debtor—not where *it is admitted* that the debtor is so interested, or where *it is admitted* that the other person is so indebted.

If a mere denial of such beneficial interest or debt would oust the jurisdiction of the Court, the powers conferred would be a farce.

It is suggested that the jurisdiction of the Court would be ousted, if there was a " *bona fide* question." Here however the judge has found as a fact that there was fraud. There was consequently no " *bona fide* question " in the matter—but even if there had been, this would have made no difference, for if the beneficial interest or the debt in fact exists, the Court has jurisdiction to deal with the matter.

Whether or not the debtor is beneficially interested, and whether or not the debt exists, are questions of fact to be determined by the Court. For the purpose of determining them, the Court is to hear all persons whom it may consider interested, and this must of course include the alleged debtor, for even though he denies the debt he is still an interested person.

From Sec. 2 of the Civil Procedure Law, 1885, and Art. 207 of the Cyprus Courts of Justice Order, 1882, it is clear that the jurisdiction of the Court may be exercised by a single judge.

The powers of the Court with reference to a debt are those given by the words in Sec. 77, which declare that " the Court may make such order as may seem just."

In many cases it might be just to make an immediate and summary order. In others it might be more fitting that the judge should make an order for trial by the District Court.

Now this is a case in which there is an allegation of fraud, and speaking generally, it is undesirable that a single judge should decide questions of fraud.

The learned judge had the power to try the question, but in our opinion he should not have exercised it.

We have accordingly come to the conclusion that the best course will be for us to direct, under the powers conferred upon us by Order XXI, rule 21a, that the matter shall be reheard by the full District Court, and we therefore remit it to the District Court for that purpose.

BERTRAM, J.: The questions for our consideration seem to be the following:—

1. Has the Court power under Sec. 77 of the Civil Procedure Law, 1885, to make an order disposing of a debt attached under Secs. 73 and 74 of the same law.
2. Assuming that it has this power, may it exercise it in a case when the debt is disputed.
3. Assuming that the Court has this power, may the jurisdiction be exercised by a single judge.
4. Assuming that a single judge has jurisdiction to deal with the matter, has he power to try out the dispute or must he frame an issue and send it forward for trial by the full Court.

With regard to the first of these questions the law is far from clear. The origin of this part of the law—(that is to say, the part dealing with " execution by attachment of property ") is no doubt to be found in Order XLV of the English Supreme Court Rules, which in its turn was taken from certain sections of the Common Law Procedure Act, 1854. There is however this important difference. The English order deals solely with " attachments of debts," leaving property to be secured by the ordinary writ of execution. The Cyprus legislator has endeavoured to embrace this system of " attachment of debts " in a wider system of " attachment of property."

The scheme of the law, however, so far as debts are concerned, is singularly obscure. By Sec. 72 it directs that where another person is indebted to the judgment debtor such person may be ordered by writ of attachment to appear before the Court and be examined as to the debt. By Sec. 73 it declares that the effect of the writ of attachment is to make the debt a security for the judgment. By Sec. 74 it prohibits the person summoned from paying over the debt to the judgment creditor. When however we come to Sec. 77,—which is the section which actual defines the

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power of the Court to deal with the things attached—debts seem to have vanished from the mind of the legislator. They are not specifically mentioned, and the Court is not in express terms authorised to make any order with regard to them. Nevertheless when we reach Sec. 79, we find that it expressly contemplates that the Court may have made some order directing a disposition of the debt. The only way to give any coherence to this part of the law, is to ascribe the very widest possible meaning to the words in Sec. 77, " or may make such other order as may seem just." The more natural way of construing the words, I confess, would be to read them in close connection with the words immediately preceding. To do this, however, would be to render the whole scheme of the law distorted and ineffective. I take it therefore that the words empower the Court to make any order for the disposal of the debt that the circumstances may require.

With regard to the second question, I entertain no doubt whatever that the procedure applies to cases where the debt is disputed. There is no occasion to interpolate the word " undisputed." Debts are in exactly the same position as the other things that may be attached. The fact that the Court is to hear " all persons whom it may consider to be interested " seems to me to contemplate expressly that there may be a dispute. Certainly, to limit the application of the procedure to cases where there was no dispute, would very seriously lessen its usefulness.

The third question is where the jurisdiction of the Court in these matters may be exercised by a single judge. Mr. Sozos relied upon the definition of " Court " in Sec. 2 of the Civil Procedure Law, 1885, as determining the point in his favour. But here, I think, he is mistaken. I do not think that the definition is intended to confer on a single judge any jurisdiction which he did not possess already. When it says that the word " Court " is to include a single judge, it means for the purpose of these matters for which a single judge is competent to exercise the jurisdiction of the Court. The enactment which determines the power of a single judge of a District Court is Art. 207 of the Order in Council of 1882—which declares that any order in an action not disposing of the action on its merits may be made by a single judge subject to an appeal to the Court. I think that the order made by Oikonomides, J., is such an order in the original action. The proceedings or the writ of attachment are not a fresh action. They are proceedings in the original action and are so intituled. The order made by the judge is consequently an order made in that action within the meaning of Art. 207. *Cf.* the case of *Aggelidi* v. *Ginghiz* (1896) 4 C.L.R., on p. 5.

Finally, assuming that a single judge can deal with the question, how should he deal with it? Sec. 77 says that he " may make such order as may seem just." It seems to me that these words are wide enough to authorise him either to frame an issue and send it forward to trial (which is the course which is specifically prescribed in England—see Order XLV, rule 4) or, if he thinks proper, to try out the question himself. It seems to me impossible to say that the learned judge has not a discretion in the matter, or that in electing to try the issue himself he exercised his discretion on a wrong principle. At the same time I confess the discretion is one which I myself would have exercised otherwise. The issue was

one involving a charge of fraud, and generally speaking it is not satisfactory that a charge of fraud should be disposed of by a single judge. The person against whom so serious a charge is made ought to have the benefit of that concourse of minds, which in England is secured by a trial by jury and in this country by a trial before the full Court. It is true that he has an appeal to the full Court, but this again is not wholly satisfactory. He starts with a presumption against him, and is liable to be told that the question is a question of fact; that the learned judge heard his evidence, formed his own impression and decided against him; and that such a decision of fact is not one that his colleagues feel justified in reversing Under the circumstances, though I do not say that the learned judge was necessarily wrong in the course he took, yet as the Rules of Court gave us power to direct that the case should be reheard by the full District Court, I think that this is the most appropriate way of dealing with the appeal.

Appeal allowed

[TYSER, C J AND BERTRAM, J]

THE COMMITTEE OF THE BELLAPAIS SCHOOL CONSISTING OF COSTI SAVA HAJI DIMITRI AND OTHERS, *Plaintiffs,*

v.

HARALAMBO HAJI LOIZO AND OTHERS, *Defendants.*

EDUCATION—EDUCATION LAW, 1905, SECS. 2, 19, 22, 23, 34—RIGHT TO VOTE AT ELECTION OF SCHOOL COMMITTEE—"TAX-PAYING INHABITANTS"—ASSESSMENTS FOR SCHOOL FEES—ELECTION—REPORT OF PRESIDING OFFICER.

JURISDICTION—RIGHT OF COURTS TO TRY TITLE TO PUBLIC OFFICE—RIGHT OF ACTION OF PERSONS VESTED WITH PUBLIC AUTHORITY TO RESTRAIN USURPATION BY OTHERS

At an election for the School Committee of the village of Bellapais, a number of persons who were male inhabitants residing in the village but were not assessed for school fees, claimed the right to vote. The presiding officer took the votes of these persons but in his report to the Commissioner declared that they were not qualified to vote It appeared from the report of the presiding officer that, assuming the votes of these persons to be valid, the Plaintiffs had the majority of votes, assuming them to be invalid the Defendants had the majority The Defendants entered upon the office of School Committee and administered the schools

HELD: (1) That the persons in question were qualified to vote Sec. 23, Sub-sec 4 of the Education Law, 1905, does not make assessment to school fees a condition precedent to the right to vote

(2) That inasmuch as it appeared from the report of the presiding officer, that the Plaintiffs had a majority of the votes, the Plaintiffs were the elected School Committee of the village

It is not sufficient that the persons claiming to be elected should have received the majority of votes. It is essential that it should appear by the report of the Presiding Officer that they received this majority

(3) That the Plaintiffs, as the School Committee, were entitled to sue to restrain the Defendants from exercising an authority vested in themselves.

SEMBLE As tax-paying inhabitants they would not be entitled to sue to restrain the Defendants from exercising the authority of School Committee