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ANESTOS
ADAMOU
v.

XENOPHON
IOANNIDES

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

ANESTOS ADAMOU KOKONI,

Appellant-Plaintiff,

v.

XENOPHON IOANNIDES,

Respondent-Defendant.

(Civil Appeal No. 4436).

Civil Procedure—Judgment debtor—Instalment order under Part IX, sections 86 to 91 of the Civil Procedure Law, Cap. 6—The judgment debtor should not be allowed to create obligations, other than those for the essential needs of himself and his family and then putting them forward as an excuse for his inability to pay his judgment debt in accordance with such instalment order.

Civil Procedure—Judgment debtor—Execution by imprisonment—Committal proceedings and committal order under Part VIII sections 82 to 85 of the Civil Procedure Law, Cap. 6—A committal order under section 82 of Cap. 6 (supra) may be given even after the making of an instalment order under section 91 of the said statute—Committal order for failure on the part of the judgment debtor or to satisfy the judgment debt in accordance with such instalment order as aforesaid—Discretion of the Court—It should be exercised judicially—Whether or not the imprisonment of the judgment debtor would defeat the creditor's own ends is immaterial—Nor is it an excuse for the debtor to say that his inability to pay the judgment debt is due to the fact that after the instalment order was made he created new obligations not essential to himself and his family—Committal proceedings under Part VIII of Cap. 6 (supra)—In such proceedings the debtor is not a compellable witness—The committal order under section 82 of Cap. 6 (supra) may be issued notwithstanding that an endorsed office copy of the instalment order made under section 91 (supra) was not served on the debtor under the provisions of the Civil Procedure Rules, Order 42A, rules 1 and 2—Order 42A as well as section 42 of the Courts of Justice Law, 1960 (Law of the Republic No. 14/1960), providing for attachment and sequestration in case of disobedience to an order of the Court, are not applicable to orders for payment of money—English Rules : Order 42 rule 7 of the R.S.C.

The District Court of Nicosia directed under section 91 of the Civil Procedure Law, Cap. 6 that the respondent (judgment debtor) should pay his judgment debt of £165 by monthly

instalments of £2 each, as from the 1st May, 1962. The respondent having failed to pay the instalments due, the appellant-creditor applied to the District Court for the debtor's committal to prison under section 82 of Cap. 6 (*supra*). His application was dismissed on the ground that a committal order would defeat the creditor's (appellant's) own ends, and because the debtor (respondent), after the said instalment order was given, has sent his son to the University in Athens so that he did not have sufficient money to pay the judgment debt.

The creditor appealed against the dismissal of his application for a committal order. It was argued on behalf of the appellant-creditor that the trial Judge, in refusing the committal order applied for, exercised his discretion on wrong principles. It was argued on behalf of the respondent-debtor, *inter alia*, that a committal order cannot be given because an office copy of the instalment order referred to above was not served on the debtor under the provisions of Order 42A, rules 1 and 2 of the Civil Procedure Rules (section 42 of the Courts of Justice Law, 1960 and Rules 1 and 2 of Order 42A of the Civil Procedure Rules are set out in full in the judgment of the High Court). It was further argued on behalf of the respondent that a committal order cannot be given after the making of an instalment order under section 91 of Cap. 6 (*supra*).

The High Court in allowing the appeal :—

Held, (1) with great respect to the learned President, we do not think that it is for the trial Judge to decide whether imprisonment would defeat the creditor's ends. Indeed this is not a test in exercising judicial discretion, and it would seem that he has exercised his discretion on wrong principles.

(2) With regard to the inability of the respondent to pay his judgment debt owing to the fact that after the instalment order, he has sent his son to the University of Athens, with great respect, we do not think that was the intention of the legislature. We are of the view that a debtor cannot be allowed to go about creating obligations, other than those for the essential needs of himself and his family, and then putting them forward as an excuse for his inability to pay his judgment debt. A parent who is eager to give his son university education in Athens or anywhere else, at a cost of say £25 per month, is praiseworthy. But, surely a judgment debtor who is prepared to pay £25 a month for his son's university educa-

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tion overseas (as in this case) should first pay the monthly instalment of £2 against his judgment debt as ordered by the Court. Indeed, in this case he consented to such an order—*not that it would make any difference if he had not consented to it.*

Undoubtedly there are in Cyprus many thousands of parents who would very much like to have their children educated in a university abroad but they cannot afford it. Although it is hard to say so, we think that a judgment debtor, is in the same position, that is to say, that he cannot afford to pay for the university education of his child unless he can make arrangements for the payment of his judgment debt.

(3) With regard to the argument that the appellant failed to comply with the provisions of order 42A, rules 1 and 2 of the Civil Procedure Rules (as amended in 1954) in that he failed to serve on the debtor respondent an endorsed copy of the instalment order directing him to pay £2 per month and that the *non service vitiated the committal proceedings* we are of the view that Order 42A does not apply to a judgment or order for the payment of money and that, consequently, it was not necessary to have an endorsed copy of the consent instalment order (made under section 91 of the Civil Procedure Law, Cap. 6) served on the debtor in this case. Vide *Maroulla Antoni Nicola v. Zannetos Yiorghi Djaboura* (1929) 14 C.L.R. 10.

(4) With regard to the question whether a committal order under section 82 of Cap. 6 (*supra*) could be made after the making of an instalment order and after the failure of the debtor to pay the instalments as ordered by the Court, we take the view that the wording of section 82 is clear. A committal order could be made in this case provided there was evidence before the trial Judge satisfying the requirements of section 82—as indeed there was.

(5) So far as we are aware, it has been the practice for a considerable number of years now (and we have been unable to trace any decision of the Supreme Court to the contrary) for a judgment creditor to apply first for an order for the payment of the judgment debt by instalments (under section 91), in case of the debtor's failure to comply with such an order, then to apply to the Court under the provisions of section 82 for the debtor's imprisonment.

This is in our view amply covered by the provisions of section 82 and we believe it is the correct procedure to follow.

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(6) On a committal proceeding under section 82 the debtor is not a compellable witness, as he is compellable in a proceeding under Part IX (sections 86 to 91) of the same Law, for his examination respecting his ability to pay the judgment debt : see *Hattidje Mustafa v. Ali Mehmet Mutaf* 15 C.L.R. 63, at p. 64. But if the debtor gives evidence in his defence in a committal proceeding under section 82 he is liable to cross-examination in the usual way, and his evidence on the question of his means and ability to pay can be relied upon to support the creditor's case, as in the present case.

(7) In the circumstances, and on the evidence before the trial Judge, a committal order ought to have been made and we accordingly allow the appeal and we now proceed to make a *committal order* in the terms given in the judgment of our brother Vassiliades J.

(8) *Per VASSILIADES, J.*: We, therefore, reach the conclusion that the appeal must succeed ; and the order dismissing appellant's application for committal, be set aside. We consider that in the circumstances of this case, the judgment-creditor is entitled to the enforcement of the instalments-order of the 7th April, 1962, by a committal order under section 82. And we make order accordingly, directing that the respondent be committed for two months from the day of arrest under a warrant issued by virtue of such order. We further direct that the issuing of the warrant under this order be kept in suspense so long as the respondent will in future regularly comply with the instalments-order by making the payments specified therein, on or before the 5th day of every calendar month following this judgment. First payment to be made by the 5th January, 1964.

This order is remitted to the District Court for execution, and in case of default in the payment of any instalment as aforesaid a warrant of commitment to be issued by the Registrar, District Court, on the filing of an affidavit by the appellant (creditor), without notice to the respondent (debtor).

Appeal allowed. Respondent to pay part of appellant's costs here and below fixed at £8.

Cases referred to :

Maroulla Antoni Nicola v. Zannetos Yiorghi Djaboura (1929)
14 C.L.R. 10, *followed* ;

Hattidje Mustafa v. Ali Mehmet Mutaf (1936) 15 C.L.R. 63,
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Appeal.

Appeal against the judgment of the District Court of Nicosia (Stavrinides P.D.C.) dated the 30.4.63 (Action No. 2455/60) dismissing plaintiff's application for the imprisonment of defendant because he has not paid his judgment debt of £165 due under an order of the Court dated 6.10.60.

A. Triantafyllides with X. Syllouris for the appellant.

E. Emilianides for the respondent.

Cur. adv. vult.

On the 19th December, 1963, the following judgments were read :-

JOSEPHIDES, J. : As we intimated on the 8th October last in allowing the appeal, a committal order ought to have been made by the trial Judge in this case.

I now proceed to give the reasons for the decision of the majority of the Court.

On the 7th April, 1962, the District Court of Nicosia directed the judgment debtor (respondent) in this case to pay the sum due under a judgment by monthly instalments of £2 each commencing on the 1st May, 1962, until final payment. This order was made under the provisions of section 91 of the Civil Procedure Law, Cap. 6.

After an application for the debtor's committal to prison was made on the 4th June, 1962, he paid on the 12th January, 1963, the sum of £4 being the arrears in respect of monthly instalments for May and June, 1962, and the application was then withdrawn and dismissed. As the debtor failed to pay any other instalment a fresh application for his committal to prison, under the provisions of Part VIII of the Civil Procedure Law, Cap. 6, was filed with the District Court of Nicosia on the 14th February, 1963, in respect of the arrears in the payment of the monthly instalments as from the 1st July, 1962, onwards. This application was heard and dismissed by the President, District Court, on the 30th April, 1963. The reasons for dismissing the application were—

- (a) that, in respect of the period 1st July, 1962, to 1st September, 1962, it would serve no purpose if the debtor were imprisoned and that it may defeat the creditor's own ends ; and

(b) that, in respect of the period after the 1st September, 1962, as the debtor had sent his son to the University in Athens and had to pay £25 per month for him (the son), he did not have sufficient means to pay the money directed to be paid by him (the debtor).

With regard to (a), with great respect to the learned President, we do not think that it is for the trial Judge to decide whether imprisonment would defeat the creditor's ends. Indeed this is not a test in exercising judicial discretion, and it would seem that he has exercised his discretion on wrong principles.

With regard to (b) the judgment debtor admitted earning a net monthly salary of £65 (after deduction of income tax) but he submitted that as he had sent his son to the University in Athens, after the making of the instalment order by the District Court and had to remit to him £25 per month, he was unable to pay the sum of £2 per month against the judgment debt as ordered by the Court by consent. The trial Judge agreed with this submission and refused to commit the debtor to prison.

With great respect, we do not think that that was the intention of the legislature. We are of the view that a debtor cannot be allowed to go about creating obligations, other than those for the essential needs of himself and his family, and then putting them forward as an excuse for his inability to pay his judgment debt. A parent who is eager to give his son a university education in Athens or anywhere else, at a cost of say £25 per month, is praiseworthy. But, surely a judgment debtor who is prepared to pay £25 a month for his son's university education overseas (as in this case) should first pay the monthly instalment of £2 against his judgment debt as ordered by the Court. Indeed, in this case he consented to such an order-not that it would make any difference if he had not consented to it. Undoubtedly there are in Cyprus many thousands of parents who would very much like to have their children educated in a university abroad but they cannot afford it. Although it is hard to say so, we think that a judgment debtor is in the same position, that is to say, that he cannot afford to pay for the university education of his child unless he can make arrangements for the payment of his judgment debt.

Respondent's (debtor's) counsel raised the point that the appellants (creditor) failed to comply with the provisions of Order 42A, rules 1 and 2, of the Civil Procedure Rules

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(as amended in 1954), in that he failed to serve on the debtor an endorsed copy of the instalment order directing him to pay £2 per month against the judgment debt until final payment, and that this vitiated the committal proceedings.

Order 42A, rules 1 and 2 read as follows :—

“ 1. Where any order is issued by any Court directing any act to be done or prohibiting the doing of any act there shall be endorsed by the Registrar on the copy of it to be served on the person required to obey it, a memorandum in the words or to the effect following :

‘ If you the within named A.B. neglect to obey this Order by the time therein limited, you will be liable to be arrested and to have your property sequestered.’

2. An office copy of the Order shall be served on the person to whom the order is directed. The service shall, unless otherwise directed by the Court or Judge, be personal.”

The English counterpart of our Order 42A, rule 1, is order 42, rule 7, of the R.S.C., which contains words excluding judgments for the payment of money. And the rules contained in our Order 42A are the rules subject to which a Court has power to enforce obedience to its orders as provided by section 42 of the Courts of Justice Law, 1960, which reads as follows :—

“ 42. Subject to any Rules of Court every Court shall have power to enforce obedience to any order issued by it, directing any act to be done or prohibiting the doing of any act, by fine or imprisonment or sequestration of goods . . . ”.

It will be seen that, so far as the argument in this case goes, the operative words both in rule 1 of Order 42A and section 42 of the Courts of Justice Law, 1960, are “ any order . . . directing any act to be done ”. In this connection, the Supreme Court of Cyprus in *Maroullou Antoni Nicola v. Zannetos Yiorghi Djaboura* (1929), 14 C.L.R. 10, held that a judgment or order for the payment of money is not an order “ directing an act to be done ” within the meaning of Clause 40(i) of the Cyprus Courts of Justice Order, 1927, which was the precursor of section 42 of the Courts of Justice Law, 1960, and Order 42A of the Civil Procedure Rules. Adopting the reasoning in the above

case, we are of the view that Order 42A does not apply to a judgment or order for the payment of money and that, consequently, it was not necessary to have an endorsed copy of the consent instalment order (made under section 91 of the Civil Procedure Law, Cap. 6) served on the debtor in this case.

Finally, in the course of the argument the question was raised whether a committal order could be made under the provisions of section 82 of the Civil procedure Law, Cap. 6, in the circumstances of this case, *i.e.* after the making of an instalment order (under the provisions of section 91) and after the failure of the debtor to pay the instalments as ordered by the Court. We take the view that the wording of section 82 is clear. A committal order could be made in this case provided there was evidence before the trial Judge satisfying the requirements of section 82—as indeed there was.

The question may legitimately be asked “what was the object of having the provisions for the examination of a debtor (Part IX of the Civil Procedure Law, Cap. 6) follow, and not precede, the provisions for the imprisonment of a debtor (Part VIII of the Law)?” In fact this question has exercised my mind for some time now. Was the inverse order of the statutory provisions, so to say, deliberate or accidental?

The Civil Procedure Law, Cap. 6, was originally enacted in 1885, as Law 10 of 1885, and was subsequently amended and consolidated in its present form. wishing to trace the original provisions I referred to the Cyprus Gazette of April 4th, 1885, at page 605, containing the original Law 10 of 1885 as enacted on the 2nd April, 1885. The provisions for the “examination of judgment debtor” (sections 25 to 30) and those for “execution by imprisonment” (sections 71 to 74) in Law 10 of 1885 are substantially the same as those appearing in the present Chapter 6, but with this difference in the order in which they appear, *i.e.* the provisions in the 1885 Law for the examination of a judgment debtor (Part V) precede the provisions for imprisonment (Part IX). However—and the reason for the change is not apparent—when the Commissioners (Chief Justice Sir Joseph Hutchinson and Judge Fisher) came to prepare the consolidated edition of the Statute Laws in 1906 they reversed the order, *i.e.* they inserted the imprisonment provisions as Part VIII (sections 81 to 84) and the provisions for the examination of a debtor

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as Part IX (sections 85 to 90) ; and this order has been followed in subsequent consolidated editions up to the present day.

Be that as it may, and although logically Part IX (debtor's examination) should precede Part VIII (debtor's imprisonment) in the Civil Procedure Law, Cap. 6, we do not think that undue weight need be given to the order in which these provisions appear, and the respective sections of the Law should be interpreted and applied as substantive enactments irrespective of this. So far as we are aware, it has been the practice for a considerable number of years now (and we have been unable to trace any decision of the Supreme Court to the contrary) for a judgment creditor to apply first for an order for the payment of the judgment debt by instalments (under section 91), and, in case of the debtor's failure to comply with such an order, then to apply to the Court under the provisions of section 82 for the debtor's imprisonment. This is in our view amply covered by the provisions of section 82 and we believe it is the correct procedure to follow.

On a committal proceeding under section 82 the debtor is not a compellable witness, as he is compellable in a proceeding under Part IX (sections 86 to 91) of the same Law, for his examination respecting his ability to pay the judgment debt : see *Hattidje Mustafa v. Ali Mehmet Mutaf* 15 C.L.R. 63, at page 64. But if the debtor gives evidence in his defence in a committal proceeding under section 82 he is liable to cross-examination in the usual way, and his evidence on the question of his means and ability to pay can be relied upon to support the creditor's case, as in the present case.

In the circumstances, and on the evidence before the trial Judge, a committal order ought to have been made and we accordingly allowed the appeal and we now proceed to make a *committal order* in the terms given in the judgment of our brother Vassiliades, J.

It should be noted for record purposes that after the close of the addresses in this appeal and before we wrote our judgment counsel informed the Court that the debtor (respondent) paid all the arrears (£16) due under the instalment order until the date of the filing of the application for his committal to prison.

VASSILIADES, J. : This appeal raises interesting, and, in my opinion, rather important questions in the execution of judgments for the payment of money. It concerns

execution-proceedings under Parts VIII and IX of the Civil Procedure Law (Cap. 6) involving committal to prison for non-payment of debt.

The appellant obtained judgment for his claim in the action, with £12 costs, on October 6, 1960. The claim was for £165 on a bond ; and for an order directing delivery of a motor-car pledged as security for the payment of the debt under the bond. By consent of the parties, the Court, when giving judgment to the plaintiff, directed stay of execution for two months regarding the amount of the judgment and two weeks regarding costs. The judgment, as formally drawn up, appears at page 6 of the record and speaks for itself. I need not refer to the two writs of execution upon movables, (the first issued on 4.11.60 for the costs, and the second on 26.1.61) which do not directly concern the present appeal.

About a year after the execution on movables viz. on the 20th January, 1962, the judgment-creditor (appellant herein) filed an application for execution under Part IX of the Civil Procedure Law. He applied for the examination of the judgment-debtor "respecting his ability to pay the judgment-debt" by monthly instalments. The application was based on sections 86 to 91 of the statute, which constitute Part IX. No reference to Part VIII was made at all.

In support of his application, the judgment-creditor filed an affidavit (sworn on 12th January, 1962) wherein he stated, inter alia, that the debtor made payments against the judgment-debt amounting to a total of £73 including the sum collected by execution upon movables. The affidavit further stated that the debtor had no other movables ; and that working as a pharmacist in the employment of the Government, he (the debtor) was in a position to pay £10 per month against the balance still payable under the judgment.

Pausing for a moment at this affidavit, I must observe that the judgment-creditor, who came to move the Court's process for execution in satisfaction of his judgment, did not state either in his application, or in the affidavit filed in support, particulars showing the sums received from the debtor after judgment ; the amount collected from execution on the debtor's movables ; what became of the pledged car ; and how were the payments and collections appropriated against capital, interest, or costs, so as to show correctly the exact amount still payable under the judgment.

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I take the view that such a statement should have been made by the creditor when he took this step in further execution ; and that the omission to make it, if not an obstacle in filing the application, it should, in any case, be considered in dealing with costs.

Returning now to the application, I must refer to the affidavit filed in opposition on the 8th February, 1962, wherein the respondent stated that his monthly salary of £44.115 mils, was hardly sufficient for the maintenance of his family, consisting of a wife and four children, all dependent upon him.

After an adjournment due to respondent's absence, the parties were before the Court on the 7th April, 1962, when the respondent-debtor appearing without an advocate, agreed and consented to the making of an order against him for the payment of the debt by instalments of £2 per month as from 1st May, 1962 ; with £6 costs. I think that there can be no doubt that that was an order made under section 91.

On the 4th June, 1962, viz. four days after expiry of the month of May, the appellant-creditor filed a fresh application that the judgment-debtor be called upon to show cause why he should not be committed for twelve months for failing to pay his debt according to the order of the Court. As expressly stated therein, this application also, was based on Part VIII of Cap. 6. On the other hand, the affidavit filed in support (sworn by the creditor on the 1st June) leaves no doubt that the proceeding was taken in connection with the order made on the 7th April, under Part IX for the payment of the judgment-debt by monthly instalments as above ; and for the enforcement of that order.

For non-service upon the respondent of the necessary documents, the application had to be twice adjourned ; and when eventually before the Court in January, 1963, the parties appearing through their respective advocates, stated that the amount of £4 having been paid to cover the arrears of the instalments for May and June, 1962, there was only a claim for £3 costs ; whereupon the application was dismissed, with £3 costs for the judgment-creditor. Nothing appears on the record to show what was said on that occasion as to the instalments for the six months which had elapsed from the filing of the application in June, 1962, until its disposal in January, 1963. But it is reasonable to assume that the question of these arrears was discussed somehow on that occasion. .

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About a month later, on the 14th February, 1963, the appellant-creditor filed a fresh application, again based on Part VIII of the Civil Procedure Law (Cap. 6) that the respondent debtor be called upon to show cause why he should not be committed under section 82 for failing to pay his debt according to the order of the 7th April, 1962, for monthly payments. The affidavit filed in support of this fresh application, sworn by the creditor on the same day (14.2.63) specifically refers to the order in question ; to the payment of £4 for May and June, 1962, as above ; and to the failure of the debtor to pay the instalments due from 1st July, to the time of the application, notwithstanding the fact that his financial circumstances were the same as at the making of the order, during this period. So here again, the proceeding is clearly taken to enforce the order made under section 91 in Part IX.

On the 30th April, 1963, when the application came on for hearing, the debtor, having the assistance of his advocate, gave evidence as to his means (which were now stated to be a salary of £65 per month) and he tried to explain his failure to make more payments under the order, on the ground that his family obligations, including the cost of a son at the University in Athens, did not permit him to do so.

The learned trial Judge who heard the application, took the view that the arrears of payment fell into two periods ; before September, 1962, when respondent's son went to the University ; and after that date. For the former period, the Judge found no excuse ; but for the latter, he apparently thought that the cost of the University education of his son was a good justification for the debtor's failure to pay the instalments under the order. In any case the learned Judge considered that imprisonment " would serve no purpose and indeed might defeat the applicant's own ends ", as he put it. He therefore dismissed the application with costs. From this order, the judgment-creditor appeals on the ground that the trial Judge misdirected himself both as to the effect of the evidence and as to the law applicable in the matter.

Two questions arise for consideration in this appeal :

1. Whether a committal order under section 82 in part VIII of the Civil Procedure Law can be made for failure to make payments under an instalments-order made under section 91 in Part IX ; and.

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2. Whether a judgment-debtor subject to an order under section 91, is justified for failing to comply with the order, by reason of his undertaking, after the order, obligations such as those in the present case.

I do not think that it is necessary for the purposes of a proceeding of this nature, to consider the view that a committal order may "defeat the creditor's own ends." An order under section 82 may well be discretionary; but the discretion involved, must be judicially exercised upon legal considerations.

Dealing with the first question, one must observe that execution under Part VIII of the Civil Procedure Law, appears to constitute a proceeding different in nature, to that under Part IX. The difference, both in substance and in form, was pointed out in the judgment of Stronge, C.J. in *Hattidje Mustafa v. Ali Mehmet Mutaf* (15, C.L.R., 63) when the Supreme Court of the Colony of Cyprus was dealing with an appeal from a committal order made by the District Court of Nicosia in a motion consisting of similar applications under Parts VIII and IX of the Civil Procedure Law, taken together at one and the same time.

I do not think that I can usefully add anything to what was said in that case, as to the difference in the character of the two proceedings. And I must confess that it is not without difficulty that I came to agree with the view taken by my brother Judges in this Court that when section 82 speaks of "a judgment or order" (in the third line of the text, at the end of page 27 of Cap. 6) it may include an order for the payment of the judgment-debt by instalments, made under section 91. It seems to me that the point was not fully argued in the present case on the part of the respondent. It was hardly taken by his advocate. And as at present advised, I cannot say that the application of the appellant herein under Part VIII, cannot be an "investigation by the Court respecting the ability of a judgment-debtor to pay the amount due under a judgment or order", under section 82.

Upon this conclusion, it follows that where "the debtor since the making of the order has had sufficient means to pay the money directed to be paid by him or some part thereof which still remains unpaid, and that he neglects to pay it according to the order" (as provided in section 82(a)) a committal order can be made under this section.

The respondent has admittedly had, at least, the same salary during the period in question as he had at the time

when he consented to the making of the order for the payment of his debt by monthly instalments. And he has admittedly collected his salary during such period. But he refused or neglected to make payments in compliance with the order.

Coming now to the second question arising in this appeal, namely whether respondent's failure to pay the instalments under the order was justified by reason of his undertaking subsequently to the order, to pay for his son's University education, we are unanimously of the opinion that the question must, clearly, be answered in the negative. With all the sympathy we may feel for respondent's sense of parental duty, it is our judicial duty to take the legal aspect of the case which is that before undertaking any such fresh responsibilities the respondent should have taken the necessary steps for the amendment or discharge of the order, due compliance with which disabled him, as he says, to meet the new responsibilities he was about to undertake.

We, therefore, reach the conclusion that the appeal must succeed ; and the order dismissing appellant's application for committal, be set aside. We consider that in the circumstances of this case, the judgment—creditor is entitled to the enforcement of the instalments—order of the 7th April, 1962, by a committal order under section 82. And we make order accordingly, directing that the respondent be committed for two months from the day of arrest under a warrant issued by virtue of such order. We further direct that the issuing of the warrant under this order be kept in suspense so long as the respondent will in future regularly comply with the instalments—order by making the payments specified therein, on or before the 5th day of every calendar month following this judgment. First payment to be made by the 5th January, 1964.

This order is remitted to the District Court for execution, and in case of default in the payment of any instalment as aforesaid a warrant of commitment to be issued by the Registrar, District Court, on the filing of an affidavit by the appellant (creditor), without notice to the respondent (debtor).

The respondent to pay part of the appellant's costs here and below which we fix at £8.

WILSON, P. : Order made accordingly.

Appeal allowed.
Order made as aforesaid.

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Dec. 19
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ANESTOS
ADAMOU
v.
XENOPHON
IOANNIDES
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Vassiliades, J.