

TYSER, C.J. *N. Paschalis* for the Appellant.

&  
FISHER, J. This is not a penal judgment, see *Raulin v. Fischer*, 1911, 2. K.B., 93.

—  
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—

He also cited *Westrope v. Georgiades*, S.C. May 30, 1912, Preliminary Issue No. 9\*, and *Huntington v. Attrill*, 1893, A.C. 150.

AND  
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*Haji Ioannou* for the Respondents.

v.  
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—

The judgment sought to be enforced is that of a criminal court. Clause 49 of the Cyprus Courts of Justice Order, 1882, precludes District Courts from trying cases committed outside their districts and therefore they cannot have power to enforce judgments of a criminal court outside Cyprus.

Ottoman Law applies (Cyprus Courts of Justice Order, 1882, Clause 23). He cited *Mejellé*, Arts. 1821 and 1785. (The Chief Justice referred to Art. 1849).

As regards the estate of *Georghi Karous*, the maxim *actio personalis moritur cum persona* applies.

The Plaintiff in this action was *Nicola Kyriakoudi*, and the damages were awarded to him. He never appeared in the French Court.

*N. Paschalis* in reply: I ask for judgment in favour of Plaintiff *Nicola Kyriakoudi*, he is the real Plaintiff, the second Plaintiff was his agent.

Judgment: THE CHIEF JUSTICE: The claim in this action is to enforce a judgment of a French Court.

*Georghi Karous* and *Cosma Anayotou* were prosecuted by the Procureur of the Republic before the Civil Tribunal of the Department of Seine sitting as a Correctional Tribunal and convicted *Georghi Karous* of swindling, and *Cosma Anayotou* as an accomplice.

The Plaintiff in this action, being the person injured by the swindling, put in a civil claim, at the same hearing, for damages. It appears that by Art. 3 of the Code d'Instruction Criminelle the Plaintiff was entitled to claim at the hearing of the charge or to bring a separate action.

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\* JOHN WESTROPE & Co.

v.  
N. L. GEORGIADES.

ACTION ON FOREIGN JUDGMENT—EFFECT OF FOREIGN JUDGMENT IN CYPRUS.

*The Plaintiffs were domiciled in England and the Defendant was an Ottoman subject domiciled in Cyprus. The Plaintiffs sued the Defendant in the High Court of Justice in England to recover a liquidated sum of money. An appearance was entered on behalf of the Defendant but no further steps were taken to defend the action and the Plaintiffs recovered judgment in due course for the amount claimed. The Plaintiffs brought an action on the judgment in Cyprus.*

HELD: That the Defendant was precluded from entering into the merits of the action decided by the English judgment.

Georghi Karous was convicted of swindling and Cosma Anayotou as being an accomplice, and on the demand of the *partie civile* they were both ordered to pay him 4,735 francs as damages and a fixed sum for expenses.

Cosma Anayotou appealed and the judgment was confirmed on appeal. The judgment for damages in favour of the Plaintiff is the judgment sought to be enforced.

Since that judgment was obtained Georghi Karous has died, and as far as his liability is concerned the Plaintiff sues his heirs for the purpose of recovering the amount from the estate which the dead man has left.

There are two questions to be decided:—

1. Is the French judgment evidence in the Court of Larnaca that the Defendants are under an obligation to pay the Plaintiff the debt due to him under that judgment?
2. Can the Plaintiff sue the heirs and recover from the estate of the deceased Georghi Karous?

The first question is decided by *Westrope v. Georgiades* which was a decision on a question directly at issue in the action, and which the learned Judges, misled by an error in the drawing up and wording of the formal judgment, have erroneously characterized as *obiter dictum*. The learned Judges apparently declined to follow that judgment, and have given their reason for not following it. I will therefore examine the grounds on which the Judges have given judgment in this case.

I will first examine the reasons advanced for giving judgment in favour of Cosma Anayotou.

The learned Judges cite Art. 1821 of the *Mejellé*. They say in effect that by that Article read in conjunction with Art. 1785 it is enacted that a written judgment given by a Judge appointed by His Majesty the King is good. Therefore they hold there is no case against Anayotou. The reasoning would appear to be: a judgment of a Judge appointed by the King is good; this is not a judgment of a Judge appointed by the King, therefore it is not good. This is evidently a case of what is called in logic an illicit process and the reasoning is faulty.

From the fact that the judgment of a Cyprus Judge is good no inference can be drawn as to the judgment of a Judge who is not a Cyprus Judge. But perhaps the learned Judges, reading Art.

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TYSER, C.J. 1821 with the interpretation Art. 1785, have construed it to mean  
 &  
 FISHER, J. that no judgment other than a judgment given by a Judge appointed  
 by the Sultan is good, applying the maxim *expressio unius exclusio*  
*alterius*.

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If this were the true interpretation it would be inconsistent with  
 Art. 1849 by which the Judge is to confirm the finding of an arbitrator.  
 It is quite clear that that could not be the intention of the legislator.  
 Therefore the construction of the learned Judges is wrong. The Article  
 has no application to judgments other than those of a Judge appointed  
 by the Sultan.

Art. 1821 is really a rule of evidence which says that a written  
 judgment, being according to rule, without other evidence is sufficient  
 to justify a judgment, awarding the litigant, in the preceding action,  
 that which was given him by the preceding judgment. It applies  
 only to judgments drawn up in accordance with certain rules (*see* Ali  
 Haydar). It is a rule of evidence which is superseded by the practice  
 of these Courts. We must search elsewhere for the law as regards  
 foreign judgments.

Now there is a great diversity of opinion in all countries as to the  
 effect of foreign judgments, and a difference of practice in different  
 countries. As to the practice in the Ottoman Empire I can find no  
 authority. It is true that the judgments of the Consular Courts  
 were directed to be executed by the Ottoman Courts so far as immove-  
 ables are concerned. But these Courts were established in Turkey  
 by treaties and are hardly an authority for any other Court.

There would appear to be no law in the Ottoman Empire and no  
 fetwa or judicial opinion on the question whether a foreign judgment  
 imposes an obligation on the judgment debtor which is enforceable  
 by the Courts of the Empire, nor is there any legislative enactment  
 in Cyprus. It is true that Ottoman Courts will not grant execution  
 of foreign judgments, no more will English or any other Courts, but  
 I find no authority in the Ottoman Law for either enforcing a foreign  
 judgment or refusing to enforce it in an action based on the obligation  
 created by it. It can hardly be that a judgment *in rem* would not  
 be recognised and enforced. If so, on what principle. -

This is a matter of private international law and in the absence  
 of any guiding principles in the Ottoman Law this Court has decided  
 to follow the principles laid down in the English decisions and I think  
 it has rightly so decided.

*Raulin v. Fischer* (1911, 2, K.B. 93) which is on all fours with this  
 case, is an express authority that this is a judgment which is not for a

penalty which would be enforced in England, but there is no suggestion that any such difference is recognised in Turkey and we have no ground in the absence of any law for making any distinction in Cyprus.

I will now examine the grounds of the judgment of the District Court in favour of the heirs of Georghy Karous, because if that part of the judgment is sound, although the action on the judgment lies against the survivor, the heirs cannot be sued.

The learned Judges have followed what they imagined to be the law of England. They rely on the maxim *actio personalis moritur cum persona* as being a proper exposition of the English Law. For fear that it should be supposed that I endorse the view that that maxim properly represents the English Law I will point out that the law has been materially altered by Statute.

The reason the Judges give for following the English Law is an alleged silence of the Ottoman and Cypriot Law on the subject. It is true that so far as I know there is no law in the Destour dealing with the subject.

The Mejjellé, which, with the exception of the first 99 articles, is a collection of legal propositions concerning dealings between people which are of frequent application, lays down no rule on this subject. There are general propositions in the first 99 articles which might in many cases be urged in support of proposition that an action in tort does lie against the heirs. I am informed by the Chief Cadi that actions against heirs to recover damages from the estate of deceased tort feasons are maintained in Ottoman Courts.

The following fetwa is an authority for this proposition:—

*Question* : If Zeid pulls down by violence the Mulk building of Omer and before having made good the damages of the demolished building he (Zeid) dies, can Omer, after having returned the materials of the demolished building to the heirs of Zeid, recover the building value of the demolished building from the estate of Zeid ?

2. Can he (Omer) again after retaining them (the materials of the demolished building) and deducting their values from the demolished building recover the remaining value from the estate of the deceased (Zeid) ?

*Answer* : Yes.

*Authority* : Bekjet-ul-fetwa.—Chapter setting forth wrongful taking.

It would therefore seem that the Ottoman Law is not silent on the subject, and that an action for damages and loss caused by him in his lifetime is maintainable by that law. It is however immaterial because

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TYSER, C.J. this is not an action for damages for a wrong done. It is an action  
 &  
 FISHER, J. to recover a judgment debt. If the Plaintiff had sued for the wrong  
 on which that judgment is founded we might have had to consider the  
 question, but he has not done so.

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If it were a judgment of a Cyprus Court there could be no doubt of the amount of the judgment being a debt recoverable from the estate. When once it is admitted that an action can be brought on a foreign judgment, it follows that the action is for a debt.

For the above reasons I am of opinion that the judgment of the District Court was wrong. The judgment and other evidence certainly shewed a case which called for answer. The District Court ought not to have stopped the case. The judgment of the District Court must therefore be set aside.

If any case had been made at the settlement of issue for refusing to enforce the judgment it would be necessary to send the case down for further hearing. But the Defendants neither at the settlement of issue nor at the hearing, raised any ground of defence other than that a foreign judgment could not be enforced.

We have asked whether the Defendants wish to introduce any further evidence.

It was not and could not be alleged on the facts proved that the judgment was obtained by fraud, or that the Court had not jurisdiction nor could any other valid defence be raised.

We have decided that the Defendant was wrong on the only point at issue between the parties. There is no question of fact and no other question of law raised between the parties for trial. There is only one question of law and we have heard all that the Defendant has to say on the matter.

FISHER, J.: I agree that the Plaintiff Nicola Kyriakoudi is entitled to judgment and I think I may usefully quote part of the judgment of Lindley, L.J., in the case of *In re Henderson, Nouvion v. Freeman* (1887) 37, Chancery Division, p. 244 (cited on pp. 412, 413 of Dicey's Conflict of Laws, First Edition). On p. 256 of the report he says:—

“ The principle on which an action can be brought on a foreign  
 “ judgment is that the rights of the parties have been already in-  
 “ vestigated by a competent tribunal, or that if such rights have not  
 “ in fact been investigated and determined, it is because the parties,  
 “ or one of them, have made default and not availed themselves of the

“opportunities afforded them by the foreign tribunal. In an action on a foreign judgment, not impeached for fraud, the original cause of action is not re-investigated here, if the judgment was pronounced by a competent tribunal having jurisdiction over the litigating parties: (*Godard v. Gray*, Law Reports, 6 Q.B., 139, *Schibsby v. Westenholz*, *idem*, p. 155). The judgment is treated as *res judicata*, and as giving rise to a new and independent obligation which it is just and expedient to recognise and enforce.”

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*Appeal allowed. Judgment to be entered for the Plaintiff Nicola Kyriakoudi.*

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The case of *Elpiniki Michailides v. Agathocli Michailides, ex parte the Syndics in the Bankruptcy of Agathocli Michailides* reported in pages 77-81 of the original edition is no longer of any importance.