

[FISHER, C.J. AND GRIMSHAW, P.J.]

TRUSTEES OF THE CHURCH OF OROUNDA

v.

HARALAMBO PAPA ANDONI AND ANOTHER
HAJI MOUSTAFA EMIR ALI, *Ex parte Respondent*.FISHER,
C.J.
&
GRIM-
SHAW,
P.J.
1924

June 24

EXECUTION—MORTGAGE—MORTGAGE DEBT EXTINGUISHED BY NEW BOND—
PROCEDURE.

Plaintiffs are judgment creditors and the Defendants are judgment debtors. Plaintiffs seek to execute the judgment debt against the immoveable property of Defendants. Many years ago Defendants borrowed a sum of £75 from Haji Moustafa Emir Ali, the ex parte respondent. For this sum a bond was made, secured by mortgage of various properties. Later on an account being taken between Defendants and the ex parte, another bond (for the balance due on the old bond with interest accrued) for £146 was given by Defendants to ex parte. No attempt was made to register a mortgage in respect of this new bond, but the original mortgage stood registered in the Land Registry Books against the immoveable properties of the Defendants. The Plaintiffs applied to the District Court to order the sale of the Defendant's immoveable properties, claiming that the mortgage registered had been extinguished by the new bond. The District Court dismissed the application on the grounds that the matter should have been brought before the Court by way of action.

From this order the plaintiffs appeal.

For Appellants *Triantafyllides* and *Ioannides*.

Respondents (defendants) in person.

For Respondent (respondent in the application) *Krinaeos*.

Judgment : On the 28th April, 1906, the property of defendant was mortgaged to secure £75 12s. due on a bond. On 24th December, 1918, a bond was made including all interest due on the above bond amounting to £146 4s. The debt on the latter bond is the only debt due by the mortgagor to the mortgagee. The mortgage at present registered is for a non-existent debt; it cannot stand in the way of a judgment creditor. A mortgagee to get the benefit of law must observe the law. Here he seeks to say that a mortgage for £76 effected in 1906 stands good as a mortgage for £144 advanced in 1918. To begin with the fees are different, and, as he has not paid them there is clearly no mortgage for that sum. He says alternatively that the mortgage is at all events good for £76, but that debt has been extinguished. The new bond created an entirely different relationship between the parties, *e.g.*, any period of prescription would run from 1918. Clearly the mortgagee could not sue on the old bond.

This is a question arising in the course of execution and we see no reason for holding that a substantive action is necessary; we allow the appeal, and declare that the mortgage to the respondent is no longer effective and we direct that the application to sell the property be granted.