[BELCHER, C.J., DICKINSON, J., FUAD, J.]

BELCHER, C.J., DICKINSON, J., FUAD, J. 1928.

June 29.

A. & K. CONSTANTINIDES

v.

NAJEM HOURY & SONS

AND

EX-KING HUSSEIN, GARNISHEE.

CIVIL PROCEDURE—LAW 10 OF 1885, SECTIONS 72, 73, 74 AND 77—LIABILITY OF GARNISHEE—EFFECT OF PENDING APPEAL ON LIABILITY—EFFECT OF SERVICE OF WRIT OF ATTACHMENT UPON GARNISHEE—CYPRUS COURTS OF JUSTICE ORDER, 1927, RULES OF COURT, ORDER XXI., RULE 20—(RULES OF SUPREME COURT (ENGLAND), ORDER XXXXV., RULE 4 COMPARED).

Appeal of plaintiffs from the order of a District Court dismissing their application to attach a judgment debt in the hands of the garnishee.

Lanitis for appellants (plaintiffs and applicants).

Chrysafinis for respondent (garnishee).

No appearance for respondents (defendants).

The facts are sufficiently disclosed in the judgment of the Court, which was delivered by the Chief Justice as follows:—

Judgment: This is an appeal from an order of the District Court Limassol-Paphos dissolving a writ of attachment issued under Section 72 of the Civil Procedure Law, 1885, on the application of the appellants in respect of a debt alleged to be due by the ex-King of the Hedjaz, who is one of the respondents, to the other respondents Najem Houry and Co.

In action No. 449/25 in the District Court of Limassol the appellants got, on 18th November, 1925, judgment against the respondent Houry and Co. for a sum of £184 6*s.* 6*cp.*, with interest and costs.

In action No. 170/26 in the District Court of Nicosia which was taken to the Supreme Court on appeal No. 3186, the respondents Houry and Co. got, by the result of the appeal, judgment against the respondent the ex-King for £1,617 and costs. The date of the judgment on appeal was 6th July, 1927, and on the same day the respondent, the ex-King, was granted conditional leave to appeal to His Majesty the King in Council.

The debt which the appellant in the present appeal sought to attach was £300 as part of the last-mentioned judgment debt of £1,617 sufficient to satisfy their own judgment against Houry & Co.

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On the 8th July, 1927, the District Court of Limassol issued the writ of attachment (returnable on 8th November, 1928) and on the 11th of the same month it was served on the ex-King as garnishee.

On the 15th August, 1927, the ex-King and the other respondent by their advocates informed the Supreme Court that the appeal to the Privy Council would not be proceeded with.

What led up to the withdrawal of the ex-King's appeal is not altogether clear, but from the record of evidence which was before the District Court when it made the order under appeal it appears that King Feisal of Iraq, who is a son of the ex-King of the Hedjaz, came to Cyprus in August, 1927, and acting in his father's interest but without his father's knowledge, promised to pay a sum of £1,000 or thereabouts to Houry and Sons if they would write a letter to the ex-King withdrawing all claims against him; the letter was written and received and the advocates for Houry and Sons and for the ex-King told the Supreme Court the matters in dispute were settled and (as stated) that the Privy Council appeal would not be gone on with, and then some time before the return day of the writ of attachment, in fact very shortly after the 16th August King Feisal paid Houry and Sons the sum which he had promised to pay them.

The District Court found on these facts that, as a result of the settlement referred to, there was no debt which Houry and Sons could enforce for their own benefit against the ex-King, citing *Webster* v. *Webster* (1862) 31 Beav. 393, (Halsbury, Vol. XIV., p. 93, para. 170), and ordered the writ to be dissolved, or, as the order says, discharged.

This Court has to consider whether that order was right, and to guide us we must look first at the statutory law of Cyprus relating to garnishee proceedings and in particular to Section 73 of Law 10 of 1885. That section says that from the time of service on the person indebted (whom I may call for simplicity's sake the garnishee) all debts, due by garnishee to the judgment debtor at the time of the service of the writ of attachment, shall become securities in the garnishee's hands for the satisfaction of the claim of the judgment debtor; then, going on, we find that Section 74 provides for punishment of the garnishee if he pays the debt to the judgment debtor after being served with the writ of attachment, while Section 74 enables the Court to make such order on the return of the writ, as may seem just.

The question the Court below had to decide was, therefore, was there on the day of service of the writ of attachment a debt of £300 (or more) due by the garnishee to the judgment

debtor. It had before it, to help it to a conclusion on that head, only these facts, namely, that there was a judgment of £1,617 against the garnishee in favour of the judgment debtor and, on the other hand, that leave to appeal to the Privy Council against that judgment had been conditionally obtained on behalf of the garnishee as defendant in the action in which the judgment had been given.

Unfortunately we have not here the report of *Webster* v. *Webster* (supra) but it seems to us that the principle it enunciates (as summarised in Halsbury) must refer to the date of the service of the writ and has no application where the settlement, which discharged the debt, was made after that, the only material date, otherwise the principle could have been invoked even if the ex-King had himself paid the whole of the debt to Houry and Sons after he received the writ of attachment; indeed, were it so, such a writ could always be defeated by a garnishee willing to risk the penal provisions of Section 74. It has, however, been argued before us, that the effect of the lodging of the appeal, and the stay of execution, was to alter the nature of the ex-King's debt which he owed on the judgment to Houry and Sons, so as to render it no longer a debt within the meaning of Section 73 and so attachable by plaintiff. That is an argument demanding close consideration. We may refer to Order 45 of the Rules of Court for guidance. because the general scheme is the same as that of our Cyprus legislation, namely to provide a method of execution by attachment of debts, although the provisions of our law are less elaborate. This was a case such as is dealt with in Rule 4 of the English Order, namely the case of a garnishee disputing his liability. In such a case, in England, the Court orders the question of liability to be tried as a special issue, and I think that the directing of such an issue is one of the class of orders which Section 77 enables Cyprus Courts to make when it says that the Court " may make such other order as may seem just "; there is one reported case which rather appears to be opposed to the view that an issue may be so directed in England when proceedings are actually pending between judgment debtor and garnishee, the case of *Richards* v. *Greaves* (1861) 10 W.R. 45, the report of which also is not available to us; but in the case now before us the highest tribunal in Cyprus had decided the debt to be due, and only an appeal was pending. I think the legally correct, as it was undoubtedly the practical, course was for the Court below to have adjourned the hearing under Section 77 until the Privy Council appeal had either been disposed of by that tribunal or had lapsed or been withdrawn. For the judgment debt remained a judgment debt subject to the possibility of being annulled by the Privy Council, with at least as much

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certainty about it as a debt, as yet not sued for, which the garnishee says he does not owe. In the latter case the Court has to determine whether it really is a debt or not, and that, as we said, is ascertained by trying a special issue. The object being to find out whether it really is a debt, and there being in this case a projected reference of that very issue to the Privy Council, I cannot see that anyone's just claims could have been prejudiced by holding matters over till that issue had been decided, while the object sought to be effected by Part 7 of the Civil Procedure Law, 1885, would have been attained as it could have been attained in no other way. The judgment debtor, *i.e.*, respondent Houry, obviously is not hurt, for in no case is he liable for more than one clear and proved debt, and win or lose in the Privy Council he still has to pay his creditor the plaintiff. The garnishee is not hurt, for if the Privy Council decides against him he has merely to divide his payment between two persons instead of its all going to one: the amount is not increased; and if the Privy Council decides for him he has not to pay anyone anything. On the other hand the appellants would be very seriously prejudiced if it were to be held that no debt arose till the Privy Council should decide in the appeal in Houry's favour; they might be defeated either by interim assignments or by the ex-King paying Houry the moment the Privy Council judgment was given.

Once the ex-King was served with the writ of attachment it was his duty, if he wished to settle, as in fact he did settle by adopting what his son did on his behalf, with his own creditor the respondent Houry, to see that the appellant's claim was protected. Section 74 makes that quite clear. Once he abandoned his appeal he could no longer have any vestige of ground for saying that he was not, at the date of the service of the writ of attachment, liable on the judgment against him. If the settlement as he in some way suggests, did not concern him, then he still owed the debt; if he adopted the settlement he admitted the debt.

This Court has, by Rule 20 of Order 21 of the Rules of Court, 1927, power to draw inferences of fact, and to make any order which it appears to us should have been made.

We should have no difficulty in finding, were it material, that the settlement effected in August was ratified by the ex-King as one made on his behalf, and we think the proper order is that the appeal be allowed and that the ex-King do pay the appellants the amount of the debt due to the latter by Houry and Sons on the judgment in case No. 449/25, together with costs in the Court below and of this appeal.

Appeal allowed.