It seems clear therefore that the word " deyn " will include a judgment debt.

We see nothing in Art. 1660 of the Mejellé to limit the meaning of those terms as used in that section and we are therefore of opinion that the decision of the Court below was right, and that the judgment debt claimed by the Applicants was a " deyn " within the meaning of Art. 1660 of the Mejellé and that the application for the writ of sale of immoveable property was a " dawa " within the meaning of that article.

Some mention was made in the course of argument of applications made to the Land Registry Office, prior to the application for the writ of sale, for the purpose of enabling the Plaintiffs to proceed to execution of their judgment by sale of the immoveable property of the debtor.

As it was admitted that no such application was made until after fifteen years had elapsed since the judgment was given, those applications cannot affect this case.

We say nothing as to what would be their effect if made before the fifteen years had elapsed.

Appeal dismissed.

[HUTCHINSON, C.J. AND TYSER, J.]

HUTCHINSON, C.J. & TYSER, J.
1905
Jan. 28

OLYMPIAS PERISTIANI AND OTHERS, *Planitiffs,*

v.

ONOUFRIOS J. JASSONIDES, *Defendant.*

SALE UNDER THE TITHE AND TAX COLLECTION ORDINANCE (NO. XIV. OF 1882)—DEFAULT OF PURCHASER—LIABILITY OF PURCHASER TO PERSON INJURED—LAW X. OF 1885.

Property under mortgage was sold for a Government debt under the Tithe and Tax Collection Ordinance, 1882. The mortgagee consented to the sale and the order directed that any surplus realised by the sale after the payment of the Government debt should be paid to the mortgagee.

The purchaser failed to carry out his purchase and there was a loss on the resale of the property.

HELD: *that the mortgagee was entitled to recover from the purchaser at the sale the loss he had sustained by reason of the sale not being carried out.*

APPEAL of the Defendant from the judgment of the District Court of Limassol.

The claim was to recover the Plaintiffs' share of the difference between the amount bid by the Defendant for certain property bought by him at a forced sale under the Tithe and Tax Collection Ordinance 1882, and the amount realised at a subsequent sale, rendered necessary by the Defendant's refusal to carry out his contract.

The facts of the case so far as they are material to this judgment are as follows :—

1. The Plaintiffs and the Defendant were heirs of Eleni J. Jassonides, the Defendant being her son.
2. During her lifetime Eleni J. Jassonides held a mortgage in certain shares in the Colossi Chiftlik, the said mortgage having devolved upon her as heiress of George Acamas.
3. On the 27th April, 1901, an order was made on the application of the Government for the sale of the Chiftlik under the Tithe and Tax Collection Ordinance (No. XIV. of 1882) to raise certain arrears of taxes due to Government.

   The mortgagor did not appear on the application but the mortgagee appeared by her attorney and consented to the order made.
   The order directed that the surplus proceeds of the sale, after payment of the Government debt, should be paid to the heirs of George Acamas.
4. On the 21st September, 1900, the property was knocked down to the Defendant for £781.
5. On the 26th November, 1901, Eleni J. Jassonides died, and her interest in the mortgage passed to the Plaintiffs and Defendant.
6. On the 31st August, 1902, the Defendant having failed to complete the purchase, the property was again put up to auction and sold for £550.

The District Court gave judgment for the Plaintiffs, deducting from the difference between the two prices at which the property was sold certain sums which the Defendant claimed ought to be credited to him.

Sevasly for the Appellant.

Pascal Constantinides for one Respondent.

Artemis for other Respondents.

Sevasly : The claim is under Secs. 65 and 66 of Law X. of 1885.

The Plaintiffs have no *locus standi.* The only person entitled to object is the creditor or mortgagor, Law XX. of 1890, Sec. 1.

Pascal : The mortgagee is damaged by the non-completion of the contract.

Judgment : THE CHIEF JUSTICE (after stating the facts and dealing with certain issues of fact which are not material to this report) continued as follows:—

There remains the second defence founded on Sec. 66 of Law X. of 1885. The sale was ordered under the Tithe and Tax Collection Ordinance XIV. of 1882, under which the property is to be ordered to

be sold "in like manner as if it were sold by order of a competent "Court for the payment of a judgment debt." Law X. of 1885, prescribes the manner in which immoveable property may be sold for payment of a judgment debt; and this sale was made in the manner prescribed by Law X. of 1885. Then what is to happen when a loss occurs owing to the default of the purchaser to complete the purchase? If the sale is for payment of a judgment debt under Law X. of 1885, then Sec. 66 enables the "judgment creditor" to sue the purchaser. But when it is not for payment of a judgment debt, but for taxes, so that there is no "judgment creditor," have the persons injured no remedy? I think that in such a case the defaulter is liable to compensate the persons injured, and for this reason, that when the property was knocked down to him there was thereby made a contract of purchase and sale between him and the vendors, and for breach of that contract he became liable to them. This is recognized by the last sentence of Sec. 66, which enacts that the purchaser is "responsible "for all losses, if any, occasioned by his neglect or refusal to pay the "money bid by him;" and if that enactment did not exist, or if it does not apply to a sale under the Tithe and Tax Collection Ordinance, the same principle must be applied: there is a contract, and for breach of it the purchaser is liable to the vendor in damages. The vendors in this case were the Government and Eleni, for whose benefit the sale took place. And in my opinion if Eleni had been living, she, as the person injured, could have sued; and, she being dead, her heirs can sue.

There is no evidence whether Eleni left a will or whether there is any executor or administrator of her property duly appointed; but no question was raised as to that, and the Defendant has not disputed the right of the Plaintiffs to sue as her heirs.

Therefore I think that judgment was rightly given for the Plaintiffs and the appeal should be dismissed with costs.

TYSER, J., agreed.

Appeal dismissed.