

TYSER, C.J.  
&  
BERTRAM,  
J.  
1908  
June 24

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

HAJI NICOLA MARKOU, *Plaintiff,*  
v.  
CONSTANTI HAJI CHRISTODOULOU, *Defendant,*  
GEORGIOS MOUNTZIS, *Applicant.*

EXECUTION—ORDER OF SALE—REGISTRATION OF JUDGMENT—MEMORANDUM—  
PRIORITY—CIVIL PROCEDURE LAW, 1885, SECS. 26, 31, 52 AND 56.

A. a judgment creditor procured the issue of a writ of sale of the immovable property of his judgment debtor. After the issue of the writ, but before it reached the Land Registry Office, B., another judgment creditor, registered his own judgment under Secs. 52 and 53 of the Civil Procedure Law, 1885, by "depositing a memorandum."

HELD: That inasmuch as the effect of the order of the Court for the issue of the writ of the sale was specifically to charge the judgment debt upon the debtor's immovable properties within the meaning of Sec. 56 of the Civil Procedure Law, 1885, the writ of sale took priority over the charge effected by the deposit of the memorandum.

SEMBLE: The order of the Court for the issue of a writ of sale of immovable property effects a charge upon the property from the moment of the issue of the writ.

Appeal from the order of Mitzis, J., Nicosia District Court.

The Plaintiff obtained judgment against the Defendant in the action on May 13th, 1906. The Applicant had also obtained judgment against the same Defendant in another action, his judgment being dated April 10th, 1905.

On July 26th, 1907, the Plaintiff obtained from the Court an order for the issue of a writ of sale of the immovable properties of the Defendant, or so much of them as should be necessary to satisfy his judgment debt. This order was drawn up on October 1st, 1907. On December 7th, 1907, a writ of sale was issued in pursuance of this order, and was delivered to the Sheriff for execution on the same day, and on December 11th it was transmitted by the Sheriff to the Land Registry Office.

After the issue of this writ, but before it reached the Land Registry Office, that is to say, on December 9th, 1907, the Applicant registered his judgment by lodging a memorandum under the Civil Procedure Law, 1885.

The Land Registry Office proceeded to execute the Plaintiff's writ of sale. The Applicant thereupon applied to Mitzis, J., under Sec. 31 of the Civil Procedure Law, 1885, for an order that the sale be stopped, or in the alternative that it should proceed subject to it being declared that he (the Applicant) had a first charge on the proceeds.

Mitzis, J., dismissed the application.

The Applicant appealed.

*Theodotou* for the Applicant.

*Severis* for the Respondent.

*Judgment:* The question for our consideration in this case was whether a judgment creditor who obtains an order of the Court for the issue of a writ of sale of the immovable property of his debtor has priority over another judgment creditor who after the issue of the writ, but before it is carried into effect, registers his judgment under Sec. 52 of the Civil Procedure Law, 1885.

The effect of registering the judgment in the manner prescribed by law (that is to say, by depositing in the Land Registry Office an office copy of the judgment together with a memorandum describing the debtor's property), is, according to Sec. 56, that "the interest of the debtor in the property shall be charged with the payment of the debt due under the judgment in priority to all debts or obligations of the debtor *not specifically charged upon the property before the deposit of the memorandum.*"

The question for our consideration therefore simply comes to this whether or not the order of the Court has the effect of "specifically charging" the judgment debt upon the property which is to be sold.

Now what are the terms of the order? "This Court doth order that a writ do issue for the sale of the interest of the Defendant . . . . . in the following immovable property, or such as will suffice, viz.: the property registered in his name . . . . . to raise the following sums, viz.: . . . . . and that the sum so raised be paid to Mr. Severis advocate for Plaintiff."

Do these words specifically charge the debt upon the property of the debtor? It seems to us clearly that they do.

When once the Court has ordered property to be sold, the property cannot be dealt with except in accordance with that order. The order being one which the Court is competent to make must have its effect, and no one is entitled by selling, mortgaging or otherwise disposing of the property to render the order abortive. From the moment the order is complete the property is in the power of the Court. The Court has specifically devoted it to the discharge of the judgment debt. In other words it seems to us that the Court in the exercise of its jurisdiction has specifically charged the debt upon the property.

It is true that here the order is a general order for the sale of the debtor's property or so much of it as is necessary to satisfy the debt, but this does not seem to us to make any difference. The word "specifically" is used with reference to the debt, and not with reference to the property.

A great deal was said in the argument about the delivery of the writ to the Sheriff, and its delivery to the Land Registry Office and we were informed that it is the practice of the Land Registry officials not to accept a memorandum when once a writ of sale of the property sought to be charged by the memorandum has already reached their hands. It seems to have been thought that the writ was not effective until delivered into the hands of the officer immediately responsible for executing it and that at this point it became a charge upon the land but not before. All this however seems to us beside the point. In the absence of any statutory

TYSER, C.J.  
&  
BERTRAM,  
J.  
—  
HAJI  
NICOLA  
MARKOU  
v.  
CONSTANTI  
HAJI  
CHRISTO-  
DOULOU  
—

TYSER, C.J.  
&  
BERTRAM,  
J.

HAJI  
NICOLA  
MARKOU  
v.  
CONSTANTI  
HAJI  
CHRISTO-  
DOULOU

limitation of its operation, the order of the Court takes effect from the moment it is complete, and it does not require any delivery to an executive officer to complete it.

Whether the order of the Court is to be considered complete from the moment when it is pronounced, or from the moment when it is drawn up, or from the moment when the writ is issued, it is not necessary to decide in this case. Inasmuch however as the order of the Court strictly speaking is not an order for the sale of the property but an order for the issue of a writ for its sale, it would seem reasonable to regard the whole process as one, and to consider that the order is complete and the property charged with the debt from the moment of the issue of the writ.

This conclusion would seem to be in harmony with the principles of the English Common Law.

At Common Law a debtor's goods and chattels were bound by the writ of execution from the time of its *teste*, that is to say, from the date of its issue. His lands were bound from the date of the judgment. It was by a series of statutory enactments that the English law was put upon its present footing, under which a writ of execution, whether of real or personal property, effects a charge on the property from the moment of its delivery to the Sheriff.

It is no doubt very inconvenient that the question of the priority of these two competing legal processes may have to be determined by an examination of proceedings taking place before different persons in different buildings at the same time; and that it may be necessary in a given case to decide the point by a minute comparison of two or more clocks or watches. We are not able however to interpret the words "charged upon the property" as meaning "charged upon the property in the records of the Land Registry Office," nor to say that an order of sale is not to be considered in force until it reaches the Land Registry Office.

It would probably be convenient that the legislature, following the model of the English statutes, should enact that writs for the sale of immovable property should not bind the land until delivered to the Land Registry Office. For us so to decide would be to take upon ourselves the office of legislators.

The appeal must accordingly be dismissed with costs.

*Appeal dismissed.*

---