

FISHER,
C.J.
&
STUART,
P.J.
1923
March 23

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

HARALAMBO L. NICOLAIDES

v.

ELENE G. SAVVIDES.

FRAUDULENT TRANSFERS AVOIDANCE LAW, 1886, SEC. 3 (1) & (2)—PROCEEDINGS
APPLICATION.

The facts are as follows:—

The plaintiff brought an action against the defendant and her husband and obtained judgment in 1902. The husband died in 1912. In April, 1916, the plaintiff applied for an order to sell the defendant's house in execution of the judgment. These proceedings lapsed and on the 8th March, 1919, the defendant transferred the house to her daughter Anastassia. There was no evidence to show whether the transfer was gratuitous or for good consideration. On the 22nd July, 1919, the plaintiff filed an application under sub-section (1) of sec. 3 of the Fraudulent Transfers Avoidance Law, 1886, asking that the transfer should be set aside and the house sold in execution of the judgment.

The District Court granted the application.

From this order the *ex parte* Anastassia appeals.

For Appellant *Pavrides*.

For Respondent (plaintiff) *Stavrinakis*.

No appearance for Defendant.

Judgment: This Court is of opinion that the Fraudulent Transfers Avoidance Law, 1886, cannot be applied. Sec. 2 (1) does not give any separate jurisdiction to the Court over cases within it, it must be read subject to sec. 3 sub-section (2). The District Court has read it as if the application could be made at any time within one year of the transfer, irrespective of whether the transfer was made before the action or proceedings were instituted or not. This Court is further of opinion that the application should have been dismissed, the transfer not having been made within "one year next before the commencement of the "action."

The Fraudulent Transfers Avoidance Law, 1886, was intended to protect creditors against debtors who seek to strip themselves of their property in anticipation of being sued or proceeded against, *e.g.*, by a petition in bankruptcy.

Appeal allowed with costs.