NETTLETON, C.J. & GRIMSHAW, P.J. 1925 March 2

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

IN THE MATTER OF THE BANKRUPTCY OF THE COMMERCIAL FIRM M. LOUKAIDES, OF NICOSIA, CONSISTING OF THE HEIRS OF THE DECEASED MATHEO LOUKAIDES, NAMELY:

1. AUGUSTA M. LOUKAIDOU
2. ANNA C. LOIZIDOU
3. ELENI G. CHRISTODOULIDOU
4. ZOE M. PAPAPETROU
5. MARIA CHR. PAPADOPOULOU
6. HARITINI Z. PAPADOPOULOU
7. CLEO A. HAJIGAVRIEL
8. YEORGHIOS M. LOUKAIDES
9. EURIPIDES M. LOUKAIDES

AND

IN THE MATTER OF THE CLAIM OF DEMETRI AND FRANZESCO TALIADOROS FOR £739 10*s.* 2*cp.* DUE ON A BOND BY THE BANKRUPT FIRM.

NOVATION—EFFECT OF.

The whole point in these proceedings is whether all the nine respondents have to pay this claim, or whether the respondent George Loukaides is alone liable.

It is necessary to set out as briefly as possible the history of the bankrupt firm in order to understand the position the claimants find themselves in to-day.

Matheo Loukaides, the father of all the respondents, except the respondent Augusta (who is the mother of the others and widow of Matheo) had a business which he conducted under the title " M. Loukaides." He died in 1901, leaving many minor heirs. By will he appointed an executor to carry on the business until the youngest of the children (Euripides) became of age. For some years after Euripides became 21 (if that age is what Matheo meant by his will) the executor continued to administer the business and up to his death in 1917. Then all the nine respondents published a circular, which disclosed the fact that they were partners and that the firm would be carried on by the eldest son the respondent George Loukaides still under the firm name of " M. Loukaides." George carried on the business by virtue of this circular up to October 4, 1922, when he himself issued a circular stating that he alone was responsible for the debts of the firm " M. Loukaides."

None of the other respondents published any objection to this circular, and after that date George became sole proprietor. It must be noted that George had in reality settled all claims of the other respondents in the firm, by giving dowry to them, all of them being women (except Euripides), and therefore he was merely setting out a proposition which de facto *had been already accomplished. The other brother Euripides was educated as an advocate and had already had more than his fair share, but later George settled with Euripides and bought out Euripides' share.*

Now in April, 1924, the petition in bankruptcy was filed. Present claimants were represented throughout the trial. The judgment of the petition was given on the 12th May, 1924. No appeal was lodged by any of the persons interested and now it cannot be appealed against.

It is to be noted, as a fact, that where all nine respondents are liable for a debt it would be paid in full, but where the respondent George is alone responsible payment would be only a small proportion of the debt.

As to the facts about the present claim, they are sufficiently set out in the judgment of the District Court, dated 5th December, 1924, which runs as follows:—

In order to understand what this application is about it must be presumed that the judgment which was given by the District Court of Nicosia, dated 5th May, 1924, is generally known. All parties represented here in this application to-day were represented throughout the trial of that bankruptcy petition, and therefore it is unnecessary to recapitulate the whole of that judgment to-day. Shortly that judgment decided that all creditors who gave credits to the bankrupt firm prior to 4th October, 1922, were entitled to regard the firm as a partnership composed of nine persons—the nine respondents—and those creditors who gave credit to the firm after that date were only entitled to look to the respondent George M. Loukaides as the sole proprietor of the firm " M. Loukaides."

Now by this application Messrs. Demetri and Franzesco Taliadoros seek an order of the Court directing the syndics to include their claim against the firm for £739 odd, due on a bond, in the earlier lists of claims, *i.e.*, that they, the applicants, can recover against all the nine respondents jointly and severally. This claim was already made to the syndics and they declined to include the amount in this earlier list. Hence this application to the Court.

From evidence adduced by applicants we find the following facts proved:—

1. That Franzesco Taliadoros—applicant No. 2—was a servant of the bankrupt firm from 1905 to February, 1924.

2. That his brother—applicant No. 1—who is described as a Government official, entrusted him, applicant No. 2, with the investment of his capital.

3. That Franzesco did lend money to the bankrupt firm between 1919 and July, 1922, amounting to £800 odd.

4. That from time to time payments were made by the bankrupt firm up to July, 1922, reducing this loan.

5. That an account was made up between the firm and Franzesco on 8th June, 1923.

6. And that a bond was drawn up in favour of Franzesco and applicant No. 1, for £739.

7. This bond was the subject matter of an action instituted against the firm on the 14th March, 1924; the present application is for the same amount.

It is noticed that applicant No. 1's name was not inserted in the ledger account of the bankrupt firm as being a creditor; nor is his name written in the private ledger produced by Franzesco. The first time his name is shown on the records before us is in the bond, dated 8th June, 1923.

The principal matter we have to consider is: Does the making of a bond in 1923 create a new obligation by the firm or, is the bond merely an acknowledgment in customary form of an old debt created years before ?

Now in the judgment given by the District Court in the Bankruptcy proceedings on May 5th, 1924, section 106, states as follows:—

" In our opinion, therefore, all respondents are jointly and severally " liable for all debts and liabilities contracted in the name of the firm " between the coming of age of Euripides' and George's circular."

And section 113 idem states as follows:—

" We are of opinion that George Loukaides, by his circular, assumed " complete responsibility for the liabilities of the firm, and that the " commercial world could only have looked to him for the payments of " any credits which they might make to the firm after that date."

The applicants were present or represented throughout the trial, and if they were dissatisfied by the judgment, they had a right to appeal. This they did not do and they have consequently lost the right to criticise this decision.

It is argued on applicants' behalf that the principle set out in *Heath v. Percival* applies. We should certainly accept this argument as conclusive had the applicants rested content with a book debt, but they did not. They sought to strengthen their position by getting a definite written acknowledgment and they were then not contented with that, but to make themselves still further secured, as they thought, they admittedly demanded a guarantor.

Now, in our opinion, this act of theirs, which we must point out is a purely voluntary act, creates a new contract, and applying the principles set out in preliminary C.L.R. No. 22 in *Church of Orounta v. Haralambo Papa Andoni* they are not entitled to increase their security under a new

contract, and at the same time, because it happens to suit their convenience to do so, claim benefits of a less secured position which they have voluntarily given up.

We therefore dismiss the claim of D. & F. Taliadoros to have their debt against all the respondents, and we hold their claim can only be against George M. Loukaides.

All costs to come out of the estate of the bankrupt firm.

From this judgment the claimant appeals.

For Appellant *Clerides.*

Juge Commissaire and Syndics in person.

For Respondents 3, 4 and 5 *Pavlides.*

For Respondents 6 and 7 *Chrysafinis.*

Respondents 1, 2, 8 and 9 in person.

Judgment: Affirming the judgment of the District Court, dismisses the appeal of claimant, but varies the order of the District Court as to costs and orders each party to pay his own costs.