

[BELCHER, C.J. AND DICKINSON, P.J.]

LOIZO G. SAVIDES

v.

1. YANNADJI HAJI STAVRINO
2. MARIOU HAJI SAVA

AND

TALLOU YANNADJI (*ex parte*).

BELCHER,
C.J.
&
DICKIN-
SON,
P.J.

June 27.

FRAUDULENT TRANSFER—LAW 7 OF 1886, SECTIONS 2, 3, 3 (2) AND 4
—MEANING OF “TRANSFER”—DATE OF TRANSFER—LAND
TRANSFER AMENDMENT LAW, 1890—REGISTRATION—INSOL-
VENCY—LAW 20 OF 1919, SECTIONS 3 AND 4.

APPEAL of plaintiff from an order of a District Court.

Loisides for appellant (plaintiff).

Mitsides for respondent (*ex parte*).

Respondents (defendants) in person.

The facts are sufficiently disclosed in the judgment of the Court.

Judgment: This is an appeal by the plaintiff from the dismissal of an application which was heard before the full District Court of Kyrenia, made by plaintiff as judgment creditor, to set aside, as fraudulent, a sale of certain immovables by one of the judgment debtors, who, together with the purchaser of the land, were cited on the application. That application was made under Section 3 of Law 7 of 1886, which enables a judgment creditor to set aside such a disposition as by that Law is deemed to be fraudulent and so invalid against him; one of the conditions of a successful application being, *vide* Section 3 (2), that the disposition (I use this word as covering generically all the dealings aimed at, though the law does not use it) must have been made within one year next before the commencement of the action in which the application is made.

To deal firstly with matters of fact: the writ in the action was issued on Monday, the 13th October, 1924, and the lower Court has found in fact that the disposition was fraudulent; with that finding I see, in the evidence, no reason for interfering. Another matter of unquestioned fact is that the disposition was carried on for registration, and registered in the Land Registry at Kyrenia, on Wednesday, the 15th October. As to when the agreement to sell

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was made between the parties, there is some variation in the evidence, and the Court below did not consider it necessary to decide the point. I have come to the conclusion, as to the date of this agreement, that it was a date anterior to the 13th October. All the witnesses agree that, as was natural and indeed requisite, an agreement preceded registration. Tallou, the purchaser, says it was "a few days before." The vendor says "five days before I received the summons" (the latest day for service would, in view of the return day fixed, be 17th October).

The District Court decided that the "transfer" was made before the issue of the writ, and it is clear from the learned President's judgment that the only matter he thought proper to be considered in this connection was the date of registration. For purposes of his judgment he held "transfer" to be synonymous with registration in the Land Registry Office and to mean nothing else. It is for this Court to consider whether he was right in that, in which his finding against the applicant was, *natura rei*, unassailable, or whether "transfer" may have, for the purposes of Law 7 of 1886 a wider meaning so as to bring the transaction impugned by this appeal within the time limit—to bring it in fact to a date before the issue of the summons instead of after it.

First one must see what "transfer" naturally connotes in Law 7 of 1886. That Law does not, except in the ancillary Section 4, deal specifically with registrations. For the law concerns dealings with not only immovables but movables as well. In three places, in Sections 2 and 3, the word "other" is used before the word "transfer" so as to show clearly that the latter word is a generic word of wide signification, not limited to either movables or immovables and a *fortiori* not limited to one class of dealings with immovables, as has been argued before us. Had the law meant to refer to registrations even as one of the kinds of dispositions aimed at, it would have been easy to mention registration specifically; but this is not done. Nor is the reason far to seek. Registration in itself is not such an act "*inter partes*" as could bear the colour of fraud; registration may indeed be necessary for certain purposes (not, as we shall see, for all purposes) to complete or validate the transaction, but it does not constitute the transaction and it is not an act of the parties at all; it is an act of Government; also it is an act which cannot properly be done in the absence of some prior agreement of the parties to sell and buy or to mortgage and accept in pledge, as the case may be. This is clear from the "Land Transfer Amendment Law, 1890," which requires,

in the case of a mortgage, that the mortgage itself is to be produced on registration and in the case of a sale a written statement that there has been an agreement of sale and purchase. Forms are scheduled, and there is to be no registration until the Land Registry official has satisfied himself that both parties are in agreement. It is in these circumstances impossible to conclude that no rights exist before registration. The law not only does not say so but bases registration on the existence of antecedent rights.

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No doubt it would be possible to use the term "transfer" which, as seen, cannot refer to registration only, (though in speech among lawyers it may have come in Cyprus to mean the same thing) in a wide sense to cover every part of a dealing from first offer to final registration of the accepted offer. But that is not the natural meaning to give to the word in Law 7 of 1886. There is nothing to prevent people bargaining this year and lawfully registering the year after next; but Law 7 of 1886 contemplates no such protracted matter. The bargain is at least as much a part of the sale as the registration is, and yet Section 3 is surely looking at something which from its nature must be done within a year.

I cannot resist the conclusion that the whole law is aimed at acts done between parties; and of any such act there is a moment at which one can say "it is done or made," whereas, the moment before, that could not have been said; and to such a state of things Section 3 (2) would naturally be easy of application, while it would be impossible if the transactions could be expanded to cover more than a year. Even if the whole set of actions from first offer to registration is to be regarded as the transfer we shall see if we look at the expressed object of the law, (to prevent collusive dealings) that it would be no straining to hold that, seeing that no fraud can possibly attach to registration in itself, the fraud referred to must be such as may potentially affect that part of the transfer, that is the bargain, in which the parties are the active agents. On such an interpretation, if that part fell, as to time, within the year provided, the case would be within the law. Otherwise the whole object of the law could be defeated by a fraudulent debtor delaying registration of an impugnable transaction till the day after action brought. I think the law can be reasonably interpreted so as to obviate so undesirable a state of things, and I do so interpret it.

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It has been further argued that as defendants were declared insolvent on the 16th September, 1926, no order can be made by us on this appeal. Law 20 of 1919, under which the insolvency order was made, says that on such an order all actions against the insolvent are to be stayed (Section 3) and that "all proceedings which in bankruptcy would be brought by . . . or against the syndics shall be brought by or against the Registrar". (Section 4.) I do not think a declaratory of this action sort, primarily directed against the transferee from the insolvent and not against the latter, can be stayed under Section 3 but the point, in any case, is met by the Registrar's being joined, as we have ordered, as a respondent to the appeal. It may be that the present proceedings will inure for his benefit and not for that of the plaintiff. We are not deciding that, but even if there might have been an alternative route to the same end by a step taken by the Registrar in the insolvency, it does not follow that this one is excluded.

The appeal is allowed with costs.

The sale, the subject matter of this application, is set aside and the Land Registry official will make the entries in the register rendered necessary by this order.
