[BELCHER, C.J., DICKINSON, J., LUCIE-SMITH, J.]

IN THE MATTER OF THE BANKRUPTCY OF THE COMMERCIAL FIRM N. CH. TAVERNARIS & BROS. OF NICOSIA

AND

IN THE MATTER OF THE APPLICATION OF AVRAAM TAVERNARIS, A BANKRUPT, OF NICOSIA.

BANKRUPTCY—HOUSE ACCOMMODATION, APPLICATION BY BANKRUPT FOR—LOCUS STANDI OF BANKRUPT APPLICANT—OTTOMAN COMMERCIAL CODE, ARTICLES 153, 163, 175, 177, 181, 182, 217 AND 237—CIVIL PROCEDURE LAW, 1885, SECTION 21—TURKISH LAW BEFORE OCCUPATION—IMPERIAL IRADE 7 REBIUL EVVEL, 1279—CODE OF CIVIL PROCEDURE (TURKISH) OF 2 REDJEB, 1296, ARTICLE 294 COMPARED—LAW OF 27 JEMAZI-UL-ACHIR, 1296, ARTICLE 55 COMPARED—CIRCULAR OF THE MINISTRY OF JUSTICE (TURKISH) OF 24 ZILKADE, 1297, COMPARED—WAHL AND THALLER (1922) ON FRENCH DROIT COMMERCIAL COMPARED—ADMINISTRATION OF ASSETS VESTING IN SYNDICS—APPOINTMENT OF ADVOCATE AS JUGE COMMISSAIRE —CYPRUS PRACTICE.

Appeal by the applicant Bankrupt from an order of a District Court dismissing his application that the Juge Commissaire and Syndics should be ordered to exempt certain house accommodation from the sale of the bankruptcy immovable assets, for his use.

HELD (per BELCHER, C.J.): There is no provision for a bankrupt to have house accommodation reserved.

(Per DICKINSON, J.): There is no provision for a bankrupt to apply to the Court for an order for a house to be exempted from the sale.

Triantafyllides for appellant.

Clerides for syndics.

Stavrinakis, Juge Commissaire, in person.

Judgment. THE CHIEF JUSTICE: This is an appeal from an order of the District Court of Nicosia dismissing an application by bankrupt that the Juge Commissaire and Syndics should be ordered to exempt from the sale of the applicant's immovables and to reserve for himself and his family a certain house in Nicosia. The District Court's decision was grounded on the absence of any provision in the Ottoman Commercial Code for such an exemption. At the same time the District Court expressed the opinion that though there was no legal obligation it would be quite proper for the creditors, through their syndics, to grant house accommodation to the bankrupt as an act of generosity.

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The appeal to this Court is made on several grounds, of which the substantial one is that the bankrupt is entitled to the exemption by law as of right.

In argument before us it was conceded on behalf of the appellant that there is no express provision of the Code giving the right claimed, but it was contended that by the Turkish law in force at the Occupation a judgment debtor was entitled to such an exemption, and that the principle was applied equally to sales in bankruptcy, that is that the provisions of the Code were read subject to the law relating to the execution of civil judgments; the argument proceeding that the old Turkish law on the subject being now replaced by the Civil Procedure Law of 1885 (whereby a similar exemption is provided for, in Section 21) the latter must govern the interpretation in this respect of the provisions of the Code.

To ascertain the Turkish law before the Occupation I have utilised Nicolaides 'Οθωμανικοὶ Κώδικες, 2nd Edition, Vol. II., which was quoted by appellant's counsel in the course of his argument.

The earliest reference in point is at page 1067, on which is printed an Imperial Iradé dated 7 Rebiul Evvel, 1279 (2nd Sept., 1862). That recites that according to an ancient Nizamname there could be sold for debt the movables and immovables of a debtor except one house of low value; and further that if the sale did not realise the amount of the debt the sureties would have to make it up. The Iradé then proceeds to provide for certain particular executions against tax-farmers and their sub-contractors respectively, which are not material.

The recital shows clearly enough that exemption of a house on a sale under judgment was recognised long before the Occupation, but equally clearly it contains no reference whatever to bankruptcy, though at the time the Iradé was issued the Commercial Code had been in force for twelve years, since 1850 that is to say. On the contrary the references to the amount of the debt, and to the sureties' contingent liability, show plainly that execution for civil debt alone was in question.

Next we have, at page 1882, Article 294 of the so-called *Προσωρινὴ Πολιτικὴ Δικονομία*, a Code of Civil Procedure, which article deals with the attachment of immovables for judgment debts and their sale, should movables prove insufficient. The last sentence exempts the judgment debtor's dwelling and a sufficiency of arazi mirié from both attachment and sale. The date of this Code is 2 Redjeb, 1296, that is 22nd June, 1879. It only needs a glance to show that it relates wholly to suits in the Court by and against individuals.

Then at page 1993 is Article 55 of the Law of 27 Jemazi-ul-Achir, 1296, *i.e.*, 18th June, 1879, promulgated that is to say a few days before the Code last referred to. This Law is entitled " Temporary Law relating to the Execution of Civil Judgments," and its Article 55 seems to overlap Article 294 of the Code. It (Article 55) provides that a house suitable to the condition in life of the debtor may not be sold, but it is to be left to him. If the debtor is a farmer (it goes on), he is to be left a portion of land enough to keep his household, to be assigned by the President of the Court. Again there is nothing to indicate any reference to bankruptcy.

At page 2003-4 there is a circular of the Ministry of Justice dated 24 Zilkadé, 1297 (16th October, 1880), explaining and reconciling apparent variances between Article 294 of the Code and Article 55 of the Law, and laying it down that in Article 294 the word ἀποφασίζεται must not be interpreted as having reference exclusively to judicial pronouncements but (as it appears) as extending also to orders given by the official in charge of a civil execution. But still it is only a civil execution which is here dealt with.

The Code and the Law both date after the Occupation, and the subject of them both is Civil Procedure and Civil Execution, nor is there anything in the circular indicating an intention (even supposing the power) to extend the scope of either to bankruptcy. On the other hand the Commercial Code which does deal with bankruptcy was in force at the date of the promulgation of all three, as it had been for long before the first and as it remained for long after the last. It is true that if they merely re-enact a former law or laws the fact that they date after the Occupation will not preclude us from looking at them, but even were they binding on us as they stand they take us no further than does the recital in the Iradé of 1862.

I now consider how far the matter is affected by law or judicial decision in Cyprus since the Occupation. There is no legislation on the point, and we should certainly not be justified in holding that because in an analogous case, which is, however, definitely not a bankruptcy under the Code, the Relief of Insolvent Farmers Law of 1919 (Section 10) exempts from distribution in the cases to which it applies that property which would be exempt from civil execution by reason of the proviso to Section 21 of the Civil Procedure Law of 1885, that is to say, house accommodation for the insolvent and family. Section 10 has, however, this bearing on the case before us, that its wording shows it to be assumed that the principle for which appellant has contended before us is not part of the law of Cyprus, for

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if the debtor's house accommodation is not in any case available for distribution in bankruptcy there would, so far as it is concerned, be no need to rely on the exception contained in Section 10, which in practice is utilised to secure its exclusion therefrom.

But it is argued that even if we can find nothing on the subject in the Code, as is admitted, nor in other Turkish law as it stood in 1878 or subsequent Cyprus legislation, as it appears from what I have stated as the case, yet still we ought to interpret the Code, taken as it is from the French, as the French authorities have interpreted their text. I have looked at the latest authorities to which we have been referred, both dated 1922, Wahl, Precis théorique et pratique de Droit Commercial, p. 847 et seqq, and Thaller, Traité elementaire de Droit Commercial, p. 1045. All that appears from these writers is that there is a difference of opinion as to whether goods not seizable in civil execution fall into the estate of a bankrupt, so that there is in any case nothing which we can treat as authoritative. I observe (Wahl, Article 2330) that when in France the debtor's "homestead" was declared exempt from civil execution by the law of 12th July, 1909, it was considered by the French legislature necessary to provide that it should not form part of the estate in case of bankruptcy: indicating an intention to alter the law to which Section 10 of our law of 1919 presents a curious parallel.

We must, I think, treat Article 153 (of the Ottoman Commercial Code) as definitely vesting in the creditors' representatives the administration of all the assets, subject in certain cases of which Articles 177 and 182 provide examples, to very limited potential re-vesting in the bankrupt of the right to deal with them. No such right is given as to house accommodation.

On the second ground of appeal relied on, the admitted practice of the Cyprus Courts to appoint an advocate and not a judicial officer as Juge Commissaire is one with which I do not think we should interfere after it has prevailed for so many years. In my view, therefore, it was competent for the Juge Commissaire in this case to give the leave required for sale under Article 278.

As to the applicant's moral claim, if any, to have this house or any house reserved to him, that is a matter with which this Court has nothing to do; nor, in the view which I have taken, is it necessary to decide whether or not he has the right of appearing before us directly and not through the syndics.

I think the appeal must be dismissed.

DICKINSON, J.: I agree with the learned Chief Justice in his findings dealing with various foreign legal authorities cited by counsel for the appellant. In my judgment I have myself viewed this appeal from a rather different angle.

The appellant (applicant) was a partner in the firm Tavernaris & Bros. which was declared bankrupt on the 18th July, 1924, and at the same time he was declared bankrupt personally.

From that date he was divested of every vestige of his movable and immovable property by operation of Article 153 of the Ottoman Commercial Code. The article runs as follows:—

> "A bankrupt whose bankruptcy has been ordered, apart from their being left no right in him to manage his properties, cannot lay hands even on properties passing to his charge during his bankruptcy. And albeit that things being so proceedings and matters of every sort relating to the sale, etc., of all the bankrupt's movable and immovable properties and goods pertain to the syndics, it is, however, permissible for the bankrupt to be summoned by the Commercial Court when there is need to examine him on some matters."

In my opinion the language of this article is in no way ambiguous and, therefore, there is no necessity to examine Article 443 of the French Code which, however, has the same provisions.

The appellant's counsel has not established the *locus standi* of the bankrupt to appear before the Court in the present proceedings.

The application seeks an order of the Court restraining the syndics from selling a particular house belonging to the bankrupt. Surely the proposed action of the syndics in putting up this house for sale is "a matter relating to the sale of the bankrupt's immovable property" and by Article 153 this is one of those matters which "pertain to the syndics."

The Code permits a bankrupt to apply personally to the Court on two or at most three specific occasions only: firstly under Article 175 when the bankrupt may apply to the Court for the dismissal of the syndics, but only after the creditors or the bankrupt have applied first to the Juge Commissaire to move the Court in the matter and the Juge Commissaire has failed to act. Secondly, under Article 181, when the bankrupt is under arrest and the Juge Commissaire fails or declines to move the Court to order the provisional liberation of the bankrupt,

the bankrupt may move the Court himself. Thirdly, under the official note appended to Article 182, an honest bankrupt if dissatisfied with the daily allowance which may be made to him by the Juge Commissaire at the instance of the syndics may apply to the Court.

It is to be noted that Article 237 states definitely that the syndics alone may apply, so that it would appear that this official note is not strictly accurate.

Now Article 163 specifically lays down that no appeal lies against the rulings of the Juge Commissaire.

One of the reasons for making the decisions of Juges Commissaire final is to prevent the waste of the assets of bankrupt estates in frivolous litigation.

The reason for limiting the rights of a bankrupt to appear before the Court to the specific occasions mentioned in Articles 175, 181 and possibly 182, is doubtless the same.

If indeed there be any right appertaining to the bankrupt to have house accommodation exempted for his benefit, he must move the syndics to grant such exemption and the ruling of the Juge Commissaire in the matter must be final.

We are not aware whether the appellant (applicant) made such an application to the syndics, nor whether the Juge Commissaire refused to make any exemption of the house in question, but in my opinion the Juge Commissaire alone has power to grant the relief claimed in the present application. I find, therefore, that the District Court had no jurisdiction to entertain that part of the present application which asks for an order of the Court exempting from sale the particular house mentioned therein.

The applicant further seeks, in the alternative, for other assistance from the Court, namely that the Court should order the syndics to provide some necessary house accommodation for the use of himself and his family. He bases this claim on the right of a judgment debtor to have so much house accommodation as is necessary for the use of the judgment debtor and his family reserved to the judgment debtor: *vide* Section 21 of the Civil Procedure Law of 1885.

He relies on statements contained in the judgments of the learned Judges of the Supreme Court in *Filippides* v. *Hira* reported in C.L.R., Vol. IX., p. 3, *et seqq*. The two Judges do not use exactly the same terms. Tyser, C.J., seems to regard the bankrupt as a judgment debtor absolutely with the same rights and privileges, and uses the term "judgment debtor" when speaking of the "bankrupt."

Bertram, J., approves of the reservation of house accommodation and trusts that the syndics will give it due effect, but is not aware that there is any legal obligation on the syndics so to do.

That particular case was contested on other grounds, namely whether a certain judgment creditor was entitled as a privileged creditor to an order for the sale of the bankrupt's immovable property on which he had lodged a memorandum of his judgment with the Land Registry Department, and as far as I can see from the report published the question whether or not the bankrupt was entitled, as of right, to have an order from the Court instructing the syndics not to sell a particular house, or to provide necessary house accommodation, was not argued before the Supreme Court. Therefore, the comments of the learned Judges must be regarded as *obiter dicta*. I must beg to differ from Mr. Justice Bertram when he says that he trusts the syndics will see that house accommodation is reserved to the bankrupt although they are not under legal obligation so to do, unless they should have first received such instructions from three-fourths of the creditors.

As I understand the duties of the syndics they are to liquidate all the bankrupt's property for the benefit of the creditors, and to fail to liquidate the house property would be, in my opinion, a dereliction of duty on their part.

But although I differ from him in that matter I would point out that Mr. Justice Bertram in his observations had in view two points of law which are pertinent to the present case:

(*a*) that in his opinion the bankrupt must look to the syndics for the granting of any such relief, and

(*b*) that the relief granted to judgment debtors by Section 21 of the Civil Procedure Law of 1885, was in his opinion not applicable to a declared bankrupt.

In these two conclusions I am in full accord with his observations, which are in direct opposition to Sir Charles Tyser's pronouncement.

It appears to me that proceedings in bankruptcy are not civil proceedings but are in the nature of quasi-criminal proceedings, having a decidedly more criminal aspect than proceedings under the Malicious Injury to Property Laws which on many occasions have been held by this Court to be quasi-criminal.

The Ottoman Commercial Code permits the syndics to grant certain facilities to honest bankrupts, and the Code recognises three different classes of bankruptcy (official note to Article 217).

(1) Ordinary bankruptcy, presumably the same class as that elsewhere referred to as honest bankruptcy;

(2) culpable bankruptcy; and

(3) fraudulent bankruptcy.

It would appear from this official note to Article 217 that in practice the Turkish Courts, and by Court practice I include the rulings of Juges Commissaire approved by the Courts, made a distinction in favour of bankrupts who were held merely unfortunate (honest), and it may be that there has grown up a similar distinction under the French Code. Where modern French jurists differ from one another on the question of the practice of those Courts in allowing a bankrupt house accommodation it seems to me that they may have been considering bankrupts of different classes.

Now the syndics in the present case have made an examination of the affairs of the bankrupt firm, and of the present applicant, and their report has been made to the Juge Commissaire, and he again has reported to the District Court. His report is to the effect that the present bankruptcy falls in the third class, namely fraudulent, and this finding renders the applicant liable to criminal trial.

We have no other information on which to rely for the purpose of discovering whether the present applicant would be entitled to the privileges the law permits the syndics to grant to honest bankrupts, if it can be said to include the reservation of house accommodation, but I am of opinion that he is not entitled to claim as such. His counsel describes the statements made in this judicial report as mere allegations, but I cannot concur with this description.

To sum up, I find, therefore, that applicant is not entitled to appear personally before the Court to prosecute this application and I find he is not entitled to ask for special consideration from the syndics by reason of the class to which his bankruptcy has been assigned by the syndics and approved by the Juge Commissaire.

The appeal should be disallowed.

LUCIE-SMITH, J.: I concur.

Appeal dismissed with costs.