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THE OFFICIAL RECEIVER (TRUSTEE OF THE ESTATE OF EVANGELOS IOANNIDES, A BANKRUPT) v. LAMBROS PAREAS.

[CREAN, C.J., AND HALID, J.]

THE OFFICIAL RECEIVER (TRUSTEE OF THE ESTATE OF EVANGELOS IOANNIDES, A BANKRUPT), *Appellant*,

v.

LAMBROS PAREAS, *Respondent*.

In Bankruptcy:

Re EVANGELOS IOANNIDES (*Respondent*),

AND

Ex parte LAMBROS PAREAS, *a creditor* (*Applicant*)

(*Civil Appeal No.* 3699.)

Bankruptcy proceeding—Agricultural Debtors Relief Law, 1940—*Cyprus Courts of Justice Order, Clause 2—Meaning of Civil Proceeding.*

The respondent herein filed a bankruptcy petition against Evangelos Ioannides on 11th March, 1941. Having received notice of the petition, the debtor made application to the Debt Settlement Board for the settlement and adjustment of his debts. The respondent contended that the filing of a petition in Bankruptcy could not be considered an action pending in respect of a debt such as contemplated in section 31 of the Agricultural Debtors Relief Law, 1940.

Held: A proceeding in bankruptcy is a civil proceeding as defined by Clause 2 of the Cyprus Courts of Justice Order, 1927. It is therefore included in the term "action" defined by Section 2 of the Agricultural Debtors Relief Law, 1940.

Appeal from an order of the District Court of Limassol.

P. Papaioannou for the appellant.

M. Houry for the respondent.

The facts of the case are set forth in the judgment of the Chief Justice.

CREAN, C.J.: Lambros Pareas of Limassol filed a petition in bankruptcy against Evangelos Ioannides on the 11th day of March, 1941.

According to the petition Ioannides, the debtor, owed £149. 2*s.* and other sums to the petitioning creditor at the time of the filing of the petition. It is set out in the petition that the debtor carried on business as a merchant in St. Andrew Street, Limassol, for some months prior to the presentation of the petition, and that the acts of bankruptcy relied on to support the petition were committed by the debtor within three months of the date of filing thereof.

The several allegations in the petition are verified by an affidavit of the petitioning creditor filed with the petition. In this affidavit it is said that the debtor's wife filed an action against her husband in the District Court of Limassol on the 25th February, 1941, claiming £330 from him on foot of a promissory note and bond respectively. Judgment for this sum of £330 was obtained by the wife against her husband, the debtor herein, by default of appearance on the 7th March, 1941. Following this an application for the issue of a writ of sale of his movable property was made on the same day and seizure made immediately thereafter. Whatever else can be said of these proceedings against the debtor, it must be admitted they were expeditious.

From the filing of the action till the seizure of the debtor's movable property after judgment, 10 days only had elapsed, and it seems therefore moderately clear that this lady did not allow the grass to grow under her feet. But if she were charged with undue and suspicious haste in getting judgment against her husband and seizing his goods she would probably reply, "*vigilantibus non dormientibus acquitas subvenit*".

From the affidavit of the petitioning creditor it appears he became aware of this lightning method of the debtor's wife to obtain judgment and seize the goods of her husband from an inspection of the file of proceedings in the Court. And as it, no doubt, appeared to him to be a colourable and collusive transaction and an attempt to defraud the other creditors of the debtor, he took steps to thwart her in that design. He did so, by filing a petition in bankruptcy knowing that once a receiving order is made, all the property of the debtor will vest in a trustee for the benefit of all the creditors generally.

One would imagine that the filing of the petition in Bankruptcy would have been an end of the matter, but the ingenuity of the debtor or his wife or their legal advisers was apparently not quite exhausted, for the next step taken by the debtor after he had read the notice of the Bankruptcy petition was to make an application to the Rural Debt Settlement Board for the settlement and adjustment of his debts. This Board was established by Law 12 of 1940 for the purpose of assisting agricultural debtors to pay their debts and sanctioning an arrangement with their creditors; and it is given power to receive applications and make orders on them for the relief of these agricultural debtors.

Is is said by Mr. Papaioannou for the appellant that agricultural debtors by this statute of 1940 are entitled to petition the Board to have their debts settled, and the Board can issue an award declaring that the debts, although payable at once, shall be paid over a period not exceeding 15 years, and can also reduce the rate of interest agreed upon. Power is also given to the Board, if it is satisfied that the debtor would be unable to pay his debts within 15 years, to reduce those debts by one-third, or declare him insolvent and allow unlimited reduction of the debts. This statute applies to all agricultural debtors whose property does not exceed £1,500 in value.

The first law affording relief or protection to farmers was Law 20 of 1927 and by virtue of it farmers were declared insolvent, and on complying with the requisites of the law they were granted unconditional discharges. This law was repealed by the Bankruptcy Law of 1930, and it is submitted on behalf of the respondent that this later law did in effect deny any relief to farmers. Reasons are given for this submission but I am unable to think there is any great substance in them.

Under Section 31 of the Agricultural Debtors Relief Law of 1940 the Board thereof is directed to send a notice to the Court to stay any action which is pending in that Court against the debtor who has sought relief.

As the debtor in this case included amongst his debts the debt of the petitioning creditor grounding the petition in bankruptcy, a notice was sent by the Board to the Court of bankruptcy to stay all further proceedings.

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The hearing of the petition was fixed for the 31st of March, and it was pointed out to the Court that the notice under section 31 had been sent by the Board to stay the action and therefore the proceedings in Bankruptcy should be stayed, at least temporarily. The definition of "action" as defined in section 2 of the A.D.R. Law, 1940, was referred to and it is as follows :—

"'action' includes all proceedings of a civil nature before any Court of Law".

The definition of civil proceedings as set out in the Cyprus Courts of Justice Order in Council, 1927, was also referred to, and it reads :— "All proceedings other than criminal proceedings". Criminal proceedings are also defined in the same section of the Order in Council. It is prescribed in the same Order what is the jurisdiction of the Courts in civil matters, and *inter alia* it is prescribed that they shall hear bankruptcy matters.

After referring to all these different definitions and powers of the Civil Courts it was argued that the bankruptcy petition filed against the debtor must be taken to be a civil cause or action and therefore the proceedings must cease on receipt of the notice under section 31 of the Agricultural Debtors Relief Law.

Counsel for the respondent submitted that the filing of a bankruptcy petition cannot be considered as an action pending in respect of a debt such as is contemplated by the above section. He argues that the petitioning creditor does not claim his debt from anybody ; what he asks for in his bankruptcy petition is a receiving order against the debtor. Once that order has been made the property of the debtor vests in a trustee for the benefit of all his creditors generally, and the petitioning creditor would benefit to the same extent only as the other creditors.

One other contention for the respondent is, that proceedings in bankruptcy are of a *quasi* criminal nature and therefore cannot come under section 31 which refers only to liability for a debt. It is argued that once the Receiving Order is made the status of the debtor changes, he is divested of his property and becomes subject to criminal proceedings for any irregularities or fraud in his trade or business which occurred within the 12 months immediately prior to the filing of the petition. Even if the debtor is a non trader he is subject to the same disabilities and penalties for certain acts as a trader.

In Volume 2 of Halsbury's Laws of England referred to by Mr. Houry for the respondent, bankruptcy proceedings are said to carry with them *quasi* penal consequences. In olden days there is no doubt that bankruptcy was looked upon as a crime and it must have been looked upon as a fairly serious one, as I see from this volume of Halsbury cited that John Perrott was hanged in Smithfield in the year 1761 for concealing part of his effects, and that proceeding, it must be admitted, is very far from being a civil one.

The authority for the statement in Halsbury that bankruptcy proceedings carry with them *quasi* criminal consequences, is apparently taken from the cases In *re X Y Ex parte, Hale*, 1 K.B. Div. 1902, and In *re* a Debtor reported in 2 K.B.D. 1910. And to understand fully what is meant by that statement I think it is necessary to examine closely the judgments in these cases. In the first of these cases it was decided "(1) that on the hearing of a

petition for bankruptcy the petitioning-creditor is entitled to production of the debtor's books for the purpose of proving allegations in the petition, (2) that the debtor himself can be called as a witness by petitioning-creditor in support of the petition on the ground that, now that a debtor can petition for an adjudication against himself, bankruptcy proceedings can no longer be considered as of a *quasi* criminal nature ".

Prior to the decision in this case it was not usual to call a debtor as a witness on the hearing of his own petition, and the reason probably was, according to Vaugham Williams, L.J., that proceedings in bankruptcy were regarded as, in some sense, criminal proceedings, and as you could not call a prisoner to give evidence against himself so you could not call a debtor on the hearing of a petition against him.

But in this case the calling of the debtor was allowed; and in the course of his judgment Lord Justice Vaugham Williams remarks in deciding that his evidence can be given, " In saying this, I am bearing in mind that since 1869 the nature of bankruptcy proceedings has been considerably altered. It is difficult to say that bankruptcy proceedings are in any sense criminal now that a debtor may petition against himself ".

In the same case Romer, L.J., expressed the view that it is impossible at the present time to say that the presentation of a bankruptcy petition against a man is in the nature of criminal proceedings against him. And Cozens Hardy, L.J., agreed with the above views.

Although there was no express issue before the Court as to what was the nature of bankruptcy proceedings, it is clear that their lordships were strongly of opinion that the presentation of a bankruptcy petition is not in the nature of criminal proceedings.

The other case to which I have referred, and the one on which the statement in Halsbury is undoubtedly founded was In *re* a Debtor decided in 1910; and the point therein at issue must have been considered one of difficulty for the case was first heard before the Master of the Rolls and Buckley and Kennedy, L.JJ., and after it had been argued at some length it was adjourned for argument before the full Court. It was decided by the full Court in this case that the petitioning-creditor in a bankruptcy petition cannot, before the hearing of the petition, obtain an order for interrogatories or discovery to prove the allegations in a petition.

Again the point at issue in this case is not the definite one, whether or not bankruptcy proceedings are in the nature of criminal proceedings. But the *obiter dicta* of their Lordships in giving judgment help one to form an opinion on this point. The case of *X Y* was referred to by Vaugham Williams, L.J., and he said he had nothing to detract from it; and that the Court of Appeal in that case came to the conclusion that proceedings in bankruptcy could not properly be considered as criminal proceedings on the ground, amongst others, that a bankruptcy petition had for some years past been a proceeding of which an insolvent might avail himself to get his estate administered in bankruptcy.

The remark of Fletcher Moulton, L.J., relevant to this case is where in his judgment he says, " Now proceedings in bankruptcy are of course not actions, but in my opinion what the petitioner seeks by his petition is in the highest degree penal in its consequences. It

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amounts to loss of civil status carrying with it grave disqualifications." Farwell, L.J., says that he agrees with Fletcher Moulton, L.J., that an adjudication of a bankruptcy involves very grave disqualifications, and Buckley, L.J., agreed on the ground that proceedings in bankruptcy are in the nature of penal proceedings inasmuch as they result or may result in an alteration of the debtor's status.

It is true that what a petitioning-creditor seeks by his petition, is in the highest degree penal in its consequence, as stated by Fletcher Moulton, L.J. If on the petition the debtor is adjudicated bankrupt or a receiving order made, the consequences to the debtor are penal inasmuch as he loses his status in certain circumstances. For instance if he were a Member of Parliament before the adjudication order that order would automatically debar him from sitting as such member.

The filing of the petition alone however would not be penal in its consequence until the adjudication or receiving order is made, though the words of Buckley, L.J., indicate that he was of opinion that even the filing of a petition was in the nature of a penal proceeding as it might result in an alteration of the debtor's status. It has been said the filing of a petition is a *lis pendens* and an adjudication order.

Comparing what Fletcher Moulton, L.J., says that proceedings in bankruptcy are not actions but penal in their consequences and what Buckley, L.J., says that proceedings in bankruptcy are in the nature of penal proceedings as they may result in an alteration of the debtor's status with the remarks of Vaugham Williams, L.J., there appears to me to be some doubt in the matter as there is a certain amount of conflict in the views expressed by them.

With that doubt before me I turn to the local laws and I see an action is defined by the Agricultural Debtors Relief Law as all proceedings of a civil nature before a Court of Law. That definition does not bring us much further as there is still the question whether or not bankruptcy proceedings are of a civil nature. Then on reference to the Cyprus Courts of Justice Order, 1927, I see an action is defined in exactly the same words as in the A.D.R. statute. Criminal proceeding, however, by the C.C.J.O., 1927, means any proceedings instituted against any person to obtain punishment of such person for any offence against the law. That definition I would say does not contemplate bankruptcy proceedings as criminal proceedings, because bankruptcy proceedings are not brought solely and primarily to obtain punishment of the debtor for an offence against the law. They may be brought to put him out of trade, or for the purpose of ejecting judgment-creditors in possession of execution, but not necessarily to have him punished by law. In this same Order in Council civil proceedings are defined as including all proceedings other than criminal proceedings. That being so, if bankruptcy proceedings do not come under the definition of criminal proceedings then according to this law they are civil proceedings. And if this Order in Council still governs the procedure in the Courts of Cyprus proceedings in bankruptcy can be considered as civil proceedings in the absence of any definite reference in A.D.R. Law to bankruptcy proceedings. It is a pity such a reference was not made as then there would have been no doubt in the matter.

In conclusion I would say, but with a certain amount of hesitation, that the filing of a bankruptcy petition can be considered as a civil proceeding as it may not have any penal consequences, and therefore such as was contemplated by the Agricultural Debtors Relief Law; and consequently the proceedings on the petition should have been stayed as applied for by the Board. The appeal should therefore be allowed in my opinion.

The question raised by this appeal is not, at this moment, one of very great importance, as I understand the time within which applications to the Board for relief by debtors has expired Therefore, there is no possibility of this question arising again as there will be no more applications filed. And if there are no more applications there can be no more contests as to their priority over petitions in bankruptcy filed.

Appeal allowed—as the appellant is considered to have no merits, no costs of appeal are allowed.

HALID, J.: I concur.

[GRIFFITH WILLIAMS AND HALID, JJ.]

1941
Nov. 22.

HOURIYE MUSTAFA AND OTHERS, *Appellants*,

v.

AHMED RAMADAN AND OTHERS, *Respondents*.

(*Sheri Appeal No.* 34.)

Mohammedan Law—Inheritance—Evidence of Genealogy—Admissibility of Nufus Books.

This action was brought to determine claims to share in the estate of one Yusuf Jemal Mustafa Raif, deceased The plaintiffs (respondents in this Court) claimed through one Ramadan, son of one Yero Ahmed, a brother of the deceased's father Mustafa Raif The defendant 1's claim as sister of the deceased was admitted The defendants 2, 3, 4, 5 and 6 claimed through their grandfather one Shukri, and defendant 7, as guardian *ad litem* of two minors, claimed through their grandfather one Hashim. It was admitted that the said Shukri and said Hashim were sons of one Haji Mehmed The rights of the defendants to inherit depended on the said Haji Mehmed's being the father of the said Mustafa Raif. The plaintiffs contended that he was the brother

In support of their case defendants (appellants in this Court) produced the Nufus Book of Nicosia, and also a declaration made in the Sheri Court, Nicosia, in the year A H.1291 (A.D 1874). The plaintiffs produced the Nufus Book of Tala The admissibility in evidence of declaration and of the entries in the Nufus Books, and if admitted, the weight to be given to them was considered

Held. The Nufus Books having been duly kept under the provisions of a Turkish law of which the Court can take cognizance are admissible in evidence; and very strong evidence would be required to contradict the entries in them. The Court declaration is admissible for what it is worth.

Appeal from a judgment of the Sheri Tribunal of Nicosia–Kyrenia,

Fadil N. Korkut for the appellants.

Ph. Markides for the respondents.