

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.

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

[GRIFFITH WILLIAMS AND HALID, JJ.]

HOURIYE MUSTAFA AND OTHERS, *Appellants*,

v.

AHMED RAMADAN AND OTHERS, *Respondents*.

(*Sheri Appeal No. 34.*)

1941  
Nov. 22.

*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.

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HOURIYE  
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v.  
AHMED  
RAMADAN  
AND OTHERS.

The facts are set forth in the judgment of the Court which was delivered by:—

GRIFFITH WILLIAMS, J. : This is an appeal from a judgment of the Sheri Tribunal of Nicosia-Kyrenia in which case the Court gave judgment in favour of the plaintiffs who claimed as heirs of Yussuf Jemal Mustafa Raif, deceased of Nicosia, to share in the distribution of his estate.

The defendants were: defendant 1, the only surviving sister of the deceased Jemal, Houriye, whose claim to share was admitted; and defendants 2, 3, 4, 5 and 6 grandchildren of one Shukri, and two minors represented by their guardian *ad litem* defendant 7, the grandchildren of one Hashim.

The relationship of Shukri and Hashim and their descendants, the defendants 2-7, with the deceased Jemal, was disputed by the plaintiffs, who claimed that their father, one Ramadan, was of the same relationship to the deceased Jemal as Shukri and Hashim, and that as he was the only one of the three to survive the deceased Jemal, and was at that time the deceased's nearest relation on the Asaba side, he and his children were entitled to share in the inheritance in priority to the said defendants.

The plaintiffs alleged that Hashim and Shukri, who were the sons of one Haji Mehmed, were nephews of the deceased Jemal's father Mustafa Raif, whereas the defendants claimed that Mustafa Raif was himself a son of Haji Mehmed and consequently a brother of Hashim and Shukri. The case therefore turned on the question of whether Mustafa Raif, the father of the deceased Jemal, was the son or a brother of Haji Mehmed. The plaintiffs said he was the brother of Haji Mehmed, and consequently brother of Ramadan's father Yero Ahmed, all three being sons of one Yusuf Borouzan of Tala. This would make the said Ramadan, through whom the plaintiffs claimed, the deceased Jemal, and Hashim and Shukri all first cousins. But as only Ramadan outlived Jemal, under the Moslem law of inheritance his descendants would be entitled to succeed in priority to the descendants of Hashim and Shukri.

The case first came on for hearing in December, 1936, but judgment was not given until the end of 1937. On the conflicting evidence the Sheri Judge decided to believe the version of the genealogy given by the plaintiffs. It is difficult sometimes to follow his reasoning as it is not always clear what weight he attached to the different parts of hearsay evidence, since necessarily in a pedigree case of this kind a great part of the evidence must be hearsay.

On the appeal of the defendants to the Supreme Court for the case to be reheard on the ground that fresh documentary evidence had come to light, the Supreme Court on the 5th June, 1939, referred the case back to the Sheri Court to reconsider the case and to hear any fresh evidence adduced.

On 21st December, 1939, after objection by counsel for the plaintiffs the Court allowed the production in evidence of the Nufus Book of Nicosia, and of a declaration made in the Sheri Court, Nicosia, in the year A.H. 1291. In the said Nufus Book appeared an entry of the family and servants of one Mustafa Raif of Nicosia. This entry clearly referred to the family of the Mustafa, father of the deceased Jemal and of the defendant Houriye. It also set out that Mustafa Raif was the son of Haji Mehmed Agha.

It was clear that if this evidence was accepted the case for the plaintiffs was at an end, as has been admitted in this Court by Mr. Markides, counsel for the plaintiff-respondents. But the entry regarding Mustafa Raif's parentage given in this book received substantial support by the other document produced—a court record—namely a declaration made in the Sheri Court regarding a certain transfer of a house and land, which was made in the presence of the Honourable Mustafa Raif Eff., son of Haji Mehmed Agha, who was acting on behalf of his discharged slave Ali Abdulla. The name of one Ali Abdulla also occurs in Mustafa Raif family entry in the Nufus Book, Nicosia, as one of his servants.

The question, therefore, arises as to the admissibility of these documents and the weight to be given to the evidence they contain. Clearly, at the lowest appreciation, they corroborate in detail the evidence given by Mustafa Raif's nearest living descendant, namely his daughter Houriyeh, who would be expected to know more than anyone else concerning her father; and who together with the Hoja who was present in the mosque when Mustafa was taken ill, gave the date of his death as having occurred before the British Occupation. Indeed Houriyeh gave the exact year of death mentioned in the Nufus Book, though if we believe the Nufus Book entry, she must have arrived at it by calculating her age from that event rather than the event from her age.

If this evidence of date of death is accepted, the evidence of Zehra that she had seen Mustafa alive was untrue, and the evidence also of other plaintiffs' witnesses as to his age, appearance, profession and so on, was untrue.

The learned Sheri Judge decided that the Nicosia Nufus Book was admissible, but having done this it is difficult for us to understand why he did not accept its contents.

Nufus Books were kept in all districts under the Turkish rule in compliance with a law passed for regulating provincial administration in the year A.D. 1864, as is shown in Destour, Vol. 1, p. 633. The Book was under the law to be kept by special clerks and to be kept continuously. It was a public register similar to the records kept today. Under Turkish Law, which was the law then applicable to Cyprus these books would be referred to in Court for knowledge of the facts contained in them. Because in England registers have in order to be admissible in evidence to fulfil certain very stringent conditions, which probably a record of this kind would not fulfil, it does not follow that old records kept at a time before the introduction of more scientific and accurate registers would not be admitted on account of falling short of the perfection now required.

The Nufus Books were kept under the provisions of a Turkish law of which this Court can take cognizance. In the absence of evidence to the contrary this Court must presume that this Nicosia Nufus Book was properly kept in accordance with the law then in force, and that like all registers of the kind was a public document. Indeed we know that certificate of births and deaths were made out from it. We think that it must be admissible on similar grounds to those on which old church registers dating from before statutory regulations respecting them were introduced were admissible in England. In England though not necessarily kept with the accuracy required of modern records they were admissible for what

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they were worth as public documents by the Common Law. The case of *Sturla v. Freccia*, L.R., 5 A.C., p. 623, sets out the law on this subject very plainly.

Though the law under which these Nufus Books were kept is no longer in force, it must have remained in force for some time after the occupation. The Order in Council of 1882 Clause 23 continued in force Ottoman Law in all cases in which Ottoman subjects were involved, save where such law was altered or modified by Cyprus Statute Law. It was not until 1894 that a law regulating the registration of Births and Deaths was introduced.

By section 11 (2) of the Interpretation Law, 1935, "Where a law repeals any other enactment, then unless the contrary intention appears the repeal shall not (b) affect the previous operation of any enactment so repealed or anything done or suffered under any enactment so repealed".

Though then the Provincial Administration Law of A.H. 1281 is not included in Schedule 4 of the Administration of Justice Law, 1935, and must be no longer in force, any public register kept under the provisions of that law must be admissible in evidence in this Court.

If then this book was rightly admitted in evidence, even though the contents be only considered *prima facie* evidence, it will require very strong and certain contrary evidence to rebut it. At the time the entries were made this action was not contemplated, and no reason has been suggested as to why this record should be wrong. Even if admitted as hearsay evidence only, that is to say, the information Mustafa Raif gave of his father's name and his family, surely on this ground no one today could speak with greater authority than Mustafa himself could at the time this record was made some 70 odd years ago. This record is besides supported by the evidence of Mustafa's own daughter, speaking from information received from her parents. The date of death recorded in it also is supported by evidence of the Hoja. It is not as if all the oral evidence in the case combined to falsify the record in this book. Even then one would hesitate to say that the record was false, but would rather consider that it might refer to some other Mustafa. (This however on account of the verifiable facts set out in the entry itself seems highly improbable). As it is, the best evidence, namely that of Hourie and of the Hoja, supports it.

With regard to the other document, an old Court record, if admitted only as evidence of repute does at least show that Mustafa Raif was a man of some importance and that he was known to the Court as son of Mehmed Agha. This, in our opinion, is quite conclusive in favour of the appellant's contention.

The entry of Mustafa Raif, son of Yousouf, a labourer, in the Nufus Book of Tala seems to refer to another Mustafa Raif, a name very common in the Colony. Besides this entry is not altogether free from suspicion.

The appeal will therefore be allowed with costs here and in the Court below except those incurred in the first appeal to this Court and the second hearing in the Court below which must be borne by defendants 2-7.

Judgment of the Sheri Court to be set aside.