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and the Courts held that the statute gave them no discretion—an order for ejectment must be made. However, we have looked at the facts in these English cases; in each one the rent was considerably in arrears, and the landlords had served notices to terminate the contractual tenancies because of these arrears; these were not cases of a landlord suddenly pouncing on a tenant for a trifling delay in paying his rent.

This appeal is accordingly allowed. The order of the trial Court must be set aside and the respondent's claim dismissed. The appellant is entitled to his costs here and below.

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ARTEMIS VASSILIADES AND OTHERS
v.
AFRODITI VASSILIADOU

[HALLINAN, C.J., AND ZEKIA, J.]
(January 9, 1954)

ARTEMIS VASSILIADES AND OTHERS, *Appellants,*

v.

AFRODITI VASSILIADOU, *Respondent.*

(*Civil Appeal No.* 4043)

Fraudulent Transfers Avoidance Law (Cap. 95)—Claim by transferee to balance after creditors satisfied—Locus standi of heirs of bankrupt vis-a-vis the trustee in bankruptcy—Res judicata—Claim not to vary but to interpret legal effect of previous order.

In 1939 the plaintiff's father transferred nearly all his property to her and in 1940 he was declared bankrupt. In 1941 her brother, the 2nd defendant, as a judgment creditor of her father obtained an order setting aside the transfers of 1939, which order was upheld in the Supreme Court and in the Privy Council in 1944.

In 1945 the plaintiff applied to review or amend the order setting aside the transfers so that any surplus after satisfying the creditors should be for the plaintiff. The District Court held that it had no jurisdiction as the Privy Council had not ordered a new trial. In June, 1946, all the creditors were paid off in the bankruptcy and the surplus balance was vested in the trustee in bankruptcy under section 31 of the Bankruptcy Law.

In 1951 the plaintiff brought the present proceedings claiming a declaration that she was entitled to the surplus after satisfying the creditors.

The District Court held that the defendants other than the trustee in bankruptcy had no "*locus standi*"; that the proceedings in 1945 did not make the claim "*res judicata*"; and that the plaintiff was entitled to the declaration as claimed.

Upon appeal,

Held: (i) Before bankruptcy proceedings are concluded and the creditor satisfied, the debtor, his heirs or transferees can have no *locus standi;* but after all creditors are satisfied, any

party interested in a surplus has a *locus standi* in any proceedings relating thereto.

(ii) Since the Court in the present proceedings is in substance not asked to vary or amend the order of 1941 setting aside the transfers, but to declare the legal effect of such order, the decision of the District Court in 1945, does not make the present proceedings *res judicata*.

(iii) The object of the legislation to set aside transfers in fraud of creditors has been, since the time of Elizabeth I, to set such transfers aside only so far as is necessary to satisfy the creditors; and an order made under section 4 of Cap. 95 should be so construed, even if the property, to enable the creditor to enforce a judgment, is registered in the name of the transferor-debtor.

Appeal dismissed.

Appeal by defendant from the judgment of the District Court of Famagusta (Action No. 503/51).

J. Clerides, Q.C., with *G. Achilles* for the appellants.

Sir Panayiotis Cacoyannis for the respondent.

Judgment was delivered by the Chief Justice.

A separate judgment was also delivered by Zekia, J.

HALLINAN, C.J.: This case concerns the property of a certain Haji Nicolas Vassiliades of Vatyli which has been the subject of litigation for the last 18 years; and to understand the issues in this case it is necessary to give in briefest outline the history of this long legal struggle. In 1935, the second defendant in these proceedings, who is a son of Mr. Vassiliades, brought two actions against his father; in 1936 Mr. Vassiliades transferred nearly all his property to his daughter Afroditi, the respondent; in 1937 and 1938 the 2nd defendant, obtained judgments against his father; and in April, 1939, he applied to have the transfers of property from Mr. Vassiliades to the respondent set aside. In September, 1939, the respondent, possibly in order to hinder the 2nd defendant from levying execution on their father's property, obtained a receiving order in bankruptcy against her father who was adjudicated bankrupt in February, 1940. In 1941 the action to set aside the transfers under the Fraudulent Transfers Avoidance Law (Cap. 95) was continued, the name of the trustee in bankruptcy being substituted for that of the judgment debtor, and the Court in May, 1941, ordered that all the transfers be set aside. In the following year Mr. Vassiliades died. The respondent appealed against the order setting aside the transfers but this appeal was dismissed both by the Supreme Court and, in 1944, by the Privy Council. The main issues before the Privy Council were whether the President of the District Court was disqualified through bias and whether there had been other irregularities in the trial.

The respondent, however, appears to have raised in the Privy Council the question as to what should happen to any surplus that remained from the property transferred after the creditors had been satisfied. However, this was a minor issue and was discussed at the end of their Lordships' judgment in the following sentence: "It is stated that the value of the property in question is considerably in excess of the debt of the first respondent. That matter must be dealt with by the Courts in Cyprus to whom their Lordships refer it to do what is just in the circumstances".

In 1945 the respondent Afroditi applied to the District Court to do what is just in the circumstances, *i.e.* amend or review the judgment of the District Court dated 26th May, 1941. The District Court gave its decision on the 6th December, 1945. It stated the issue before it thus: "Did the Privy Council invest the District Court with powers of amending or review, *i.e.* of a new trial"? The formal order of the Privy Council had merely dismissed the appeal and confirmed the judgment of the Supreme Court given in July, 1941. The District Court in refusing the application said "The judgment of the Privy Council does not amount to a reference to this Court for a new trial".

By the 22nd June, 1946, all creditors of the deceased had been paid off in full. In 1947 the respondent commenced an action similar to the claim in the present proceedings. A settlement was reached but was later set aside by the Court and finally in 1951 the present proceedings were instituted. The Court below in giving judgment for the respondent ordered:—

> "There will be judgment for plaintiff with a declaration that she is entitled to the property which came to defendant 1 as trustee in bankruptcy of the deceased Hji Nicolas Vassiliades under the avoidance order made on the 26th May, 1941, in action 244/35 District Court, Famagusta, and which is still found in his possession or under his control and administration. And moreover, that plaintiff is entitled to the income of such property, actually collected by the said trustee as from the date of the last dividend, subject to any payments made by the trustee out of such income, for any costs and expenses incidental to the bankruptcy up to the closing of his accounts. And there will be an order directing the trustee to effect transfer of property; to account for income and make payment to plaintiff accordingly".

Before discussing the main issue in this appeal it is convenient to dispose of three grounds of appeal which have been argued before us, namely, (i) the *locus standi* of the defendants-appellants other than the trustee in bankruptcy; (ii) the defence of *res judicata;* and (iii) the defence that the respondent's claim is statute barred.

The trial Court reached the conclusion that none of the defendants, except the trustee in bankruptcy, had any *locus standi* because the estate of the deceased could only be represented by the administrator of the estate who was the trustee in bankruptcy. The trial Court appears to have relied on an order made by the Court under section 31 of the Bankruptcy Law (Cap. 6) which provides that where the Court annuls an adjudication in bankruptcy under that section the property of the debtor vests in such person as the Court may appoint. But the person appointed under that section is not an administrator of the estate, and the appointment does not preclude the heir of a deceased debtor from claiming an interest in any surplus which remains after the creditors have been paid in full. Before bankruptcy proceedings are concluded and the creditors have been satisfied, the debtor, his heirs or transferees can have no *locus standi*; but after all creditors are satisfied, any party interested in a surplus has a *locus standi* in proceedings relating thereto. The first defendant, the trustee in bankruptcy, has not appealed but, in my view, the other defendants have the right to appeal if they so wish. I consider, therefore, that the trial Court erred in its conclusion on this point.

On the other hand, I am clearly of opinion that the trial Court was right on the issues of *res judicata* and the statute of limitation. If, as in the application to the District Court, the respondent was seeking in the present proceedings to have amended or reviewed the judgment of the District Court in 1941 setting aside the transfers, then it might well be argued that she was seeking to disturb a *res judicata*; the issue in the present proceedings is not whether the order of 1941 should be varied, but whether or not, on the true construction of the Fraudulent Transfers Avoidance Law (Cap. 95), an order setting aside transfers of property merely sets aside those transfers as against the creditors, so that any surplus remaining after the creditors are paid in full is for the benefit of the transferee. There can be no question of *res judicata* in the present proceedings for, in substance, the Court has been asked to declare the legal effect of the order of 1941, not to vary or amend it.

The question raised on the Limitation of Actions Law (Cap. 21) can be quickly disposed of. It was argued that the respondent's claim fell within section 5 of that law, which provides that no action for a cause of action not otherwise expressly provided for in the Law can be brought after the expiration of six years from the date when such cause of action accrued. Now six years (before the institution of the present proceedings in 1951) would bring us back to 1945. The creditors were not paid off in full until June, 1946, and the claim for a declaration as to the surplus assets of the debtor before June, 1946, would have been in respect of a right arising "*in futuro*". Clearly the statute does not run against a claimant merely because he might

have started an action for a declaration as to future rights before those rights actually accrue. The appellants' defence based on the Limitation of Actions Law must therefore fail.

We can now consider the main question which falls to be decided on this appeal, namely, whether the order of 1941 set aside the transfers as against the creditors only or set them aside absolutely so that the respondent, the transferee, has no right left in the property the subject of these proceedings. Section 3 of the Fraudulent Transfers Avoidance Law (Cap. 95) provides that a transfer made with intent to hinder or delay creditors shall be deemed fraudulent and shall be invalid against such creditors; and section 4 provides that in any proceedings for the recovery of a debt, the Court may set aside a transfer deemed fraudulent under section 3; and section 5 authorises the Land Registry to make all such registrations as may be necessary consequent on an order of Court.

In construing this law some help can be obtained by looking at the English Statutes "*in pari materia*". Discussing statutes "*in pari materia*" Maxwell on the Interpretation of Statutes, 10th Edition, at page 33, cites a passage from the judgment of Uthwatt, J., in *re Orbit Trust Ltd.'s Lease* (1943) Ch. 144. In that case the Court had to fix the rent of premises damaged by enemy action under an Act of 1939. The learned Judge refers to a statute passed after the great fire in London in 1666 and says: "I see no reason for thinking that there is not implicit in the legislation of 1939 the principle . . . which Parliament proclaimed as just in 1666". Up to 1925 the English Statute aimed against fraudulent transfers was 13 Elizabeth (Chapter 5) which provides that as against creditors such transfers should be utterly void, frustrate and of no effect. The present law in England is contained in section 172 of the Law of Property Act, 1925, which provides that every conveyance of property made with intent to defraud creditors shall be void at the instance of any person thereby prejudiced. It should be noted that section 172 merely provides that a conveyance made with intent to defraud creditors can be avoided; it does not say that this avoidance is as against creditors only. The section in this respect appears to be interpreted as having the same effect as the Statute of Elizabeth where it is expressly stated that the avoidance is as against creditors only. The English practice in making orders setting aside transfers is explained in the 15th Volume of Halsbury, 2nd Edition, page 260, where it is stated: "Where a conveyance is set aside under the section, the proper form of order, unless the Court is satisfied that nothing can in any possible event come to the grantee after the creditors have been paid, is not that the conveyance be delivered up to be cancelled, but that the grantee shall do all things necessary to make the property comprised in the alienation available for satisfying the claim of the creditors".

Section 42 of the Bankruptcy Acts, 1914 to 1926, which corresponds to section 46 of our Bankruptcy Law, contains a provision that any settlement which includes any conveyance or transfer of property shall be void against the trustee in Bankruptcy if the settlor becomes bankrupt within two years (or, in certain circumstances, 10 years) after the date of the settlement. The notes to this section in Williams on Bankruptcy, 15th Edition, page 330, cite the case of *Re Sims v. Mans.* 340 for the following proposition: "It seems, however, that the settlement is only avoided so far as is necessary to satisfy the debts of the bankrupt and pay the costs of the bankruptcy and that the title to the surplus, if any, of the settled property is unaffected".

The English Courts in exercising their powers under the Statutes of Elizabeth and the Act of 1925 appear to have been careful in all cases where a surplus might be anticipated to make clear that the setting aside was only as against the creditors. For example, in the case of *French* v. *French*, 43 English Reports, 1166, the Court found that a trader had, with intent to hinder and delay his creditors, sold his business in consideration (*inter alia*) of an annuity being paid to his widow after his death out of the business profits. The Court set aside so much of the sale as related to the widow's annuity. Lord Cranworth, L.C., at page 1169 says: "I may observe, that in my opinion (though I am not aware of any authority on the point), if at any time hereafter the assets of the testator should be realised and found more than sufficient to meet all his liabilities, this Court would find the means of restoring the settlement and giving Mrs. French the benefit intended to be conferred upon her. All that I intend now to decide is, that the creditors of William French must be satisfied".

Having regard to the English Statutes from which our Law derives, the decided case and the practice of the English Courts in making orders under these statutes, it is quite clear that the object of the legislation has always been to set aside fraudulent transfers only so far as is necessary to satisfy the claims of creditors; and I see no reason why our Law (Cap. 95) should not be similarly construed. The very nature of the proceedings, where creditors seek to avoid conveyances made in order to hinder them, makes it undesirable that any matters should be put in issue which are not issues between the creditors and the debtor; it would inevitably complicate the issues and cause confusion if a Court when considering the issue between creditors and debtors should also have to decide issues of law, equity and fact between the debtor and his transferee.

It has been argued for the appellants that because the property whose transfer was set aside has been re-registered in the name of the debtor, this registration has absolutely

destroyed the respondent's interest in the property. In our view the retransfer is not a matter of substance but of procedure, because under section 62 of the Civil Procedure Law (Cap. 7) a judgment creditor, before he can enforce his judgment debt by a sale of the debtor's interest in the immovable property, must have that property registered in the name of the debtor.

I conclude therefore that the trial Court was right in making the declaration which it is sought on this appeal to set aside. *The appeal must therefore be dismissed with costs.*

ZEKIA, J.: I propose to deal only with the main issue. There is no need for me to go into the facts of the case and I agree and have nothing to add to what has been stated in the judgment just delivered in connection with the other points raised in appeal.

The main issue is whether the creditors' claims having been fully satisfied, the surplus of immovable properties originally transferred by deceased Nicolas Vassiliades, the bankrupt, to his daughter Afroditi Vassiliadou, the respondent, (the transfer of which was set aside under the Fraudulent Transfers Avoidance Law) would go back to the transferee, the respondent, or would remain part of the estate of the deceased bankrupt available for his heirs.

The answer to this much depends on the interpretation to be placed on sections 3 and 4 of the Fraudulent Transfers Avoidance Law (Cap. 95).

The Court had set aside the transfer in question under these sections and the effect of such avoidance is the crucial point to be decided in the principal issue. Has the order setting aside such transfer rendered the transactions involved void for all intents and purposes or void to the extent only of satisfying claims of the creditors? Does the fact of ordering all transactions to be set aside without restricting such order to the extent of the liabilities of the transferor make any difference to the claim of the respondent?

Section 3 reads:

"Every gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property made by a person with intent to hinder or delay his creditors or any of them in recovering from him, his or their debts shall be deemed to be fraudulent, and shall be invalid as against such creditor or creditors; and, notwithstanding any such gift, sale, pledge, mortgage or other transfer or disposal, the property purported to be transferred or otherwise dealt with may be seized and sold in satisfaction of any judgment debt due from the person making such gift, sale, pledge, mortgage or other transfer or disposal".

This section makes it clear that fraudulent transfers are invalid only as against creditor or creditors and properties subject to such fraudulent transactions are rendered available for the satisfaction of judgment debts of the transferor or grantor as the case may be.

Section 4 describes the procedure for setting aside such fraudulent transfers. Section 5 provides for rectifying registration in the Land Registry which "may be necessary consequent on the order of the Court".

In my view the object of the Law has been made abundantly clear by section 3 which is to protect unsecured creditors against fraudulent dispositions by debtors. In this connection it may not be out of place if mention is made of the fact that at the date of the enactment of this Law (1886) the Ottoman Commercial Code was in force in Cyprus and only traders in respect of their commercial debts could be declared bankrupt (see Article 147 of the Ottoman Commercial Code). The object of this law appears to have been twofold:

(*a*) to protect unsecured creditors against fraudulent debtors who were not traders and the debts were not incurred in a commercial transaction;

(*b*) to save such creditors from having recourse to cumbersome bankruptcy proceedings in order to have their claims settled.

Having dealt with the object of the law we turn now to the scope of sections 3 and 4. The phrase "shall be invalid as against such creditor or creditors" in section 3 and further down in the same section the sentence "The property purported to be transferred may be seized and sold in satisfaction of any judgment debt . . ." strongly suggest that the fraudulent transfers are avoided only to the extent of the debtor's liabilities. Section 4 deals only with the procedure to give effect to section 3. Section 5 likewise relates to a procedure necessitated by section 3 because for putting up for sale immovable properties of a judgment debtor such properties should stand registered in the Land Registry books in the name of such debtor. Section 22 of the Civil Procedure Law (Cap. 7) reads:

> "The immovable property of a judgment debtor which may be sold in execution shall include only the properties standing registered in his name in the books of the Land Registry Office".

In other words powers given to the Court and to the officer of Land Registry under sections 4 and 5 respectively were intended only to implement and to be exercised within the scope of section 3.

The Court's order setting aside transfers under section 4 should therefore be taken to be limited in extent to judgment debtor's liabilities.

With a similar object in view section 46 of the Bankruptcy Law (Cap. 6) renders void against the trustee in bankruptcy, the kind of fraudulent transfers under consideration.

The view we have taken derives strong support from English law and authorities. 13 Elizabeth (C. 5) and section 172 of the Law of Property Act, 1925, which replaced the former correspond to our Fraudulent Transfers Avoidance Law (Cap. 95). Likewise section 42 of the Bankruptcy Act, 1925, is the counter part of our section 46 of the Bankruptcy Law (Cap. 6). The relevant English Acts like our corresponding law do not expressly provide for the extent of avoidance of a fraudulent transaction. Take for instance section 172 (1) of the Law of Property Act, 1925:

> "Save as provided in this section, every conveyance of property, made whether before or after the commencement of this Act, with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced".

Our section 48 of the Bankruptcy Law is identical with section 42 of the Bankruptcy Act. Nothing is mentioned either in these as to the extent of invalidity of the transactions avoided, beyond the words "shall be void against the trustee in the bankruptcy". It is significant, however, that the power of avoidance conferred on Courts under the said Acts have been found as being limited to the extent of judgment debtor's liabilities. Halsbury's Laws of England, Vol. 15, 2nd Edition, page 344, paragraphs 455, 469, 478 are relevant to the point. They deal with section 172 of the Law of Property Act, 1925. Towards the end of para. 455 it is said: "The avoidance being only for the benefit of creditors, once they have been satisfied the alienation stands good for all other purposes and cannot be impeached by other persons". Para. 469 reads:

> "Although conveyances made with intent to defraud creditors are voidable at the instance of any person thereby prejudiced, such conveyances are valid in all other respects and against all other persons. Where such alienations are made by deed they cannot be impeached by the grantor, by his personal representatives after his death, by his committee after his lunacy, nor by any other persons deriving title under him, the grant being good as against all third parties other than creditors. Where, however, the alienation is by delivery of goods and is in fact a mere pretence, and no purchase-money is paid although a receipt is signed for it, the grantor may recover the goods from the grantee in an action in trover".

Para. 478 also reads:

"Where a conveyance is set aside under the section the proper form of order, unless the Court is satisfied that nothing can in any possible event come to the grantee after the creditors have been paid, is not that the conveyance be delivered up to be cancelled, but that the grantee shall do all things necessary to make the property comprised in the alienation available for satisfying the claims of the creditors. The Court may direct a sale of so much of the property comprised in the conveyance as will be required to satisfy the claims of the creditors, or, where such a course is more convenient, of the whole of the property. Creditors are not entitled to an account of the rents and profits of such property received by the grantee before the conveyance is set aside".

In Halsbury Statutes of England, 2nd Edition, Vol. 2, page 379 in the foot-note to section 42 of the Bankruptcy Act, 1914 (C. 59) is stated that "settlement... shall be void to the extent to pay unsecured creditors".

Most of the cases referred to in Halsbury's Laws and Statutes in relation to paragraphs and notes quoted, could not be traced in the sets of reports available in the Supreme Court Library and one has to be content with what he finds in these works.

I think, therefore, that the trial Court was right in its decision and that the appeal should be dismissed with costs. I must confess, however, that in the absence of an authority on all fours some doubt lingers in my mind as to the effect of the unqualified order of avoidance of the transfers made originally by the Court which order so far up to the present proceedings stood unaltered.