

HUTCHIN-
SON, C.J.
&
FISHER,
ACTING J.
1906

[HUTCHINSON, C.J. AND FISHER, ACTING J.]

IN THE MATTER OF CHRISTO NICOLAOU,

EX-PARTE STENE N. ELEUTHERIADES.

April 30

BANKRUPTCY—OTTOMAN COMMERCIAL CODE, ARTS. 1 AND 147—APPENDIX TO
COMMERCIAL CODE, ART. 28—"TRADER"—"COMMERCIAL TRANSACTION."

A Shoemaker may be a trader within the meaning of Art. 1 of the Ottoman Commercial Code.

The Code makes no distinction between large and small traders.

On an application to declare a debtor in a state of bankruptcy on the ground of suspension of his commercial payments, it was proved that the debtor made 25 to 30 pairs of boots a week, that he sold these boots at fairs and elsewhere and that he purchased leather and other materials for the purpose of his business.

HELD: that he was a trader within the meaning of the Code.

This was an appeal from the District Court of Nicosia.

The facts appear from the judgment.

Chrysafinis for the Appellant.

Kyriakides for the Respondent.

Judgment: HUTCHINSON, C.J.: This is an appeal from the order of the District Court of Nicosia dismissing the Appellant's application for an order declaring Christo Nicolaou to be a bankrupt. The District Court dismissed the application on the ground that "Christo Nicolaou" is not a merchant within the terms of the Commercial Code; and the only point that has been argued on this appeal is whether or not the ground of that decision is correct.

By Art. 147 of the Commercial Code a trader who is unable to pay his commercial debt is deemed to be in a state of bankruptcy.

The term "trader," *tujar* in the Turkish, called "merchant" in the judgment of the District Court, is defined in Art. 1 of the Code thus:

"All persons who are engaged in commerce and enter into written agreements relating to commercial transactions are designated 'traders.'" And Art. 28 of the Appendix to the Code enumerates some things which are considered by law to be commercial transactions, the first of which is "every purchase of goods or produce for re-sale in their raw or manufactured state."

The evidence as to the nature of Christo Nicolaou's business is in substance this: he is a shoemaker; does not keep any books; has been a shoemaker for three years; and he says, "I used to buy goods from Stene (the Applicant) and others; I owe him 3,950*cp.* for leather and other materials . . . I had apprentices working for me . . . I had two shops; one I worked in; in the other I put my boot-trees, leather and stores. I made 25 to 30 pairs of boots a week for two years. . . . I used to go round in the fairs and sell boots." And the Applicant who sells leather wholesale, used to sell leather and other materials to Christo, in respect of which there is an admitted balance of £21 14*s.* 2*cp.* due to him; and he says that Christo sells boots wholesale.

I am not too confident in my opinion on this point, as I am differing from the President of the District Court and the Turkish Judge; but it certainly appears to me that Christo is a man who buys goods for re-sale in their manufactured state: and that he is therefore a *tujar* or "trader" as defined by the Code.

The only reason advanced, so far as I understood, for holding that he is not a trader is that his business was on a small scale; he only kept two or three apprentices and made about 1,300 to 1,500 pairs of boots in a year. But the Code makes no distinction between a large and a small trader.

I do not say that every shoemaker, blacksmith or carpenter is necessarily a "trader." A man who merely does jobs to order may not be a trader; but one who makes it his business to buy materials and manufacture them and then sell the manufactured goods is a *tujar* as defined by the Code, whether his business is large or small.

The order appealed from must be set aside and the Respondent Christo declared to be in a state of bankruptcy. The Applicant will add his costs in the District Court and in this Court to his debt.

FISHER, ACTING J.: Concurred.

Appeal allowed.

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&
FISHER,
ACTING J.

CHRISTO
NICOLAOU,
EX-PARTE
STENE N.
ELEUTHER-
IADES.

[HUTCHINSON, C.J. AND FISHER, ACTING J.]

POLICE,

v.

KYRIAKO KLEANTHI.

POLICE,

v.

IANNAKI COSTI AND IANNI IANNAKI.

CRIMINAL PROCEDURE—SUMMARY CONVICTION—CYPRUS COURTS OF JUSTICE
ORDER IN COUNCIL, 1882, ART. 48—CONSENT OF ACCUSED TO SUMMARY
TRIAL.

Where a prisoner is convicted of an offence not triable summarily without his consent it is necessary to the validity of the conviction that the consent should appear on the records of the Court.

These were appeals from the Magisterial Court of Larnaca. The conviction in the first case for an offence against Art. 202, in the second case against Art. 179 of the Ottoman Penal Code.

In neither case did it appear that the prisoner consented to be tried summarily.

Rossos for Kyriako Kleanthi.

Amirayan for the Crown in both cases.

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