agreements for the sub-letting of portions of khans, though even in this case the law declares that such verbal agreements shall only have a very limited effect.

I have therefore come to the conclusion that the contract in this case not being in writing is invalid, and cannot be enforced by action.

There remains the further question whether on an equitable principle analogous to that which allows compensation to a person who in good faith and in reliance on a supposed title has planted trees or erected buildings on another person's land, and to that by which a person who repudiates an informal sale of immovable property is not allowed to retain the benefit of the purchase money he has received from the buyer, the Defendant should not be required to return to the Plaintiffs some compensation for the expenditure, which in reliance upon the agreement, they have made upon the land, and of which the Defendant has indirectly reaped the benefit. The application of the principle to cases of the return of purchase money is explained in *Zenobio* v. *Osman* (1893) 2 C.L.R., 172, *Haralambo* v. *Ashmore* (1899) 5 C.L.R., 22, 23, *Evaggeli* v. *Nicola* (1900) 5 C.L.R., 49, and other cases. It seems to me that the present case may be legitimately considered as falling within the same principle, and that it would be inequitable to allow the Defendant to repudiate the agreement and at the same time to reap the benefit of the expenditure which in reliance on the agreement the Plaintiffs have made upon the land. The Defendant must therefore pay to the Plaintiffs the amount of that expenditure.

I concur in what the Chief Justice has said as to the *prima facie* presumption that all laws of general application in force in the Ottoman Empire at the date of the English occupation were in force in Cyprus on that date.

Appeal allowed.

[TYSER, C.J. AND BERTRAM, J.]

BETWEEN

TSIKKINOU HAJI SAVA, *Plaintiff,*

v.

KYRIAKOU YEORGHI MARIOLOU, *Defendant.*

BOUNDARIES—ADJOINING PROPRIETORS EACH CLAIMING UNDER QOCHAN—BURDEN OF PROOF—POSSESSION.

Where there is a dispute as to boundaries between two adjoining proprietors, both claiming under qochans, each of which is consistent with the claim of the person holding under it, and where one of the parties is in possession of the land in dispute, the onus lies upon the party seeking to disturb that possession to establish his claim to the satisfaction of the Court.

Appeal of the Defendant from the judgment of the District Court of Famagusta.

TYSER, C.J. & BERTRAM, J.

TSIKKINOU HAJI SAVA v. KYRIAKOU YEORGHI MARIOLOU

This was a boundary dispute between two adjoining proprietors. Both claimed by virtue of qochans, and each qochan was consistent with the claim of its holder. There was no natural boundary. Conflicting evidence of long user was given by a great number of witnesses called by both parties. The Plaintiff was in possession and had cultivated up to the boundary line which she claimed for the past eight years.

The District Court decided the case in favour of the Plaintiff on the basis of a plan which under the circumstances of the case they considered to be conclusive between the parties. The Supreme Court held that the plan did not bind the Defendant as against the Plaintiff, and it has not been thought necessary to report this part of the case. While deciding that the judgment of the District Court could not be supported on this ground, the Court nevertheless upheld the judgment on the ground stated below.

Pascal Constantinides for the Appellant.
G. Chacalli and *Agathangelos Papadopoulos* for the Respondent.

Judgment: Both Plaintiff and the Defendant have qochans, and as far as the terms of these documents go, either qochan may include the disputed strip. Both sides gave evidence of user, extending back for a great number of years.

It appeared however that the Plaintiff was in possession of the disputed strip and had cultivated it up to the boundary which she now claims for the past seven or eight years.

In these circumstances it was contended for the Defendant, that this being a claim by the Plaintiff, the onus lay upon the Plaintiff to establish to the satisfaction of the Court either that the disputed strip was necessarily included in her qochan, or that she and her predecessors had cultivated the disputed strip for a sufficient time to prescribe any possible claim on the part of the Defendant, and that the evidence on these points being conflicting and indecisive, the Defendant was entitled to judgment.

We are of opinion however that the case is governed by another principle.

In dealing with all property, but more especially with immovable property, the law *prima facie* protects possession—unless that possession can be shown to have been acquired by force, by stealth or by permission, as against the person impeaching it. This is a fundamental principle of the English law of real property, under which any person in possession of land may bring an action to vindicate that possession, and in any such case it lies upon the person disputing the right of the possessor to establish that he holds a superior title. It is also a principle of the Roman law, as shown by the interdict *uti possidelis*, which imposed the role of Plaintiff and with it the onus of proof upon the person seeking to disturb the party in possession. See Justinian, Institutes IV, xv, 4. " Commodum autem possidendi in eo est, quod, etiamsi ejus res non sit, qui possidet, si modo actor non potuerit suam esse probare, remanet suo loco possessio propter quam causam, cum obscura sint utriusque jura, contra petitorem judicari solet." The same principle has been adopted

by French jurisprudence (see Planiol, Droit Civil, Vol. II, Sec. 2286) and probably by all other systems which are based upon the Roman law.

In this country the Courts will assert this same principle in protection of persons in possession under a title which the Court recognises—that is to say—*persons holding under a registered title.**

Applying that principle to the class of cases now under consideration we are of opinion that where a dispute as to boundaries arises between two adjoining proprietors, both claiming under qochans, each of which is consistent with the claim of the person holding under it, and where one of the parties is in possession of the land in dispute, the onus lies upon the party seeking to disturb that possession to establish his claim to the satisfaction of the Court.

In this case the evidence adduced by the Defendant does not satisfactorily discharge that onus.

The appeal must be dismissed and the judgment of the District Court affirmed with costs.

Appeal dismissed.

[TYSER, C.J. AND BERTRAM, J.]

IN RE PANAYI PIERI SHIRA.

BANKRUPTCY—DECLARATION OF BANKRUPTCY—COMMERCIAL CODE, ARTS. 147 AND 150—BANKRUPTCY RULES, 1894, RULES 1 AND 3—PROVISIONAL ADJUDICATION—"EXECUTED PROVISIONALLY"—EX PARTE ORDER—CIVIL PROCEDURE LAW, 1885, SEC. 8.

A District Court has no power to make a provisional adjudication of bankruptcy.

The expression "executed provisionally" in Art. 150 of the Commercial Code explained.

An adjudication of bankruptcy may be made ex parte (subject to the provisions of Sec. 8 of the Civil Procedure Law, 1885), but it can only be made when there is such evidence as would be sufficient to support an adjudication after hearing both parties.

Per BERTRAM, J.: *Evidence in support of a bankruptcy petition should be formal and precise.*

Per TYSER, C.J.: *It must show that there has been a cessation of commercial payments of such a character as to indicate an insolvent condition.*

The evidence in support of a bankruptcy petition was that the debtor owed a creditor £16 and had other debts which he "could not or would not pay."

HELD: *insufficient evidence of a state of bankruptcy.*

This was an appeal from an order of the District Court of Famagusta declaring Panayi Pieri Shira, of Lefkoniko, a bankrupt. The petition was dated October 3rd, 1907, and filed on the following day, when it was at once taken into consideration on an *ex-parte* motion made on behalf of the petitioning creditors.

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* The Courts however will not entertain an action to restrain interference with immovable property, which is based on possession alone. See *Juma* v. *Halil Imam* (1899) 5 C.L.R., 16.