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.

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Formal evidence of insolvency was given by one of the petitioning creditors, as follows:—

"I am a merchant. Panayi Pieri Shira is a merchant carrying on business at Lefkoniko. He owes me about £16. He has many other debts and cannot or will not pay."

On his evidence the Court declared the debtor a bankrupt, and directed the Assistant Registrar to impound his books and papers, make an inventory of his property and debts, set seals on his property and report to the Court.

It appeared further from the file of the proceedings that the hearing of the petition was fixed for October 22nd.*

The debtor appealed.

G. Chacalli for the Appellant.

Pascal Constantinides and *Chrysaphinis* for the Respondents.

Judgment: CHIEF JUSTICE: The order was in my opinion not justified on the evidence presented to the Court.

An order declaring a debtor bankrupt can be made *ex parte*, but it can only be made when there is such evidence as would be sufficient to support an adjudication after hearing both parties.

There must be facts proved which amount to a cessation of commercial payments by the debtor, *i.e.*, to use the words of law "a state of bankruptcy."

Here the only evidence is that the debtor cannot or will not pay a debt of £16 due to a petitioning creditor and that he has many other debts which he cannot or will not pay.

This is quite consistent with his being in a perfectly solvent condition, and with a continuance on his part to pay debts and carry on his business in the ordinary way.

The Respondent seems to have thought that there could be an interim adjudication pending enquiry as to whether the debtor was bankrupt or not.

In my opinion this is not so. The Respondent seems to have misunderstood the term "executed provisionally" in Sec. 150. It does not mean adjudication till hearing, but immediate execution after adjudication and it enables the Court to give immediate effect to the adjudication although it has been made *ex parte*.

The order must be set aside and the case sent down to the District Court to fix a new day for hearing the petition.—Costs of appeal and of the proceedings below to be in the discretion of the District Court on the hearing of the petition.

This Order is made without prejudice to any application which the creditor may think fit to make to the Court below *ex parte*.

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* On the case being called on in the District Court on October 22nd, the Court declined to proceed with it, as an appeal had been entered. The order appealed against was there referred to as a "provisional order," but this circumstance was not before the Supreme Court on the hearing of the appeal.

BERTRAM, J.: It is not clear on the face of the proceedings whether the order of adjudication in this case was intended as a final order made *ex parte*, or, as suggested by the Respondents, as an interim order with a view to the preservation of the debtor's property pending the hearing of the bankruptcy petition.

In any case it was not justified by the evidence presented to the Court.

In order to justify an adjudication of bankruptcy, it must be shown that the debtor has suspended his commercial payments. See *in re Haji Fehmi Hassan* (1892) 2 C.L.R., 87. Here the evidence merely states that the debtor owed the petitioner £16 and had other debts which he "could not or would not pay." There is nothing to show that these debts are commercial debts, and for anything that appears to the contrary they may be claims disputed by the debtor.

A petition in bankruptcy is a semi criminal proceeding. Adjudication involves very serious consequences for the debtor—stoppage of his business, sequestration of his property and personal arrest (Art. 165), and in certain events may even lead to imprisonment (Art. 288 and Penal Code, Art. 232). The evidence in support of the petition should therefore be formal and precise.

An adjudication may no doubt be made *ex parte*. Power is reserved to the Court by Rule 3 of the Bankruptcy Rules, 1894, to direct that the service of the petition on the debtor may be dispensed with. This is entirely in accordance with the system of the French Commercial Code, which the Ottoman Code closely follows. See *Lyon-Caen and Rénault: Traité de Droit Commercial*, Vol. VII, Sec. 99. Such a case would however be governed by Sec. 8 of the Civil Procedure Law, 1885, and, even if the evidence given in this case warranted an adjudication, the conditions of that section have not been complied with.

The Respondents, however, preferred to support the order as a provisional one. They contended that the law had been exactly complied with; that Rule 1 of the Bankruptcy Rules, 1894, requires the petitioner to ask first that the Court shall declare the debtor a bankrupt, and secondly, that it shall fix a day for the hearing of the petition.* It was contended that the two matters were to be dealt with in this order—that the debtor was to be adjudicated bankrupt provisionally, and that afterwards the petition was to be heard. This argument seems to me untenable. It does not follow that because the law says that two things are to be asked for in a particular order that they must be dealt with in that order. The law knows nothing of a provisional adjudication of bankruptcy. The question to be determined on the hearing of the petition is whether the debtor is to be adjudicated bankrupt or not, and it is impossible to suppose that he is to be adjudicated bankrupt first and the matter tried out afterwards.

The expression in Art. 150, which is translated in Mr. Amirayan's edition "executed provisionally" does not support the Respondent's

* Bankruptcy Rules, 1894, Rule 1. "Every application to a District Court to declare any trader a bankrupt shall be made by a petition in writing . . . . . requesting the Court to declare such trader a bankrupt and to fix a day for the hearing of the petition."

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contention. It corresponds to the words " executoire provisoirement " in the corresponding article of the French Code (440). In French Procedure the words have a technical significance, and their effect here (assuming that the Turkish expression is to be interpreted in the same sense) is that an adjudication of bankruptcy is put into operation at once, in spite of either " opposition " or appeal. Otherwise under Art. 71 of the Code of Commercial Procedure, it would, if made *ex parte*, be delayed till 15 days after signification, and in the event of " opposition " or appeal would be suspended (Arts. 78 and 109). See *Lyon-Caen and Rénault: Traité de Droit Commercial*, Vol. VII, Sec. 125. *Rogron, Code de Commerce Expliqué, 4th Edition*, 782.

In any event, as pointed out above, the evidence is not such as to justify even a provisional adjudication, even supposing that the law recognised such a proceeding.

Appeal allowed.

TYSER, C.J. & BERTRAM, J. 1907 *Dec.* 18

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

MORPHIA HAJI IANNI MOURMOURI, *Plaintiff,*

v.

MICHAEL HAJI IANNI, *Defendant.*

PRESCRIPTION—IMMOVABLE PROPERTY—UNREGISTERED GIFT—ADVERSE POSSESSION—MEJELLE, ART. 1660—RENUNCIATION OF PRESCRIPTION—ABANDONMENT.

Possession for the period of prescription under a gift of immovable property not perfected by registration does not operate to supply the defect of want of registration so as to give a good title to the donee, unless such possession is maintained adversely to the donor, and is of such a nature as to exclude the donor continuously and substantially from the enjoyment of the property.

A mere occasional and permissive user by the donor would not necessarily interrupt the prescription.

BY THE COURT: (*Obiter*). *If a person, who is entitled to set up a prescriptive right against another person renounces his prescription, whether expressly or by implication, he cannot afterwards reassert the prescription against the person in whose favour he has renounced it.*

SEMBLE: *If a person who by prescription has acquired a right of registration to mulk immovable property deliberately abandons that property without any intention of returning to it he cannot afterwards assert his right to registration as against a person who subsequently assumes possession of it.*

A father by two successive documents in 1877 and 1893, purported to give to his daughter a room in his house. After the gift he made some small and occasional use of the room and also for some time actually lived in it. The daughter used the room up to her father's death in 1893, and soon afterwards pulled down the rafters and for several years down to the date of the action made no further use of it.

HELD: *that she had not acquired a prescriptive right to registration.*

This was an appeal from the decision of the District Court of Famagusta.