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IN RE PANAYI PIERI SHIRA

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.

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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.

The facts of the case were as follows:—

In 1877 the father of the Plaintiff made certain documentary disposition of his property in favour of his children. In 1893 shortly before his death some question having apparently arisen between the children as to the validity of the father's gifts, he issued to them new and more comprehensive documents, which he had certified by the Village Judge. In neither case were the intended transfers perfected by registration.

The share allotted to the Plaintiff consisted partly of a field, and partly of a single room in the father's house. The house was composed of three rooms and one room seems to have been assigned to each child, that is to say, one to the Plaintiff, one to her sister Maroullou, and one to her brother, the Defendant. The father blocked up a door by which Plaintiff's room communicated with that of the Defendant. It seems to have been assumed (though there was no evidence of the fact), that the father was the registered owner of the house.

The object of the action was to assert the claim of the Plaintiff to the field and house thus allotted to her, as against her brother, the Defendant, who claimed to be entitled to them and who in 1893, presumably after his father's death, succeeded in obtaining a qochan for part of the house, which included both his own room and that allotted to the Plaintiff.

The District Court found that the Plaintiff was entitled to both field and room, (one member of the Court dissenting as to the latter). No substantial attempt was made to induce the Supreme Court to disturb the finding of the District Court with reference to the field. The question at issue on the appeal was practically speaking the ownership of the room.

It appeared that at any rate during part of the period between the execution of the first document in 1877 and the death of the father, the Plaintiff did not actually live in the room, but lived with her husband in a neighbouring house. She used however to tie up her donkey in the room and kept "odds and ends" there. It was also sworn that the father used to keep his brooms and other small articles in the room. It appeared further from the evidence of one of the witnesses for the Plaintiff that after his gift of it to the daughter the father actually lived in the room. He lived sometimes in the Plaintiff's room, sometimes in Maroullou's, and sometimes in the Defendant's where he finally died. It did not appear that he had any other place of residence. Soon after his death the Plaintiff and Defendant had a dispute as to the ownership of the room and the Plaintiff removed the rafters. Since then (a period variously estimated at from six to ten years) the room had remained in ruins and neither Plaintiff or Defendant had made any use of it.

The Defendant appealed.

Nikolaides for the Appellant.
Chacalli for the Respondent.

Judgment: There does not seem any reason to doubt that the father intended to make a gift of this room to his daughter. But inasmuch as neither of his successive documentary dispositions was confirmed by

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registration, the only plea on which the daughter can base a claim to the exclusive ownership of the room is that of prescription. In order to sustain this plea she must prove that she herself occupied the room in such a way and for such a time as to oust the claim of her father. In other words, the property being mulk, she must prove that she occupied the room adversely to her father for 15 years, and that during this time her father neglected to assert against her a right of suit which he possessed.

If from the date of the gift from her father in 1877 to his daughter in 1893 the Plaintiff had substantially speaking maintained the room in her own occupation, the mere fact of her allowing her father to make some slight and casual use of the room, for the deposit of his brooms or otherwise, would have had no special significance. Such a mere occasional and permissive user would not operate as an interruption of her prescription. But, if after his gift to the daughter he actually lived in the room, how can she possibly be supposed to have acquired a prescriptive title against him? The plea of prescription implies that the father, being dispossessed neglected during 15 years, to bring an action to recover possession. But how could he have brought an action to recover possession of the room while he was actually living in it? And how could the daughter who in 1893 recognised the father's title to the property by accepting the second transfer contend that up to that time she had been holding the property adversely to him? Possession for the period of prescription under a grant or sale not perfected by registration may no doubt operate to supply the defect of want of registration in the same manner as *usucapio* operated to secure defective titles in Roman law, but such possession, in order to be effective, must be maintained adversely to the person entitled to dispute it and be of such a nature as to exclude the donor or vendor, continuously and substantially, from the enjoyment of his property. We cannot say that anything of this sort existed in this case.

In this view of the facts it is not necessary to give any decision on the important point raised in the course of the argument, as to the effect upon the Plaintiff's claim of her removal of the rafters and her disuser of the room for the last ten years.

It is we think an undoubted proposition that, if a person, who is entitled to set up a prescriptive right against another person, expressly renounces his prescription, or does an act which is by implication equivalent to renunciation, he cannot afterwards reassert the prescription against the person in whose favour he has renounced it.

It may also be true (though we reserve our opinion until the case actually arises), that 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.

We do not think that in this case the act of the Plaintiff in pulling down the rafters and ceasing to make any use of the property amounted either to renunciation of her rights in favour of her brother, or to its

abandonment to the world at large. But as we hold on the facts that she had not acquired any prescriptive right, these points are not material to the decision.

Under the circumstances the Plaintiff has not established any case for setting aside the Defendant's qochan and the appeal must be allowed so far as it relates to the room, but dismissed so far as it relates to the field.

Appeal allowed.

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IN RE LUKA A TALLIADOROU.

BANKRUPTCY—COMMERCIAL CODE, ARTS. 1 AND 147—APPENDIX TO COMMERCIAL CODE, ARTS. 28 AND 35—"TRADER"—RIGHT OF NON-COMMERCIAL CREDITOR TO INITIATE BANKRUPTCY PROCEEDINGS—PRACTICE—APPEAL TO SUPREME COURT—CYPRUS COURTS OF JUSTICE ORDER IN COUNCIL, 1882, ART. 31.

An appeal lies to the Supreme Court against a refusal to declare a debtor a bankrupt.

A carpenter and wood-carver may be a "trader" within the meaning of Art. 1 of the Commercial Code.

Whether a person is a "trader" is a question of fact to be determined from all the circumstances of the case.

It is not necessary to constitute a person a trader that he should carry on his business by means of written documents.

The Turkish text of Art. 1 of the Commercial Code explained.

In order to justify a declaration of bankruptcy it is necessary to show that the payments which the debtor has suspended were commercial payments.

The presumption that a bill of exchange signed by a trader is given in relation to commercial business unless a non-commercial object is therein stated, as declared by Art. 35 of the Appendix to the Commercial Code, is confined to the proceedings mentioned in that Article and does not extend to bankruptcy proceedings.

A bankruptcy petition may be presented by a non-commercial creditor.

The debtor was described as a wood-carver and a contractor for church work. He made contracts with Church Committees for the decoration of churches with wood-carving. He employed apprentices and bought large quantities of timber for the purposes of the work. He declared that he might either win or lose on each transaction. He also executed orders for furniture or wood-carving.

HELD: *that he was a "trader" and consequently capable of being declared a bankrupt.*

This was an appeal from a judgment of the District Court of Nicosia refusing to declare one Luka A. Talliadorou in a state of insolvency, on the ground that he was not a trader.

The debtor in his evidence described himself as a wood-carver and a contractor for church work. It appeared that he made contracts with Church Committees for work ranging in value from £200 to £350. For the purpose of these contracts he bought wood in quantities varying in value from £60 to £150. He employed five or six apprentices and declared that in each case he might either win or lose on the whole transaction. He also made chairs and furniture to order, had made looking-glass frames for a Café in Nicosia, and had done work for the Public Works