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.

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

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

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Department. His work was carried on in an ordinary carpenter's shop and it did not appear that he exposed for sale goods ready made. He was irregular in his work and his habits, kept no books and preserved no accounts and, owing to numerous judgments against him, his business for some time past had been managed by his wife.

The petition was presented by certain judgment creditors, members of the debtor's family, who, having guaranteed a bond debt of the debtor, had been compelled to satisfy the bond. It was opposed by other creditors to whom the petitioners had given notice of the petition.

The petitioners appealed.

G. Chacalli for the opposing creditors, took the preliminary objection that no appeal lay.

The Court decided that an appeal lay under Art. 31 of the Cyprus Courts of Justice Order in Council, 1882, inasmuch as the word " action " used in that article would under Act. 3 include a bankruptcy petition.

Artemis, Chrysafinis and *Neoptolemos Pascal* for the Appellants cited *In re Christo Nikolaou* (1906) 7 C.L.R., 32.

G. Chacalli, Stavrinides and *Severes* for the opposing creditors.

Judgment: CHIEF JUSTICE: The only question in this case is whether this carpenter can be made bankrupt. It depends entirely on the construction of that part of the Commercial Code which deals with bankruptcy.

In my opinion taking all the sections of the Commercial Law dealing with bankruptcy into consideration, the persons contemplated by that law as liable to be made bankrupt are persons trading as merchants. I do not think that it is necessary that it should be confined to persons trading in a large way or with foreign countries, but they must be trading as merchants in a wholesale or retail capacity.

Whether or no a carpenter is such a trader is a question of fact.

One thing is to see whether his business comes within the definition of commercial transactions in the Appendix to the Code.

In this case the evidence shows that the Plaintiff has made a considerable number of contracts to supply church furniture and contracts of considerable value and that he makes a business of these contracts; that he supplies people with furniture and frames for looking-glasses and generally that he supplies any customer who gives him an order.

To enable him to carry on his business he has to buy wood and work it up into the objects required and he sells it when so worked up.

On the large contracts he may make a profit or incur a loss.

To my mind it is clear that the general character of his business is in accordance with the definition of " commercial transactions " given in Art. 28 of the Appendix to the Commercial Code. His business is made up of commercial transactions and there is no reason on the evidence why he should not be held to be a merchant.

For this reason I think that he is the sort of person who as regards the character of his business, should be within the contemplation of the Bankruptcy Law.

It has been argued that it has not been shewn that he enters into written agreements relating to commercial transactions and is therefore not a merchant within the meaning of the Bankruptcy Law—as defined by Sec. 1 of the Commercial Code.

In my opinion the definition in Art. 1 is not meant to be an exhaustive definition applicable to every part of the Code but it is meant to point out the particular class who are under the obligation as to book-keeping contained in Book I Chapter 1.

In any case the definition is to be read distributively, and denotes two classes who are to be called merchants, viz.: those engaged in commerce and those making written agreements with respect to commerce.

On one point the evidence is insufficient. By Art. 147 a trader is insolvent if he is unable to pay his commercial debts. There is no evidence to show that any of the debts unpaid were incurred in his business and the question does not seem to have been considered in the Court below. The case should go back to the District Court for further evidence of failure to pay his commercial debts.

Costs to abide the decision of the District Court.

BERTRAM, J.: The first and principal point taken was that the debtor was not a trader and consequently could not be declared an insolvent under the provisions of the Commercial Code. It was argued that a man could not be a trader if he sold things made to order, more especially if the things sold were primarily the products of his artistic skill. According to this view a carpenter who has a shop in which he sells chairs and tables ready made is a trader; if he makes them to order he is only an artisan. A sculptor who exhibits statuary ready made for sale in his studio is a trader; if he executes them only in accordance with the commissions he receives he is an artist. Several French authorities were cited in support of this proposition. In the interpretation of the Ottoman Commercial Code, which in its main features is practically identical with the French Code de Commerce, the conclusions of French jurisprudence though not binding are always valuable. French courts and commentators have been much exercised with the distinction between the trader and the artisan. An artisan is considered as a person who lets out his labour to anyone who will hire him. It is generally accepted that a man who merely sells his labour is not a trader, and that he does not necessarily become a trader merely because he himself provides the material on which his labour is expended. But it is certainly not a settled conclusion of French jurisprudence that in order that an artificer who sells the work of his hands should be a trader it is necessary that he should keep a shop for the exhibition of his wares ready made. On the contrary, it is a point on which the decisions of the French courts are at variance. See *Sirey, Code de Commerce Annoté, 3rd Edition*, p. 5. *Lyon-Caen et Rénault: Traité de Droit Commercial*, Vol. II, p. 123. The keeping of a shop may be evidence that a man is a trader but it does not follow that a man is not a trader unless he keeps a shop.

The distinction is in truth a question of fact. As is said in a Greek Commentary, cited in the course of the argument (Ralli,—'Ερμηνεία τοῦ

Ελληνικοῦ Ἐμπορικοῦ Δικαίου), the mark of the artisan is "μίσθωσις ἐργασίας," the mark of the trader is ἐμπορικη κερδοσκοπία and, as has been well observed by a French jurist (*Pardessus* Dr. Comm. 181), "Le point de separation entre cas deux qualités est souvent imperceptible et très difficile à caractériser."

The question in each case for the purposes at any rate of the Ottoman Code (which is not here textually identical with the French Code), is this.—Is the man " habitually engaged in commerce "? In other words having regard to all aspects of his vocation, the materials he buys, and the articles he sells, does he make his living by transactions which are commercial speculations. Applying this principle to the facts of the case it seems to me plain that the debtor must be regarded as a trader. It makes no difference that the value of the things he produces is enhanced by his artistic skill—nor to my mind is it necessary to consider the refined distinction suggested by Lyon-Caen et Rénault (Vol. I, p. 123), as to whether he buys his timber with the object of making a profit on the raw material, or merely for the purposes of his art. Nor does it matter that he has failed to keep books or preserve accounts, that his work is irregular, and his habits dissolute. On the broad facts of the case he is a contractor for church decorations and his contracts with church committees are as much commercial speculations as a contract by a firm of engineers to construct a harbour or to build a bridge.

The second point in the case was whether it was necessary in order to constitute a man a trader within the meaning of Art. 1 of the Commercial Code that he should carry on his business by means of written documents. It was contended that in order to be a trader within the meaning of this article a man must satisfy two conditions—first, he must be habitually engaged in commerce, and secondly, he must conduct his commercial transactions by means of written documents. It was argued that the object of the addition of this second condition (which is a departure from the French Code) was to exclude bazaar traders, and hucksters who carry on their purchases and sales by word of mouth. Even if this is the correct interpretation, the debtor does not belong to this class of persons, and indeed it appears from the record of another case, which was admitted in evidence in the proceedings in the Court below, that, as one might expect, his agreements with church committees, in some cases at any rate, were in writing. As the question raised is, however, of some importance I will proceed to consider the meaning of the article.

The view put forward by counsel for the opposing creditors is supported by Ahmed Reshyd Pasha in his Commentary on the Commercial Code. " According to this article," he says " it is necessary to hold that those who are engaged in trade but do not enter into written documents cannot be called traders."

He observes that the enactment of this condition is contrary to the spirit of the Code the object of which was " to facilitate commercial transactions." It is certainly contrary to the scheme of the French Code on which the Ottoman Code is so closely modelled. The learned author suggests that its insertion is due to a misapprehension by the legislator

of the meaning of Art. 1 of the French Code which is as follows: "*Sont Commercants ceux qui exercent des actes de commerce, et en font leur profession habituelle.*" The words "*Tejairetle meshghoul olan*" (those who are occupied in commerce) according to the author, are a translation of the words "ceux qui . . . en font leur profession habituelle," whereas the words "*Tejairete dair basennedat akti mukhavele iden*" (those who enter into written documents relating to commerce), are a mis-translation of the words "ceux qui exercent des *actes* de commerce," the translator having been misled by the fact that the word "*acte*" sometimes means a formal document. It is impossible not to feel that this is a most plausible explanation of the Turkish text. But even assuming that the Legislator has mis-translated the French word "*actes*," I do not think it follows that the article necessarily bears the sense which the commentator puts upon it. One can only dissent from the opinion of a Turkish commentator on a Turkish Code with very great diffidence, but I am informed by those conversant with Turkish that though the article is capable of the construction attributed to it, it is equally capable of another construction, namely, that it refers to two classes of persons: (1) those engaged in commerce, (2) those who enter into written documents relating to commerce. Indeed I am assured by one competent person that this is the more natural grammatical construction. It seems therefore that the Turkish translator may have mis-read the French article as itself referring to two classes of persons, viz.: first, traders proper, *i.e.*, those engaged in buying and selling, and secondly, traders in a secondary sense, *i.e.*, persons whose business is carried on by written documents relating to trade, such for example as bankers, insurers, commission agents, bill brokers, shipowners, etc. This construction is at any rate a possible one.

In the Commercial Code the Turkish legislator has enacted what is on the face of it intended to be an application to Turkey of the French Code de Commerce. Where the words which he uses are capable of two constructions, and one of those constructions can be harmonised with the scheme of the French Code, while the other is out of harmony with that scheme, I think that the former of the two constructions is to be preferred. I concur therefore in the view expressed by the Chief Justice that the two clauses are to be read distributively and not cumulatively.

It was next argued that in order to justify a declaration of insolvency it is necessary that the petitioning creditors' debt should be a commercial debt. The case of *In re Haji Fehmi Hassan* (1892) 2 C.L.R., 84, was cited in support of that contention but it does not justify it. That case merely declares that the payments on the suspension of which the petition is based must be commercial payments. Nor is the contention in harmony with French law. In French law it is settled that if a trader has suspended his commercial payments, a civil (*i.e.*, a non-commercial) creditor may initiate proceedings to have him declared insolvent. I am of opinion that the petitioning creditors' debt is sufficient to support the petition.

Finally, it was contended that there was no evidence that the debtor has suspended his *commercial* payments. There was ample evidence of

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the existence of unpaid judgments against the debtor, but the character of the debts on which the judgments were based does not appear. The attention of the Court below does not seem to have been directed to the point, doubtless owing to the fact that Art. 147 is mis-translated in the Greek version of the Commercial Code. That version follows the text of the French Code, rather than that of the actual Turkish enactment, but even under French law jurisprudence has determined that insolvency can only be declared in respect of the non-payment of commercial debts. The matter is placed beyond all doubt by the Turkish text and the case of *In re Haji Fehmi Hassan*, 2 C.L.R., 84, above referred to.

Counsel for the petitioning creditor cited Art. 35 of the Appendix to the Commercial Code, and contended that the final paragraph of that article (which declares that a bill signed by a trader shall be presumed to be given in relation to mercantile business unless a non-mercantile object is therein stated), governed all proceedings under the Commercial Code, I think however that the presumption is limited to the proceedings referred to in the article itself, and does not extend to all proceedings under the Code. I agree therefore that the case must go back for further hearing on the question whether there has been a cessation of the debtor's commercial payments within the meaning of the first article.

Appeal allowed.

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

CHARILAOS IOANNIDES, *Plaintiff,*

v.

CHARALAMPES HAJI GEORGIOU, *Defendant.*

PRINCIPAL AND AGENT—RATIFICATION—MEJELLE, ARTS. 1453 AND 1485.

T. T., acting as agent for the Plaintiff bought in the name of the Plaintiff at an auction sale certain water rights on terms which were admitted to be a departure from his instructions. The Plaintiff took possession of the property purchased, but disputed his liability to indemnify the agent to the full extent of the purchase price. The agent afterwards sold the property to the Defendant.

HELD: *that the Plaintiff had ratified the contract, and that the agent was not entitled to dispose of the property to the Defendant.*

The subject of ratification as between principal and agent considered.

This was an appeal from the judgment of the District Court of Kyrenia.

In August, 1901, the Plaintiff instructed Mr. Theophanes Theodotou to bid for him at the sale of certain water rights at Lapithos. There was a conflict of evidence as to the instructions. According to Mr. Theodotou his instructions were to bid up to £3. According to the Plaintiff the instructions were to start at £3 and if necessary go up to £5. There was also a conflict of evidence as to what happened at the sale. According