1982 February 8

[LORIS, STYLIANIDES, PIKIS, JJ.]

CHRISTAKIS EVANGELOU AND ANOTHER,

Appellants,

v.

STAVROS G. AMBIZAS AND ANOTHER,

Respondents,

(Civil Appeal Nos. 6143 and 6144).

Civil Procedure—Practice—Prayer for relief—Main relief—Ancillary relief—Effect—It does not extend the issues specifically raised—Trial Judge had no authority to grant relief that was not prayed for—Fact that there was departure from pleadings, by introduction of evidence not covered by pleadings, may be an adequate justification for their amendment.

Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)—"Displaced debtor"—"Stricken debtor"—Trial Judge erroneously declaring judgment debtors as "displaced debtors" because such relief was not prayed for—But existence of overwhelming evidence that they were "stricken debtors"—Judgment debtors declared as "stricken debtors" by Court of Appeal instead of remitting case to District Court for retrial.

Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)—"Stricken debtor"—Section 2 of the Law—Guarantor of a "stricken debtor" qualifies as a "stricken debtor" himself.

Costs—Proceedings under the Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)—Costs should be at large and whenever applicant is successful proper course is normally to make no order as to costs.

Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)—"Stricken debtor"—Who qualifies as a "stricken debtor"—Date at which the evaluation of the debtor's financial position must be undertaken is date of trial—Burden is on the debtor

to satisfy the Court that he is entitled to relief—Test being whether he is reasonably in a position to meet his obligations.

Evidence—Privilege—Private matters—No rule of law entitling a witness to withhold disclosure of what he regards as private matters.

Evidence—Expert evidence—Who may qualify as an expert—Witness allowed to give expert testimony on the value of land without possessing such expertise—No justification for such a course.

Evidence—Privilege—Communication between advocate and client—Not every communication between advocate and client is privileged—When privilege is claimed there must be balanced the need to disclose relevant evidence in the interests of Justice and the need to sustain a climate of unimpeded communication between the advocate and his client—Proceedings under the Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79)—Advocate in giving evidence declining to disclose identity of person for whom he was holding shares in a company—Trial Judge wrongly excluding such evidence.

Findings of fact—Court of Appeal as a rule, hesitant to interfere with the findings of fact of a trial Court—But perfectly justified whenever, as in this case, the findings of the trial Court are not warranted by the evidence.

Civil Procedure—Practice—Hearing together two applications without an order of consolidation—Procedure followed unorthodox and irregular.

Practice—Judge—Function of Judge at trial of civil action—Intervention of Judge on cross-examination of witness—Undesirable.

The appellants advanced prior to 14th August, 1974 three loans, one to Realand Estates Limited secured by property purchased by the debtors in the Kyrenia district and guaranteed by Stavros Ambizas ("respondent 1") and Andreas Pantazis; and two loans to respondent 1, the repayment of which was guaranteed by his wife. The debtors made default in the repayment of the loans and the appellants instituted proceedings against them and obtained judgment against the principal debtors and the guarantors for the amounts of the loans.

The judgment debtors applied for relief under the provisions of the Debtors Relief (Temporary Provisions) Law, 1979 and

sought a declaration that they were stricken debtors and relief incidental thereto. Two separate applications were filed one by Realand Estates Limited and a second one by respondent 1 and his wife. The trial Judge proceeded to hear the two proceedings together, when moved orally by counsel for the applicants, notwithstanding the absence of an order for consolidation.

The facts relevant to respondent 1 were as follows:

Shortly before the Turkish invasion respondent 1 gave up his position at the Development Bank with a view to practising on his own as an advocate at Nicosia and has secured annual retainers from a number of clients, totalling some £7,000. Towards the end of 1974 he became operational as an advocate in private practice and employed a secretary to assist him; and despite the claim that his financial prospects as an advocate were prejudiced, as a result of the Turkish invasion, his practice grew in volume and his gross earnings rose considerably and were estimated at the time of the hearing to not less that £14,000 a year. In due course he engaged a second secretary and in the years 1977 and 1978 he employed successively two lawyers to assist him. Respondent 1 declined to disclose to the Court the salary paid to these two lawyers and he was sustained by the trial Judge on the ground that this was a private matter. In the course of the trial respondent 1 was allowed to give expert testimony on the value of land in the occupied part of Cyprus which belonged to him and to Realand Estates. After the Turkish invasion he continued investing in land and other business and was holding one fourth share in the company "Eleon Enterprises" with an initial investment of £4,000. He also made another investment in a company which contracted to acquire land with a tourist potential but he refused to divulge the name of a friend in the United Kingdom who was expected to advance a loan to him and the trial Judge did not require him to disclose his name and identity. Respondent 1 was, also, registered as a shareholder of one seventh share in another land development Company; and he claimed that he was not the beneficial owner of the shares but only the nominee of an undisclosed principal. He was upheld by the trial Judge on the ground that the communication was privileged. At the time of the trial and for a number of years previously respondent 1 was a member of the House of Representatives wherefrom he derived earnings in the region of £200.- per month. After

his election to the House he purchased a duty free car at a cost of £6,500 and his involvement in politics cost him a monthly expense of £300 to £330 and the monthly expense for private lessons for one of his children was £80.

The trial Judge ruled that:

(a) Realand Estates were displaced tenants within the meaning of the Law;

(b) Respondent 1 was a stricken debtor within the meaning of the Law;

(c) The guarantors and the principal debtors were automatically entitled to relief by virtue of the definition of a displaced debtor supplied by s. 2 of Law 24/79, and

(d) The relevant date for determining whether a particular debtor is stricken, is the 14th August, 1974 and not subsequently.

Upon appeal by the judgment creditors it was mainly contended:

(1) That Realand Estates were declared as displaced debtors whereas such relief was not asked for in the application;

(2) That the guarantors of Realand Estates were not entitled to relief under Law 24/79;

(3) That the conclusion of the trial Court that the material date for determining whether a person was a stricken debtor or not was the date immediately after the events of 1974 and not the date of trial, was arbitrary and wrong in Law.

(4) That the finding of the trial Court that respondent 1 was a stricken debtor was unreasonable and against the weight of evidence.

Regarding contention (1) above counsel for the respondents argued that it was open to the trial Court to declare Realand Estates Limited as displaced, by virtue of the prayer for ancillary relief and submitted that the issue of displacement of the Company was raised in the course of cross-examination of respondent 1.

Held, (1) that ancillary relief is a species of residual relief,

arising from and inextricably connected with the main reliefs sought in the prayer; that it does not extend the issues specifically raised, except broaden them to the outer limit; that a declaration of displacement under Law 24/79, is a distinct relief, separate and independent from a declaration of strickenness; that the fact that evidence was introduced in cross-examination, pertaining to the centre of activities of Realand Estates Ltd., does not, in itself, broaden the pleaded issues but such departure from the pleadings may find adequate justification for their amendment; that, therefore, the trial Judge granted a relief that was not prayed for, and one he had no authority to grant; but that since there was overwhelming evidence that Realand Estates were stricken debtors within the meaning of the Law and were, but for the omission of the Judge to acknowledge their rights, entitled to a declaration that they were stricken, instead of remitting the case back to the District Court for retrial, a course which would be unfair and unnecessary in the circumstances, this Court will rule that Realand Estates were entitled to a declaration that they were stricken.

(2)(a) That in view of the definition of a stricken debtor* by section 2 of Law 24/79 the guarantor of a stricken debtor qualifies, also, as a stricken debtor himself; and that, therefore, both Realand Estates Ltd. and their guarantors were entitled to relief as stricken debtors.

(2)(b) That proceedings under Law 24/79 are definitive in the sense that recourse to the Court is essential for the delineation of the rights of the parties; that in such circumstances, costs should be at large, and whenever the applicant is successful, the proper course is normally to make no order as to costs; that the facts relevant to establishing a case of strickenness are peculiarly within the knowledge of the debtor, and the creditor should not be faulted for insisting on an inquiry before the suspension of his right to collect the debt; and that, therefore, in the circumstances of this case, the appropriate order is, with regard to this aspect of the appeal, to direct that there should

* "Stricken debtor" is defined as follows by section 2 of Law 24/79:

" 'Stricken debtor' means any debtor whose work or business has been affected by reason of the abnormal situation, to such an extent so as to render him unable to meet his contractual obligations out of which the debt arose, or a debtor who is missing as a result of the Turkish invasion and includes a co-debtor and a guarantor of any such debtor".

be no order as to costs, either here or in the Court below and that the costs in the Court below, and on appeal, should be divided equally between the two applications for relief.

(3) (On the question of who qualifies as a stricken debtor) That the Law postulates as a first prerequisite for relief adverse financial repercussions emanating from the Turkish invasion; that, therefore, the Court must, to start with, weigh the magnitude of the loss sustained as a result of the Turkish invasion and then, it must evaluate the financial position of the debtor, as shaped by the events of 1974, in juxtaposition to the debt, and decide whether he is in a position to respond to his obligation; that the debtor's financial position must be examined from a broad perspective, the test being whether he is reasonably in a position to meet his obligations and the burden is on the debtor to satisfy the Court that he is entitled to relief; and that regarding the date at which the evaluation of the debtor's financial position must be undertaken on a grammatical construction of the definition of a stricken debtor, particularly the word "δύναται" ("is able"), read in combination with the verb that follows "νὰ ἀνταποκριθῆ" (to respond), the inquiry must be presently made and not by reference to any time anterior to the date of trial.

(4)(a) That the trial Judge erroneously sustained respondent 1 when he declined to disclose to the Court the salary paid to the two lawyers employed at his office on the ground that this was a private matter, because there is no such head of privilege and no rule of Law entitling a witness to withhold disclosure of what he regards as private matters.

(4)(b) That the trial Court, without justification allowed respondent 1 to give expert testimony on the value of Land because there was nothing before the Court to justify the reception of his opinion on the subject; that to qualify as an expert, it must first be established that a witness on account of his knowledge and experience in a given field of knowledge, is qualified to the extent that it is safe to admit his opinion as evidence of the fact in issue; and there was nothing on record to suggest that respondent 1 possessed such expertise.

(4)(c) That the trial Judge should have required respondent 1 to disclose the name of his friend in the U.K. who was expected

to advance a loan to him because no colour of privilege could attach to this communication.

(4)(d) That not every communication between client and advocate is privileged; that when privilege is claimed there must be balanced the need to disclose relevant evidence in the interests of justice and the need to sustain a climate of unimpeded communication between the advocate and his client; that, therefore, the decision of the trial Judge to exclude evidence touching upon the identity of the principal the beneficial owner of the shares, and his precise relationship with the nominee, was wrong and had the effect of depriving the Court of relevant information to the sub-judice issues.

(5) That though this Court as a rule, is hesitant to interfere with the findings of fact of a trial Court interference by the Court of Appeal is perfectly justified whenever, as in this case, the findings of the trial Court are not warranted by the evidence or are vitiated by a misappreciation of the evidence; that, further, in this case, the Judge misconstrued the law, as to the date at which the debtor's ability to pay the debt in question should be judged; that viewing the evidence in its entirety, the inescapable inference is that respondent 1 failed to prove that he is a stricken debtor within the meaning of the law; that there was every indication that his law practice, far from declining, expanded over the years, whereas his amenity to invest remained unaffected; that proper reflection on two pieces of evidence, notably the monthly political contributions made by him, amounting monthly to between £300.- to £330.- and the monthly expense of £80.- for private lessons of one of his children, offer strong evidence that he was in a position, at the time of trial, to meet his obligations to appellants; accordingly the appeal must be allowed.

Observations:

(1) That the procedure of hearing the two applications together without an order of consolidation, which was followed by the trial Judge was unorthodox and, as we conceive it, irregular, and one apt to lead to confusion and, possibly, injustice. The rules of procedure may appropriately be described as the compass of litigation, departure from which may lead the Court astray, away from the path ordained by law.

(2) Before ending this judgment, we consider it necessary to comment on one aspect of the case that has given us concern, and that is the many interventions of the trial Judge in the course of the cross-examination of respondent 1, some of which were, in our view, unfortunate.

Although a Judge may intervene in order to ensure that the proceedings follow the course ordained by the rules of evidence and procedure, he must avoid interfering beyond the limits indicated above, and especially refrain from passing unnecessary comments that may create the impression of his descending into the arena of trial. A Judge must invariably distance himself from the conflict that unfolds before him and maintain strictly his arbitral position throughout the proceedings. (See, *Jones* v. *National Coal Board* [1957] 2 All E.R. 155, and *Yianni* v. *Yianni* [1966] 1 All E.R. 231). Any departure from this stance of aloofness may compromise, in the eyes of the litigants, as well as third parties, his impartiality. It is upon the unquestionable impartiality of the judiciary that the rule of law rests. (See *Duport Steels Ltd. & Others* v. *Sirs and Others* [1980] 1 All E.R. 529 (H.L.)). Nothing that is said in this judgment is meant, in any way, to question the integrity of the trial Judge or his devotion to duty. Our aim is to deprecate unjustified interventions not conducive to the aims of justice. In that way, we indicate the pitfalls that a Judge must avoid.

Appeal 6143 *dismissed.*
Appeal 6144 *allowed.*

Cases referred to:

Farrell v. *Secretary of State* [1980] 1 All E.R. 168;

Tryfonos & Another v. *Famagusta Shipping Co.* (1957) *Ltd.* (1981) 1 C.L.R. 137;

Bursill v. *Tanner* [1885–86] 16 Q.B.D. 1;

Re Cuthcart [1869–70] Ch. App. L.R. Vol. 5 p. 703;

Waugh v. *British Railway Board* [1979] 2 All E.R. 1169;

Alfred Crompton v. *Commissioners of Customs* [1973] 2 All E.R. 1169;

Burmah Oil v. *Bank of England* [1979] 2 All E.R. 461;

Jones v. *National Coal Board* [1957] 2 All E.R. 155;

Yianni v. *Yianni* [1966] 1 All E.R. 231;

Duport Steels Ltd. & Others v. *Sirs and Others* [1980] 1 All E.R. 529.

Appeals.

Appeals against the judgment of the District Court of Nicosia (HadjiConstantinou, S.D.J.) dated the 28th June, 1980 (Appl. No. 50/80) whereby the respondents were declared stricken debtors under the provisions of the Debtors Relief (Temporary Provisions) Law, 1979 (Law 24/79) and an order for the suspension of execution of the judgments in Action Nos. 1085/78 and 1086/78 was made.

E. Lemonaris with *N. Cleridou* (*Mrs.*), for the appellants.

A. Timothi (*Mrs.*), for the respondents.

Cur. adv. vult.

LOIZIS J.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: Christakis and Joan Evangelou, the appellants, advanced, prior to 14th August, 1974, three loans, one to REALAND ESTATES LIMITED, secured by property purchased by the debtors in the Kyrenia district and guaranteed by Stavros Ambizas and Andreas Pantazis, and two loans to Stavros Ambizas, the repayment of which was guaranteed by his wife, namely Mrs. Pitsa Ambiza.

The debtors made default in the repayment of the loans whereupon proceedings were instituted against them before the Nicosia District Court, that resulted in the appellants obtaining judgment against the principal debtors and the guarantors, as follows:-

A. *Action No.* 1087/78— Judgment was obtained against Realand Estates Ltd., as principal debtors, and Stavros Ambizas and Andreas Pantazis and guarantors, for the sum of £22,676.697 mils, plus interest accruing at the rate of 9% per annum, on the sum of £16,425.—from 23.1.1979.

B. *Action No.* 1085/78— Judgment was obtained against Stavros Ambizas as principal debtor, and Pitsa Ambiza as guarantor, for the sum of £5,014.208 mils,

plus interest accruing at the rate of 9% per annum, from 23.1.1979, and

C. *Action No.* 1086/78— Judgment was obtained against Stavros Ambizas as principal debtor, and Pitsa Ambiza as guarantor, for the sum of £5,581.—, plus interest chargeable at the rate of 9% per annum, from 23.1.1979.

The judgment debtors sought relief under the provisions of the Debtors Relief Law—Law 24/79, seeking a declaration that they were stricken debtors, and relief incidental thereto, for the suspension of execution and stay of proceedings under the Bankruptcy Law. In the absence of an immediate nexus between the two debts, two separate applications for relief were made to the Nicosia District Court, one by Realand Estates Limited and its guarantors—Application No. 50/80—and a a second one, notably Application No. 51/80, by Mr. Stavros Ambizas and his wife.

The Judge proceeded, for no stated reason, apparently for the sake of convenience, to hear the two proceedings together, notwithstanding the absence of an order for consolidation. Mrs. Timothi moved the Court orally to hear the two applications together, a course to which counsel for the appellants, respondents before the trial Court, raised no objection, whereupon the trial Judge, Hadjiconstantinou, S.D.J., proceeded to hear evidence and finally give a judgment in respect of both applications.

No part of the appeal is directed against the procedure followed by the Court; therefore, nothing that is said here should be construed as tacitly sanctioning the course followed. On the contrary, it appears to us that the procedure followed was unorthodox and, as we conceive it, irregular, and one apt to lead to confusion and, possibly, injustice. The rules of procedure may appropriately be described as the compass of litigation, departure from which may lead the Court astray, away from the path ordained by law.

After hearing evidence on the merits of the case in support of both applications, coming from Mr. Stavros Ambizas and

a number of witnesses tending to corroborate aspects of his evidence in relation to his financial affairs, the Judge found for the applicants and ruled that:

(a) Realand Estates Limited are displaced debtors within the meaning of the law,

(b) Stavros Ambizas is a stricken debtor within the meaning of the law,

(c) the guarantors of the principal debtors are automatically entitled to relief by virtue of the definition of a displaced debtor, supplied by s.2 of Law 24/79, and, lastly,

(d) that the relevant date for determining whether a particular debtor is stricken, is the 14th August, 1974, and not subsequently.

Further, the Judge adjudged the appellants to pay the costs o the proceedings.

The appellants challenged the conclusions of the Court and raised a number of grounds directed against the findings of the Court and the inferences drawn from the evidence. We do not propose to enumerate the grounds of appeal; they will be referred to in the course of this judgment, as we deal with specific complaints of the appellants.

Appeal against the findings and conclusion of the Court in Debtors Relief Application No. 50/81:

The first ground of appeal is that Realand Estates Limited were declared as displaced debtors, whereas such relief is not asked for in the application. The findings of the Court in this area illustrate forcefully the confusion that may arise from the issues in the cause, whenever the Court departs from the course set down by law. Counsel for the respondents argued that it was open to the Court to declare Realand Estates Limited as displaced, by virtue of the prayer for ancillary relief, and submitted that the issue of the displacement of the company was raised in the course of cross-examination of Mr. Ambizas.

Mr. Lemonaris contested the validity of these submissions and invited the Court to hold that it was not open to the trial Judge to make a declaration not asked for in the application. Further,

he referred us to the residence of a company in an effort to indicate that the finding in question was not, under the circumstances, open to the Court on the evidence before it.

It is our considered view that ancillary relief is a species of residual relief, arising from and inextricably connected with the main reliefs sought in the prayer. It does not extend the issues specifically raised, except broaden them to the outer limit. A declaration of displacement under Law 24/79, is a distinct relief, separate and independent from a declaration of strickenness. Prayer for the one, does not, by necessary implication import the other. The fact that evidence was introduced in cross-examination, pertaining to the centre of activities of Realand Estates Ltd., does not, in itself, broaden the pleaded issues but, as it was decided in *Farrell* v. *Secretary of State* [1980] 1 All E.R. 168, such departure from the pleadings may find adequate justification for their amendment. We are, therefore, left with the stark fact that the Judge granted a relief that was not prayed for, and one he had no authority to grant. What should then be done?

One course open to the Court, is to remit the case back to the District Court for retrial; that would, in our judgment, be unfair and unnecessary in the circumstances of the case. There was overwhelming evidence that Realand Estates Ltd. were stricken debtors within the meaning of the law. The evidence before the Court leaves no doubt that the property of the company became, as a result of the Turkish invasion, inaccessible to the debtors and, therefore, presently of little value. Nor does it make any difference that we disagree with the trial Judge as to the relevant date for testing whether a particular debtor is stricken within the meaning of the law. Both, on 14.8.1974, as well as at the time of the trial, the applicants lost access to their property and the amenity to use and dispose of it, as they would have been able to do had it not been for the Turkish invasion. So, in all probability, they qualified as stricken debtors at the date of the hearing of the application, and were, but for the omission of the Judge to acknowledge their rights, entitled to a declaration that they were stricken. Of that entitlement, we shall not deprive them, and we rule accordingly.

A second question arises before disposing of the appeal taken against the order made in Application No. 50/80, that is, whether

the guarantors are, by virtue of this declaration, automatically and co-extensively entitled to relief under the Debtors Relief Law.

We received conflicting submissions on the implications of the definition of a stricken debtor under s. 2 of Law 24/79. The wording of the definition of a stricken debtor makes our task easy for, on any view of the plain language of the law, the guarantor of a stricken debtor qualifies, ipso facto, as a stricken debtor himself. The concluding words of the definition, notably "... και περιλαμβάνει συνοφειλέτην και έγγυητήν παντός τοιούτου όφειλέτου," (English translation, "... and includes the co-debtor and guarantor of any such debtor," evidently meaning a stricken debtor earlier defined in the section, leave no room for doubt. Manifestly, the legislature did not wish to place the burdens of a stricken debtor on the shoulders of a guarantor in circumstances that would leave the guarantor remediless; the guarantor would be unable to seek repayment from the principal debtor, a course that a guarantor would be free to pursue under the provisions of the Contract Law, Cap. 149, but for the provisions of Law 24/79. We, therefore, consider it unnecessary to follow the course embarked upon by Mr. Lemonaris and explore what happened in other countries, such as India, where similar but not identical questions had to be considered; that is unnecessary in view of the clear and unambiguous provisions of our law.

In consequence, both Realand Estates Ltd. and their guarantors, were entitled to relief as stricken debtors, and *what remains to consider, is whether an order for costs should be made against the applicants.* Proceedings under Law 24/79 are definitive in the sense that recourse to the Court is essential for the delineation of the rights of the parties. In such circumstances, costs should be at large, and whenever the applicant is successful, the proper course is normally to make no order as to costs. The facts relevant to establishing a case of strickenness are peculiarly within the knowledge of the debtor, and the creditor should not be faulted for insisting on an inquiry before the suspension of his right to collect the debt. Therefore, in the circumstances of this case, the appropriate order is, with regard to this aspect of the appeal, to direct that there should be no order as to costs, either here or in the Court below. The costs in the Court

below, and on appeal, should be divided equally between the two applications for relief.

Appeal against the decision in Debtors Relief Application No. 51/80:

This part of the appeal is primarily directed against the ruling of the trial Court, whereby it was decided that:

(a) The relevant date for determining strickenness is the 14th of August, 1974, and

(b) the finding that Mr. Stavros Ambizas was, at the material date, a stricken debtor.

No evidence was adduced that his wife, the guarantor, was herself, a stricken debtor, nor relief was sought by her, except incidental to that of the principal debtor, that is, Mr. Ambizas.

Who is a stricken debtor:

A stricken debtor is defined by s.2 of Law 24/79 as a debtor whose financial position was, as a result of the anomalous situation resulting from the Turkish invasion, prejudiced to an extent that renders him unable to respond to the financial obligations arising from his debt. A debt in this context is one created prior to 14.8.1974.

In *Lorris Tryfonos & Another* v. *Famagusta Shipping Co. Ltd.*, (1981) 1 C.L.R. 137, it was held that the inquiry must be solely restricted to the ability of the debtor to respond to his particular obligation and not to his financial obligations generally. The law postulates as a first prerequisite for relief, adverse financial repercussions emanating from the Turkish invasion. Therefore, the Court must, to start with, weigh the magnitude of the loss sustained as a result of the Turkish invasion. Then, it must evaluate the financial position of the debtor, as shaped by the events of 1974, in juxtaposition to the debt, and decide whether he is in a position to respond to his obligations.

Argument was received as to the date at which this evaluation must be undertaken. On a grammatical construction of the definition of a stricken debtor, particularly the word "δύναται" (is able), read in combination with the verb that follows "νά

ἀντεπεκρίθη" (to respond), one is led to the conclusion that the inquiry must be presently made and not by reference to any time anterior to the date of trial. This construction is not only warranted by the wording but also consonant with the wider aims of the law intended to give relief to those debtors who, notwithstanding the effluxion of years from the shattering events of 1974 and such recovery as they have achieved, remain unable to meet their obligations.

Mrs. Timothi argued that it is unreasonable to distinguish, in this respect, between displaced and stricken debtors, and submitted that the right to relief of the two classes of beneficiaries of the law should be tested by reference to 14.8.1974. If this submission is upheld, practically everyone would qualify for relief for at the time of the Turkish invasion and in the climate of uncertainty that ensued and lasted for quite some time, economic values dropped considerably, putting the financial standing of everyone in jeopardy. Further, there are inherent and intrinsic differences between displaced and stricken debtors. The implications of uprootment are diverse and widespread and are apt to tax one's resources for many years to come, particularly the effort to build-up a home. Their plight was different from that of stricken debtors and that is acknowledged by the law.

Before leaving the subject of who qualifies as a stricken debtor, we may note that prejudice may arise from the loss of both or either capital and income. The debtors' financial position must be examined from a broad perspective, the test being whether he is reasonably in a position to meet his obligations. The burden is on the debtor to satisfy the Court that he is entitled to relief.

The Evidence:

Shortly before the Turkish invasion, Mr. Ambizas gave up his position at the Development Bank with a view to practising on his own as an advocate at Nicosia. He described his prospects as bright, having secured annual retainers from a number of clients, totalling some £7,000.—.

At the time of the Turkish invasion, he was in the process of setting up his law practice. Towards the end of 1974, he

became, it seems, operational as an advocate in private practice, and employed a secretary to assist him in carrying out his work. Despite the claim that his financial prospects as an advocate were prejudiced as a result of the Turkish invasion, there is, from his evidence, every indication that his practice grew in volume, and his gross earnings rose considerably, estimated at time of the hearing to not less than £14,000.—a year. This emerges from his evidence that monthly expenses for running his office, including salaries paid to personnel, came to about £1,000.—, and that in the end net earnings were in the region of £2,000.—. In due course, Mr. Ambizas engaged a second secretary, and in the years 1977 and 1978 he employed successively two lawyers to assist him, namely Mrs. Timothi and Mrs. Demetriou. These facts offer strong evidence that the practice of Mr. Ambizas flourished sufficiently and expanded to the extent of necessitating the employment of two advocates for the transaction of the legal business of the office. Mr. Ambizas unjustifiably declined to disclose to the Court the salary paid to the lawyers employed at his office. Regrettably, he was sustained by the trial Judge on the ground that this was a private matter. There is no such head of privilege and the inference to be drawn in this respect is that Mr. Ambizas was not forthcoming in enlightening the Court about his financial affairs in a key area. Such evidence would enable the Court to decide whether his employees were earning more than he allegedly earned, a fact relevant to credibility. There is no rule entitling a witness to withhold disclosure of what he regards as private matters. Such claim to privilege is unknown to the law.

In the light of the evidence before the Court, the finding of the trial Judge that his law practice was prejudicially affected as a result of the Turkish invasion, was not warranted. On the contrary, there was every indication that it expanded in volume and earnings therefrom rose sufficiently to justify the employment of two advocates and the incurring of monthly expenses amounting to £1,000.—. The Judge at no stage attempted to make a comparison of the expectations as to the net earnings of Mr. Ambizas at the time of the Turkish invasion and his earnings at the time of the trial; evidently, he acted on the erroneous assumption that the expectancy of £7,000.— retainers would be net profit. What the Judge should have

done in the circumstances was to compare the gross at the time of the hearing, and his expected gross earnings at the time of the Turkish invasion. Had he done so, the credit side would be at the time of the hearing. In consequence, the finding of the trial Judge in this area, was totally unwarranted and cannot be sustained. The inevitable inferences from the evidence before the Court is that no loss was suffered in this respect.

The appellants invited us to hold, not only that the practice of Mr. Ambizas was not adversely affected by the events of 1974, but his overall financial position as well. In their submission, the findings of the trial Judge in this regard are likewise unwarranted and do not reflect the proper inferences that should be drawn from the evidence. The trial Judge apparently equated the loss of Mr. Ambizas with the loss of Realand Estates Ltd., and concluded that Mr. Ambizas forfeited in consequence of the Turkish invasion valuable immovable property in the Kyrenia district. Mr. Ambizas is not the owner of the property; he is only a 50% shareholder in the company and the shares paid up so far by Mr. Ambizas are 50 in all, acquired prior to 1974, at a cost of £50.—. The remaining capital of the company, some 19,900 shares, has not been called in, and judging from the evidence of Mr. Ambizas, there is no intention, in the foreseeable future to require the shareholders, that is Mr. and Mrs. Ambizas, to pay up the remaining shares. Nor will need arise in the immediate future, having regard to the declaration of Realand Estates Limited as a stricken debtor. The Judge did not see matters in this perspective and presumed that Mr. Ambizas suffered a lost equivalent to 50% of the value of the company in the Kyrenia district. There was no evidence before the Court as to the value of the shareholding of Mr. Ambizas in the company, either at the time of the Turkish invasion or at the date of the hearing of the application. Nor was there any admissible evidence as to the value of the property of the company. Mr. Ambizas was, without justification, allowed to give expert testimony on the value of land. There was nothing before the Court to justify the reception of his opinion on the subject. To qualify as an expert, it must first be established that a witness, on account of his knowledge and experience in a given field of knowledge, is qualified to the extent that it is safe to admit his opinion as evidence of the fact in issue. There is nothing on record to suggest that Mr. Ambizas posses-

sed such expertise; on the contrary, judging from his own evidence, he possessed no such qualifications. For, when asked to give his opinion as to the value of the immovable property of his wife at Nicosia, he disclaimed knowledge and refused to opine on the subject.

The opinion of Mr. Ambizas was, for similar reasons, wrongly admitted with regard to property he acquired prior to the Turkish invasion in the Famagusta district, at Yialoussa, notably one third share in ten donums of land, for which he paid about £500.—. The loss of Mr. Ambizas in this respect, is appreciable but there is no satisfactory evidence as to its extent, and, certainly, the Judge wrongly admitted opinion evidence from a non expert in the field of land valuation.

Mr. Ambizas did not, as it appears from his evidence, give up investing in land and other business; a notable example is the acquisition on his part of one fourth share in the company "Eleon Enterprises Ltd.", with an initial investment of £4,000.—. Here and elsewhere, there is no satisfactory evidence as to the value of his shareholding in the business, although it seems that the company is doing fairly well, judging from the big investment made for the construction of a swimming pool. Furthermore, he made another investment in a company that contracted to acquire land with a tourist potential in the Mazotos area, but he was rather secretive as to the source of his finance and refused to divulge the name of a friend in the United Kingdom who is expected to advance a loan to him. No valid reasons, in fact no reasons whatever, were given in support of the professed unwillingness to disclose the identity of his unnamed friend, and the Judge did not, as he should have done, require him to disclose his name and identity. No colour of privilege could attach to this communication. The Court was, in essence, deprived of important information with a direct bearing on the financial position of Mr. Ambizas.

Communications between advocate and client:

Mr. Ambizas is registered as a shareholder of one seventh share in another land development company, namely I.A.T.A. Limited. He claimed that he is not the beneficial owner of the shares but only the nominee of an undisclosed principal, and he persisted in his refusal to disclose his name, notwith-

standing the importance attached to this fact by the respondents, and the challenge to his credibility on the matter. He was upheld by the trial Judge on the ground that the communication is privileged.

Mrs. Timothi, although she supported this ruling, she did not advance any persuasive arguments why we should depart from the established principles relevant to professional privilege that limit the privilege to communications intrinsically and inextricably connected with the subject on which legal advice is sought. Mr. Lemonaris contested the correctness of the ruling, and referred us to a number of authorities on the subject, two of which comprehensively indicate the boundaries of professional privilege; notably, *Bursill* v. *Tanner*, 16 Q.B.D. 1, [1885–86], and in *Re Cuthcart*, Ch. App. L.R. Vol. 5 [1869–70], p. 703.

Cotton, L.J. in *Bursill* supra, points out that not everything that comes to the knowledge of a professional adviser attracts privilege. A privileged communication is, in the words of James, L.J. in *Re Cuthcart* supra, a communication sigillo confessionis, that is, a communication made to the legal adviser for the very purpose of obtaining his professional advice and assistance.

In *Waugh* v. *British Railway Board* [1979] 2 All E.R. 1169 (H.L.), the test suggested for determining whether a particular communication is privileged, is whether the dominant purpose for which the information is passed to the legal adviser is to obtain his advice with a view to possible use in litigation.

In every case where privilege is claimed, two competing principles must be balanced:–

(a) The need to disclose relevant evidence in the interests of justice, invariably a weighty consideration, and

(b) the need to sustain a climate of unimpeded communication between the advocate and his client, likewise a potent factor for the administration of justice.

It must be appreciated that confidentiality as such, is not, as the House of Lords took pains to stress in *Alfred Crompton* v. *Commissioners of Customs* [1973] 2 All E.R. 1169, a separate head of privilege, but only a consideration relevant to determi-

ning whether privilege claimed on grounds of public interest should be upheld. (See, also, *Burmah Oil* v. *Bank of England* [1979] 2 All E.R. 461).

The decision of the trial Judge to exclude evidence touching upon the identity of the principal and his precise relationship with the nominee, was wrong and had the effect of depriving the Court of relevant information to the sub judice issues. It is an appropriate opportunity to emphasize that not every communication between client and advocate is privileged, and that relevant evidence on the subject should not be excluded unless the foundations for privilege are first laid down. Certainly, the delegation of duties to an advocate that could, in law, be discharged by any other person is not covered by privilege; in other words, the identity of one of the parties and his status as a lawyer does not, automatically, attract privilege.

Other Facts:

At the time of the trial, and for a number of years previously, Mr. Ambizas was a member of the House of Representatives wherefrom he derived earnings in the region of £200.– per month. He claimed that his participation in the House of Representatives, and politics in general, far from being a source of profit added to his financial obligations. This involvement cost him, in his evidence, a monthly expense of £300.– to £330.–, in the form of political contributions. This aspect of the evidence of Mr. Ambizas made no impression on the trial Judge who ignored it in his judgment. In our judgment, it was a very important piece of evidence leading to an inference that Mr. Ambizas must have been in a healthy financial position to be able to afford this kind of monthly expense. After his election to the House, he purchased, duty–free, what may appropriately be described as a luxury car, notably a B.M.W., at a cost of £6,500.—, another indication of a healthy financial position.

The Judge disallowed evidence as to the income and property of the wife of Mr. Ambizas, on grounds of irrelevance. We are unable to uphold this ruling, notwithstanding our decision that a guarantor is automatically entitled to relief, for such evidence was relevant in the light of the statement of Mr. Ambizas

that they had a common account for household expenditure. On the evidence of Mr. Ambizas, his wife is in a gainful employment; she is, in his words, profitably employed, wherefrom one may derive the inference that her nursery-school is a success business venture.

We are, as a rule, hesitant to interfere with the findings of fact of the trial Court, the basic forum for the elucidation of the facts of the case, but interference by the Court of Appeal is perfectly justified whenever, as in this case, the findings of the trial Court are not warranted by the evidence or are vitiated by a misappreciation of the evidence. Further, in this case, the Judge misconstrued the law, a fact indicated earlier in this judgment, as to date at which the debtor's ability to pay the debt in question should be judged.

Viewing the evidence in its entirety, the inescapable inference is that Mr. Ambizas failed to prove that he is a stricken debtor within the meaning of the law. There is every indication that his law practice, far from declining, expanded over the years, whereas his amenity to invest remained unaffected. The trial Judge misconceived the implications arising from the inaccessibility of the property of Realand Estates Limited and its impact on the financial position of Mr. Ambizas. There is hardly any satisfactory evidence to articulate the loss allegedly suffered in this area and its effect on the ability, at the time of trial, of Mr. Ambizas to make good his obligations to the appellants. In our judgment, he failed to prove that he is a stricken debtor and consequently the appeal must be allowed. On the contrary, proper reflection on two pieces of evidence, notably the monthly political contributions made by applicant, amounting monthly to between £300.– to £330.–, and the monthly expense of £80.– for private lessons of one of his children, offer strong evidence that he was in a position, at the time of trial, to meet his obligations to respondents.

Before ending this judgment, we consider it necessary to comment on one aspect of the case that has given us concern, and that is the many interventions of the trial Judge in the course of the cross-examination of Mr. Ambizas, some of which were, in our view, unfortunate.

Although a judge may intervene in order to ensure that the

proceedings follow the course ordained by the rules of evidence and procedure, he must avoid interfering beyond the limits indicated above, and especially refrain from passing unnecessary comments that may create the impression of his descending into the arena of trial. A judge must invariably distance himself from the conflict that unfolds before him and maintain strictly his arbitral position throughout the proceedings. (See, *Jones* v. *National Coal Board* [1957] 2 All E.R. 155, and *Yianni* v. *Yianni* [1966] 1 All E.R. 231). Any departure from this stance of aloofness may compromise, in the eyes of the litigants, as well as third parties, his impartiality. It is upon the unquestionable impartiality of the judiciary that the rule of law rests. (See, *Duport Steels Ltd. & Others* v. *Sirs and Others* [1980] 1 All E.R. 529 (H.L.)).

We propose to recite by way of example the intervention of the Judge, in two areas, that were unfortunate and apt to convey the wrong impression. These interventions touched upon the admissibility of evidence as to the identity of the principal for whom Mr. Ambizas claimed to have acted as nominee, and the financial implications of his position as a member of the House of Representatives.

"

Ε. Καὶ ἐσύ, κ. Ἀμπίζα, ὑπέγραψες τὸ Memorandum of Association γιὰ £7,500.-;

Α. Μάλιστα.

Ε. Στὶς 21.6.1979;

Α. Μάλιστα, σὰν δικηγόρος.

Ε. Σὲ τοῦτον τὸν φίλον σας χρωστᾶται σήμερον £6,000.-;

Δικαστήριον: Ποῖος εἶπε ὅτι τοῦ χρωστᾶ. Ἐπλήρωσε £25,000.-.

Ε. Σοῦ τὰ χάρισε κ. Ἀμπίζα;

Δικαστήριον: Δὲν ξέρει. Ἐκεῖνος ποὺ τοῦ τὰ ἔδωσε ξέρει.

Ε. Πιστεύεις ὅτι θὰ σοῦ τὰ χάρισε:

κ. Τιμόθη: Εἶναι ἄσχετη ἡ ἐρώτηση.

Δικαστήριον: Δὲν ἐπιτρέπω τὴν ἐρώτησιν.

Μάρτυς: Μπορῶ νὰ ἀπαντήσω.

Δικαστήριον: Ὄχι, νὰ μὴν ἀπαντήσετε.

κ. Λεμονάρης: Εἶπεν ὅτι ἔχει ζημιὰν ἀπὸ τὴν Βουλήν.

Δικαστήριον: Γιατὶ ὄχι. Ὑπάρχουν ὑποχρεώσεις σὰν Βουλευτὴς· ὅλες αὐτὲς οἱ ὑποχρεώσεις καὶ τὸ γεγονὸς ὅτι δὲν ἔχει τὴν δυνατότητα νὰ ἀφοσιωθῇ καὶ νὰ θυσιάση ὅλες τὶς ἐργάσιμε ὧρες εἰς τὸ δικηγορικὸ γραφεῖον του χάνει καὶ τὴν νομικὴν ἐργασίαν.

κ. Λεμονάρης: Ἔτσι λέγει ὁ ἴδιος.

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("*Q.* And you Mr. Ambizas, signed the Memorandum of Association for £7,500.–?

A. Yes.

Q. On 21.6.79?

A. Yes, as an advocate.

Q. To this friend do you owe to day £6,000.–?

Court: Who said that he owes to him. He paid £25,000.–.

Q. Has he gifted it to you Mr. Ambizas?

Court: He doesn't know. He who gave it to him knows.

Q. Do you believe that he must have gifted it to you?

Mrs. Timothi: The question is irrelevant.

Court: I do not allow the question.

Witness: I can answer.

Court: No, don't answer.

Mr. Lemonaris: He said that he suffers loss from the House of Representatives.

Court: Why not. There are obligations as a member of the

House of Representatives; all these obligations and the fact that he does not have the possibility to devote and spend all the working hours in his law office, he loses his legal work.

Mr. Lemonaris: That is what he says.

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Nothing that is said in this judgment is meant, in any way, to question the integrity of the trial Judge or his devotion to duty. Our aim is to deprecate unjustified interventions not conducive to the aims of justice. In that way, we indicate the pitfalls that a judge must avoid.

In the result, the appeal is allowed. The respondents in Appeal No. 6144 are adjudged to pay half the costs before the trial Court and on appeal.

Appeal 6143 *dismissed.*
Appeal 6144 *allowed. Order for costs as above.*