1971
Sept. 9

IN RE DJEREDJIAN AND ANOTHER

[TRIANTAFYLLIDES, P., STAVRINIDES, A. LOIZOU, JJ.]

IN THE MATTER OF HAGOP DJEREDJIAN AND NAZARET DJEREDJIAN, BANKRUPTS,

Appellants,

and

IN THE MATTER OF THE SALE BY AUCTION OF PROPERTY UNDER REG. 6300, AY. NICOLAOS QUARTER, FAMAGUSTA, ON THE 20TH APRIL, 1969, BY THE MORTGAGEE, *i.e.* THE TURKIYE ISH BANKASI,

Respondents.

(*Civil Appeal No.* 4916).

Mortgaged Property—Sale—House accommodation—Bankruptcy—Proceedings for sale of mortgaged property (block of six flats) commencing in 1964 *and sale effected in* 1969—*Mortgagors adjudicated to be bankrupts on January* 10, 1966—*Said proceedings for sale commenced in* 1964 *under the provisions of the Sale of Mortgaged Property Law, Cap.* 233—*Provisions of section* 42(3)(*f*) *of the Immovable Property (Transfer and Mortgage) Law,* 1965, *became operative on January* 1, 1967—*Those provisions not applicable to the disposition of the proceeds of the said sale in view of section* 54(2) *of the said new Law ; also not applicable under the well settled principles governing the matter of retrospective legislation—Therefore, no provision should be made in this case for house accommodation for the appellants (mortgagors) and their family—Previous legislation applicable.*

House accommodation—Sale of mortgaged house—Disposition of proceeds—See supra ; *see also* infra *under Bankruptcy ; also* infra *under Immovable Property etc. etc.*

Bankruptcy—Mortgaged property of bankrupt, including house accommodation—Vests in the trustee as from the time of the bankruptcy adjudication—See further infra *under " Words and Phrases ".*

Statutes—Construction of—Retrospective operation of statutes—The rule of non-retrospectivity—Substantive legislation as distinct from procedural one—Principles applicable well settled.

Words and Phrases—"For the time being in force" in section 42(b) of the Bankruptcy Law, Cap. 5—They relate to the time of the adjudication of bankruptcy.

Immovable Property (Transfer and Mortgage) Law 1965 (Law No. 9 of 1965)—Became operative on January 1, 1967—Sections 42(3)(f) and 54(1)(2)(3)—House accommodation—Cf. section 22 of the Civil Procedure Law, Cap. 6; and the Sale of Mortgaged Property Law, Cap. 233.

This appeal turns on the simple point whether the surplus from the proceeds of the sale of the mortgaged block of six flats of the appellants should not be applied in satisfaction of any judgment (or other) Creditor, unless and until sufficient house accommodation has been provided for the appellants (mortgagors) and their respective families.

The District Court of Famagusta dismissed the application of the appellants made under section 42(3)(*f*) of the Immovable Property (Transfer and Mortgage) Law, 1965 (Law No. 9 of 1965), by which they had applied to the Court that "the surplus from the sale of their mortgaged property (*i.e.* a block of six flats) should not be applied in satisfaction of any claims under judgments, unless and until sufficient house accommodation had been provided for them and their families".

From this judgment the appellants took the present appeal. The Supreme Court dismissed the appeal on the ground that the provisions of the said section 42(3)(*f*) of Law No. 9 of 1965 (which Law came into force on January 1, 1967) have no retrospective effect and, therefore, do not affect the position and vested rights in this case, which had been crystallised much earlier (January 10, 1966, *infra*) in accordance with the provisions of the previous legislation *viz.* the Sale of Mortgaged Property Law, Cap. 233.

The uncontested facts of the case are as follows:

The appellants were the owners since 1954 of a block of flats situated at Famagusta covered by registration No. 6300. The whole of this property had been mortgaged to the Turkiye Ish Bankasi in the year 1963. In 1964 the mortgagees applied under the provisions of the Sale of Mortgaged Property Law, Cap. 233 for the compulsory sale of the mortgaged property. The property was finally sold on April 20, 1969 leaving after deducting the mortgage debt a considerable surplus. On

January 10, 1966, the appellants were adjudicated to be bankrupts by an order of the Famagusta District Court. It is the contention of the appellants that, in view of the provisions of section 42(3)(*f*) of Law 9 of 1965 (*supra*), they are entitled out of the said surplus to sufficient house accommodation being provided for themselves and their family, before such surplus is applied in satisfaction of any claims under judgments or any satisfaction of other creditors. It is common ground that if the provisions of the said section 42(3)(*f*) are applicable to this case, the claim of the appellants ought to have succeeded ; this section provides that such surplus as aforesaid " shall not be applied in satisfaction of any such claims under judgments, unless and until sufficient house accommodation has, in the opinion of the District Court, been provided for the mortgagor and his family ".

The question, therefore, in issue in this appeal is twofold : What was the law pertaining to the facts of the present case before the enactment of Law No. 9 of 1965 (which came into operation on January 1, 1967, *supra*) ; and what is the effect of this Law, if any, on the disposition of the surplus of the proceeds from the sale of the aforesaid mortgaged property. It is to be reminded that under the material section 42(3)(*f*) of the said Law the surplus in question cannot be applied in satisfaction of any claim etc. etc., " unless and until sufficient house accommodation has . . . . . been provided for the mortgagor and his family ". The text of section 42(3)(*f*) is set out in full *post* in the judgment.

Dismissing the appeal by majority, the Court :—

Held, (SIAVRINIDES, J. *dissenting*) :

(1) Where a sale of mortgaged house or houses takes place under the Sale of Mortgaged Property Law, Cap. 233, the provisions of section 23 of the Civil Procedure Law, Cap. 6 (providing exemption from execution of house accommodation absolutely necessary for the debtor and his family) do not apply. The sale of mortgaged property comprised in a mortgage certificate without any reservation should include the whole of the property (see *Themistocles and Another* v. *Changari* (1918) 10 C.L.R. 124).

(2) (*a*) By mortgaging his house the debtor empowered the mortgagee to have it sold and have the mortgage debt paid out of the proceeds of the sale. It follows that the

provision in section 23 hereinabove referred to regarding exemption of house accommodation is not applicable and, therefore, the judgment creditors are entitled to an order of attachment of the surplus of the proceeds of the sales, after satisfaction of the mortgage debt (see : *Tofallides and Another* v. *Mehmed Ali* (1918) 11 C.L.R. 3).

(*b*) In *Michaelides* v. *Demetriades* (1968) 1 C.L.R. 211, the Supreme Court following the principles laid down in the two preceding cases (*supra*) held that the bankrupt waived his rights to claim exemption for the house accommodation which was mortgaged by him, not only *vis-a-vis* his mortgagee but generally *vis-a-vis* the other creditors and the trustee in bankruptcy ; and that the bankrupt's mortgaged property, including house accommodation, vested in the trustee, subject to the mortgage.

(3)(*a*) Once the mortgaged property (including house accommodation) was divisible among the bankrupt's creditors and vested in the trustee at the time of adjudication (*i.e.* January 10, 1966), the question whether it was exempt from execution or not must be considered in relation to the time that it became divisible to the creditors and not at some subsequent time. The question, therefore, that falls for determination is whether the provisions of section 42(3)(*f*) of Law No. 9 of 1965 (and which came into operation on January 1, 1967) are applicable to this case.

(*b*) They are not, because they are provisions bringing about a complete change in the substantive law of the land, and we would have no difficulty in holding that they were not intended to change the position with regard to vested rights. But the legislator did not leave matters to be interpreted in the light of the well settled principles of construction and retrospective application of statutes. He proceeded further by making specific provision by section 54 of the law, setting out its transitional provisions (*Note :* Section 54 is set out *post* in the judgment).

(4) The principle regarding retrospective operation of statutes enunciated in Maxwell, on The Interpretation of Statutes, 12th Ed. p. 215, is as good law in Cyprus. And there is no doubt that section 42(3)(*f*) (*supra*) does not merely alter any time limit or other rules which previously regulated litigation. It has nothing to do with procedure in litigation in which case it would have been considered as a procedural

law, thus capable of being given retrospective effect (*see : National Real Estate and Finance Co. Ltd.* v. *Hassan* [1939] 2 All E.R. 154, at p. 159 ; *followed in Re* 14 *Grafton Street London etc. etc.* v. *Centrovincial Estates etc.* [1971] 2 All E.R. 1, at p. 9).

Appeal dismissed. No order as to costs of the appeal.

Cases referred to :

Themistocles and Another v. *Changari* (1918) 10 C.L.R. 124 ;

Tofallides and Another v. *Mehmed Ali* (1918) 11 C.L.R. 3 ;

Michaelides v. *Demetriades* (1968) 1 C.L.R. 211 at pp. 230–231 ;

Millington-Ward v. *Roubina* (1970) 1 C.L.R. 88 ;

Christou v. *The Republic* (1965) 3 C.L.R. 214 ;

Nicola v. *Christofi* (1965) 1 C.L.R. 324 ;

Carson v. *Carson* [1964] 1 W.L.R. 511, at p. 516 ;

Croxford v. *Universal Insurance Co. Ltd.* [1936] 2 K.B. 253, at p. 281 ;

National Real Estate and Finance Co. Ltd. v. *Hassan* [1939] 2 All E.R. 154, at p. 159 ;

Re 14 *Grafton Street, London etc. etc.* v. *Centrovincial Estates (Mayfair) Ltd.* [1971] 2 All E.R. 1, at p. 9 ;

Williams v. *Williams* [1971] 2 All E.R. 764.

Appeal.

Appeal by applicants against the judgment of the District Court of Famagusta (Georghiou, P.D.C. and Pikis, D.J.) dated the 10th July, 1970, (Application No. 42/69) whereby the application of the applicants, made under section 42(3) (*f*) of the Immovable Property (Transfer and Mortgage) Law, 1965, by which they had applied to the Court that the surplus from the sale of their mortgaged property should not be applied in satisfaction of any claims under judgments, unless and until sufficient house accommodation had been made for them and their families, was dismissed.

Chr. Mitsides with *P. Demetriou*, for the appellants.

G. Ladas with *A. Ladas*, for the trustee in bankruptcy.

E. Montanios, for the Chartered Bank Ltd., a judgment creditor.

Cur. adv. vult.

TRIANTAFYLIDES, P. : Mr. Justice A. Loizou will deliver the first judgment.

A. LOIZOU, J. : This is an appeal from the judgment of the Full Court of Famagusta dismissing the application of the appellants, made under section 42(3) (*f*) of the Immovable Property (Transfer and Mortgage) Law of 1965, by which they had applied to the Court " that the surplus from the sale of their mortgaged property should not be applied in satisfaction of any claims under judgments, unless and until sufficient house accommodation had been made for them and their families."

The uncontested facts of this case are as follows :

The appellants were the only two general partners in the firm of Michael Djeredjian & Sons, which partnership were the registered owners since 1954 of a block of six flats situated at Watt Street, Famagusta, covered by registration No. 6300, block 375, Ay. Nikolaos quarter. The whole of this property covered by the said registration had been mortgaged to the Turkiye Ish Bankasi in the year 1963. In 1964 the mortgagees applied under the provisions of the Sale of Mortgaged Property Law, Cap. 233, for the compulsory sale of the mortgaged property. After two abortive attempts the property was finally sold on the 20th April, 1969, for £11,750. The surplus left from this sale after deduding the mortgage debt and expenses was £11,401.700 mils. On the 1st October, 1965, a Receiving Order had been made against both appellants and on the 10th January, 1966, they were adjudicated to be bankrupt in consequence of an order of the Court. At all material times the appellants resided in another block of flats previously owned by them but which were sold by public auction in the year 1968 at the instance of the same Turkish Bank, in order to cover another mortgage debt. They remained in occupation of two flats in this property, converted into one, and since their adjudication they paid no rent for the occupation of the premises and now they are threatened with eviction.

It is the contention of the appellants that in view of the enactment of Law 9 of 1965, they are entitled out of the surplus of the sale of this mortgaged property, under section 42 (3) (*f*) thereof, to sufficient house accommodation being provided for themselves and their family, before such surplus is applied in satisfaction of any claims under judgments or any satisfaction of other creditors. It has been submitted by learned counsel for the appellants that the

aforesaid property did not vest in the trustee upon adjudication of bankruptcy and that in the event that it did vest it was exempt from execution under Law 9/1965 and further, whether it vested or not the surplus of the proceeds of the sale were not divisible to the creditors of the bankrupts. Section 42 (3) (*f*) of Law 9/1965, was applicable and the appellants were entitled to house accommodation before the surplus was applied for the payment of their creditors.

The question, therefore, in issue before us is twofold : What was the law pertaining to the facts of the present case before the enactment of Law 9/1965 ; and, what is the effect of this law, if any, on the disposition of the surplus of the proceeds from the sale of the aforesaid mortgaged property. The legal position as it was before the enactment of Law 9/1965, may be summed up as follows : Under section 23 of the Civil Procedure Law, Cap. 6,—

> " The immovable property of a judgment debtor which may be sold in execution shall include only the property standing registered in his name in the books of the District Lands Office.
>
> Provided that where the property consists in whole or in part of a house or houses there shall be left to or provided for the debtor such house accommodation as shall in the opinion of the Court be absolutely necessary for him and his family."

It was held, however, in the case of *Themistocles and Another* v. *Changari* (1918) 10 C.L.R. 124, that where a sale of mortgaged property takes place under the Sale of Mortgaged Property Law 1890, now Cap. 233, the provisions of section 21 (now section 23) do not apply. The sale of mortgaged property comprised in a certificate of mortgage without any reservation should include the whole of the property covered thereby. In *Tofallides and Another* v. *Mehmed Ali* (1918) 11 C.L.R. p. 3, it was held that the debtor by mortgaging his house empowered the mortgagee to have it sold and have the mortgage debt paid out of the proceeds of the sale. It was further stated that the debtor's house accommodation in that case had been sold in consequence of something voluntarily done by himself and the proviso to section 21 (now 23) hereinabove set out regarding exemption of house accommodation was not applicable and that the plaintiffs in that case were entitled to an order of attachment of the surplus of the proceeds of the sale, after satisfaction of the mortgage debt. In *Michaelides* v. *Demetriades* (1968) I C.L.R. 211, the

Supreme Court following the principles enunciated in the two preceding cases held that the bankrupt waived his rights to claim exemption for the house accommodation which was mortgaged by him, not only *vis-a-vis* his mortgagee but generally *vis-a-vis* the other creditors and the trustee in bankruptcy. It was further held that the bankrupt's mortgaged property, including house accommodation vested in the trustee, subject to the mortgage and at pp. 230-231 of the judgment it is stated :—

> " To sum up, if the mortgaged property in this case did not include any house accommodation it would undoubtedly be divisible amongst the creditors subject to the mortgage, and it would so vest in the trustee under section 49. As the house, which was included in the mortgaged property under one registration with all the other property, is not exempt from execution because the law does not exempt from sale a mortgaged house, it was, subject to the mortgage, divisible among the creditors and vested in the trustee. The trustee stepped into the shoes of the debtor who, *inter alia*, owed a mortgaged debt of £8,500 (plus interest), and owned under one registration immovable property including house accommodation, which was mortgaged to the mortgagee bank, as security. Consequently, this house accommodation was not exempt from execution *at the material time*, and by his bankruptcy the debtor could not be put in a better position."

I have underlined in the aforesaid passage the words " at the material time " as they are of significance for the determination of one of the arguments advanced by learned counsel for the appellants. His argument was that as the surplus from the proceeds of the sale of the mortgaged property came into existence on a date subsequent to the date of the adjudication, *i.e.* it was contingent property which could not vest in the trustee upon adjudication and, therefore, they were exempt from execution on account of the provision of section 42 (*b*) of the Bankruptcy Law, Cap. 5, which reads " all property as would be exempt from execution under any law for the time being in force in Cyprus ". He invited the Court to find that the words " for the time being in force in Cyprus " referred to the time of the sale and not to the time of the adjudication. I cannot agree with the submission of the learned counsel because under section 19 (1) of The Bankruptcy Law, Cap. 5 " ..... the Court shall adjudge the bankrupt debtor, and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in the trustee".

Therefore, all the property of the bankrupts became divisible and vested in the trustee upon the bankrupts' adjudication. The whole of the property covered by registration No. 6300 vested in the trustee subject to the rights of the mortgagee and at the time of the adjudication on account of the mortgage it was not exempt from execution. The words " for the time being in force " cannot but relate to the time of the adjudication of bankruptcy as thereafter the entire *universitas juri* was by his adjudication taken from him and given to the trustee who stepped into his shoes and took a title no better and no worse than the bankrupts and became the owner of everything which the bankrupt acquires between adjudication and the moment when his discharge becomes effective. (See Williams on Bankruptcy, 18th ed. p. 272).

The trustees became the owners of this property, subject to the rights of the mortgagee and the waiver by the bankrupt of their right to claim house accommodation in view of the property having already been mortgaged by them. Once this property was divisible and vested in the trustee at the time of the adjudication the question whether it was exempt from execution or not must be considered in relation to the time that it became divisible to the creditors and not at some subsequent time.

The application of the appellants to the District Court was consequently based on section 42 (3) (*f*) of Law 9/65, as under the pre-existing law there could be no such application. The question, therefore, that poses for determination is the effect of this law on the facts of the present case. Section 42 (3) (*f*) reads as follows :

«(στ) Πρὸς ἐξόφλησιν ἀπαιτήσεων δυνάμει δικαστικῶν ἀποφάσεων ἐγγεγραμμένων δυνάμει τῶν διατάξεων τοῦ ἄρθρου 53 τοῦ περὶ Πολιτικῆς Δικονομίας Νόμου, κατὰ τὴν ἀντίστοιχον τάξιν προτεραιότητος τῆς ἐγγραφῆς αὐτῶν :

Νοεῖται ὅτι ἐὰν τὸ τοιοῦτο ἐκπλειστηρίασμα προέκυψε καθ' ὁλοκληρίαν ἢ μερικῶς ἐκ τῆς πωλήσεως οἱασδήποτε οἰκίας, τοῦτο δὲν διατίθεται πρὸς ἐξόφλησιν τοιούτων ἀπαιτήσεων δυνάμει δικαστικῶν ἀποφάσεων μέχρις οὗ γενῶσιν ἐπαρκεῖς κατὰ τὴν κρίσιν τοῦ Ἐπαρχιακοῦ Δικαστηρίου διεθετήσεις πρὸς στέγασιν τοῦ ἐνυποθήκου ὀφειλέτου καὶ τῆς οἰκογενείας αὐτοῦ :

Νοεῖται περαιτέρω ὅτι ἐὰν ὁ ἐνυπόθηκος ὀφειλέτης εἶναι γεωργὸς καὶ τὸ τοιοῦτον ποσὸν προέκυψε καθ' ὁλοκληρίαν ἢ μερικῶς ἐκ τῆς πωλήσεως οἱασδήποτε γαίας, τοῦτο δὲν διατίθεται πρὸς ἐξόφλησιν τοιούτων ἀπαιτήσεων δυνάμει

δικαστικῶν ἀποφάσεων ἀναφορικῶς πρὸς χρέη συναφθέντα μετὰ τὴν 2αν Μαΐου, 1919, ἐκτὸς ἐὰν ἐπαρκὴς κατὰ τὴν κρίσιν τοῦ Ἐπαρχιακοῦ Δικαστηρίου ἔκτασις γῆς παρασχέθῃ εἰς τὸν ἐνυπόθηκον ὀφειλέτην καὶ τὴν οἰκογένειαν αὐτοῦ, ἢ ἐκτὸς ἐὰν τὰ χρέη ταῦτα ὀφείλωνται εἴς τινα Συνεργατικὴν Ἑταιρείαν προσηκόντως ἐγγεγραμμένην ὡς τοιαύτην δυνάμει τῶν διατάξεων τοῦ περὶ Συνεργατικῶν Ἑταιρειῶν Νόμου, ἐὰν δὲ μετὰ τὴν ἐξόφλησιν τῶν ὡς ἐν τοῖς ἀνωτέρω ὀφειλῶν *ὑφίσταται εἰσέτι περίσσευμά τι τοῦ ἐκπλειστηριάσματος* τοῦτο καταβάλλεται τῷ ἐνυποθήκῳ ὀφειλέτῃ.»

The unofficial English translation reads as follows :

"(*f*) In satisfaction of any claims under judgments registered under the provisions of section 53 of the Civil Procedure Law, in the order of the respective priorities of their registration :

Provided that if such proceeds have been realized, wholly or partly, from the sale of any house, they shall not be applied in satisfaction of any such claims under judgments, unless and until sufficient house accommodation has, in the opinion of the District Court, been provided for the mortgagor and his family :

Provided further that if the mortgagor is a farmer and such proceeds have been realized, wholly or partly, from the sale of any land, they shall not be applied in satisfaction of any such claims under judgments in respect of debts incurred after the 2nd of May, 1919, unless and until sufficient land has, in the opinion of the District Court, been provided for the mortgagor and his family or unless such debts are due to any Co-operative Society, duly registered as such under the provisions of the Co-operative Societies Law, and if there is any balance of the proceeds of the sale after satisfaction of the liabilities aforesaid, such balance shall be paid to the mortgagor."

The trial Court after quoting a passage from *Michaelides* case (*supra*), had this to say :—

"This reasoning is applicable with equal force to the case before us. In consequence we find that on the 10.1.1966, the immovable property at Watt Street, became, subject to the mortgage, divisible among the creditors and vested in the trustee. Therefore, unless we judge section 42 (3) (*f*) of Law 9/65, to have retrospective effect so as to divest the trustee of the estate that vested in him upon bankruptcy, the claim of the applicants must fail.

Section 42 (3) (*f*) of the Law, introduces a new order for the distribution of the proceeds of sale of mortgaged property and makes specific provision for the protection of the right of a debtor to have house accommodation where the property sold includes a house. It is clear from the plain provisions of this section that such part of the proceeds of sale from the sale of mortgaged property sufficient to meet the housing needs of the debtor in a proper case, will be exempt from execution, for example attachment, and in consequence section 42 (*f*) where applicable constitutes an exemptive legislative provision within the meaning of section 42 (*b*) of Cap. 5. Law 9/65 came in force in 1967 and unless its provisions have retrospective effect, the applicants are to derive no help from section 42 (*f*).

We take the view that there is nothing in Law 9/65 compelling us to give retrospective effect to its provisions and in the absence of clear words to that end, the law must be given prospective effect. No rule of interpretation of statute is more firmly established and probably none more salutary. The most recent expression of the rule is to be found in the case of *Millington-Ward* v. *Roubina* (1970) 1 C.L.R. 88. See also the case of *Christou* v. *The Republic of Cyprus* (1965) 3 C.L.R. 214 and *Nicola* v. *Christofi* (1965) 1 C.L.R. 324."

On the principle regarding retrospective operation of statutes, I would like to quote from Maxwell on The Interpretation of Statutes, 12th Ed. p. 215 :—

" Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

The statement of the law contained in the preceding paragraph has been so frequently quoted with approval that it now itself enjoys almost judicial authority. (*Carson* v. *Carson* [1967] 1 W.L.R. 511,

per Scarman J. at p. 516. Cf. *Croxford* v. *Universal Insurance Co. Ltd.* [1936] 2 K.B. 253, per Scott L.J. at p. 281. 'That page (of Maxwell) seems to me to contain an almost perfect statement of the principle that you do not give a statute retrospective operation unless there is perfectly clear language showing the intention of Parliament that it shall have a retrospective application' ".

The aforesaid principle is as good law in Cyprus as it is in England.

There is no doubt in my mind that Law 9/65 and in particular section 42 (3) (*f*) thereof, does not merely alter any time limit or other rules which previously regulated litigation. It has nothing to do with procedure in litigation, in which case it would have been considered as a procedural law thus capable of being given retrospective effect. As said by Scott L. J. in *National Real Estate and Finance Co. Ltd.* v. *Hassan* [1939] 2 All E.R. 154 at p. 159, " where vested rights are affected *prima facie*, it is not a question of procedure ..... As a general rule, when one speaks of an act as being a procedural act one means it is an act relating to proceedings in litigation." This proposition was followed by Brightman J. in *Re* 14 *Grafton Street, London, W.* 1. *De Havilland* (*Antiques*) *Ltd.* v. *Centrovincial Estates* (*Mayfair*) *Ltd.* [1971] 2 All E.R. p. 1 at p. 9.

It is a provision bringing about a complete change in the substantive law of the land, and I would have no difficulty in holding that it was not intended to change the position with regard to vested rights. But the legislator did not leave matters to be interpreted in the light of the aforesaid principles of interpretation only. He proceeded further by making specific provision by section 54 of the law, setting out its transitional provisions. This section reads as follows :

«54. (1) Δήλωσις μεταβιβάσεως ἢ ὑποθήκης ἀκινήτου γενομένη δυνάμει τῶν διατάξεων τοῦ περὶ Μεταβιβάσεως Γαιῶν Τροποποιητικοῦ Νόμου ἐπάγεται τὰς αὐτὰς συνεπείας καὶ εἶναι ἐξ ἴσου ἔγκυρος ὡς ἐὰν ἐγένετο δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου.

(2) Διαδικασία ἀρξαμένη πρὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου διὰ τὴν πώλησιν οἱουδήποτε ἀκινήτου πρὸς ἐξόφλησιν ἐνυποθήκου χρέους, συνεχίζεται καὶ περατοῦται ὡς ἐὰν ὁ παρὼν Νόμος δὲν εἶχε ψηφισθῇ.

(3) Διαδικασία ἀρξαμένη πρὸ τῆς ἐνάρξεως τῆς ἰσχύος τοῦ παρόντος Νόμου δυνάμει τῶν διατάξεων τοῦ περὶ Πωλήσεως Ἐνυποθήκων Ἀκινήτων Νόμου εἶναι ἰσχυρὰ ὡς ἐὰν ἐγένετο δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου.»

The unofficial English translation reads as follows :—

"54. (1) Any declaration of transfer or mortgage of any immovable property made under the provisions of the Land Transfer Amendment Law before the coming into operation of the Law shall have the same effect and validity as if it had been made under the provisions of this Law.

(2) Any proceedings taken before the coming into operation of this Law for the sale of any immovable property in satisfaction of a debt secured by a mortgage shall be continued and determined as if this Law had not been enacted.

(3) Any proceedings taken before the coming into operation of this Law under the provisions of the Sale of Mortgaged Property Law shall have effect as if made under the provisions of this Law."

The case can therefore be decided on the proper interpretation of the meaning and effect of subsections (2) and (3). In my view subsection (3) preserves the validity of all procedural steps (statutory notices, affidavits, etc.) taken before the coming into operation of Law 9/65 under the sale of Mortgaged Property Law, Cap. 233, which was by Law 9/65 repealed. Subsection (2) thereof preserves the validity of the substantive law applicable to such proceedings. That this is so, is further borne out by the fact that whereas the law was published on the 15th March, 1965, it was not brought into operation under section 55 until the 1st January, 1967, thus, *inter alia*, giving the opportunity to those that had vested rights affected thereby to institute proceedings so that their rights would be governed on account of subsection (2) of section 54, by the law in force before the enactment of the present law.

The words in subsection (2) "shall be continued and determined" must be taken as including the disposition also of the surplus of the proceeds of the sale of the mortgaged property and not stop short of that.

For all the above reasons the appeal is dismissed.

TRIANTAFYLLIDES, P. : I am in agreement with my learned brother Mr. Justice Loizou regarding the outcome of this appeal and I will state very briefly my reasons—which essentially are the same as his—for being of this view :—

The appellants could only succeed in this appeal if it were to be found that the provisions of section 42 (3) (*f*) of the Immovable Property (Transfer and Mortgage) Law, 1965 (9/65), which came into operation as from the 1st January, 1967, after the procedure for the sale by public auction of mortgaged property of the appellants had commenced in 1964, under the Sale of Mortgaged Property Law, Cap. 233, are applicable to the disposition of the proceeds of the said sale which took place in 1969.

The application in the present case in favour of the appellants of section 42 (3) (*f*) would amount, in substance, to applying statutory provisions of substantive law retrospectively in a manner affecting the already existing rights of other persons.

In the light of the relevant principles of law, which have been recently affirmed in the case of *Williams* v. *Williams* [1971] 2 All E.R. 764, and, also, because I consider that the provisions of section 54 (2) of Law 9/65—which have already been quoted in the judgment of Mr. Justice Loizou—exclude, in effect, the application of section 42 (3) (*f*) to the disposition of the proceeds of the sale of the mortgaged property in question of the appellants, I am of the opinion that the appellants were not entitled to have applied in their favour the relevant to their claim provisions of section 42 (3) (*f*) and, therefore, this appeal should be dismissed.

In reaching my aforesaid conclusion about the effect of section 54 (2) of Law 9/65, I have derived considerable help from comparing its provisions with those of section 54 (3) of the same Law, which are only intended, unlike section 54 (2), to preserve the validity of procedural steps in relation to the sale by auction of mortgaged property which were taken under Cap. 233 prior to the coming into operation of Law 9/65.

Regarding the collateral issue whether it was the mortgaged property itself of the appellants—who were declared to be bankrupts in 1966—which vested in the trustee in bankruptcy, or only the proceeds from the sale of such property in 1969, I think that there can be no doubt that the property itself did vest, at the material time prior to

the coming into operation of Law 9/65, in the trustee, subject, of course, to the mortgage (see in this respect the case of *Michaelides* v. *Demetriades* (1968) 1 C.L.R. 211, at pp. 230—231).

STAVRINIDES, J. : I agree with my brethren that the result of this appeal turns on the construction of s. 54 (2) and (3), of the Transfer and Mortgage of Immovable Property Law, 1965. But I am unable to agree with them as to that construction.

The earlier of those subsections is specifically concerned with " proceedings for the sale of any immovable property in satisfaction of a mortgage debt " and provides that such proceedings " are continued and concluded as if this Law had not been enacted ", while the latter is, specifically again, concerned with " proceedings under the provisions of the Sale of Mortgaged Property Law ", as to which it provides that they " shall have effect as if taken under the provisions of this Law ". I note that in the English translation prepared in the Ministry of Justice and adopted in the judgment of my brother Loizou the words of the authentic Greek text of the earlier subsection " *synehizete kai peratoute* " are rendered " shall be continued and determined ". "*Peratoute* " means " concluded ". " Determined " is an ambiguous word : Depending on its context, it may mean " concluded " or, alternatively, " decided " or " given effect ". Had the text of the English translation been authentic and the next subsection not existed I would have agreed that the intention of s. 54 (2) was to exclude the operation of the first proviso to s. 42 (3) (*f*) in regard to " any proceedings " to which the former provision relates. But here the true meaning is " concluded ", which, in my view, connotes procedure, not substantive result. By contrast " effect ", which connotes substantive result, is used in s. 54 (3). But there is more to it than this, because of the words " as if taken under the provisions of this Law " following " effect ". These link up with the words " a sale made under the provisions of this Law " used in s. 42 (3) and in my judgment show an intention that s. 42 (3) shall apply to any proceedings to which s. 54 (3) relates.

On these grounds I would allow the appeal.

TRIANTAFYLLIDES, P. : In the result this appeal is dismissed, by majority. We are, however, unanimously of the view that, in the circumstances, there should be no order as to the costs of the appeal.

Appeal dismissed. No order as to the costs of the appeal.