

1953  
March 12

CHRISTO-  
DOULOS  
NICOLA  
TSERIOTIS  
v.  
CHRYSSI  
CHRISTO-  
DOULOU AND  
ANOTHER.

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(March 12, 1953)

CHRISTODOULOS NICOLA TSERIOTIS OF LIMASSOL,  
*Appellant,*

v.

CHRYSSI CHRISTODOULOU AND ANOTHER,  
*Respondents.*

(*Civil Appeal No. 3973.*)

*Contract Law (Cap. 192) sec. 74—Amount to be paid—No distinction between liquidated damages and penalty.*

The plaintiff-appellant transferred his house to his daughter on her marriage but reserved a room for himself, his wife and children. The agreement stipulated that his daughter would pay £200 compensation if the plaintiff were dispossessed of the room.

*Held:* Where, under the Contract Law sec. 74 a specific amount is to be paid in case of breach, no question arises whether compensation is liquidated damages or penalty. The Court is at liberty to grant such sum by way of compensation as is reasonable.

Appeal by plaintiff from the judgment of the District Court of Limassol (Action No. 1359/51).

*Chr. Mitsides and P. Papaioannou* for the appellant.

*Pl. Solomonides* for the respondents.

The judgment of the Court was delivered by :

HALLINAN, C.J. : [The judgment dealt with certain matters of fact which it is not necessary to report. The facts stated in the headnote are sufficient for the purposes of the point of law decided. Only that portion of the judgment which deals with this point is reported.]

The next question is whether this sum of £200 is liquidated damages which the parties have assessed or whether it is in the nature of a penalty. Whether or not the Court has to decide this question depends on the interpretation that we give to section 74 of the Contract Law. We have been referred to the corresponding section 74 of the Indian Contract Law. After a perusal of the notes to this section contained in Pollock and Mulla, Indian Contract Acts, 6th Edition, we have come to the conclusion that before the amendment it was clearly the intention of the legislature to do away with the distinction between penalty and liquidated damages, so that whenever a sum is named in a contract as the amount to be paid in case of a breach, the Court in every such case must award such sum as it considers reasonable compensation not exceeding the amount so named. It has been argued in this appeal that the insertion of the words "if the contract contains any other stipulation by way of

penalty" restored this distinction between liquidated damages and penalty by an amendment in 1899. However, it appears that the object of the amendment in 1899 was to enable the Court to treat certain terms contained in bonds and moneylending transactions as penalties which but for the amendment would not be within section 74 ; for example, if such a contract provided for the rate of interest to be increased as from the date of a default under the contract, that (after the amendment of section 74) could be treated as a penalty whereas before the amendment it could not. When one views the amendment of 1899 in this light, it is, in our view, clear that the original intention of the legislature to do away with the distinction between a penalty and liquidated damages where there is a sum named in case of breach, still remains. *Since then we are of opinion that this sum of £200 mentioned in the agreement between the parties is not an alternative agreement but is intended to be a sum named in the contract as an amount to be paid in the case of breach, we consider that the Court is at liberty to grant such sum by way of compensation as is reasonable, not exceeding £200.*

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ANOTHER.

[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(March 26, 1953)

THE FIRST LIMASSOL CO-OPERATIVE SAVINGS  
BANK, LTD., *Appellants,*

- v. -

GUZIN SHEFIK OF LIMASSOL, *Respondent.*

(*Application in Civil Appeal No. 3975.*)

*Order 35 r. 2 and Order 51 r. 2—Filing notice of appeal—If filed in time with the Registrar, time of service on respondent immaterial.*

Under Order 51 r. 2 notice of appeal must be served through the Court. Such a notice, if filed within the time prescribed in Order 35 r. 2, is deemed to have been served in time on the respondent.

Application by the respondent to strike out the appeal.

*Ali Dana* for the appellants.

*Sir Panayiotis Cacoyiannis* for the respondent.

The judgment of the Court was delivered by :

HALLINAN, C.J. : This is an application by the respondent to strike out the appeal as not having been served upon him within the time prescribed in Order 35 r. 2.

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THE FIRST  
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