

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.*

1953
March 12

CHRISTO-
DOULOS
NICOLA
TSEKIOTIS

v.
CHRYSSI
CHRISTO-
DOULOU AND
ANOTHER.

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

(March 26, 1953)

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

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.

1953
March 26

THE FIRST
LIMASSOL
CO-OPERATIVE
SAVINGS
BANK, LTD.
v.
GUZIN
SHEFIK.

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THE FIRST
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CO-OPERATIVE
SAVINGS
BANK, LTD.
v.
GUZIN
SHEFIK.

The last day for the service of the appeal was Saturday, 12th April, 1952, and the notice of appeal was filed with the Registrar for service on the respondent on that day which was Saturday and was in fact served two days later, *i.e.* on the 14th April, 1952.

Order 51, r. 2, prescribes that all documents or processes required to be served under any of the Rules of Court shall be served through the Court. The short question on this application is whether the appellant by filing his notice of appeal with the Registrar within the time prescribed in Order 35 r. 2 is deemed to have served his notice of appeal in time on the respondent or whether he must file it with the Registrar in sufficient time for the Registrar to arrange service on the respondent. It is curious that this point has not arisen before or that the practice has not been established. In our view if it was the intention that the appellant had to file his notice of appeal with the Registrar in time to have it served on the respondent the rule would have made provision about this. But, in the absence of a provision, we consider that the only reasonable interpretation must be that the appellant, when he files his notice of appeal with the Registrar within the time prescribed in Order 35 r. 2 must be deemed to have served it in time on the respondent.

The application to strike out this appeal is therefore refused.