

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

GEORGE MICHAEL, OF NICOSIA,

Plaintiff-Respondent,

v.

COSTAS GEORGHIOU, OF AGLANJA,

*Defendant-Appellant.**(Civil Appeal No. 3654.)*1939
July 5.GEORGE
MICHAEL
v.
COSTAS
GEORGHIOU.

CONTRACT OF SALE—AGREEMENT FOR RETURN OF GOODS IF PRICE NOT PAID WITHIN
A SPECIFIED TIME—SECTIONS 84 (3) AND 55 (1) OF THE CONTRACT LAW OF 1930.

The parties entered into an oral agreement whereby the respondent agreed to sell to the appellant a cart and a mule for £25. Though the cart and mule were delivered to the appellant, it was agreed that they were not to become his (appellant's) property until the full price had been paid, and this price was to be paid within one year. Upon appellant's failure to pay the agreed price within the specified time the respondent brought an action in the District Court, Nicosia, claiming the return of the cart and mule or alternatively £25. The District Court gave judgment for the return of the cart and mule to the respondent, and the appellant appealed therefrom.

HELD: (1) That the contract entered into between the parties was not a contract of sale within the scope of section 84 of the Contract Law, 1930, but was an executory one, i.e., the completion of the contract was contingent on the payment by the appellant of the balance of the purchase price within one year ;

(2) That time was of the essence of the contract, and therefore it was voidable at the option of the promisee under section 55(1) of the Contract Law, 1930.

Ioannides with *Ioannou* for the appellant.

C. Glykys for the respondent.

Judgment of the Court was delivered by the Chief Justice.

CREAN, C.J.: This is an appeal from a judgment of the District Court of Nicosia dated 3rd January, 1939, in an action by George Michael of Nicosia (respondent) against Costa Georghiou, of Aglanja (appellant), claiming the return of a mule and cart or alternatively £25, the price agreed on by an oral contract.

It was alleged by the respondent (plaintiff in Court below) that he entered into an oral agreement with the appellant for the sale to the appellant of a cart and mule on or about the 20th February, 1937, it being a term of the agreement that though delivery was immediately given to the appellant of the cart and mule they were not to become the property of the appellant until the full price had been paid and this price was to be paid within one year. It was a further term of the agreement that any sums paid by the appellant on account of the cart and mule should not be recoverable in the event of the contract being terminated, and that the mule and cart were to be returned to the possession of the respondent.

Counsel for the appellant argued at length before us that the local Contract Law—Law No. 24 of 1930—is different from the Law of England in that, in a sale the property passes as soon as the proposal

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is accepted—section 84 (3)—and not at such time as the parties intend it to pass. He argued that it was not open to parties to contract outside the Contract Law, and that every contract for sale was governed by section 84 of that Law. Consequently, in his submission, the property in the cart and mule had passed to the appellant, and, though judgment could be given against him for the price, no order for the return of the cart and mule could be made.

Certainly, the local Contract Law seems to differ from English Law as to the time at which property is deemed to pass; and if this contract is to be considered on the footing of a pure sale then the appellant's contention would be unanswerable, and no judgment for return of the mule and cart could stand. But we are in agreement with the learned Judge of the Court below, who accepted the evidence of the plaintiff (respondent) as to the terms of the agreement, that this was not a contract of sale, but an executory contract. That is to say, the completion of the contract of sale was contingent on the payment by the defendant (appellant) of the balance of the purchase price within one year. Under section 55 (i) of the Contract Law when time is of the essence of the contract—and it seems to have been made so in this case—and a party fails to perform his promise (in this case to pay the sum of £25) within the specified time, then the contract is voidable at the option of the promisee.

From the whole circumstances of this case it is unreasonable to believe that the respondent intended immediately to part with his property in the mule and cart, particularly as he retained the registration in his own name. The effect of his evidence is that the transaction was not intended as a sale within the scope of section 84 of the Contract Law, but was merely an agreement to allow the appellant to use the cart and mule and sell them to him at the agreed price if he could find the money to pay for it within one year.

The judgment of the Court below, namely, that the cart and mule should be returned or £25—their agreed value—be paid should, in our opinion, be affirmed.

The respondent obtained possession of the cart and mule, and sold them to somebody else. Since the cart and mule have been held to be his own property, we do not think this Court need inquire too closely into the correctness of the procedure adopted by the respondent in regaining possession. Nor is that question before us in this appeal.

The appeal will be dismissed with costs.

Appeal dismissed with costs.