1963
Nov. 5,
Dec. 17
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IACOVOS
IOANNOU
KRASISMENOS
v.
IOANNIS IOSIF
HJICHANNI

[WILSON, P., ZEKIA, VASSILIADES AND JOSEPHIDES, JJ.]

IACOVOS IOANNOU KRASISMENOS,

Appellant

v.

IOANNIS IOSIF HJICHANNI,

Respondent.

(*Civil Appeal No.* 4444).

Agricultural Debtors Relief Law, 1962—*A debt on a bond executed in July*, 1962, *in renewal of or in substitution for, old debts existing prior to the appointed day* (i.e. *February* 13, 1962) *is a debt incurred after that date—The Contract Law, Cap.* 149, *section* 62—*The Agricultural Debtors Relief Law*, 1962, *sections* 2, 6 (2), 8 (1) *and* (2) *and* 9 (1)—*Therefore, no relief under the latter Law can be sought in respect of the said debt—Relief can only be granted in respect of Debts incurred before the appointed day* (supra) *and still owed by the debtor at the time of the filing of the application for relief.*

Statutes—Construction—Canons of construction—Matters to be considered in construing a statute—Aim, scope and object of the whole statute—what was the law before the statute was passed—What was the mischief or defect for which the law had not provided—What remedy the legislature has appointed and the reason of the remedy—And the history of the statute.

By section 62 of the Contract Law, Cap. 149 it is provided that if " the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

By section 2 of the Agricultural Debtors Relief Law, 1962 " Debt " includes all liabilities of a debtor of any nature whatsoever, secured or unsecured, ... , whether payable presently or in future."

Section 8 of the Agricultural Debtors Relief Law, 1962, reads as follows :—

(1) " A debtor may . . . . apply in the prescribed form . . . . . claiming relief . . . . in respect of any debt incurred before the appointed date and owed by him " . . . (Note : *the appointed date is February* 13, 1962).

(2) Any such application shall include all the debts owed by the debtor and incurred before the appointed date and shall also contain a statement of any debts owed by the debtor and incurred after the appointed date and of any exempted debts . . . . ."

Section 9 (1) of the said Law reads as follows :—

" No application shall be entertained by the Relief Court and no relief shall be granted in respect of any debt incurred after the appointed date."

Section 6 (2) of the aforesaid Law gives the Court power to grant leave to a debtor to apply for the reopening of a " transaction " under certain circumstances. (Section 6 (2) is set out in full in the judgment of the High Court).

The appellant has applied to the Agricultural Debtors Relief Court, Kyrenia, requesting relief under the provisions of the Agricultural Debtors Relief Law, 1962, in respect of a debt of £1892 owed by him under a bond in customary form dated the 29th July, 1962, to the creditor (respondent). This bond was issued in consideration and satisfaction of two previous bonds dated the 24th September, 1957 and 15th October, 1961, respectively, and of a cash loan of £50 made after February, 1962, *i.e.* after the appointed day (13th of February, 1962).

The Agricultural Debtors Relief Court, Kyrenia held that the applicant-debtor (appellant) was not entitled to relief in respect of this bond issued to the respondent-creditor on the ground that it was a debt incurred after the appointed day *i.e.* February 13, 1962 and that therefore, this debt should be deleted from the application for relief.

The debtor (applicant) appealed against this order and the High Court in dismissing the appeal, ZEKIA and JOSEPHIDES J. J., dissenting :-

Held, (1) it is quite clear that there was a new liability created when the new bond was issued. Were it not for the provisions of the Agricultural Debtors Relief Law, 1962, to be discussed herein, there would be agreement that this was the legal position.

(2) There is of course no dispute as to the general purpose, but the nature and extent of relief must be ascertained from the Law itself. The debtor must bring himself within the provisions of the Act. In section 2 the definition is " debt includes all liabilities of a debtor of any nature whatsoever,

secured or unsecured, whether payable under a Judgment or Order of a Court or under a hire purchase agreement or otherwise and whether payable presently or in the future". This clearly includes the bond in question. From the definition there are excluded what are known as "exempted debts" with which we are not concerned in this proceeding, and the debts dealt with by section 9.

(3) The plain language of sub-section (1) of section 8 says the debts in respect of which relief may be given are the debts incurred before the appointed date, February 13, 1962, and they must be debts owed by him, but it does not define the date upon which they must be owed. Nevertheless before the Relief Court can grant relief a debt must be one incurred before February 13, 1962 and also be owing. Owing when ? At the date when the application is sworn to or filed as will be explained later. The sub-section does not say the debt must be owing, whatever that word may mean, on or before February 13, 1962. If that had been the intention it would have been easy to say so.

(4) At what date, then must the debt be owing in order to give the Court jurisdiction over it ? Clearly there is not jurisdiction over a debt which was incurred before the appointed date and which has been paid off by the date on which the debtor makes his affidavit attached to his application for relief because such a debt cannot be said to be one "owed" at that time. Nor for the same reason has the Court any jurisdiction in respect of a debt which has been incurred after the appointed dates but has also been paid off by the date the debtor makes such an affidavit. The form does not even require it to be listed.

(5) Again sub-section (2) of section 8 of the Agricultural Debtors Relief Law, 1962, provides for the listing not only of those debts for which relief may be given, but also other debts for which relief may not be given, namely those incurred after the appointed date and owed by the debtor. It does not require a listing of any debts which have been incurred since the appointed date and have been paid. We can only conclude the word "owed" relates to debts owed at the date the application was sworn to by the debtor, namely August 8, 1962.

(6) Can it be said debts are owing under the two earlier bonds as of either the date of making the affidavit or filing the application for relief ? We think not. It was stated and agreed during argument before us that the debtor's liability

under them had been extinguished when the new bond was taken. This is confirmed by their return by the creditor to the debtor. The fact that the new bond represented a re-arrangement of the legal liabilities between these two persons does not affect the creditor's position. The rights and liabilities of the parties are not governed by the earlier bonds, they arise out of and are governed by the new legal contract entered into on July 19, 1962. The debtor must have known about the Law when he gave the new bond and must be held to think he gained some advantage in doing so.

(7) When the debtor filed his application (sworn on August 8, 1962) on August 8, 1962, he knew he owed nothing on the two earlier bonds, he only owed money on the last one. He had therefore no right to apply for relief in respect of those earlier debts. And if he had no right to apply for relief the Court could not have power to grant him something for which he was not entitled to ask.

Section 9 (1) confirms this view because it prohibits the Court from granting relief in respect of any debt incurred after the appointed date.

(8) We have not overlooked section 6 (2) of the Law which gives the Relief Court power to grant leave to a debtor to apply for the re-opening of a "transaction" under certain circumstances. It was argued in this Court that the debtor could invoke it here. There are two insurmountable difficulties in his way. The first is that no application was made to the Relief Court for such leave. The second is that no material was placed before either the Relief Court or this Court which would allow such leave to be given.

We should also add that section 6 (2) supports the conclusion which we have reached. In it the legislature has clearly said, in effect, that the transactions therein designated and which apart from this provision would clearly not come within the Law, may be re-opened and a new account may be taken between the debtor and the creditor and that the relief therein provided for may be given.

Held, per JOSEPHIDES, J., in his dissenting judgment :—

(1) There is no doubt that under our Contract Law, Cap. 149, if the " parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed " (section 62). If A owes to B £1,000 by virtue of a customary bond dated 1961 and A enters into an agree-

ment with B and gives B a mortgage of his (A's) property for £1,000 in March, 1962, in place of the bond of £1,000, this is a new contract and extinguishes the old. But, can it be said that this is a "debt incurred after the appointed date" (13th February, 1962) for the purposes of the Agricultural Debtors Relief Law ? In fact the consideration stated in the bond for £1,892 of July, 1962, is the two old bonds of 1961 plus a small "admitted account" (£50).

(2) We are here concerned with the construction of an Act of Parliament and I think we ought to give the Act its ordinary meaning, and carry out to its full extent that which the legislature intended. In accordance with the canons of construction applicable to such cases to arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act ; to consider (*a*) what was the law before the Act was passed ; (*b*) what was the mischief or defect for which the law had not provided ; (*c*) what remedy Parliament has appointed ; and (*d*) the reason of the remedy (*Heydon's* case (1584) Rep. 7*b*).

(3) The long title of the Agricultural Debtors Relief Law, 1962, states that it is "a Law to provide for the relief of Agricultural Debtors in the Republic". The expression "debt" in section 2 is defined as including "all liabilities of a debtor of any nature whatsoever, secured or unsecured, whether payable under a judgment or order of a Court or under a hire-purchase agreement or otherwise and whether payable presently or in the future". Certain debts are exempted from the definition of a "debt" e.g., taxes and duties, loans made by Co-operative Societies and Banks, etc.

(4) A special Court, styled as "the Relief Court" was constituted under the provisions of section 3 of the Law and empowered to consider and determine any application made by any debtor under the provisions of the Law and, when the "circumstances of the case" so require, by its decision to order—

(*a*) that any debt included in the debtor's application may be paid by instalments during such period, not exceeding twelve years, as the Court may determine (subject to special provisions for hire-purchase agreements) ;

(*b*) that the agreed rate of the interest chargeable for such debt may be reduced up to not less than five per centum per annum (section 6 (1)).

The expression " circumstances of the case " includes *inter alia* " questions relating to the circumstances under which and the purposes for which such indebtedness was incurred " (section 6 (3) (*b*)).

(5) The Relief Court was further empowered to reopen transactions regarding interest paid, arrears of interest, rate of interest, or the amounts charged for expenses, bonus, premiums, renewals, etc., proved to be excessive, notwithstanding any bond or agreement purporting to create an obligation, and relieve the debtor of any sum so found to be charged or paid in excess. (Section 6 (2)). This reproduces substantially the provisions of the Usury (Farmers) Law, Cap. 101 (section 4) and the Dealings between Merchants and Farmers Law, Cap. 132 (section 6), which have been on the statute book since 1919.

Under the provisions of section 8 a debtor is entitled to apply to the Relief Court for relief in respect of " any debt incurred before the appointed date " ; and under section 9 (1) it is provided that no application shall be entertained by the Relief Court and no relief shall be granted in respect of " any debt incurred after the appointed date " (see the Greek and Turkish texts of section 9 (1) quoted in this judgment). A " debt " is a liability of a debtor of any nature whatsoever " .... whether payable presently or in the future ", (section 2).

" The appointed date " is defined in section 2 of the Law to be the 13th day of February, 1962. In the Bill published in the Official *gazette* of the Republic on the 3rd March, 1962, the expression " appointed date " in clause 2 of the Bill, was defined as meaning " the date in which the present Law was introduced as a Bill by the competent Ministers in the House of Representatives".

(6) From the above brief outline it will be seen that the object of the legislature was to provide for the relief of farmers in the Republic by extending the time for the payment of their debts, reducing the rate of interest, etc., in respect of debts which had been " incurred " before the date on which the Bill was introduced in the House of Representatives. The expression used in the Greek text is " χρέη συναφθέντα " and the expression used in the Turkish text is " aktedilen her hangi bir borç ", before the appointed date (section 8 (1)).

(7) I now approach the construction of this Act bearing in mind that in the words of Lord Lindley (in *Thomson* v. *Clanmorris* (1900) 1 Ch. 718, 725) " regard must be had not only to

the words used, but to the history of the Act and the reasons which led to this being passed ". (*Pratt* v. *Cook* (1939) 1 K.B. 364, 382 C.A., *per* Goddard L.J.).

(8) As I read the Greek and Turkish texts of section 8 (1) and section 9 (1) it was the intention of the legislature to give relief in respect of debts actually created for the first time prior to the introduction of the Bill in the House of Representatives (and payable either " presently or in the future "), and not to exclude such debts from relief in cases where an old bond or liability was renewed after the introduction of the Bill in the House. That is to say, I take the object of the legislature to be to look to the substance of the transaction to ascertain whether it is a completely new liability incurred for the first time after the appointed date or a bond or contract renewing an older bond or contract made prior to the appointed date. For the purposes of this special Law one has to look to the substance and the origin of the liability and not to the ultimate form ; one should look to the creation and nature of the indebtedness itself as such and not to the date of the document evidencing such debt or to the documentary evidence of the debt founding the enforceable right.

(9) In the present case the bond in dispute (for £1,892) signed in July, 1962, itself states that the consideration is the old bonds (of 1961) plus a new account (of £50). That is to say, the sum of £1,892 consists of two old debts incurred prior to the 13th February, 1962, amounting to £1,842 and of a new debt of £50 incurred after February, 1962.

(10) In the circumstances, applying the above construction I consider that the debtor is entitled to relief in respect of his indebtedness of £1,842 incurred prior to the appointed date, but not in respect of the new debt of £50 incurred after that date.

I would allow the appeal in those terms.

Appeal dismissed with costs.

Cases referred to :—

Thomson v. *Clanmorris* (1900) 1 Ch. 718, 725 ;

Pratt v. *Cook* (1939) 1 K.B. 364, 382, C.A.;

Heydon's case (1584) Rep. 7*b*.

Appeal.

Appeal against the judgment of the Agricultural Debtors Relief Court of Kyrenia (Attalides Ag. D.J.) dated the 30.5.63 (Application No. 100/62) whereby it was held that

applicant is not entitled to relief in respect of a debt due on a bond issued to the respondent on 29.7.62 and that the debt be deleted from the application for relief.

E. Efstathiou for the appellant.

A. Liatsos for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgments which follow.

WILSON, P. : This is an appeal from the order of the Agricultural Debtors Relief Court, Kyrenia, made on May 30th 1963, in which it was ordered that the applicant debtor was not entitled to relief in respect of a debt due on a bond issued to the respondent on 29.7.1962 and that the debt be deleted from the application for relief.

The only question for consideration in this appeal is whether for purposes of the said Law, the indebtedness to the creditor was incurred by two earlier bonds given before the effective date or incurred by a single bond given after the effective date.

The learned trial Judge ruled that the debtor was not entitled to relief for this debt because the debtor freely issued the new bond after the Law had been put into operation and it was accordingly excluded by the provisions of section 9 (1) which reads :

> " No application shall be entertained by the relief Court and no relief shall be granted in respect of any debt incurred after the appointed date."

The appointed date was February 13, 1962.

Upon the appeal it was contended that the debtor was entitled to relief because the indebtedness to the creditor was, for purposes of the Law, incurred under the earlier bonds, and, in any event, section 6 (2) applied. It provides :—

> " Subject to any Rules of Court the relief Court may grant leave to a debtor to apply for the re-opening of a transaction if there is evidence satisfying such court that the interest paid or the arrears of interest on the debt or both exceed the amount of such debt, or that the rate of interest in excess of the legal rate of interest, or that the amounts charged for expenses, inquiries, fines, bonus, premius renewals or any other charges are excessive, and in such a case the relief court may re-open the transaction and take an account

between the creditor and the debtor, notwithstanding any account stated, bond, mortgage or any agreement purporting to create an obligation, and relieve the debtor of any sum so found to be charged or paid in excess."

The following are the relevant facts. It is admitted that the appellant is a debtor within the meaning of the Agricultural Debtors Relief Law 1962. It is admitted that this bond was given in satisfaction of two earlier bonds made between the debtor and the creditor dated 24.9.61 and 15.10.61 and some small debts incurred after the Agricultural Debtors Relief Law came into effect. It is also admitted that the earlier two bonds and the small debts referred to were satisfied by the issue of the new bond on July 29, 1962. The two older bonds were surrendered by the creditor to the debtor when the new bond was given. It was further admitted that if the creditor had brought action on the old bonds—assuming that were permitted—against the debtor, after the new bond had been given, the latter would have contended that he was not under any liability to pay them, because they had been satisfied by the giving of the new bond. It is quite clear, therefore, that there was a new liability created when the new bond was issued. Were it not for the provisions of the Agricultural Debtors Relief Law to be discussed herein, there would be agreement that this was the legal position.

It was contended, however, that for the purposes of the Agricultural Debtors Relief Law that the old debt continued because the new bond contained the following provision :—

"Derived from old bonds and by virtue of an admitted account."

and that the general purpose of the law was to give relief to agricultural debtors. There is of course no dispute as to the general purpose, but the nature and extent of relief must be ascertained from the Law itself. The debtor must bring himself within the provisions of the Act. In section 2 the definition is : " 'debt' includes all liabilities of a debtor of any nature whatsoever, secured or unsecured, whether payable under a Judgment or Order of a Court or under a hire purchase agreement or otherwise and whether payable presently or in the future." This clearly includes the bond in question. From the definition there are excluded what are known as " exempted debts " with which we are not concerned in this proceeding, and the debts dealt with by section 9.

Now what does the Law require. The relevant words of section 8 (1) and (2) are—" A debtor may . . .apply in the prescribed form . . .claiming relief . . .in respect of any debt *incurred before the appointed date and owed by him* . . . "

" (2) Any such application shall include *all the debts owed* by the debtor *and incurred before the appointed date and shall also contain a statement of any debts owed by the debtor and incurred after the appointed* date *and* of any exempted debts . . . . "

The plain language of sub-section (1) says the debts in respect of which relief may be given are the debts incurred before the appointed date, February 13, 1962, and they must be debts owed by him, but it does not define the date upon which they must be owed. Nevertheless before the Relief Court can grant relief a debt must be one incurred before February 13, 1962 and also be owing. Owing when? At the date when the application is sworn to or filed as will be explained later. The sub-section does not say the debt must be owing, whatever that word may mean, on or before February 13, 1962. If that had been the intention it would have been easy to say so.

At what date, then, must the debt be owing in order to give the Court jurisdiction over it? Clearly there is no jurisdiction over a debt which was incurred before the appointed date and which has been paid off by the date on which the debtor makes his affidavit attached to his application for relief because such a debt cannot be said to be one " owed " at that time. Nor for the same reason has the Court any jurisdiction in respect of a debt which has been incurred after the appointed dates but has also been paid off by the date the debtor makes such an affidavit. The form does not even require it to be listed.

Again, sub-section (2) provides for the listing not only of those debts for which relief may be given, but also other debts for which relief may not be given, namely those incurred after the appointed date and owed by the debtor. It does not require a listing of any debts which have been incurred since the appointed date and have been paid. I can only conclude the word " owed " relates to debts owed at the date the application was sworn to by the debtor, namely August 8, 1962.

Can it be said debts are owing under the two earlier bonds as of either the date of making the affidavit or filing the application for relief? I think not. It was stated and agreed during argument before us that the debtor's liability under them had been extinguished when the new bond was taken. This is confirmed by their return by the cre-

ditor to the debtor. The fact that the new bond represented a re-arrangement of the legal liabilities between these two persons does not affect the creditor's position. The rights and liabilities of the parties are not governed by the earlier bonds, they arise out of and are governed by the new legal contract entered into on July 29, 1962. The debtor must have known about the Law when he gave the new bond and must be held to think he gained some advantage in doing so.

When the debtor filed his application (sworn on August 8, 1962) on August 8, 1962, he knew he owed nothing on the two earlier bonds, he only owed money on the last one. He had therefore no right to apply for relief in respect of those earlier debts. And if he had no right to apply for relief the Court could not have power to grant him something for which he was not entitled to ask.

Section 9(1) confirms this view because it prohibits the Court from granting relief in respect of any debt incurred after the appointed date.

I have not overlooked section 6(2) of the Law which gives the Relief Court power to grant leave to a debtor to apply for the reopening of a " transaction " under certain circumstances. It was argued in this Court that the debtor could invoke it here. There are two insurmountable difficulties in his way. The first is that no application was made to the Relief Court for such leave. The second is that no material was placed before either the Relief Court or this Court which would allow such leave to be given.

I should also add that section 6(2) supports the conclusion which I have reached. In it the legislature has clearly said, in effect, that the transactions therein designated and which apart from this provision would clearly not come within the Law, may be reopened and a new account may be taken between the debtor and the creditor and that the relief therein provided for may be given.

For these reasons the appeal should be dismissed with costs.

ZEKIA, J. : The point which falls for decision in this appeal is the construction to be laid on the words " debts incurred " which occur in section 9(1) of the Agricultural Debtors Relief Law, 1962. Section 9(1) reads :

> " No application shall be entertained by the Relief Court and no relief shall be granted in respect of any debt incurred after the appointed date,"

the appointed date being the 13th day of Februarv, 1962.

In this case, admittedly, the consideration of the bond (£1,892 of July 1962) included in the appellant's application made to the Agricultural Debtors Relief Court, consists mainly of two earlier bonds for debts incurred prior to the appointed date.

Is it permissible for the appellant-debtor, for the purposes of the Agricultural Debtors Relief Law, 1962, to include in his application debts embodied in two earlier bonds notwithstanding the fact that both bonds merged in a new bond of July 1962? The primary object of the Agricultural Debtors Relief Law is to grant relief to the Agricultural Debtors by arranging the payment of their debts by annual instalments, not exceeding 12 years and also by reducing the rate of interest to be paid by such debtors, and, if need be, by re-opening accounts and transactions between such debtors and their creditors (see section 6 of the Law). Under section 8(a) of the Law a debtor was entitled to apply within the prescribed period to the Relief Court in respect of debts incurred before the appointed date. There is no doubt that the old debts merged in the new bond, executed in July, 1962, but the fact remains that they were still unpaid and were originally incurred prior to the appointed date.

I am inclined to the view that it would be more consistent with the object of the law in question if the actual date originally a debt was incurred is accepted for the purposes of sections 6(1) and 9(1) of the Agricultural Debtors Relief Law, 1962.

I am, therefore, of the opinion that the appeal should be allowed.

VASSILIADES, J. : I am clearly of opinion that the appeal must fail.

The word " debt " in a legal proceeding and in a statutory provision concerning indebtedness, must carry its ordinary legal meaning unless otherwise required. It must mean a legally binding obligation for the payment of money, enforceable by legal process. Moral debts, prescribed debts, extinguished or paid up debts, and other such obligations, past or still existing, cannot be described as legal debts, in the absence of express provision to that effect in the relevant law.

We are here concerned with a debt under the Agricultural Debtors Relief Law, 1962. The claim of the creditor, or

the obligation of the debtor, cannot be dealt with under the provisions of this special statute, unless they can be brought within the definition of the statute, which reads :

> « 'Χρέος ' περιλαμβάνει πάσης φύσεως ὑποχρεώσεις ὀφειλέτου τινός, ἠσφαλισμένας ἢ μή, εἴτε αὗται ὀφείλονται δυνάμει δικαστικῆς ἀποφάσεως ἢ διατάγματος, εἴτε δυνάμει συμβάσεως ἐνοικιαγορᾶς εἴτε ἄλλως πως, καὶ εἴτε αὗται κατέστησαν ἤδη ἀπαιτηταὶ εἴτε θὰ καταστῶσιν ἀπαιτηταὶ ἐν τῷ μέλλοντι.»

(In the official English translation prepared at the Ministry of Justice, the definition reads :

> " debt includes all liabilities of a debtor of any nature whatsoever, secured or unsecured, whether payable under a judgment or order of a Court or under a hire-purchase agreement or otherwise and whether payable presently or in future.".)

It is common ground that the " debt " of the appellant-debtor to the respondent-creditor herein, could not be dealt with by the Relief Court unless it could be brought within the provisions of the statute.

It is moreover common ground that the " debt " in question consists of a legal obligation of the appellant-debtor to pay to the respondent-creditor £1,862 with 9% p.a. interest from 1.8.62 under a bond in customary form dated 29.7.62, and issued to the creditor accordingly, payable on 1.8.62. This bond was signed and issued in consideration and satisfaction of a small cash-loan and two previous bonds dated 24.9.61 and 15.10.61 respectively, both of which were returned, as usual, to the debtor upon the issuing of the bond in question on 29.7.62.

Surely the only legal debt which now, (and as from issuing of the new bond) the appellant-debtor owes to the respondent-creditor is the debt payable under the bond in question. He has no debt under the previous bonds ; or in respect of the small cash loan. And equally surely, the debt under the present bond is a " debt " within the definition ; while the indebtedness which existed under the previous bonds ceased to be debts within the definition as from the 29.7.62. To my mind, the legal position under these bonds cannot be other than this.

Now the appellant-debtor in making his application for relief under section 8 of the Agricultural Debtors Relief Law, on the 8th August 1962, included in his state-

ment of payable debts, the debt due, or "owing" to the respondent-creditor under the bond issued on the 29.7.62. Had he not included it, the debt could not be made subject to any order made by the Relief Court under section 6, as expressly provided in section 9. And the creditor would be free to pursue his ordinary legal remedy under the bond in his hands.

But having included the debt in his application under section 8, the appellant-debtor is faced with the unavoidable position that the Relief Court, by express provision in the same section 8, can only give him relief under the statute "in respect of any debt incurred before 'the appointed date'", that is to say before the 13th February, 1962, as provided in section 2. Debts incurred after that date, are expressly exempted from the statute, notwithstanding the fact that they are "debts" within the definition in section 2.

Now "debt incurred" or "χρέος συναφθὲν" (as worded in the Greek text of the section 8 of the Statute) before the appointed date can only mean, in my view, debt contracted, before the date fixed by the legislator for the purposes of this law. Συνάπτω χρέος in Greek means: I contract a debt.

In my view, the appellant-debtor contracted his present legal debt to the respondent-creditor when he negotiated, agreed signed and issued to him, the bond for £1,862 on the 29.7.62; presumably knowing the legal consequences of the transaction. The ruling of the Relief Court Judge, to exclude the debt in question from appellant's application, was, therefore, in my opinion, clearly right. And I agree with the conclusion reached by the President of the Court that for the reasons stated in his judgment, this appeal must be dismissed, with costs.

JOSEPHIDES, J.: In this case we have to construe the expression "χρέη συναφθέντα μετὰ τὴν καθωρισμένην ἡμερομηνίαν" in Turkish "Tayin edilen tarihten sonra akdedilen her hangi bir borç", which occurs in section 9(1) of the Agricultural Debtors Relief Law, 1962. The same expression occurs in section 8 of the same Law. In the English translation of the Law this is rendered as "any debt incurred after the appointed date."

The Greek and Turkish texts of section 9(1) read as follows:

«9 (1) Τὸ δικαστήριον ἀνακουφίσεως ἀγροτῶν ὀφειλετῶν δὲν κέκτηται δικαιοδοσίαν ἐκδικάσεως αἰτήσεων οὐδὲ παροχῆς ἀνακουφίσεως ἀναφορικῶς πρὸς χρέη συναφθέντα μετὰ τὴν καθωρισμένην ἡμερομηνίαν.»

" 9(1) Tayin edilen tarihten sonra aktedilen her hangi bir borç ile ilgili olarak, Borç Düzenlome Mahkemesince hiç bir müracaata bakilmaz ve hiç bir hal çaresine hükmedilmez."

The " appointed date " is the 13th day of February, 1962 (section 2 of the Law).

The facts are briefly as follows : The appellant, who is a debtor within the meaning of the Agricultural Debtors Relief Law, filed his application for relief to the Relief Court on the 8th August, 1962, in the prescribed form, under the provisions of section 8 (1) of the Law. In the second schedule to his application he showed the respondent as his creditor No. 1 and stated that he owed to him " about £1,892 plus interest ", by virtue of a " bond renewed in July, 1962," adding the following : " my original debt was incurred in 1949 and since then the bonds were renewed every year."

The respondent-creditor filed a notice of opposition supported by an affidavit in which, *inter alia*, it was stated that by virtue of a bond issued on the 29th July, 1962, and expiring on the 1st August, 1962, the appellant-debtor owed to him the sum of £1,892 plus interest at 9% per annum, and he, the respondent, asked the Court to exempt this debt from the debtor's application having regard to the date of the issue of the bond.

The application came on for hearing before the Relief Court Judge on the 30th May, 1963, and it was common ground that the consideration stated in the bond for £1,892 issued on the 29th July, 1962, was two old bonds dated 24th September, 1961 and 15th October, 1961 (for £1,699 and £58, respectively), and an " admitted account" of £50 in respect of money advanced for the first time after the 13th February, 1962.

The appellant's counsel submitted to the Relief Court that the bond signed in July, 1962 was a renewal of an old debt existing prior to 13th February, 1962 and not a " debt incurred " after that date.

The respondent's counsel submitted that the debtor by signing the bond for £1,892 on the 29th July, 1962, that is to say, after the " appointed date " (13th February, 1962), waived his right to ask for relief and that the bond was in respect of a " debt incurred after the appointed date."

Furthermore, respondent's counsel submitted that the bond for £1,892 included not only two old bonds but also a new loan of £50.

The Relief Court Judge ruled that the appellant was not entitled to relief for this debt " having freely issued the bond after the date fixed and after the Law has been put into operation. The debt 1, therefore, is deleted from the application ".

On appeal both counsel reiterated their submissions, appellant's argument being that the bond of £1,892 signed in July, 1962, was a renewal of a " debt incurred " prior to the 13th February, 1962, and that the renewal of a bond did not constitute the " incurring of a debt " under the Law. Counsel for the respondent submitted that by the signing of the new bond in July, 1962, the liability under the old bonds of 1961 was extinguished and that the debtor "incurred a debt " in July, 1962, *i.e.* after the appointed date.

There is no doubt that under our Contract Law, Cap. 149, if the " parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed " (section 62). If A owes to B £1,000 by virtue of a customary bond dated 1961 and A enters into an agreement with B and gives B a mortgage of his (A's) property for £1,000 in March, 1962, in place of the bond of £1,000, this is a new contract and extinguishes the old. But, can it be said that this is a " debt incurred after the appointed date " (13th February, 1962) for the purposes of the Agricultural Debtors Relief Law ? In fact the consideration stated in the bond for £1,892 of July, 1962, is the two old bonds of 1961 plus a small " admitted account " (£50).

We are here concerned with the construction of an Act of Parliament and I think we ought to give the Act its ordinary meaning, and carry out to its full extent that which the legislature intended. In accordance with the canons of construction applicable to such cases to arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act ; to consider (*a*) what was the law before the Act was passed ; (*b*) what was the mischief or defect for which the law had not provided ; (*c*) what remedy Parliament has appointed ; and (*d*) the reason of the remedy (*Heydon's case* (1584) Rep. 7b).

The Agricultural Debtors Relief Law was published in the Gazette of the Republic (and came into operation) on the 26th April, 1962, and under the provisions of section

8 (1) a debtor was given three months after the expiration of one month from the day of the coming into operation of the Law to apply to the Relief Court for relief. The long title of the Law states that it is " a Law to provide for the relief of agricultural debtors in the Republic ". The expression " debt " in section 2 is defined as including " all liabilities of a debtor of any nature whatsoever, secured or unsecured, whether payable under a judgment or order of a Court or under a hire-purchase agreement or otherwise and whether payable presently or in the future ".

Certain debts are exempted from the definition of a "debt", e.g. taxes and duties, loans made by Cooperative Societies and Banks, etc.

A special Court, styled as " the Relief Court " was constituted under the provisions of section 3 of the Law and empowered to consider and determine any application made by any debtor under the provisions of the Law and, when the " circumstances of the case " so require, by its decision to order—

(*a*) that any debt included in the debtor's application may be paid by instalments during such period, not exceeding twelve years, as the Court may determine (subject to special provisions for hire-purchase agreements) ;

(*b*) that the agreed rate of the interest chargeable for such debt may be reduced up to not less than five per centum per annum (Section 6 (1)).

The expression " circumstances of the case " includes *inter alia* " questions relating to the circumstances under which and the purposes for which such indebtedness was incurred " (Section 6 (3) (*b*)).

The Relief Court was further empowered to reopen transactions regarding interest paid, arrears of interest, rate of interest, or the amounts charged for expenses, bonus, premiums, renewals etc. proved to be excessive, notwithstanding any bond or agreement purporting to create an obligation, and relieve the debtor of any sum so found to be charged or paid in excess. (Section 6(2)). This reproduces substantially the provisions of the Usury (Farmers) Law, Cap. 101 (section 4) and the Dealings between Merchants and Farmers Law, Cap. 132 (section 6), which have been on the statute book since 1919.

Under the provisions of section 8 a debtor is entitled to apply to the Relief Court for relief in respect of " any debt incurred before the appointed date " ; and under

section 9(1) it is provided that no application shall be entertained by the Relief Court and no relief shall be granted in respect of " any debt incurred after the appointed date " (see the Greek and Turkish texts of section 9(1) quoted earlier in this judgment). A " debt " is a liability of a debtor of any nature whatsoever " . . whether payable presently or in the future " (section 2).

The " appointed date " is (as already stated) defined in section 2 of the Law to be the " 13th day of February, 1962 ". In the Bill published in the official Gazette on the 3rd March, 1962, the expression " appointed date ", in clause 2 of the Bill, was defined as meaning " the date on which the present Law was introduced as a Bill by the competent Ministers in the House of Representatives ".

From the above brief outline it will be seen that the object of the legislature was to provide for the relief of farmers in the Republic by extending the time for the payment of their debts, reducing the rate of interest, etc. in respect of debts which had been " incurred " before the date on which the Bill was introduced in the House of Representatives. The expression used in the Greek text is " χρέη συναφθέντα " and the expression used in the Turkish text is " aktedilen her hangi bir borç ", before the appointed date (section 8(1)).

The words " συνάπτω " and " συνάπτω χρέος " are defined in the Greek Dictionaries as follows :

> Συνάπτω ΑΚΔ (ἀόρ. συνῆψα, πθτ. ἀόρ. συνήφθην, μτχ. παθτ. πρκ. συνημμένος). Συνδέω (μτφ. μὲ ἀφηρημένον ἀντικείμενον) κάμνω (π.χ. συνάπτω γάμον, μάχην κ.λ.π.)
>
> ('Επιτροπῆς Φιλολόγων
> Σύγχρονον ὀρθογραφικὸν ἑρμηνευτικὸν
> λεξικὸν 'Ελληνικῆς γλώσσης
> Καθαρευούσης—Δημοτικῆς,
> Σελὶς 2027)

> Συνάπτω, ἀόρ. συνῆψα,—συνήφθην, παθ. μετ. συνημμένος. Συνδέω, συναρμόζω, συνήθ. μεταφ. «συνάπτω φιλίαν—γνωριμίαν—σχέσεις» συνδέομαι διὰ φιλίας κ.λ.π. «συνάπτω μάχην» μάχομαι (συνάπτω γάμον) νυμφεύομαι, «σ υ ν ά π τ ω χ ρ έ η — δ ά ν ε ι ο ν» δ α ν ε ί ζ ο μ α ι «συνημμένος-η-ον προσηρτημένος». Προσκεκολλημένος «τὰ συνημμένα μετὰ τῆς ἀναφορᾶς ἔγγραφα». 'Επίρ.—συνημμένως
>
> (Μεγάλη 'Ελληνικὴ 'Εγκυκλοπαίδεια

Τόμος ΚΒ Ἔκδοσις Δευτέρα
Ἱδρυτὴς Ἰδιοκτήτης—Παῦλος Δρανδάκης
Ἐκδοτικὸς Ὀργανισμὸς «Φοῖνιξ» Ε.Π.Ε.
Σελὶς 551)

Συνάπτω (ρ. μετ. ἀορ. συνῆψα, παθ. ἀόρ. συνήφθην, μτχ. παθ. πρκμ. συνημμένος). Συνενῶ, συνδέω, συναρμόζω, συγκολλῶ, συμφωνῶ, συμβάλλομοι, ἐπιχειρῶ, κάμνω φρ. συνάπτω γάμον, νυμφεύομαι· συνάπτω μάχην, συγκρούομαι· συνάπτω συμβόλαιον, συμβάλλομαι· συνάπτω σχέσεις, σχετίζομαι· σ υ ν ά π τ ω χ ρ έ η · χ ρ ε ώ ν ο μ α ι.

(Ἐλευθερουδάκη Ἐγκυκλοπαιδικὸν Λεξικὸν
Τόμος Ἑνδέκατος, Σελὶς 893).

Συνάπτω (ρ. μτβ.) ἀόρ. συνῆψα, παθ. ἀόρ. συνήφθην, μετ. παθ. παρακ. συνημμένος . Συνδέω τι πρὸς ἄλλο, συναρμόζω τι ὡς παρακολούθημα, ὡς παράρτημα. «Τὸ ἔγγραφόν σας μετὰ τοῦ συνημμένου πιστοποιητικοῦ διεβιβάσθη κ.λ.π.» (ἰδία μεταφ.) «συνάπτω γάμον» νυμφεύομαι· συνάπτω μάχην, μάχομαι· συνάπτω σχέσεις, γνωριμίαν, σχετίζομαι· γνωρίζομαι πρός τινα «συνάπτω συμβόλαιον—σύμβασιν, δάνειον» συνομολογῶ.

(Πρωΐας λεξικὸν νέας Ἑλληνικῆς γλώσσης,
Ἔκδοσις δευτέρα ἐπηυξημένη,
Τόμος Δεύτερος, Σελὶς 2299).

According to the Turkish English Dictionary by Honi, the Turkish word " Aktetmek " means " to bind, tie, conclude (bargain, treaty) ; contract (marriage) ; set up, establish (council) ; organise (meeting) ; make (a contract, etc." And according to the Concise Oxford Turkish Dictionary by Alderson and Fahir Iz, the word " akid " (from which the verb " aktetmek " drives) means " A tying ; tie, knot ; compact, treaty ; bargain ; marriage."

I now approach the construction of this Act bearing in mind that in the words of Lord Lindley (in *Thomson* v. *Clanmorris* (1900) 1 Ch. 718, 725) " regard must be had not only to the words used, but to the history of the Act and the reasons which led to this being passed ". (*Pratt* v. *Cook* (1939) 1 K.B. 364, 382 C.A., per Goddard L.J.).

As I read the Greek and Turkish texts of section 8(1) and section 9(1) it was the intention of the legislature to give relief in respect of debts actually created for the first time prior to the introduction of the Bill in the House of Representatives (and payable either " presently or in the

future "), and not to exclude such debts from relief in cases where an old bond or liability was renewed after the introduction of the Bill in the House. That is to say, I take the object of the legislature to be to look to the substance of the transaction to ascertain whether it is a completely new liability incurred for the first time after the appointed date or a bond or contract renewing an older bond or contract made prior to the appointed date. For the purposes of this special law one has to look to the substance and the origin of the liability and not to the ultimate form ; one should look to the creation and nature of the indebtedness itself as such and not to the date of the document evidencing such debt or to the documentary evidence of the debt founding the enforceable right.

In the present case the bond in dispute (for £1,892) signed in July, 1962, itself states that the consideration is the old bonds (of 1961) plus a new account (of £50). That is to say, the sum of £1,892 consists of two old debts incurred prior to the 13th February, 1962, amounting to £1,842, and of a new debt of £50 incurred after February, 1962.

In the circumstances, applying the above construction, I consider that the debtor is entitled to relief in respect of his indebtedness of £1,842 incurred prior to the appointed date, but not in respect of the new debt of £50 incurred after that date.

I would allow the appeal in those terms.

WILSON, P. : In the result the appeal is dismissed with costs.

Appeal dismissed with costs.