[VASSILIADES, P., JOSEPHIDES AND HADJIANASTASSIOU, JJ.]

XENIS XENOPOULLOS,

Appellant-Plaintiff,

v.

ELLI ISIDOROU MAKRIDI,

Respondent-Defendant,

(*Civil Appeal No.* 4711).

Contract—Sale of immovable property—Specific performance of a contract for the sale of land—It can be ordered only under the Sale of Land (Specific Performance) Law, Cap. 232*—Provided that all the formalities required by that Law, namely section* 2, *have been complied with—Provisions of section* 76(1) *of the Contract Law, Cap.* 149 *regarding specific performance of contracts generally not applicable to contracts for sale of land—In view of the saving clause in sub section* (2) *of said section* 76— Iordanou *v.* Anyftos (1958) 24 *C.L.R.* 97 *and* Avgousti *v.* Papadamou (1968) 1 *C.L.R.* 66, *followed—Cf. section* 10 *of Cap.* 232 (supra); *section* 92 *of the Civil Procedure Law, Cap.* 6; *section* 34 *of the Courts of Justice Law,* 1960 (*Law of the Republic No.* 14 *of* 1960).

Sale of land—Specific performance—See above.

Specific performance—Sale of land—See above.

Contract—Breach of—Sum named therein whether in the nature of pre-estimated damages or penalty—Is the maximum amount payable when the contract is broken—The Contract Law, Cap. 149, *section* 74(1)—Tseriotis *v.* Christodoulou (1953) 19 *C.L.R.* 216, *followed; principle laid down in* Iordanou's *case ubi* supra *at p.* 105, *applied.*

Damages for breach of contract—Sum named therein—Section 74 *of the Contract Law Cap.* 149*—See hereabove.*

Penalty or pre-estimated damages—Specific amount named in the contract in the nature of either—It is the maximum amount that can be recovered—In either case a lesser amount may be recovered in cases where the Court thinks it reasonable in the circumstances—Section 74 *of the Contract Law, Cap.* 149*— See, also, hereabove.*

Pre-estimated damages—See hereabove.

Immovable property—Sale of—Specific performance—See hereabove.

By a contract in writing, duly signed and attested by witnesses, dated June 28, 1965, entered into between the parties in these proceedings, the respondent agreed to sell a building site belonging to her, and the appellant agreed to buy it, for the price of £2,800. One of the several terms of the agreement was to the effect that transfer of title to the buyer should be effected after full payment of the price, interest, taxes etc. By clause 5 in the said contract it was agreed that the party contravening "the above terms or any one of them, is liable to pay compensation in the sum of £500." Some two years later, on September 12, 1967, the vendor acting in breach of the contract, informed the buyer by letter that she decided to repudiate it; and offered to return to the buyer whatever he had already paid against the price, plus the amount of £500 compensation agreed under the contract. The buyer declined to accept such repudiation and by letter dated September 14, 1967 replied that he insisted on the strict performance of the contract. Eventually he instituted on November 1, 1967 the present action in the District Court of Limassol claiming against the vendor (now respondent): (1) Specific performance of the contract by transfer of the said building site to him as agreed: or, in the alternative, (2) return of the sale price with interest; and in any event (3) damages exceeding the agreed amount of £500 (*supra*).

It is common ground that the case lies outside the provisions of the Sale of Land (Specific Performance) Law, Cap. 232, as many of the formalities required thereunder had not been complied with. On the other hand section 74(1) of the Contract Law, Cap. 149 provides that a contract shall be capable of being specifically enforced if (a) it is not a void contract; (b) it is expressed in writing; (c) it is signed by the party to be charged therewith; and (d) the Court considers that specific performance is the appropriate remedy, in the circumstances of the case, which the Court is prepared to grant in the exercise of its judicial discretion in the matter. These provisions, however, are coupled, in the same section, with the saving clause in sub-section (2) which referring to contracts for the sale of land reads:

"(2) Nothing herein contained shall affect the specific performance of contracts for the sale of immovable property

under the provisions of the Sale of Land (Specific Performance) Law (now Cap. 232) or any amendment thereof."

On the other hand section 74(1) of the Contract Law, Cap. 149 reads:—

> 74(1) "When a contract has been broken if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. A stipulation for increased interest from the date of default may be a stipulation by way of penalty."

The District Court tried and decided the questions of law involved in this appeal as a preliminary issue under The Civil Procedure Rules, Order 27, rules 1 and 2, as follows:

> "(1) The Court has no power to order specific performance of the agreement dated 8.6.65 since all the formalities required by section 2 of Cap. 232 (*supra*) have not been complied with; consequently
>
> (2) the sole remedy in the present case is that of payment of damages, and
>
> (3) the maximum amount of damages to which the plaintiff is entitled for breach of contract on the part of the defendant is £500."

From this ruling the buyer (plaintiff) appealed on four grounds the effect of which is that the trial Court erroneously held that the contract was incapable of specific performance; and erroneously decided that under the contract the buyer was not entitled to more than £500 damages.

It was argued by counsel for the appellant that specific performance is one of the remedies expressly made available for the enforcement of contracts under section 76(1) of the Contract Law, Cap. 149; the saving clause of sub-section (2) of which (*supra*) does not exclude contracts for the sale of land from the general application of the section, but merely provides a parallel remedy, in the discretion of the Court, available

to a party who can bring his case within the section; regardless of whether such case lies outside the strict provisions of the Sale of Land (Specific Performance) Law, Cap. 232.

Regarding the question of damages counsel for the appellant argued that the provision in the contract for the payment of £500 compensation was made by way of security against particular breaches, leaving the amount of damages for complete repudiation of the whole contract at large.

Dismissing the appeal and affirming the decision-ruling of the trial Court, the Supreme Court:—

Held, 1. Regarding the question of specific performance of the contract:

(1) The majority judgment of this Court in the case of *Avgousti* v. *Papadamou* (1968) 1 C.L.R. 66 at p. 75 reads:

> "In spite of the not very happy manner in which sub-section (2) of section 76 of the contract Law, Cap. 149 (*supra*), has been phrased, we have really no doubt in our minds that what was intended to be conveyed thereby is that the provisions of sub-section 1 of section 76 (*supra*), regarding specific performance of contracts in general, shall not 'affect' in other words shall not be applicable to specific performance of contracts for the sale of immovable property, and that this matter should be continued to be governed, as before, solely by the provisions of the Sale of Land (Specific Performance) Law, Cap. 232".

We find ourselves in agreement with this view.

(2) The Sale of Land (Specific Performance) Law is one of the rare Laws in the statute book, which the legislator did not find necessary to alter or amend since its enactment more than eighty years ago (in 1885) notwithstanding that it concerns a transaction of such frequent occurrence in Cyprus as the sale of immovable property. Its provisions were expressly saved when the legislator by enacting in 1930 the Contract Law (now Cap. 149), introduced by section 76 thereof specific performance as a remedy for the enforcement of contractual obligations subject to the conditions therein provided. There can be no doubt that until 1931 when the new (at the time) Contract Law of 1930 (now Cap. 149) came into force, the remedy of specific performance was not available to either

vendor or buyer of immovable property outside the provisions of the Sale of Land (Specific Performance) Law. Indeed section 10 of this statute expressly put it beyond the reach of the vendor in any case, by providing that his remedy shall lie in damages only.

(3) We do not think in the circumstances that it could have been the intention of the legislator to create "a parallel remedy" of specific performance to the parties in contracts for the sale of immovable property (including the vendor) as suggested on behalf of the appellant buyer in this case. To hold otherwise, one would have to face a variety of irregular situations into which we need not enter.

Held, II. Regarding the question whether or not the maximum amount of damages is the sum of £500 named in the contract sued on:

(1)(a) In the case of *Iordanou* v. *Anyftos* (1958) 23 C.L.R. 97, at p. 105, Zekia J. delivering the judgment of the Court said that "the specific sum mentioned (in the contract) whether in the nature of pre-estimated damages or penalty is the maximum amount payable when the contract is broken."

(b) We agree that this is the effect of the provisions of section 74(1) of the Contract Law, Cap. 149 regarding the payment of compensation under the contract in *Iordanou's* case (*supra*).

(2) Turning now to the contract in this case, it was submitted by counsel for the appellant that clause 5 of the contract (*supra*) provides for a penalty for a breach within the contract; and that for a complete rescission, the damages are at large, to be measured on the loss of the other side consequent upon such rescission. Reading the contract as a whole and clause 5 in its context, we hold with the District Court of Limassol that this was not what the parties have agreed; or have expressed in their contract. We are unanimously of the opinion, therefore that this appeal against the ruling of the District Court fails:

(3) And the case must now go back to the District Court to deal with the other matters in dispute, particularly the rate and amount of interest to which the buyer is entitled on the various sums he paid to the vendor against the price. Costs in cause.

Appeal dismissed; order for costs as above.

Cases referred to:

Avgousti v. *Papadamou* (1968) 1 C.L.R. 66, followed;

Iordanou v. *Anyftos* (1958) 24 C.L.R. 97, followed; Principle laid down at p. 105 applied;

Tseriotis v. *Christodoulou* (1953) 19 C.L.R. 216, followed;

Georghiades and Another v. *Patsalides and Another* (1958) 24 C.L.R. 275;

Richard West and Partners (Inverness) Ltd. v. *Dick* [1969] 2 W.L.R. 383; affirmed on appeal [1969] 2 W.L.R. 1190;

Ranger v. *Great Western Railway Co.* (1854) H.L. 72; [1843–1860] All E.R. Rep. 321;

Aktieselskabet Reidar v. *Arcos Ltd.* [1926] All E.R. Rep. 140 at p. 145 per Atkin L.J.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Limassol (Malachtos P.D.C. & Loris D.J.) dated the 25th April, 1968 (Action No. 2217/67) dismissing his claim for specific performance of an agreement concerning the sale of a building site.

G. Cacoyiannis, for the appellant.

M. Houry, for the respondent.

Cur. adv. vult.

The judgment of the Court was delivered by:

VASSILIADES, P.: The plaintiff, a Limassol dentist, decided to build a house for himself. He approached the defendant, a spinster, who owned several building sites in a residential area of the town of Limassol, and agreed to buy one of them for £2,800. The site is described in the statement of claim with reference to its registration in the Land Registry Office; its size is given as one evlek and 213 square feet (a little over one fourth of a donum) which is obviously not a large site.

The sale was negotiated in June, 1965; and was finally settled on the terms embodied in an agreement in writing, dated 28th June, 1965, duly signed by the parties and attested by witnesses.

It is a formal contract in writing; admitted by both sides; on the contents and nature of which both the claim in the action and the defence rest. It was produced by the plaintiff and was admitted as *exhibit* 1 in these proceedings. We shall refer to it as "the contract"; and to the parties thereto as "the vendor" for the defendant, and "the buyer" for the plaintiff, respectively.

It was a fundamental part of the contract that the ownership of the property would remain with the vendor until full payment of the price; and until formal transfer at the Land Registry Office as required by law.

Some two years later, on September 12, 1967, the vendor informed the buyer by letter through her advocate, that she decided to repudiate the contract; and offered to return to the buyer whatever he had paid against the saleprice, plus the amount of compensation agreed under the contract. The buyer promptly declined this offer, replying through his advocate on September 14, 1967, that he insisted on the performance of the contract. Both lawyers' letters are on the record before us as *exhibits* 2 and 3 respectively. No agreement having been reached, the vendor insisting on her repudiation of the contract, the buyer filed the present action on November 1, 1967.

His claim is for specific performance of the contract by transfer of the property to the buyer; or, in the alternative, return of the sale price with interest at 9% on each payment; and in any case damages. The vendor entered an appearance in due course; and the buyer filed and delivered his statement of claim on December 6, 1967. The vendor filed and delivered her defence on December 9; and the pleading closed with a reply and a rejoinder in January, 1968.

In the meantime, the buyer's advocate, taking a commendable course in the circumstances, applied under rules 1 and 2 of Order 27 of the Civil Procedure Rules, for directions that certain questions of law raised by the pleadings, be tried and decided as a preliminary issue, the determination of which would practically dispose of the dispute between the parties, saving them considerable time and expense. The other side agreed to the course suggested; and on January 5, 1968, the Court made a consent order in the terms of the application.

The questions of law raised for decision as above, are stated in the application as follows:–

"(1) Whether the Court has power to decree specific performance of the agreement dated 28th June, 1965 even though some of the formalities prescribed by the Sale of Land (Specific Performance) Law, Cap. 232, have not been complied with. (See para. 8 of the defence).

(2) Whether upon a true construction of the said agreement dated 28th June, 1965, the parties are deemed by clause 5 of the said agreement to have excluded specific performance of the said agreement intending damages to be the sole remedy or whether such sum was specified merely as security for the performance of the agreement by either party (see paras. 4 and 8(b) of the defence and para. 4 of the statement of claim).

(3) Whether the maximum amount of damages to which the plaintiff is entitled for non-performance of the contract is £500."

The legal issues raised by these questions may, we think, be put more simply in the question whether it is open to the Court to order specific performance of this contract for the sale of immovable property, under the provisions of section 76 of the Contract Law (Cap. 149) regardless of the provisions of the Sale of Land (Specific Performance) Law (Cap. 232)? And if not, whether the contract entitles the plaintiff to any compensation beyond the amount of £500.– provided therein.

The District Court answered these questions in the negative. For the reasons stated in a carefully considered ruling, the Court decided that:–

"(1) The Court has no power to order specific performance of the agreement dated 28.6.65 since all the formalities required by section 2 of Cap. 232 have not been complied with; consequently,

(2) the sole remedy in the present case is that of payment of damages, and

(3) the maximum amount of damages to which the plaintiff is entitled for breach of contract on the part of the defendant is £500.–".

From this decision the buyer (plaintiff) appealed on the four grounds stated in his notice of appeal, the effect of which is that the trial Court erroneously held that the contract was incapable of specific performance because of the provisions of the Sale of Land (Specific Performance) Law; and erroneously decided that under the contract, the buyer was not entitled to more than £500.– damages.

In presenting the appeal before us, learned counsel for the buyer argued that the equitable remedy of specific performance, which is part of our law, is particularly used in England in cases of contracts for the sale of land. He referred to Halsbury's Laws of England, 3rd Ed. Vol. 34, paragraph 484 at p. 290; and paragraph 560 at p. 330. Counsel submitted that specific performance is one of the remedies expressly made available for the enforcement of contracts under section 76 of our Contract Law (Cap. 149); the saving paragraph (2) of which does not exclude, counsel argued, contracts for the sale of land from the general application of the section, but provides a parallel remedy, in the discretion of the Court, available to a party who can bring his case within the section; regardless of whether such case lies outside the strict provisions of the Sale of Land (Specific Performance) Law.

Referring to *Avgousti* v. *Papadamou* (1968) 1 C.L.R. 66, decided on March 19, 1968, learned counsel rightly pointed out that the decision therein was not part of our case law when the present case was argued before the District Court; and submitted that the *ratio decidendi* was different in the *Avgousti* case which is moreover distinguishable, he said, on its facts. Counsel referred to both, the majority and the dissenting judgments in that case, finding, of course, ample support in the latter.

Learned counsel for the vendor, on the other hand, submitted that the remedy of specific performance is a statutory remedy in Cyprus, which, as far as contracts for the sale of immovable property are concerned, was considered in *Iordanou* v. *Anyftos* (24 C.L.R. 97) and recently in *Avgousti* v. *Papadamou* (*supra*) the decision in which governs the matter to such an extent that the appellant cannot succeed in this appeal unless that decision be overruled.

As far as I can say, drawing from my limited knowledge of the Turkish law applicable in Cyprus during the early part of

the British occupation of the Island, specific performance was a remedy unknown to the law at that time. It was first introduced in 1885 by the Sale of Land (Specific Performance) Law of that year, which was enacted "to provide for the specific performance of contracts for the sale of immovable property". It went on the statute book as Law 11 of 1885; and considerable time later, in practically the same form, as Cap. 238 in the 1949-edition of the Laws of Cyprus; and as Cap. 232 of the 1959-edition. It was not affected by the 1946 reform in the law concerning immovable property; nor was it affected by Law 9 of 1965 enacted in March of that year, to consolidate and reform the law regarding the transfer and mortgage of immovable property. (See section 55 at p. 312 and the schedule thereto at p. 320 of the Official Gazette, Parts I and II, stating the abolished legislation).

The Sale of Land (Specific Performance) Law in question, is one of the rare Laws on the statute book, which the legislator did not find necessary to alter or amend since its enactment more than eighty years ago (1885) notwithstanding that it concerns a transaction of such frequent occurrence in Cyprus as the sale of immovable property. Its provisions were expressly saved when the legislator, in reforming the law of contract in 1930, introduced by section 76 of the new Contract Law (now Cap. 149) specific performance as a remedy for the enforcement of contractual obligations, subject to the conditions therein provided. This is the section upon which the buyer's claim rests. It provides that a contract shall be capable of being specifically enforced if (a) it is not a void contract; (b) it is expressed in writing; (3) it is signed by the party to be charged therewith; and (d) the Court considers that specific performance is the appropriate remedy, in the circumstances of the case, which the Court is prepared to grant in the exercise of its judicial discretion in the matter.

These provisions, however, are coupled in the same section, with the saving in sub-section (2) which referring to contracts for the sale of immovable property, reads:–

> "(2) Nothing herein contained shall affect the specific performance of contracts for the sale of immovable property under the provisions of the Sale of Land (Specific Performance) Law, or any amendment thereof."

Section 76 constitutes Part VIII of the Contract Law which follows Part VII where provision is made in three different

sections, for the consequences of breach of contract. The party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage as therein provided.

In reading, construing and applying these statutory provisions in Cyprus, one must bear in mind that they were intended to introduce in a codified form the principles of the English law on the point, always subject to the limitations and qualifications necessary to adapt such law to local conditions, as expressed in the particular statute. Apart of specific provisions to this effect in the statute (such as those in section 2 of the Contract Law) there exist provisions of general application to the same effect in section 33 of the Courts of Justice Law (Cap. 8) now superseded, after independence, by the corresponding provisions in section 29 of the Courts of Justice Law, 14 of 1960. One must, moreover, remember in this connection, that the law governing the ownership, sale, mortgage and transfer of immovable property in England in 1885 and to the present day, was and still is fundamentally different to the law of Cyprus regarding these same matters.

Against this background, we can now return to consider the provisions material to this case, in the Sale of Lands (Specific Performance) Law, Cap. 232, and in section 76 of the Contract Law, Cap. 149. The matter was recently considered in *Avgousti* v. *Papadamou* (1968) 1 C.L.R. 66, to which learned counsel on both sides referred. The buyer in that case (plaintiff in the action) claimed specific performance of a contract for the sale of immovable property of the value of over £2,000 which the seller repudiated. The trial Court declined to order specific performance on the ground that the action had not been instituted within two months from the date when the contract was made, as required by section 2(d) of the Sale of Land (Specific Performance) Law, Cap. 232; and awarded to the buyer £2,760.— compensation against the seller, plus costs.

On appeal from that judgment, counsel for the buyer took the point (*inter alia*) that the trial Court failed to consider the possibility of ordering specific performance of the contract under section 76 of the Contract Law, Cap. 149. The majority judgment on the point (Triantafyllides and Loizou, JJ.) at p. 75, reads:

"In spite of the not very happy manner in which sub-section (2) of section 76 of Cap. 149, has been phrased, we have

really no doubt in our minds that what was intended to be conveyed thereby is that the provisions of sub-section (1) of section 76, regarding specific performance of contracts in general, shall not 'affect', in other words shall not be applicable to specific performance of contracts for the sale of immovable property, and that this matter should continue to be governed, as before, solely by the provisions of Cap. 232."

We find ourselves in agreement with this view. There can be no doubt, we think, that until 1931 when the new (at that time) Contract Law of 1930 came into force, the remedy of specific performance was not available to either vendor or buyer of immovable property, outside the provisions of the Sale of Lands (Specific Performance) Law. Indeed section 10 of the statute expressly put it beyond the reach of the vendor in any case, by providing that his remedy shall lie in damages only. When the legislator enacted the Contract Law (No. 24 of 1930) and repealed by express provision in section 247 (and the schedule thereto) the parts in the civil and commercial codes pertaining to contracts, not only he did not include the Sale of Lands (Specific Performance) Law in the repealed legislation, but he expressly provided, *ex abundante cautela,* that nothing contained in the new law regarding the specific performance of contracts "shall affect the specific performance of contracts for the sale of immovable property" under the provisions of the relevant Law. We do not think that in these circumstances, it could have been the intention of the legislator to create "a parallel remedy" of specific performance to the parties in contracts for the sale of immovable property (including the vendor) as suggested on behalf of the buyer in this case. To hold otherwise, one would have to face a variety of irregular situations into which we need not enter. The short answer to any complaints or criticism regarding the provisions of the Sale of Lands (Specific Performance) Law of 1885 (now Cap. 232) is that it is for the legislature, and not for the Courts, to alter or abolish existing statutory provisions. In our view, this case presents no reason for either.

Learned counsel for the buyer referred us to *Georghiades and Another* v. *Patsalides and Another*, 24 C.L.R. 275; and to *Richard West and Partners (Inverness) Ltd.* v. *Dick* [1969] 2 W.L.R. 384; affirmed on appeal [1969] 2 W.L.R. 1190. The former was a case for the enforcement of a settlement declared and recorded in Court in a previous action upon a contract of

dowry. The District Court of Kyrenia ordered specific performance of the settlement under section 76 of the Contract Law, subject to certain conditions and directions embodied in the order, one of which was that plaintiff 2 would have been married to plaintiff 1 within a certain period as contemplated by all parties concerned with the contract of dowry. The provisions of the Sale of Land (Specific Performance) Law never came into play in that action; and were not considered in the judgment. We think that the case is distinguishable from the present dispute both on its facts and nature.

The judgment of Megarry J. in the *Richard West* case (*supra*) presents, undoubtedly considerable interest. As far as the law in Cyprus is concerned, it underlines the personal character of the equitable remedy of specific performance as it developed in England, in contrast with the statutory character of the remedy in Cyprus where the legislator put it into statutory form adapted to local conditions, in the climate of which, the statutory provisions will have to be construed and applied. The provisions in section 92 of the Civil Procedure Law (Cap. 6) and in section 34 of the Courts of Justice Law (14 of 1960) to which we have been referred, provide examples of this difference. Furthermore the *Richard West* case, where a contract for the sale of "foreign land" was specifically enforced against the buyer in England, puts in the limelight some of the fundamental differences between immovable property rights in the two jurisdictions. We do not think that that case can be of help in the construction of the statutory provisions governing the case in hand.

We can now come to the question of damages. The matter turns on the contract between the parties, read and considered subject to the law applicable thereto, with the object of giving effect to the intention of the parties, as expressed in their contract or necessarily implied in order to achieve the purpose of the contract. This is on the record before us as *exhibit* 1. We do not definitely know whether the parties had professional assistance in its preparation; but if they did not, for a contract of this size and nature, they only have themselves to blame for any shortcomings therein.

The buyer claims that under the contract he is entitled (apart of specific performance which we have dealt with) to (a) return of all the monies paid as sale-price; (b) interest thereon; (c) damages "as claimed in paragraphs 5 or 6" of his statement

of claim (i.e. sale price, interests and agreed damages); (d) "further or other relief"; (e) interest on the amount of the judgment; and costs.

The vendor, as regards damages, contends that beyond the refund of the monies received, she is only liable, under the contract, to pay the agreed compensation of £500; — which she offered to do when communicating her decision to repudiate, through her lawyer.

The trial Court dealing with this matter, followed the decision in *Iordanou* v. *Anyftos* (*supra*); and applying the provisions regarding compensation for breach, in section 74(1) of the Contract Law (Cap. 149) held that "the maximum amount of damages to which the plaintiff is entitled for breach of contract on the part of the defendant is £500." And ruled accordingly in the buyer's application under 0.27, referred to earlier in this judgment.

This part of the trial Court's decision is also challenged by the appellant-buyer. Learned counsel on his behalf submitted that the provision in the contract for the payment of £500 damages, was made by way of security against particular breaches, leaving the amount of compensation for the complete repudiation of the whole contract at large. He relied on *Ranger* v. *Great Western Railway Co.* (1854) H.L. 72 (also found in the re-prints of the All England Reports [1843–1860] at p. 321); and on *Aktieselskabet Reidar* v. *Arcos Ltd.* [1926] All E.R. Rep. 140 at p. 145 per Atkin L.J. Regarding the decision in *Iordanou* v. *Anyftos* (*supra*) counsel submitted that this point was not taken in that case; which is moreover distinguishable on its facts.

The *Akt. Reidar* case arose under a charterparty. The question was "whether in view of the terms of the charterparty, there was any breach on the part of the charterers, and, if there was, whether the breach is satisfied by a payment of demurrage at the stipulated rate." The Court of Appeal upheld the decision of the trial judge who decided the matter in favour of the shipowner. Atkin L.J. took the view that "the provisions as to demurrage quantify the damages not for the complete breach, but only such damages as arise from the detention of the vessel." The case turned on the terms of the charterparty, as read and construed by the Court, considering the nature of the contract and the facts which gave rise to the dispute.

This is the approach normally adopted by the Courts in dealing with problems arising from all kinds of contracts. But the contract in that case was of a very different nature; and the Court was dealing with a completely different set of facts.

The *Iordanou case* (*supra*) on the other hand, arose from two contracts for the sale of land; and the dispute was very similar to the matter in hand. The plaintiff-buyer in that case, purchased under two contracts a piece of land from five different vendors who owned the property in undivided shares. On payment of part of the price, the total of which was £45, the buyer entered into possession as provided in the contract; and improved the land at considerable expense. Some years later, on payment of the full price, four of the five vendors transferred their title to the property as agreed. The defendant (who was the fifth vendor and owned one-fifth undivided interest in the land) refused to transfer her title to the buyer and repudiated the contract. The value of the property had risen by that time, to about twenty times the sale price. The buyer sued the defendant claiming specific performance of the contract; and failing that, £200 damages for the breach. The one of the two contracts provided that "if any of the contracting parties broke the contract" he would become liable to pay £10 damages to the other party. The second contract (to which the defaulting vendor was also a party) contained a similar provision for the payment of £15 damages. The defendant contended that her liability under the two contracts could not exceed one-fifth of the total of £25 agreed damages.

The trial Court declined to grant specific performance, on the ground that the conditions required by the Sale of Land (Specific Performance) Law (then Cap. 238 and now Cap. 232) had not been satisfied. But awarded to the plaintiff-buyer £183 damages which the Court found to be the one-fifth of the value of the property at the time of the breach. On appeal by the defendant-vendor, the Supreme Court (in 1959 prior to independence) held that the claim for specific performance was rightly dismissed by the trial judge; but, following the decision in *Christodoulos Tseriotis* v. *Chryssi Christodoulou* (1953) 19 C.L.R. 216, held that the vendor was not liable to pay damages beyond the total of £25 provided in the two contracts; and allowed the appeal accordingly. Zekia J. in delivering the judgment of the Court said (at p. 105) that "the specific sum mentioned (in the contract) whether in the nature of pre-

estimated damages or penalty is the maximum amount payable when the contract is broken."

We agree that this was the effect of the provisions in the Contract Law (Cap. 149) regarding the payment of compensation under the contract between the parties in the *Iordanou* case (*supra*). It is for the parties in each case, to make adequate and appropriate provision in their contract for the payment of compensation for the complete, or any particular breach of its terms, expressing their intention as agreed, in clear language, so that the Court will be able to enforce the agreed terms. Subject to the provisions of the Contract Law (Cap. 149) the Court can only enforce what the Court will find from the evidence or by necessary implication, that all the parties concerned, have freely and knowingly agreed to; or must be taken to have agreed to.

We can now turn to the contract between the parties before us, to see whether the finding of the trial Court that the compensation payable under the contract for its complete repudiation by the vendor is £500 (in addition, of course, to the return of the monies paid against the sale price) is erroneous as submitted by the appellant. The only provision in the contract (exh. 1) regarding the payment of compensation is found in paragraph 5 of the part stating certain terms under the heading: "ΙΔΙΑΙΤΕΡΟΙ ΟΡΟΙ" (special or particular stipulations). The first of these paragraphs provides for the payment of the property-taxes pending transfer of title; the second, for the position which will arise if the buyer will fail in the agreed payments against the price; the third provides regarding the cost of improvements, if any, which the buyer may make on the property during the validity of the contract, in the event of the vendor terminating the contract by reason of the buyer's default; the fourth provides for the transfer of title to the buyer after full payment of the price, interest, taxes etc; the fifth reads:—

> "Ὁ παραβάτης τῶν ἄνω ὅρων ἢ οἱουδήποτε τούτων ὑποχρεοῦται εἰς ἀποζημίωσιν £500.000 μίλς";

and the sixth states that the contract was made in duplicate to the same effect, each party taking his own copy.

It was submitted on behalf of the appellant-buyer that paragraph 5 provides for a penalty for a breach within the contract; and that for a complete rescission, the damages

are at large, to be measured on the loss of the other side, consequent upon such a rescission. Reading the contract as a whole and paragraph 5 in its context, we hold with the District Court that this is not what the parties have agreed; or have expressed in their contract. We have no doubt in our mind that apparently the parties did not anticipate, at the time when they made their contract in June 1965, that until full payment of the balance of the price (amounting to £1,800) by monthly instalments within two years, as provided by the contract, the value of the site would increase by £3,000, as alleged in paragraph 8 of the statement of claim; and did not provide for such an event. Had the contract provided in that same paragraph 5, for the payment of three, or five thousand pounds compensation, instead of £500, the parties or either of them might not have agreed to sign such a contract; or the respondent-vendor might well have desisted from taking the decision, conveyed through her lawyer, to repudiate her promise to sell and transfer the property under the contract.

We are unanimously of the opinion that this appeal fails; and that the case must now go back to the District Court to deal with the other matters in dispute, particularly the rate and amount of interest to which the buyer is entitled, in the circumstances of this case, on the various sums he paid to the vendor against the price.

Appeal against the ruling of the District Court dismissed; with costs in cause.

Appeal dismissed; order for costs as above.