[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]
(February 18, 1954)

LILIKA STEPHANOPOULOU,

Appellant,

v.

THE TRUSTEES OF THE ESTATE OF DEMETRIOS A. HADJIPAVLOU,

Respondents.

(*Civil Appeal No.* 4064)

Bankruptcy—Bond in customary form under Contract Law, section 8—Right of trustees in bankruptcy to re-open—Proof of coercion or fraud not necessary.

H., a bankrupt, had executed a bond in customary form for £6,300. In fact he had only received £3,000. The Contract Law, section 8, provides that the contents of such a bond are conclusive unless forgery, coercion or fraud is proved. The trustees in the bankruptcy only allowed the creditor to prove for the amount which H. had actually received and the District Court affirmed this decision.

Upon appeal,

Held: The trustees in bankruptcy may go behind the facts stated in a bond in customary form to show that for some good reason it should never have been executed for the amount stated therein. It is not necessary that forgery, coercion or fraud be proved. *Re Van Laun, ex parte Chatterton*, 76 L.J. (C.A.) 644, applied.

Appeal dismissed.

Appeal by applicant from the order of the District Court of Limassol (Bankruptcy Petition No. 1/52) in favour of respondents.

B. Vassiliades for the appellant.

A. Anastassiades for the respondent.

Judgment was delivered by:

HALLINAN, C.J.: In this case the creditor-appellant sought to prove in bankruptcy proceedings the bond, exhibit B, which was dated 19th October, 1950, for the sum of £6,300 with interest at 8 per cent. The trustees, under rule 25 to the second schedule of the Bankruptcy Law, investigated the circumstances in which this bond was made and the consideration which was given and they came to the conclusion that on three different days in October, November and December, 1950, a total sum of £3,000 was given by the appellant to the bankrupt. In fact, the bankrupt never received the £6,300, the subject of the bond in customary form.

The finding of the trustees in bankruptcy has been affirmed

by the President of the District Court and from that decision this appeal has been brought.

The principal ground of the question of law which has been argued for the appellant is that the trustees in bankruptcy had no power to go behind the bond in customary form except if it were shown that the bond was a forgery or obtained by fraud; and he relied on the provisions of section 8 of the Contract Law which provides that whenever any legal proceedings are taken on a bond in customary form the contents of such bond shall be a conclusive evidence of the facts stated therein unless forgery, coercion or fraud are proved.

The trustees and the learned President of the District Court relied on the decision in *Re Van Laun, ex parte Chatterton*, 76 Law Journal, in the Court of Appeal, at p. 644. That was a case where a solicitor was seeking to prove in bankruptcy an account stated between his client, the bankrupt, and himself. The Court of Appeal held that the trustees in bankruptcy were entitled to go behind the account stated and to investigate the real nature of the transaction and the actual consideration given. If the grounds for the decision merely applied to an account stated or to a contract under seal and not to a judgment, it might be argued that the grounds only amounted to this: In an action by a promisor on an account stated or on a contract under seal, the promisee would be estopped from denying the consideration but this estoppel was *inter partes* and did not preclude a trustee in bankruptcy from going behind the account or the contract. If this was the ground for the decision then it might be argued that the creditor in this case was not relying on any rule of estoppel but on the statutory provision contained in section 80 of the Contract Law which makes a bond in customary form conclusive unless forgery, coercion or fraud are proved; and the statutory provision must preclude the trustees from going behind the bond. But the decision in re Van Laun went beyond the mere proposition that an estoppel *in pais* did not bind the trustees in bankruptcy. The principle in that case is very clearly stated in the judgment of Buckley, L.J., at p. 648.

> "Whether the creditor alleges that there has resulted and that he relies upon an account stated or a covenant entered into by the debtor, or a judgment which he has obtained, the principle, I apprehend, is exactly the same, and is this—that the trustee is not the person who has stated the account, is not the covenantor, is not the judgment debtor, but is entitled to say, 'It is my business to see that those who seek to rank against this estate are persons who are really creditors of that estate.' If there be a judgment, it is not necessary to shew fraud or collusion. It is sufficient, in the language of Lord Esher, to shew miscarriage of justice—that is to say, that for some good reason there ought not to have been a judgment."

Now if the principle in re Van Laun is that the trustees can go behind a judgment in order to do justice, that proposition must also apply in the case of a bond in customary form; for the conclusiveness of a judgment derives from a judicial decision and can only be set aside for fraud or collusion just in the same way as the conclusiveness of a bond in customary form derives from statute and can only be avoided for forgery, coercion or fraud.

We are, therefore, of opinion that the principle laid down in Van Laun's case applies in the present case.

Some argument has been addressed to us on section 48 of the Bankruptcy Law. This section corresponds with section 45 of the English Bankruptcy Act, 1914. It is clear from the reference which has been made to a passage in 2, Halsbury, 2nd Ed. at p. 311, paragraph 415, that the principle enunciated in Van Laun's case is still good law in England, although enunciated in 1907, and we take it that the provisions of our section 48 must be read subject to the general principle laid down in Van Laun's case.

The other grounds of appeal can be disposed of quite shortly.

In our view, the trustees had sufficient evidence before them to find that the three bonds made prior to exhibit B had been destroyed and, therefore, secondary evidence of these bonds could be given.

The final ground of appeal was that the finding of the trustees that the consideration had been only £3,000 and not £6,300 was against the weight of the evidence. Our attention has been drawn to the contradiction in the evidence as to whether a man called Panos or Poullos was or was not a witness to the bond. The trustees very carefully directed their minds to this contradiction and, with this matter in mind, reached their conclusion upon the balance of probabilities; we are not prepared to disturb their finding. The principal inference of fact which the trustees drew was, in our opinion, a very reasonable inference, that is to say, that having regard to all the surrounding facts it was unbelievable that the appellant creditor had in her house, in her safe, £4,500; and if that fact is disbelieved it is difficult to see how the trustees could have believed the evidence of any witnesses who said that they saw this sum handed over to the bankrupt.

In our view this appeal fails on all three grounds and must be dismissed with costs.