[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

LOIZOS CHR. KANARIS,

Appellant—Plaintiff,

v.

OSMAN TOSOUN,

Respondent-Defendant.

(*Civil Appeal No.* 4700).

Contract—Bond or promissory note—Consideration unlawful—Value or price of animals, the subject of a sale concluded in circumstances which render it "void and of no effect" under the express and clear provisions of section 7 of the Animals Certificates Law, Cap. 29—Bond sued on is, therefore, void and unenforceable—Contract Law, Cap. 149 *sections* 23 *and* 2(2)(g)*—Cf. sections* 4 *and* 5 *of Cap.* 29 (supra).

Animals—Sale of—Contrary to sections 4 *and* 5 *of Cap.* 29 (supra)*—Sale, therefore, void and of no effect under section* 7 *of the same Law, Cap.* 29.

Illegality—Illegal contracts—Contracts prohibited by statute—Void and unenforceable—See supra.

Statutes—Construction—Where the language of the statute is clear and unequivocal it must be enforced even though the result may be absurd or mischievous—It is not the province of the Courts to scan the wisdom or the policy of a statutory provision, provided its meaning is plain—As it is the case of section 7 *of Cap.* 29 (supra).

This is an appeal by the plaintiff from the dismissal by the District Court of Paphos of his action for £50 claimed on a bond or promissory note, dated September 8, 1963 and payable on December 31, 1963 the consideration of which was the agreed value or price of various animals sold and delivered by him at that date to the respondent-defendant. The seller (appellant) had in his possession the said animals without having the required certificate of ownership in respect thereof; he failed to produce to the buyer (respondent) a certificate of ownership in respect of those animals sold to him, and he (the

seller) failed to deliver such certificate or certificates to the mukhtar of the village in which the sale took place, all the above contrary to the provisions of sections 4 and 5 of the Animals Certificates Law, Cap. 29. Now by section 7 the statute expressly declares that a sale in contravention of the provisions of section 4 or 5 "shall be *void* and of no effect". There is no doubt that one of the main objects of Cap. 29 (*supra*) was to afford protection to owners against thefts of their animals.

On the other hand by section 10(1) of the Contract Law, Cap. 149 all agreements are contracts enforceable by law "if they are made by the free consent of parties competent to contract, for a *lawful consideration* and with a lawful object, and are not hereby expressly declared to be *void*.....". And section 23 of the same Law provides as follows:

> "The consideration or object of an agreement is lawful unless—
>
> (a) it is forbidden by law; and
>
> (b) is of such a nature that if permitted, it would defeat the provisions of any law; or
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> .....
>
> In each of these cases the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is *void*"— and therefore, unenforceable (see section 2(2)(g) of the same Law (*supra*)).

It was argued by counsel for the appellant that the bond sued on was outside the purview of sections 4 and 5 of the Animals Certificates Law, Cap. 29. This bond counsel went on was an executed contract in the sense that the buyer (respondent) took delivery of the animals disposed of them and received, thus, full value under the contract.

The defence put forward by the respondent was that the consideration of the bond was the value of the animals which were sold to him by the appellant, that the appellant (seller) failed to produce to the respondent (buyer), the required certificates of ownership, that he also failed to deliver to the mukhtar of the village such certificates, contrary to the provisions of sections 4 and 5 of the aforesaid Law Cap. 29

(*supra*); and that consequently such sale was *void* and of no effect under section 7 of the same Law, and that the bond in question was, therefore, unenforceable in law.

Dismissing the appeal the Court:—

Held, Per Josephides, J. (Vassiliades, P. and Triantafyllides, J. concurring):

(1) It is a general rule of construction that where by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced even though it be absurd or mischievous. Once the meaning is plain, it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands according to the real sense of the word.

(2) Having given the matter anxious consideration, I am of the view that the language of section 7 of the Animals Certificates Law, Cap. 29 (*supra*) is clear and unequivocal and it is therefore, our duty to give full effect to it, irrespective of the consequences.

(3) The consideration of the bond or promissory note sued on is the value of the animals which are the subject of a sale which is declared to be "*void* and of no effect" under the express provisions of section 7 of Cap. 29 (*supra*). Consequently, under the provisions of section 23 of the Contract Law, Cap. 149 (*supra*) the consideration of the bond in question is unlawful as it is either "forbidden by law" or "is of such a nature that, if permitted, it would defeat the provisions of any law"; and the bond in dispute is therefore *void* and unenforceable (see section 23 and 2(2)(g) of the Contract Law, Cap. 149).

(4) For these reasons I would dismiss the appeal. I feel however that I ought to state that it is with great regret that I have reached this conclusion as the respondent has no merits whatsoever. There will be no order as to costs.

Appeal dismissed. No order for costs.

Cases referred to:

Sajan Singh v. *Sardara Ali* [1960] I All E.R. 269 at pp. 272H to 273F;

Amar Singh v. *Kulubya* [1963] 3 All E.R. 499 at p. 503 et. seq;

Taylor v. *Chester* [1869] L.R.4 Q.B. 309 at p. 314;

Bowmakers, Ltd. v. *Barnet Instruments, Ltd.* [1944] 2 All E.R. 579 at p. 582;

Kearlye v. *Thomson* [1890] 24 Q.B.D. 742 at p. 745;

Anderson, Ltd. v. *Daniel* [1924] 1 K.B. 138 at p. 149;

St. John Shipping Corporation v. *Joseph Rank Ltd.* [1957] 1 Q.B. 267 at pp. 283, 285, 289;

Sutters v. *Briggs* [1922] 1 A.C. 1 at p. 8;

Mavromoustaki v. *Yeroudis* (1965) 1 C.L.R. 176;

B. and B. Viennese Fashions v. *Losane* [1952] 1 All E.R. 909;

Fisher v. *Bridges* (1854) 3 E. and B. 642;

Lucy v. *W.T. Henleys Telegraph Works Co. Ltd.* [1969] 3 W.L.R. 588;

In re Harvest Lane Motor Bodies Ltd., [1968] 3 W.L.R. 220 at p. 223.

The facts sufficiently appear is the judgment read by Josephides, J.

Appeal.

Appeal by plaintiff against the judgment of the District Court of Paphos (Papadopoulos, D.J.) dated the 22nd January, 1968 (Action No. 868/64) dismissing his claim for £50 plus interest on a bond or promissory note.

G. Cacoyiannis, for the appellant.

L. Papaphilippou, for the respondent.

Cur. adv. vult.

VASSILIADES, P.: The first judgment will be delivered by Josephides, J.

JOSEPHIDES, J.: This is an appeal by the plaintiff from the dismissal by the District Court of Paphos of his claim for £50, plus interest, on a bond or promissory note.

The reasons given by the learned Judge in dismissing the plaintiff's case were the following:

> "The plaintiff has produced a bond, exhibit 1. The consideration is the sale of goats and kids. From the evidence before the Court it has transpired that no certificates of ownership were issued in respect of this sale. A sale of any animals in contravention of section 4 and section 5 of Cap. 29 is *void* according to section 7 of Cap. 29. So the bond produced is *void* since the consideration was contrary to section 4 and section 5 of Cap. 29."

The appellant's main ground of appeal was that the provisions of sections 4 and 5 of the Animals Certificates Law, Cap. 29, do not affect the validity of his bond. This, according to appellant's counsel, was an executed contract in the sense that the buyer (respondent) took delivery of the animals, disposed of them and received full value under a contract. In support of his submission learned counsel for the appellant relied on *Sajan Singh* v. *Sardara Ali* [1960] 1 All E.R. 269, at pages 272H to 273F; and *Amar Singh* v. *Kulubya* [1963] 3 All E.R. 499. Finally, he submitted that the consideration in this case was lawful and he referred to section 23 of our Contract Law, Cap. 149. In reply he said that he did not rely on section 65 of the Contract Law.

Respondent's counsel argued that the object of the Animals Certificates Law, Cap. 29, was to protect animal owners and buyers and to ensure that a buyer did not purchase stolen animals. He further argued that the point in dispute was part and parcel of the same transaction, that is, of the sale which was declared to be *void* under the provisions of section 7 of the Law, as the bond was given in consideration of the animals sold by the appellant to the respondent.

As pleaded in paragraph 1 of the statement of claim, " the defendant on or about the 8th September, 1963, issued to the order of the plaintiff a bond (promissory note) for £50 expiring on the 31st December, 1963, with interest at nine per cent per annum from the date of expiry, for value received in purchasing various animals". The bond in question, which was produced in evidence, is in a printed form in Greek which has been filled in. The English translation reads as follows:

> " In Nikoklia, dated 8.9.1963 – Good for £50. – On the 31.12.1963 I, the undersigned, Osman Tosoun, of Kouklia,

owe to pay to the order of Mr. Loizos Chr. Kanaris of Nikoklia the above sum of English Pounds: fifty pounds only for value received in (ἰσάξιον ληφθὲν εἰς) 4 goats, one he-goat, one female kid and payable at Nikoklia plus interest at 9% from expiry until full payment.

8.9.63
(Signed) Osman Tosoun.
(50 mils stamps)

Witnesses:—
(Signed) Eleni Themistocleous.
(Signed) Ifigenia Iosif. "

The defence put forward by the respondent was that the consideration of the bond in dispute was the value of the animals which were sold by the appellant to the respondent, that the appellant (seller) failed to produce to the respondent (buyer) the certificates of ownership in respect of such animals, and that he also failed to deliver to the mukhtar of the village such certificates of ownership in respect of the animals in question, contrary to the provisions of sections 4 and 5 of the Animals Certificates Law, Cap. 29; that, consequently, such sale was *void* and of no effect by virtue of the provisions of section 7 of the same Law, and that the bond in dispute was, therefore, unenforceable.

In evidence the respondent (buyer) stated that no certificates of ownership of the animals were produced to him by the appellant (seller) although he asked for such certificates, and that the appellant never gave to him any certificates; and the appellant (seller) in evidence conceded that he never had any certificates of ownership in respect of such animals.

The material section with which we are concerned is section 7 of Cap. 29 which reads as follows:

" Irrespectively of any proceedings which may be had or taken, a sale of any animal in contravention of the provisions of section 4 or 5 of this Law shall be *void* and of no effect".

Section 10(1) of our Contract Law, Cap. 149, provides that all agreements are contracts enforceable by law "if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are

not hereby expressly declared to be *void*....."; and section 23 of the same Law provides as follows:

"The consideration or object of an agreement is lawful, unless –

(a) it is forbidden by law; or

(b) is of such a nature that, if permitted, it would defeat the provisions of any law; or

.....

In each of these case the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is *void*"; and, therefore, unenforceable (see section 2(2)(g)).

In construing section 7 of the Animals Certificates Law, Cap. 29, I must first ask myself whether the words of the section are clear or not, as it is a general rule of construction that where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced, even though it be absurd or mischievous. According to Maxwell on Interpretation of Statutes, 11th edition, at page 4, and the cases quoted in support, the words cannot be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should be excluded or embraced. However unjust, arbitrary or inconvenient the meaning conveyed may be, it must receive its full effect. When once the meaning is plain, it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words. As Lord Birkenhead said in *Sutters* v. *Briggs* [1922] 1 A.C. 1, at page 8, "Where, as here, the legal issues are not open to serious doubt our duty is to express a decision, and leave the remedy (if one be resolved upon) to others."

Having given the matter anxious consideration, I am of the view that the language of section 7 of our Cap. 29 is clear and unequivocal, and it is, therefore, our duty to give full effect to it, irrespective of the consequences.

In the case of *Amar Singh* v. *Kulubya* [1963] 3 All E.R. 499, at page 503 et seq., which was relied upon by the appellant's counsel, all the authorities on illegality, and the maxims "*ex*

turpi causa non oritur actio" and "*in pari delicto potior est conditio defendentis*", are summarised and I need not refer to them in detail. The net result is that if a plaintiff cannot maintain his cause of action without showing, as part of such cause of action, that he has been guilty of illegality, then the Courts will not assist him in his cause of action. In the case of *Taylor* v. *Chester* [1869, L.R 4 Q.B. 309, at page 314, it was said:

> "The true test for determining whether or not the plaintiff and the defendant were in *pari delicto*, is by considering whether the plaintiff could make out his case otherwise than through the medium and by the aid of the illegal transaction to which he was himself a party".

See also *Bowmakers, Ltd.* v. *Barnet Instruments, Ltd.* [1944] 2 All E.R. 579, at page 582. This principle, however, does not apply to a plaintiff who is a member of a protected class under a statute. In such cases of oppressor and oppressed, or of a class protected by statute, the one may recover from the other, notwithstanding that both have been parties to the illegal contract: See *Amar Singh* v. *Kulubya* (*supra*), at page 505; and *Kearlye* v. *Thomson* [1890] 24 Q.B.D. 742, at page 745.

As put very succintly in Anson's Law of Contract, 18th edition, at page 211, "a statute may declare that a contract is illegal or *void*. There is then no doubt of the intention of the Legislature that such a contract should not be enforced. The difference between an *illegal* and *void* contract is important as regards collateral transactions, but as between the parties the contract is in neither case enforceable."

The following principle relating to illegal contracts was enunciated by Atkin L.J. in *Anderson, Ltd.* v. *Daniel* [1924] 1 K.B. 138, at page 149:

> "The question of illegality in a contract generally arises in connection with its formation, but it may also arise, as it does here, in connection with its performance. In the former case, where the parties have agreed to something which is prohibited by Act of Parliament, it is indisputable that the contract is unenforceable by either party. And I think that it is equally unenforceable by the offending party where the illegality arises from the fact that the mode of performance adopted by the party performing it

is in violation of some statute, even though the contract as agreed upon between the parties was capable of being performed in a perfectly legal manner."

According to Devlin J. (as he then was) in *St. John Shipping Corporation* v. *Joseph Rank Ltd.* [1957] 1 Q.B. 267, at page 283, "There are two general principles. The first is that a contract which is entered into with the object of committing an illegal act is unenforceable. The application of this principle depends upon proof of the intent, at the time the contract was made, to break the law; if the intent is mutual the contract is not enforceable at all, and, if unilateral, it is unenforceable at the suit of the party who is proved to have it..... The second principle is that the Court will not enforce a contract which is expressly or impliedly prohibited by statute. If the contract is of this class it does not matter what the intent of the parties is; if the statute prohibits the contract, it is unenforceable whether the parties meant to break the law or not."

As stated in the judgment of Devlin J., the principle enunciated by Atkin L.J. and cited above is an offshoot of the second principle that a prohibited contract will not be enforced. If the prohibited contract is an express one, it falls directly within the principle. It must likewise fall within it if the contract is implied (at page 283 of the *St. John Shipping Corporation* report).

The language of the cases on illegality shows that the fundmental question always is whether the statute meant to prohibit the contract which is sued upon (see *St. John Shipping Corporation* case, at page 285).

Finally, Devlin, J. in the above quoted case, sums up the position as follows (at page 289):

"In the statutes to which the principle has been applied, what was prohibited was a contract which had at its centre — indeed often filling the whole space within its circumference — the prohibited act; contracts for the sale of prohibited goods, contracts for the sale of goods without accompanying documents when the statute specifically said there must be accompanying documents; contracts for work and labour done by persons who were prohibited from doing the whole of the work and labour for which they demanded recompense."

The judgment of Devlin J. was extensively referred to in the judgment of this Court in *Mavromoustaki* v. *Yeroudis*, as *executor, etc.* (1965) 1 C.L.R. 176.

In *Anderson, Ltd.* v. *Daniel* [1924] *supra*, the facts were that every seller of artificial fertilizers was required by statute to give to the purchaser an invoice stating the percentages of certain chemical substances contained in the goods. In that case the sellers had delivered ten tons of artificial fertilizers without complying with the statutory requirement. It was held that they could not recover the contract price, since the way in which they had performed the contract was illegal.

Another case on the point is that of *B. and B. Viennese Fashions* v. *Losane* [1952] 1 All E.R. 909. In that case the regulations required that the seller of utility goods should furnish to the buyer an invoice containing certain particulars. The plaintiff made a contract of sale for non-utility goods to which the regulations did not apply; but he purported to perform it by delivering to the buyer without objection utility garments to which the regulations did apply; and he did not furnish the invoice. If the Court enforced his claim for the price of the garments it would have in effect been enforcing a contract for the supply of utility garments without furnishing an invoice, which, had it originally been made in that form, would have been prohibited; therefore, the plaintiff could not recover (see per Jenkins L.J., at pages 913-914).

Finally, it is well settled that if money is due from A. to B. under an illegal transaction and A. gives B. a bond or a promissory note for the amount owing, neither of these instruments is enforceable by B. The leading authority is *Fisher* v. *Bridges* (1854), 3. E. & B. 642, where A. agreed to sell to B. certain land which was to be used for the purposes of a lottery that was illegal because forbidden by statute. The land was conveyed and the price, except for £630, was paid. Later B. executed a deed by which he covenanted to pay £630 to A. It was held that no action lay on the covenant. Jervis, C.J., in delivering the judgment of the Exchequer Chamber, said:—

> " It is clear that the covenant was given for the payment of the purchase money. It springs from and is the creature of the illegal agreement, and as the law would not enforce the original illegal contract, so neither will it allow the parties to enforce a security for the purchase money, which by the original bargain was tainted with illegality."

Reverting to the present case, the seller (appellant) had in his possession animals without having a certificate of ownership in respect thereof, he failed to produce to the buyer (respondent) a certificate of ownership in respect of the animals sold to the buyer, and he (the seller) failed to deliver such certificates to the mukhtar of the village in which the sale took place, contrary to the provisions of sections 4 and 5 of the Animals Certificates Law, Cap. 29; and the statute expressly declares that a sale in contravention of the provisions of section 4 or 5 " shall be *void* and of no effect " (section 7 of Cap. 29). There is no doubt that one of the main objects, if not the main object, of the Legislature in enacting Cap. 29 was to afford protection to owners against thefts of their animals, and that is why sales in contravention of its provisions are declared to be *void*.

The consideration of the bond or promissory note, on which the seller's (appellant's) claim is exclusively based, is the value of the animals which are the subject of a sale which, as already stated, is declared to be " *void* and of no effect ", under the express provisions of section 7 of Cap. 29. Consequently, under the provisions of section 23 of our Contract Law, Cap. 149, the consideration of the bond sued upon is unlawful as it is either "forbidden by law " or " is of such a nature that, if permitted, it would defeat the provisions of any law "; and the bond in dispute is, therefore, *void* and unenforceable (sections 23 and 2(2)(g) of Cap. 149).

For these reasons I would dismiss the appeal. I feel, however, that I ought to state that it is with great regret that I have reached this conclusion as the respondent has no merits whatsoever.

VASSILIADES, P.: It is with great difficulty and reluctance that in the end I brought myself to agree that this appeal must fail. The matter turns on the question of law whether the bond on which the claim is made, is actionable or not.

The respondent-defendant admits that he signed and issued the bond in question to the appellant-plaintiff in payment of the agreed price of animals sold and delivered to the defendant. I shall hereafter refer to him as the buyer; and to appellant-plaintiff as the seller. The buyer admits purchasing, receiving and taking away the animals. He also admits signing and issuing the bond; but he contends that the bond is not action-

able by reason of the provisions in sections 4, 5 and 7 of the Animals Certificates Law, Cap. 29.

In his pleadings, the buyer alleged also payment and satisfaction; and filed a counterclaim, which the seller denied. But the trial Judge found for the seller on this factual issue; and dismissed the counterclaim, on the facts.

Dealing with the legal issue, however, – the validity of the bond – the trial Judge came to the conclusion that as the bond was issued for the value of animals sold without the production of certificates of ownership on the part of the seller as required by sections 4 and 5 of the Animals Certificates Law, Cap. 29, the sale was *void* as provided in section 7 of the statute; and the bond issued by the buyer for the value of the animals bought and received, was also *void* and unenforceable.

Upon that view of the law and on the facts as he found them from the evidence before him, the trial Judge dismissed both the claim and the counterclaim; and directed that each party should bear his own costs.

From this judgment the seller now appeals mainly on the contention that the provisions of sections 4 and 5 of the Animals Certificates Law do not affect the validity of his bond. They should be construed and applied, he submits, in furtherance of the object of the statute which was to prevent animal stealing; and not in a way which will render unenforceable a bond which is otherwise perfectly legal.

The buyer's case on the other hand, is that the bond made in connection with a sale of animals in contravention of the statute in question, is so tainted with illegality as to render the bond unenforceable in law.

As already pointed out in the judgment just read, the appeal turns on this legal issue. And as I have already said, it is with great difficulty and reluctance that I brought myself to agree that it must fail. I cannot think that the legislator ever intended the provisions of the Animals Certificates Law to enable litigants like the buyer in this case, to avoid their obligation to pay for animals which they have actually received from their owner as seller, and taken away with them, on the express undertaking in the form of a bond, to pay for their agreed value.

There is no suggestion here that the animals were not the property of the seller. As their lawful owner he could have obtained the certificates of ownership required by the statute in question. Can he now obtain them? If yes, what will be the effect of his producing them at this stage? If he cannot now obtain them, where is the protection which the legislator intended the statute to give to this owner of the animals against thieves? I hope someone will be able to give to this lay litigant an answer to these questions which will not shake his respect for the law and his confidence in the Courts of his country.

Be that as it may, I consider it useful to add that it is obvious to me that what the Animals Certificates Law, now Cap. 29, was intended to achieve, was to protect the lawful ownership, possession and sale of animals; and to prevent, or at least render more difficult, animal stealing. The ownership and sale of animals has always been, especially in the rural areas of this country, part of the daily life. What has been a pest, is animal stealing.

The Cattle Certificate Law, 9 of 1889, (which the Animals Certificates Law came to replace in 1947) was enacted eighty years ago to dispel doubt that had " arisen as to what animals are included in the provisions of the law as to the measures proper to be taken and carried out for the prevention of the theft of oxen, buffaloes, asses and other gregarious animals " (see Cyprus Gazette No. 285, of May 3, 1889, at p. 1375). And what the legislator intended about sixty years later, when the present statute was enacted in 1947, may be seen in the Official Gazette No. 3291 of February 27, of that year at page 86.

How far has the legislator succeeded in achieving his aim against animal stealing, it is not for me to say here. Nor can I say how far has this statute been enforced during all these years, with prosecutions or otherwise, for the offence of selling or buying animals in contravention of the provisions in sections 4 and 5, as provided in section 6. I cannot recollect any such prosecution. And it is, I think, significant and rather gratifying, that no case could be traced in the Cyprus Law Reports where the provisions of this statute were relied upon during the whole of its existence, by a buyer for avoiding payment of the value of animals which passed to him from the seller in perfectly good faith and without any suggestion of fraud. Now that this case shall go in the reports, I hope

it will cause those concerned, to move in the right direction to prevent this statute being used for a purpose for which it could never have been intended.

I have found it very difficult to agree to what seems to be the unavoidable result of this appeal, because I believe that statutory provisions should be construed and applied, if possible, for the purpose which the legislator intended to serve; and not to defeat it. I cannot express this belief in better or more appropriate terms, than cite with great respect the words of Lord Denning M.R. in a recent case (*Lucy* v. *W.T. Henleys Telegraph Works Co. Ltd.* (C.A.) [1969] 3 W.L.R. (Part 38) p. 588) where the matter turned on the construction of statutory provisions in section 3(4) of the Limitation Act, 1963. At page 596 his Lordship's judgment reads:—

> "..... It comes back once again to the ever recurring question: How should we construe an Act of Parliament? I have said before, and I repeat now, that we should so construe an Act of Parliament as to effectuate the intention of the makers of it and not to defeat it. If they have by mistake overlooked something, we should do our best to smooth it out. We should construe it so as to avoid absurdities and incongruities, and to produce a consistent and just result."

Lord Denning was in the minority in that case. The two Lord Justices, who sat with him in that appeal, felt themselves bound by the wording of the section, even if that led to an obviously unintended by the legislature, and unjust result. But, with all respect, I certainly think that his was the right view. And in fact that was the view which in the end decided the dispute as the successful appellant after hearing all the judgments, took the exceptional course of declaring that he would rather act justly than stand by his strict legal rights as declared by the majority judgments.

In another case (in re *Harvest Lane Motor Bodies Ltd.* [1968] 3 W.L.R. 220), Megarry J. took guidance from a statement made almost a century ago by James V.C., which he cited at p. 223:

> " I think we must give a liberal construction to the statute, such as is consistent with common justice and common sense; and it appears to me that it would not be consistent with common justice or common sense that a person who

has entered into contingent obligation, by which he has bound himself, should be permitted to say that, because the contingency has not yet happened, although it may still happen, he is not bound....."

This is why I found it very difficult to bring myself to agree that this appeal must be dismissed; and that the buyer wins his case.

TRIANTAFYLLIDES, J.: I agree, too, that this appeal should be dismissed.

I have nothing to add to the relevant legal principles as expounded by my brother Mr. Justice Josephides; but I must add that I do share, to a certain extent, the concern of the learned President of the Court, Mr. Justice Vassiliades, about the consequences, for the appellant, of the application of the said principles.

I might stress that I would, possibly, not have agreed that the principles in question should have led to the dismissal of the appeal if it were a fact – which it is not – that there was in existence, at the time of the signing of the bond, a certificate of ownership in relation to the animals which were sold, and that it was the intention of the parties to proceed to comply with the relevant legislative provisions, for the transfer of the ownership of the animals, as soon as possible thereafter.

VASSILIADES, P.: Appeal dismissed. No order for costs.

Appeal dismissed. No order for costs.