[TRIANTAFYLLIDES, STAVRINIDES, HADJIANASTASSIOU, JJ.]

LOUKIS PAPASTRATIS,

Appellant-Defendant,

v.

TAKIS G. ECONOMOU,

Respondent-Plaintiff.

(*Civil Appeal No.* 4811).

Bond in customary form—Section 78 *of the Contract Law, Cap.* 149—*Must be signed by the maker in the presence of at least two witnesses—Provisions and formalities of section* 78 *must be fully and strictly complied with—Consequently, the bond in the present case does not satisfy the requirements of section* 78—*Because it was signed by the maker in the presence of one witness only—The second witness—whose signature appears thereon—having signed it some time thereafter—No suggestion that the maker had even acknowledged his signature to the said second witness—Cf. sections* 79 *and* 80 *of Cap.* 149 (supra)—*See further infra.*

Bond in customary form—Within section 78 *of the Contract Law, Cap.* 149—*Period of limitation fifteen years after the cause of action has arisen—The Limitation of Actions Law, Cap.* 15—*Period of limitation regarding other bonds much shorter (five or six years)—It follows that in the present case the bond sued on not being a bond in customary form, the action based thereon is statute barred—Because the cause of action has arisen some time in* 1955 *and the action was not filed until* 1966.

Contract—Bond in customary form—Supra.

Limitation of actions—Limitation of Actions Law, Cap. 15—*Bonds in customary form—Ordinary bonds—See* supra.

Statutes—Construction of—The rule is that words used in a statute are used correctly and exactly, and not loosely and inexactly—Burden of establishing that the rule has been broken can be discharged only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred—The words "signed in the presence of at least two witnesses" in section 78 *of the Contract Law, Cap.* 149 (supra)—*Nothing to show that they must be given*

a loose and inexact meaning—On the contrary, in view of the provisions of sections 79 and 80 of the same Law and, also, in view of the longer lease of life accorded to bonds in customary form by virtue of the Limitation of Actions Law, Cap. 15 (supra)*—The aforesaid words in section* 78 *must be fully and strictly construed and complied with.*

This is an appeal by the defendant against the judgment of the District Court of Nicosia whereby he was adjudged to pay the plaintiff £365 balance due on a bond dated September 19, 1955. The whole case turns on the point whether or not the said bond is " a bond in customary form " under section 78 of the Contract Law, Cap. 149. If it is a bond in customary form, then, the period of limitation under the Limitation of Actions Law, Cap. 15 being fifteen years, the claim thereunder is not statute barred and the plaintiff succeeds. If it is not, then the claim is statute barred, the relevant period of limitation in that case being only five or six years and the action not filed until 1966 i.e. much more than six years after the cause of action had arisen (circa 1955).

A bond in customary form is defined by section 78 of the Contract Law, Cap. 149 to be " a promise in writing made by one person to another signed in the presence of at least two witnesses ".

The trial Judge found that the bond in question was signed by the defendant (now appellant) in the presence of one witness only ; that the other subscribing witness came and added his signature on the bond later on, after asking the defendant (appellant) whether he had received the money stated in the bond and after the latter had admitted such receipt. There is nothing on record to show that the appellant acknowledged, too, having signed the bond earlier on. On those facts the trial Judge found that the bond sued on was a bond in customary form and, consequently, that the claim thereunder was not statute barred, the period of limitation in that case being fifteen years ; and gave judgment for the plaintiff (respondent).

Allowing the appeal and setting aside the judgment of the trial Judge, the Court :—

Held, (1). In our view the provisions of section 78 of the Contract Law, Cap. 149 (*supra*) have to be strictly complied with ; and this view is strengthened by the kind of provisions set out in sections 79 and 80 of that Law.

(2) Moreover, a bond in customary form is granted by the Limitation of Actions Law, Cap. 15 a much longer lease of life (fifteen years) than ordinary bonds (five or six years) ; for this reason, too, we think that it is quite important that formalities regarding a bond in customary form should be fully and strictly complied with.

(3)—(*a*) " It is the rule that words are used in an Act of Parliament correctly and exactly, and not loosely and inexactly........................". This dictum of Lord Hewart C. J. in *Spillers Ltd.* v. *Cardiff (Borough) Assessment Committee* [1931] 2 K.B. 21 at p. 43 was cited with approval by the Privy Council in the case of *Mayor, etc., of the Borough of New Plymouth* v. *Taranaki Electric-Power Board* [1933] A.C. 680, at p. 682, per Lord Macmillan.

(*b*) In the present case we have not been persuaded that there is anything to show that the words " signed in the presence of at least two witnesses " in section 78 of the Contract Law, Cap. 149, must be given such a loose and inexact meaning as to enable the maker of a bond in customary form to sign it in the presence of one witness only, and allow the second witness to put thereon his signature, in the presence of the maker, later on, as is the position in relation to the bond in the present case.

(4) Consequently, this bond is not " a bond in customary form " within section 78 of the Contract Law, Cap. 149. It follows that the present action is statute barred, because it has not been filed until 1966 i.e. long after the relevant period of limitation of six years had elapsed. (*Note :* the cause of action arose circa 1955). The judgment of the trial Judge is, therefore, set aside. No order as to costs here and in the Court below.

Appeal allowed. No order as to costs here and in the Court below.

Cases referred to :

Spillers Ltd. v. *Cardiff (Borough) Assessment Committee* [1931] 2 K.B. 21 at p. 43 per Lord Hewart C.J. ;

Mayor, etc., of the Borough of New Plymouth v. *Taranaki Electric-Power Board* [1933] A.C. 680 at p. 682 per Lord Macmillan.

Appeal.

Appeal by defendant against the judgment of the District Court of Nicosia (Santamas, Ag. D.J.) dated the 21st April, 1969 (Action No. 44/66) whereby he was adjudged to pay to the plaintiff the sum of £365 being balance due on a bond.

L. Clerides with *C. Indianos*, for the appellant.

J. Mavronicolas, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, J.: This is an appeal against the judgment of the District Court of Nicosia, in Civil Action No. 44/66, brought by the respondent-plaintiff against the appellant-defendant, in respect of £365, being the balance due on a bond dated the 19th September, 1955 ; by the said judgment the appellant was ordered to pay such balance to the respondent.

By virtue of the bond the appellant undertook to pay to the respondent £615. He paid against his liability £50 in December, 1955, and £200 in February, 1960. During the hearing before the trial Court he stated on oath that he refused to pay the balance, because, according to him, the bond had been signed by him in respect of a gambling debt.

We are not concerned in this case with the propriety of the stand taken by the appellant in refusing to honour what is alleged by him to be a gambling liability ; nor have we found it necessary to go into the question as to whether this was in fact a gambling debt and, if so, whether the bond is an illegal transaction.

This appeal can, and should, be determined on the basic issue of law regarding the nature of the bond in question, in other words whether or not it is a bond in customary form ; there being no dispute on the part of the respondent that the action should be treated as being out of time if the bond is not one in customary form, once the aforesaid payments by the appellant are not relied upon, as made, as being acknowledgments, which could operate so as to result in the right to sue on the bond accruing when they were made.

A " bond in customary form " is defined by section 78 of the Contract Law (Cap. 149) to be " a promise in writing made by one person to another signed by the maker in the presence of at least two witnesses . . ."

The learned trial Judge has found that the bond concerned was not in fact signed in the presence of two witnesses, but that it was signed in the presence of one witness, and that the other witness came and added his signature thereto later, after asking the appellant whether he had received the money stated in the bond and after the latter had admitted such receipt ; there is nothing on record to show that the appellant acknowledged, too, having signed the bond earlier on, immediately before the arrival of this witness.

In our view the provisions of section 78 have to be strictly complied with if a bond is to be a bond in customary form ; and this view is strengthened by the kind of provisions set out in sections 79 and 80 of Cap. 149.

Moreover, it has to be borne in mind, that a bond in customary form is granted by the Limitation of Actions Law (Cap. 15) a much longer lease of life, for purposes of proceedings based on it, than ordinary bonds, and for this reason, too, we think that it is quite important that formalities regarding a bond in customary form should be fully complied with.

Lord Hewart in his judgment in *Spillers Ltd.* v. *Cardiff (Borough) Assessment Committee* [1931] 2 K.B. 21, has stated (at p. 43) :—

> " It ought to be the rule, and we are glad to think that it is the rule, that words are used in an Act of Parliament correctly and exactly, and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of establishing their proposition lies heavily. And they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred."

This dictum was cited with approval by the Privy Council in the case of *Mayor, etc., of the Borough of New Plymouth* v. *Taranaki Electric-Power Board* [1933] A.C. 680 (see the judgment of Lord Macmillan at p. 682).

In the present case we have, indeed, not been persuaded by counsel for the respondent that there is anything to show that the words " signed by the maker in the presence of at least two witnesses ", in section 78 of Cap. 149, must be given such a loose and inexact meaning as to enable the maker of a bond in customary form to sign it in the presence of

one witness only, and allow the second witness to put his signature to the bond, in the presence of the maker, later, as is the position in relation to the bond in question.

We find, therefore, this bond not to be a bond in customary form and the civil action based on it, which was filed in 1966, to be statute-barred ; the period of limitation for an ordinary bond, such as this one, which dates back to 1955, being six years only.

In the result this appeal is allowed and the decision appealed against is set aside ; but with no order as to costs here, or in the Court below, in view of the nature of this case.

Appeal allowed. No order as to costs here or in the Court below.