1979 April 13

[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

ANTHOULLA MELAISI,

Appellant-Defendant,

v.

M. & M. GEORGHIKI ETERIA LTD.,

Respondents-Plaintiffs.

(*Civil Appeal No.* 5218).

Statutes—Retrospective operation—Presumption against—Not applicable to enactments affecting only the procedure or practice of the Courts—Section 2 *of the Sale of Land* (*Specific Performance*) *Law, Cap.* 232, *as amended by section* 2 *of Law* 50/70 *not only of a procedural nature—Cannot be presumed to be of retrospective effect and applicable to contracts entered into prior to its enactment.*

Sale of Land (*Specific Performance*) *Law, Cap.* 232—*Section* 2 *as amended by section* 2 *of Law* 50/70—*Not only of a procedural nature—Cannot be presumed to be of retrospective effect and applicable to contracts entered into prior to its enactment.*

Contract—Sale of land—Whether time of completion of the essence of the contract—Principles applicable—Undertaking by seller to complete "on payment of the whole purchase price and at any rate not later than" a specified time—Offer by buyers to pay about a month later than specified time—Even if time of the essence of the contract breach thereof not brought about by buyers —Because their failure to perform it at a specified time rendered it voidable at the option of the seller who, however, took no steps to avoid it on such ground—Section 55 *of the Contract Law, Cap.* 149.

By a contract of sale, entered into on May 6, 1970, the appellant-defendant sold to the respondents-plaintiffs certain shares in four plots of land, situated in the vicinity of Morphou, at the agreed price of £4,000. £1,500 was payable on the signing of the contract and the balance was payable not later than six months thereafter with interest at 9% from the date of the contract. The appellant undertook to transfer the properties

sold on payment of the whole price and at any rate not later than the 6th November, 1970. On May 9, 1970, the respondents deposited at the Nicosia District Lands Office a copy of the contract of sale under the provisions of the Sale of Land (Specific Performance) Law, Cap. 232. By letter dated December 1, 1970 the respondents requested the appellant to fix a date for the transfer and, also, informed him that they were ready to pay "the balance of the sale price". As the appellant failed to respond to the above request and to three similar subsequent requests which were made by letters dated January 15, February 19 and March 6, 1971 the respondents filed an action for specific performance.

At the time when the contract was entered the legislative provisions under which specific performance of such contract could have been secured were those in section 2* of the Sale of Land (Specific Performance) Law, Cap. 232 paragraph (d) of which provided that a contract could be specifically enforced "if an action has been instituted within two months from the date when the contract was made to compel the specific performance thereof".

On May 29, 1970, there was enacted the Sale of Land (Specific Performance) (Amendment) Law, 1970 (Law 50/70) by means of which the said paragraph (d) was amended** so as to make possible the institution of the action within a period of six months and the reckoning of such period from a date later than the date of the contract.

Respondents' action was not filed within two months from the date when the contract was made, but, much later, on March 31, 1971.

The trial Court, having held that the time specified in the contract was only a formal part and was not of the essence of the contract and that the amendments of Law 50/70, being of a procedural nature, could be applied to contracts of sale made prior to their enactment, made an order of specific performance against the appellant.

* Quoted in full at p. 759 *post*.

** See the relevant amendment at p. 762 *post*.

Upon appeal:

Held, that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication; that though the presumption against retrospective construction has no application to enactments which affect only the procedure or practice of the Courts, the provisions of section 2 of Cap. 232, as amended by the provisions of section 2 of Law 50/70, cannot be regarded as being only of a procedural nature, so that they could be presumed to be of retrospective effect and applicable to contracts entered into prior to their enactment, such as the contract between the parties nor can be found in them any express or implied intention of the Legislature that they should have a retrospective effect, so that they could be treated as applicable to the said contract (pp. 767–8 *post*); that, therefore, in the present case it was not open to the trial Court to apply the provisions of Law 50/70 to the contract which is the subject matter of these proceedings; and that, consequently, no order for its specific performance could have been made, the only remedy of the respondents being damages for dreach of such contract which have to be assessed by the trial Court.

On the question whether the trial Court was right in finding that time was not of the essence of the contract between the appellant and the respondents:

Held, (*after referring to the relevant principles of law—vide pp. 754–7 post*) that even if this Court were to reach a conclusion different from that which has been reached by the trial Court on this point—as it has been invited to do by counsel for the appellant— this would not result in its finding in favour of the appellant to the effect that it was the respondents, and not herself, who brought about a breach of the contract because under the provisions of section 55 of the Contract Law, Cap. 149 any failure of the respondents to perform the contract at a specified time rendered it voidable, and yet the appellant took no steps to avoid it on such a ground; and, that, furthermore, after the time specified for its performance had elapsed, she was repeatedly called upon by the respondents to perform the contract, in exchange of the respondents performing their own obligations under such contract, but she failed to respond in

a positive manner; with the result that there has taken place a breach of the contract for which she is responsible.

Appeal allowed.

Cases referred to:

Stickney v. *Keeble and Another* [1915] A.C. 386 at pp. 415–416;

Smith v. *Hamilton* [1950] 2 All E.R. 928 at pp. 932–933;

Shiacolas v. *Michaelides and Another* (1967) 1 C.L.R. 290 at p. 300;

Avgoustis v. *Papadamou and Another* (1968) 1 C.L.R. 66 at pp. 73–76;

Xenopoullos v. *Makridi* (1969) 1 C.L.R. 488;

"*Avgi*" *Yerolakkos Buses Co. Ltd.* v. *Administrators of the Estate of Costas Christou* (1971) 1 C.L.R. 1 at p. 13;

In re Chapman; Cocks v. *Chapman* [1896] 65 Law J. Rep. Chanc. 170 at p. 172;

R. v. *Harris* (*Richard*) [1970] 3 All E.R. 746 at p. 754;

Williams v. *Williams* (1971) 2 All E.R. 764 at pp. 770–771.

Appeal.

Appeal by defendant against the judgment of the District of Nicosia (Stylianides, P.D.C. and A. Ioannides, Ag. D.J.) dated the 11th June, 1973, (Action No. 1998/71) whereby an order of specific performance of a contract of sale of land was made against her.

L. N. Clerides with *T. Eliades*, for the appellant.

K. Michaelides, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant challenges a judgment of the District Court of Nicosia by means of which there was made against her, as a defendant in the action before the trial Court, an order of specific performance of a contract of sale of land dated May 6, 1970, which was entered into between her and the respondents, who were the plaintiffs in the said action.

Counsel for the appellant has, *inter alia*, contended, during the hearing of this appeal, that the judgment of the trial Court is erroneous in that it was wrongly held by it that the respondents had not broken the aforesaid contract by contravening a term of

it as to the time of its performance, which was an essential term, and, also, because the trial Court was not entitled to order specific performance of the contract in question, either on the strength of the law applicable to it or in the course of a proper exercise of its relevant discretionary powers.

The uncontested facts of this case, as they are set out in the judgment of the trial Court, are as follows:-

" On 6/5/70 the Defendant by a contract of sale (*exh.* 2) sold to the Plaintiff Company 1124223/40642560 shares of the following properties situated in the vicinity of Morphou and known as Merra:

Plot No.	*Block*	*Plot No.*	*Block*
35	F	26	M
3	G	142	M
6	K	150	M
23	L		

The sale price was agreed at £4,000. £1,500 was payable on the signing of the contract; the vendor acknowledged in the contract *exh.* 2 that she received this amount of £1,500 and undertook to pay £1,000 thereof to the Chartered Bank towards her mortgage debt, as the properties subject-matter of the sale were mortgaged in favour of the said Bank. The balance was payable not later than 6 months thereafter with interest at 9% from the date of the contract. The Defendant undertook to transfer the properties sold on payment of the whole price and at any rate not later than the 6/11/70.

The Defendant on the date of the signing of the contract—6/5/70—issued a receipt (*exh.* 3) acknowledging thereby that she received from the Plaintiffs £1,500 on account of the 'contract of sale dated 6/5/70'. The Plaintiffs on 9/5/70 by A 13/70 (*exh.* 1) deposited at the Nicosia District Lands Office a copy of the contract of sale under the provisions of the Sale of Land (Specific Performance) Law, Cap. 232.

By letter dated 1/12/70 (*exh.* 8) the Plaintiffs requested the Defendant to fix a date for the transfer and make the necessary arrangements for the cancellation of the charge

in favour of the Bank. They informed the Defendant that they were ready to pay 'the balance of the sale price'.

By a second letter dated 15/1/71 the Plaintiffs requested the Defendant to transfer the properties subject-matter of the contract of sale within 8 days; it was brought to her knowledge that the properties had been impeded according to the law; the Defendant was further notified that if she failed to comply, the Plaintiffs would resort to the Court and claim specific performance. (See *exh.* 9).

The Defendant, not only did not comply with the aforesaid request but did not even reply.

On 19/2/71 Mr. K. Michaelides, the Plaintiffs' advocate, sent to the Defendant by double registered post, a notice (*exh.* 10) whereby he called upon the Defendant for the last time, within 8 days, to fix a day for the transfer of the properties sold in the name of the Plaintiffs. The Defendant did not respond.

On 6/3/71 by double registered letter the same advocate called upon the vendor to appear on 12/3/71 at 9. a.m. before the Land Registry Office of Nicosia and transfer to Plaintiffs, free of any charge or encumbrance, the immovable properties sold to them by the contract of sale of 6/5/70. This letter was received by the Defendant on 8/3/71 (see *exh.* 11 and 11a).

As nothing was heard of the Defendant this action ensued."

Section 55 of the Contract Law, Cap. 149, reads as follows:-

"55.(1) When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

(2) If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or

before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

(3) If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so."

The above provision is the same as section 55 of the Indian Contract Act, 1872 (see Pollock and Mulla on the Indian Contract and Specific Relief Acts, 9th ed., p. 386).

As it is stated in Pollock and Mulla, *supra* (at p. 387) "the Privy Council has observed that this section does not lay down any principle, as regards contracts to sell land in India, different from those which obtain under the law of England"; therefore, also, our own section 55 of Cap. 149, above, does not lay down the law in a manner different from the corresponding principles of English Law.

In *Stickney* v. *Keeble and another*, [1915] A.C. 386, Lord Parker of Waddington stated (at pp. 415-416) the following:-

" My Lords, in a contract for the sale and purchase of real estate, the time fixed by the parties for completion has at law always been regarded as essential. In other words, Courts of law have always held the parties to their bargain in this respect, with the result that if the vendor is unable to make a title by the day fixed for completion, the purchaser can treat the contract as at an end and recover his deposit with interest and the costs of investigating the title.

In such cases, however, equity having a concurrent jurisdiction did not look upon the stipulation as to time in precisely the same light. Where it could do so without injustice to the contracting parties it decreed specific performance notwithstanding failure to observe the time fixed by the contract for completion, and as an incident of specific performance relieved the party in default by restraining proceedings at law based on such failure.

This is really all that is meant by and involved in the maxim that in equity the time fixed for completion is not of the essense of the contract, but this maxim never had any application to cases in which the stipulation as to time could not be disregarded without injustice to the parties, when, for example, the parties, for reasons best known to themselves, had stipulated that the time fixed should be essential, or where there was something in the nature of the property or the surrounding circumstances which would render it inequitable to treat it as a non-essential term of the contract.

It should be observed, too, that it was only for the purposes of granting specific performance that equity in this class of case interfered with the remedy at law. A vendor who had put it out of his own power to complete the contract, or had by his conduct lost the right to specific performance, had no equity to restrain proceedings at law based on the non-observance of the stipulation as to time."

In *Smith* v. *Hamilton*, [1950] 2 All E.R. 928, Harman J. said (at pp. 932-933):

" This was a contract for the sale of land, and it goes without saying at this date that, unless there was something special, the time limited in the conditions of sale for completion was not a date which, in the words of the old law, was of the essence of the contract. In other words, the equitable view which now prevails in regard to all contracts and has prevailed for a very long time in the case of real estate is that the Court looks to the substance of the matter and will not allow provisions relating to dates to control the general view that the contract, when made, is to be performed if it is just and equitable so to do, notwithstanding that time be over-run. There are, of course, circumstances in which time can be said to be of the essense of the contract from the beginning. Everybody knows, for instance, that on a sale of licensed premises, or a sale of a shop as a going concern, and, perhaps, the sale of animals in certain circumstances, time is of the essence because it necessarily must be so. Apart from that, however, it would need very special circumstances to make time of the essence of the contract on a sale of an ordinary private dwelling-house with vacant possession.

It is quite true that the negotiations of the parties before the contract is made may have the effect of making time of the essence, and I was referred by counsel to a case where LORD HALDANE, in delivering the judgment of the Judicial Committee of the Privy Council, made a number of illuminating observations on this subject. It was an Indian Appeal, *Jamshed Khodaram Irani* v. *Burjorji Dhunjibhai*, [1915], 32 T.L.R. 156, which turned on a provision in the Indian Code. LORD HALDANE said, after reading the section of the Code (32 T.L.R. 157):

> 'Their Lordships did not think that that section laid down any principle which differed from those which obtained under the law of England as regarded contracts to sell land. Under that law equity, which governed the rights of the parties in cases of specific performance of contracts to sell real estate, looked not at the letter but at the substance of the agreement, to ascertain whether the parties, notwithstanding that they named a specific time within which completion was to take place, really and in substance intended no more than that it should take place within a reasonable time.....The special jurisdiction of equity to disregard the letter of the contract in ascertaining what the parties to the contract were to be taken as having really and in substance intended as regards the time of its performance might be excluded by any plainly expressed stipulation. But to have that effect the language of the stipulation must show that the intention was to make the rights of the parties depend on the observance of the prescribed time limits in a fashion which was unmistakable. The language would have that effect if it plainly excluded the notion that those time limits were of merely secondary importance in the bargain, and that to disregard them would be to disregard nothing that lay at its foundation. Prima facie, equity treated the importance of such time limits as being subordinate to the main purpose of the parties, and would enjoin specific performance notwithstanding that from the point of view of a Court of law the contract had not been literally performed by the plaintiff as regards the time limit specified. That was merely an illustration of that general principle of

disregarding the letter for the substance which Courts of equity applied when, for instance, they decreed specific performance with compensation for a non-essential deficiency in subject-matter. But equity would not assist where there had been undue delay on the part of one party to the contract and the other had given him reasonable notice that he must complete within a definite time. Nor would it exercise its jurisdiction when the character of the property or when other circumstances would render such exercise likely to result in injustice. In such cases, the circumstances themselves, apart from any question of expressed intention, excluded the jurisdiction. Equity would further infer an intention that time should be of the essence from what had passed between the parties before the signing of the contract."

In the light of the above exposition of the relevant principles of law it has to be examined whether the trial Court was right in finding that, in the particular case before us, time was not of the essence of the contract between the appellant and the respondents; it has stated the following, in this respect, in its judgment:-

"We revert to the facts and circumstances of the case under consideration. In the contract (*exh.* 2) the parties named a specified time at which completion was to take place. The Plaintiffs/purchasers undertook to pay the purchase price 'not later than six months from today' and the Defendant/vendor to transfer the land free 'on payment of the whole purchase price and at any rate not later than the 6th November, 1970'. In sequence of time the payment would precede the transfer. The payment and the transfer, in our view, would substantially take effect simultaneously. The subject of the sale is land—shares of plots of land. They were charged with a mortgage in favour of a Bank. The contract provided for the payment of interest from the date of the contract on the unpaid purchase price at the maximum rate permissible by the relevant law.

Having regard to all the circumstances of this case, in our judgment, the object of the parties was the sale of the land; the Plaintiffs took upon themselves to pay the purchase price and the Defendant to transfer the land in the name of

the vendor. The time specified in the agreement is only a formal part and was not of the essence of the contract."

Even if we were to reach a conclusion different from that which has been reached by the trial Court on this point—as we have been invited to do by counsel for the appellant—this would not result in our finding in favour of the appellant to the effect that it was the respondents, and not herself, who brought about a breach of the contract; because under the provisions of section 55 of Cap. 149 any failure of the respondents to perform the contract at a specified time rendered it voidable, and yet the appellant took no steps to avoid it on such a ground; and, furthermore, after the time specified for its performance had elapsed, she was repeatedly called upon by the respondents to perform the contract, in exchange of the respondents performing their own obligations under such contract, but she failed to respond in a positive manner, with the result that there has taken place a breach of the contract for which she is responsible. The sequence of the relevant events is set out in the passage already quoted above, in connection with the uncontested facts, from the judgment of the trial Court.

Before concluding this part of our judgment it is useful to refer to the case of *Shiacolas* v. *Michaelides and another*, (1967) 1 C.L.R. 290, where Hadjianastassiou J. stated the following (at p. 300):-

> " There is, therefore, no difficulty on our part in upholding the Judgment of the trial Court on the view that even though time was of the essence originally, the appellant by his conduct deprived himself of the possibility of terminating his contracts with respondents on such a ground, but on the contrary having waived the stipulations as to time he later on broke such contracts himself."

There remains to examine, next, whether the respondents were entitled to the order of specific performance which was made in their favour:

As was already stated the contract was entered into on May 6, 1970. At that time the legislative provisions under which specific performance of such contract could have been secured were those in section 2 of the Sale of Land (Specific Performance) Law, Cap. 232, which read as follows:-

"2. Subject to the provisions hereinafter contained, every contract for the sale of immovable property shall be capable of being specifically enforced under the order of a District Court or the Supreme Court, if it is a valid contract according to law and if the following conditions have been complied with in relation thereto, viz.:-

(a) if it is in writing;

(b) if the purchaser shall within twenty-one days of the date of the contract deposit or cause to be deposited at the District Lands Office of the district within which the property is situate a copy of the contract;

(c) if the purchaser has before the institution of an action to compel specific performance of the contract, called upon the vendor to appear before a District Lands official and declare that he has agreed to sell the property mentioned in the contract;

(d) if an action has been instituted within two months from the date when the contract was made to compel the specific performance thereof."

It is useful, especially in relation to matters with which we will have to deal with later on in this judgment. to quote the following passages from the majority judgment in the case of *Avgousti* v. *Papadamou and another*, (1968) 1 C.L.R. 66 (at pp. 73-76):-

" The principal ground on which the trial Court has refused specific performance was that the action had not been instituted within two months from the date when the relevant contract was made, as expressly provided for under section 2(d) of the Sale of Land (Specific Performance) Law, Cap. 232.

It has been argued by learned counsel for the appellant that the expression 'from the date when the contract was made', in the aforesaid section 2(d), should be interpreted as meaning, in effect, from the date when the cause of action under such contract arose; actually, in the present case, in view of the terms of the contract between the parties, such cause of action did not arise until about one year after the contract was entered into, namely, on September, 1966.

We are unable, in the face of the express wording of section 2(d) of Cap. 232, to accept the submission of counsel for the appellant. It seems, in the last analysis, that the provisions of section 2 of Cap. 232 are designed to make possible specific performance in cases in which the right to sue does arise within a period of two months after the making of a contract for the sale of immovable property, as, for instance, when the stipulated time for performance expires, or there is an anticipatory breach of contract, within such period.

.....

The last submission of counsel for the appellant has been that section 76 of the Contract Law, Cap. 149, which provides about specific performance of contracts in general, is applicable to cases of contracts for the sale of immovable property, such as the present one, notwithstanding the existence of the express provisions, governing specific performance of such contracts, in Cap. 232; counsel has submitted in this connection that the trial Court failed to consider the possibility of granting specific performance under section 76 of Cap. 149, and that whatever has been stated in its judgment to the effect that this is a case in which, in any event, damages and not specific performance would be the appropriate remedy, has not been stated by reference to section 76, but by reference to section 8 of Cap. 232, only.

Sub-section (2) of section 76 of Cap. 149 reads as follows:-

> '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'.

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 cannot see any valid reason for which Cap. 232 should have been allowed to remain on the statute-book when section 76 of Cap. 149 was enacted, if it was intended to put contracts for the sale of immovable property on the same footing as all other contracts, in so far as specific performance thereof was concerned; we do think that it was not so intended, because of the special considerations which apply to the specific performance of contracts for the sale of immovable property in the context of the land registration system in force in Cyprus, and to which system the provisions of Cap. 232 are correlated in express terms.

As at present advised we know of no case in which the view that section 76 of Cap. 149 does not apply to a case of specific performance of a contract for the sale of immovable property was ever doubted, and, on the contrary, in 1959 the then Supreme Court of Cyprus adopted, without question, such view in *Iordanou* v. *Anyftos* (24 C.L.R., p. 97)."

The *Avgousti* case, *supra*, was followed in *Xenopoullos* v. *Makridi*, (1969) 1 C.L.R. 488.

After the conclusion of the contract for the sale of the land, on May 6, 1970, the respondents proceeded to deposit it at the appropriate District Lands Office on May 9, 1970, that is well within the period of twenty-one days specified in section 2(b) of Cap. 232; but, the action out of which this appeal has arisen was not filed by the respondents against the appellant within two months from the date when the contract was made, as envisaged by section 2(d) of Cap. 232, but, much later, on March 31, 1971.

Actually, it was impossible to have filed the action within two months from the date of the conclusion of the aforementioned contract, because it was provided therein that it would be performed not later than within six months thereafter and, therefore, the cause of action for its breach did not arise within the period of two months envisaged by section 2(d), above, but much later.

Councel for the appellant has contended, therefore, that it was not, in the circumstances, possible for the trial Court to order specific performance of the contract concerned, as there had not been due compliance with all the prerequisites laid down by section 2 of Cap. 232.

On the other hand, counsel for the respondents has argued that it was rendered possible for the trial Court to order specific performance, because, in the meantime, there was enacted, on May 29, 1970, the Sale of Land (Specific Performance) (Amendment) Law, 1970 (Law 50/70), section 2 of which reads as follows:-

"2.—(1) Paragraph (b) of section 2 of the principal Law is hereby amended by the deletion therefrom of the words 'twenty-one days' (first line) and the substitution therefor of the words 'two months'.

(2) Paragraph (d) of section 2 of the principal Law is hereby amended as follows:

(a) by the deletion therefrom of the word 'two' (first line) and the substitution therefor of the word 'six';

(b) by the substitution of the full stop at the end thereof by a colon and the addition immediately after of the following proviso:

'Provided that where in the contract a later date is specified or implied for the declaration of transfer of the immovable property mentioned therein, or for the payment of the consideration, or for the payment of the last instalment of the consideration agreed to be paid off by instalments (including the case of a contract of hire-purchase), the period of six months prescribed by this paragraph shall begin to be reckoned from such later date specified in the contract' ".

The trial Court, in agreeing with the view of the respondents, on this point, stated the following in its judgment:

" The amending law 50/70 only extended the time in which the action may be commenced. It does not affect the contract. It takes away no vested rights. No person has a vested right in any course of procedure. He has only the

right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and, if an Act of Parliament alters that mode of procedure, he has no other right than to proceed according to the altered mode. (Maxwell on Interpretation of Statutes 9th Ed., p. 232). Provisions relating to the time for the bringing of proceedings are regarded in the absence of any indication to apply to all proceedings instituted after their commencement, notwithstanding that the cause of action arose before that time.

The legislator by the amendment of para. (d) of Section 2 of Cap. 232 intended to make available the remedy of specific performance to numerous purchasers. Sales of immovable property during the decade 1960-1970 increased considerably. Those sales were rarely on a cash basis. Payment of the purchase price was by agreement made within a time much longer than the two months period prescribed by the old law, or by instalments which were spread in many cases over a number of years. The law was glaringly defective. The equitable remedy of specific performance was beyond the reach of many purchasers who performed their obligations. The law led to injustice and protected the defaulters (vendor) who, due to the galloping of prices, obtained unfair advantage by opting to pay damages at common law under the provisions of Section 73 of the Contract Law. This legal remedy was inadequate. The aim of the legislator was to provide for this defect in the law. In our judgment, the object of law 50/70 would be defeated if we held that it does not apply to contracts of sale made prior to the date it came into operation. It is plain that the purchasers in contracts made prior to the enactment of law 50/70, who can bring themselves within the provisions of the amendment, are within the scope of the law."

We are unable to uphold as correct the above view of the trial Court:

In Maxwell on Interpretation of Statutes, 12 ed., it is stated (at pp. 215, 216):-

"Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes

a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication[1].

The statement of the law contained in the preceding paragraph has been 'so frequently quoted with approval that it now itself enjoys almost judicial authority[2]' ".

In this connection, useful reference may, also, be made to the judgment of our Supreme Court in "*Avgi*" *Yerolakkos Buses Co. Ltd.* v. *Administrators of the Estate of Costas Christou*, (1971) 1 C.L.R. 1, 13.

What is meant by retrospective effect of a statute is explained in Halsbury's Laws of England, 3rd ed., vol. 36, p. 423, para. 643, as follows:-

" It has been said that the word 'retrospective' is somewhat ambiguous and that a good deal of confusion has been caused by the fact that it is used in more senses than one. In general, however, the Courts regard as retrospective any statute which operates on cases or facts coming into existence before its commencement in the sense that it affects, even if for the future only, the character or consequences of transactions previously entered into or of other past conduct. Thus a statute is not retrospective merely because it affects existing rights; nor is it retrospective merely because a part of the requisites for its action is drawn from a time antecedent to its passing."

The presumption against retrospectivity does not apply to procedural Acts; in this respect, the following are stated by

1. *West* v. *Gwynne* [1911] 2 Ch. 1, per Kennedy L.J. Cf. *Smith* v. *Callander* [1901] A.C. 297; *Re Snowdon Colliery Co., Ltd.* [1925] 94 L.J. Ch. 305.
2. *Carson* v. *Carson* [1964] 1 W.L.R. 511, per Scarman J. at p. 516. Cf. *Croxford* v. *Universal Insurance Co., Ltd.* (1936) per Scott L.J. at p. 281. 'That page (of Maxwell) seems to me to contain an almost perfect statement of the principle that you do not give a statute retrospective operation unless there is perfectly clear language showing the intention of Parliament that it shall have a retrospective application."

Maxwell, *supra* (at p. 222): "The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the Courts. No person has a vested right in any course of procedure,[1] but only the right of prosecution or defence in the manner prescribed for the time being, by or for the Court in which he sues, and if an Act of Parliament alters that mode of procedure, he can only proceed according to the altered mode[2]. 'Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be'. "[3]

It is not always an easy task to decide whether a statute is procedural, or, if it is not of such a nature, whether it has been framed in such a way as to be intended to be given retrospective effect; the answers to these questions are to be found by construing each particular statute with the aid of appropriate cannons of interpretation of statutes, and in the light of the guidelines laid down, in this respect, by relevant case-law.

In *in re Chapman*; *Cocks* v. *Chapman*, [1896] 65 Law J. Rep. Chanc. 170, Kekewich J. said (at p. 172):-

> " There are many cases upon the general doctrine whether an Act of Parliament may be read retrospectively or not, and there are many cases upon the meaning of particular statutes. We have the general law concisely stated by Lord Hatherley, in his Judgment in *Pardo* v. *Bingham*[4], where he says: 'The question is ..... whether on general principles the statute ought in this particular section to be held to operate retrospectively, the general rule of law undoubtedly being that, except there be a clear indication either from the subject-matter or from the wording of a statute, the statute is not to have a retrospective construction.' That is to say, generally you assume it is not retrospective, but you may find that presumption rebutted by a consideration of the subject-matter or by the language of the statute. Then he says: 'In fact, we must look to the general scope and purview of the statute, and at the remedy

1. *Republic of Costa Rica* v. *Erlanger* [1874] 3 Ch. D. 62, per Mellish J.
2. *Wright* v. *Hale* [1860] 39 L.J. Ex. 40, per Wilde B.
3. *Gardner* v. *Lucas* [1878] 3 App. Cas. 582, per Lord Blackburn at p. 603.
4. Law Rep. 4 Ch. 735.

sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated.' Of course that opens up a wide field of enquiry, but no words can express better than those of Lord Hatherley what the duty of the Court is."

In *R.* v. *Harris* (*Richard*), [1970] 3 All E.R. 746, MacKenna J. said (at p. 754):-

" In this matter our Courts have always distinguished between statutes altering the substantive law and those altering rules of procedure or the law of evidence. Where the trial is held after the substantive law is changed, they apply the old law to transactions taking place before the change was made and the new law only to subsequent transactions. But where the change is in the rules of procedure or the law of evidence, the new law is applied in both cases."

In *Williams* v. *Williams*, [1971] 2 All E.R. 764, Lord Simon P. said (at pp. 770–771):-

" Rules about retrospection of statutes

The rules about retrospection of statutes are set out in Maxwell on Interpretation of Statutes[1] and Craies on Statute Law[2] in passages which have frequently been cited with approval:

' A statute is deemed to be retrospective, which..... creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past. But a statute is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing[2]'.

A distinction is to be drawn between statutes altering substantive law and those altering adjective law or procedure[3].

'In general, when the substantive law is altered during the pendency of an action, the rights of the parties are decided according to the law as it existed when the

1. 12th Edn, 1969, pp. 215, 220–224.
2. See Craies, 6th Edn, p. 386.
3. See especially Maxwell, 12th Edn, pp. 220–224.

action was begun, unless the new statute shows a clear intention to vary such rights[1].'

This rule is a presumption only; and it may be overcome either by express words in the statute showing that the provision is intended to be retrospective, or 'by necessary and distinct implication' demonstrating such an intention[2].

'The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the Courts:..... alterations in the form of procedure are always restrospective, unless there is some good reason why they should not be'[3].

It follows that this rule too (as to procedural provisions) is presumptive only."

Looking at the provisions of section 2 of Cap. 232, as amended by the provisions of section 2 of Law 50/70, we have reached the conclusion that we cannot regard the amendments in question as being only of a procedural nature, so that they could be presumed to be of retrospective effect and applicable to contracts entered into prior to their enactment, such as the contract between the parties in the present case. Nor can we find in them any express or implied intention of the Legislature that they should have retrospective effect, so that they could be treated as applicable to the said contract.

The provisions of section 2 of Cap. 232, as they stood before their amendment in 1970, were not merely procedural, but they laid down the prerequisites which had to be fulfilled in order to render a contract for the sale of immovable property specifically enforceable in case it was broken; and their amendment in 1970 did not alter, in any way, their essential nature.

In our opinion, it is clear that it was not intended by the Legislature to render contracts entered into before the enactment of Law 50/70 specifically enforceable under such Law and the

1. Maxwell, 12th Edn, pp. 220, 221.
2. See Maxwell, 12th Edn, pp. 215, 225.
3. Maxwell, 12th Edn, p. 222. The quotation is from *Gardner* v. *Lucas* [1878] 3 App. Cas. 582 at 603 per Lord Blackburn.

sole object of Law 50/70 was to create greater possibilities of specific performance of contracts which would be entered into in future.

In the present instance the contract concerned was deposited, as already stated, with a District Lands Office within the period of twenty-one days prescribed by section 2(a) of Cap. 232, as it stood before its amendment by Law 50/70; and, it was so deposited even before the enactment of such Law. We do not think that it could be seriously argued that if it had not been so deposited and if the said period of the twenty-one days expired, as it has expired, before the enactment of Law 50/70, then, because such period was extended to two months by means of the amendment introduced, in this respect, by Law 50/70, it would have been possible to deposit the contract in question with the District Lands Office within the extended period of two months, thus rendering a contract in respect of which the substantive rights of the parties had crystallized in the sense that it was no longer specifically enforceable, a contract which had become, once again, specifically enforceable. In this way the substantive rights of the parties would have been directly and materially affected in a manner not contemplated by them at the time when they entered into the contract concerned.

Nor can it be said that the provisions in paragraph (a) of section 2 of Cap. 232 relate to substantive rights, whereas the provisions in paragraph (d) of the same section are of a procedural nature only; we regard all the prerequisites set out in section 2 of Cap. 232, even as now amended by section 2 of Law 50-70, as being a closely interwoven and interrelated set of prerequisites which relate to substantive rights, even if they do have certain procedural elements which, however, are not decisive as regards the essential nature of such prerequisites.

We, therefore, find that in the present case it was not open to the trial Court to apply the provisions of Law 50/70 to the contract which is the subject matter of these proceedings and, consequently, no order for its specific performance could have been made; and the only remedy of the respondents is to be granted damages for breach of such contract, which have to be assessed by the trial Court.

As regards the costs of the proceedings we vary the order of costs made by the trial Court so that the appellant should bear

only half of the costs of the respondents at the trial, and we order that the respondents should pay half of the costs of the appellant in this appeal.

Appeal allowed. Order for costs as above.

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