

Present : Schneider J.

1922.

THE ATTORNEY-GENERAL, v. COSTA *et al.*

76—C. R. Colombo, 671.

*Bond by a minor along with her father as surety to go through a course at the Training College and serve for five years as a teacher—Is bond valid?—Penalty—Liquidated damages.*

The first defendant, who was a minor, entered into a bond with her father as surety agreeing to pay His Majesty the King the sum of Rs. 300. The condition of the bond was that if the first defendant would complete the prescribed course for the students of the Musæus Training College and immediately thereafter be a teacher in some registered school for five years, then the obligation shall be null and void. The first defendant presented herself for some examination, and, on failing, abandoned her training. The Crown sued on the bond. The Commissioner of Requests held that as the bond was not in the form prescribed in the Education Code, the action was not maintainable.

*Held.* (1) That as the bond was for the benefit of the minor the contract was binding on the minor; and that as the father joined in the bond, the contract was binding on her.

(2) The fact that the bond was not in the form prescribed in the Code did not affect the validity of the bond.

(3) Under our law even a penalty may be recovered if it be not *ingens* or *immanis*.

(4) The amount stipulated even under the English law was in the nature of liquidated damages.

**T**HE facts are set out in the judgment.

*Brito-Muttunayagam, C.C.* (for Crown), appellant.

*D. B. Jayatileke*, for respondent.

November 2, 1922. SCHNEIDER J.—

In this action the plaintiff sued upon a bond entered into by him on the one part and the first and second defendants on the other part. The bond is dated July 24, 1921. It would appear that at that date the first defendant was a minor, and second defendant, who entered into the bond as surety, is her father. The bond stipulated that the defendants were bound in a sum of Rs. 300 to be paid to His Majesty the King. The bond recites that on November 11, 1920, the first defendant entered into the Musæus Training College as a student. The condition of the bond was that if the first defendant would complete "the prescribed course for the students of the Musæus Training College and immediately thereafter be a teacher in some registered school in Ceylon

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under the management of the Buddhist Theosophical Society or of any other Buddhist Society or Buddhist school for and during five consecutive years, then this obligation shall be null and void." It would appear that the first defendant presented herself for some examination in connection with her training course and failed. She, thereupon, on August 8, 1921, left the Musæus College, and abandoned her training. The action is founded upon the alleged breach on her part of the condition of the bond. The defence raised to the action was that the first defendant was a minor, and that, therefore, the contract is not binding. The learned Commissioner has rightly held that this defence is not sustainable, because the bond was entered into for the benefit of the minor, the first defendant, and it seems to me it is also unsustainable for another reason, viz., that she entered into the bond with the authority of her father, who, I take it, is her guardian. But the learned Commissioner has dismissed the plaintiff's action for reasons which do not commend themselves to me, and which I am unable to uphold. He appears to have considered the Government Grant-in-aid Code, and to have come to the conclusion that the bond was not in the form prescribed by that Code. It seems quite clear to my mind that the learned Commissioner was not justified in consulting the Grand-in-aid Code in order to interpret a contract entered into by parties with all the solemnity of a bond. Parties must be held bound by the terms of the bond. It is equally clear to me that by the bond the defendants undertook to pay a sum of Rs. 300 as damages if first defendant failed to qualify herself as a trained teacher, and thereafter to serve as a teacher for a certain period of years. When she failed her examination and discontinued the course of studies, she clearly committed a breach of the condition of the bond, and thereby became liable to pay the sum stipulated in the bond. It was contended in argument that she, by failing at that examination, made it impossible for herself to complete her course of training. I do not know whether that would be so or not, but assuming that to be so, it would be no defence to the action, because her stipulation was that she would pay that sum of Rs. 300 in case she did not complete her course of training or render service thereafter. I would, therefore, hold that there had been a default on the part of the first defendant, and that the defendants are, therefore, liable upon the bond. It was then argued that the sum of Rs. 300 is a penalty, and should not be regarded as liquidated damages; that no damages have been proved; and that, therefore, the plaintiff was not entitled to claim any more than nominal damages. The defendants' case may be a hard one, but I do not think that I would be justified in laying down bad law because of a hard case. The Roman-Dutch law does not recognize the English law distinction between penalty and damages. Under our law even a penalty may be recovered if it be not *ingens* or

*immanis*. It was so pointed out in *Fernando v. Fernando*.<sup>1</sup> I do not regard the sum of Rs. 300 stipulated in the bond as a penalty, even as the term is understood in the English law. It is in the nature of liquidated damages for the reason that upon a breach of any one of the conditions of the bond it would be almost impossible to assess damages. Damages in those circumstances do not mean what the Department of Public Instruction may have had to pay or actually had to suffer in this particular instance. It should be taken into consideration that in pursuance of the policy of Government large sums of money are spent by Government, and that, therefore, failure on the part of one single person who may make default may have more far-reaching effects that are apparent when the particular instance alone is considered.

I am, therefore, of opinion that judgment should be entered for plaintiff as prayed for, with costs. It is urged that the first defendant is a village girl in poor circumstances. If that be the fact, perhaps representation might be made to the proper authorities for some relief. My duty is to decide the case upon legal materials, and I must therefore allow the appeal, with costs, and set aside the judgment of the Court below and give judgment for the plaintiff as prayed for, with costs.

*Appeal allowed.*

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J.

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