PRINCIPAL IMMIGRATION OFFICER *v.* MORRIS HEDSTROM LIMITED

[Civil Jurisdiction (Hyne, C.J.) August 23rd, 1954]

Immigration Ordinance, 1947—whether bond valid without seal.

The defendant company entered into a bond necessitated by the provisions of the Immigration Ordinance, 1947, in respect of Mr. and Mrs. Sanders who had been engaged to work for that company. A condition of the bond was that Mr. Sanders was to work only as a plumber.

Mr. Sanders left the employment of the defendant and worked in other capacities.

The Crown then took proceedings to recover the sum of £300 secured on the bond.

HELD.—(1) Since the bond was not sealed it was null and void.

(2) Although a criminal prosecution could have been brought against Mr. Sanders, this was not a pre-requisite for suing on the bond.

Cases referred to:—

Attorney-General v. Beach [1889] 2 Q.B. 147.
R. v. Bishop of Salisbury, 70 L.J. Q.B.D. 423.
R. v. Morris, 36 L.J.M.C. 84.

B. A. Doyle, Q.C., Attorney-General, for the plaintiff.

J. Falvey for the defendant.

HYNE, C. J.—There are in fact only two matters in dispute between the plaintiff and defendant, namely, (1) Is the bond on which the defendant is being sued a valid deed? And (2) What is the meaning and effect of section 8 (6) of the Ordinance.

Sub-section (6) of section 8 of the Immigration Ordinance reads as follows:—

> "If any person enters the Colony in pursuance of the foregoing provisions of this section and contravenes or fails to comply with any of the conditions of the permit under which he has been allowed to enter or any of the provisions of this Ordinance, then, in addition to any other penalty to which he may be liable—
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> (*a*) if security has been furnished by way of deposit such deposit may be forfeited;
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> (*b*) if security has been furnished by bond the Principal Immigration Officer may sue and recover the amount secured by the bond, and any sum forfeited or recovered under the provisions of this sub-section shall be paid into the general revenue of the Colony."

It is contended by Counsel for the defence that the provisions of sub-section (6) of section 8 can only be invoked after there has been a conviction for contravention of the Ordinance. He contends further that if the Principal Immigration Officer proceeds to take action under this sub-section without any antecedent proceedings for a breach of a condition, he becomes a judge in his own cause. It is submitted that he must be fortified by some judicial pronouncement before he can proceed to the forfeiture of money deposited, or sue on the bond.

The learned Attorney-General contends that, in suing on the bond, the Principal Immigration Officer is not a judge in his own cause because to succeed in his action he would have to satisfy the Court that there has been a breach. He quite rightly points out that, but for the admission in the present case that there has been a breach, it would have been necessary for him to adduce evidence of the breach.

He submits that the sub-section contemplates several penalties.

The words used in the sub-section are " in addition to any other penalty to which he may be liable." There is nothing in these words in my opinion which precludes the Principal Immigration Officer from suing until after conviction for a breach. It is agreed " liable " means liable upon conviction. As the Attorney-General points out it might happen that a Court, thinking that a charge though proved is of so trivial a nature as not to merit any punishment, would dismiss the charge without proceeding to conviction. Should the Principal Immigration Officer in such a case be precluded from suing ? I think not; nor do I think the legislature so intended.

There is the further point that the person prosecuting for a breach may not, and need not, be the Principal Immigration Officer, and if the Immigration Officer sues he must, in any event, as I have said, satisfy the Court that there has been a breach.

If, instead of suing, the Principal Immigration Officer causes the forfeiture of a cash deposit, and does so wrongly, the person whose deposit is forfeited surely has a right of action against the Principal Immigration Officer. It is hardly likely also that the deposit would be forfeited without notice to the depositor.

Having carefully considered the arguments of Counsel and the wording of the sub-section, I am satisfied that a conviction for a breach is not a condition precedent to action by the Principal Immigration Officer under the sub-section. In other words the deposit can be forfeited and the Principal Immigration Officer can sue even though no other proceedings have been taken against the person who has committed a breach.

There remains the question of the bond, and whether it is a valid bond.

A bond is a written acknowledgment of a debt, or contract to pay under seal.

At common law a deed is required to be sealed and delivered. A signature became of importance with the spread of education, and is now usually required in the authentication of documents. But whatever may be the requirements as to signature, sealing is the essence of due execution of a deed. As the Attorney-General says, if a deed is sealed, delivery can reasonably be implied.

The instrument executed by the defendant is in the form prescribed by Regulation 6 (2) of the Immigration Regulations, 1948. The form is that set out as Form No. 5 in the Schedule to the Regulations.* It is called a Security Bond.

The term " Bond " is also used in the Ordinance.

It is clear, therefore, that it is contemplated that it is a bond that shall be entered into, and the wording of the form follows the usual pattern of bonds.

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* *Repealed.*

There is, however, no provision for sealing. All that is required is that the person executing the bond shall sign it in the presence of a witness. The common law requirement of sealing is nowhere suggested by the form.

The Regulations were made by the Governor under section 12 of the Ordinance. It is admitted that the bond executed by the defendant is in the prescribed form and that it is not sealed as required by common law.

It is argued, and quite correctly, that the form is a statutory form, but it is further argued that failure to seal is cured by reason of the fact that the bond is in a form laid down by statute. As I understand this argument it means that the requirements of the common law are abrogated by the Ordinance.

I think it may properly be said that common law gives place to a statute where they plainly differ.

In *Regina v. Morris* (36 L.J.M.C. p. 84) the question for determination was whether a previous summary conviction for assault was a bar to a subsequent conviction for manslaughter upon the death of the man assaulted consequent upon the same assault. It was held that it was not.

It was argued that by reason of section 45 of the *Offences against the Person Act*, 1861, further proceedings were barred. *Byles, J.*, after saying at p. 86—

> " The form and intention of the common law pleas of autrefois convict and autrefois acquit show that they apply only where there has been a former judicial decision on the same accusation in substance,"

and after considering the word " cause " as used in the statute, continued—

> " But if these observations . . . should appear to savour too much of refinement . . . it must be remembered that it is a sound rule to construe a statute in conformity with the common law, rather than against it except where, or so far as, the statute is plainly intended to alter the course of the common law."

Again in *Attorney-General v. Beach* [1889] 2 Q.B. p. 147 at p. 155 *Chitty, L.J.*, said—

> " In construing a statute regard must be had to the ordinary rules of law applicable to the subject matter, and these rules must prevail, except in so far as the statute shows that they are to be disregarded."

In *Rex v. Bishop of Salisbury* 70 L.J. Q.B., p. 423, cited by Counsel for the defence, where the question was considered whether the *Vestries Act*, 1818, repealed or modified the common law, as to the mode or election of two Church Wardens when the minister and parishioners cannot agree, *Channel, J.*, at p. 429 said—

> " A General Act must not be read as repealing the common law relating to a special matter unless there is something in the General Act to indicate an intention to deal with that special and particular matter."

On this principle he held that the act did not alter the special provision of the common law.

It is a special provision of the common law that a bond requires to be sealed.

It has to be considered whether there is anything in the Immigration Ordinance which indicates an intention to exclude the sealing of the bond, or to indicate that it is plainly intended by the Ordinance that the course of the common law shall be altered, or that an ordinary rule of law is to be disregarded.

I can find nothing in the Ordinance or in the Regulations under the Ordinance to lead to such a conclusion. The word " bond " is not defined in the Ordinance, it is only used twice in the Ordinance itself in what appears to be a somewhat casual way in section 8 (6) (*b*), while in the Regulations reference is made to a security bond in a certain form.

Nowhere is it provided either expressly or by implication that the common law requirement of sealing may be dispensed with. In the absence of such provision it must be held, I think, that it was not the intention of the legislature that the common law provision for sealing should be abrogated.

It follows, therefore, that the bond, not being sealed, is a nullity and that the plaintiff cannot succeed in his action. There will accordingly be judgment for the defendant with costs.