

1962  
Oct. 19

THE CIVILIAN  
ADMIN. OFFICER  
H.Q. MIDDLE  
EAST, AS THE  
AGENT OF THE  
SECRETARY OF  
STATE FOR AIR  
AND/OR AGENT OF  
THE AIR COUNCIL.  
v.  
NUBAR AYVASIAN

[WILSON, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

THE CIVILIAN ADMINISTRATION OFFICER, HQ  
MIDDLE EAST AIR FORCE EPISKOPI, AS THE AGENT  
OF THE SECRETARY OF STATE FOR AIR AND/OR  
AGENT OF THE AIR COUNCIL,

*Appellant (Defendant),*

v.

NUBAR AYVASIAN

*Respondent (Plaintiff)*

*(Civil Appeal No. 4390).*

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*Civil Procedure—Practice—Amendment of writ of Summons—Whether Court can amend writ of summons although not asked for—Proper procedure for such alterations must be followed.*

*International Law—Constitutional Law—After Independence day (16th August 1960) the Crown became a foreign Government in relation to Cyprus.*

The District Court Nicosia in dismissing the defendant's application to set aside the writ of summons and all subsequent proceedings, before dismissal ordered the amendment of the style of the cause and the amendment of the indorsement of the writ of summons, although such relief was not asked for. The High Court allowing the appeal,—

*Held :* (1) It is our view that by these amendments the District Court substituted a new defendant in the place of the defendant originally sued. The procedure prescribed by the Rules for such alterations not having been followed, we are of the opinion that the change in the style of cause and the amendment of the indorsement could not have been made. In the circumstances, and the part of the order affecting them, must, therefore, be set aside.

(2) For the purpose of this motion we are of the opinion that after August 16th, 1960, the British Crown became a foreign Government in relation to Cyprus and that the relief asked for in the original notice of motion to set aside the writ of summons should be granted.

*Appeal allowed. Defendant to have his costs against the*

plaintiff, here and in the  
Court below, if demanded.

Cases referred to :—

*Krajina v. The Tass Agency and another* (1949) 2 All E.R.274 ;

*Sayce v. Ameer Ruler Sadic Mohammad Abbasi Bahawalpur State*  
(1952) 1 All E.R. 326.

**Appeal.**

Appeal against the judgment of the District Court of Nicosia (Pierides and Ioannides, D. JJ.) dated the 29th June, 1962 (Action No. 3326/60) dismissing defendant's application to set aside the writ of summons, the service thereof and all subsequent proceedings, in an action for damages for wrongful dismissal.

*G.P. Cacoyannis* for the appellant.

*G. Tornaritis* for the respondent.

The judgment of the Court was delivered by :—

WILSON, P. : This is an appeal by the defendant from the judgment and order of the District Court of Nicosia, dated 29th June, 1962, dismissing defendant's application to set aside the writ of summons in the action and all subsequent proceedings thereon.

Although the relief was not so asked, the District Court, before dismissing defendant's application, ordered the amendment of the style of cause so as to read :—

Nubar Ayvasian of Nicosia, plaintiff  
and

The Civilian Administration Officer, HQ Middle East Air Force, Episkopi, as the agent of the Secretary of State for Air and/or agent of the Air Council, defendant.

Furthermore the District Court ordered the amendment of the writ of summons by adding to the endorsement thereof, the words :

"The defendant is sued in his capacity as agent of the Air Ministry in Cyprus and/or the Air Council and/or the Secretary of State for Air".

It is our view that by these amendments the District

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Wilson, P.

Court substituted a new defendant in the place of the defendant originally sued. The procedure prescribed by the Rules for such alterations having not been followed, we are of the opinion that the change in the style of cause and the amendment of the indorsement could not have been made, in the circumstances, and the part of the order affecting them, must, therefore, be set aside.

With respect to the original application, the affidavit of Peter Kenneth Walker of Episkopi, filed upon the motion and standing uncontradicted, discloses that the Civilian Administration Officer of the Headquarters, Middle East Air Force, Episkopi, is a servant of the British Crown. This is a fair conclusion from the affidavit itself.

Moreover, paragraph 2 of the statement of claim states that the defendant is the Administration Officer of the Royal Air Force, in Cyprus, and he is sued in his capacity as agent of the Air Ministry. This further strengthens the conclusion that even the original defendant was sued as a servant of the British Crown.

In support of the appeal counsel referred to *Krajina v. The Tass Agency and another* (1949) 2 All E.R. 274 and *Sayce v. Ameer Ruler Sadic Mohammad Abbasi Bahawalpur State* (1952) 1 All E.R. 326.

For the purpose of this motion we are of the opinion that after August 16th, 1960, the British Crown became a foreign Government in relation to Cyprus and that the relief asked for in the original notice of motion should be granted.

For these reasons we think that the appeal must be allowed as indicated ; and the defendant have his costs against the plaintiff, here and in the court below, if demanded.

*Appeal allowed. Defendant to have his costs against the plaintiff, here and in the Court below, if demanded.*