

GREGORIS NICOLAOU YIANNAKOURI, AND
ANOTHER (No. 2),

Plaintiffs,

v.

CYPRUS SEA CRUISES (LIMASSOL) LTD.,

Defendants.

GREGORIS
NICOLAOU
YIANNAKOURI
AND ANOTHER
(No. 2)

v.

CYPRUS SEA
CRUISES
(LIMASSOL)
LTD.

(Admiralty Action No. 4/65)

Admiralty—Practice—Evidence—Seeking to put in evidence a document under the provisions of section 4 (1) (a) (i) and (b) of the Evidence Law, Cap. 9—Document not the original as required under section 3 (1) (4) of Law—No authority cited whether “reasonably practicable” in section 4 (1) (b) thereof includes considerations of cost as well—Maker’s availability in Court for cross-examination of paramount importance—Provisions of section 4 (2) (b) of Law.

Evidence—Application to produce document in evidence without calling the maker as witness—Evidence Law, Cap. 9, section 4.

In the course of the hearing of this admiralty action, which concerns a claim for damage caused to plaintiffs’ goods, consisting of books, personal and household effects, whilst such goods were transported from Limassol (Cyprus) to Piraeus (Greece), plaintiffs’ advocate sought to put in evidence under the provisions of section 4 (1) (a) (i) and (b) of the Evidence Law, Cap. 9, a document entitled “Register of examination of passenger’s baggage”, purported to have been issued by the Customs authorities in Piraeus ; there was a statement in the document in question that it was a true copy of the original for the Insurance company of the recipient of the goods and that it was issued to the recipient for that purpose.

The object of seeking to put the said document in evidence was to prove the amount of damages, which formed one of the major issues in the action.

Held, (1) as at present advised and without any authorities for guidance, I am not prepared to rule in this case that on the material before me it would not be reasonably practicable to secure the attendance of the maker of this document as a witness.

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(2) I do not think that, even if the question of cost was a matter to be considered in deciding this point, the cost would be so high, having regard to the claim of £580, as to make it prohibitive to have this witness brought to Cyprus.

(3) An additional reason for refusing to allow this document in evidence is that it is not the original document, as required under the provisions of sub-section (1) of section 4 of the Evidence Law, Cap. 9, and of sub-section (4) of the same section which provides that " For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible ".

(4) The object of seeking to put this document in evidence is to prove the amount of damages. This is one of the major issues in the case and I am of the view that it is of paramount importance that the maker of the document should be available in Court to be cross-examined on his estimate of the damage and to answer questions which may be put to him by the Court.

(5) It should also be observed that under the provision of sub-section (2) of section 4 of Cap. 9, which provides that the Court may, at any stage of the proceedings, order that such a document shall be admissible as evidence, the plaintiffs had the opportunity of applying before the trial for such an order, in which case, under the provisions of sub-section 2 (b) of section (4), the Court might allow even a certified true copy of the document to be produced as specified in the order ; and if the Court refused, the plaintiffs would still have time to make arrangements for the witness to come from Piraeus. But the plaintiffs did not choose to follow this course.

(6) For these reasons I am not prepared to allow the document to be put in evidence.

Order in terms.

Ruling.

Ruling on the admissibility in evidence of a document entitled " Register of examination of Passenger's baggage " made in the course of the hearing of an admiralty action con-

cerning a claim for damage caused to plaintiff's goods while transported from Limassol (Cyprus) to Piraeus (Greece).

Chr. Mitsides, for the plaintiffs.

G. Polyviou, for the defendants.

The following ruling was delivered by :

JOSEPHIDES, J.: In this case Mr. Mitsides seeks to put in evidence a document under the provisions of the Evidence Law, Cap. 9, section 4 (1) (a) (i) and (b). Section 4 reproduces the provisions of section 1 of the English Evidence Act, 1938.

For the purpose of deciding the point I have looked at the document which is sought to be put in evidence. It is a document entitled "Register of examination of passenger's baggage", and it purports to have been issued by the Customs authorities in Piraeus, Greece. It is stated therein that it is a true copy of the original for the Insurance company of the recipient of the goods and that it is issued to the recipient for that purpose.

Section 4 (1) provides that—

"In any civil proceeding where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied ; that is to say—

(a) if the maker of the statement either—

(i) had personal knowledge of the matters dealt with by the statement ; or

(ii) ; and

(b) subject to sub-section (2) of this section, if the maker of the statement is called as a witness in the proceedings :

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success."

Mr. Mitsides submits that it is not "reasonably practicable" to secure the attendance of the person who made this document because it will be very expensive to have him

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brought to Cyprus for the purpose of giving evidence before this Court. He has not cited any authority in support of that submission, that is to say, whether the expression "it is not reasonably practicable to secure his attendance" includes also considerations of cost. As at present advised and without any authorities for guidance, I am not prepared to rule in this case that on the material before me it would not be reasonably practicable to secure the attendance of the maker of this document as a witness. I do not think that, even if the question of cost was a matter to be considered in deciding this point, the cost would be so high, having regard to the claim of £580, as to make it prohibitive to have this witness brought to Cyprus.

An additional reason for refusing to allow this document in evidence is that it is not the original document, as required under the provisions of sub-section (1) of section 4 of the Law and of sub-section (4) of the same section which provides that "For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible".

The object of seeking to put this document in evidence is to prove the amount of damages. This is one of the major issues in the case and I am of the view that it is of paramount importance that the maker of the document should be available in Court to be cross-examined on his estimate of the damage and to answer questions which may be put to him by the Court.

It should also be observed that under the provision of sub-section (2) of section 4, which provides that the Court may, at any stage of the proceedings, order that such a document shall be admissible as evidence, the plaintiffs had the opportunity of applying before the trial for such an order, in which case, under the provisions of sub-section 2 (b) of section (4), the Court might allow even a certified true copy of the document to be produced as specified in the order; and if the Court refused, the plaintiffs would still have time to make arrangements for the witness to come from Piraeus. But the plaintiffs did not choose to follow this course.

For these reasons I am not prepared to allow the document to be put in evidence.

Order in terms.