

1978 March 16

[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU, A. LOIZOU, JJ.]

KATARINA SHIPPING INC.,

Appellants-Plaintiffs,

v.

THE CARGO ON BOARD THE SHIP "POLY",

Respondent-Defendant.

(Civil Appeals Nos. 5783 and 5795).

Practice—Record of proceedings—Intended to refer to two actions but containing only title and number of one of the actions—Error arising from accidental slip or omission—Rightly corrected by Judge—Rule 6 of Order 25 of the Civil Procedure Rules—
5 *Whether it could be treated as forming part of the file of both actions before its correction—Validity of "drawn up order" which was drawn on the basis of the original erroneous record.*

On December 12, 1977, Counsel in Admiralty Actions Nos. 232/77 and 235/77 made certain statements concerning the release
10 on terms of the defendant cargo in action No. 232/77; and on the basis of these statements the trial Judge proceeded to make an order by consent for the release of the cargo. When the relevant record, which had initially been taken down by the Judge in his own handwriting, was typed, there was inserted
15 at the top of it the title and number of Action No. 235/77 only; such record was then signed by the Judge.

On January 9, 1978 the Registry of this Court drew up an order in Action No. 232/77 on the basis of the above order which was made by the Judge on December 12, 1977. On January
20 24, 1978 the Judge ordered correction of the record of December 12, 1977 by making it forming part of the file of both actions. There was no doubt that it was intended both by the parties and the Judge that such record should become part of the files of both the said actions, Nos. 232/77 and 235/77, to the extent
25 to which each constituent part of that record related, respectively, to either action.

Upon appeal against both the validity of the order made on December 12, 1977 for the release of the cargo and the validity of the order made on January 24, 1978 for the correction of the record:

Held, that this was a case of an error arising from an accidental slip or omission which was rightly corrected, under Order 25, rule 6, of the Civil Procedure Rules, and the inherent power of the Court, by the order of the Judge dated January 24, 1978, so that the said record was then made to form part of the files of both the aforementioned two actions; that until such correction was effected the record of December 12, 1977, did not, and could not, be treated as forming part of the file of action No. 232/77; therefore, it was not possible for the Registry of this Court to draw up any order in action No. 232/77 on the basis of the order which the Judge made on December 12, 1977; consequently, the "drawn up order", dated December 12, 1977, which was, actually, drawn up on January 9, 1978, and which, as a matter of fact, was never signed by the Judge, was a nullity, and there was no need to order on January 24, 1978, any corrections of that drawn up order, as a new order ought to be drawn up in action No. 232/77 on the basis of the corrected relevant record; in the result both appeals are determined accordingly, and are allowed to that extent, with no order as to their costs.

Appeals partly allowed.

Appeals.

Appeals by plaintiffs against the order of a Judge of the Supreme Court (Hadjianastassiou, J.) dated the 12th December, 1977 (Adm. Act. No. 235/77) regarding the release, on certain terms, of the respondent cargo and against the validity of an order dated 24th January, 1978 by means of which certain corrections were made to a drawn up on the 9th January, 1978, order which had been based on the aforesaid order of 12th December, 1977.

T. Papadopoulos with M. Vassiliou and P. Ioannides, for the appellants.

C. Erotocritou with J. Erotocritou, for the respondent.

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment of the Court. In these two appeals, which were heard together in view of their nature, the appellants challenge the validity of an order made, in the first instance, by a Judge of this Court on December 12, 5 1977, regarding the release on certain terms of the respondent cargo—which was the defendant cargo in admiralty action No. 232/77—and, also, the validity of an order made by the same Judge of this Court on January 24, 1978, by means of which certain corrections were made to a drawn up, on January 9, 10 1978, order, which had been based on the aforesaid order of December 12, 1977.

At all material times there was pending before the same Judge of this Court a related admiralty action, No. 235/77, in which both the appellant in the present appeals and the ship "POLY" 15 were defendants.

We have heard very lengthy and elaborate arguments by counsel for the parties before we have reached the following conclusions, from which there appear too, to the necessary in our view extent, the relevant procedural events:

20 On December 12, 1977, counsel, who were the same in both admiralty actions Nos. 232/77 and 235/77, appeared before the trial Judge, who was dealing with both these actions, for the purpose of obtaining a date for the continuation of the proceedings in action No. 235/77, and, on that occasion, they made 25 certain statements concerning the release on terms of the defendant cargo in action No. 232/77, in which judgment on the issue of the continuance in force of the order of arrest of the said cargo had already been reserved. On the basis of these statements the trial Judge proceeded to make an order by consent 30 for the release of the cargo.

When the relevant record, which had initially been taken down by the Judge in his own handwriting, was typed, there was inserted at the top of it the title and number of case No. 235/77 only; such record was then signed by the Judge.

35 There is no doubt that it was intended both by the parties and the Judge that such record should become part of the files of both the said actions, Nos. 232/77 and 235/77, to the extent to which each constituent part of that record related, respectively, to either action.

We, therefore, are of the view that this is a case of an error arising from an accidental slip or omission which was rightly corrected, under Order 25, rule 6, of the Civil Procedure Rules, and the inherent power of the Court, by the order of the Judge dated January 24, 1978, so that the said record was then made to form part of the files of both the aforementioned two actions. 5

Until such correction was effected, on January 24, 1978, the record of December 12, 1977, did not, and could not, be treated as forming part of the file of action No. 232/77; therefore, it was not possible for the Registry of this Court to draw up any order in action No. 232/77 on the basis of the order which the Judge made on December 12, 1977; consequently, the "drawn up order", dated December 12, 1977, which was, actually, drawn up on January 9, 1978, and which, as a matter of fact, was never signed by the Judge, was a nullity, and there was no need to order on January 24, 1978, any corrections of that drawn up order, as a new order ought to be drawn up in action No. 232/77 on the basis of the corrected relevant record. 10
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In the result both these appeals are determined accordingly, and are allowed to that extent, with no order as to their costs. 20

Appeals partly allowed; no order as to costs.