

1984 April 26

[HADJIANASTASSIOU, J.]

FOOD PRESERVING & CANNING INDUSTRIES LTD.

Plaintiffs,

v.

APOLLO SHIPPING & TRANSPORT CO. LTD. AND OTHERS,

Defendants.

(Admiralty Action No. 64/78).

Evidence—Secondary evidence—Bill of lading—Original not in the possession of plaintiffs—Sent abroad and efforts to secure its return failed—Absence of original explained—Copy thereof can be produced.

The plaintiffs sought to produce in evidence a copy of the bill of lading on the ground that the original was not in their possession; it was sent abroad and efforts to secure its return failed. 5

Held, that when the original of a document cannot be found after due search its contents may be proved by secondary evidence; that in this case the original is not in the possession of the plaintiffs and it was sent abroad and efforts to secure its return failed; that, therefore, the plaintiffs explained the absence of the original and a copy can be produced. 10

Order accordingly.

Cases referred to: 15

Regina v. Nowaz [1976] 1 W.L.R. 830 at p. 832.

Application.

Application by plaintiffs for leave to produce copy of a bill of lading because the original is not available.

St. Nathanael, for *L. Demetriades* for the plaintiffs. 20

Fr. Saveriades, for defendants.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following interim judgment. The plaintiffs allege they can produce a copy of a bill of lading

because the original is in the hands of a third party, outside Cyprus. It happened as follows:

5 The plaintiffs sent the original bill of lading to the Commercial Bank of Kuwait in order to secure the return of the goods shipped from Limassol to Kuwait. The plaintiffs, as we have heard in evidence, asked them to return it but they did not. Defendants opposed to the production of the copy for two reasons: (1) because it is not a negotiable instrument, something appears to me to be irrelevant, and (2) because for the reason
10 that the efforts made to secure it were not sufficient as they failed to explain the non production of the original, a copy cannot be produced.

The principle on the production of a copy of the original is stated in Cross on Evidence, fourth edition, page 525, I
15 quote: "When the original of a document cannot be found after due search, its contents may be proved by secondary evidence. The requirement as to due search will be satisfied in different ways according to the differing circumstances of each case. A party may adduce secondary evidence of the contents
20 of a document if his opponent admits to having lost it or if a stranger served with a subpoena duces tecum does likewise. The contents of a lost will may be proved by secondary evidence to the same extent as those of any other lost document".

In *Regina v. Nowaz*, [1976] 1 W.L.R.p. 830, where secondary
25 evidence was allowed to be given as evidence that could not have been presented in original form because it was in the hands of a stranger outside the jurisdiction, James, L.J., in dealing with that matter had this to say at p. 832:-

30 "The point then, is a short one. Were the photograph and the contents of the application form wrongly or rightly admitted in evidence? Had the original application form and the photograph been produced there can be no doubt that they would have been admissible. Mr. Yazdani submits that the admission of the secondary evidence, in the
35 absence of the original document, in the form of oral evidence of the police officer was wrong, and that in those circumstances, in a criminal case the Crown were not entitled to adduce evidence of this type.

It appears that there is a dearth of authority in relation to the reports on criminal proceedings upon this particular topic. There are cases, which we have not found it necessary to consider in detail, which involved the civil law and evidence admissible in civil proceedings which clearly show that in circumstances such as these where a document is not produced because it cannot be produced—because the person in whose custody it is cannot be compelled to produce it—then the secondary evidence is admissible”. 5

In this case the original is not in the possession of the plaintiffs. There is evidence that it was sent abroad and the efforts to secure its return failed. In such circumstances I find they explained the absence of the original and a copy, therefore, can be produced. 10

For the reasons above given, the objection is overruled. 15

Order accordingly.