

(October 10, 1955)

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THE POLISH  
OCEAN LINES  
AND ANOTHER  
v.  
N. SPYROPOULOS  
AND ANOTHER

1. THE POLISH OCEAN LINES OF GDYNIA, POLAND, THROUGH THEIR AGENTS IN CYPRUS, THE SCANDINAVIAN NEAR EAST AGENCY (CYPRUS) LTD., of Famagusta.
2. THE SCANDINAVIAN NEAR EAST (CYPRUS) LTD. OF LARNACA AND FAMAGUSTA PERSONALLY AND AS AGENTS OF APPELLANTS 1,

*Appellants,*

v.

1. N. SPYROPOULOS of 1, Phocas Street, Famagusta.
2. N. SPYROPOULOS (LONDON) LTD. of 107-115, Long Acre Covent Garden Market, London W.C. 2, PERSONALLY AND AS AGENT OF RESPONDENT 1,

*Respondents.*

(Civil Appeal No. 4144)

*Interlocutory Injunction—Property not the subject matter of the action—Order set aside.*

The plaintiffs sued the defendants for breach of an agreement cargo on a certain vessel. Later the plaintiffs paid the defendants £8,500 in respect of the freight on another cargo not shipped on the vessel concerned in the dispute. The trial Court upon the plaintiffs' application granted an interlocutory injunction under section 37 (1) of the Courts of Justice Law, 1953, in respect of the £8,500.

*Held:* The defendant could not be restrained from disposing of his property not the subject-matter of the action.

Interlocutory injunction set aside.

Appeal allowed.

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Appeal by defendants from the judgment of the District Court of Famagusta (Action No. 1123/55).

*G. Clerides* for the appellants.

*E. Tavernaris* for the respondents.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C.J.: In this case the respondents are engaged in the export trade of vegetable produce from Cyprus to England, and they entered into an agreement with the appellants. The first appellant is the owner of certain ships and the second appellant is his agent in Cyprus. The respondents allege that they suffered damage through the failure of the appellants to carry out an agreement that had been reached between them, and on the 4th June they commenced an action against the appellants for £9,000. On the same day they paid a sum

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of £8,500 to the appellants for freight and this sum was transferred by the second appellant out of the country to the first appellant before any application for an interim injunction could be served upon the second appellant. Later in the month the respondents again paid to the second appellant another sum of £8,500 for freight in respect of cargo shipped on a vessel other than the vessel concerned in the dispute between the parties. The respondents obtained an order for an interim injunction returnable for the 25th June, and this was served on the second appellants before they had parted with the £8,500. The Court in due course heard this application and granted an interlocutory injunction under section 37 (1) of the Courts of Justice Law, No. 40 of 1953.

It was submitted for the appellants both before the trial Judge and on the hearing of this appeal that the Court has no power to grant an injunction in respect of a defendant's property which is not the subject-matter of the action before any judgment has been entered against the defendant. The Court below rejected this submission and held that on the true interpretation of section 37 the interlocutory injunction could go.

In Kerr on Injunctions, 4th Edition, page 2, it is stated: "The effect and object of an interlocutory injunction is merely to preserve the property in dispute *in statu quo* until the hearing or further order". And later in the same paragraph: "It is enough if he" (the applicant) "can show that he has a fair question to raise as to the existence of the right which he alleges and can satisfy the Court that the property should be preserved in its present actual condition, until such question can be disposed of". Counsel for the appellants has also referred us to two cases in support of his submission on this appeal: *Robinson v. Pickering*, 16 Chancery Division, 660, and *Scott v. Scott*, 1950, 2 All England Reports, 1154.

We have no doubt that the principle upon which the jurisdiction of the Court is exercised under section 37 of the Courts of Justice Law No. 40 of 1953 on the point that falls for decision in this case is the same as in England under section 45 of the Judicature Act of 1925 which virtually reproduces section 25 (8) of the Judicature Act of 1873. In our view the Court erred in holding that a defendant could be restrained by interlocutory injunction from disposing of his property not the subject-matter of the action before any judgment had been entered against him.

*The order for an interlocutory injunction and the order for costs must be set aside and this appeal allowed with costs.*