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

LOUKIS PILAVAKIS OF NICOSIA,

Appellant-Plaintiff,

v.

CYPRUS INLAND TELECOMMUNICATIONS AUTHORITY,

Respondents-Defendants,

(*Civil Appeal No.* 4451).

Contract—Contract of service—Breach of—Wrongful dismissal—Notice of dismissal—Validity—Damages.

Damages—Damages should be assessed by the trial Courts at the time they dispose of the case—Powers of the High Court to assess themselves damages—The Courts of Justice Law, 1960, *section* 25.

Public Corporations—The Inland Telecommunications Authority—Appointment and dismissal of Secretary—The Inland Telecommunications Service Law, Cap. 302, *sections* 10 (1), (2) *and* (3).

Public Corporations—Companies—Analogies—The principle applicable in cases of acts ultra vires the directors but intra vires *the company—Whether or not applicable to public corporations—Where the language of the statute is clear it must be given effect without reference to the above principle.*

Agency—Public Corporations—Officers of—Are not agents.

Statutes—Construction of—Where the language of the statute is clear it should be given effect—Without reference to the question whether or not the principle of law applicable to companies in cases of acts ultra vires *of the directors but* intra vires *the company, is applicable also to public corporations—Section* 10 *of Cap.* 302 (supra) *is perfectly clear.*

By an agreement in writing dated the 13th July, 1960, the appellant-plaintiff was appointed Secretary of the defendants-respondents for a period of two years commencing from the 1st June, 1960, and expiring on the 31st May, 1962, subject to the condition, contained in paragraph 3 (2) of the said agreement, that the Authority viz. the defendants-respondents might upon the recommendation of its general manager and at their absolute discretion terminate the agreement at the end of the probationary period of three months by giving notice thereof in writing to the appellant-plaintiff of not less than six days prior to the expiration of the probationary period.

On August 26, 1960, the general manager, wrote to the appellant-plaintiff advising him that his services were not satisfactory and extending the probationary period for three months until 30th November, 1960, with proviso of retaining him for the full period if his services were satisfactory. On November 1st, 1960, the new Chairman-Manager wrote a letter to the appellant-plaintiff stating that he also has judged him unsuitable for the post of Secretary of the Authority and that, exercising his prerogative as per paragraph 3 (2) of the Service Agreement, he terminated his services as from 2nd November, 1960. The said letter of dismissal ended with the statement that " A month's salary in lieu of notice will be paid to you ".

On the 9th of November, 1960, the Board of Directors of the defendant-respondent Authority passed a resolution as follows : " The members of the Authority unanimously expressed their satisfaction and agreement on the way the Chairman handled Mr. Pilavakis' case ".

Section 10 of the Inland Telecommunications Service Law, Cap. 302, provides :

" (1) The Authority shall appoint a General Manager, a Secretary, and such other officers and servants as may be necessary for the purposes of this Law.

(2) All officers and servants of the Authority shall be under the administrative control of the Authority.

(3) The Authority may authorize any member thereof or any of its officers or servants to exercise such of the administrative powers conferred on the Authority under the provisions of sub-section (2) as the Authority may think fit."

On the facts set out hereabove the appellant brought an action in the District Court of Nicosia against the responden's claiming damages for wrongful dismissal or breach of contract. The District Court in dismissing the action and without assessing the damages held :—

" the issue argued before the Court was the legal form of the resolution of the 9th November, 1960 (the date on which the Board of Directors made and passed a resolution as follows : ' The members of the Authority unanimously expressed their satisfaction and agreement on the way that the Chairman handled Mr. Pilavakis' case ') that is, whether the resolution in question constituted a valid ratification of the Authority for the dismissal of the plaintiff by the Chairman General Manager. In deciding

this point it is, in our view, pertinent to decide whether this act of the Chairman General Manager was *intra vires* the powers of the Authority. In the light of the provisions of section 10 (2) of the Inland Telecommunications Service Law, we are of the view that the answer must be in the affirmative. Quitè clearly, then both under clause 3 (2) of the Agreement (exhibit 1) and section 10 (2) of the Law, the power to dismiss the plaintiff was vested in the Authority. Furthermore, sub-section 3 of the same section of the Law, gives power to the Authority to authorise any member thereof or any of its officers or servants to exercise such of the administrative powers conferred on the Authority under the provisions of subsection 2, as the Authority may think fit. We are of the opinion that the same principle which entitles a company to validly ratify a transaction *ultra vires* its directors but *intra vires* the company,

Parker And Cooper Ltd. v. *Reading and another* (1926) All E.R. Rep. 323 ;

Grant v. *United Kingdom Switchback Railways Company* (1889) 40, Ch. D., 135,

and a principal to ratify an act done by his agent without his prior authority, express or implied, apply in this particular case.

In consequence of the above, we hold the view that the resolution of the 9th November, 1960, was a valid ratification of the Chairman's General Manager's act of dismissing the plaintiff and that the dismissal was, therefore, in accordance with the terms of the agreement (exhibit 1)."

From the dismissal of his action the plaintiff appealed upon the following grounds :—

(*a*) the defendants notice of dismissal was not given in accordance with the terms of the contract of service ;

(*b*) his services were terminated by the General Manager and not by the Authority, which was illegal because the General Manager had no such power ;

(*c*) the Authority had no power to delegate such authority to the General Manager ;

(*d*) since there was no proper termination of the contract the Authority broke it illegally and the plaintiff is entitled to damages for its breach ;

(*e*) the damages, not having been assessed by the trial Court, they should be assessed by this Court under the authority given by section 25 of the Courts of Justice Law, 1960.

The High Court allowing the appeal:—

Held, (1) we agree with the defendant's-respondent's contention that the length of notice of dismissal complied with the contract on the assumption that the contract came to an end on November 30. There is no basis for the appellant's-plaintiff's contention that such notice had to be given on November 23 or 24. It could be given at any time, provided that it was given to the plaintiff not less than six days prior to the expiration of the probationary period.

(2) There is no evidence upon which this Court can give a ruling in the appellant's -plaintiff's favour upon his allegation in the statement of claim that " No prerogative is vested in the Chairman-General Manager for dismissing employees ". The burden lay upon the plaintiff to prove this assertion.

(3) However, the appellant-plaintiff is entitled to succeed in his appeal upon the ground that the respondent Authority had no power to delegate authority to its General Manager.

(4) The allegation by the respondents-defendants that the appellant-plaintiff was dismissed properly by the Authority on the recommendation of its Chairman-General Manager is not in accordance with facts proved at the trial.

(5) The Authority's resolution dated 9th November, 1960 (*supra*), neither ratifies nor approves of the dismissal by the General Manager, as a specific act of the Authority, nor does it specifically terminate the contract at the end of the probationary period, as it ought properly to have done.

(6) Nowhere is there any indication that the General Manager has power to do more than recommend to the Authority the dismissal of the appellant-plaintiff. After recommendation the Authority, not the General Manager may terminate the agreement under paragraph 3 (2), or, for cause, dismiss him, under paragraph 5 of the agreement (*supra*).

(7) The respondent-defendant are a statutory public corporation and the powers of such a corporation created by statute are limited by the statutes which regulate it and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect its purposes.

(8) It will not be found in any reported case that where a board of directors is required to appoint an officer, such as the general manager or secretary, that this authority can be delegated to some officer of the company. It appears that the legislature intends certain duties to be discharged by the Authority as a group and it is quite clear that the appointment of the General Manager and the Secretary come within the category of persons who must be appointed directly by the Authority as a whole.

(9) The cases referred to (*supra*) deal with the question of whether certain acts *ultra vires* the directors or an officer are *intra vires* the company. This principle of law does not apply in this case. We do not go into the question of whether different principles apply in respect of public corporations as distinguished from private corporations, because it appears in this case that the language of the statute itself (*i.e.* section 10 of Cap. 302, *supra*) is perfectly clear. It is unnecessary to quote any cases in support of the principle, where the language of the statute is clear, that it should be given effect.

(10) We would point out, however, that the general manager, whether he may be the person who notified the Secretary of the action of the Authority in dismissing him or in terminating his services, is not the agent of the company or corporation in the ordinary sense of the word. He is an officer of the company but there is no evidence in this case, even assuming that we could give effect to the argument on behalf of the respondents-defendants that the general manager was an agent, there is no evidence before us to what his authority was. If he had such an authority it was the responsibility of the defendants to prove it.

(11) The secretary of this public corporation is not an agent but officer of the corporation.

(12) However, we prefer to put our decision on the other ground that appointment and dismissal of the secretary is something which must be done by the Authority and cannot be delegated to one or more of its members.

(13) We take the view that the General Manager did not have authority to do what he did and that the Authority did not itself act as required by the law, that the employment of the secretary was not terminated and we should view this contract as one which has not been terminated properly and there has been a breach of it.

(14) As to damages we draw the attention of trial Courts to something which has been stated previously in this Court that damages should be assessed by the trial Judges at the time they dispose of the case. However, there is evidence in this case upon which we may arrive at a conclusion ourselves with respect to damages and we propose to assess them under the authority of section 25 of the Courts of Justice Law, 1960, rather than send them to the trial Court for this purpose. We assess the damages to £750.

Appeal allowed. Judgment of trial Court set aside. Judgment in favour of appellant-plaintiff against the respondents-defendants for £750 *together with costs of the trial and appeal.*

Cases referred to :

Parker And Cooper Ltd. v. *Reading and another* (1926) All E.R. Rep. 323 ;

Grant v. *United Kingdom Switchback Railways Company* (1889) 40, Ch. D. 135.

Appeal.

Appeal against the judgment of the District Court of Nicosia (Loizou, P.D.C., and Ioannides, D.J.) dated the 10.5.63 (Action No. 5301/60) dismissing plaintiff's claim for £5,000 damages for breach of contract and in the alternative the same amount for wrongful dismissal.

L. N. Clerides for the appellant.

A. Hjiloannou for the respondents.

The judgment of the court was delivered by :

WILSON, P. : This is an appeal from the judgment of the District Court of Nicosia given on May 1st, 1963, dismissing the plaintiff's action with costs.

There are really only two points in the appeal, namely was the dismissal of the plaintiff valid, and, if not, what damages is he entitled to recover from the defendants. The following are the facts.

By an agreement in writing, dated July 13, 1960, exhibit 1, the plaintiff was appointed Secretary of the defendants, commencing from June 1st, 1960, for a period of two years expiring on the 31st May, 1962, subject to the condition, however, that the defendants might, upon the recommenda-

tion of its general manager and at their absolute discretion, terminate the agreement at the end of the probationary period of three months by giving notice thereof in writing to the plaintiff not less than six days prior to the expiration of the probationary period.

On August 26, 1960, the general manager wrote to the plaintiff advising him that his services had not been entirely satisfactory but extending the probationary period for a further period of three months, to the end of November 30, 1960. At that time the plaintiff's services would be reviewed again and a decision reached as to whether he would be retained. The plaintiff accepted this extension.

On November 1st, 1960, the new general manager wrote to the plaintiff referring to the letter of August 26 and saying :

> " I regret to inform you that I also have judged you to be unsuited for the duties and responsibilities required for the post of Secretary to the Authority and do hereby exercise my prerogative as per Clause 3 (2) of the Service Agreement which you signed on the 13th of July, 1960 and terminate your services as from the 2nd of November, 1960.
>
> A month's salary in lieu of notice will be paid to you."

Following the termination of his employment, the plaintiff resumed private practice as an advocate during which he has earned a very modest income. There is no evidence that he made an attempt to obtain other employment which would pay him a salary.

In dismissing the plaintiff's action the trial Court held that—

> " the issue argued before the Court was the legal form of the resolution of the 9th November, 1960 (the date on which the Board of Directors made and passed a resolution as follows ' The members of the Authority unanimously expressed their satisfaction and agreement on the way that the Chairman handled Mr. Pilavakis' case ') that is, whether the resolution in question constituted a valid ratification of the Authority for the dismissal of the plaintiff by the Chairman General Manager. In deciding this point it is, in our view, pertinent to decide whether this act of the Chairman General Manager was *intra vires* the powers of the Authority. In the light of the provisions of section 10 (2) of the Inland

Telecommunications Service Law, we are of the view that the answer must be in the affirmative. Quite clearly, then both under clause 3 (2) of the Agreement (exhibit 1) and section 10 (2) of the Law, the power to dismiss the plaintiff was vested in the Authority. Furthermore, sub-section 3 of the same section of the Law, gives power to the Authority to authorise any member thereof or any of its officers or servants to exercise such of the administrative powers conferred on the Authority under the provisions of sub-section 2, as the Authority may think fit. We are of the opinion that the same principle which entitles a company to validly ratify a transaction ultra vires its directors but intra vires the company,

Parker And Cooper Ltd. v. *Reading and another* (1926) All E.R. Rep. 323

Grant v. *United Kingdom Switchback Railways Company*, (1889) 40, Ch. D., p. 135

and a principal to ratify an act done by his agent without his prior authority, express or implied, apply in this particular case.

In consequence of the above, we hold the view that the resolution of the 9th November 1960 was a valid ratification of the Chairman's General Manager's act of dismissing the plaintiff and that the dismissal was, therefore, in accordance with the terms of the agreement (exhibit 1)."

From the dismissal of his action the plaintiff appealed upon the following grounds :—

(*a*) the defendants notice of dismissal was not given in accordance with the terms of the contract of service ;

(*b*) his services were terminated by the General Manager and not by the Authority, which was illegal because the General Manager had no such power ;

(*c*) the Authority had no power to delegate such authority to the General Manager ;

(*d*) since there was no proper termination of the contract the Authority broke it illegally and the plaintiff is entitled to damages for its breach ;

(*e*) that damages, not having been assessed by the trial Court, they should be assessed by this Court under the authority given by section 25 of the Courts of Justice Law 1960.

I shall consider each of these grounds. The relevant portions of paragraph 3 of the contract (exhibit 1) are as follows :

" 3 (1) This Agreement shall commence and the Officer shall enter upon the duties of the office hereunder, on the 1st June, 1960, for a period of two years expiring on the 31st May, 1962, subject always to the provisions of para (2) of this clause.

(2) The Authority may, upon the recommendation of the General Manager and at their absolute discretion terminate this Agreement at the end of the probationary period by giving notice therefore in writing to the Officer not less than six days prior to the expiration of the probationary period."

It is the defendants' contention that the length of notice of dismissal complied with the contract. With this we agree, on the assumption that the contract came to an end on November 30. There is no basis for the plaintiff's contention that such notice had to be given on November 23 or 24. It could be given at any time, provided that it was given to the plaintiff not less than six days prior to the expiration of the probationary period.

The short answer to the second ground of appeal is that there was no evidence before the trial Court as to the scope of the General Manager's authority. There is no material upon which this Court can give a ruling in the plaintiff's favour upon his allegation in the statement of claim paragraph 8 (*c*) (i) " No prerogative is vested in the Chairman-General Manager for dismissing employees." The burden lay upon the plaintiff to prove this assertion.

However, he is entitled to succeed in his appeal upon his third ground namely the Authority had no power to delegate authority to the General Manager.

The defendants allege in paragraph 8 of the statement of defence " that plaintiff was dismissed properly as the Authority on the recommendations of the Chairman-General Manager judged plaintiff unsuitable for the post of Secretary and authorised the General Manager to terminate plaintiff's service and approved the action taken by him ".

This allegation is not in accordance with the facts proved at the trial. What actually occurred was the General Manager dismissed the plaintiff by the letter of November 1, 1960. On 9th November, 1960, the Authority passed the following resolution :

> " The members of the Authority unanimously express their satisfaction and agreement on the way that the Chairman handled Mr. Pilavakis' case."

In the circumstances it neither ratifies and approves of the dismissal specifically by the General Manager, as a specific act of the Authority, nor does it specifically terminate the contract at the end of the probationary period, as it ought properly to have done.

I also notice the contract itself contemplates the General Manager shall only recommend dismissal and that the Authority " may . . . at their absolute discretion terminate this agreement . . . ". Moreover the contract is executed by the Authority, not the General Manager as such, under its corporate seal. Another indication that the engaging of the plaintiff as well as his dismissal was to be the act of the Authority and not its General Manager.

Then, further paragraph 4 of the contract provides—

> " The duties of the Officer shall include the usual duties of the Secretary to the Authority and any other suitable duties which the Authority may call upon him to perform. The officer shall occupy himself in such manner as the Authority shall direct . . . . "

Paragraph 5—

> " If the Officer shall at any time neglect, or refuse . . . to perform his duties . . . the Authority may forthwith dismiss him.
>
> In witness whereof the Authority has caused its Common Seal to be affixed hereto . . . ."

Nowhere is there any indication that the General Manager has power to do more than recommend to the Authority the dismissal of the plaintiff. Then the Authority, not the General Manager may terminate the agreement, paragraph 3 (2), or, for cause, dismiss him, paragraph 5.

With respect to the ground upon which the trial Court based its decision I would point out that the defendant is a statutory public corporation and that the powers of such a corporation created by statute are limited by the statutes

which regulate it and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect its purposes.

Section 10 (2) of the Law provides : " All officers and servants of the Authority shall be under the administrative control of the Authority". With respect, the trial Court overlooked the express provisions of section 10 (1) of the Inland Telecommunications Service Law, Chapter 302, which reads :

> " The Authority shall appoint a General Manager a Secretary, and such other officers and servants as may be necessary for the purposes of this Law."

I think it would not be found in any reported case that where a board of directors is required to appoint an officer, such as the general manager or secretary, that this authority can be delegated to some officer of the company. It appears that the legislature intends certain duties to be discharged by the Authority as a group and it is quite clear that the appointment of the General Manager and the Secretary come within the category of persons who must be appointed directly by the Authority as a whole.

The cases referred to deal with the question of whether certain acts ultra vires of the directors or an officer are intra vires of the company. This principle of law, in our view, does not apply in this case. I do not go into the question of whether different principles apply in respect of public corporations as distinguished from private corporations because it appears in this case that the language of the statute itself is perfectly clear. It is unnecessary to quote any cases in support of the principle, where the language of the statute is clear, that it should be given effect.

I would point out, however, that the general manager, whether he may be the person who notified the secretary of the action of the Authority in dismissing him or in terminating his services, is not the agent of the company or corporation in the ordinary sense of the word. He is an officer of the company but there is no evidence in this case, even assuming that we could give effect to the argument on behalf of the defendants that the general manager was an agent, there is no evidence before us to what his authority was. If he had such an authority it was the responsibility of the defendants to prove it.

> " If the words of the Statute are in themselves precise and unambiguous no more is necessary than to expound

those words in their natural and ordinary sense, the words themselves in such case best *declaring* the intention of the legislature"—Maxwell on the Interpretation of Statutes, 10th ed. 1953, p. 2.

However, we prefer to put our decision on the other ground that appointment and also dismissal of a secretary is something which must be done by the Authority and cannot be delegated to one or more of its members.

Therefore, the appeal in this case must be allowed.

The only other matter which requires consideration is the question of damages. We would draw the attention of trial Courts to something which has been stated previously in this Court that damages should be assessed by the trial judges at the time they dispose of the case. However, there is evidence in this case upon which we may arrive at a conclusion ourselves with respect to damages and we propose to assess them under the authority of section 25 of the Courts of Justice Law 1960 rather than send them to the trial Court for this purpose.

We take the view that the General Manager did not have authority to do what he did and that the Authority did not itself act as required by the law, that the employment of the secretary was not terminated and we should view this contract as one which has not been terminated properly and there has been a breach of it.

The problem of assessing damages is not free from difficulty as there has not been sufficient or full evidence before the Court, adduced by either side.

The plaintiff is 44 years old and he is a Barrister. He was called to the Bar in 1949. He acted as Assistant Registrar of Trade Unions for the Government of Nigeria for 14 months and was appointed later as general manager of the Nigerian Shipping and Trading Company in Nigeria for just over a year ; he resigned for family reasons to come to Cyprus and from 1954 to 1957 he practised law in Larnaca ; he joined the Hellenic Mining Company for a period of just over three years as legal adviser. His services there were terminated at the end of January, 1960, when there was a change in the management of that company. Then on June 1st he received the appointment which is in question in this action. His salary under the present contract was at the rate of £1,236 per annum for the first

three months of the agreement and then at the rate of £1,320 a year for the next 12 months and then at the rate of £1,362 a year for the remainder of the term of this agreement.

In addition to this he was entitled to receive a cost-of-living allowance based on the same rate per centum on the basic salary as is payable from time to time to public servants in the service of the Government in Cyprus, which was 28½% at the material time.

Since leaving the service of the defendants he has earned up to the date of trial not more than £250 per annum. His rate of earnings at the date on which he gave evidence, namely January 29, 1962 was £30 per month.

It is difficult for us to forecast what increase in earnings the plaintiff may expect to make on resuming practice ; it takes some time to create a clientelle which will result in earning a satisfactory income. On the other hand it would be unfair, we think, to take the salary which the plaintiff would have earned had his services not been terminated by the company as the measure of damages because there might be other reasons for terminating the services of the appellant before the end of the contract or for many reasons he might have left the service of the defendants.

Damages, therefore, are a matter of conjecture but the Court is bound to make the best estimate it can of the net loss for which he should be reimbursed. Giving this matter our best consideration we think that a fair award would be £750.

The appeal will, therefore, be allowed and the judgment of the trial Court will be set aside. In its place there will be judgment entered in favour of the plaintiff against the defendants for £750 together with costs of the trial and this appeal.

Appeal allowed. Judgment of the trial Court set aside—In its place judgment entered in favour of the plaintiff-appellant against the defendants-respondents for £750 with costs of the trial and this appeal.