[ZEKIA, P., TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

PILAVACHI & CO. LTD.,
Appellants-Applicants (Defendants),

v.

INTERNATIONAL CHEMICAL COMPANY LTD.,
Respondents (Plaintiffs).

(Civil Appeal No. 4488)

Foreign Judgment—The Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10 *and the Rules made thereunder—Foreign (English) Judgment registered in Cyprus under section* 4*—Application to set aside such registration, based on rule* 10 (1) *of the Rules, sections* 4, 5 *and* 6 *of the Law and Article* 30.2 *and* 3 *of the Constitution of Cyprus.*

Public policy—Doctrine of public policy—Provision in Contract Law, Cap. 149, *section* 23*—Submission that enforcement of foreign judgment would be contrary to public policy in Cyprus—What constitutes public policy—The enforcement of a foreign judgment in Cyprus to be contrary to public policy should be against the principles of the established law.*

Conflict of Laws—Public policy—Enforcement of foreign judgment—Defendant should not be unfairly prejudiced in the presentation of his case to the foreign court—Foreign judgment should not offend against principles of natural justice.

Practice—Counterclaim—Counterclaim is a cross-action not merely a defence to the claim—It can only be put in where an action could be brought—Alleged tort committed outside jurisdiction—Cyprus Court has no jurisdiction to entertain a counterclaim for such tort as it has no jurisdiction to entertain a claim for same in a separate or independent action—The English Rules of the Supreme Court, O. 19 *r.* 3 *(prior to the* 1962 *Revision), the Old English O.* 21 *r.* 11 *(new English O* 15 *r.* 3 (1)) *and the Cyprus Civil Procedure Rules O.* 19 *r.* 3 *and O.* 21 *r.* 8.

Constitutional Law—Constitution of Cyprus and the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10*—Law not contrary to Article* 30.2 *and* 3 *(b) of the Constitution and, therefore, not unconstitutional.*

Jurisdiction—Composition of "Court" under the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10*—The Courts of Justice Law,* 1960, *sections* 2 *and* 22 (1) (2) *(b)* (3) *(a) (b) and* (4)*—A*

District Judge sitting alone has no jurisdiction to hear and determine an application under section 6 (1) *to set aside registration of foreign judgment exceeding* £500.

The respondents-plaintiffs, on the 11th November, 1963, obtained a judgment against the appellants-defendants in the High Court of Justice, Queen's Bench Division, in England, for £2,252.0.4*d.* plus interest and £26.16.6*d.* costs.

The claim was based on (*a*) two bills of exchange for £2,229.13.1*d.* drawn by the plaintiffs-respondents and accepted by the defendants-appellants, both payable in London, which were duly endorsed by the plaintiffs and presented in due course and were dishonoured ; and (*b*) the defendants' failure to pay £14.7.9*d.* being the price of goods sold and delivered to the defendants, payment for such goods being due in London.

On the 2nd December, 1963, the respondents applied to the District Court of Limassol to have the said judgment registered under the provisions of section 4 of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, and leave to register such judgment was granted on the same day by the acting President, District Court, on terms.

On the 30th December, 1963, the appellants filed their application to set aside the registration of the judgment which is based on rule 10 (1) of the Rules made under section 5 of Cap. 10, and on sections 4, 5 and 6 of the Law, Cap. 10, and Article 30.2 and (3) of the Constitution of the Republic.

In support of their application the appellants filed an affidavit in which they alleged that they were advised that they had a good claim based on the tort of conspiracy, against the respondents which they intended to assert against them and certain of their directors and others by means of a counterclaim, if the action had been brought in Cyprus, but that the plaintiffs purposely brought their action in the United Kingdom in order to put it out of the appellants' power to defend the action in England and make the defence there too expensive for them to meet the initial costs. They further alleged that in so far as the registration in Cyprus of the foreign judgment under Cap. 10 precludes the defendants from presenting their case before the Cyprus Court, the Law, Cap. 10, is unconstitutional as being contrary to Article 30 of the Constitution of the Republic.

The appellants contended, also, in their affidavit, that it would be against public poilcy, as understood in Cyprus, in the circumstances of this case not to set aside the registration of the aforesaid judgment.

The District Judge, who heard the application, dismissed it on the ground that the provisions of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, were not repugnant to or inconsistent with the provisions of Article 30 of the Constitution.

On the question of the appellants' intended counterclaim the Judge found that there was no material evidence before the Court to support the alleged conspiracy, and that the fact that a defendant may have a counterclaim against a plaintiff who applied for registration of his judgment, was not a ground on which such registration could be set aside under the provisions of section 6 of the Law, Cap. 10.

Against the said order of the District Judge dismissing the appellants' application appellants filed the present appeal.

This appeal was argued before the Court of Appeal on three grounds :

(1) that the enforcement of the English judgment would be contrary to public policy in Cyprus and that the registration of such judgment should be set aside under the provisions of section 6 (1) (*a*) (*v*) of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10 ;

(2) that it would be contrary to public policy and Article 30 (2) and (3) (*b*) of the Constitution of Cyprus to deprive a citizen of his right to present his case before a Cyprus Court ; and

(3) that a District Judge sitting alone had no jurisdiction to hear and determine the application to set aside the registration of a judgment under Cap. 10.

Held, (*I*) *as regards the first ground of appeal :*

(1) In the circumstances of this case, it cannot be said that the appellants were unfairly prejudiced in the presentation of their case to the English Court, or that the English judgment offends against the principles of natural justice, and we are of the view that the enforcement of such judgment would not be contrary to public policy in Cyprus.

(*II*) *as regards the second ground of appeal :*

(1) It is abundantly clear that the appellants do not have a right to present an independent action in Cyprus as the alleged tort of conspiracy was committed outside Cyprus, that no principles of public policy have been infringed, and that the appel-

lants have not been denied a fair trial as they were not entitled to have their claim adjudicated upon in Cyprus. They had a reasonable opportunity of presenting their case to the English Court of which they failed to avail themselves and they cannot be heard now to complain that they are not given a second opportunity in a Cyprus Court. For these reasons we are of the view that there is no substance in this ground of appeal.

(*III*) *as regards the third ground of appeal :*

(1) Having regard to the definition of the expression " action " in section 2 of the Courts of Justice Law, 1960, there is no doubt that an application to set aside the registration of a foreign judgment under Cap. 10, comes within the ambit of that definition ; and as the amount in dispute exceeds £500 it would seem that a District Judge sitting alone would have no jurisdiction to deal with the matter unless it could be brought within the provisions of sub-section (3) (*a*) or (3) (*b*) of section 22, that is—

(*a*) that this is a matter in which the District Judge is giving judgment in any action in which the defendant failed to appear or admitted the claim, etc.; or

(*b*) that this is a matter in which the judge was making an order in any action not disposing of the action on its merits.

(2) We do not think that paragraph (*a*) above would apply in any case. As regards (*b*), in the case of the *registration* of the foreign judgment under the provisions of section 4 of the Law, Cap. 10, it could be considered that the Judge was making an order not disposing of the action on its merits, because subsequent to such registration, under the express provisions of the Law and the Rules (r. 8), notice of such registration has to be given to the judgment debtor who may apply to the registering court to have the registration set aside.

(3) But as regards the application of the judgment debtor under the provisions of section 6 of Cap. 10, to have the registration of the foreign judgment set aside, it cannot be said that a judge determining such application would be making an order " not disposing of the action on its merits ". The proceedings for the setting aside of the registration of the foreign judgment are closely connected with the questions which arise in the course of execution of a District Court judgment, *e.g.* applications for writs of attachment, interpleader applications etc. In those cases, if the property attached under the execu-

tion of the District Court judgment, or seized in execution of the judgment and claimed by a third party, exceeds in value the sum of £500, then the Full Court—and not a judge sitting alone—has jurisdiction to hear and determine the matter.

(4) For these reasons we are of the view that the District Judge sitting alone had no jurisdiction to hear and determine the application to set aside the registration of the foreign judgment.

(IV) in the result :

We allow the appeal, set aside the order of the District Judge and remit the application to the District Court to be retried by the Full Bench.

(V) on the question of costs :

As the appellants have lost on the two grounds on which they argued the case before the District Court, and as they raised the question of jurisdiction for the first time in this Court, we make no order as to costs here or the Court below.

Appeal allowed. Order of the Court below set aside. Application sent back to the District Court to be retried by the Full Bench.

Cases referred to :

Kaufman v. *Gerson* (1904) 1 K.B. 591 ;

In re *Macartney* (1921) 1 Ch. 522, 527.

Huntington v. *Attrill* (1893) A.C. 150 ;

Jacobson v. *Frachon* (1928) 138 L.T. 386, 390, 392 ;

Scarpetta v. *Lowenfeld* (1911) 27 T.L.R. 509 ;

Chilides, v. *Beraut* (1953) 19 C.L.R. 223 ;

Scammell v. *Hurley* (1929) 1 K.B. 419 ;

De Jetley v. *Marks* (1936) 1 All E.R. 872 ;

Birmingham Estates Company v. *Smith*, 13 Ch. D. p. 509 ;

Bow Maclachlan & Co. v. *The Camosun* (1909) A.C. 597 ;

Williams v. *Agius* (1914) A.C. 522 ;

Amon v. *Bobbett*, 22 Q.B.D. 548 ;

Stumore v. *Campbell & Co.* (1892) 1 Q.B. 317 ;

Padwick v. *Scott* 2 Ch. D. 736 ;

Newman v. *Lever* (1887) 4 T.L.R. 91 ;

Anglo-Italian Bank v. *Wells* (*and Davies*), 38 L.T. 201 ;

Christou v. *Christou* 1964 C.L.R. 336.

Appeal.

Appeal against the order of the District Court of Limassol (Malachtos, D.J.) dated the 4th June, 1964 (Application No. 1/63) dismissing appellants' application to set aside the registration in the District Court of Limassol, under the provisions of section 4 of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, of a judgment obtained against them in the High Court of Justice, Queen's Bench Division, in England.

St. G. McBride with *G. Tornaritis*, for the appellants.

G. J. Pelaghias, for the respondents.

Cur. adv. vult.

ZEKIA, P. : The judgment of the Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J. : This is an appeal against the order of a District Judge dismissing the appellants' application to set aside the registration in the District Court of Limassol, under the provisions of section 4 of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, of a judgment obtained against them in the High Court of Justice, Queen's Bench Division, in England.

The judgment was obtained in the English Court on the 11th November, 1963, for £2,252.0.4*d.* plus interest and £26.16.6*d.* costs. The claim was based on (*a*) two bills of exchange for £2,229.13.1*d.* drawn by the plaintiffs-respondents and accepted by the defendants-appellants, both payable in London, which were duly endorsed by the plaintiffs and presented in due course and were dishonoured ; and (*b*) the defendants' failure to pay £14.7.9*d.*, being the price of goods sold and delivered to the defendants, payment for such goods being due in London.

The writ of summons was duly served on the appellants (defendants) who failed to enter an appearance within the time limited for that purpose. In fact, the appellants admit the whole of the above claim, which is undisputed,

and they also concede that the Queen's Bench Division of the High Court of Justice in England had jurisdiction to try the case. The aforesaid judgment, which is final and conclusive, was entered against the appellants in default of appearance on the 11th November, 1963.

On the 2nd December, 1963, the respondents applied to the District Court of Limassol to have the said judgment registered under the provisions of section 4 of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, and leave to register such judgment was granted on the same day by the acting President, District Court, on terms. Notice of registration was duly served on the appellants under the provisions of rule 8 of the Rules made under section 5 of the Law.

On the 30th December, 1963, the appellants filed their application to set aside the registration of the judgment which is based on rule 10 (1) of the aforesaid Rules, sections 4, 5 and 6 of the Law, Cap. 10, and Article 30 (2) and (3) of the Constitution of the Republic.

In support of their application the appellants filed an affidavit in which they allege that they were advised that they had a good claim against the respondents which they intended to assert against them and certain of their directors and others by means of a counterclaim, if the action had been brought in Cyprus, but that the plaintiffs purposely brought their action in the United Kingdom in order to put it out of the appellants' power to defend the action in England and make the defence there too expensive for them to meet the initial costs. They further alleged that in so far as the registration in Cyprus of the foreign judgment under Cap. 10 precludes the defendants from presenting their case before the Cyprus Court, the Law, Cap. 10, is unconstitutional as being contrary to Article 30 of the Constitution of the Republic. It was further contended that one H. W. Miller, described as the export manager of the respondents, conspired with the newly appointed Cyprus agents and that he procured by false pretences and without justification the termination by the respondents of the appellants' Cyprus agency of the Kolynos tooth-paste, and that " for their act of H. W. Miller the plaintiffs must answer in damages to the defendants ".

Finally, the appellants contended, in their affidavit, that it would be against public policy, as understood in Cyprus, in the circumstances of this case not to set aside the registration of the aforesaid judgment.

The appellants exhibit to their affidavit copies of four letters exchanged between the parties between the 31st March, 1963, and the 16th of August, 1963. The first letter, dated the 31st March, 1963, is signed by " H. W. Miller " on behalf of the respondent company and addressed to the appellants. Reference is made in the letter to Article XII of the Agreement dated 2nd April, 1951, and notice is given to the appellants of the respondnents' " desire to terminate the said Agreement at 30th June, 1963 ". The respondents stated that they regretted the necessity to terminate the Agreement which had been running satisfactorily for some 12 years, but they added that they considered it necessary to take this step to protect their interests in Cyprus. They further stated that while they were under no legal duty to give the reason for the termination of the agreement, they felt they owed it to the appellants to do so by virtue of the friendly relationship their two companies had enjoyed over the years. The reason given for the termination of the agency was that the respondents had formed the view that when Mr. Pilavakis ceased to be responsible for the management of the appellant company there would be no established successor to take over from him with the result that the respondents had no confidence in the continuity of the company's business.

The appellants replied to that letter by a letter dated the 4th April, 1963, signed by Ant. A. Pilavakis and addressed " personal " to H. W. Miller, International Chemical Co. Ltd. (respondents). Pilavakis stated that Miller's letter of the 31st March came to him as a shock and reminded him that he (Pilavakis) had held the Kolynos agency for over 40 years and had worked very hard to place the toothpaste in the market of Cyprus. He further complained that it was not fair for someone else to come and reap the fruit of his (Pilavakis') efforts. He refuted the idea that when he ceased to be responsible for the management of the appellant company there would be no established successor to take over. He mentioned that in due course his son-in-law Mr. Popoff, would, in due course, be his successor and that he had also arranged with another member of his family who had lived in Egypt to come and join the business in Cyprus, in spite of the fact that there was no question for him (Pilavakis) to cease being responsible for the management having completely recovered after the operation he had had in the previous year for duodenal ulcer. Finally, he expressed the hope that he would be in London about the middle of April, 1963, accompanied by his son-in-law, and that he would be meeting Mr. Miller to discuss matters.

The next letter is dated the 24th July, 1963 signed by Ant. A. Pilavaki and addressed to H. W. Miller. The letter shows that the appellants were unable to persuade the respondents to withdraw the termination of their agency. In his opening paragraph Mr. Pilavakis expresses to Mr. Miller his " deepest disgust " for the way he has been treated, and he then goes on to state that the responsibility for the breaking of the contract rests entirely on Miller's shoulders, that he (Pilavakis) is determined not to keep silent and that Miller " must be prepared for all the consequences of (his) unfair decisions ". Pilavakis further states that he will cause the question to be brought before a Cyprus Court of Justice because he would like to hear what Miller would have to say on oath in the witness box about the motives behind the termination of the agency. He concludes by claiming that he must be liberally compensated for the termination of the agency and for the creation through his efforts of an extraordinary goodwill for the respondents' products in Cyprus, and stating that he has decided, as a first step in this direction, to withhold payment of two drafts of £1,374 and £834, due shortly, and that he will be pleased if the respondents will take legal proceedings against the appellants for the collection of the above sums as in this way a Court of Justice will decide on their issue.

This letter of the appellants was passed by the respondents to their solicitors, Messrs. McKenna & Co., of London, who, on the 16th August, 1963, wrote to the appellants on the question of the payment of the aforesaid two bills, stating that they had advised their clients that if they instituted legal proceedings against the appellants to recover the amount of the two bills, there would be no valid defence to the proceedings. They also stated that they had advised their clients that the English Court had jurisdiction in the matter and that it would be possible to institute the proceedings in England and for the case to be tried there. Upon obtaining judgment against the appellants in England, they said, it would be possible for their clients to register the judgment in Cyprus and enforce it against the appellants without the necessity of reopening the case in Cyprus. The solicitors very fairly pointed all this out to the appellants, adding that their clients were naturally distressed on having to take legal proceedings against the appellants, particularly in view of the long and friendly association that has existed in the past. In conclusion, the appellants were notified by the solicitors that another chance would be

given to them to pay the amount of the bills so that the matter could be settled amicably and without further expense to them.

As already stated, this correspondence is exhibited to the appellants' affidavit.

To that affidavit the respondents put in a reply in which they stated that the judgment was final and conclusive, that the bills were payable in London and that the price of the goods sold and delivered was likewise payable in London and that the English Court had jurisdiction to try the case. The respondents further stated that the appellants had an opportunity of filing a defence and bringing any counterclaim before the English Court and that the registration of the English judgment in Cyprus in no way affected the appellants' right to bring an action against the respondents either in the English Courts or in the Cyprus Courts if they were so advised. It was further alleged that the termination by the respondents of the appellants' agency was effected under an express power contained in the agency contract and that Article 30 of the Constitution had no application in the present proceedings.

A supplementary affidavit was filed by the appellants in which they contended that the respondents deliberately chose to bring the action in England to prevent the appellants from counterclaiming there, as to have counterclaimed in England would have entailed more expense than could be afforded by the appellants as they would have to take all their witnesses to England from Cyprus and Lebanon as well as being involved in heavy legal expenses there ; and that it would be impossible financially for the appellants to counterclaim in England. The appellants also stated that they could not commence an action in Cyprus as the respondents, as far as they (appellants) were aware, had not committed a tort in Cyprus which would give the Cyprus Courts jurisdiction in the matter.

On this evidence the District Judge, who heard the application, dismissed it on the ground that the provisions of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, were not repugnant to or inconsistent with the provisions of Article 30 of the Constitution.

On the question of the appellants' intended counterclaim the Judge found that there was no material evidence before the Court to support the alleged conspiracy, and that the fact that a defendant may have a counterclaim

against a plaintiff who applied for registration of his judgment, was not a ground on which such registration could be set aside under the provisions of section 6 of the Law, Cap. 10.

This appeal was argued before us on three grounds :

(1) that the enforcement of the English judgment would be contrary to public policy in Cyprus and that the registration of such judgment should be set aside under the provisions of section 6 (1) (*a*) (*v*) of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10 ;

(2) that it would be contrary to public policy and Article 30 (2) and (3) (*b*) of the Constitution of Cyprus to deprive a citizen of his right to present his case before a Cyprus Court ; and

(3) that a District Judge sitting alone had no jurisdiction to hear and determine the application to set aside the registration of a judgment under Cap. 10.

As regards the *first ground* of appeal, appellants' counsel in submitting to the Court that the enforcement of the English judgment in the present case would be contrary to public policy in Cyprus did not cite any authority in support of his proposition nor did he make any submission as to what constitutes public policy.

Sir William Holdsworth in his " History of English Law ", volume VIII, page 55, says " In fact, a body of law like the common law, which has grown up gradually with the growth of the nation, necessarily acquires some fixed principles, and if it is to maintain these principles, it must be able, on the ground of public policy or some other like ground, to suppress practices which, under ever new disguises, seek to weaken or negative them ". For the enforcement of a judgment to be contrary to public policy in Cyprus, it should, I think, be against the principles of the established law.

It is a well-established principle that any action brought in England is subject to the English doctrine of public policy ; and in Cyprus there is express provision in section 23 of the Contract Law, Cap. 149, that the consideration or object of an agreement is said to be unlawful if the Court regards it as opposed to public policy, but there is no definition of what is public policy.

The following is suggested by Prof. Cheshire as the probable classification of cases in which the English Court

will refuse to enforce a foreign acquired right on the ground that its enforcement would conflict with overriding principles of English public policy :

(*a*) where the fundamental conceptions of English justice are disregarded ;

(*b*) where the English conceptions of morality are infringed ;

(*c*) where a transaction prejudices the interests of the United Kingdom or its good relations with foreign powers ; and

(*d*) where a foreign law or status offends the English conceptions of human liberty and freedom of action.

(See Prof. Cheshire, " Private International Law ", 5th Edition, p. 154 *et seq.*).

With regards to (*a*) above, the established rule that a foreign judgment cannot be recognized in England if it offends the principles of natural justice, as for example, if the defendant was denied the opportunity of presenting his case to the foreign court, exemplifies this aspect of English public policy. Another example is the rule that a contract obtained by what is regarded in the eye of English law as coercion is unenforceable in England (*Kaufman* v. *Gerson* (1904) 1 K.B. 591).

No action is sustainable in England upon a foreign judgment which is contrary to the English principles of distinctive or public policy (*In re Macartney* (1921) 1 Ch. 522, 527) ; or which has been given in proceedings of a penal or revenue nature (*Huntington* v. *Attrill* (1893) A.C. 150) : cf. our section 3 (2) (*b*). The rule of English law is that " the general recognition of the permanent rights of illegitimate children and their spinster mothers is contrary to the established policy of this country ", and, therefore, where a Maltese Court had adjudged a putative father liable to provide his illegitimate daughter with an alimentary allowance without any time limit, such as minority, being imposed, it was held that no action on the judgment lay in England (*In re Macartney*) (1921) 1 Ch. 522, 527). Any impropriety in the foreign proceedings which has deprived a party of an opportunity to present his side of the case will be regarded as a violation of the rules of natural justice (*Jacobson* v. *Frachon* (1928) 138 L.T. 386, 390, 392). A departure from these rules may appear in two forms—

(*a*) where no notice of the proceedings was given to the defendant (cf. our section 6 (1) (*a*) (iii) ; and

(*b*) where the defendant was unfairly prejudiced in foreign proceedings.

With regard to (*b*), it is a violation of natural justice if a litigant, though present at the proceedings, was unfairly prejudiced in the presentation of his case to the court. A clear example of this would be if he were totally denied a right to plead, but the defence of unfair prejudice is not one that is lightly admitted. It is not sufficient, for instance, that his personal evidence was excluded, if the procedural rule of the forum is that parties may not give evidence on their own behalf (*Scarpetta* v. *Lowenfeld* (1911) 27 T.L.R.509). Again, the defence will not succeed if the alleged unfairness consisted of something that might have been combated and removed in the foreign action (see *Jacobson* v. *Frachon*, *supra* : and *Cheshire*, *ubi supra* ; at pages 641–5). Cf. the critical comment in *Dicey's* Conflict of Laws, 7th edition, at page 1003 *et seq.*

Coming now to the particular circumstances of this case, were the defendants (appellants) denied a right to plead ? Were they deprived of an opportunity to present their side of the case in the English Court, or did the alleged unfairness consist of something that might have been combated and removed in the English action ?

It is the appellant's contention that H.W. Miller, export manager of the respondent company, conspired with the newly appointed Cyprus agents to terminate the appellants' agency in Cyprus and to appoint the former as agents, that he procured by false pretences and without justification the termination by the respondents of the appellants' Cyprus agency. And that, for this act of Miller, the respondents must answer in damages to the appellants.

In the first instance, the respondents were, under the express provisions of their contract with the appellants, entitled to terminate the agency on giving the agreed notice, which they did. If they were so entitled, could it be said that the respondents conspired with themselves to terminate a contract which they were entitled to do under the express terms of the contract ?

Section 34 of our Civil Wrongs Law, Cap. 148 provides that " any person who , knowingly and without sufficient justification, causes any other person to break a legally binding contract with a third person, commits a civil wrong against such third person " (see *Chilides* v. *Beraut* (1953) 19 C.L.R. 223). So it cannot be said that

the respondent company unlawfully caused breach of its own contract with the appellants. For a person to be guilty of conspiracy to break a contract there must be proof that he persuaded a third party to do an act wrongful in itself, such as committing a breach of contract with another person. Where directors of a company in a board meeting cause a breach of contract by the company, they cannot be sued in tort (*Scammell* v. *Hurley* (1929) 1 K.B. 419) ; but some of the directors could conspire before the meeting to induce the meeting as a whole to break a contract (*De Jetley* v. *Marks* (1936) 1 All E.R. 872).

The appellants concede that the alleged tort was committed outside Cyprus and that they cannot sue the respondents in Cyprus, but they contend that if the respondents brought an action in Cyprus on the bills of exchange, for which they obtained judgment in the English Court, they (appellants) would be entitled to present a counterclaim against the respondents for the alleged tort committed outside the jurisdiction.

The appellants further concede that they could present such a counterclaim before the English Court, after they were served with a copy of the writ of summons in the English case and before the judgment in question was given by that Court against the appellants in default of appearance. But they contend that the respondents deliberately sued in the English Court to preclude them from counterclaiming there as this would have entailed more expense which the appellants could not afford.

On these contentions the following questions fall to be determined—

(*a*) Is the respondent company answerable for Miller's alleged tort of conspiracy to break an agreement to which the respondent company was a party itself ?

(*b*) If the respondent company had sued on the bills of exchange in the Cyprus Courts, could the appellants counterclaim for the alleged tort ?

As regards (*a*), we entertain considerable doubts whether, even if there was evidence proving the alleged tort against Miller, in the circumstances of this case the respondent company would be answerable to the appellants for such tort ; but it is not necessary for the purposes of this case to decide this point.

With regard to (*b*), we think that there is ample authority that a defendant in an action " has no business to put in a counterclaim except where an action could be brought" (per Jessel M.R. in *Birmingham Estates Company* v. *Smith*, 13 Ch. D. page 509). A counterclaim is substantially a cross-action ; not merely a defence to the plaintiff's claim. It must be of such a nature that the Court would have jurisdiction to entertain it as a separate action (*Bow Maclachlan & Co.* v. *The Camosum* (1909) A.C. 597 ; *Williams* v. *Agius* (1914) A.C. 522). " A counterclaim is to be treated, for all purposes for which justice requires it to be so treated, as an independent action " (per Bowen L. J. in *Amon* v. *Bobbett*, 22 Q.B.D. 548). In short, for all purposes, except those of execution, a claim and a counterclaim are two independent actions (per Lord Esher, M.R. in *Stumore* v. *Campbell & Co.* (1892) 1 Q.B. 317).

The above quoted English cases were decided on the interpretation of the English Rules of the Supreme Court, Order 19, rule 3 (prior to the 1962 Revision), which corresponds to our Order 19, rule 3.

It would seem that appellants' claim for conspiracy may lie, if at all, against Miller alone and not against the respondent company. But even if Miller were to be added as a co-defendant to the counterclaim proposed to be presented against the respondent company, then, under the provisions of Order 21 rule 8, which corresponds to the old English Order 21, rule 11 (new English Order 15, rule 3 (1)), the counterclaim must ask for relief relating to or connected with the subject matter of the plaintiff's claim (see *Padwick* v. *Scott* 2 Ch. D. 736 ; and the Judicature Act, 1925, section 39 (*b*)).

It is well settled that " without strong ground a counterclaim ought not to be allowed in an action on a bill, cheque or note which is not disputed " (*Newman* v. *Lever* (1887) 4 T.L.R. 91), unless the counterclaim were so connected with the cause of action that it might be set up as a defence (per Thesiger L.J. in *Anglo-Italian Bank*, v. *Wells* (*and Davies*), 38 L.T. 201). So that, even if a counterclaim could lie against the respondent company in a Cyprus Court, based on the alleged conspiracy of Miller, it would be extremely doubtful, to say the least, if any strong ground could be found which would enable a Cyprus Court to allow such a counterclaim in an action of the respondent company on the bills of exchange due by the appellants, which were admitted, and on the basis of which the respondent company obtained their judgment in the English Court, which was eventually registered in Cyprus.

To sum up : Even if a counterclaim for conspiracy were maintenable against the respondent company—

(*a*) on the appellants' own contention the alleged tort was committed outside Cyprus, and on the authorities the Cyprus Court would have no jurisdiction to entertain it as it would have no jurisdiction to entertain such a claim in a separate or independent action ; and

(*b*) the appellants concede that they were entitled to present their counterclaim in the English Court and that they were not deprived of the opportunity of presenting their side of the case to that Court, but that it was a matter of costs.

In the circumstances of this case, it cannot be said that the appellants were unfairly prejudiced in the presentation of their case to the English Court, or that the English judgment offends against the principles of natural justice, and we are of the view that the enforcement of such judgment would not be contrary to public policy in Cyprus.

The *second ground* of appeal was that it would be contrary to public policy and Article 30 (2) and (3) (*b*) of the Constitution of the Republic to deprive a citizen of Cyprus (the appellants) of his right to present his case before a Court in Cyprus. We think that we can deal shortly with this matter.

Our Article 30, paragraph 2, reproduces substantially the provisions of Article 6 (1) of the Rome Convention for the Protection of Human Rights and Fundamental Freedoms (dated the 4th November, 1950). The object of this provision is to secure for every person in Cyprus a fair trial within a reasonable time by an independent and impartial Court established by law. Likewise, the provisions of Article 30 (3) (*b*), to the effect that every person has the right to present his case before the Court and to have sufficient time necessary for its preparation, is one of the prerequisites to ensure a fair trial in a Cyprus Court. And this Court has already held that these provisions could not have been intended to apply to foreign proceedings (*Christou* v. *Christou* 1964 C.L.R. 336). The European Commission of Human Rights in interpreting Article 6 of the Rome Convention was of the opinion that, " the right to a fair hearing guaranteed by Article 6, paragraph (1), of the Convention appears to contemplate that every one who is a party to civil proceedings shall have a reasonable opportunity of

presenting his case to the Court under conditions which do not place him at a substantial disadvantage *vis-a-vis* his opponent" (see Application No. 434/58, Yearbook of the European Convention of Human Rights, volume 2, pages 354, 370, 372 : and Application No. 1092/61 Yearbook, volume 5, pages 210, 212).

From what has already been stated in considering the first ground of appeal, it is abundantly clear that the appellants do not have a right to present an independent action in Cyprus as the alleged tort of conspiracy was committed outside Cyprus, that no principles of public policy have been infringed, and that the appellants have not been denied a fair trial as they were not entitled to have their claim adjudicated upon in Cyprus. They had a reasonable opportunity of presenting their case to the English Court of which they failed to avail themselves and they cannot be heard now to complain that they are not given a second opportunity in a Cyprus Court. For these reasons we are of the view that there is no substance in this ground of appeal.

The *third and final ground* of appeal was that a District Judge sitting alone had no jurisdiction to hear and determine the appellants' application to set aside the registration of a foreign judgment under the provisions of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10.

The registration of the English judgment under the provisions of section 4 (1) of the Law was ordered by the acting President, District Court, and the appellants' application to set aside such registration was heard and determined by a District Judge sitting alone. Section 4 provides that application for the registration of a foreign judgment shall be made to the District Court and that "on any such application the Court shall.....order the judgment to be registered". Section 6 (1) provides that, on an application duly made by any party against whom a registered judgment may be enforced, the registration of the judgment shall be set aside if "the registering Court" is satisfied that the original Court had no jurisdiction, and on other grounds. The expression "District Court" is defined in section 2 of the Law as "the District Court in the district in which the judgment debtor or any of the judgment debtors resides or in which any property to which a judgment relates is situate" ; but there is no provision as to the composition of such Court. Rule 10 (1) of the Foreign Judgments (Reciprocal Enforcement) Rules, made under section 5 of the Law, provides that an application to set aside the registration of a judgment shall be made

by summons to "the Court", but no definition of the expression "Court" is given in the Rules. Consequently, we have to consider the provisions of the Courts of Justice Law, 1960, which lays down the jurisdiction and powers of the Courts of the Republic.

Section 22 (1) provides that a District Court composed of not less than two judges shall have jurisdiction to hear and determine in the first instance any "action". Sub-section (2) (*b*) of the same section provides that a President of a District Court or a District Judge sitting alone shall have jurisdiction to hear and determine any action in which the amount in dispute or the value of the subject matter does not exceed £500. Sub-section (3) provides that, notwithstanding the aforesaid provisions, a President or a District Judge shall have power—

(*a*) "to give judgment in any action" in which the defendant fails to enter appearance or he admits the claim etc.; and

(*b*) "to make any order in any action not disposing of the action on its merits".

Sub-section (4) provides that "the amount in dispute or the value of the subject matter of an action shall be the amount or value actually in dispute between the parties thereto as disclosed upon the pleadings ....., notwithstanding that the amount claimed or the alleged value of the subject matter in the action exceeds the amount or value". The expression "action" is defined in section 2 of the Law as meaning "a civil proceeding commenced by writ or in such other manner as may be prescribed by Rules of Court"; and the expression "civil proceeding" includes "any proceeding other than criminal proceeding".

In the present case the English judgment registered in the District Court of Limassol is for £2,252.0.4*d.* plus costs.

Having regard to the definition of the expression "action" in section 2 of the Courts of Justice Law, 1960, there is no doubt that an application to set aside the registration of a foreign judgment under Cap. 10, comes within the ambit of that definition; and as the amount in dispute exceeds £500 it would seem that a District Judge sitting alone would have no jurisdiction to deal with the matter unless it could be brought within the provisions of sub-section (3) (*a*) or (3) (*b*) of section 22, that is,

(*a*) that this is a matter in which the District Judge is giving judgment in any action in which the defendant failed to appear or admitted the claim, etc.; or

(*b*) that this is a matter in which the judge was making an order in any action not disposing of the action on its merits.

We do not think that paragraph (*a*) above would apply in any case. As regards (*b*), in the case of the *registration* of the foreign judgment under the provisions of section 4 of the Law, Cap. 10, it could be considered that the Judge was making an order not disposing of the action on its merits, because subsequent to such registration, under the express provisions of the Law and the Rules (rule 8), notice of such registration has to be given to the judgment debtor who may apply to the registering Court to have the registration set aside. But, as regards the application of the judgment debtor under the provisions of section 6 of Cap. 10, to have the registration of the foreign judgment set aside, it cannot be said that a Judge determining such application would be making an order " not disposing of the action on its merits ". The proceedings for the setting aside of the registration of the foreign judgment are closely connected with the questions which arise in the course of execution of a District Court judgment, *e.g.* applications for writs of attachment, interpleader applications, etc. In those cases, if the property attached under the execution of the District Court judgment, or seized in execution of the judgment and claimed by a third party, exceeds in value the sum of £500, then the Full Court—and not a Judge sitting alone—has jurisdiction to hear and determine the matter.

For these reasons we are of the view that the District Judge sitting alone had no jurisdiction to hear and determine the application to set aside the registration of the foreign judgment.

In the result, we allow the appeal, set aside the order of the District Judge and remit the application to the District Court to be retried by the Full Bench.

On the question of costs, as the appellants have lost on the two grounds on which they argued the case before the District Court, and as they raised the question of jurisdiction for the first time in this Court, we make no order as to costs here or the Court below.

Appeal allowed and order made as above.

Appeal allowed. Order of the Court below set aside. Application sent back to the District Court to be retried by the Full Bench. No order as to costs throughout.