

CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

IN ITS ORIGINAL JURISDICTION AND ON APPEAL
FROM THE DISTRICT COURTS.

[HADJIANASTASSIOU, J.]

PANTELIS KARAMAILIS (No. 1),

Plaintiff,

v.

PASPARO SHIPPING COMPANY LTD.,

Defendants.

(Admiralty Action No. 20/69).

1972
Jan. 20

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PANTELIS
KARAMAILIS
(No. 1)
v.
PASPARO
SHIPPING
COMPANY
LTD.

Admiralty—Practice—Security for defendants' costs in an action brought by the master of the ship not resident in Cyprus—Rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893—“Seaman” in the said rule held not to include a master—Application for such security granted.

Words and Phrases—“Seaman” in rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893.

Security for costs—See supra.

In this case the Court granted the application of the defendant for an order directing the plaintiff—not resident in Cyprus—to give security for costs (the defendants' costs). The application was based on rule 185 of the Cyprus Admiralty Jurisdiction Order, 1893, the full text of which is set out in the judgment of the Court.

Cases referred to :

Thompson v. H. and W. Nelson, Ltd. [1913] 2 K.B.D. 523, at pp. 527 528.

Application.

Application by defendants for an order directing the plaintiff to give security for costs in an admiralty action

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whereby plaintiff claimed £205.700 mils as wages and/or agreed and/or reasonable remuneration for services rendered on the ship "Master George".

G. Talianos, for the plaintiff.

P. Demetriou, for the defendants.

The following judgment was delivered by :—

HADJIANASTASSIOU, J. : The applicant has filed an application on October 12, 1971, seeking an order directing the plaintiff who ordinarily resides in Greece, to give security for the defendants' costs in this action in the sum of £150. This application is based on rule 185 of the Rules of the Supreme Court of Cyprus in its Admiralty jurisdiction. This Rule reads as follows :—

" If any plaintiff (other than a seaman suing for his wages or for the loss of his clothes and effects in a collision) or any defendant making a counter claim is not resident in Cyprus, the Court or judge may, on the application of the adverse party, order him to give such security for the costs of such adverse party as to the Court or judge shall seem fit ; and may order that all proceedings in the action be stayed until such security be given "

The plaintiff, Pantelis Karamailis of Hios Island, on or about November 25, 1967, entered the service of the defendants, Pasparo Shipping Company Limited of Nicosia, who were the owners of the ship "Master George", as master on board of the said ship. His monthly wages were stated to be the amount of £169. The plaintiff continued serving in that ship until April 14, 1968, when he was discharged from service, whilst he was at Singapore Port, because of illness.

On October 21, 1969, the plaintiff brought an action against the defendants claiming the sum of £205.700 mils a balance due to him for his wages from November, 1967, up to April, 1968, when he was serving as master of the aforesaid ship. On October 19, 1970, the defendant company filed a statement of defence denying that they owed to the plaintiff the sum claimed or any other sum or at all.

On October 26, 1971, the plaintiff filed a notice of intention to oppose the application of the defendants to give security for the defendants' costs.

During the hearing of this application, the sole question posed before me is whether a "master" comes within the meaning of a "seaman". Since Rule 185 of the Rules of the Supreme Court in its Admiralty Jurisdiction gives no definition of the word "seaman", it is necessary to turn first to the Admiralty Court Act, 1861. Having done so, and because I could find no definition of the word "seaman" in this Act also, it is necessary to look into the Merchant Shipping Act 1854 (now 1894) a considerable part of which is devoted to the subject of seamen's wages. Section 742 provides, unless the context otherwise requires, "the expression 'seaman' includes every person (except masters, pilots and apprentices duly indentured and registered), employed or engaged in any capacity on board any ship". The expression "seamen" includes not only seamen as defined by the principal Act (*supra*), but also apprentices to the sea service (Merchant Shipping Act, 1906, s. 49). It appears, therefore, that the word "seaman" would, for the purposes of the Admiralty Court Act, 1861, be considered to have a meaning at least as extensive. In *Thompson v. H. & W. Nelson, Limited* [1913] 2 K.B.D. 523 at pp. 527-528, Lord Coleridge, J., delivering a separate judgment in the same case had this to say:—

"Under ss. 113 and 114 of the Merchant Shipping Act, 1894, a seaman can only recover as wages the amount specified in the articles. By s. 742 'wages' includes emoluments. Therefore to make the Act applicable the person seeking to recover must be a 'seaman', and the sum demanded must be in the nature of 'wages' as defined in the Act. 'Seaman' includes every person, with certain exceptions not material to this case, employed or engaged in any capacity on board any ship. First of all, is a man in control of the bar a 'seaman' within the meaning of the Act? It seems to me that he is a seaman just as the ship's cook or any other person engaged in a similar character on board the ship is a seaman."

See also Admiralty Practice, 3rd edn. by Williams & Bruce regarding the word "seaman" when used in the Admiralty Court Act 1861.

On the other hand, "master" includes every person (except a pilot) having command or charge of any ship. See Merchant Shipping Act, 1894, section 742. This identical wording as to the meaning of the word "master" has been inserted verbatim in our Law 46/1963, section 2.

I now turn to our Merchant Shipping (Safety Regulations and Seamen) Law, Cap. 292, which shall be construed as

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one with the Merchant Shipping Acts, so far as they are or shall be made applicable to Cyprus immediately preceding Independence Day. Section 2, (as amended by Law 38/63), reads as follows :—

“ In this Law unless the context otherwise requires—
‘ Merchant Shipping Acts ’ means the Acts of Parliament cited as the Merchant Shipping Acts, 1894 to 1950, and any other Act amending or substituted for the same ;

‘ seaman ’ includes every person, employed or engaged in any capacity on board ship except masters, pilots and apprentices duly indentured and registered.”

Pausing here for a moment, it is to be observed that this definition of the word “ seaman ” is identical with the definition of s. 742 of the Merchant Shipping Act, 1894.

I think that I should have added that the Supreme Court of Cyprus derives its jurisdiction and powers from the provisions of section 9 (a) of the Administration of Justice (Miscellaneous Provisions) Law, 1964, which introduces section 19 (a) of the Courts of Justice Law, 1960. It is to be observed that under the latter section, the High Court had exclusive original jurisdiction as a Court of Admiralty vested with and exercising the same powers and jurisdiction as those vested in or exercised by the High Court of Justice in England in its Admiralty jurisdiction on the day immediately preceding Independence Day.

Having had the advantage of hearing the submissions of both counsel, and since it is a well known principle of construction that the draftsman of our Rules of the Supreme Court must be taken to have known the meaning of the expression “ seaman ”, immediately before the coming into operation of the Cyprus Admiralty Jurisdiction Order, 1893, and to have used it with that meaning, I have come to the conclusion that the word “ seaman ” does not include the master of a ship, and I would, therefore, uphold the contention of counsel for the applicants. For these reasons, and exercising my powers under Rule 185, I order the plaintiff to give an amount of £80 security for the costs of the adverse party within a period of one month, since the respondent/plaintiff is out of the jurisdiction of this Court. All proceedings in this action to be stayed until such security be given. Costs of this application in favour of the applicant company.

Order accordingly.