[A. LOIZOU, J.]

ARTEMIS COMPANY LIMITED,

Plaintiffs,

v.

THE SHIP "SONJA",

Defendant.

(*Admiralty Action No.* 12/69).

Civil Procedure—Admiralty—Parties—Joinder of parties—Principles applicable—Application by defendant to add further defendant—Plaintiff not objecting, rather concurring (infra)*—Admiralty action—Claim for breach of contract of afreightment—Plaintiff alleging that breach was done through party sought to be added and alleged to have been acting as agent of the defendant—Defendant maintaining that such proposed party was not so acting—Plaintiffs joining in the application—Application granted in the special circumstances of this case—Cyprus Admiralty Jurisdiction Order,* 1893, *Rules* 29, 30 *and* 32.

Parties—Joinder—Admiralty action—See supra.

Admiralty—Action in rem *and action* in personam*—May be joined in the same writ of summons and proceeded with accordingly—It is immaterial that against one of the defendants the action will be* in rem *and against the other an action* in personam.

By this Admiralty action the plaintiffs claim damages for breach of contract of afreightment concluded between the parties, the defendants alleged to have been acting through the firm A. L. Mantovani and Sons Ltd. acting as their agents. The defendants, who have denied that the said firm acted in the matter as their agents, seek now to have them added as defendants "upon such terms as shall seem just". Messrs. A. L. Mantovani and Sons Ltd. opposing the application objected that they have acted throughout as agents of the defendants and never contracted personally, and this was well known to both the plaintiffs and the defendant. It was argued, *inter alia*, by the said firm of A. L. Mantovani that the action being one *in rem* they cannot be joined therein since the action in so far as they are concerned would certainly be an action *in personam*.

Granting the application, the learned Judge :—

Held, (1). Such joinder cannot in law be excluded. In British Shipping Laws Vol. 1 Admiralty Practice (1964) at p. 11, it is stated, that, in comparatively rare cases actions may be both *in rem* and *in personam*. Such actions may be begun by means of a single writ. In Cyprus mixed actions *in rem* and *in personam* are not an unusual occurrence.

(2) (*a*) In the circumstances of this case and on the authorities, had it not been for the joining of the application by the plaintiffs with which I shall deal shortly, this application should have been dismissed.

(*b*) However, the joining of the application by the plaintiffs is a significant factor. I take it this is not just a case of the plaintiffs merely consenting but a case of adopting the application and urging that it be granted.

(*c*) If this application were to be dismissed there would be nothing to stop the plaintiffs from applying themselves for this joinder. This would unnecessarily cause multiplicity of proceedings and add up to costs. Nor the dismissal of this application will prevent the plaintiffs from proceeding by another action against the new defendants sought to be added hereto.

(3) In the special circumstances of this case, and without purporting to lay down a principle of general application, I grant this application by ordering that A. L. Mantovani and Sons Ltd. be joined as co-defendants in this action and that the writ of summons in this action be amended accordingly and that as second defendant should be entitled to exercise all the rights of the first defendants in this action.

Application granted. No *order as to costs.*

Cases referred to :

Hood Barrs v. *Frampton, Knight and Clayton* [1924] W.N. 287 ;

Amon v. *Raphael Tuck and Sons Ltd.* [1956] 1 All E.R. 273, at p. 277 ;

Five Steel Barges [1890] 15 P.D. 142 ;

British Transport Commission v. *Patria* (*Owners*), *Kent County Council and Others* v. *Kent Council and Others* (*Fire Float Vessel No.* 2) [1959] 1 *Lloyd*'s *Reports* 73 ;

General Insurance Co. of Cyprus Ltd. v. *Maroulla Georghiou and Another* (1963) 2 C.L.R. 117 ;

Bennetts and Co. v. *McIlwraith and Co.* [1896] 2 Q.B.D. 464 ;

Byrne v. *Brown* [1889] 22 Q.B.D. 657, at p. 666 ;

Gurtner v. *Circuit* [1968] 1 All E.R. 328, at p. 331 ;

Dollfus Mieg et Compagnie S.A. v. *Bank of England* [1950] 2 All E.R. 605.

Application.

Application for an order that the names of Messrs. A. L. Mantovani & Sons Ltd. of Larnaca be added as defendants in an Admiralty action whereby the plaintiffs claimed the sum of £31,250 as damages for breach of an agreement to carry 250 tons of grapes from Limassol to Dover.

Chr. Demetriades, for the applicants.

A. Dikigoropoulos, for the respondent.

M. Houry, for A. L. Mantovani & Sons Ltd.

Cur. adv. vult.

The following ruling was delivered by :—

A. LOIZOU, J. : The plaintiff company allege in their petition that by an exchange of telegrams between A. L. Mantovani & Sons Ltd. acting as agents for the defendant ship and its said owners, a contract of afreightment and/or agreement was on the 12th July, 1969, concluded between the plaintiffs and the defendants whereby the latter undertook to accept on board the said ship on the 15th July, 1969, or earlier, at Limassol, and carry therefrom to one safe south coast United Kingdom port, 250 tons or 5,000 trays of fresh grapes at 4/3d. per tray.

The plaintiffs further allege that on the 17th July, 1969, when the first quantity of fresh grapes had been taken to Limassol quay packed and ready for loading on the said defendant ship, A. L. Mantovani & Sons Ltd, as agents for the said defendant ship, in breach of defendant 's contract of afreightment and/or agreement with the plaintiffs and contrary to their assurances of the previous day, informed the plaintiffs that the said defendant ship would not accept plaintiffs ' cargo. As a result of the aforesaid alleged breach of contract, the plaintiffs claim to have suffered damages, and their total claim in the present action is in the region of £28,000.

Before filing their answer, the defendant ship applied " for an order that the names of Messrs. A. L. Mantovani & Sons Ltd. of Larnaca be added as defendants in this action upon such terms as shall seem just ".

The application is based on the Cyprus Admiralty Jurisdiction Order, 1893, Rules 29, 30 & 32. Rule 30 corresponds in all material respects to Order 9 Rule 10 of our Civil Procedure Rules, and to Order 16 Rule 11 of the English Rules of the Supreme Court which order is applicable in Admiralty Actions in England. In the revised English Rules of the Supreme Court, Order 16 Rule 11 is now renumbered as Order 15 Rule 6. As pointed out by Lord Denning M.R. in *Gurtner* v. *Circuit* [1968] 1 All E.R. 328 at p. 331, the new rule is in substantially the same terms as the old R.S.C. Order 16 Rule 11, and nothing turns on the difference in wording.

In the affidavit filed in support of the said application, it is pointed out that, from the petition filed by the plaintiffs the alleged contract and the alleged breach thereof were done through A. L. Mantovani & Sons Ltd. acting as the agents of the defendants. In this affidavit, paragraph 3(d) and (e) thereof, it is claimed that A. L. Mantovani & Sons Ltd. were not acting in this matter as agents of defendant, but as an intermediary for their own account, and were never authorized by defendants as alleged in the petition and/or never acted on defendant's behalf. Paragraphs 4 and 5 of the said affidavit read as follows :—

> " 4. In view of what is stated hereinabove, I am advised by the Advocate of Defendant and verily believe that the whole case of the Plaintiffs against Defendant rests on whether 'Mantovani' were or not acting as agents of Defendant in the matter and in such a way as validly to bind Defendant in respect thereof. I am, further, advised and verily believe that, in view of the above, the case of Defendant is that, if there was any contract or assurances and/or breach thereof such contract, assurances and/or breach were made by 'Mantovani' personally and that, therefore, 'Mantovani' themselves are solely liable, if at all.
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> 5. As a result of the above, I am advised by the Advocate for Defendant and verily believe that 'Mantovani' are :—
>
> (a) Persons interested in the action, as they might be affected in their pocket, by the determination of the matter in dispute

(b) persons who ought and/or who could have been joined in the action, from the beginning, with a claim against them either jointly and/or in the alternative

(c) persons whose presence, in view of the above facts, before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the action ".

Counsel for the Plaintiffs addressed to counsel for the Defendant a letter dated the 6th April, 1972, whereby he requested the latter to let him have copies of any documents indicating a *prima facie* support of the allegations contained in paragraph 3(d) and (e) of the affidavit filed in support of the present application so that it would enable him to agree not to oppose this application. Subsequent to that he intimated to the Court that he did not propose to oppose this application, subject to his right for costs. The Court, in the circumstances, thought proper and directed that this application should be served upon the proposed new defendants, who upon being served filed their opposition relying on Orders 30 and 237 of the Cyprus Admiralty Jurisdiction Rules and *Hood Barrs* v. *Frampton, Knight & Clayton* [1924] W.N. 287. It may usefully be pointed out here that the aforesaid Rule 237 referred to in the opposition provides that " in all cases not provided by the Cyprus Admiralty Jurisdiction Rules, the practice of the Admiralty Division of the High Court of Justice of England, so far as the same shall appear to be applicable shall be followed ". The case of *Hood Barrs* (*supra*) is referred to in the judgment of Devlin J. in *Amon* v. *Raphael Tuck & Sons Ltd.* [1956] 1 All E.R. p. 273 at p. 277 :—

> " In *Hood Barrs* v. *Frampton, Knight & Clayton* ([1924] W.N. 287), the plaintiffs employed the defendants to collect on their behalf the rents of a certain flat. After a while the defendants refused to pay over the rents because they had been informed by a third party that she was entitled to receive them. The plaintiffs sued the defendants who asked for the other party to be joined. Eve, J., refused the application and said that the defendants had no right to require the plaintiffs to sue another party ; and that convenient as it no doubt would be to have the whole matter discussed, they could not claim to have it decided on the record as it stood. He declined

to make the order for adding a defendant against whom no relief was sought. Here, again, I do not think that the gist of the learned judge 's decision was that he had no jurisdiction to make the order in a case where the plaintiffs sought no relief ; I think the true effect of it is that the defendants were not entitled to have the other party joined because the question involved did not arise on the record as it stood ".

Counsel for the applicant stated that any difficulty that might arise from what was said in the *Hood Barrs case* (*supra*) was overcome by the fact that the plaintiff was joining in his application and that in any event it is obvious that on the authorities defendants were added even against the will of the plaintiffs. As stated by Devlin J. in *Amon 's case* (*supra*) at p. 277 :—

> " Nevertheless, later authorities which are binding on me show conclusively that the party can be joined as defendant even though the plaintiff does not think that he has any cause of action against him ".

The facts relied upon in the opposition are the following :—

"(*a*) The presence of A. L. Mantovani & Sons Ltd. as Defendants is not necessary to enable the Court to adjudicate effectually and completely on all questions involved in this action.

(*b*) If any question or liability should arise as between A. L. Mantovani & Sons Ltd. and the Ship Sonja then A. L. Mantovani & Sons Ltd. should be joined as 3rd Parties by the Ship Sonja.

(*c*) The Plaintiffs have raised no claim against A. L. Mantovani & Sons Ltd. and have not seen fit to make A. L. Mantovani & Sons Ltd. co-respondents ".

By an affidavit filed in support of the opposition it is reiterated that A. L. Mantovani & Sons Ltd. acted throughout as agents and never contracted personally, and this was well-known to both the plaintiffs and the defendant.

In arguing the case for his clients, Mr. Houry submitted further that the action against his clients would be naturally an action in *personam* and therefore could not be joined in an action in *rem* on the application of a res, the ship.

However such joinder cannot in law be excluded. In British Shipping Laws Vol. 1 Admiralty Practice (1964) at p. 11, it is stated, that, in comparatively rare cases actions may be both in *Rem* and in *Personam*. Such actions may be begun by means of a single writ, and reference is made to the case of *Five Steel Barges* [1890] 15 P.D. 142 ; and *British Transport Commission* v. *Patria* (*Owners*), *Kent County Council and Others ; Patria Owners* v. *Kent County Council and Others* (*Fire Float Vessel No.* 2) [1959] 1 Lloyd's Reports 73, where it was said that defendants may, of course, be added. In Cyprus mixed actions in *Rem* and in *Personam* are not an unusual occurrence.

Counsel for plaintiffs joined in the application and went even further and argued the case in favour of such joinder. He referred to the case of *General Insurance Co. of Cyprus Ltd.* v. *Maroulla Georghiou & Another* (1963) 2 C.L.R. p. 117. In the said judgment, the Supreme Court of Cyprus applied the principle laid down in *Amon* v. *Raphael Tuck* (*supra*) per Devlin J. adopting the dictum of Wynn-Parry J. in *Dollfus Mieg et Compagnie S.A.* v. *Bank of England* [1950] 2 All E.R. 605 at p. 611. The principle enunciated therein was that the intervener had a right and an interest in the outcome of the litigation and therefore the order for joining him as a defendant was rightly made as he would be directly affected in the enjoyment of his legal rights. He also referred me to a number of other cases among them the case of *Bennetts & Co.* v. *McIlwraith & Co.* [1896] 2 Q.B.D. 464. This is a case where in an action against the defendants for breach of warranty of authority it appeared that they had assumed to act as agents in entering into a charterparty for loading the plaintiff's vessel with cargo which was not supplied. The plaintiffs being in doubt as to whether the defendants had or had not authority applied to add the alleged principals as defendants. It was held that the plaintiffs were entitled to do so on the authorities mentioned therein.

In the case however of *Gurtner* v. *Circuit* (*supra*) Lord Denning M.R. did not agree on the narrow construction given by Devlin J. and said the following at p. 331 :

> " There were many cases decided on it ; but I need not analyse them today. That was done by Devlin, J., in *Amon* v. *Raphael Tuck & Sons* Ltd. He thought that the rule should be given a narrow construction, and his views were followed by John Stephenson, J., in *Fire, Auto and Marine Insurance Co., Ltd.* v. *Greene*. I am afraid that I do not agree with them. I prefer

to give a wide interpretation to the rule, as Lord Esher, M.R., did in *Byrne* v. *Brown*. It seems to me that when two parties are in dispute in an action at law and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the Court in its discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the Court achieves the object of the rule. It enables all matters in dispute ' to be effectually and completely determined and adjudicated upon ' between all those directly concerned in the outcome ".

The principle therefore was extended considerably with Salmon L.J. concurring to the effect that the Court has a discretion to add a party to an action at law if the determination of that dispute will directly affect him in his legal rights or his pocket in that he will be bound to foot the bill. Furthermore Diplock L.J. with Salmon, L.J. concurring concluded that a matter was not effectively " adjudicated upon " within this order unless all those who would be liable to satisfy the judgment were heard ; thus not applying the dictum of Devlin, J. in *Amon's* case (*supra*) found at p. 287 where he said :

> " The only reason which makes it necessary to make a person a party to an action is so that he may be bound by the result of an action and the question to be settled therefore must be a question in the action which cannot be effectively and completely settled unless he is a party ".

Lord Denning M.R. preferred the wider interpretation given to the rule by Lord Esher M.R. in *Byrne* v. *Brown* [1889] 22 Q.B.D. 657 where he said at p. 666 :

> " One of the chief objects of the Judicature Acts was to secure that, whereever a Court can see in the transaction brought before it that the rights of one of the parties will or may be so affected that under the forms of law other actions may be brought in respect of that transaction, the Court shall have power to bring all the parties before it, and determine the rights of all in one proceeding. It is not necessary that the evidence in the issues raised by the new parties being brought in should be exactly the same ; it is sufficient if the main evidence, and the main inquiry, will be the same, and the Court then has power to bring

in the new parties, and to adjudicate in one proceeding upon the rights of all the parties before it. Another great object was to diminish the cost of litigation. That being so, the Court ought to give the largest construction to those Acts in order to carry out as far as possible the two objects I have mentioned".

These in effect are the general principles is so far as the present proceedings are concerned governing the addition of a defendant either on the application of the defendant or of a person not already a party. The point therefore for determination is whether the aforesaid principles apply to the facts of the present case. What is claimed by the defendant ship is that she is not liable to the plaintiff company because Messrs. A. L. Mantovani & Sons Ltd. were not acting as her agents. If that is so then the defendant ship cannot have applied for the joinder. If the defendant is successful in proving that, it would be for the plaintiffs to ask for the joinder or bring another action. As stated in the Supreme Court Practice 1970 p. 168 "*prima facie* the plaintiff is entitled to choose the person against whom to proceed and to leave out any person against whom he does not desire to proceed". If on the other hand the defendant is unsuccessful in proving that A. L. Mantovani & Sons Ltd. were not their agents then the defendant will be adjudged to pay and that will not directly affect A. L. Mantovani & Sons Ltd. in their legal rights or in their pocket, in the sense that they will be bound to foot the bill. There is no claim for contribution or indemnity or damages against A. L. Mantovani & Sons Ltd. by the defendant in case the latter is found liable towards plaintiffs.

In these circumstances therefore and on the authorities, had it not been for the joining of the application by the plaintiff with which I shall be shortly dealing more extensively, this application should have been dismissed. However, the joining of the application by the plaintiff in the light of what has already been shown is a significant factor and gives to the present proceedings their special character. I take it that this is not just a case of the plaintiffs merely consenting but a case of adopting the application and urging that it be granted. If this application were to be dismissed there would be nothing to stop the plaintiffs from applying themselves for this joinder. This would unnecessarily cause multiplicity of proceedings and add up to the costs. Nor the dismissal of this application will prevent the plaintiffs from proceeding by another

action against the new defendant sought to be added hereto. Under this rule the Court has power on the application of the plaintiff to add or substitute a defendant. Therefore since the plaintiffs have elected to take the stand in these proceedings to which I have referred and without purporting to lay down a principle of general application, in the special circumstances of this case I grant this application by ordering that A. L. Mantovani & Sons Ltd. be joined as a co-defendant in this action and that the writ of summons be amended accordingly and that as second defendant should be entitled to exercise all the rights of the first defendant in this action.

With regard to costs normally where an order is made on the plaintiff 's application it is made subject to his paying the costs of and thrown away by the additions, but in the circumstances of this case I make no order as to costs.

Application granted. No order as to costs.