[TRIANTAFYLLIDES, P., STAVRINIDES, L. LOIZOU, A. LOIZOU, MALACHTOS, JJ.]

PANTELIS KARAMAILIS (No. 2),
Appellant-Plaintiff,

v.

PASPARO SHIPPING CO. LTD.,
Respondents-Defendants.

(*Civil Appeal No.* 5039).

Admiralty—Practice—Foreign plaintiff (residing abroad)—Master of a ship—Suing for wages—Has to give security for defendants' costs—Rule 185 *of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction,* 1893—*Cf.* infra.

"*Seaman*" *in rule* 185 (supra)—*Does not include a* "*master*" *of the ship—Consequently a master suing for wages (and residing abroad) may be ordered under that Rule to give appropriate security for the defendant's costs.*

Construction and interpretation of Rules—"*Seaman*"*—See* supra.

Words and Phrases—"*Seaman*" *in rule* 185 *of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction,* 1893.

This is an appeal against an order made by a Judge of this Court in an Admiralty Action, whereby the plaintiff (now appellant), a ship's master suing for wages, was commanded to give security in the sum of £80 for the costs of the defendants (now respondents): See this order reported in this Part at p. 1, *ante.* The order was made under rule 185 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction, 1893. This rule provides that "if any plaintiff (other than a seaman sueing for his wages or) is not resident in Cyprus, the Court or a Judge may, on the application of the adverse party, order him to give security for the costs of such adverse party as the Court or a Judge shall seem fit ."

The only point in issue in this case is whether or not the master of a ship is "a seaman" within the said rule 185. The Supreme Court, affirming the order appealed from, held that "seaman" does not include the master of a ship.

Held, (1). When the aforesaid Rules were drafted in 1893 the practice then prevailing was that an order for security of costs of the other party in wages actions was given only in those by a master. It seems, therefore, that this practice was incorporated in the said Rules of 1893 (*supra*) ; and that is why there is in rule 185 (*supra*) a provision precluding the making of an order for security of costs in the case of a " seaman " suing for his wages.

(2) In the light of such practice we must interpret the word " seaman " in Rule 185, as not including a " master ".

(3) It was further argued by counsel for the appellant that in construing nowadays rule 185, a master must be dealt with in the same way as a seaman because of section 44 (3) of the Merchant Shipping (Masters and Seamen) Law, 1963 (Law No. 46 of 1963), which provides, in effect, that for the recovery of his wages the master of a ship shall have the same rights, remedies and liens as a seaman. But section 44 (3) is a provision of a substantive, and not of a procedural, nature, and, therefore, it cannot be treated as having changed the procedural situation under Rule 185 of the rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction, 1893.

Appeal dismissed with costs.

Cases referred to :

The Sophie, 1 W. Rob. 326 ;

The D.H. Peri, Lush. 543 ;

The Franz et Elize, Lush. 377 ;

The Zufall, 44 L.J. Ad. 16 ; 32 L.T.N.S. 571 ;

The Don Ricardo, L.R. 5 P.D. 121 ; 49 L.J. Ad. 28.

Note : All those cases are cited in Roscoe's Admiralty Law and Practice (1882) 2nd ed. p. 260, under the heading : " Security for costs ".

Appeal.

Appeal by plaintiff against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) dated the 20th January, 1972, (Admiralty Action No. 20/69) whereby the plaintiff was ordered to give security in the sum of £80 for the costs of the defendant.

L. Papaphilippou, for the appellant.

G. Talianos, for the respondent.

The judgment of the Court was delivered by :—

TRIANTAFYLLIDES, P. : This is an appeal against an order* made by a Judge of this Court, in Admiralty Action No. 20/69, by virtue of which the plaintiff, a ship's master suing for wages, was commanded to give security in the sum of £80 for the costs of the defendants, within one month from the date of such order, namely the 20th January, 1972.

The order was made under rule 185 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction, 1893 (hereinafter referred to as " the Cyprus Admiralty Rules ") which 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 counterclaim 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."

On behalf of the appellant it has been contended that " seaman " in the above rule includes a " master ", and that therefore the order appealed from could not have been made thereunder.

In the absence of any definitions in the relevant legislation we have derived guidance from the practice as it was at about the time—1893—when the Cyprus Admiralty Rules were made as a Schedule to the Cyprus Admiralty Jurisdiction Order, 1893, which was enacted under the Colonial Courts of Admiralty Act, 1890.

In Roscoe's Admiralty Law and Practice, (1882) 2nd ed. p. 260, we find this, under the heading " Security for costs ":—

> " When the plaintiff resides out of the jurisdiction of the High Court he may be required to give security for costs (*The Sophie*, 1 W. Rob. 326 ; *The D. H. Peri*, Lush. 543), although at the time of the application he is within the jurisdiction ; but this practice is generally confined in wages actions to those by a master " (*The Franz et Elize*, Lush. 377 ; 5 L.T.N.S. 290 ; *The Zufall*, 44 L. J. Ad. 16 ; 32 L.T.N.S. 571 ; *The Don Ricardo*, L. R. 5 P.D. 121 ; 49 L. J. Ad. 28)."

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* Reported in this part at p. 1 *ante*.

In *The Don Ricardo* (*supra*) Sir Robert Phillimore said, at p. 122 :

> " With regard to the question as to whether the plaintiff should be made to give security for costs, I have been referred to the case of *The Franz et Elize* (Lush. 377) ; but in that case the plaintiff had been a master of the vessel proceeded against. And, on the whole, I think it would be hard in the circumstances of this case to make the plaintiff who was only in the position of a mate on board the Don Ricardo, give security for costs."

It seems, therefore, that when the Cyprus Admiralty Rules were drafted in 1893 the above mentioned practice was incorporated therein, and that is why there is in rule 185 a provision precluding the making of an order for security for costs in the case of a " seaman " suing for his wages ; and, also, consequently, we must in the light of such practice, interpret the word " seaman ", in rule 185, as not including a " master ".

That practice seems to have changed later ; in Williams and Bruce on Admiralty Practice, (1902) 3rd ed. p. 483, we find a note stating that the modern practice with reference to security for costs in suits for wages instituted by masters or seamen is the same as in other suits ; but in Cyprus no amendment of the Rules was made in order to adopt such modern practice and so we are still in the position which existed earlier in England ; it is up to the appropriate authorities to give consideration to the possibility of amending our Rules.

We have to deal, next, with a submission of counsel for the appellant that in construing nowadays rule 185 a master must be dealt with in the same way as a seaman because of section 44 (3) of the Merchant Shipping (Masters and Seamen) Law, 1963, (46/63), which provides, in effect, that for the recovery of his wages the master of a ship shall have the same rights, remedies and liens as a seaman.

Section 44 (3) is a provision of a substantive, and not of a procedural, nature, and, therefore, in our opinion, it cannot be treated as having changed the procedural situation under rule 185 of the Cyprus Admiralty Rules.

Moreover, a provision very much similar to section 44 (3) existed in England at the time when, as already stated, the practice there was that in relation to actions for wages security for costs was ordered only in so far as masters, and

not, also, seamen, were concerned ; that provision was section 191 of the Merchant Shipping Act, 1854, which was later substantially reproduced as section 167 (1) of the Merchant Shipping Act, 1894. So our section 44 (3) has no more bearing than the English provisions just referred to had on the matter of security for costs.

In the light of all the foregoing it is clear that the word " seaman " in rule 185 does not include a " master "; thus it was open to the learned trial Judge to make the order for security for costs which has been appealed from ; so this appeal should be dismissed.

As the appeal was filed on the 1st February, 1972, within the time prescribed for giving security for costs, we feel that it is only fair in dismissing it to order that the time for giving the security should be extended so as to run from today.

The appeal is dismissed with costs against the appellant.

Appeal dismissed with costs.