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[TRIANTAFYLIDIS, P., STAVRINIDES, L. LOIZOU, JJ.]

JUPITER
ELECTRICAL
(OVERSEAS) LTD.
AND ANOTHER

JUPITER ELECTRICAL (OVERSEAS) LTD.
AND ANOTHER,

Appellants-Defendants,

v.

SAVVAS
COSTA
CHRISTIDES

v.

SAVVAS COSTA CHRISTIDES,

Respondent-Plaintiff.

(Civil Appeal No. 4967).

Jurisdiction—Civil wrong committed abroad—And being one of those specifically enumerated in the Civil Wrongs Law, Cap. 148—Defendant resident within the jurisdiction—Common law—Jurisdiction of Cyprus Court not excluded by the first paragraph of section 3 of the Civil Wrongs Law, (supra)—Section 29(1)(c) of the Courts of Justice Law, 1960 (Law 14 of 1960). 5

Conflict of Laws—Civil wrong—Claim based on Civil wrong (personal injuries) committed abroad—Conditions to be satisfied in order that an action thereon may be instituted in Cyprus. 10

Civil Procedure—Practice—Preliminary point of law—Civil wrong committed abroad—Matter of law to be applied can be treated as a preliminary issue to be dealt with before the trial—Civil Procedure Rules, Order 27 rule 1. 15

The appellants, who are being sued by the respondent for damages for personal injuries which he suffered while being employed by them in Libya, have applied, under Order 27, rule 1, of the Civil Procedure Rules, that two issues of law, namely whether the trial Court possesses jurisdiction in the matter and, if so, what is the law to be applied—that of Cyprus or of Libya—should be heard as preliminary issues prior to the trial of the action; both such issues were raised in the Statement of Defence. 20 25

The application was opposed and the trial Court in dealing with it ruled that the question as to what is the law to be applied is not a matter within the ambit

of Order 27. The trial Court, by its ruling, further found that it possessed jurisdiction to try the action on the basis of s. 23 of the Courts of Justice Law, 1960 (Law 14 of 1960)—which provides about the territorial jurisdiction in Cyprus of the District Courts— and on the ground that the action was based partly on a contract allegedly entered into in Nicosia. Moreover, it held that the appellants had submitted to its jurisdiction by filing an unconditional appearance and by applying for evidence to be heard as preparatory to the trial of the action.

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In relation to the issue of jurisdiction counsel for the appellants has argued that the trial Court did not possess jurisdiction in the present case in so far as a claim in tort is concerned and he relied in this respect on the first paragraph of section 3 of the Civil Wrongs Law, Cap. 148, which reads as follows :-

“3. The matters in this Law hereinafter enumerated shall be civil wrongs, and subject to the provisions of this Law, any person who shall suffer any injury or damage by reason of any civil wrong committed in the Colony”—now the Republic—“or within three miles of the coast thereof measured from low water mark shall be entitled to recover from the person committing or liable for such civil wrong the remedies which the Court has power to grant”.

The Civil Wrongs Law was first enacted in 1932 as Law 35/32. And the first paragraph of s. 3 of Law 35/32 was exactly the same as the aforementioned first paragraph of s. 3 of Cap. 148, except that the last phrase thereof, instead of being “*the remedies which the Court has power to grant*”, was “*the remedies hereinafter specified*”. This amendment was introduced by means of a provision in the Second Schedule to the Cyprus Laws (Revised Edition) Law 1959 (Law 24 of 1959).

By section 49(c) of the Courts of Justice Law, 1935 (Law 38/35) “the common law and the rules of equity as in force in England on the 5th day of November, 1914, save in so far as other provision has been or shall be made by any Law of the Colony” (now the Republic) became applicable by the Courts of the then

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Colony of Cyprus in the exercise of their Civil or Criminal jurisdiction. The said s. 49(c) was amended by the Courts of Justice (Amendment No. 2) Law, 1952 (Law 29/52), so as to read as follows:

“(c) The common law and the doctrines of equity 5 save in so far as other provision has been or shall be made by any Law of the Colony” (now the Republic).

This provision remained in the statute book until 1960 when it was repealed and replaced by paragraph (c) of s. 29(1) of the Courts of Justice Law, 1960 10 (Law 14/60), which reads as follows:

“(1) Every Court in the exercise of its civil or criminal jurisdiction shall apply

(c) the common law and the doctrines of equity save in so far as other provision has been or shall be made 15 by any law made or becoming applicable under the Constitution or any law saved under paragraph (b) of this section in so far as they are not inconsistent with, or contrary to, the Constitution.”

In the case of *Georghiades & Son v. Kaminaras*, 23 20 C.L.R. 276 the Supreme Court by its judgment *delivered on the 31st December, 1958*, held that s. 3 of the Civil Wrongs Law, Cap. 9 (1949 ed.) was rendered inoperative by the effect of the repeal of sections 56 to 58 of Cap. 9 by means of s. 18 of the Civil Wrongs 25 (Amendment) Law, 1953 (Law 38/53); and proceeded to state that “it would seem a bit odd to argue that a person who does not and cannot seek redress under s. 3 is subject to the restrictive terms of such section”.

Counsel for the appellants has argued that the effect 30 of the first paragraph of section 3 of Cap. 148 is to exclude, in the present case, the application of the Private International Law principle of the Common Law by virtue of which a civil wrong committed abroad could be rendered actionable before the Cyprus Courts, 35 because the civil wrong in respect of which the appellants have been sued, namely that of negligence, is one of those specifically enumerated in Cap. 148; and he has, in this respect, asked the Court of Appeal, to hold, if necessary, that the *Georghiades* case, *supra*, was 40

wrongly decided to the extent to which it is incompatible with his submission.

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5 During the hearing of this appeal counsel for the appellants conceded that the trial Court does have jurisdiction to deal with the present case in so far as a claim based on contract is concerned.

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10 *Held*, (1) The matter of the law to be applied can be treated as a preliminary issue to be dealt with before the trial. (See *Sayers v. International Drilling Co.* NV [1971] 3 All E.R. 163).

15 (2) In view of the subsequent amendment, of the final phrase of the first paragraph of s. 3 of the Civil Wrongs Law by means of Law 24/59, the reasoning in the *Georghiades* case, *supra*, cannot be regarded as being directly relevant for the purpose of deciding now-
20 days whether s. 3 of Cap. 148 prevents the filing of an action in Cyprus against a defendant resident or domiciled here, in respect of a civil wrong which was committed abroad and which is one of those enumerated specifically in Cap. 148.

25 (3) Since there are now to be found in the first paragraph of s. 3 of Cap. 148 the words "the remedies which the Court has power to grant", instead of, as before, the words "the remedies hereinafter specified", it cannot nowadays be said, as it was done in the *Georghiades* case, that section 3 is inoperative merely because there are no longer specified in Cap. 148 the particular remedies concerned.

30 (4) If we were to decide that the first paragraph of s. 3. of Cap. 148 amounts to "other provision made by any law", in the sense of s. 29(1)(c) of Law 14/60, (quoted *ante*), with the effect that when a civil wrong committed abroad is one of those specifically enumerated in Cap. 148 the Private International Law
35 principle, by virtue of which a civil wrong committed abroad could be rendered actionable in Cyprus, is not applicable. this would result in creating a distinction. from the point of view of the jurisdiction of our Courts, between *civil wrongs specifically enumerated* in Cap.
40 148 and other actionable here Common Law *civil wrongs which are not so enumerated*; in relation to the latter

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category of civil wrongs such principle would be applicable as there can be no question of it being excluded, due to s. 29(1)(c) of Law 14/60, by the first paragraph of section 2 of Cap. 148.

(5) In the light of, and by analogy to, the view expressed in *The Universal Advertising and Publishing Agency and Others v. Vouros*, 19 C.L.R. 87, at pp. 94, 95, we have reached the conclusion that the first paragraph of s. 3 of Cap. 148 is not "other provision", in the sense of section 29(1)(c) of Law 14/60, which is so "clear" and "imperative" as to exclude the application of the aforementioned Private International Law principle in a case where the civil wrong complained of has been committed abroad and is one of those specifically enumerated in Cap. 148.

(6) In our opinion the said first paragraph has no other effect than what is expressly stated therein, that is to say, it makes available "the remedies which the Court has power to grant" in relation to the civil wrongs enumerated in Cap. 148 and which are committed in Cyprus; it is by no means a provision which is either exhaustive or exclusive. It follows that in the present case the first paragraph of s. 3 of Cap. 148 cannot have the effect of excluding the jurisdiction of the trial Court.

(7) In the light of all pertinent considerations we are inclined to hold (and no argument to the contrary has been advanced before us) that in the present case the trial Court has jurisdiction to examine whether the respondent would be entitled to sue the appellants in respect of a civil wrong committed abroad; in accordance with the earlier referred to principle of Private International Law the respondent can do so only if he does establish that the event which caused him the injuries is actionable as a civil wrong according to Cyprus Law and it is also actionable according to the law of Libya (see Dicey & Morris on the Conflict of Laws, 9th ed. p. 938).

(8) In the present case no question arises of only the law of Cyprus or only the law of Libya being applicable as regards tortious liability, but both such legal systems, have to be considered in order to decide

whether the claim of the respondent based on a civil wrong is actionable.

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Appeal dismissed.

Cases referred to :

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- 5 *Sayers v. International Drilling Co. NV* [1971] 3 All E.R. 163;
- Waters v. Sunday Pictorial Newspapers Ltd.* [1961] 2 All E.R. 758;
- 10 *Carl Zeiss Stiftung v. Herbert Smith & Co. and Others* [1969] 1 Ch. 93;
- Heirs of the late Theodora Panayi v. The Administrators of the Estate of the late Stylianos Georghis Mandrioti* (1963) 2 C.L.R. 167 at p. 170;
- Michaelides v. Diakou* (1968) 1 C.L.R. 392 at p. 395;
- 15 *Papamichael v. Chaholiades* (1970) 1 C.L.R. 305 at p. 309;
- Georghiadis & Son v. Kaminaras*, 23 C.L.R. 276;
- Universal Advertising and Publishing Agency and Others v. Vouros*, 19 C.L.R. 187;
- 20 *Wilkinson v. Barking Corporation*, [1948] 1 All E.R. 564;
- Boys v. Chaplin* [1971] A.C. 356.

Appeal.

25 Appeal by defendants against the order of the District Court of Nicosia (Kourris, D.J. and Santamas, Ag. D.J.) dated the 15th March, 1971, (Action No. 698/70) dismissing defendants' application under Order 27, rule 1 of the Civil Procedure Rules that two issues of law, namely whether the trial Court possessed jurisdiction and

30 if so what is the law to be applied, that of Cyprus or of Libya, should be heard as preliminary issues before the trial of the action for damages for personal injuries, which the plaintiff suffered while being employed by defendants in Libya.

- 35 *G. Ladas* with *A. Ladas*, for the appellants.
 N. Aloneftis with *P. Demetriou*, for the respondent.

Cur. adv. vult.

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The facts sufficiently appear in the judgment of the Court delivered by :

TRIANTAFYLLIDES, P. : In this case the appellants, who are being sued by the respondent for damages for personal injuries, which he suffered while being employed by them in Libya, have applied, under Order 27, rule 1, of the Civil Procedure Rules, that two issues of law, namely whether the trial court possesses jurisdiction in the matter and, if so, what is the law to be applied—that of Cyprus or of Libya—should be heard as preliminary issues prior to the trial of the action; both such issues were raised in the Statement of Defence. 5 10

In dealing with the application, which was opposed, the trial court ruled that the question as to what is the law applicable is not a matter within the ambit of Order 27. 15

We may say at once that we do not agree with the trial court on this point, because, as shown by, *inter alia*, *Sayers v. International Drilling Co. NV* [1971] 3 All E.R. 163, the matter of the law to be applied can be treated as a preliminary issue to be dealt with before the trial. 20

Rule 1 of Order 27 is similar to rule 2 of Order 25, of the Rules of the Supreme Court in England, as it was before 1962; now the corresponding Supreme Court rule in England is rule 11 of Order 18 (read together with rules 3 and 4(2) of Order 33). 25

In *Waters v. Sunday Pictorial Newspapers, Ltd.* [1961] 2 All E.R. 758, Danckwerts L.J. observed the following (at p. 763) in relation to rule 2 of Order 25 :- 30

“That rule is one which is only useful when there is a legal point, or legal points, which will dispose of the action if they are decided in a certain way”.

In *Carl Zeiss Stiftung v. Herbert Smith & Co. and Others* [1969] 1 Ch. 93, the headnote reads as follows :- 35

“A plaintiff brought an action against solicitors for an account and payment of all moneys they had received and were to receive from defendants in respect of fees, costs and disbursements in defending a passing-off action still proceeding in which the 40

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5 plaintiff claimed, as the solicitors admittedly knew,
that all the assets of the defendants were and always
had been the plaintiff's property; considerable fees,
costs and disbursements would be incurred in future
in defending the passing-off action preceding and
during trial to establish matters in issue between
the plaintiff and the defendants. In the action against
the solicitors the plaintiff averred matters which were
10 in issue in the passing-off action, and the solicitors
moved for an order for the trial as a preliminary
issue of the question whether the solicitors would
be accountable to the plaintiff, for the moneys
admittedly received, if the plaintiff established the
matters averred.

15 Pennycuik J. dismissed the motion.
On appeal :-

20 Held, allowing the appeal, that since a decision
in favour of the solicitors on the issue would dispose
of the claim against them irrespective of the passing-
off action, the trial of the preliminary issue should
be ordered."

In delivering judgment Lord Denning MR stated (at
p. 98) :-

25 "The solicitors now ask that a preliminary issue
be tried so as to decide whether they are liable for
moneys which they received from their clients hon-
estly on account of their fees and disbursements.
They point out that they cannot safely conduct the
litigation for the West German company with this
30 risk, and I might almost say, this threat, hanging
over their heads. The judge refused to order a pre-
liminary issue. He said that the main action should
be fought out to its conclusion before the trial judge;
and then this second action against the solicitors
35 should be tried afterwards before the same judge.

I am afraid that I cannot agree with the judge's
decision. These solicitors ought to know where they
stand. They should be able to conduct the litigation
without having a sword suspended over their heads.
40 It is not a hypothetical issue. It is a practical issue
of urgency. It is very desirable that it should be

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decided as soon as possible before many further costs are incurred.

I know that it has been said on one or two occasions that a preliminary issue should be ordered only when, whichever way it is decided, it is conclusive of the whole matter. That was said by Lord Evershed M.R. in *Windsor Refrigerator Co. Ltd. v. Branch Nominees Ltd.* [1961] 1 All E.R. 277; and Harman L.J. in *Yeoman Credit Ltd. v. Latter*, [1961] 1 W.L.R. 828, 835. I do not think that is correct.

The true rule was stated by Romer L.J. in *Everett v. Ribbands*, [1952] 1 K.B. 112 :

‘Where you have a point of law which, if decided in one way, is going to be decisive of litigation, then advantage ought to be taken of the facilities afforded by the Rules of Court to have it disposed of at the close of pleadings, or very shortly after the close of pleadings’.

I have always understood such to be the practice. I quite agree that in many cases the facts and law are so mixed up that it is very undesirable to have a preliminary issue. I always like to know the facts before deciding the law. But this is an exceptional case. The solicitors have received in good faith moneys for the defence of this action. They ought to know at once whether they can safely go on receiving them. If the issue of law is decided in their favour, it will dispose of the claim against them, irrespective of the main action. I would order a preliminary issue to be tried.”

In the *Heirs of the late Theodora Panayi v. The Administrators of the Estate of the late Stylianos Georghis Mandrioti* (1963) 2 C.L.R. 167, Josephides, J. said (at p. 170) :-

“We would like to add that in cases where an objection is taken in the defence the interested party must apply to the Court to have a particular point of law under Order 27 formulated and set down for hearing before the date of trial, and he should not wait until the day of trial when all the parties

and their witnesses are before the Court, when considerable costs may be incurred”.

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This view was confirmed in *Michaelides v. Diakou* (1968) 1 C.L.R. 392 (at p. 395) and *Papamichael v. Chaholiades* (1970) 1 C.L.R. 305 (at p. 309).

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The court below, in dealing with the application of the appellants, under rule 1 of Order 27, had to decide only, in the light of the above principles, whether or not the issues of law concerned were to be heard as preliminary issues prior to the trial; by its Ruling, however, the trial court proceeded further and found that it possessed jurisdiction to try the action on the basis of section 23 of the Courts of Justice Law, 1960 (Law 14/60)—which provides about the territorial jurisdiction in Cyprus of the District Courts—and on the ground that the action was based partly on a contract allegedly entered into in Nicosia. Moreover, it held that the appellants had submitted to its jurisdiction by filling an unconditional appearance and by applying for evidence to be heard as preparatory to the trial of the action.

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In relation to the issue of jurisdiction counsel for the appellants has argued that the trial court did not possess jurisdiction in the present case in so far as a claim in tort is concerned and he relied in this respect on the first paragraph of section 3 of the Civil Wrongs Law, Cap. 148.

The said provision reads as follows :-

“3. The matters in this Law hereinafter enumerated shall be civil wrongs, and subject to the provisions of this Law, any person who shall suffer any injury or damage by reason of any civil wrong committed in the Colony”—now the Republic—“or within three miles of the coast thereof measured from low water mark shall be entitled to recover from the person committing or liable for such civil wrong the remedies which the Court has power to grant :”.

We have found it useful to examine in this connection the history of the evolution of the law, and, in particular, we have considered the history of the above provision in conjunction with the process of the introduction into

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our legal system of the principles of the English Common Law :

The Civil Wrongs Law was first enacted in 1932 as Law 35/32. The first paragraph of section 3 of Law 35/32 was exactly the same as the first paragraph of section 3 of Cap. 148, except that the last phrase thereof, instead of being "the remedies which the Court has power to grant", was "the remedies hereinafter specified". 5

In 1935, by section 49(c) of the Courts of Justice Law, 1935 (Law 38/35), "the common law and the rules of equity as in force in England on the 5th day of November, 1914, save in so far as other provision has been or shall be made by any Law of the Colony" became applicable by the courts of the then Colony of Cyprus in the exercise of their civil or criminal jurisdiction. 10 15

In the 1949 Revised Edition of the Statute Laws of Cyprus, which came into force by virtue of the Cyprus Laws (New Edition) Law, 1950 (Law 6/50), Law 35/32 appeared as Cap. 9 and the first paragraph of section 3 thereof remained the same as it was in Law 35/32. Law 38/35 appeared as Cap. 11 and paragraph (c) of section 28(1) of Cap. 11 was the same as paragraph (c) of section 49 of Law 38/35, which was not affected by the amendments introduced by the Courts of Justice (Amendment) Law, 1940 (Law 19/40). 20 25

The said paragraph (c) was amended by the Courts of Justice (Amendment No. 2) Law, 1952 (Law 29/52), so as to read as follows :-

"(c) the common law and the doctrines of equity save in so far as other provision has been or shall be made by any Law of the Colony". 30

In 1953, by section 18 of the Civil Wrongs (Amendment) Law, 1953 (Law 38/53), there were repealed sections 56 to 58 of Cap. 9, which provided about remedies for civil wrongs; these were the "remedies" referred to in the first paragraph of section 3 of Cap. 9 (sections 56 to 58 of Cap. 9 correspond to sections 55 to 57 of Law 35/32). It was provided by subsection (2) of section 18 of Law 38/53 that the repeal of sections 56 to 58 of Cap. 9 would come into operation 35 40

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“as from the date on which the Courts of Justice Law, 1953, comes into operation”. This Law is Law 40/53 which was enacted on the 11th November, 1953, and it is obvious that sections 56 to 58 of Cap. 9 were re-
5 pealed because they became superfluous in view of the coming into force of provisions such as sections 36 and 37 of Law 40/53. It is to be noted, also, that section 33(1)(c) of Law 40/53 re-enacted paragraph (c) of section 28(1) of Cap. 11, as amended by Law 29/52.

10 On the 31st December, 1958, judgment was delivered in *Georgiades & Son v. Kaminaras*, 23 C.L.R. 276; the Supreme Court had to consider in that case whether the first paragraph of section 3 of Cap. 9 could be treated as preventing the application in Cyprus of the
15 Common Law principle enabling civil wrongs committed abroad to become actionable before the Cyprus Courts if the defendant was resident or domiciled within the territorial jurisdiction of such Courts; Zekia J, as he then was, stated the following (at pp. 282, 283, 284) :-

20 “The Court below took the view that by section 3 of the Civil Wrongs Law the jurisdiction of the Cyprus Courts was excluded for libels committed outside the Colony and they had no right to grant
25 any remedy. It is not disputed that by Common Law torts committed abroad are amenable to the jurisdiction of English Courts but it is contended that Common Law cannot be resorted to in this case by virtue of section 33(1)(c) of the Courts of Justice Law, 1953, because other provision has been made
30 in this Colony.

Now, therefore we should consider section 3 of the Civil Wrongs Law which we give hereunder :

35 ‘The matters in this Law hereinafter enumerated shall be civil wrongs, and subject to the provisions of this Law, any person who shall suffer any injury or damage by reason of any civil wrong committed in the Colony or within three miles of the coast thereof measured from low water mark shall be
40 entitled to recover from the person committing or liable for such civil wrong the remedies hereinafter spicified : ...’.

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In plain language it enacts this: Any person suffering damage on account of a civil wrong, committed in the Colony, being one of those enumerated in the same Law, shall be entitled to the remedies specified in a later part of the Law. *Vassiliou v. Vassiliou*, 16 C.L.R. 69, *The Universal Advertising and Publishing Agency and others v. Panayiotis Vouros*, 19 C.L.R. 87, had enlarged the scope of this section and as a result not only the torts specified in the Civil Wrongs Law but those left out and recognised by Common Law unless clearly excluded by some legislation were actionable in the Courts of the Colony as well. As the learned Counsel of the respondent argued, the two decided cases have no bearing to the present case because here we are not concerned with a kind of tort not included in our Laws but with one for which extensive provision exist. On the other hand the torts involved in both cases were committed within the Colony and nothing turned as to the right of remedies provided in section 3 which right is limited expressly to torts committed within the Colony or within three miles of the coast. The provisions of Common Law which confer jurisdiction on the Courts to hear and determine torts committed abroad are repugnant to the provisions which form part of section 3 and therefore inapplicable.

Indeed the force of this argument cannot be denied. It is significant however to consider the effect of the repeal of sections 56 to 58 of the Civil Wrongs Law which sections dealt with remedies indicated in section 3 of the one under consideration. Section 18 of the Law 38/1953 enacted:

‘(1) Part IV of the principal Law (consisting of sections 56 to 58, both inclusive) is hereby repealed (the ensuing Parts V and VI being renumbered as Parts IV and V, respectively).

(2) This section shall come into operation and take effect as from the date on which the Courts of Justice Law, 1953, comes into operation’.

Section 3 of the Civil Wrongs Law is bound up with sections 56 to 58 of the same Law which have

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5 been repealed without being substituted. The object of section 3 was to refer to circumstances under which persons affected would have the right to the remedies given in sections 56 to 58 which sections are not now in existence. The effect of the repeal by Law 38/53 is to render section 3 inoperative. It would seem a bit odd to argue that a person who does not and cannot seek redress under section 3 is subject to the restrictive terms of such section."

10 In the 1959 Revised Edition of the Statute Laws of Cyprus, which came into force by virtue of the Cyprus Laws (Revised Edition) Law, 1959 (Law 24/59), Cap. 9 (of the 1949 Edition) appears as Cap. 148; by means of a provision in the Second Schedule to Law 24/59,
15 for the words "the remedies hereinafter specified" in the first paragraph of section 3 of Cap. 9 there were substituted the words "the remedies which the Court has power to grant".

20 Law 40/53 became Cap. 8 (in the 1959 Edition); paragraph (c) of section 33(1) of Law 40/53 corresponds to paragraph (c) of section 33(1) of Cap. 8, being exactly the same. This provision was repealed and replaced by paragraph (c) of section 29(1) of the Courts of Justice Law, 1960 (Law 14/60), which reads as
25 follows :-

30 "(c) the common law and the doctrines of equity save in so far as other provision has been or shall be made by any law made or becoming applicable under the Constitution or any law saved under paragraph (b) of this section in so far as they are not inconsistent with, or contrary to, the Constitution;"

35 Counsel for the appellants has argued that the effect of the first paragraph of section 3 of Cap. 148 is to exclude, in the present case, the application of the Private International Law principle of the Common Law by virtue of which a civil wrong committed abroad could be rendered actionable before the Cyprus Courts, because the civil wrong in respect of which the appellants have been sued, namely that of negligence, is one of those
40 specifically enumerated in Cap. 148; and he has, in this respect, asked us to hold, if necessary, that the *Georgiades*

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case, *supra*, was wrongly decided, to the extent to which it is incompatible with his submission.

In view of the subsequent amendment, as aforesaid, of the final phrase of the first paragraph of section 3 of the Civil Wrongs Law, by means of the Second Schedule to Law 24/59, the reasoning in the *Georghiades* case, *supra*, cannot be regarded as being directly relevant for the purpose of deciding nowadays whether section 3 of Cap. 148 (the Civil Wrongs Law) prevents the filing of an action in Cyprus against a defendant resident or domiciled here, in respect of a civil wrong which was committed abroad and which is one of those enumerated specifically in Cap. 148; that is to say, since there are now to be found in the first paragraph of section 3 of Cap. 148 the words "the remedies which the Court has power to grant", instead of, as before, the words "the remedies hereinafter specified", it cannot nowadays be said, as it was done in the *Georghiades* case, that section 3 is inoperative merely because there are no longer specified in Cap. 148 the particular remedies concerned.

If we were to decide that the first paragraph of section 3 of Cap. 148 amounts to "other provision... made by any law", in the sense of section 29(1)(c) of Law 14/60, with the effect that when a civil wrong committed abroad is one of those specifically enumerated in Cap. 148 the aforesaid Private International Law principle is not applicable, this would result in creating a distinction, from the point of view of the jurisdiction of our Courts, between *civil wrongs specifically enumerated* in Cap. 148 and other actionable here Common Law *civil wrongs which are not so enumerated*; in relation to the latter category of civil wrongs such principle would be applicable as there can be no question of it being excluded, due to section 29(1)(c) of Law 14/60, by the first paragraph of section 3 of Cap. 148.

In *The Universal Advertising and Publishing Agency and Others v. Vouros*, 19 C.L.R. 87, Hallinan C.J., in considering the provisions of the Civil Wrongs Law in conjunction with the effect of paragraph (c) of section 28(1) of Cap. 11 (in the 1949 Edition), which corres-

ponds to paragraph (c) of section 29(1) of Law 14/60, stated (at pp. 94, 95) :-

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5 “For the reasons which I have discussed, I consider that the intention of the legislative authority when introducing the Common Law in 1935, can best be implemented by refusing to allow the saving clause in section 28(1)(c) to exclude a common law right unless the ‘other provision’ is clear and imperative : a cause of action at Common Law should after 1935
10 be available, unless this remedy is either expressly taken away by any Law of the Colony or is clearly repugnant to any such Law”.

In the light of, and by analogy to, the above view we have reached the conclusion that the first paragraph
15 of section 3 of Cap. 148 is not “other provision”, in the sense of section 29(1)(c) of Law 14/60, which is so “clear” and “imperative” as to exclude the application of the aforementioned Private International Law principle in a case where the civil wrong complained of has
20 been committed abroad and is one of those specifically enumerated in Cap. 148; in our opinion the said first paragraph has no other effect than what is expressly stated therein, that is to say, it makes available “the remedies which the Court has power to grant” in relation to the civil wrongs enumerated in Cap. 148 and
25 which are committed in Cyprus; it is by no means a provision which is either exhaustive or exclusive.

It follows that in the present case the first paragraph of section 3 of Cap. 148 cannot have the effect of
30 excluding the jurisdiction of the trial court.

The trial court has held that it possesses jurisdiction because the action is based also on a contract entered into in Nicosia; and counsel for the appellants, during the hearing of this appeal, did concede that the trial
35 court does have jurisdiction to deal with the present case in so far as a claim based on contract is concerned.

Regarding the aspect of the jurisdiction of the trial court from the point of view of tortious liability, counsel for the appellants has argued that it was erroneously
40 held by the trial court that the appellants had, by their conduct in the proceedings, submitted to its jurisdiction,

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because, according to his contention, submission cannot create jurisdiction where the existence of jurisdiction is excluded by statutory provision; and he referred to *Wilkinson v. Barking Corporation* [1948] 1 All E.R. 564. This submission of counsel for the appellants was based on the assumption that he would be successful in his contention that a statutory provision, namely the first paragraph of section 3 of Cap. 148, excludes jurisdiction as regards tortious liability in the present case; but, as already explained in this judgment, we have not accepted the validity of such contention.

In the light of all pertinent considerations we are inclined to hold—and no argument to the contrary has been advanced before us—that in the present case the trial court has jurisdiction to examine whether the respondent would be entitled to sue the appellants in respect of a civil wrong committed abroad; in accordance with the earlier referred to principle of Private International Law the respondent can do so only if he does establish that the event which caused him the injuries is actionable as a civil wrong according to Cyprus law and it is also actionable according to the law of Libya (see Dicey & Morris on The Conflict of Laws, 9th ed., p. 938); in this respect the said principle has been stated in a slightly different way than that in which it has been stated in the *Georghiades* case, *supra*. because since that case was decided such principle has been modified by the decision of the House of Lords in *Boys v. Chaplin* [1971] A.C. 356.

It follows from the above that in the present case no question arises of only the law of Cyprus or only the law of Libya being applicable as regards tortious liability. but both such legal systems have to be considered in order to decide whether the claim of the respondent based on a civil wrong is actionable.

We are of the view, in the light of all the foregoing, that as the basic ground on which this appeal has been made—namely that the first paragraph of section 3 of Cap. 148 excludes the jurisdiction of the trial court in the present case—has not been sustained by us and as no other reason, unconnected with such ground, has been shown to our satisfaction to exist as to why we

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should interfere with the appealed from Ruling of the trial court, this appeal fails. It is correct, as we have already indicated at the outset of this judgment, that the trial court erred in treating the issue of what is the law applicable regarding the tortious liability as not being an issue which could come within the ambit of rule 1 of Order 27; but, as it is to be derived from what we have stated regarding the relevant Private International Law principle, the issue is not whether the law of Cyprus or the law of Libya only is to be applied and, therefore, the relevant preliminary issue as framed by the appellants could not have been usefully reserved for hearing as a preliminary issue before the trial of the present action.

This appeal is dismissed; but there is nothing, of course, to prevent the appellants from applying, if they so wish, under rule 1 of Order 27 for any legal issue (whether alluded to in this judgment or not) to be heard as a preliminary legal issue before the trial. The 2/3 of the costs of this appeal to be borne by the appellants.

Appeal dismissed.

Order for costs as above.