[A. LOIZOU, J.]

NEMITSAS INDUSTRIES LTD.,

Plaintiff,

and

S. & S. MARITIME LINES LTD. AND OTHERS,

Defendants.

(*Admiralty Action No.* 14/76).

Injunction—Interlocutory injunction—Principles governing grant—Money in Bank—Reasonable fear that it may be transmitted out of the jurisdiction—Injunction restraining its removal from Bank until trial of Action—Section 32 *of the Courts of Justice Law,* 1960 (*Law* 14 *of* 1960)—Sophocles Mamas & Co. *v.* Carl Borgward, 1962 *C.L.R.* 209 *and* Cyprus Palestine Plantations *v.* Olivier & Co., 16 *C.L.R.* 122 *considered.*

Money—Reasonable fear that it may be transmitted out of the jurisdiction—Interlocutory injunction restraining its removal from Bank until trial of Action.

By an admiralty action in personam the plaintiffs claimed against the defendants the sum of C£2,000 being amount paid by the plaintiffs to the defendants under 2 Bills of Lading on account of the freight and charges for the carriage of goods from Limassol to Damman. Along with the action they filed an application, under section 32* of the Courts of Justice Law, 1960, for an order restraining the defendants No. 1 from withdrawing any money from their Bank Account No. 517223 with the National Bank of Greece until the final determination of the action. In the affidavit in support of the application plaintiffs stated that there is a serious question to be tried at the hearing and that there is a probability that they were entitled to the relief sought. They further stated that they believed that defendants 1 have funds with the Bank in question and feared that the defendants may dispose of these assets, if the order applied for is not granted and it will be difficult or impossible to do justice at a later stage; and that considering the nature of the claim against the two defendants it is reasonable to fear

* Quoted at p. 305 of the judgment *post.*

that this money may be transmitted out of the jurisdiction, unless something is done to retain it here.

Counsel for applicants relied on *Nippon Yusen Kaisha* v. *Karageorghis and Another* [1975] 3 All E.R. 282 and *Mareva Compania Naviera S.A.* v. *International Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. 509 (see pp. 305 – 307 of the judgment *post*) which turned on the jurisdiction under s. 45(1)* of the Supreme Court of Judicature (Consolidation) Act, 1925 to grant interlocutory injunctions *ex parte*, pending trial of the plaintiff's action, restraining the defendant from disposing any assets within the jurisdiction.

Held, considering all the circumstances of this case and in particular that there is a serious question to be tried at the hearing and that on the facts before me there is a probability that plaintiff is entitled to relief, that there is money received from the plaintiffs which stand in the name of defendants 1 with their Bank in Limassol and of which they have control and which they may at any time dispose of it or remove it out of the country and that if they do so the plaintiffs may never be able to recover same and they will suffer great injustice which this Court has power to "help avoid" (see the judgment of Lord Justice Roskill at p. 511 of the *Mareva* case, *supra*), I grant the injunction applied for. (*Sophocles Mamas & Co.* v. *Carl Borgward*, 1962 C.L.R. 209 and *Cyprus Palestine Plantations* v. *Olivier & Co.*, 16 C.L.R. 122 considered).

Application granted.

Cases referred to:

Nippon Yusen Kaisha v. *Karageorghis and Another* [1975] 3 All E.R. 282;

Mareva Compania Naviera S.A. v. *International Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. 509;

Acropol Shipping Co. Ltd. and two Others v. *Rossis* (reported in this Part at p. 38 *ante*);

Preston v. *Luck* [1884] 27 Ch. D. 497;

American Cyanamid v. *Ethicon* [1975] 1 All E.R. 504;

Sophocles Mamas & Co. v. *Carl Borgward*, 1962 C.L.R. p. 209;

Cyprus Palestine Plantations v. *Oliver & Co.*, 16 C.L.R. 122.

* Quoted at p. 305 *post*.

Application.

Application under section 32 of the Courts of Justice Law, 1960 (Law No. 14/60), for an order restraining defendants No. 1 from withdrawing any money from their Bank Account No. 517223 with the National Bank of Greece, Limassol Branch, until the final determination of an admiralty action whereby the plaintiffs claim the sum of C£2,000.– being the amount paid by plaintiffs to defendants on account of freight and charges for the carriage of goods from Limassol to Damman on board the ship "Karterado", and which goods were never carried to their destination.

P. Pavlou, for the applicants–plaintiffs.

The following decision was delivered by:–

A. LOIZOU, J.: This is an application under section 32 of the Courts of Justice Law, 1960 (Law No. 14/60), for an order restraining the defendants No. 1 from withdrawing any money from their Bank Account No. 517223 with the National Bank of Greece, Limassol Branch, until the final determination of the action.

The application is further based on the Civil Procedure Rules, Order 48, rule 2 and on rules 203 and 205 of the Cyprus Admiralty Jurisdiction Order 1893, on the inherent powers of the Supreme Court of Cyprus in its admiralty jurisdiction and on the practice of the High Court of Justice in England in its admiralty jurisdiction, the latter, apparently, invoked because of the provisions of section 19(a) of the Courts of Justice Law, 1960, and rule 237 of the Cyprus Admiralty Jurisdiction Order 1893.

The claim against the defendants in this admiralty action in personam is for,

"(a) C£ 2,000.– (Two Thousand Cyprus Pounds) being the amount paid by the plaintiffs to the defendants No. 1 and/or defendants No. 2 under 2 Bills of Lading No. DAM/1, DAM/2 and DAM/3, signed by the defendants No. 1 and on behalf and/or as agents of the defendants No. 2, on account of the freight and charges for the carriage of goods from Limassol to Damman on board the vessel "KARTERADO", which was at the material time chartered by the defendants No. 2 and/or by the material time chartered by

the defendants No. 2 and/or by the defendants No. 1, which goods were never carried to their destination.

(b) The same amount by way of damages for breach of the contract of carriage.

(c) The same amount as money had and received and/or as money paid for a consideration which has totally failed and

(d) Legal interest and costs."

Counsel for the applicants has relied on *Nippon Yusen Kaisha* v. *Karageorghis and Another* [1975] 3 All E.R. 282 and *Mareva Compania Naviera S.A.* v. *International Bulkcarriers S.A.* [1975] 2 Lloyd's Rep. p. 509, as both cases turned on the jurisdiction under section 45(1) of the Supreme Court of Judicature (Consolidation) Act, 1925 to grant interlocutory injunction *ex-parte* pending trial of the plaintiff's action restraining the defendant from disposing any assets within the jurisdiction, and because, the said section is in substance similar to section 32 of the Courts of Justice Law, 1960 and which, by analogy, should be likewise interpreted.

Section 45(1) of the Act of 1925, reads as follows:

"45(1) The High Court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do."

Section 32(1) of our 1960 Law, reads as follows:

"31.-(1) Subject to any Rules of Court every Court, in the exercise of its civil jurisdiction may, by order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases in which it appears to the Court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith:

Provided that an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage."

A comparison of the two sections reveals that the jurisdiction under them is wide and is exercised when "it appears to the Court just or convenient so to do." Needless to say that this is so exercised, having regard to settled reasons or principles. In my view, the identical wording of these two sections justifies a similar approach and interpretation of our section. Therefore, it is useful to see what was said in the *Nippon* case (*supra*), a case where the plaintiffs fear that the moneys in Banks might be transmitted out of the jurisdiction unless something was done to retain them in England. So, they applied for an interim injunction to restrain the defendants from disposing of or removing any of their assets which are in this jurisdiction, outside it. Lord Denning, M.R. at p. 283 of the report said:

> "It seems to me that the time has come when we should revise our practice. There is no reason why the High Court or this Court should not make an order such as is asked for here. It is warranted by s. 45 of the Supreme Court of Judicature (Consolidation) Act 1925 which says the High Court may grant a mandamus or injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do. It seems to me that this is just such a case. There is a strong *prima facie* case that the hire is owing and unpaid. If an injunction is not granted, these moneys may be removed out of the jurisdiction and the shipowners will have the greatest difficulty in recovering anything. Two days ago we granted an injunction *ex parte* and we should continue it."

The statement of Lord Denning, however, that "there is a strong *prima facie* case that the hire is owing and unpaid", brings up a difference which has no immediate bearing in the instant case, but it should be mentioned here, as in all cases where the Court is about to grant an interlocutory injunction under section 32, which was extensively dealt by this Court in the case of *Acropol Shipping Co. Ltd., and two Others* v. *Rossis* (reported in this Part at p. 38 *ante*). It was held therein that in Cyprus the principles for granting an interlocutory injunction and because of the wording of the proviso to section 32(1) follow closely the principles formulated in *Preston* v. *Luck* [1884] 27 Ch. D. 497, that a party seeking it would show that there was a serious question to be tried at the hearing and that on the facts before the Court there is a probability that plaintiff

was entitled to relief rather than the principles stated by the House of Lords in the *American Cyanamid* v. *Ethicon* [1975] 1 All E.R. 504, also referred to in the *Acropol* case.

In the second case cited, *Mareva Compania Naviera* (*supra*), Lord Denning after commenting on a number of authorities, had this to say at page 510:

> " In my opinion that principle applies to a creditor who has a right to be paid the debt owing to him, even before he has established his right by getting judgment for it. If it appears that the debt is due and owing — and there is a danger that the debtor may dispose of his assets so as to defeat it before judgment—the Court has jurisdiction in a proper case to grant an interlocutory judgment so as to prevent him disposing of those assets. It seems to me that this is a proper case for the exercise of this jurisdiction. There is money in a bank in London which stands in the name of these time charterers. The time charterers have control of it. They may at any time dispose of it or remove it out of this country. If they do so, the shipowners may never get their charter hire. The ship is now on the high seas. It has passed Cape Town on its way to India. It will complete the voyage and the cargo discharged. And the shipowners may not get their charter hire at all. In face of this danger, I think this Court ought to grant an injunction to restrain the defendants from disposing of these moneys now in the bank in London until the trial or judgment in this action."

And Lord Justice Roskill, at p. 511 expressed his opinion in the following words:

> " Indeed it is right to say that, as far as my own experience in the Commercial Court is concerned, an injunction in this form has in the past from time to time been applied for but has been consistently refused. This Court should not, therefore, on an *ex parte* interlocutory application be too ready to disturb the practice of the past save for good reasons. But on the facts of this case, there are three good reasons for granting this injunction."

And further down in his judgment he said:–

> " If therefore this Court does not interfere by injunction, it is apparent that the plaintiffs will suffer a grave injustice which this Court has power to help avoid ....."

No doubt, this is a power to be sparingly exercised and in the context of the aforesaid pronouncements and on proper facts justifying the exercise of the Court's discretion in order to help the plaintiffs avoid suffering grave injustice.

This is the first time, as advised, that section 32 came up for interpretation in the present context, although it was on the Statute Book since 1960. The only other case where an effort was made to restrain a Bank from remitting the money out of the jurisdiction, is to be found in *Sophocles Mamas & Co.* v. *Carl Borgward*, 1962 C.L.R. p. 209, but the appellant in that case applied under section 4(1) of the Civil Procedure Law, Cap. 6 and relying on the case of *Cyprus Palestine Plantations* v. *Olivier and Co.*, 16 C.L.R. 122 the Court held that section 4(1) was not applicable and that the Court had no power under section 4 of the said Law to make an order affecting property not itself the subject of the action, but as I have already said, section 32 was not considered and therefore there is no precedent on the subject. It is relevant, therefore, to see what are the facts and circumstances of this case that would justify the granting of the order applied for.

As it is shown by the affidavit filed in support of the present application on behalf of the plaintiff Company, there is a serious question to be tried at the hearing and that on the facts set out therein, there is a probability that the plaintiff Company was entitled to the relief sought. The plaintiffs believe that defendants 1 have funds with the Bank in question and fear that the defendants may dispose of these assets, if the order applied for is not granted and it will be difficult or impossible to do justice at a later stage. Furthermore, considering the nature of the claim against the two defendants, it is reasonable to fear that this money may be transmitted out of the jurisdiction, unless something is done to retain it here.

Considering all the circumstances of this case and in particular that there is a serious question to be tried at the hearing and that on the facts before me there is a probability that plaintiff was entitled to relief that there is money received from the plaintiffs which stands in the name of defendants 1 with their Bank in Limassol and of which they have control and which they may at any time dispose of it or remove it out of the country and that if they do so the plaintiffs may never be able to recover same and they will suffer great injustice which this Court has

power, as put by Lord Roskill (*supra*) "to help avoid" I grant the injunction applied for, restraining defendants 1 from withdrawing any money from their aforesaid Bank account which will reduce the total amount in same if it exceeds £2,000 to less than £2,000 until final determination of the action or until further order, upon the applicants–plaintiffs entering into a recognisance in the sum of £2,000 to the satisfaction of the Registrar of this Court being answerable in damages to defendants 1 against whom the order has been made, unless the respondents–defendants appear before the Court on the 2nd day of October*, 1976 at 10 a.m. and challenge this order by applying to discharge it.

In conclusion, I need only say that on notice being given the Bank will not naturally part with the money to the extent hereinabove stated.

Order accordingly.

* On that date the order was by consent made absolute subject to certain variations regarding the amount of money affected by the order.