

1977

May 12

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OVERSEAS
SHIPPING
& FORWARDING
CO.
v.
KAPPA
SHIPPING
CO. LTD.
AND OTHERS

[A. LOIZOU, J.]

OVERSEAS SHIPPING & FORWARDING CO.
OF LEBANON,

Plaintiffs,

v.

KAPPA SHIPPING CO. LTD. AND OTHERS,

Defendants.

(Admiralty Action No. 56/74).

Practice—Preliminary objection—Point of law—Jurisdiction—Facts not disputed—Serious question of law, which if decided in favour of applicants would dispense with any further trial—Order directing trial of question of jurisdiction as a preliminary issue—Rule 89 of the Cyprus Admiralty Jurisdiction Order, 1893 and rule 2, Order 25 of the old English Rules of the Supreme Court of 1883.

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Jurisdiction—Preliminary point of law.

Admiralty—Practice—Preliminary point of law—Jurisdiction—Rule 89 of the Cyprus Admiralty Jurisdiction Order, 1893.

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By means of an action in *personam* the plaintiffs sought, *inter alia*, an order of the Court cancelling the registration of two ships from the names of defendants 3 and 2, respectively, and registering them in the name of defendant 1.

Following the filing of the pleadings, defendants 2-6 applied for an order of the Court that the following question or issue of law, which was raised by the answer in this action, be tried as a preliminary issue before the trial of the action, namely “that upon the facts pleaded in the petition, the Supreme Court of Cyprus in its Admiralty Jurisdiction has no jurisdiction to hear and determine the action against defendants 2 - 6, both inclusive”.

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The application was based on rule 89* of the Cyprus Admiralty Jurisdiction Order, 1893, and on Order 25, rule 2** of the old English Rules of the Supreme Court of 1883.

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* Quoted at p. 251 *post*.

** Quoted at p. 251 *post*.

There did not appear to be any disputed facts and the applicants based their argument on the facts as pleaded.

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5 *Held*, that an order under r. 89 is made when a Judge is persuaded that the objection raises a serious question of law which, if decided in favour of the party objecting, would dispense with any further trial or at any rate with the trial of some substantial issue in the action; that considering that the jurisdiction of this Court in admiralty matters is well defined and the law is neither unsettled nor obscure, the order applied for should be granted, there being a serious question of law which, if decided in favour of the applicants-defendants 2-6, would dispense with any further trial, as far as they are concerned and costs will be saved thereby. (*Sumner v. William Henderson & Sons Ltd.* [1963] 2 All E.R. 712 distinguished).

15 *Application granted.*

Cases referred to:

London, Chatham, and Dover Ry. Co. v. South-Eastern Ry. Co., 53 L.T. 109;

Robinson v. Fenner [1913] 3 K.B. 835;

20 *Paschalis v. The Ship "Tania Maria" ex "Constantis Fotinos"* (reported in this Part at p. 53 ante at pp. 57-58);

Isaacs & Sons Ltd. v. Cook [1925] 2 K.B. 391;

Taverner v. Glamorgan County Council [1941] 57 T.L.R. 243;

25 *Companhia de Mocambique v. British South Africa Co.* [1892] 2 Q.B. 358; [1893] A.C. 602;

Re Clinton, 88 L.T. 17;

Sumner v. William Henderson & Sons Ltd. [1963] 2 All E.R. 712;

30 *Waters v. Sunday Pictorial Newspapers Ltd.* [1961] 2 All E.R. 758;

Windsor Refrigerator Co. Ltd. and Another v. Branch Nominees Ltd. and Others [1961] 1 All E.R. 277.

Application.

35 Application by defendants 2 - 6 for an order of the Court that a question or issue of law, to the effect that the Supreme Court in its Admiralty Jurisdiction has no ju-

jurisdiction to hear and determine the action against them, be tried as a preliminary issue before the trial of the action.

E. Psillaki (Mrs.) for applicants.

G. Mitsides for *L. Papaphilippou* for respondents.

Cur. adv. vult. 5

The following ruling was delivered by:-

A. LOIZOU, J.: The plaintiffs' claim in this admiralty action in Personam, is as follows:

- “(a) An order of the Court ordering the cancellation of any registration of the ship ‘BABI’ ex ‘JULIA K’ from the name of Defendant No. 3 and re-registration or reinstatement of her registration in the name of Defendant No. 1. 10
- (b) An order of the Court ordering the cancellation of any registration of the ship ‘KRIKRI’ from the name of Defendant No. 2 and re-registration or reinstatement of the registration in the name of Defendant No. 1. 15
- (c) A declaration of the Court that any transfer and registration of the ship ‘BABI’ ex ‘JULIA K’ and ‘KRIKRI’ in the names of Defendants 3 and 2 respectively was effected by fraud and/or deceit and/or collusion and/or conspiracy and/or with intent to defraud Plaintiffs and/or with intent to defeat payment of plaintiffs' claim against Defendant No. 1 all of which were done by all Defendants. 20 25
- (d) Judgment against Defendant No. 1 for £4,230 equivalent to 29,612.16 L.L. according to the terms and conditions of a charterparty of ship ‘KRIKRI’ dated 27.8.1973. 30
- (e) Interest at 9 per cent per annum on the above amount.
- (f) Against all defendants damages for fraud and/or collusion and/or fraudulent transfer of the said ships and/or for breach of the terms and conditions of a charterparty and/or otherwise. 35

(g) Damages for breach of the terms of a charter-party and/or for negligence.

(h) Further or other relief.

(i) Costs”.

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5 The defendants 2 - 6, both inclusive, by the present application, as finally argued before me, apply for an order of the Court that the following question or issue of law raised by the answer in this action, be tried as a preliminary issue before the trial of the action, namely, “that
10 upon the facts pleaded in the petition, the Supreme Court of Cyprus in its Admiralty Jurisdiction, has no jurisdiction to hear and determine the action against defendants 2-6, both inclusive”.

15 The application is based, *inter alia*, on rule 89 of the Cyprus Admiralty Jurisdiction Order, 1893, and on Order 25, rule 2 of the old English Rules of the Supreme Court of 1883.

20 The respondents-plaintiffs oppose the said application, on the ground that the said preliminary point is based on disputed facts and in any case, the cause or causes of action and the remedies sought by them, fall within the jurisdiction of the Supreme Court of Cyprus in its Admiralty Jurisdiction.

The said rule 89 reads as follows:

25 “Either party may apply to the Court or Judge to decide forthwith any question of fact or of law raised by any pleading, and the Court or Judge shall thereupon make such order as to him shall seem fit”.

Order 25, rule 2 reads as follows:

30 “Any party shall be entitled to raise by his pleading any point of law, and, unless the Court or a Judge otherwise orders, any point so raised shall be disposed of by the Judge who tries the cause at or after the trial”.

35 So far as their substance is concerned, they are in effect the same and the latter is identical—except that under Order 89, an application may be made for the determina-

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tion of any question of fact, apart from one of law, raised by the pleadings and subject to this difference—to Order 27, rule 1 of our Civil Procedure Rules. An order under these Rules is made when a Judge is persuaded that the objection raises a serious question of law—I am not concerned here with a question of fact which can possibly be raised under Order 89—which, “if decided in favour of the party objecting, would dispense with any further trial or at any rate with the trial of some substantial issue in the action”. (See *London, Chatham and Dover Ry. Co. v. South-Eastern Ry. Co.*, 53 L.T. 109; *Robinson v. Fenner*, [1913] 3 K.B. 835 and Annual Practice, 1960, p. 572). 5 10

The Full Bench of the Supreme Court had recently the opportunity of dealing with this point in *Soteris Paschalis v. The Ship “TANIA MARIA” ex “CONSTANTIS FO-TINOS”*, (reported in this Part at p. 53 ante at pp. 57-58), where it was stated:- 15

“.....the Court acceded being obviously of the opinion that his decision on such point of law substantially disposed of the whole action and so saved costs by disposing same before trial. It was indeed a proper course to be followed as there was no disagreement on the material facts and it was consonant with what was stated by Romer L.J., in *Everett v. Ribbands* [1952] 2 Q.B., 198 at p. 206, that: 20 25

‘Where there is a point of law which if decided one way is going to be decisive of litigation, 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 afterwards.’” 30

It is true that such an order should not be made in respect of matters which, on account of their nature, factual or legal, have to be decided at the trial and should be made only in respect of matters “on which no further light would be thrown at the trial”. (See *Isaacs & Sons Ltd. v. Cook*, [1925] 2 K.B. p. 391, applied in *Taverner v. Glamorgan County Council* [1941], 57 T.L.R. 243). “Nor should such an order be made where there are facts in dispute”. 35

In the case in hand, there do not appear to be any disputed facts, as the applicants base their argument on the 40

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5 facts as pleaded, or to put it otherwise, on cause of action
relied upon by the plaintiffs in their petition as against
them and at that, as a question of jurisdiction which is one
of the cases where such orders have been made (See *Com-*
panhia de Mocambique v. British South Africa Co. [1892]
2 Q.B. 358; [1893] A.C. 602; *Re Clinton*, 88 L.T. 17).

10 Considering that the jurisdiction of this Court in admiralty
matters is well defined and the law is neither unset-
tled nor obscure and bearing in mind all that has herein-
above been stated, I have come to the conclusion that the
order applied for should be granted, there being a serious
question of law which, if decided in favour of the appli-
cants-defendants 2 - 6, would dispense with any further
trial, as far as they are concerned and costs will be saved
15 thereby.

20 Out of respect to the argument advanced by counsel for
the respondents, I must deal with it at some length before
concluding this decision. I have gone through the authori-
ties cited by him, but I find that they are distinguishable.
In the case of *Sumner v. William Henderson & Sons Ltd.*,
[1963] 2 All E.R. p. 712 C.A. the facts had not been
agreed and what the evidence would have been was most
uncertain. It was observed by Sellers, L.J. that it did not
seem to the Court in the interest of either party that a hy-
25 pothetical decision should be reached then by way of spe-
cial case.

30 In the case of *Waters v. Sunday Pictorial Newspapers,*
Ltd., [1961] 2 All E.R. p. 758, the question that arose was
one of striking out pleadings and as pointed out by Danc-
werts, L.J. at p. 763, "R.S.C. Ord. 19, r. 27, and Ord. 25,
r. 4, and, indeed, also the inherent jurisdiction of the court,
are only to be exercised in cases where it is clear that the
defences which have been put forward cannot really suc-
ceed"

35 The case of *Windsor Refrigerator Co., Ltd. and another*
v. Branch Nominees, Ltd. and others, [1961] 1 All E.R.
p. 277 was one where by reason of the obscurity of the
facts or the law, they ought to be decided at the trial.

40 In the case in hand, the issue of law sought to be dis-
posed of by the Court as a preliminary one before the trial

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of the action, is that of the jurisdiction of this Court with regard to the cause or causes of action as they appear in the petition. Their factual aspect does not come into play, except that it constitutes the cause or causes of action with regard to which the issue of jurisdiction is raised.

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For all the above reasons I have come to the conclusion that the application should be granted and an order is made accordingly, with costs.

Application granted with costs.