

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

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SOTERIS N. PASCHALIS,

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PASCHALIS

*Appellant-Plaintiff,*

v.

v.

SHIP

"TANIA MARIA"

THE SHIP "TANIA MARIA" EX  
"CONSTANTIS FOTINOS",

*Respondent-Defendant.*

(Civil Appeal No. 5516).

5 *Admiralty—Practice—Preliminary objection—Point of Law—Un-  
conditional appearance and taking of steps in the action—  
Admiralty action in rem—Even if all facts in the statement of  
claim were to be proved the plaintiff did not have a cause of  
action against the defendant ship—The entering of an uncon-  
ditional appearance and the taking of steps in the action could  
not give the plaintiff a cause of action which he did not in law  
have.*

0 *Admiralty—Maritime lien—Action in rem—Claim for money ad-  
vanced as necessaries—Ship changed ownership—Plaintiff's  
claim does not give a maritime lien as against the defendant  
ship.*

5 By an admiralty action in rem the plaintiff claimed against  
the defendant ship an amount of £3,000.- on a bottomry  
bond and/or loan and/or bond and/or as disbursements and/  
or money advanced to the master of the ship on or about the  
18th June, 1971 as necessaries to enable her to proceed with  
her voyage and an amount of £1420 as disbursements.

10 Following the filing of an unconditional appearance by the  
defendant ship on the 25th January, and the filing of plain-  
tiff's petition the answer and counterclaim was filed on behalf  
of the defendant ship on the 27th March, 1973 and it was  
raised therein, by way of preliminary objection that the Court  
had no jurisdiction to entertain this action, *inter alia*, for the  
15 following reasons, namely:

"(a) The claims raised in this action do not create maritime  
liens and/or any cause of action in rem, or

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(b) any other cause of action cognisable by this Court, in particular as set out in The Administration of Justice Act, 1956 Sections 1(1) (a) to (s) and 3 as applied in Cyprus by Sections 19(a) and 29(2) of Law 14/60.

(c) At the time of the commencement of this action the Defendant Ship was not owned by any person who may have been personally liable to the Plaintiff, as envisaged by section 3(4) (a) of The Administration of Justice Act, 1956 or otherwise". 5

The trial Court having heard the above preliminary objection dismissed the action of the plaintiff on the ground that "once the plaintiff did not acquire any maritime lien for the amount of his advance to the master, which attached to and followed the ship from and after the time when this advance was made, he cannot have an action in rem once at the time of its institution the res was no longer the property of his debtor, having been sold to the owners of Rosade Lines of Beirut, before this action". Hence the present appeal in which the sole question for determination was whether the jurisdiction of the Court could be questioned after the entering of an unconditional appearance by defendant and the taking of steps in the action which should be considered as amounting to a waiver of his right to object to the jurisdiction of the Court. 10 15 20

The defendant-ship was on the 22nd September, 1971 sold to another company. 25

*Held*, dismissing the appeal, (1) that even if all facts in the statement of claim were to be proved nevertheless in Law the claim of the plaintiff should be defeated; that the complaint raised by this appeal that the defendant could not properly raise this point or had waived his right cannot stand, as in cases like the present one neither the non entering of a conditional appearance nor the taking of subsequent steps in the action could give to the plaintiff a cause of action against the defendant-ship which he did not in Law have; and that as the ownership of the ship had changed and it was no longer the property of the debtor, the claim of the plaintiff did not give him any maritime lien as against the defendant-ship which would follow her irrespective of change of ownership. 30 35

*Appeal dismissed.*

Cases referred to:

*Everett v. Ribbands* [1952] 2 Q.B. 198 at p. 206. 40

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5 Appeal by plaintiff against the judgment of a Judge of the Supreme Court in its Admiralty Jurisdiction (Hadjianastassiou, J.) dated the 5th September, 1975, (Admiralty Action No. 4/73) whereby plaintiff's claim for, *inter alia*, the amount of £3,000.- on a bottomry bond and/or loan and/or disbursements and/or money advanced to the master of the ship as necessaries was dismissed.

*Chr. Chrysanthou*, for the appellant.

10 *St. McBride*, for the respondent.

TRIANTAFYLLIDES, P.: The judgment of the Court will be delivered by Mr. Justice A. Loizou.

15 A. LOIZOU, J.: This is an appeal from the judgment of a Judge of this Court\* by which the action of the plaintiff and at that an admiralty action in rem, was dismissed on the ground that "once the plaintiff did not acquire any maritime lien for the amount of his advance to the master, which attached to and followed the ship from and after the time when this advance was made, he cannot have an action in rem once at the time of its institution the res was no longer the property of his debtor, having been sold to the owners of Rosade Lines of Beirut, before this action".

20 By the writ of summons the plaintiff claimed against the defendant Ship "TANIA MARIA" ex "CONSTANTIS FOTINOS"—

30 "(a) £3,000.- on the bottomry bond and/or loan and/or bond and/or as disbursements and/or money advanced to the master of the ship on or about the 18.6.1971 as necessaries to enable the ship to proceed with its voyage.

(b) £1,100 disbursements in respect of proper expenditure of necessary things for the ship for the purposes of navigation.

35 (c) £320.400 further disbursements in respect of proper expenditure of necessary things for the ship for the purposes of navigation.

\* Reported in (1975) 1 C.L.R. 162.

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(d) Legal Interest.

(e) Costs".

Upon the filing of this action on 15.1.1973, the plaintiff applied and obtained a warrant for the arrest of the defendant ship and it was admitted in the affidavit filed in support of that application, that the ship in question was a Lebanese ship, but at the material time it carried the name "CONSTANTIS FOTINOS" and belonged to a certain N.C. Spanos Shipping Co. Ltd.

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A notice of intention to show cause against the order for the arrest of the defendant ship was filed on the 20th January, 1973 and it was, *inter alia*, stated, that the defendant ship was sold on the 22nd September, 1971, having been purchased from a Panamanian Company and an affidavit was filed in support of the said notice.

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It is not contested that the claims made by plaintiff had arisen before the sale of the vessel to its present owners. On the 25th January, 1973, the parties appeared before the learned trial Judge and, in addition to a direction for the filing of a security bond by plaintiff, a direction was made for the filing of the pleadings. The appearance on behalf of the defendant ship was unconditional.

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On the 10th March, 1973, an application for the dismissal of the action for want of prosecution was filed by counsel on behalf of the defendant ship, but was withdrawn, in view of the filing of the petition.

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The answer and counterclaim was filed on behalf of the defendant ship on the 27th March, 1973 and it was raised therein, by way of preliminary objection, that the Court had no jurisdiction to entertain this action, *inter alia*, for the following reasons, namely:

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"(a) The claims raised in this action do not create maritime liens and/or any cause of action in rem, or

(b) any other cause of action cognisable by this Court, in particular as set out in the Administration of Justice Act, 1956 Sections 1(1) (a) to (s) and 3 as applied in Cyprus by Sections 19(a) and 29(2) of Law 14/60.

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(c) at the time of the commencement of this action the Defendant Ship was not owned by any person who may have been personally liable to the Plaintiff, as envisaged by Section 3(4) (a) of The Administration of Justice Act, 1956 or otherwise”.

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On the 14th May, 1973 an application for discovery and inspection was made on behalf of the defendant and it was directed when documents were finally filed, each party to be at liberty to apply for a date of hearing, which, in due course, was done and the case was heard on the preliminary objection raised in the defence. It is from that judgment that the present appeal was filed on a number of grounds, but as finally argued before us, the question for determination is whether the jurisdiction of the Court could be questioned after the entering of an unconditional appearance by defendant and the taking of steps in the action which should be considered as amounting to a waiver of his right to object to the jurisdiction of the Court.

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A conditional appearance reserves to the appearing defendant, the right to apply to the Court to set aside the writ or service thereof, for an alleged informality or irregularity which renders either the writ or service invalid or for lack of jurisdiction. (See Annual Practice 1960, p. 198). But this is not the position in the present case, in which the central issue was whether the plaintiff had a cause of action entitling him to succeed.

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The preliminary issues which the learned trial Judge had to determine were in the nature of the old demurrer. He had to decide on the admitted fact of change of ownership and if all the facts stated in the statement of claim were to be proved, nevertheless in law the claim of the plaintiff should be defeated. The defendants, therefore, availed themselves of the provisions of Order 27 or the corresponding old English Order 25 (See Annual Practice 1960, page 571) and the Court was invited to decide the question of law raised in the defence as a result of the existing state of facts, a course to which the plaintiff did not object and to which 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 the

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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 page 206, that:

“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 after”.

The complaint, therefore, raised by this appeal that the plaintiff could not properly raise this point or had waived his right, cannot, in our opinion, stand as in cases like the present one neither the non entering of a conditional appearance nor the taking of subsequent steps in the action could give to the plaintiff a cause of action against the defendant-ship which he did not in law have. As already stated, the ownership of the ship had changed and it was no longer the property of the debtor and the claim of the plaintiff did not give him any maritime lien as against the defendant-ship which would follow her irrespective of change of ownership. Consequently, we dismiss the appeal with costs.

*Appeal dismissed with costs.*