1983 August 1

[SAVVIDES, J.]

COVOTSOS TEXTILES LTD.,

Plaintiffs.

v.

1. ELLERMAN LINES LTD., THROUGH THEIR AGENTS IN CYPRUS UNITED CONTAINER AGENCIES A & L LTD.
2. FRANCOUDI & STEPHANOU LTD.,

Defendants.

(*Admiralty Action No.* 128/80).

Admiralty—Parties—Addition—Striking out a party who has been added to the proceedings—Principles applicable—Whether leave to add new defendant will be granted after the expiry of any relevant period of limitation affecting the proposed defendant.

Admiralty — Practice — Pleadings — Amendment — Petition — Addition of new defendant with consent of existing defendant—Added defendant entering unconditional appearance—None of defendants applying to have the name of new of defendant struck out—Order amending petition in order to introduce facts, in support of claim against new defendants, which came to the knowledge of plaintiffs after they had been alleged by existing defendant—Entry of an unconditional appearance by defendant 2 does not deprive them of the defence of the limitation of actions which can be raised in their answer—Rule 89 of the Cyprus Admiralty Jurisdiction Order 1893.

The plaintiffs had originally brought an action against defendant 1. In view of the allegations of the latter that defendants 2 were to blame it was found necessary by the plaintiffs to have defendants 2 added as parties in the action. Defendants 2 entered an unconditional appearance; and they were added as parties with the consent of defendants 1. Neither of the defendants had applied to have the name of defendants 2 struck out. Following the addition of defendants 2 the plaintiffs applied for leave to amend the petition, because in their sub-

mission, such amendment was necessary once the title of the action has been amended, a new party has been added, and it was necessary to introduce facts in support of their claim against defendants 2 which came to their knowledge after they had been alleged by defendants 1 in their answer.

Counsel for defendants 1 contended that this application cannot be granted as a new cause of action was being introduced and if the amendment will be allowed defendants 1 would not be in a position to claim against defendants 2 as the claim against defendants 2 was statute-barred and that an amendment should not be allowed if its effect was to defeat the time bar.

Counsel for defendants 2 submitted that if this amendment was allowed and the time limit run from the date of the filing of the action, defendants 2 would be prejudicially affected as by the time this amendment was sought, the claim against them was time barred as a result of the incorporation in the paramount clauses of the Hague Rules.

After stating the principles governing addition of new parties to the proceedings and the principles governing striking out of a party who was added to the proceedings—vide pp. 485-494 *post.*

Held, that in the circumstances of the present case and having regard to the fact that an order has already been made to amend the writ of summons, by adding defendants (2) as parties, the consequential amendment of the petition as applied for, should be granted; that by such amendment the defendants will not be prejudiced in raising the defence of limitation or any other legal objection which they deem necessary by their pleadings; that by the fact that defendants (2) entered an unconditional appearance they have not deprived themselves of the defence of the limitation of this action; and that if such objection is raised by defendants in their answer they will be entitled to apply to the Court to decide forthwith same under rule 89 of the Cyprus Admiralty Rules which corresponds in so far as points of law are concerned to Order 27 of the Civil Procedure Rules.

Application granted.

Cases referred to:

Raleugh v. *Goschen* [1898] 1 Ch. 73 at p. 81;

Liff v. *Peasley* [1980] 1 All E.R. 623 at pp. 631-632, 639;

Liptons Cash Registers and Business Equipment Ltd. v. *Hugin (G.B.) Ltd. and Others* [1982] 1 All E.R. 595 at p. 596;

Leadbitter v. *Hadge Finance Ltd. and Others* [1982] 2 All E.R. 167;

Gawthrop v. *Boulton and Others* [1978] 3 All E.R. 615;

Heirs of Theodora Panayi v. *The Administrators of the Estate of late Stylianos Mandriotis* (1963) 2 C.L.R. 167 at p. 170.

Application.

Application by plaintiffs for leave to amend their petition.

H. Solomonides, for applicants-plaintiffs.

St. McBride, for respondents-defendants 1.

G. Michaelides, for respondents-defendants 2.

Cur. adv. vult.

SAVVIDES J. read the following decision. This is an application whereby plaintiffs apply for an amendment of their petition. The facts of the case, are briefly as follows:

Plaintiffs filed the above action against Ellerman Lines Ltd., defendants 1, through their agents in Cyprus Francoudi & Stephanou Ltd. claiming £2,120.- as damages for breach of contract for carriage of goods by sea and/or for breach of duty and/or for negligence in respect of goods delivered to the defendants and/or their agents at Limassol for carriage by defendants' ship "City of Hartlepool" to Allesmere of the U.K. and for which the defendants or their agents issued a bill of lading No. GR9 dated the 12th June, 1979.

The defendants entered a conditional appearance and on the 30th September, 1980, filed an application for setting aside the order of the Court dated the 28th June, 1980 granting leave for substituted service of the writ of summons on the defendants through Francoudi and Stephanou, on the ground that Francoudi and Stephanou were not the agents of the defendants and they had no authority to accept service of any legal process on behalf of the defendants. By the affidavit attached to the application, it was alleged that at the material time the agents

of defendants were the United Container Agencies A & L Ltd. As a result, on the 15th October, 1980, an order was made by consent setting aside the service of the writ of summons. On the 3rd November, 1980, on an ex parte application by the plaintiffs an order was made - (a) amending the title of the action by substituting the name of Francoudi & Stephanou Ltd. by United Container Agencies A & L Ltd. as agents of the defendants; (b) amending the previous order for substituted service so that service was allowed to be made on the defendants through United Container Agencies A & L Ltd., as their agents. Service of the amended writ of summons was effected accordingly. The defendants entered an unconditional appearance and directions for pleadings were made. As a result of allegations contained in the answer filed by the defendants, the plaintiffs applied on the 30th November, 1981, (a) for an order that Francoudi & Stephanou Ltd. of Limassol, be joined as co-defendants in the action and that the title of the action be amended accordingly, and (b) for leave to amend the petition so that reference in the petition be made also to the new party.

The facts relied upon in support of the application are set out in the affidavit of Simos Papadopoulos, an employee at the law office of counsel for plaintiffs. By the said affidavit it is alleged that as a result of the defendants' contentions contained in their answer, it has emerged that Francoudi & Stephanou should be joined as co-defendants and the petition be amended accordingly.

Defendants opposed the application and the facts on which they relied in support of their opposition, were to the effect that plaintiffs are introducing a new cause of action by adding the proposed defendants against whom the cause of action is time-barred by virtue of the Hague Rules, as enacted or applied in Cyprus by virtue of the Carriage of Goods by Sea Law, Cap. 263 or by virtue of Article 6 of the Schedule thereto as suit against the proposed new defendants had not been commenced within one year as from 1.7.79. (b) That the amendments sought, are premature.

On the date when the application came up for hearing counsel for defendants stated that he withdrew his objection regarding paragraph (a) of the application and applicants withdrew part (b) of the application. Defendants reserved their right to raise any objection regarding any amendments which might be applied

for later. As a result, an order was made as per para. (a) of the application, granting leave to join Francoudi & Stephanou Ltd., as defendants 2 in the action. The plaintiffs on the 22nd March, 1982, filed the present application, whereby they apply for leave to amend the petition as follows:

"(1) To substitute the words 'agents of the defendants' in the 1st paragraph with the words 'defendants or either of them or their agents'.

(2) To add after the word 'Defendants' in para. 2 the figure '1'.

(3) To substitute para. 3 of the Petition with the following:

'3. On or about 12.6.79 the 1st Defendants by their agents issued to defendants 2 a bill of lading No. 4 for the carriage of one container from Limassol to Ellesmere by the CITY OF HARTLEPOOL and delivered same to a certain Tower Express Ltd.'

(4) To add after para. 3 the following new paragraph and paras. 4 to 7 to be renumbered accordingly:

'4. The said container was filled, packed, stuffed or loaded by Defendant No. 2 who purported to have included therein the Plaintiff's goods described in para. 1 hereof and Defendant No. 2 issued to the Plaintiff a liner bill of lading No. G R9 evidencing that the goods were shipped on board the said vessel in good order and condition.'"

The amended writ of summons and copy of this application were served on defendants 2 who appeared unconditionally in the action and opposed the application. The facts relied upon in opposition by defendants 1 are as follows:

"(a) By the proposed amendments the Plaintiffs are seeking to sue the defendants 1 upon a new cause of action which is now time barred by agreement.

(b) By the proposed amendments the Plaintiffs are seeking to sue defendants 2 upon a cause of action that is time barred by agreement.

(c) The application is in any event premature and will remain premature and cannot be made till:

(i) the defendants 2 have been served and have entered an unconditional appearance to the writ.

(ii) Directions have been given as to pleadings."

In support of the opposition defendants 1 filed an affidavit sworn by Andri Trappa an advocate in the office of counsel for defendants 1, to the effect that the Bills of Lading incorporated under their paramount clause the Hague Rules, whereby any remedy against defendants 2 is extinguished and by relying on a new Bill of Lading, the Plaintiffs are seeking to introduce a new cause of action against defendants 1 which is out of time.

In arguing the case before this Court, counsel for applicants submitted that the amendment was necessary, once the title of the action has been amended and a new party has been added in these proceedings and that, under the Rules of Court, an amendment may be ordered at any stage of the proceedings. As to the allegation that a new cause of action is being introduced, or that the claim has become statute barred, counsel submitted that these are matters which can be raised by the defendants at any stage of the proceedings.

Counsel for defendants 1 contended that this application cannot be granted as a new cause of action is being introduced and if the amendment will be allowed defendants 1 will not be in a position to claim from defendants 2, as the claim against defendants 2 is statute-barred and that an amendment should not be allowed if its effect is to defeat the time bar.

Mr. Michaelides, counsel for defendants 2, submitted that if this amendment is allowed and the time limit runs from the date of the filing of the action, defendants 2 will be prejudicially affected as by the time this amendment was sought, the claim against them was time barred as a result of the incorporation in the paramount clauses of the Hague Rules.

From the record in the file of these proceedings, the following facts are apparent:

(a) Defendants 1 by their answer deny any liability and allege that if any liability does exist, same is the liability of Francoudi & Stephanou Ltd. the added defendants.

(b) Though defendants 1 allege that a third party is responsible, they did not take third party proceedings against such party.

(c) In view of the allegations of defendants 1 that defendants 2 are to blame, it was found necessary by the plaintiffs to have defendants 2 added as parties in this action.

(d) Defendants 2, the added parties, entered an unconditional appearance.

(e) Defendants 2 were added as parties to the proceedings with the consent of defendants 1. At no stage after service was effected on defendants 2 and before they entered an unconditional appearance did they apply to have the amended writ of summons and service upon them set aside.

The issue in the present proceedings is whether leave will be granted to the applicants to amend their petition in view of the fact that a new party was added. Neither of the defendants had applied to have the name of defendants 2 struck out. Nevertheless, I find it necessary to deal briefly with the practice regulating the procedure of adding or substituting parties to the proceedings.

The provision of adding new parties to the proceedings is to be found in rules 29 - 34 of the Cyprus Admiralty Rules. Rule 30 provides as follows:

> "The Court or Judge may at any stage of the proceedings and either with or without an application for that purpose being made by any party or person and upon such terms as shall seem just, order that the name or names of any party or parties be struck out or that the names of any person or persons who are interested in the action or who ought to have been joined either as Plaintiffs or Defendants or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the action be added."

Its equivalent under the English Rules of the Supreme Court is to be found in Order 16 of the old Rules (the Rules in force on the 15th August, 1960; see Annual Practice, 1960) and Order 15 of the new Rules and in particular Order 15, rule 6 (see Annual Practice, 1982). Order 15, rule 6 of the new rules

has not brought about any material change in substance to the former rule, but it has knit together provisions contained in the former rule. Reading from the Annual Practice, 1982, at p. 210 in the notes, the following is stated:

> "Leave to add a defendant will not be granted after the expiry of any relevant period of limitation affecting the proposed defendant (*Lucy* v. *W.T. Henleys Telegraph Works Co. Ltd.* [1970] 1 Q.B. 393). Query, however, whether the court has a wide discretion, which will be rarely exercised, to add a defendant after the expiry of the relevant period of limitation (*Marubeni Corporation and Another* v. *Pearlstone Shipping Corporation*, The Times, June 30, 1977, C.A.).

And further down at the same page,

> "Where the addition will have the effect of adding a new cause of action, the order may be refused."

In support of the last proposition, reference is made to *Raleugh* v. *Goschen* [1898] 1 Ch. 73. That was an action brought against the defendants in their official capacity for acts alleged against them as an official body. By an application the plaintiffs sought to amend the action by suing the defendants in their individual as well as their official capacity and by adding as defendants two marines who committed the alleged trespass, and a civil engineer employed in Her Majesty's Dockyard under whose directions the two marines were acting. Romer J. had this to say in his judgment at page 81:

> "Those affidavits do not allege any personal participation in the alleged trespass, or any threat of future trespass by, or by the order or direction of, any of the defendants. Then the summons asks for leave to amend the action by suing the defendants in their individual as well as in their official capacity, and by adding the two marines and Mr. Shortridge as co-defendants. In other words, the summons proceeds on the footing that the present action is one against the present defendants in their official capacity only; and I think the plaintiffs' own view as to their action is the correct one. It follows that, in my opinion, the present action as it stands is misconceived and will not lie; and the only further question I have to consider is whether

I ought to give the plaintiffs leave to amend as asked by them. On consideration I think I ought not; for what the plaintiffs are seeking to do is to change one action into another of a substantially different character. Apart from the fact that the present action cannot be sustained, while the other might lie, an action against the defendants in their official capacity, supposing is to lie, would differ in most material respects from an action against them as individuals, as will be seen when consideration is paid to questions of discovery, and to the form of any interlocutory injunction or final judgment that could be obtained by the plaintiffs, and as to how and against whom such injunction or judgment could be enforced. Moreover, as pointed out above, the affidavits in support of the summons to amend do not venture to allege any claim against any of the defendants individually. For these reasons I think I ought not to allow leave to amend as asked."

In *Liff* v. *Peasley* [1980] 1 All E.R. 623 C.A. Stephenson L.J. reviewed the authorities and said at pp. 631 - 632:-

"There is no doubt about the practice long established before the 1975 Act. It is not to permit a person to be made a defendant in an existing action at a time when he could have relied on a statute of limitation as barring the plaintiff from bringing a fresh action against him. The reason for this practice, or rather the way in which this practice is justified or the legal basis on which it is rested, is, curiously more doubtful. There appear to be two alternative bases: (1) the action against the added defendant relates back to the date of the original writ, the plaintiff is deemed to have begun his action against the defendant when he began it against the original defendant, and so the defendant is deprived of his right to rely on the statute of limitations; (2) the action against the added defendant is begun at the date of the amendment joining him in the action, and so he can rely on the statute as barring the plaintiff from suing him. In most cases it will not matter which of the two possible dates is regarded as the date of the commencement of the action brought against the added defendant. If he applies to set aside the order joining him as co-defendant, he will succeed, either

because he would be deprived of his right to rely on the statute if the earlier date were preferred or because he would be able to rely on the statute and defeat the plaintiff's claim if the later date were preferred. But in this case the added defendant has elected to plead the statute in answer to the plaintiff's claim before challenging the plaintiff's right to make him a defendant. Can he at that later stage allege that his joinder, though properly made in the first instance, is improper, only if he can successfully rely on the statute, because he was not sued until the later date, so that it would be pointless and unnecessary that he should be, or remain, a defendant? But if he cannot rely on the statute because he is deemed to have been sued from the earlier date, how can he then deny that he is, and remains a proper and necessary party to the action?"

Brandon L.J. said [1980] 1 All E.R. 623 at p. 639,

"It is an established rule of practice that the court will not allow a person to be added as defendant to an existing action if the claim sought to be made against him is already statute-barred and he desires to rely on that circumstances as a defence to the claim. Alternatively, if the court allowed such addition to be made ex parte in the first place, it will not, on objection then being taken by the person added, allow the addition to stand, I shall refer to the established rule of practice as 'the rule of practice'. There are two alternative bases on which the rule of practice can be justified. The first basis is that, if the addition were allowed, it would relate back so that the action would be deemed to have been begun as against the person added, not on the date of amendment, but on the date of the original writ; that the effect of such relation back would be to deprive the person added of an accrued defence to the claim on the ground that it was statute-barred; and that this would be unjust to that person. I shall refer to this first basis of the rule of practice as the 'relation back' theory. The second and alternative basis for the rule is that, where a person is added as defendant in an existing action, the action is only deemed to have been begun as against him on the date of amendment of the writ; that the defence that the claim is statute-barred therefore remains

available to him; and that, since defence affords a complete answer to the claim, it would serve no useful purpose to allow the addition to be made. I shall refer to this second and alternative basis of the rule of practice as the 'no useful purpose' theory."

From what appears from the judgment of Stephenson and Brandon L.JJ. they both rejected the "relation back" theory in favour of the "no useful purpose" approach. Brandon L.J. set out the usual practice. He said [1980] 1 All E.R. 623 at p. 639:

"An application by a plaintiff for leave to add a person as defendant in an existing action is, or should ordinarily, be made ex parte under RSC Ord 15, r.6(2)(b). If the application is allowed, the writ must then be amended under r.8(1), and served on the person added under r.8(2) of the same order. If the person added as defendant, having had the amended writ served on him, objects to being added on the ground that the claim against him was already statute-barred before the writ was amended, the ordinary practice is for him to enter a conditional appearance under RSC Ord.12, r.7, and then to apply to set aside the amended writ and the service of it on him under Ord.12, r.8. Then, if he establishes that the claim against him was statute-barred before the writ was amended, he is entitled as of right, in accordance with the rule of practice, to the relief for which he has asked, unless the case is of the special kind covered by RSC Ord.20, r.5(3). Provided that the person added as defendant follows the ordinary practice described above, he gets the benefit of the rule of practice, and it is not material to consider which of the two alternative bases for that rule, that is to say the 'relation back' theory on the one hand or the 'no useful purpose' theory on the other, is the true one. In the present case, however, the solicitors acting for Mr. Spinks did not follow the ordinary practice. Instead, after they had accepted service on him of the amended writ, they entered an unconditional appearance in the action on his behalf, and later, after accepting service of the amended statement of claim, they served a defence containing a plea that the claim against him was statute-barred."

The Court in that case considered also the position where the

party objecting to his being added has entered an unconditional appearance and held that- (p. 624)

> "(ii) Assuming, however, that the entry of an unconditional appearance did preclude S from objecting under Ord. 15, r.6 to his joinder, he would be entitled to plead the 1939 Act because the true basis of the rule of practice was not the 'relation back' theory but that the action against a person joined as defendant was deemed to have been commenced against him from the date on which the writ was amended, so that if the action was then time-barred there was no useful purpose in allowing the joinder. Accordingly, the joinder of S took effect only from the date on which the writ had been amended, and not from the date of the original writ. On that basis, the court would summarily dismiss the action against him on the ground that it was time-barred."

Liff v. *Peasly* was considered in *Liptons Cash Registers and Business Equipment Ltd.* v. *Hugin (GB) Ltd and others* [1982] 1 All E.R. 595, 596 where it was held that:

> "(1) There appeared to be an established rule that a party, whether plaintiff or defendant, should not be added if the affect would be to deprive a defendant of a defence under the Limitation Acts, and the existence of such a rule could only be explained if it was the law that an amendment adding a party took effect and operated from the date when the writ was issued, in which case a defendant might thereby be deprived of a limitation defence, whereas if the amendment were to take effect and operate from the date of the amendment a defendant would not thereby be deprived of such a defence; *Byron* v. *Cooper* (1844) 11 Cl & Fin 556, *Mabro* v. *Eagle Star and British Dominions Insurance Co. Ltd.* [1932] All E.R. Rep. 411, *Davies* v. *Elsby Bros Ltd.* [1960] 3 All E.R. 672, *Seabridge* v. *H. Cox & Sons (Plant Hire) Ltd.* [1968] 1 All E.R. 570, *Lucy* v. *W T Henleys Telegraph Works Co. Ltd.* [1969] 3 All E.R. 456, *Braniff* v. *Holland & Hannen and Cubitts (Southern) Ltd.* [1969] 3 All E.R. 959 and *Liff* v. *Peasley* [1980] 1 All E.R. 623 considered; *Gawthrop* v. *Boulton* [1978] 3 All E.R. 615 not followed.

(2) However, if at the time that the amendment to the writ adding the defendant was challenged it was merely arguable, and not plain, that at the date of the amendment a limitation defence would have succeeded in regard to the whole or part of the plaintiff's case against the new defendant, the court, in the exercise of its wide discretion under RSC Ord. 15, r.6(2)(b)(ii) to order addition of a party 'on such terms as it thinks just', had power to make an exception to the established rule by allowing the amendment on terms that the proceedings against the new defendant should be deemed to have commenced at the date of the amendment. In those circumstances the limitation period vis-a -vis the new defendant would cease to run only at the date of amendment and not at the date of issue of the writ in the action, because such a course, by preserving the new defendant's possible limitation defence while at the same time giving the plaintiff an opportunity to establish that the defence was not well founded, as the only way to ensure justice between the parties in accordance with Ord.15, r.6 (2)(b)(ii). Furthermore, the rule that joinder of the party to an existing action would not be allowed if it would deprive him of an accrued limitation defence was not a rule of substantive law but only a rule of practice and therefore, did not preclude the court from granting leave to add a new defendant on terms that the joinder took effect only from the date of the amendment of the writ, and such a course did not offend against the object of the rule which was to preserve any limitation defence which might be open to the new defendant; *Lovesy* v. *Smith* [1880] 15 Ch.D. 655, *Re Bowden, Andrew v. Cooper* [1890] 45 Ch.D. 444, *Sneade* v. *Wotherton Barytes and Lead Mining Co. Ltd.* [1904] 1 K.B. 295, *A-G (ex rel Rhondda UDC) and Rhondda UDC* v. *Pontypridd Waterworks Co.* [1908] 1 Ch. 388 and *Mitchell* v. *Harris Engineering Co. Ltd.* [1967] 2 All E.R. 682 considered.

(3) Accordingly, the appeal would be allowed and the orders made in May and June 1978 giving leave to amend the writ by adding the third and fourth defendants would be restored, subject to the addition of the new defendants being treated as operative only from the date when the amendment was made, i.e. from 16 June 1978."

In *Leadbitter* v. *Hodge Finance Ltd. and others* [1982] 2 All E.R. 167, it was held:

"For the purpose of applying the rule of practice that a defendant would not be added to an existing action if the claim against him was time-barred, the relevant date for considering whether the claim was time-barred was the date on which the application to amend the writ was heard. Thus, although a plaintiff who, in reliance on s.2A(4)9(b) of the 1939 Act, alleged that his claim against a proposed defendant was brought within three years of the date on which he first acquired knowledge of the relevant facts could proceed by issuing a fresh writ against the proposed defendant raising the issue of the date of the plaintiff's knowledge, that was not the only method of proceeding: the issue of the date of the plaintiff's knowledge could alternatively be determined either as a preliminary issue in the existing action or as an issue in the trial of that action. Accordingly, the plaintiff was not time-barred on the ground that he had not issued a fresh writ against the highway authority within three years of the date of the accident, and it was open to the court to determine the issue of the date of the plaintiff's knowledge when determining his application to amend his writ. In all the circumstances, the plaintiff could not reasonably have been expected to have acquired knowledge of his cause of action against the highway authority before 31 July 1978, and that date was within the limitation period of three years prior to the hearing of his application to amend the writ. The plaintiff's claim against the highway authority was therefore not time-barred, and leave to amend the writ by adding the highway authority as defendant would be granted."

Bush J. after reviewing the opinions expressed in *Liff* v. *Peasley* (supra) had this to say at pp. 172, 173:

"In fact the court decided that by entering an unconditional appearance to the writ the defendants in that case had not deprived themselves of the defence of the Limitation Act, if it were available to them. In the present case the application, could, I suppose, be regarded as ex parte on notice, and indeed the proposed defendant having had notice of the application has appeared and taken full part in the

arguments and has filed an affidavit. There may be disadvantages to this approach relating to the time that it has taken for the matter in fact to come before me for determination of the issue, but I shall refer to that at a later stage. The plaintiff has by his affidavit sought to show a date later than three years after the accident as his date of knowledge within the meaning of the Limitation Act 1939 as amended. Further he has exhibited a proposed amended statement of claim. The application has been remitted to me by the registrar, and as I have indicated earlier is one for leave to amend the writ by adding a party. Now, in The Supreme Court Practice 1979, vol. I p. 351, para 20.5-8.81 there appears the following statement:

> 'It would seem that an amendment will not be allowed to add a defendant in an action for personal injuries or under the Fatal Accidents Acts where it is alleged that the action is brought against him three years from the accrual of the cause of action under s. 2A or s.2B of the Act. The proper course for the plaintiff to take is to issue a fresh writ founded on his contention that the accrual of his cause of action was from his date of knowledge and the Court may then consolidate the two actions.'

There is no authority cited for this statement. It does not agree with the procedure outlined by Brandon LJ in Liff's case to which I have already referred, and although it is a method of proceeding I do not think that it is true to say that this is the only way in which the matter can be dealt with. In fact the procedure adopted here by the plaintiff was the one suggested by Walton J in a case of the Chancery Division, *Gawthorp* v. *Boulton* [1978] 3 All E.R. 615, [1979] 1 W.L.R. 268."

And concluded as follows:

> "For this reason I respectfully follow the views expressed by Stephenson and Brandon L. JJ. and I take the view that for limitation purposes the relevant date is the date on which the writ is amdended with leave."

In Gawthrop v. *Boulton and others* [1978] 3 All E.R. 615 to which reference is made in *Lipton's* case, and which was applied in *Leadbitter's* case it was held:

(ii) On the plaintiff's summons to have K and C added as parties to the action, the master's order would be discharged and a new order made adding them as defendants to the action, for the following reasons -

(a) If they were added they would not be prejudiced in raising the defence of limitation of action because when a defendant was added to an already existing action a limitation period running to his advantage under the Limitation Act 1939 did not cease to run on the date of the issue of the writ but continued to run until the date when he was added as a party, *Seabridge* v. *H Cox & Sons (Plant Hire) Ltd* [1968] 1 All E.R. 570 applied; *Mabro* v. *Eagle Star and British Dominions Insurance Co. Ltd.* [1932] All E.R. Rep. 411 and *Lucy* v. *W.T. Henley's Telegraph Works Co. Ltd.* [1963] 3 All E.R. 456 distinguished.

(b) In any event, even if the limitation period did cease to run to their advantage at the date of the issue of the writ, they would still not be prejudiced in raising the defence of limitation of action because the plaintiff could not have discovered B's fraud until some time in 1973 and therefore was still able to commence fresh proceedings against them within the limitation period.

(c) The amendment would be allowed as a matter of convenience because it was desirable that the plaintiff's actions against B's wife and against K and C should be fused since B's fraudulent acts at any particular time would be relevant to the liability of K and C and B's partners."

Having reviewed the authorities as to when a party who was added to the proceedings may be struck out I am coming now to consider whether plaintiff's application for amendment of their petition should be granted.

In the authorities hereinabove referred to, the Court had to deal with applications either to add a new party or for striking a party wrongly joined. In the present action none of the defendants applied to have the name of defendants (2) struck out. The application before me is an application for amendment of the petition consequential to the order made amending the writ

of summons by adding defendants (2) as parties. Defendants (1) as I already mentioned, consented to the making of the order for joining defendants (2) as parties to the proceedings which was found necessary as a result of their allegations of fact in their answer to the petition, and were well aware that if defendants (2) were joined as parties, the petition would have to be amended to introduce facts, in support of any claim against defendants (2) which came to the knowledge of the plaintiffs after they had been alleged by defendants (1) in their answer. If the joining of defendants (2) would have been prejudicial to defendants (1) they should have faught against such joining and not consented to the order making defendants (2) as parties to the proceedings. Defendants (2) on the other hand entered an unconditional appearance and took no steps for having their name struck out.

In the circumstances of the present case and having regard to the fact that an order has already been made to amend the writ of summons. by adding defendants (2) as parties, I have come to the conclusion that the consequential amendment of the petition as applied for, should be granted. By such amendment the defendants will not be prejudiced in raising the defence of limitation or any other legal objection which they deem necessary by their pleadings (in this respect see *Gawthrop's* case supra). By the fact that defendants (2) entered an unconditional appearance they have not deprived themselves of the defence of the limitation of this action (see *Leadbitter's* case supra). If such objection is raised by defendants in their answer, they will be entitled to apply to the Court to decide forthwith same under rule 89 of the Cyprus Admiralty Rules. Rule 89 corresponds in so far as points of law are concerned to Order 27 of the Civil Procedure Rules. The procedure under Order 27 has been set out by our High Court in *The heirs of the late Theodora Panayi* v. *The administrators of the estate of the late Stylianos Mandriotis* (1963) 2 C.L.R. 167 in which Josephides J. had this to say at page 170:

> "We would like to add that in cases where an objection (of law) 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. An application under Order 27 should normally be made on the summons for directions.

With regard to the present case we are of the view that the correct course would have been for the appellants (defendants 3) to have applied under Order 9, rule 10, to have their names struck out on the ground of misjoinder, before the day of hearing, if they thought that they had been improperly joined as parties."

In the result, the application is granted and an order is made accordingly. Amended petition to be filed and copy served on the defendants within 15 days. The answer thereto to be filed within 15 days thereafter. Reply, if any, within ten days thereafter.

In the circumstances of the case I make no order for costs.

Application granted. No order as to costs.