

1984 March 19

[A. LOIZOU, SAVVIDES, PIKIS, JJ.]

SOL MARITIME SERVICES LTD.,

*Appellants-Defendants.*

v.

CYPRUS PORT AUTHORITY,

*Respondents-Plaintiffs.**(Civil Appeal No. 6584).*

*Ports—Wharf or jetty (“Προκυμαία ή Προβλής”)—Meaning—Breakwater—Whether a jetty within the meaning of regulation 1 of the Cyprus Ports Organization (Payable Fees) Regulations, 1976—Ship stern-tied on breakwater of port—Berthage fees payable under the said Regulations—Stern-tying the only consideration and payment of fees does not depend on the extent or nature of the services rendered by the Ports Authority.* 5

*Words and Phrases—Wharf—Jetty—(“Προκυμαία”—“Προβλής”).*

*Statutes—Construction—Wharf or jetty (“Προκυμαία ή Προβλής”) in regulation 1 of the Cyprus Ports Organization (Payable Fees) Regulations, 1976—In construing these words Court cannot rely on their statutory definition in other enactments but has to give them their ordinary meaning.* 10

The ship “Sol Phryne” which belongs to the appellant company was stern-tied on the eastern breakwater of Limassol port during the period from 19.4.1977 to 29.6.1977 for repairs. A demand was made by the respondents for the payment of the relevant fees under regulation 1\* of the Cyprus Ports Organization (Payable Fees) Regulations, 1976 but the appellant Company refused on the ground that although the vessel in question was moored in the Port, it was not alongside or stern- 15 20

\* Regulation 1 provides as follows:

“1. For every ship berthing or stern-tied alongside a wharf or ‘jetty’ in a Port, shall be required for every day or part thereof the following fees:

For every ton of net tonnage..... 12 mils”.

tied on a "Procymaca" or "Provlita" which is an essential element for the existence of the right to charge berthage fees.

5 Upon an action by the respondents the trial Court adjudged the appellants to pay C£4,411.585 mils berthage fees and hence this appeal.

10 *Held*, that a "jetty" ("προβλής") is a natural or technical protrusion or projection in the sea; that the breakwater was an artificial protrusion into the sea; that, therefore, the vessel in question was during the material time berthed or stern-tied on a "jetty" ("παραβαλλόμενον ή πρυμνοδετούμενον κατά μήκος προβλήτος") and therefore the imposition of the dues which were levied by the Authority, was correctly made in accordance with the provisions of the Law; that, furthermore, the only consideration is the stern-tying on the 15 "wharf" or "jetty" ("πρυμνοδέτησις κατά μήκος προκυμαίας ή προβλήτος") and the payment of fees does not depend on the extent or nature of any services rendered by the Authority; accordingly the appeal must fail.

20 *Held*, further, that as there is no definition in the Law and the Regulations by virtue of which the berthage fees have been charged, this Court cannot rely on the statutory definition of the words in question to be found in other enactments and for the purpose of the provisions of those laws; that in the absence of any definition in the law and of any indication that they have 25 acquired a technical meaning and they are used as such, they have to be given their ordinary meaning as the language of a statute must be construed in the ordinary and natural meaning of the words and sentences, if there is nothing to modify, alter or qualify such language.

30 *Appeal dismissed.*

**Appeal.**

35 Appeal by defendants against the judgment of the District Court of Limassol (HadjiTsangaris, P.D.C. and Artemis, S.D.J.) dated the 2nd June, 1983 (Action No. 1245/80) whereby they were adjudged to pay to the plaintiffs the sum of £4,411.585 mils berthage fees.

*A. Neocleous*, for the appellants.

*P. Ioannides*, for the respondents.

40 *A. Loizou J.* gave the following judgment of the Court. This is an appeal from the judgment of the Full District Court of

Limassol by which the appellant Company was adjudged to pay C£4,411,585 mils berthage fees under the Cyprus Ports Organization Law, 1973 (Law No. 38 of 1973, as amended, hereinafter to be referred to as the Law), and the Cyprus Ports Organization (Payable Fees) Regulations 1976, as amended (hereinafter to be referred to as the Regulations), legal interest and costs. 5

The facts and circumstances of the case are not in dispute. The ship "SOL PHRYNE" belongs to the appellant Company and was stern-tied on the eastern breakwater during the period from 19.4.77 to 29.6.77 for repairs. A demand was made by the respondents for the payment of the relevant fees under regulation 1 of the Regulations but the appellant Company refused on the ground - and this is their defence pursued before the trial Court and in this Court - that although the vessel in question was moored in the Port, it was not alongside or stern-tied on a "Procymaea" or "Provlita" (roughly translated Quay or Wharf) which is an essential element for the existence of the right to charge berthage fees. 10 15

Under section 25 of the Law, "the Organization may, with the approval of the Council of Ministers by Regulations, prescribe the charges payable for the time being for the use of the Port precincts under its jurisdiction ... as well as the conditions of payment and the manner in which they will be levied and collected . . .". 20

The relevant regulations were published in Supplement No.3, Part 1, to the Official Gazette of the Republic under Notification No. 45 at page 207. Regulation 1 in Part III thereof which deals with berthage fees provides:- 25

"1. Δι' έκαστον σκάφος παραβαλλόμενον ἢ πρυμνοδετούμενον κατὰ μήκος προκυμαίας ἢ προβλήτος ἐντὸς λιμένος καταβάλλοντα: καθ' ἐκάστην ἡμέραν ἢ μέρος αὐτῆς τὰ ἀκόλουθα δικαιώματα: 30

Δι' έκαστον κόρον καθαρᾶς χωριτικότητος.... 12 μιλς"

And in English:

"1. For every ship berthing or stern-tied alongside a wharf or 'jetty' in a Port, shall be required for every day or part thereof the following fees: 35

For every ton of net tonnage ... 12 mils".

As the trial Court put it, what it had to decide was “whether under the aforesaid Regulation the said vessel ‘SOL PHRYNE’ was ‘παραβαλλόμενον ἢ πρυμνοδετούμενον κατὰ μήκος προκυμαίας ἢ προβλήτος.’ In our opinion, a ‘προβλής’ is a natural  
 5 or technical protrusion or projection and it was so described by P.W.I Meletiou, the civil engineer who gave evidence and whose evidence we accept. Furthermore, in the ‘Σύγχρονο Λεξικό Ἑλληνικῆς Γλώσσης Ἐπιτροπῆς Φιλολόγων’ referred to by learned counsel for the plaintiffs, the meaning  
 10 is given as: ‘Φυσικὴ ἢ τεχνητὴ προεξοχὴ ποῦ εἰσχωρεῖ εἰς τὴν θάλασσαν’. We find that the vessel ‘SOL PHRYNE’ was during the material time ‘παραβαλλόμενον’ or ‘πρυμνοδετούμενον’ on a ‘προβλής’ and, therefore, the imposition of the dues, which were levied by the Authority, was correctly made in  
 15 accordance with the provisions of the Law. Furthermore, the only consideration is the ‘πρυμνοδέτησις’ on a ‘προκυμαία’ or on a ‘προβλής’. Such payment of fees does not depend on the extent or nature of any services rendered by the Authority.”

It has been argued before us that the breakwater in question  
 20 had not been at that time so built or constructed on the inside in such a way as to form a proper quay, it could not be considered as a “provlita” or “procymaea” and that these two terms should be given the same meaning as the corresponding English words into which counsel has translated same, such as “wharf” or  
 25 “jetty” are given in a number of Laws that had been enacted in English before Independence. One of them is the Shipping Dues Law, Cap. 296, and the Shipping Fees Regulations, made thereunder to be found in the Subsidiary Legislation of Cyprus, Vol. 1, page 607, where under regulation 1(1)(b) “Every ship  
 30 using any part of the Inner Harbour shall be charged the following fees: (b) berthage fees (when the ship is alongside a wharf or jetty) at the rate of 1/2 p. per diem for every ton of the registered tonnage of the ship” and also the Customs Management Law, Cap. 315, where “quay”, “wharf” and “jetty” are defined  
 35 in section 2 thereof for the purposes of that Law as meaning “a place appointed or approved by the Governor-in-Council for the landing or shipment of goods and includes any jetty, pier or quay in a Port”. We have also been referred to the English Harbour Act of 1964, section 67, for a similar definition of the  
 40 said terms.

We are afraid we cannot subscribe to this view. As there is no definition in the Law and the Regulations by virtue of which the berthage fees have been charged, we cannot rely on the statutory definition of the words in question to be found in other enactments and for the purpose of the provisions of those laws. 5  
In the absence of any definition in the law and of any indication that they have acquired a technical meaning and they are used as such, we have to give them their ordinary meaning as the language of a statute must be construed in the ordinary and natural meaning of the words and sentences, if there is nothing to modify. 10  
*alter or qualify such language.*

We agree, therefore, with the trial Court that in the way that the ship in question was stern-tied to this artificial protrusion into the sea, i.e. the breakwater, the appellant Company was liable to pay the fees claimed as being covered by the aforesaid Regulation and we dismiss the appeal with costs. 15

*Appeal dismissed with costs.*