

[GRIFFITH WILLIAMS AND MELISSAS, JJ.]

(March 10, 1948)

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 H. N. KESH-
 MIR
 v.
 KADIL
 HANTAL
 AND OTHERS.

H. N. KESHMIR, *Appellant,*

v.

KADIL HANTAL AND OTHERS, *Respondents.**(Civil Appeal No. 3832.)*

Conflict of Laws—Enforcement of foreign revenue law—Jurisdiction of Cyprus Courts—Foreign Judgments (Reciprocal Enforcement) Law, 1935, section 3 (2) (b)—Unconditional appearance—Submission to jurisdiction.

Territorial jurisdiction of District Courts—Residence—Courts of Justice Law, 1935, section 15 (1) (b).

The appellant, who is the Turkish Consul in Cyprus, brought an action on behalf of the Finance Minister of Turkey claiming from the first respondent £11,469. 7s. 4½p., arrears of income tax for the years 1943–45, in respect of the s.s. *Burhaniye*, due to the Turkish Government. The first respondent was part owner of the *Burhaniye*, and the other two respondents were masters of the said steamer. The respondents were all of Turkey. The second and third respondents were at the date of the writ on board the *Burhaniye* anchored at Zyyi harbour in the Larnaca District, and were duly served, but no service was effected on the first respondent who had no knowledge of the proceedings.

On the *ex parte* application of the appellant the District Court granted an interim order, under clause 36 (d) of the Cyprus Courts of Justice Order, 1927, stopping the clearance of the *Burhaniye*, and the second and third respondents were served with a copy of the order. On the return date of the order counsel appeared for all the respondents under protest as to the jurisdiction of the Court, on the ground that none of the respondents resided or carried on business within the jurisdiction, but the memorandum of appearance filed on the same day was unconditional. The District Court discharged the order on those two grounds.

Held: (i) that, by reason of the firmly established rule of Private International Law that a Court has no jurisdiction to entertain an action for the enforcement, either directly or indirectly, of a penal, revenue or political law of a foreign State, the claim is not within the competence of any Court in Cyprus. This rule finds confirmation in the local law by the Foreign Judgments (Reciprocal Enforcement) Law, 1935, section 3 (2) (b), which precludes from enforcement in Cyprus foreign judgments in respect of taxes, fines or other penalties.

(ii) although an unconditional appearance amounted to a submission to the jurisdiction, if the claim was otherwise within the competence of the Court to adjudicate upon, in the present case, even if respondents had voluntarily submitted to the jurisdiction, the claim was outside the competence of the Courts of Cyprus.

Order of the District Court affirmed on other grounds.

Appeal by plaintiff from the order of the District Court of Larnaca (Action No. 710/47) discharging an interlocutory order to stop the clearance of a steamer.

Fadil Korkut for the appellant.

G. M. Nicolaides for the respondents.

The facts are fully set out in the judgment of the Court which was delivered by :

GRIFFITH WILLIAMS, J. : This action was filed in the District Court of Larnaca on the 13th November, 1947, by the Turkish Consul in Cyprus on behalf of the Finance Minister of Turkey, claiming from respondent 1 £11,469.74½ arrears of income tax for the years 1943-1945, in respect of the s.s. *Burhaniye*, due to the Turkish Government.

The action is *in personam* ; it describes the respondents as being all of Turkey and alleges that respondents 2 and 3 were at the date of the writ on board the *Burhaniye* anchored at Zyyi harbour in the Larnaca District.

On the day the action was filed, the appellant applied *ex parte* for an interim order to stop clearance of the *Burhaniye*. The facts in support of the application given in the Consul's affidavit are shortly as follows :—

- (1) Respondent 1 is the owner of 60/100 shares in the *Burhaniye*.
- (2) Respondent 1 owes to the Turkish Government the amount claimed.
- (3) Respondents 2 and 3 or either of them are masters of the said steamer.
- (4) For more than a year the said steamer has been away from Turkey and she is most unlikely to return to Turkey lest she should be attached for the said debt.

The application was based on the Cyprus Courts of Justice Order, 1927, clause 36 (*d*) which empowers the Court in the exercise of jurisdiction conferred on it to make the order applied for.

The District Court granted the order, and made it returnable on the following day, 14th November, 1948. The order was served on respondents 2 and 3, and advocate Mr. G. M. Nicolaides appeared for all the respondents on the return date of the order under protest as to the jurisdiction of the Court ; but his memorandum of appearance in the action filed on the same day is unconditional.

The objection to the jurisdiction raised by the respondents' counsel was that none of the respondents resided or carried on business within the jurisdiction. Neither

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side called evidence before the District Court, and the District Court discharged the interlocutory order on these two grounds, namely, that none of the respondents resided or carried on business within the jurisdiction.

The jurisdiction of the District Courts in Cyprus is governed by the Cyprus Courts of Justice Law, 1935, section 15. The meaning of residence in sub-section (1) (b) was the subject of a decision of this Court in *Altenburger v. Mohammed El Toughouri*, 17 C.L.R. p. 161, and it was held that the English rule, namely, that mere presence of the defendant within the territorial jurisdiction is sufficient to confer jurisdiction on the Court, is not applicable in Cyprus; and, as stated already, it was not proved that any of the respondents carried on business within the jurisdiction.

We have already alluded to the unconditional memorandum of appearance of respondents' counsel which unless amended amounts to a submission to the jurisdiction, if the claim was otherwise within the competence of the Court to adjudicate upon. But by a firmly established rule of Private International Law the claim is not within the competence of any Court in Cyprus. We refer to the rule that "the Court has no jurisdiction to entertain an action for the enforcement, either directly or indirectly, of a penal, revenue or political law of a foreign State." (Dicey's Conflict of Laws, 5th Edition, p. 212).

This ground alone is sufficient to deprive the Court of jurisdiction. This rule of International Law finds confirmation in the local law by the Foreign Judgments (Reciprocal Enforcement) Law, 1935, section 3 (2) (b) which precludes from enforcement in Cyprus foreign judgments in respect of taxes, fines or other penalties.

In our opinion then, even if respondents have voluntarily submitted to the jurisdiction, the claim is outside the competence of the Courts of Cyprus.

There are several other points which would call for our consideration if we had not already decided the appeal on more fundamental grounds. We refer to the joinder of respondents 2 and 3 in a personal claim for income tax against defendant 1, and the fact that defendant 1—the only proper defendant to the action—has not been served up to the present; and, as far as can be seen from the record, has no knowledge of these proceedings.

The appeal will therefore be dismissed with costs.