1979 November 15

[MALACHTOS, J.]

NISSHO-IWAI CO. LTD.,

Plaintiffs,

v.

SAINT NICOLAS SHIPPING CO. LTD.,

Defendants.

(*Admiralty Action No.* 24/74).

Admiralty—Practice—Writ of summons—Expiration—Renewal—Principles applicable—Legal or physical impossibility to effect service of no significance—English R.S.C. Order 6 rules 8(1) *and* (2) *applicable by virtue of rule* 237 *of the Cyprus Admiralty Jurisdiction Order,* 1893—*Non-service of writ of summons on defendant company, during period of validity, because it had been struck off from the Register of Companies—Order for renewal of writ—Mistake in the order by renewing writ not as from day following its expiration but as from a subsequent day—Mistake does not render order for renewal a nullity—A mere irregularity which can be remedied by any other order—Rule* 1(1) *of Order* 2 *of the new R.S.C. and rule* 1 *of the old Order* 70—*Distinction between nullity and irregularity—Discretion of the Court in granting order for renewal—Rightly exercised in the circumstances of this case.*

On March 28, 1974 the plaintiffs brought an action against the defendant company claiming damages for breach of two bills of lading. Service was not effected on the defendant company, by the date on which the action was adjourned for service, because the company had been struck off from the Register, under section 327 of the Companies Law, Cap. 113, for failure to present yearly returns; and on April 17, 1975, the District Court of Famagusta, sitting at Larnaca, made an order, under section 327(6) of Cap. 113, restoring the company to the register together with a direction that the period during which the defendant company had been struck off from the Register of Companies should not count for any period of limitation. The

writ of summons expired on March 27, 1975 and on November 10, 1975, plaintiffs applied for an order extending its validity. The Court considered the application on the same day and ordered that "the validity of the writ of summons be extended for a period of 12 months as from today". Service of the writ was effected on January 28, 1976.

Defendants applied to have the above order set aside on the grounds that:

(a) Under rules 8(1) and (2)* of Order 6 of the English R.S.C., which are applicable by virtue of rule 237 of the Cyprus Admiralty Jurisdiction Order, 1893, the writ of summons having expired on March 27, 1975 had to be renewed as from March 28, 1975 and not as from November 10, 1975 when the Order for extension was granted by the Court;

(b) The Court wrongly exercised its discretion in granting the said Order as there was no sufficient or good reason for doing so.

Counsel for the plaintiffs contended that the English Rules were not applicable and that the time from March 28, 1974, when the writ was issued till April 17, 1975, when the defendant company was restored, did not run as it was legally impossible to effect service because the defendant company by its own conduct caused its striking off from the register.

Held, (1) that an admiralty action is generally considered as any other action brought before any other Court exercising civil jurisdiction and cannot be said that the intention of the legislator was to exempt admiralty actions as regards the duration and renewal of the writ; that, on the contrary, the object of rule

* Rules 8(1) and (2) run as follows:

"8(1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue and a concurrent writ is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow".

237 of the Cyprus Admiralty Jurisdiction Order, 1893 was to cover cases like the present one; that, therefore, the Rules of the Supreme Court of England are applicable; and that, accordingly, the present application will be considered in the light of the provisions of Order 6, rule 8(1) and (2) of the English R.S.C.

(2) That from the wording of the said Order 6, rule 8(1), it is clear that for the purpose of service a writ is valid for twelve months and this provision is absolute and does not accept any qualification; that whether a writ during the said period is legally or physically impossible to be served is of no significance.

(3) That though a mistake has been made in the making of the order for renewal of the writ for twelve months as from 10.11.1975 and not as from 28.3.1975—the day following its expiration–contrary to the provisions of the said rule 8(2), non–compliance with this rule should not of itself render any proceedings void, unless the Court should so direct, but they might be set aside wholly or in part as irregular or amended on such terms as the Court might think fit (see new Order 2, rule 1(1) of the English R.S.C. and old Order 70 rule 1).

(4) *On the question whether the mistake in the case in hand rendered the order for renewal of the writ a nullity or whether it was a mere irregularity which could be remedied by any other order:* That no doubt this Court in considering the application for renewal of the writ took into account the contents of the affidavit in support thereof and decided to extend the validity of the writ for twelve months; that taking into consideration the relevant facts and in particular the fact that service of the writ was effected on 28.1.1976, within the period of twelve months after its expiration, the mistake is considered as a mere irregularity which can be rectified without injustice; and that, accordingly, an order will be made for the extension of the validity of the writ for twelve months as from 28.3.1975.

(5) That the extension of the validity of the writ of summons is within the discretion of the Court (see the new Order 6, rule 8(2), the old Order 8 rule 1 of the English R.S.C. and the case–law thereon to the effect that the words "or for other good reasons" in the former Order 8 rule 1 were surplusage, and their removal has not increased the permissible scope of the discretion of the Court to extend the validity of a writ nor impaired the

authority of the earlier cases); that taking into consideration: (i) that the defendant company could not be served with the writ of summons from its issue up to 17.4.75, when the order for restoration to the Register of Companies was made by the District Court, and this was not due to any fault on the part of the plaintiff company, but on the contrary it was due to the non filing of the annual returns by the defendant; (ii) that the plaintiff company took all reasonable steps to restore the defendant company to the Register of Companies; (iii) that due to the Turkish invasion and the occupation of Famagusta town by the Turkish Army, no service could be effected as the Registered office of the defendant company was in Famagusta town, and (iv) that the claim of the plaintiff company could not be defeated by the Statute of Limitations, this Court is of the view that its discretion was rightly exercised in granting the order for the extension of the validity of the writ; and that, accordingly, the application to set it aside must be dismissed.

Application dismissed.

Cases referred to:

Blacker v. *Blacker* [1960] P. 146;

In re Pritchard, deceased, Pritchard v. *Deacon and Others* [1963] Ch. 502;

Harkness v. *Bell's Asbestos and Engineering Ltd.* [1967] 2 Q.B. 729;

Heaven v. *Road and Rail Waggons Ltd.* [1965] 2 All E.R. 409 at p. 414.

Application.

Application for an order setting aside the order, dated 10.11.1975, extending the validity of the writ of summons beginning this action, the service of the said writ or of a notice thereof and of subsequent proceedings.

E. Montanios, for the applicants–defendants.

Chr. Demetriades, for the respondents–plaintiffs.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicants defendants in this action, a company formed and incorporated in Cyprus with limited liability applied, as stated in their application, for:–

A. An order that the order dated 10/11/1975 to extend the

validity of the writ of summons beginning this action, the service of the said writ or of a notice thereof and of subsequent proceedings herein, be set aside on the grounds that:-

1. The Court erred in law in that the said order was to extend the validity of the said writ of summons from 10/11/1975 and not from 28/3/1975, which is the day next following that on which it had expired and/or

2. The Court wrongly exercised its discretion in granting the said order as there was no sufficient or good reason for doing so.

B. An order that the plaintiffs do pay to the defendants their costs of this action and of and occasioned by this application.

The application is based on rules 207, 208, 212 and 237 of the Cyprus Admiralty Jurisdiction Order 1893, the Rules of the Supreme Court of England Order 6, rule 8 and Order 12 rule 8, the inherent powers and practice of the Court and section 327(6) of the Companies Law, Cap. 113.

The relevant facts, as appearing in the file of the Court and in the affidavits in support of the application and opposition, are the following:

On the 28th day of March, 1974, the plaintiffs, a Japanese Company, instituted in this Court in its Admiralty Jurisdiction an action claiming against the defendants the sum of C£630,633 damages as owners of ten thousand metric tons of sugar and/or indorsees and/or consignees of two bills of lading dated 23/2/73 for the carriage of the said cargo on the ship " MARINER ", which was totally lost and/or damaged by reason of breach of the two bills of lading and/or negligence on the part of the defendants, their servants or agents and/or otherwise.

On the 28th June, 1974, the date on which the action was adjourned for service, counsel appearing for the plaintiffs stated that service could not be effected as the defendant company was struck off from the Register by the Registrar of Companies under the powers vested in him under section 327 of the Companies Law, Cap. 113. The reason that the Registrar of Companies took the above action is that there was a failure on behalf of the company to present their yearly returns.

Counsel for the plaintiffs also informed the Court that an application had been filed in the District Court of Famagusta where the registered office of the company was situated for its restoration with a view to effecting service. The action then was adjourned to the 27th September, 1974, for service pending the said application.

The hearing of the application for restoration was fixed for 10/9/74 but by reason of the Turkish invasion and the occupation of Famagusta town by Turkish troops, the hearing never took place.

On 26/3/75 the plaintiffs filed by virtue of section 327(6) of the Companies Law, Cap. 113, a new application in the District Court of Famagusta sitting at Larnaca for the name of the defendant company to be restored to the Register of Companies. This section reads as follows:

> "(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on an application made by the company or member or creditor before the expiration of twenty years from the publication in the Gazette of the notice aforesaid may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and upon an office copy of the order being delivered to the registrar for registration the company shall be deemed to have continued in existence as if its name had not been struck off; and the Court may by order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off".

The restoration order which was given on the 17th April, 1975, and was amended by a subsequent order dated 8/10/75, contains a direction that the period during which the defendant company had been struck off from the Register of Companies should not count for any period of limitation.

In the meantime the writ of summons had expired.

On the 10th November, 1975, an application was filed with

this Court on behalf of the plaintiff company for extending the validity of the writ of summons and for leave to serve it out of the jurisdiction.

It is pertinent here to state verbatim the remedies claimed in the said application which are the following:

The above applicants apply for an order of the Court:

1. Extending the validity of the writ of summons for a period of twelve months as from the date of the order.
2. Giving leave to serve the writ and/or notice of the writ of summons on the defendants in the above action outside Cyprus.
3. Giving leave for substituted service of the writ of summons on the above named defendants through the post by double registered letter, or in any other way the Court may direct.

In the affidavit in support of this application it is stated that the main reason that no application for renewal was made before the expiration of the writ of summons was that at the time of expiration the defendant company had not yet been restored and the application would have been in effect an application for renewal of a writ to be served on a company which at the time did not exist. That the claim of the plaintiffs is not statute barred as the time which the defendant company was struck off from the Register of Companies is not counted for purposes of limitation of time and that until the name of the defendant company was struck off its registered office was situated at 28 Marias Singlitikis Street, at Famagusta, which is now under Turkish occupation. As it appears from the file of the company kept with the Registrar of Companies, the Registered office of the company was still at the above address and, in the circumstances, no service could be effected.

From a search of the file of the company it also appears that the above company has four directors, two of whom, namely, Ioannis Papadopoullos and Adamos HjiPateras could be found at 5 Boumboulinas Street, Pireus, Greece.

This Court on the same day considered the above application of the plaintiffs and made the following order as per application, which reads as follows:

"*Court*: (1) It is hereby ordered that the validity of

the writ of summons be extended for a period of 12 months as from today.

(2) Leave to serve the writ of summons and/or notice of the writ of summons on the defendants in the above action outside Cyprus is hereby granted.

(3) Service of the writ and/or notice of the writ of summons on the abovenamed defendants should be considered as good service if copies thereof are transmitted through the post by double registered letter on Ioannis Papadopoullos and Adamos HjiPateras both of 5 Boumboulinas Street, Pireus, Greece, directors of the defendant. Appearance to be entered within one month as from the date of such service.

It is further directed that if the defendants do not enter an appearance within the appointed time, notice of any application in the action may be given by posting a copy of the notice on the Court notice board."

Eventually, service of the writ as per order of the Court was effected on 28/1/76.

On the 29th March, 1976, a conditional appearance was entered in the action on behalf of the defendants as they intended to apply to set aside the order for renewal of the writ and service thereof.

Hence, the present application.

Counsel for applicants in arguing the present application submitted that since there is no provision in the Cyprus Admiralty Jurisdiction Order, 1893, limiting the duration and renewal of a writ of summons, then according to rule 237, which provides that in all cases not provided by these Rules, the practice of the Admiralty Division of the High Court of Justice of England, so far as the same shall appear to be applicable, shall be followed, we must turn to the Supreme Court Rules and the relevant provision is Order 6, rule 8(1) and (2). This rule is as follows:

" 8. (1) For the purpose of service, a writ (other than a concurrent writ) is valid in the first instance for twelve months beginning with the date of its issue and a concurrent writ

is valid in the first instance for the period of validity of the original writ which is unexpired at the date of issue of the concurrent writ.

(2) Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from time to time for such period, not exceeding twelve months at any one time, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow".

So, according to the above Rules, as counsel for the applicants submitted, the writ of summons in the present case expired on 27/3/75 and had to be renewed as from 28/3/75 and not as from 10/11/75 when the Order for extension was granted by the Court. The fact that the application for the extension of the validity of the writ was made after its expiration is not fatal according to the Rules but as the order of the Court was not made as from the next day following its expiration but it was granted as per application as from 10/11/75, this order was wrong in law and, therefore, null and void. In reality the validity of the writ was extended for twenty months and not for twelve.

Counsel for applicants also argued that the discretion of the Court in granting the said order was wrongly exercised as the plaintiffs in their affidavit in support of the application did not show good and valid reasons justifying the Court to make the order.

On the other hand, counsel for the respondents submitted that the Rules of Practice of the High Court of England in its Admiralty Jurisdiction do not apply in the present case since we have our own rules which deal with the issue and service of the writ of summons. They are rules 15 to 28 of the Cyprus Admiralty Jurisdiction Order, 1893, and no provision exists in in these rules limiting the time within which service should be effected.

I must say from the outset that I entirely disagree with this submission of counsel for the respondents. An admiralty action is generally considered as any other action brought before any other Court exercising civil jurisdiction and cannot be said

that the intention of the legislator was to exempt admiralty actions as regards the duration and renewal of the writ; on the contrary, the object of rule 237 of the Cyprus Admiralty Jurisdiction Order 1893 was to cover cases like the present one. A writ of summons issued in the Admiralty Court cannot remain valid without being served for an indefinite period of time.

Having decided that the Rules of the Supreme Court of England are applicable, and taking into consideration the way this application was argued by counsel on both sides, as well as the fact that both the application for renewal of the writ and the present application were based on Order 6 rule 8 of the Rules of the Supreme Court of England, the present application should be considered in the light of the provisions of the said Order 6, rule 8(1) and (2).

Another argument of counsel for the respondents is that the time from 28/3/74 when the writ was issued till the 17th April, 1975 the date when the defendant company was restored, does not run as it was legally impossible to effect service because the defendant company by its own conduct caused its striking off the Register.

This argument is also supported by the provision made in the restoration order of the District Court that the period during which the company had been struck off from the Register of Companies should not count for any period of limitation. This contention was also put forward at the hearing of the *ex parte* application for the extension of the validity of the writ, and I must admit that it was this argument that led the Court in granting the order as from 10.11.75 and not as from 28.3.75.

From the wording of Order 6 rule 8(1) it is clear that for the purpose of service a writ is valid for twelve months and this provision is absolute and does not accept any qualification. Whether a writ during the said period is legally or physically impossible to be served is of no significance. Neither the provision made for the restoration order of the Distict Court in the present case that the period during which the defendant company had been struck off the register should not count for any period of limitation can affect the running of time as regards the duration of the validity of the writ.

Of course this provision can affect the running of time as regards the Limitation of Actions Law. But once a writ is issued there is no law or rule empowering any Court to order that the time of twelve months or any part thereof should not run. However, both the above factors should be taken into account by the Court in examining an application for renewal of the writ.

Coming now to the first submission of counsel for applicants that the order of the Court for renewal of the writ should be considered as null and void, it is obvious that a mistake has been made in the making of that order for renewal of the writ for twelve months as from 10/11/75 and not as from 28/3/75, the day following its expiration contrary to the provisions of Order 6 rule 8(2), of the Rules of the Supreme Court of England.

The non-compliance with these rules is governed by Order 2 rule 1(1) of the new Rules of the Supreme Court of England which reads as follows:

> " 1.(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or let undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein."

The predecessor of this rule is rule 1 of the old Order 70 which provides that non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

This rule sought to provide that non-compliance with these rules should not of itself render any proceedings void unless the Court should so direct, but that they might be set aside wholly or in part as irregular or amended on such terms as the Court might think fit. Semble, the Court has no power to dispense in advance with compliance with the rules of the

Supreme Court, but only a discretion, in certain cases, not to set irregular proceedings aside. (*Blacker* v. *Blacker* [1960] P. at p. 146).

A distinction is to be drawn between proceedings which are null and void, and proceedings which are merely irregular in the sense that they involve non-compliance with any of the Rules of the Supreme Court or with any rule of practice. In both cases an application should generally be made to the Court to set the proceedings aside. Nevertheless, the decisions under the rule preserve a distinction between a non-compliance such as rendering the proceedings a nullity, in which case the Court had no discretion but to treat them as a nullity and set them aside and a non-compliance which merely rendered the proceedings irregular in which case they remained valid and the Court had a discretion what order to make in the circumstances. It was held, indeed, that the Order did not apply to the former class of cases but only to the latter.

As a result of the decision of the Court of Appeal in *Re Pritchard*, deceased, *Pritchard* v. *Deacon and Others* [1963] Ch. 502 the present rule was substituted for the old one and under it the above distinction between nullity and mere irregularity disappears.

In that case "On October 6, 1961, proceedings asking for reasonable provision to be made for the widow of a testator out of his estate under the Inheritance (Family Provision) Act, 1938 were (as required by R.S.C., Ord. 54F, r. 1) begun by the preparation of an originating summons, which on October 9, the day before the expiry of the six-month period of limitation under the Act of 1938, was accepted and sealed in the local district registry. Further steps were thereafter taken by the parties under the direction of the district registrar; but in January, 1962, the district registrar informed the parties that having regard to the terms of R.S.C., Ord. 54, r. 4B, he doubted whether he had power to proceed with the matter.

As it was too late to start proceedings afresh in the Central Office, an application was made to the registrar asking why the cause, having irregularly issued from the district registry instead of the Central Office, should not be removed to the Central Office. The registrar refused the application,

holding that the originating summons was a nullity and all subsequent steps taken by the parties or by the Court were ultra vires. On a summons by the widow in the Chancery Division asking that the proceedings be transferred to London, Wilberforce J. held that originating summons was a nullity and all steps taken under it void. On appeal:–

Held (Lord Denning M.R. dissenting), that the originating summons had never been issued and was a nullity ab initio, for where an action was commenced by an originating sommons, which was purely a creature of the Rules of the Supreme Court, and that summons was not issued in accordance with the only relevant rule Order 54, r. 4B, that constituted a fundamental failure to comply with the requirements of section 225 of the Supreme Court of Judicature (Consolidation) Act, 1925, relating to the issue of civil proceedings; and the Court had no power under R.S.C. Ord. 70 r. 1, to cure proceedings which were a nullity. Accordingly, as the limitation period under the Act of 1938 had expired, the widow had no remedy.

Per Lord Denning, M.R. The non-compliance with R.S.C., Ord. 54, r. 4B, in this case was a mere irregularity and as the widow had commenced a known genuine case, but containing technical defects, before the period of limitation expired, the Court had power under R.S.C. Ord. 70, r.1, to amend the irregularity and should exercise that power by allowing the cause to be transferred to the Central Office; a fortiori, where the original error in issuing an originating summons in a district registry had been made by an officer of the Court and where, owing to the statutory limitation period, the widow would otherwise be wholly deprived of her cause of action."

In a later case, that of *Harkness* v. *Bell's Asbestos and Engineering Ltd.* [1967] 2 Q.B. 729 the legal position as regards the effect of the new rule was clearly stated. In that case "After leaving his employment with the defendants, the plaintiff was found to be suffering from asbestosis, a disease which he claimed was caused by the defendants' failure to supply him with protective clothing while he was in contact with asbestos. As his claim would have been barred by the Limitation Acts of 1939 and 1954,

his solicitors, before issuing a writ, applied *ex parte* to the district registrar under section 1 of the Limitation Act, 1963, for leave of the Court for the purposes of the Act. On April 16, 1964, the district registrar ordered that section 2(1) of the Act of 1939 should not afford a defence to the plaintiff's proposed action for damages. A writ was issued on April 17, 1964.

By R.S.C., Ord. 128, r.(1), the jurisdiction to grant leave for the purposes of section 1 of the Act of 1963 was vested in a Judge in chambers. The defendants applied to set aside the district registrar's order on the grounds that he had no jurisdiction to make it and that any order should have been for leave to proceed for the purposes of section 1 of the Act of 1963. On May 10, 1966, Blain J., holding that the registrar's order was a nullity, made no order on the application. On July 11, 1966, James, J. dismissed the plaintiff's application under R.S.C., Ord. 2, r. 1, to rectify the registrar's order and have it treated as valid. The plaintiff appealed, contending that the case came within R.S.C., Ord. 2, r.1, and that the form of the registrar's order was an 'accidental slip or omission' within R.S.C., Ord. 20, r.11. For the defendants it was contended that at the time of the registrar's order there were no 'proceedings' because no writ had been issued, and further that the Act of 1963 required that application should be made to 'the Court', which did not include a district registrar.

Held, allowing the appeal, that the application to the district registrar constituted 'proceedings' in the High Court within R.S.C., Ord. 2, r.1, under which the Court had power to correct the errors made as irregularities and that accordingly the plaintiff would be granted leave for the purposes of section 1 of the Act of 1963".

Lord Denning M.R. at page 735 of this report had this to say:

" This new rule does away with the old distinction between nullities and irregularities. Every omission or mistake in practice or procedure is henceforward to be regarded as an irregularity which the Court can and should rectify so long as it can do so without injustice. It can at last be asserted

that 'it is not possible for an honest litigant in Her Majesty's Supreme Court to be defeated by any mere technicality, any slip, any mistaken step in his litigation'. That could not be said in 1963".

With the above principles in mind I shall now proceed to consider whether the mistake in the case in hand renders the order for renewal of the writ a nullity of whether it is a mere irregularity which may be remedied by any other order. No doubt this Court in considering the application for renewal of the writ took into account the contents of the affidavit in support thereof and decided to extend the validity of the writ for twelve months. Taking into consideration the relevant facts and in particular the fact that service of the writ was effected on 28/1/76, within the period of twelve months after its expiration, I consider the mistake as a mere irregularity which can be rectified without injustice by amending the order of the 10/11/75 so that paragraph 1 thereof to read, "It is hereby ordered that the validity of the writ of summons be extended for twelve months as from 28/3/75", and an order is made accordingly.

Lastly, what remains to be considered is the second submission of counsel for applicants, that the discretion of the Court was wrongly exercised in granting the order for the extension of the validity of the writ.

Order 6, rule 8, with which we are concerned in the present application, was largely taken from the former Order 8, and in part from the former Order 64, rule 7. It makes some verbal alterations, eg. the removal of the words in the former Order 8 rule 1, "if satisfied that reasonable efforts have been made to serve such defendant or for other good reasons"; but such alterations have not made any material change in the pre-existing law or practice relating to the renewal of a writ. In *Heaven* v. *Road and Rail Waggons Ltd.* [1965] 2 All E.R. 409, Megaw J. at page 414, had this to say about the above alterations:

"The discretion under R.S.C., Ord. 64, r.7, was in terms unlimited. I am unable to see, therefore, how an alteration in wording as between the old R.S.C., Ord. 8, r. 1, and the new R.S.C., Ord 6, r.8, can by itself operate to widen the discretion or to annul, or derogate from, the authority of what was said in *Sheldon's* case as to the exercise by the Court of that discretion. However, even if it were correct

to say, as counsel for the plaintiff contends, that the pre-existing authorities have to be treated as having interpreted R.S.C., Ord. 64, r.7, against the background of, or by reference to, the terms of the old R.S.C., Ord 8, r.1, I should still be unable to accept the argument that the alteration of wording between the old R.S.C., Ord. 8, r.1, and the new R.S.C., Ord. 6, r.8(2), can validly be said to have made any material change. What is said is this: the old R.S.C., Ord. 8, r.1, dealing; as I have said, only with applications for renewal (as it was then called) before the expiry of the twelve months, includes the words, 'if satisfied that reasonable efforts have been made to serve such defendant, or for other good reasons', but the new R.S.C., Ord. 6, r.8(2) contains no such words.

Assuming that I am wrong about the irrelevance of the words in the old R.S.C., Ord. 8, r.1, to the pre–1964 decisions on R.S.C., Ord. 64, r.7, I do not think that the removal of the words 'or for other good reasons' can be said to have increased the permissible scope of the distinction or to have impaired the authority of the earlier cases. That could only be the case if the Court in consequence now has authority to exercise its discretion otherwise that 'for good reasons'. That would be a remarkable proposition. No suggestion has been made nor, I think, could be made, that 'other good reasons' in the old R.S.C., Ord. 8, r.1, was in some way limited by some sort of application of the ejusdem generis rule, by reason of the collocation of that phrase with the preceeding words relating to reasonable efforts to effect service. The words 'or for other good reasons', then, did not operate to limit the discretion under the old R.S.C., Ord. 8, r.1. Their presence could not have been material to the decisions in *Battersby's* case or *Sheldon's* case. Their omission from the new R.S.C., Ord. 6, r.8, cannot affect the continuing authority of those cases, even if the wording of the old R.S.C., Ord. 8, r.1, was relevant at all to those decisions as to the discretion. I think that the omission was probably because the words omitted added nothing and subtracted nothing. They were surplusage."

So, the words in the former Order 8 rule 1 "or for other good

reasons" were surplusage, and their removal has not increased the permissible scope of the discretion of the Court to extend the validity of a writ nor impaired the authority of the earlier cases.

In the *Heaven's* case, *supra*, Megaw J., in expressing his opinion as to what are the exceptional circumstances justifying the renewal of a writ said at page 415 the following:

> " Exceptional cases, justifying a departure from the general rule, might well arise where there has been an agreement between the parties, express or implied, to defer service of the writ; or where the delay in the application to extend the validity of the writ has been induced, or contributed to, by the words or conduct of the defendant or his representatives; or perhaps where the defendant has evaded service or, for other reasons without the plaintiff's fault, could not have been served earlier even if the application had been made and granted earlier."

In the present case taking into consideration:

(i) that the defendant company could not be served with the writ of summons from its issue up to 17/4/75, when the Order for restoration to the Register of Companies was made by the District Court, and this was not due to any fault on the part of the plaintiff company, but on the contrary it was due to the non filing of the annual returns by the defendant,

(ii) that the plaintiff company took all reasonable steps to restore the defendant company to the Register of Companies,

(iii) that due to the Turkish Invasion and the occupation of Famagusta town by the Turkish Army, no service could be effected as the Registered office of the defendant company was in Famagusta town, and

(iv) that the claim of the plaintiff company could not be defeated by the Statute of limitations,

I hold the view that the discretion of this Court was rightly exercised in granting the order for the extension of the validity of the writ.

For all the above reasons the application to set aside the order of 10/11/75 is dismissed.

On the question of costs it is ordered that the costs of this application to be costs in cause but in no case against the respondent company.

Application dismissed. Order for costs as above.