[JACKSON, C.J., AND HALID, J.]

HENRY ALTENBURGER, *Appellant,*

v.

MOHAMMED EL TAGHOURI, *Respondent.*

(Civil Appeal No. 3738.)

Territorial Jurisdiction of District Courts—Residence—Courts of Justice Law, 1935, section 15 (1) (b)—Foreign Judgments (Reciprocal Enforcement) Law, 1935, section 6, sub-section 2 (a) (iv).

In March, 1942, the appellant shipped to Alexandria under a bill of lading a quantity of gypsum on the sailing vessel Badr, which belonged to the respondent and sailed under the Egyptian flag. The gypsum never arrived at its destination, and was presumed to have been jettisoned with other cargo when the vessel encountered rough weather on its journey. The appellant took out a writ against the respondent, as owner of the ship, claiming damages for loss of the gypsum. The writ was served on the respondent in March, 1943, while he was visiting Limassol on his sailing vessel.

It was held by the District Court of Limassol, in setting aside service of the writ, that the respondent was not subject to the jurisdiction of the Court, as he did not reside within the district of Limassol within the meaning of section 15 (1) (*b*) of the Courts of Justice Law, 1935.

Held : The English rule, that a Court in England has jurisdiction if, at the time of service of the writ, the defendant is present in England though not resident in any ordinary sense of the term, is repugnant to the reciprocity of the provisions of section 6, sub-section 2 (*a*) (iv) of the Foreign Judgments (Reciprocal Enforcement) Law, 1935, and cannot be applied in Cyprus.

Appeal from an order of the District Court of Limassol setting aside service of a writ of summons upon the respondent.

G. Rossides for the appellant.

P. Papaioannou for the respondent.

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

JACKSON, C.J. : This is an appeal against an order of the District Judge, Limassol, setting aside service of a writ of summons upon the respondent on the ground that, at the time of service, the respondent did not reside within the District of Limassol within the meaning of section 15 (1) (*b*) of the Courts of Justice Law, 1935.

It appears from the respondent's affidavit that he is an Egyptian subject ordinarily resident at Damiette in Egypt and the owner of a sailing vessel, " Badr ", sailing under the Egyptian flag. On the 14th March, 1942, this vessel took on board at Limassol a quantity of about 20 tons of ground gypsum, the property of the appellant, for shipment to Alexandria under a bill of lading. The vessel encountered rough weather on her voyage to Alexandria and when she had passed beyond the territorial waters of Cyprus some cargo was jettisoned. The gypsum was presumed to be among the cargo jettisoned and never arrived at its destination,

A year later, in March, 1943, the respondent visited Limassol in his sailing vessel and while there was served with a writ of summons in an action claiming damages for the loss of the gypsum.

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When the respondent visited Limassol in his vessel in March, 1943, he said that he arrived on the 8th. The date of his affidavit is the 17th and in it he said that he was leaving " very shortly ", but the actual duration of his visit is not disclosed. He said that he slept on board his vessel.

At the hearing of the respondent's application to set aside service of the writ the argument turned only on the question of residence and it was not contended for the appellant that the respondent carried on business in the Limassol District or anywhere in Cyprus.

The District Judge, in giving his reasons for his order setting aside service of the writ, mentioned the case of *Auxentios* and *Pelavakis*, which was decided in 1910, (IX C.L.R., p. 86) and observed that before the enactment of the Courts of Justice Law, 1935, the English rule on the point at issue was followed " to some extent ". He referred, of course, to the rule by which, in an action *in personam* a Court in England is held to have jurisdiction if, at the time of service of the writ, the defendant is present in England though not resident there in any ordinary sense of that term. (Dicey's " Conflict of Laws ", 5th Edition, p. 228). But the judge apparently considered that some change had been made by the Courts of Justice Law of 1935 in regard to the sort of residence on the part of a defendant that is necessary to establish jurisdiction in a District Court. Accordingly he seemed to think that, in interpreting the word " residence " as used in that law, he was not bound by the decision in the earlier case that he had quoted. The same proposition was maintained on behalf of the respondent before us.

We cannot agree with that proposition. We can see no reason to think that the word " residence ", when used in the Law of 1935 to determine the jurisdiction of a District Court over a defendant, had not precisely the same meaning that it had when used for the same purpose in Order II, r. 2, of the Rules of Court of 1886 and in the identical Order II, r. 2, of the Rules of Court of 1927.

But it is necessary to consider the case of *Auxentios* and *Pelavakis* to which the District Judge referred. That case does not stand alone, for a very similar question had been decided a year earlier by the same two judges in the case of *Mouzouri* v. *Kissonerghi* (C.L.R. IV, p. 1). There were certain facts in those cases which differ from the facts in the case before us. In the later case, at any rate there was considerably stronger evidence of residence on the part of the defendant. In the earlier case the extent of the defendant's residence does not appear from the report, though it seems that he was only temporarily in Cyprus on a visit. In the earlier case both parties were Cypriot-born Ottoman subjects and at that time Cyprus was within the Ottoman dominions. In both cases the District Court was held to have jurisdiction. It is not entirely clear from the judgments in those cases that in either of them the learned Chief Justice relied on the English rule to support his decision. But it seems evident from Mr. Justice Bertram's judgment in each of these cases that he, at any rate, was fully prepared to apply the English rule to the circumstances before him.

The primary purpose of the definition of the territorial jurisdiction of District Courts, either in the Rules of Court of 1886 and 1927 or in the Law of 1935, was no doubt to determine the jurisdiction of those Courts as between themselves. But the

question raised in both the cases we have quoted was not in which of two District Courts jurisdiction resided, but whether or not jurisdiction resided in any Cyprus Court. The learned judge apparently felt himself free to apply the English rule to determine the latter question. There could have been no justification for applying it to determine the former. We do not feel called upon to express any opinion as to whether, in the state of the law as it was when those cases were decided, the learned judge was right or wrong, for we have a later enactment to consider. We do not refer to the Courts of Justice Law, 1935, for we have already said that, in our view, no change in the law on the point in issue was made by that enactment. We refer to the Foreign Judgments (Reciprocal Enforcement) Law, passed earlier in the same year.

It seems to us that the Law last mentioned affects the position for the following reasons. English Courts concede the same jurisdiction to foreign Courts, over persons temporarily in foreign territory, that they claim for themselves under the rule to which we have referred. In the case of *Carrick* v. *Hancock* (1895, 12 T.L.R., 59) it was decided that a defendant temporarily present in a foreign country is amenable to the jurisdiction of its Courts, so as to be bound by their judgment, and the English Courts will enforce a judgment so obtained. In his judgment in that case Lord Russel of Killowen said that the question of the time for which the defendant was actually on the foreign territory was wholly immaterial.

Accordingly, if we applied the English rule to give jurisdiction to a Cyprus Court over a defendant who was in no sense resident in Cyprus but was simply present here, no matter for how short a time, we would be obliged, by the same rule, to concede the same jurisdiction to the Courts of a foreign country. Consequently we would be obliged to enforce in Cyprus a judgment given against a Cypriot by a foreign Court in the same circumstances. Yet if we sought to do so we would now be met by the provisions of section 6 of the Foreign Judgments (Reciprocal Enforcement) Law, 1935. That section provides, in effect, that the Cyprus Court must decline to enforce the judgment of the foreign Court if the Cyprus Court is satisfied that the foreign Court had no jurisdiction. The section further provides, in sub-section (2) (*a*) (iv), that the foreign Court shall be deemed to have had jurisdiction in an action *in personam* if, among other conditions, the defendant was, at the time when the proceedings were instituted, resident in the foreign country. In view of that express provision it would not seem possible, in our opinion, to apply the English rule to determine whether or not a foreign Court had jurisdiction and to hold that it had if the defendant, when served with process, had been merely present in the foreign country, no matter for how short a time, though he was not resident there in any ordinary sense of that term. If, therefore, we cannot apply the English rule to confer jurisdiction on a foreign Court, how can we invoke it to confer jurisdiction on our own Court? We do not think we can. The English rule applies in England equally in both directions. We cannot apply it in one direction and we do not think, therefore, that we should attempt to apply it in the other, particularly when our law makes residence by a defendant an essential condition in both cases to establish the jurisdiction of a Court.

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For these reasons we feel obliged to determine this appeal according to whether the respondent, at the time of service of the writ, can or cannot be said to have been resident in the Limassol District within the meaning of section 15 (1) (*b*) of the Cyprus Courts of Justice Law, 1935. We think that, in the circumstances that we set out at the beginning of our judgment, the answer is clear. It was not contended by the appellant that the respondent was resident in the Limassol District in that sense. The appellant relied solely on the application of the English rule and on the mere presence of the respondent in Limassol when he was served with the writ. We have said that, in our opinion, the English rule cannot be applied and we feel no doubt that the respondent, at the time when he was served with the writ, was not resident in the Limassol District within the meaning of the Law that we have quoted.

We think, therefore, that this appeal must be dismissed with costs.