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

(October 9, 1951)

D. de CIAVES, *Appellant*,

v.

PHOTIOS AGROTIS, *Respondent*.

(*Civil Appeal No.* 3861)

Jurisdiction—Breach of Contract—Cause of Action arising wholly or in part within the district. Courts of Justice Law, Cap. 11, *section* 15 (1) (*a*).

The appellant, a merchant of Alexandria and an exporter of glassware, had an agent in Nicosia for obtaining orders from Cyprus. The agent had no power to accept orders without transmitting them to the appellant who would notify him as to whether they were accepted or not. The name of the appellant as principal was not disclosed. In accordance with this practice the respondent gave the appellant's agent an order for a quantity of glassware. The appellant's acceptance of the order was communicated to respondent by appellant's agent in Nicosia and the glassware delivered to the respondent in Nicosia. On delivery it was found to be different from that ordered, and was consequently rejected by the respondent, who then brought this action against the appellant claiming damages for breach of contract.

The appellant contended that the District Court had no jurisdiction. The respondent relied on section 15 (1) (*a*) of the Courts of Justice Law, Cap. 11, which gives jurisdiction to the Court when a cause of action arises wholly or in part within the district in which the Court is established. The District Court held that it had jurisdiction.

Held: that the contract was made in Nicosia through an agent acting on behalf of the appellant in Alexandria and was consequently within the jurisdiction of the Nicosia District Court by virtue of section 15 (1) (*a*) of the Courts of Justice Law, Cap. 11.

Appeal dismissed.

G. N. Chryssafinis, K.C., with *G. Polyvion* for the appellant.

J. Clerides for the respondent.

The facts of the case sufficiently appear in the judgment of the Court which was delivered by the Chief Justice.

JACKSON, C.J.: This is an appeal from the decision of the Full District Court of Nicosia and raises the question of the jurisdiction of that Court to try a certain action in which an importer in Nicosia claims a sum of money from an exporter in Alexandria as damages for breach of contract. That is the only question to be determined and we are not now deciding upon the merits of the claim.

The District Court held that it had jurisdiction to entertain the claim under section 15 (1) (*a*) of the Courts of Justice Law (Cap. 11 in the Revised Edition of the Laws).

The material parts of that section read as follows :—

Section 15. "Every District Court shall . . . have original jurisdiction to hear and determine all actions . . . where—

(*a*) the cause of action has arisen either wholly or in part within the limits of the district in which the court is established."

The facts, in so far as it is necessary to state them for the purposes of this appeal, are as follows :—

The respondent, who is the plaintiff in the action, and to whom we shall refer by that description, is a merchant in Nicosia, dealing in glassware. The appellant, who is the defendant in the action, is a merchant in Alexandria and an exporter of glassware. The defendant has an agent in Nicosia who obtains orders from clients in Cyprus for specified articles of glassware and sends these orders to the defendant in Alexandria to be executed by him. The agent receives orders in Cyprus subject to their acceptance by the defendant in Alexandria. The agent cannot himself accept orders; he only transmits them. The printed form of order which the agent uses, and which was signed by the plaintiff in this case, gives the agent's name in print and states that the order is for a firm the name of which is left blank, and that the order is subject to the approval of "the factory or firm concerned." The intending purchaser accordingly knows that there is a principal and that the order is subject to his approval, but he does not know the principal's name. We were told by counsel for the defendant that this practice is followed deliberately by agents in order to prevent their clients from communicating directly with their principals.

The agent, having received an order from an intending purchaser in Cyprus transmits it to his principal in Alexandria, who informs the agent, in due course, whether the order is accepted or not. If it is accepted, the agent communicates the acceptance to the intending purchaser in Cyprus.

In accordance with that practice the plaintiff gave the defendant's agent in Nicosia an order for a quantity of glassware. The order produced in the District Court (we understand that there were two orders) is dated the 25th October, 1945. It specified the kinds and quantities of articles required and the price. It stated that they were to be delivered f.o.b. Alexandria and to be despatched in November or December of that year. The order also provided for payment by the plaintiff, against shipping documents, by confirmed irrevocable credit, at a bank.

The plaintiff was later notified verbally by the defendant's agent in Nicosia that his order had been accepted, and on shipment of the glassware f.o.b. Alexandria, payment was made to the defendant there under the confirmed credit opened by the plaintiff. In due course, a quantity of

glassware was delivered by the defendant's agent to the plaintiff in Nicosia and the plaintiff alleged that, on inspection by him, a large part of the glassware delivered was found to be of a different description from the articles ordered. He accordingly rejected that part of the glassware delivered and on the 25th September, 1946, he brought an action against the defendant in the District Court of Nicosia for damages for breach of contract.

The plaintiff was unable to effect personal service on the defendant, though he tried to do so, and he obtained the leave of the District Court, under rule 8 of Order 5 of the Rules of Court, to serve the writ on the defendant's agent in Nicosia, giving notice to the defendant in Alexandria as provided by that rule. In the District Court the appellant contended that he had not received the required notice but, after the institution of this appeal, it was discovered that he had received it and, as we have already said, the only question now remaining concerns the jurisdiction of the District Court to try the plaintiff's action under section 15 (1) (*a*) of the Courts of Justice Law, on the ground that the cause of action has arisen, partly at any rate, within the district of Nicosia.

The judgment of the District Court includes some observations on the references in O.5 *r.* 8 and O.6 *r.* 1 (*e*) of the Rules of Court to actions arising out of contracts made by or through agents residing or carrying on business in Cyprus on behalf of principals residing or carrying on business abroad. We do not take those observations of the trial court to mean that, in their opinion, a District Court is given by those rules any wider jurisdiction than it has under section 15 of the Courts of Justice Law. We shall therefore limit our own observations to the application of that section to the facts before us and to the question whether the cause of action in this case, quite apart from its merits, arose partly at any rate within the district of Nicosia.

The English Authorities on the question of where a cause of action can be said to have arisen were fully put before us by Mr. G. N. Chryssafinis, who appeared for the appellant, and drew our attention, not only to those cases which might appear to support his client's contention, but also to others which might seem to lead to another opinion, but which he thought we should take into consideration in order to arrive at a correct conclusion. We wish to record our appreciation of the view which Mr. Chryssafinis took of his duty in this case. It entirely accords with opinions expressed by an eminent Scottish authority, Lord Macmillan, and confirmed by an English Lord Chancellor, Lord Birkenhead. Those opinions will be found in a lecture on "The Ethics of Advocacy" printed in a book by Lord Macmillan, "The Law and Other Things", which has recently been added to our library.

Mr. Chryssafinis spoke first, and without knowing what his opponent, Mr. Clerides, was going to say. We need hardly add that when it came to Mr. Clerides' turn, there was nothing wanting in his presentation of the argument for his client.

Some of the authorities quoted to us can be distinguished from the present case. In the case of *Malek* v. *Narodni Banka*, for example, (A.E.R. 1946 vol. 2, 663) an application was made for service out of the jurisdiction on the ground that a breach of a contract made outside the jurisdiction had been committed within it. The application was made under O.11 *r.* 1 (*e*) of the English Rules and was refused on the ground that there had been no breach of the contract within the jurisdiction. The corresponding provision in the Cyprus Rules is contained in the concluding paragraph of Order 6 *r.* 1. But in this case the plaintiff's allegation is not that a breach of his contract was committed within the jurisdiction, for it was agreed by both sides that the breach, if there was one, was committed in Alexandria by the shipping of the wrong goods f.o.b. there. In this case one, at any rate, of the plaintiff's arguments is that the contract itself was made in Cyprus through an agent in Cyprus on behalf of a principal abroad and that part of the cause of action consequently arose in Cyprus.

In the case of *George Monro Ltd.* v. *The American Cuanamid and Chemical Corporation* (A.E.R. 1944, Vol. 1, 386), the question was whether a tort had been committed within the jurisdiction and the point arose under the English Rule which corresponds to O. 6 *r.* 1 (*f*) of our rules.

Several of the other cases quoted to us are equally distinguishable from the present case on various grounds.

It will be more directly helpful to turn to English authority for guidance as to the meaning of the phrase " cause of action " as used in section 15 of the Courts of Justice Law.

The case of *Cook* v. *Gill* (L. J. 1876, Vol. 42, p. 98) concerned the jurisdiction of the Mayor's Court in London. All the three judges in that case considered it to be settled law that, the Mayor's Court, being an inferior court, could only have jurisdiction in cases in which the whole cause of action had arisen within its jurisdiction. The position of a District Court is different by reason of the express provision of sec. 15 of the Courts of Justice Law by which, as we have said, jurisdiction is given to the Court " where the cause of action has arisen wholly or in part " within its district. But the English case is helpful because it contains, in the judgment of Mr. Justice Brett, who afterwards became Lord Esher, an interpretation of the phrase " cause of action " in relation to a rule that the cause of action must arise within the jurisdiction of a particular court. That interpretation was repeated in the House of Lords by the same judge, then Lord Esher, fifteen years

later, in the case of *Read* v. *Brown* (L.R. 1888, 22, Q.B.D. 128, C.A.) and it has been followed by other judges since then. It was expressed as follows :—

> " Now what is the meaning of ' cause of action ' within that rule ? It seems to me that it means every material fact which is necessary for the plaintiffs to prove in order to succeed in their action, that is, every fact which a defendant might traverse, must arise within the jurisdiction of the Court."

In this case there can be no doubt that the contract between the parties is a material fact which the plaintiff must prove in order to succeed in his action, and if that contract was made in the Nicosia district, there seems to us to be no escape from the conclusion that part of the cause of action arose within the jurisdiction of the District Court.

The plaintiff's order for glassware was given to the defendant's agent in Nicosia, subject to the defendant's approval, and the defendant's acceptance of that order was communicated verbally to the plaintiff in Nicosia by the defendant's agent. No communication passed directly between the plaintiff and the defendant, either by post or in any other way, at any time prior to the conclusion of the contract, or before the glassware had been delivered to the plaintiff by the defendant's agent in supposed execution of the order. The plaintiff had, indeed, no knowledge of the defendant's identity up to that time.

In these circumstances it seems to us impossible to take any other view than that the contract was made in Nicosia through an agent acting on behalf of the defendant in Alexandria. We think, therefore, that part of the cause of action arose within the jurisdiction of the District Court and that the court consequently has jurisdiction, under sec. 15 of the Courts of Justice Law, to try the case.

The District Court took the same view and referred to section 4 of the Contract Law (Cap. 192 in the Revised Edition of the Laws) in support of it.

The District Court seems to have considered that another part of the cause of action, in addition to the making of the contract on which the action was brought, had also occurred within their district. It was not disputed for the defendant that the contract gave the plaintiff a right of inspection in Cyprus when the goods were delivered to him and a right of rejection if they were not in accordance with his order. The District Court seems to have considered that the plaintiff's inspection of the glassware in Nicosia, and the discrepancy then discovered between part of it and the goods specified in his order, were facts which he would have to prove in order to succeed in his claim, and that it could consequently be said, on this ground also, that the Court had jurisdiction to try the case. The essential fact to be proved was, of course, the breach of the

contract which was committed in Alexandria. What occurred in Cyprus provided the evidence by which it was intended to prove that breach and the measure of the damages resulting from it. (See the judgment of Lord Esher, M.R. in the case of *Read & Brown*, already cited.) We do not say we think the District Court was wrong in that particular opinion. But we ourselves express none. We think it unnecessary to go further than to say that, in our view, the contract was made in Nicosia through an agent acting on behalf of the defendant in Alexandria and that, for that reason alone, the District Court has jurisdiction in the case.

This appeal must therefore be dismissed with costs.

[LORD MERTON OF HENRYTON, LORD REID AND LORD TUCKER.]

(December 5, 1951.)

THRASYVOULOS IOANNOU AND OTHERS,

Appellants,

v.

PAPA CHRISTOFOROS DEMETRIOU AND OTHERS,

Respondents.

ON APPEAL FROM THE SUPREME COURT OF CYPRUS.

(*Privy Council Appeal No.* 46 *of* 1950.)

Evidence—Admissibility—" Public document "—Definition.

A document which is brought into existence as a result of a survey, inquiry or inquisition carried out or held under lawful authority is not admissible in evidence as a " public document " unless the inquiry was a judicial or quasi-judicial inquiry and the document is not only available for public inspection, but was brought into existence for that very purpose.

The dictum of Lord Blackburn in *Sturla* v. *Freccia* (1880) 5 App. Cas. 623, 643, contains an authoritative statement of the law as to the admissibility in evidence of that class of document.

Dictum of Lord Goddard C.J. in *Lilley* v. *Pettit* (1946) K.B. 401, 406, approved.

The statements in a document tendered in evidence as a public document should be statements with regard to matters which it was the duty of the public officer holding the inquiry to inquire into and report on : *Nothard* v. *Pepper* (1864) 17 C.B.N.S. 39, 49, 52 ; *Attorney-General* v. *Antrobus* (1905) 2 Ch. 188, 194.

The mere existence of a file containing one or more documents of a similar nature dealing with the same or a kindred subject-matter does not necessarily make the contents of the file a " continuous record " within the meaning of section 4 of the Evidence Act (Law 14 of 1946) of Cyprus (which corresponds with the provisions of section 1 and section 6 (2) of the English Evidence Act, 1938).