1957
Oct. 8,
Dec. 3

WESTCOTT & LAWRENCE LINE,
Appellants,

AND

THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND TOWNSMEN OF LIMASSOL,
Respondents.

(*Civil Appeal No.* 4229).

WESTCOTT & LAWRENCE LINE v. THE MAYOR, DEPUTY MAYOR, COUNCILLORS AND TOWNSMEN OF LIMASSOL.

Practice—Civil Procedure—Service of Writ of Summons on Foreign Company—Service on Agent—English Rules of the Supreme Court, Order 9, *rule* 8—*Civil Procedure Rules, Order* 5, *rule* 7.

An action was instituted in the District Court of Limassol against the appellants, a foreign company incorporated in London. The said company was not registered in Cyprus as an overseas corporation under the provisions of the Companies Law, 1951, nor did it have an established place of business in Cyprus, and service of the writ was effected on the director of " A.A. Ltd.," a company registered in Cyprus, as a " person in Cyprus who appeared to be authorised to transact business for the company in Cyprus", under the provisions of Order 5, rule 7, of the Civil Procedure Rules.

" A.A. Ltd." acted for about five years as agents for the appellant foreign company. Beyond the ordinary duties of ship agents, such as the booking of freight, the issue of passenger tickets, and the handling of ships coming into port, " A.A. Ltd." transacted no business and had no authority to transact business or enter into contracts on behalf of the appellant company. The freight rates and the passenger fares were fixed by the appellant company, and the bills of lading and passenger tickets were supplied to " A.A. Ltd." on forms prepared by the appellant company and printed in England. Such bills of lading and passenger tickets were invariably signed by " A.A. Ltd." as agents only, and they constituted or evidenced contracts with the appellant company.

It was not in dispute that the foreign company (appellants) did not carry on business in Cyprus in such a way as to be regarded as resident within the jurisdiction.

Held : (1) that the great similarity between the English Rules of the Supreme Court and the Cyprus Civil Procedure Rules indicated forcibly that the underlying principles in both sets of rules were similar, and, unless an express provision or the context led to a contrary view, in interpreting the Cyprus Civil Procedure Rules, preference should be given to a construction more consonant with the corresponding English Rules of the Supreme Court ;

(2) that the words "any person in Cyprus who appears to be authorised", in Order 5, rule 7, meant "a person who is obviously or manifestly authorised to transact business etc.;" and that the words "to transact business" in the same rule meant nothing more and nothing less than "carrying on business";

(3) that Order 9, rule 8, of the English Rules of Supreme Court, in its judicially interpreted and enlarged form, was substantially similar to our Order 5, rule 7, and, since both rules in material parts were in *pari materia*, the English authorities were necessarily binding on the Cyprus Courts:

(4) that the dominant factor in the English authorities was the nature and character of the authority of the local agent conferred on him by his foreign principal corporation. If the authority exercised by the agent was so extensive as to justify one to hold that the foreign principal was for the purpose of service resident in the country of the agent and therefore amenable to the jurisdiction of such country, then the service of a writ of summons or other legal process on the agent for his principal would be considered good; and

(5) that the service of the writ in the present case on the local agent was bad and ought to be set aside.

Appeal allowed.

[**Editor's Note:** An appeal by the respondents from the judgment of the Supreme Court of Cyprus is pending before the Judicial Committee of the Privy Council.

Cases referred to:

(1) *Hercules* v. *Grand Trunk Pacific Railway* (1912) 1 K.B. 227.
(2) *R.* v. *Theori and Solomou* (1902) 6 C.L.R. 14.
(3) *R.* v. *Mallow Union* 12 Ir. C.L.R. 35.
(4) *Sullivan* v. *Mitcalfe* 49 L.J. 815.
(5) *Newby* v. *Von Oppen and others* (1872) 41 L.J. 148; L.R. 7 Q.B. 293.
(6) *Okura and Co., Ltd.* v. *Forsbacka Jernverks Actiebolag* (1914) 83 L.J. 561.
(7) *The Princess Clementine* (1897) P.D. 18.
(8) *The Lalandia* (1933) 49 T.L.R. 69; (1933) L.R.P.D. 63.
(9) *The "Holstein"* (1936) 2 All E.R. 1660.
(10) *Grant* v. *Anderson and Co.* (1892) 1 Q.B. 112.
(11 *R.* v. *Schintz* (1926) Ch. 716.
(12) *George Monro Ltd.*, v. *American Cyanamid and Chemical Corporation* (1944) 1 K.B. 437.
(13) *Dunlop Pneumatic, etc.* v. *Actien Gesellschaft, etc.* (1902) 1 K.B. 342, C.A.

Appeal.

The appellants appealed against the order of the President of the District Court of Limassol (Zenon P.D.C.), reversing the ruling of the Magistrate, by which he set aside the service of the writ of summons as bad, in an action instituted against the appellants (Action No. 1639/55).

G. Cacoyannis for the appellants.

Chr. Demetriades for the respondents.

The facts of this case sufficiently appear in the judgment of the Court which was delivered by :—

ZEKIA J.: This is an appeal from an order of the President's Court, Limassol, reversing the ruling of the Magistrate who set aside the service of the writ of summons as bad, in an action brought against the appellants. The service was made by leaving a copy of the writ with the director of the Associated Agencies Ltd., Limassol, as the local representative of the appellants.

The subject-matter of the action is this : that the defendant corporation during the year 1954 carried on business for profit as shippers within the Municipal limits of Limassol without having obtained or paid for a licence required under the Municipal Corporations Law. The Municipal Council acting under their powers determined the sum of £50 as fee payable by appellants in respect of the registration of the required trade licence. Appellants having refused to pay this sum, respondents instituted the present action against the appellants.

Appellants (defendants) are a foreign or (more appropriately) an overseas corporation incorporated in London. Section 351 of the Companies Law, 1951, contained provisions as to the service of process or notice on an overseas company but, as the defendant corporation in this case did not register in Cyprus and has not established a place of business in this country, the mode of service provided by section 351 was not available. The service on the Associated Agencies Limited is purported to have been made under O. 5 r. 7 of the Civil Procedure Rules, the Associated Agencies Ltd. or its director having been considered as a person in Cyprus who appears to be authorised to transact business for the defendant corporation in Cyprus. Rule 7 reads as follows :

"7. In the absence of any statutory provision regulating service of process upon a corporate body, service of an office copy of a writ of summons or other process on the president or other head officer, or on the treasurer or secretary of such body, or delivery of such copy at the office of such body, shall be deemed good service ; and in the case of any company not formed in Cyprus, the copy may be left at its place of business in Cyprus, or if there is no such place, with any person in Cyprus who appears to be authorized to transact business for the company in Cyprus, and such leaving of the copy shall be deemed good service unless the Court or a Judge otherwise orders. And where by any law provision is made for the service of any writ of

summons or other process on any corporate body or any society or fellowship or any body or number of persons, corporate, or unincorporate, the service of the office copy of a writ may be effected accordingly."

The legality of the service of the writ of summons upon the defendant corporation by delivering the same to the Cyprus company depends as to whether the director of the company with whom the sealed copy of the writ was left by the process-server in Limassol *is a person who appears to be authorized to transact business for the defendant corporation in Cyprus or not*, and the present case, therefore, stands or falls on the interpretation of the part quoted from O. 5 r. 7 of the Civil Procedure Rules. Undoubtedly, the corresponding English Rule, O. 9 r. 8 of the Rules of the Supreme Court of 1883, is not similarly worded. The latter does not specifically refer to service on the companies formed outside the U.K. and which have no place of business within the country and, furthermore, the English Rule does not expressly provide for service on a person who appears to be authorized to transact business for an overseas company within the U.K. It appears, however, that the main part of the Rules of the Supreme Court of 1883 and the preceding procedural rules, especially those relating to process service within and out of jurisdiction, were, with certain modifications and exceptions, based on Common Law. Under Common Law doctrine a writ could never be served on a defendant out of England especially in actions *in personam*. O. 9. r. 8 and its prototype were expounded judicially (by a long line of decided cases) as providing mode of service on agents residing within jurisdiction for their principals, corporations formed out of jurisdiction. The scope of the rule was enlarged without it being redrafted as Buckley, L.J. said :

> " In O. 9. r. 8 which relates to service upon corporations, there is no such expression as ' reside ' or ' carry on business.' Those are expressions found in judgments which have dealt with this subject." (*Hercules* v. *Grand Trunk Pacific Railway* (1912) 1 K.B. 227).

It is apparent, however, that throughout this line of cases, while a practice or system of process service on the local agent of foreign corporations for actions brought against the latter was being evolved, care was taken neither to offend the letter of O. 9 r. 8 nor the underlying principle of Common Law we have just referred to. On the other hand, the greater part of our Civil Procedure Rules are almost identical with the corresponding English Rules of the Supreme Court and by section 35 of the Courts of Justice Law, in default of any provisions in our Civil Procedure Rules, the practice and procedure prevailing in the Courts in England shall be observed. The great similarity between the two sets of Rules of Court indicates

forcibly that the underlying principles in both sets are similar and, unless an express provision or the context leads to a contrary view, in interpreting our Rules of Court preference should be given to a construction more consonant to the corresponding English Rules of the Supreme Court. In *R.* v. *Theori* (1902) 6 C.L.R. 14 it was held that :—

> " the Cyprus Courts of Justice Order, 1882, to a great extent was based on English practice and in seeking to determine what was the intention of the enacting power, where it is not clearly expressed, regard should be had to the rules in force in England in regard to the matter in question."

That our Civil Procedure Rules follow to a very great extent the English model cannot be disputed. For instance O. 5 r. 8 and O. 6 r. 1 are almost identical with the corresponding English O. 9 r. 8, and O. 11 r. 1. The two instanced rules are closely related to the rule under consideration. O. 5 r. 7 deals in part with service of a writ of summons on a local agent within jurisdiction for his principal company formed outside Cyprus. O. 5 r. 8 deals likewise with service of a writ of summons on a local agent within jurisdiction, for the principal out of Cyprus in respect of actions arising out of contracts entered by the principal through the local agent. O. 6 r. 1 (*e*) (ii) deals with service out of jurisdiction in respect of action arising by a contract entered into through a local agent for a principal trading or residing outside Cyprus. In *R.* v. *Mallow Union* 12 Ir. C.L.R. 35 it was stated :

> " It is the most natural and genuine exposition of a statute to construe one part by another for that best expresses the meaning of the makers."

Another rule of construction is that " when from the provision contained in a statute it is clear that a restriction must be put upon the ordinary and literal signification of some word or expression and it is uncertain from anything to be found in the act itself or in the circumstances judicially cognisable under which the provision was inserted, what the exact character and extent of that restriction is, it is the duty of the Court to put no greater restriction than the nature of the provision and the subject-matter to which it relates necessarily imposed." (*Sullivan* v. *Mitcalfe* 49 L.J., 815.)

From both judgments of the lower Courts, it is clear that there is agreement on one point, namely, the service of the writ of summons in question in the particular circumstances of the case would have been bad under O. 9 r. 8 in England in the light of English authorities.

In other words, both Courts agree, at any rate in effect, that the defendant corporation does not carry on business in Cyprus in such a way as to be regarded as resident in the Island.

The learned President, however, finds that O. 5 r. 7 is more liberal than the corresponding English rule and the service of a writ of summons or other process can be effected in Cyprus by leaving the same on the local representative of a foreign corporation although such a mode of service would have been ruled bad under the corresponding English rule in England. We quote the relevant passage from his judgment:—

> "As I have already said, to my mind our Rule is much more liberal than the English Rule ..... and it is not necessary, therefore, for the plaintiffs to prove that the defendant company does carry on business in such a way as to be considered as resident within the jurisdiction, or as domiciled within the jurisdiction. It is sufficient for the purpose of service only that the writ is served on a person who appears to be authorized to transact such business."

Independently of what both the learned Magistrate and the learned President had agreed upon, it is obvious from paragraphs 2 and 3 of the affidavit—the contents of which are not disputed—sworn by the director of the Associated Agencies that the authority of this local agent was neither wider in scope nor different in character from the authorities of those agents sought to be served in England by writs of summons on behalf of their principal foreign corporations in cases cited to us, *e.g. Newby* v. *Von Oppen and others* (1872) 41 L.J., 148, *The Okura* (1914) 83 L.J., 561, *The Princess Clementine* (1897) P.D., 18, *The Lalandia* (1933) L.R., P.D. 63 and *The "Holstein"* (1936) 2 All E.R. 1660.

We give hereunder the paragraphs appearing in the affidavit just referred to:

> "2. Messrs. Westcott & Lawrence Line Limited, the defendants in this action, are a foreign corporation carrying on business in London. They have no residence, office, or place of business registered or otherwise in Limassol.
>
> 3. The Associated Agencies Limited are ship agents and carry on the business of freight and passenger agents in Limassol and other towns in Cyprus. In the course of this business the said company act and have acted for about five years as agents for the defendants.

" Beyond the ordinary duties of ship agents, such as the booking of freight, the issue of passenger tickets, and the handling of ships coming into port, our company transacts no business and has no authority to transact business or enter into contracts on behalf of the defendants or any other company. The rates of freight and the passenger fares are fixed by the defendants. Bills of lading and passenger tickets are supplied to our company on forms prepared by the defendants and printed in England. Such bills of lading and passenger tickets are invariably signed by our company as agents only and they constitute or evidence contracts only with the defendants."

The only point in issue, therefore, is, as we have indicated in the outset of our judgment, whether the director of the local company was the person authorized to transact business for the appellant corporation in Cyprus within the meaning of O. 5 r. 7 of the Civil Procedure Rules. We spoke already of the similarity of the underlying principles of our Rules of Court and of the English Rules of the Supreme Court. Since, as a matter of construction, it is relevant and indeed material to consider the nature of other rules, closely connected with the one in hand, it may not be amiss if we quote remarks from authorities relating to such other rules. Lord Coleridge in *Grant* v. *Anderson & Co.* (1892) 1 Q.B.D. 112 in dealing with O.38 (*a*) r. 3 in connection with service on an agent for a defendant foreign company remarked :

" I think it must be taken that it was intended in these rules to accept the decision in *Russell* v. *Cambefort*, a decision which rested upon certain broad principles of international comity, which in questions of jurisdiction must always be assumed to underlie the rules of Court or the enactments of Parliament itself; for although no doubt Parliament, or the Judges framing rules of Court under the authority of Parliament, might, if they chose, give the Courts of this country jurisdiction over foreigners, it must always be assumed, in the absence of express words to that effect, that they did not intend to do so."

In construing O. 11 r. 1 of the Rules of the Supreme Court (counterpart of O. 6 r. 1 of the Civil Procedure Rules) in a number of cases it was emphasized that the Court ought to be exceedingly careful before it allows a writ to be served on a foreigner out of England. For instance, Lord Hanworth, M.R., in *R.* v. *Schintz* (1926) Ch. 716, adopted the statement of Pearson J. in a former case :

" ' It becomes a very serious question, and ought always to be considered a very serious question, whether or not, even in a case like that, it is necessary

for the jurisdiction of the Court to be invoked, and whether this Court ought to put a foreigner, who owes no allegiance here, to the inconvenience and annoyance of being brought to contest his rights in this country, and I for one say, most distinctly, that I think this court ought to be exceedingly careful before it allows a writ to be served out of the jurisdiction.' That is the first rule. The second is that 'if on the construction of any of the subheads of Order XI there was any doubt, it ought to be resolved in favour of the foreigner;' and the third rule is that, 'inasmuch as the application is made *ex parte*, full and fair disclosure is necessary, as in all *ex parte* applications.' "

Scott L.J., in *George Monro Ltd.*, v. *American Cyanamid and Chemical Corporation* (1944) 1 K.B. 437, stated :

> " Service out of the jurisdiction at the instance of our Courts is necessarily *prima facie* an interference with the exclusive jurisdiction of the sovereignty of the foreign country where service is to be effected. I have known many continental lawyers of different nations in the past criticize very strongly our law about service out of the jurisdiction. As a matter of international comity it seems to me important to make sure that no such service shall be allowed unless it is clearly within both the letter and the spirit of Or. XI."

Obviously the remarks quoted related to service out of jurisdiction and where leave of the Judge has to be obtained before such service can be allowed.

The memorandum concerning O. 9 r. 8A of the Rules of the Supreme Court published in December, 1920, reads :

> " The power of serving an agent given by this rule is one that must be exercised with very great caution. It was not at all intended by the rule to do away with service out of the jurisdiction in ordinary cases. The power to make an order under the rule is discretionary, and except under exceptional circumstances, it ought not to be exercised in cases where there is no difficulty in getting an order for and effecting service out of the jurisdiction in the ordinary way. An order should not be made under the rule merely because the defendant has contracted by or through an agent in this country."

Further down in the memorandum it is stated :

> " An important factor may be whether the agent in question is a general agent or what may be called a casual agent, *e.g.* :
>
> (i) a foreign firm may have regular agents here doing large business for them. It might be highly proper to allow service in such a case where, although the principals could be served, delay and trouble would be thereby occasioned."

O. 5 r. 7 also places the power, to serve a local agent who appears to be authorized to transact business for his foreign principal, under judicial direction. The words " unless the Court or Judge otherwise orders " follow part of the rule under review. Service of a writ of summons or other legal process is bound up with the question of jurisdiction.

We read from Dicey's Conflict of Laws, p. 172, 6th Edition :

> " Every action in the High Court now commences with the issue of a writ of summons, which is in effect a written command from the Crown to the defendant to enter an appearance in the action ; and the service of the writ, or something equivalent thereto, is absolutely essential as the foundation of the court's jurisdiction. Where a writ cannot legally be served upon a defendant, the Court can exercise no jurisdiction over him. In an action *in personam* the converse of this statement holds good, and wherever a defendant can be legally served with a writ, there the Court, on service being effected, has jurisdiction to entertain an action against him. Hence, in an action *in personam*, the rules as to the legal service of a writ define the limits of the court's jurisdiction."

Let us consider from close quarters the meaning and scope of the phrase " that any person in Cyprus who appears to be authorized to transact business for the Company in Cyprus " which occurs in O. 5 r. 7. The words " appears to be authorized " were indeed introduced in the present Civil Procedure Rules and are not to be found in the 1886 Rules of Court, the prototype of the Civil Procedure Rules ; surely the words " a person who appears to be authorized " do not in its context mean " person who has the semblance or appearance of an authorized agent." In our view it can only mean " a person who is obviously or manifestly authorized to transact business etc." To hold otherwise is to ignore the seriousness and importance attached by courts to such matters which involve the exercise of extra-territorial jurisdiction by courts.

The remaining words are " to transact business for a foreign company in Cyprus." The words " transact business " in its context in our opinion mean nothing more and nothing less than " carrying on business." In the Shorter Oxford Dictionary, Vol. 2, 2nd Edition, p. 229 " transact " is given as meaning " now esp. to carry on, do (business) ".

We see no reason to distinguish the phrase " to transact business " from " carrying on business." What then either of these phrases connote ? The meaning attached to the words " carrying on business " in relation to the service

of process under the relevant Rules of Court should hold equally good for the same purpose in respect of words "transact business."

Gorrell Barnes, J. in *Princess Clementine* (see *supra*) when dealing with the service of a writ on a local agent for a principal foreign corporation under O. 9 r. 8 of the Rules of the Supreme Court, says:

> "In a popular sense, no doubt, the business of the defendant corporation is carried on by the corporation in England, but I do not think that this is so in the eye of the law. It seems to me that the business carried on in this country is that of an agency for the defendant corporation, and that this agency is conducted by the firm of *Barr, Moering & Co.* It follows, therefore, that the person upon whom service was made was the servant of that firm, and not the servant of the corporation."

Is there any reason for us to depart from the line of cases decided on this subject? O. 9 r. 8 of the Rules of the Supreme Court, in its judicially interpreted and enlarged form, is substantially similar to our O. 5 r. 7 and since both rules in material parts are in *pari materia* the English authorities necessarily are binding on us.

The dominant factor in these cases is the nature and character of the authority of the local agent conferred on him by his foreign principal corporation. If the authority exercised by the agent is so extensive as to justify one, in the light of the principles authoritatively stated, to hold that the foreign principal of such agent is for the purpose of service resident in the country of the agent and therefore amenable to the jurisdiction of such country, then the service of a writ of summons or other legal process on the agent for his said principal will be considered good.

"Residence" is a concomitant of the "carrying on business." As Mathew L. J., said in the *Dunlop* case (1902) 1 K.B. 342:

> "A corporation can only reside anywhere in a figurative sense and for the purpose of service it must be taken to reside at the place where it carries on its business."

Rowel, L.J., said in the same case:

> "If for a substantial period of time business is carried on by a foreign corporation at a fixed place of business in this country, through some person, who there carries on the corporation's business as their representative and not merely his own independent business, then for that period the company must be considered as resident within the jurisdiction for the purpose of the service of the writ."

Phillimore, L.J., in the *Okura* case (1914) 83, L.J. 565 said :

> " The question therefore is whether the foreign corporation can be said to be ' here.' If ' here ' its officer can be served with a writ. But a foreign corporation may be both ' here ' and ' there ' . . . . . But a foreign corporation cannot be said to be ' here ' unless there are facts from which it can be inferred that, like an individual, it is residing here, and in the case of a trading corporation residence means the carrying on of its business."

In order to illustrate a bit further that the words " residence " and the " carrying on business " do not carry a different or separate import in relation to the service of a writ on a local agent under O. 9 r. 8, we read a short passage from the judgment of Sir Boyd Merriman, P. in *The Holstein* (1936) 2 All E.R. 1660 :

> " If the company are carrying on business here or are resident here, or, has been said for short in more than one case ' are here,' they can be served through these agents in Fenchurch Street. If not the writ is bad and the service is bad."

At page 1662 he continued :

> " One thing that is quite certain in this line of cases is that ultimately it is a question of fact whether a foreign corporation does or does not reside, carry on business, or exist in the United Kingdom. But of course, the decision has got to be arrived at with reference to known principles."

The object of dwelling at some length on this aspect of the subject is to demonstrate that the doctrine of " residence " in O. 9 r. 8 of the English Rules did not, as the learned President seems to have taken, impose an additional requirement to the " carrying on business " by an agent for rendering the service of a writ of summons on him for his foreign principal, valid. " Residence " is not something superimposed on the words " carrying on business " but it helps to illustrate the kind and extent of business required to be transacted by an agent for the purpose of service under the rule discussed. The fact that O. 9 r. 8 of the Rules of the Supreme Court was assimilated to the doctrine of residence did not change the character of the Rule and did not make it dissimilar to our Rule. Moreover this doctrine fits also with the Common Law principle which we mentioned earlier.

Apart from all these, surely it cannot be argued that any person authorized to transact some business relating in some way or other to a foreign corporation could be served with writs and other process for the foreign or overseas corporation. If this is the case, all tourist agencies,

ship brokers, without exception, will provide a place of service for their foreign principals and subject their principals to the jurisdiction of the Court in the country where such an agent or broker transacts such business. Such an interpretation would also defeat the object and operation of O. 5 r. 8 and O. 6 r. 1 (*e*) (iii). Anybody unable to make a case for service within and out of jurisdiction under these rules, will have recourse to O. 5 r. 7. Such a construction would be unreasonable and inconsistent with the letter and spirit of the other rules we touched upon. The fact that the exercise of this mode of service is controlled by Court's or Judge's direction shows that the phrase " any person in Cyprus who appears to be authorized to transact business for the company in Cyprus " should have its limitations and qualifications. The Judge or Court should for this reason have something to be guided by. There is no need to pass over the guiding principles given in English authorities on the subject. On the contrary, for reasons we have attempted to explain, such authorities are binding on us. We express no opinion as to the meaning of the words " carrying on business " appearing in Revenue Laws and other legislation. These words might as well have different meaning in a different setting and context.

Appeal allowed with costs. President's order set aside and the Magistrate's order restored.

Appeal allowed.
President's order set aside.
Magistrate's order restored.