

TYSER, C.J.
1906

[TYSER, C.J.]

Dec. 4

THE CYPRUS LEGISLATIVE COUNCIL ORDER, 1882,

AND

THE STATUTES OF THE IMPERIAL PARLIAMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND STYLED "THE PARLIAMENTARY ELECTIONS ACT, 1868, AND THE CORRUPT AND ILLEGAL PRACTICES PREVENTION ACTS, 1883 AND 1895."

BETWEEN

CHRISTODOULOS SOZOS,

Petitioner,

AND

SPYROS ARAOUZOS,

Respondent.

ELECTION PETITION—CYPRUS LEGISLATIVE COUNCIL ORDER, 1882, ART. 15—
APPLICATION OF ENGLISH LAW TO PROCEDURE—PERSONAL SIGNATURE.

An election petition must be signed by the Petitioner personally.

Under Art. 15 of the Cyprus Legislative Council Order, 1882, English law applies for the purpose of procedure, as well as for the trial of the substantial issues of the petition.

This was an election petition tried by the Chief Justice under the provisions of Art. 15 of the Cyprus Legislative Council Order, 1882.

On the 11th October, 1906, as the result of an election held on October 10th and 11th Kyrillos Papadopoulos, Metropolitan Bishop of Kitium, John Kyriakides, and Spyros Araouzos were returned as elected members of the Legislative Council for the Limassol-Paphos District.

On the 8th November, 1906, a petition was presented by one of the defeated candidates, Christodoulos Sozos, against the return of Spyros Araouzos on the ground of various corrupt practices alleged in the petition. Mr. Sozos did not himself sign the petition, being abroad, but telegraphed from Port-Said authorising John Kyriakides to sign on his behalf, and the petition was accordingly signed "Christodoulos Sozos, by his authorised agent, John Kyriakides."

The Respondent applied to set aside the petition on the ground that it was not signed by the Petitioner personally.

Rees Davies, K.A., for the Applicant.

Theodotou for the Petitioner.

Judgment: CHIEF JUSTICE: This is an application to set aside the petition on the ground that the petition is not signed by the Petitioner.

The petition is signed "Christodoulos Sozos by his authorised agent, John Kyriakides."

The King's Advocate contends that the petition must be signed by the Petitioner himself.

He says that the law in force in England is applicable to the adjudication of this matter and that by the English law the Petitioner must sign personally.

Mr. Theodotou for the Petitioner contends:

1. That the English law does not apply to the presentation or signature of the petition.

That the English law applies only to the adjudication of matters referred to in the petition such as bribery, treating and intimidation and it applies to those only so far as is practicable and for the adjudication of the case.

2. That as to the petition and presentation of it the Cyprus law applies.

That as there is no direction in the Cyprus law as to who is to sign the petition, the rule "*qui facit per alium facit per se*" applies and signature by an agent is sufficient.

3. That if the English law applied to this matter, it was not necessary by English law that the Petitioner should sign personally.

4. That if Clause 15 of the Order in Council required a personal signature by the Petitioner it would be repealed by the Rules of Court of 1886.

The last contention I dealt with during the argument and I need say no more about it.

The question whether or no the Petitioner must personally sign the petition depends on the construction of Clause 15 and the enactments referred to therein so far as they are applicable.

If personal signature is necessary it must be either because there is an express enactment to that effect or (if the clause is silent in the matter) because of a presumption that the Privy Council intended that personal signature should be necessary, such intention to be gathered from the enactment and the subject matter of the enactment.

If there is any express enactment it arises from the incorporation of the English law in the clause.

The section of the clause incorporating the English law is in these terms "Until the Legislative Council otherwise provide, the law in force in England for the time being relating to corrupt practices at elections and disputed elections, shall, so far as practicable, be applied by the Judge to the adjudication of such cases."

One question is what does the law mean by the words "such cases."

One can only tell by looking at the previous part of the clause.

It runs "In case an election is disputed on the ground that the majority was made up by illegal or informal votes or was obtained by bribery, etc."

The King's Advocate says "such cases" mean cases of disputed elections and Mr. Theodotou contends that the English law is only to be applied so far as it relates to the grounds of the dispute. He said that English law does not apply to procedure in Cyprus and that the intention is to apply only that part of the law which relates to bribery, etc.

TYSER, C.J.

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DOULOS
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If the King's Advocate is right when a Judge adjudicates on a dispute as to an election, he is adjudicating on a case in which he must apply the English law.

If Mr. Theodotou is right when the Judge adjudicates on an Election Petition he is to apply the English law only so far as it is applicable to the finding whether or no there has been bribery, etc.

That is to say, the Judge is to apply the law to the adjudication of the different issues raised.

I do not think that this is a natural construction. The natural construction is that the Judge is to apply the English law mentioned in the adjudication of the whole case in which a dispute as to the validity of an election is tried and decided. To adopt Mr. Theophani's contention would be to strike out the words "and disputed elections."

The section of the clause means in effect that the Judge is to apply the English law to his adjudication upon an Election Petition, *i.e.*, on a petition in which an election is disputed. No other interpretation seems to give full effect to all the words of this section of the clause.

Now in the present matter it is clear that I am adjudicating on an Election Petition, therefore I must apply the English law unless there is anything in Clause 15 which over-rules the English law or qualifies the paragraph of the clause which enacts that the English law is to be applied.

If in adjudication I am to apply the law in force in England, that law in my opinion requires personal signature of the petition.

It is contended that Clause 15 gives the unsuccessful candidate a right to petition the Supreme Court and that by virtue of that enactment his petition will be good if it conforms with the requirements of the law in Cyprus.

I do not think that is the meaning of the paragraph in Clause 15 relied on. I am of opinion that means only that the Petitioner may petition the Supreme Court and not the District Court or any other Court; the same paragraph further enacts that the enquiry shall be made by Judge, *i.e.*, not by the full Court.

I see nothing else in Clause 15 which can possibly be thought to over-rule the English law, and I see nothing to qualify that paragraph of the clause which enacts that English law is to be applied.

The English law is meant to be incorporated for the purposes of procedure of all sorts as well as for the trial of issues as to bribery.

It is to be applied so far as practicable. There is no exception of matters arising before trial.

The petition must be presented in the form and within the time required by that law, security must be given, and day of trial fixed as by the English law provided.

I have examined the records in the Famagusta case and Clause 15 seems to have been so read at that time.

There have been various Election Petitions lately and all parties seem to have understood the law.

It is not for the Court to enquire into the reasons why a Legislative body makes a particular enactment when it has come to a conclusion as to what the Legislature means, but I do not think it unreasonable to require the Petitioner to take a personal part in the investigation of the charges before he is allowed to subject an elected member to the annoyance of a petition.

It does not seem to me desirable that such petitions should be presented by persons who have had no opportunity of enquiring into the charges they make.

An enactment that requires personal signature brings home to the Petitioner his responsibility for the charges he makes, and necessitates his being present at all events for some time before the petition is presented.

The application must be allowed with costs.

Petition dismissed.

[TYSER, C.J. AND BERTRAM, J.]

CARABET NIVOGOSIAN,

v.

THE PHOCÉENNE SS. Co.

Plaintiff,

Defendants.

TYSER, C.J.
&
BERTRAM,

J.
1907

April 13.

FOREIGN ACTION—CONFLICT OF LAWS—CYPRUS COURTS OF JUSTICE ORDER, 1882, SEC. 24—AGREEMENT TO OUST JURISDICTION OF COURT—ADMISSION AT SETTLEMENT OF ISSUE—O. VIII, RS. 3, 15, 17—CARRIAGE BY SEA—SHORT DELIVERY—GOODS SHIPPED TO FOREIGN PORT TO BE FORWARDED TO CYPRUS “AT SHIPPERS’ OR OWNER’S RISK”—RIGHT OF CYPRUS OWNERS TO SU. ON CONTRACT—UNDISCLOSED PRINCIPAL—ALTERNATIVE RIGHT OF ACTION IN TORT.

Parties to a contract cannot by agreement oust the Courts of Cyprus of the jurisdiction vested in them.

In a foreign action the Courts apply English law.

Where in a contract sued on in a foreign action it appears that the parties intended that some law other than English law should govern the contract that law will be applied.

In the absence of proof that the foreign law differs from the English law it will be presumed to be the same.

Where at the settlement of issues one party neglects to admit or deny any fact alleged by the opposite party that fact is to be taken as proved unless by consent or leave of Court permission to dispute that fact is obtained.

Per BERTRAM, J.: *Where goods are shipped from abroad to a foreign port to be forwarded to Cyprus “at shippers’ or owner’s risk,” the owner of the goods at the time of transshipment has a right of action for short delivery both as undisclosed principal on the new contract of affreightment, and also, independently of contract, for the wrongful conversion of his goods.*

This was an appeal from the decision of the President of the Larnaca District Court, sitting for the trial of a foreign action.

The Plaintiff was the owner of a consignment of iron shipped by Messrs. Lambert & Co., the owners of the SS. Clara from Antwerp to Alexandria. The Bill of Lading, dated 17th February, 1905, was