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, *Plaintiff,*

v.

THE PHOCÉENNE SS. Co. *Defendants.*

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 SUE 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 transhipment 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

made out to order, and having been first endorsed to the Imperial Ottoman Bank at Constantinople finally reached Plaintiff's hands, the last endorsement being in blank.

It was provided by a memorandum noted upon this Bill of Lading that upon arrival at Alexandria the goods were to be " forwarded to Larnaca at shippers' or owner's risk, but at the ship's or carrier's expense." Accordingly, at Alexandria, Messrs. Lambert & Ralli, agents of Messrs. Lambert & Co., reshipped the iron to Larnaca by the Defendant's SS. Seyar. At the date of this reshipment the Plaintiff was the holder of the original Bill of Lading. For the purposes of this reshipment Messrs. Lambert & Ralli took out a fresh Bill of Lading, dated 30th May, 1905, to their own order, but this Bill of Lading was never endorsed or forwarded to the Plaintiff. One of the clauses in this Bill of Lading was as follows:—" Le présent connaissement sera régi par la loi Hellénique, et en cas de difficultés de quelque nature qu'elles " puissent être, rélatives a l'execution du présent contract . . . . " . . . toutes demandes en actions judiciaires devront être portées " devant les tribunaux de Smyrne dont les chargeurs et réclamateurs " déclarent formellement accepter la competence, et auxquels de stipula- " tion expresse il est fait attribution de jurisdiction."

On the arrival of the SS. Seyar at Larnaca, Plaintiff presented the original Bill of Lading and obtained delivery of the iron, but it was found that there was a shortage.

The claim was for short delivery and the Plaintiff claimed £11 6*s*. 2*cp*. damages in respect of this shortage.

At the settlement of the issues the Plaintiff's advocate stated " the iron was shipped *by Plaintiff's agent at Alexandria* on the Seyar for Larnaca."

The Defendants contended that they had delivered all they had received from the shippers, and objected to the jurisdiction of the Court on the ground of the clauses in the Bill of Lading above referred to.

The only issues settled were as follows:—

1. Has this Court jurisdiction to decide any dispute about delivery under this Bill of Lading?
2. Under this Bill of Lading what is it the Defendants were obliged to deliver . . . what remains undelivered and what is the value?

At the first hearing, the President of the District Court, being of opinion for reasons subsequently explained that the Plaintiff had no cause of action dismissed the claim. The only point argued on the appeal was the question of jurisdiction. The Supreme Court being of opinion that the jurisdiction of the District Court was not ousted, remitted the case to the President of the Court to be tried on the second issue.

At the second hearing the President found as a fact that there had been short delivery, and assessed the damages at the amount claimed, but gave judgment for the Defendants, on the ground that there was no cause of action in the Plaintiff.

The reasons for his decision were as follows:—" The goods were shipped from Alexandria to Larnaca under the second Bill of Lading. Plaintiff was not party to this contract. Nor was the Bill of Lading endorsed to him."

" Had the Bill of Lading been endorsed and forwarded to the Plaintiff there would have been no difficulty about the case, but unfortunately this was not done."

" A man may be the purchaser of goods and entitled to them and yet he may not have an action under a Bill of Lading. The action in detinue and that on the Bill of Lading are not the same, the remedy under the latter being much more technical in its application."

" In the absence of authority I cannot find that Lambert & Ralli acted as agents of the Plaintiff towards whom they had no contractual obligations and by whom they were not paid."

The Plaintiff appealed.

Sevasli for the Appellant.

Themistocles for the Respondents.

Judgment: CHIEF JUSTICE: By Order VIII, Rule 3, the Judge at the settlement of the issues must call upon the Plaintiff " to state any facts on which he founds his claim." By Rule 15 of the same Order " if any party refuses or neglects to admit or deny any fact alleged by the opposite party, he shall be taken to have admitted it, and the party who has admitted it shall not subsequently be entitled to dispute it, except by consent or by leave of the Court. Every fact so admitted, shall unless or until leave is given to dispute it, be taken as proved."

At the settlement of the issues the Plaintiff stated that the iron was shipped by his agents at Alexandria for Larnaca. This was not denied and must therefore be taken as admitted.

The only defences raised by the Defendants were, in effect,

(1) that the Court had no jurisdiction;
(2) that they had delivered all that they shipped.

The first defence this Court has already dealt with.

As to second defence, the District Court has found that there was short delivery and assessed the damages at the amount claimed.

There was no consent or leave given to Defendant to dispute the facts, therefore it must be taken as proved that the shipment at Alexandria was made by the agents of the Plaintiffs and that the Plaintiffs are the undisclosed principals to the contract of affreightment from Alexandria to Larnaca.

Where a contract not under seal is made by an agent in his own name for an undisclosed principal, either the agent or the principal may sue upon it, the Defendant in the latter case being entitled to be placed in the same situation at the time of the disclosure of the real principal as if the agent had been the contracting party. See notes to *Thompson* v. *Davenport*, 2 S.L.C., 9th Ed., p. 432.

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The Plaintiff was consequently entitled to sue upon the contract.

I should add that this being a foreign action, the rights of the parties are determined by English law. The English law is that the law to govern the contract is the law intended by the parties. Here the parties have agreed that Hellenic law should apply, and we should follow that law if proved. In the absence of proof that foreign law differs from the domestic law it is presumed to be the same. See Wharton, Conflict of Laws, Par. 78, *Mostyn* v. *Fabrigas*, 1 S.L.C., 9th Ed., p. 628.

The judgment in this case must be set aside and judgment entered for the Plaintiff with costs in this Court and in the Court below.

BERTRAM, J.: The real question in this case was whether the Alexandria shippers were agents of the Plaintiff for the purpose of making the contract of affreightment.

The question is really concluded by the admission on the pleadings pointed out by the learned Chief Justice.

I would further say however (though it is not necessary to decide the case on this ground) that in my opinion, assuming that the Plaintiff was the owner of the goods, the Court ought to have found on the facts proved, that the agency in question existed.

In a through Bill of Lading the original shipowner is responsible for the whole transit, but in the case of a Bill of Lading of this description, where the shipowner undertakes to carry the goods to a certain point and then forward them to the end of the journey " at shippers' or owner's risk," the meaning, in my opinion, is that he undertakes at this point, where his own responsibility ceases, to find a new carrier for the shipper (or the person to whom the ownership of the goods may have passed in the interval), who shall be responsible to the shipper, or owner, as the case may be, for the remainder of the transit. When therefore the shipowner, or his representative abroad, engages this new carrier, he is acting as the agent of the shipper or owner for the time being and the shipper, or owner, as the case may be, is the real party to the contract. (*Cf.* the case of *Muschamp* v. *Lancaster & Preston Ry. Co.* (1841) 8 M. & W. 421, 58 R.R., 758.)

Apart from contract, the Plaintiff has also, I think, a right of action for the wrongful conversion of his goods.

This alternative remedy has always existed in such cases, and there was nothing to prevent it from being enforced on the writ in the present action.

I should add that the learned Judge seems to be under a misapprehension as to the effect of the absence of any endorsement on the Bill of Lading. " Had the Bill of Lading been endorsed and forwarded to the Plaintiff," he says, " there would have been no difficulty about the case." He seems to think that if the Alexandria shippers had only endorsed the Bill of Lading to the Plaintiff, the Plaintiff (presumably under the Bills of Lading Act, 1855) by virtue of the endorsement would have acquired a right of action which he did not otherwise possess.

By the express terms of Section 1 of that Act it is made clear that to entitle the endorsee of a Bill of Lading to have transferred to and vested in him a right of suit under the Act the circumstances under which the Bill of Lading has been endorsed must be such that the property in the goods has passed to the endorsee by reason of the endorsement. (*Fox* v. *Nott*, 30 L.J., Ex. 259). Here the Alexandria shippers, being only forwarding agents, had not the property in the goods. They could not consequently pass any right of action by virtue of their endorsement.

Appeal allowed.

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

ZAPHIRIO MALAMATENIO,

v.

RATIB EFFENDI IRIKZADE.

PRACTICE—TIME FOR APPEAL—LEAVE TO APPEAL—EXTENSION OF TIME—ORDER XXI, Rs. 1, 7 AND 9.

Leave to appeal from a judgment of a District Court must be sought and obtained in time to allow the Appellant to lodge notice of appeal and serve copies on the parties within four months of the judgment.

The period of four months prescribed by Order XXI, r. 7 runs from the date of the pronouncement of the judgment.

This was an appeal of the Defendant from the judgment of the District Court of Paphos. The Respondent at the hearing of the appeal raised the preliminary objection that it was out of time.

The judgment was pronounced on 25th July, 1906, and was finally drawn up on 6th August, 1906. On 24th November, 1906 (one day before the expiration of four months from the date of the pronouncement of the judgment), the Defendant applied for leave to appeal. As the full Court could not be assembled on that date the hearing of the application was postponed, and leave to appeal was ultimately given on 4th December, 1906. Notice of appeal was lodged with the Registrar and a copy served on the Plaintiff on December 13th, 1906.

No copy of the order granting leave to appeal was lodged with the Registrar as required by O. XXI, r. 1, paragraph 2.

The material provisions of the rules referred to are as follows:—

O. XXI, r. 1 " Where an appeal is made by leave an office copy of the order granting the leave shall also be lodged with the Registrar."

" Any appeal which is not made in conformity with the provisions of this Rule and any appeal a copy of the notice of which has not been served upon any Respondent within the prescribed time shall be dismissed when brought before the Court for hearing."