

TYSER, C.J.
&
BERTRAM
J.
1910
} April 24

[TYSER, C.J. AND BERTRAM, J.]
HARALAMBO AUXENTIOS
v.
NIKOLA G. PELAVAKIS.

JURISDICTION—DISTRICT COURT—ACTION AGAINST FOREIGN DEFENDANT—SERVICE OF WRIT DURING TEMPORARY RESIDENCE IN CYPRUS—CONTRACT TO BE PERFORMED ABROAD—ORDER II, RULE 2.

The Courts will entertain an action against a foreign Defendant with reference to a matter arising out of a contract to be performed outside the jurisdiction, if the Defendant is duly served with a writ while temporarily resident in Cyprus.

A person temporarily visiting a District of Cyprus during the summer months is "resident" in the District within the meaning of Order II, rule 2.

The Plaintiff entered into a contract with the Defendant, who carried on business at Alexandria, with reference to the shipment and sale of barley, and subsequently having commenced an action against the Defendant alleging negligence in respect of the contract at Alexandria, served the writ upon him while he was staying during the summer at Platres.

HELD: *That the District Court of Limassol had jurisdiction to entertain the action.*

This was an appeal from the District Court of Limassol.

The action was brought by the Plaintiff, a merchant of Larnaca against the Defendant, a merchant of Alexandria, claiming £727 19s. 1cp. damages on the ground of the negligence of the Defendant in the sale of certain barley consigned for this purpose to the Defendant at Alexandria, and on the ground of breach of the instructions given by the Plaintiff to the Defendant as his agent.

The Defendant took a preliminary objection to the jurisdiction of the Court:

The facts as recited in the judgment of the District Court were as follows: "The Defendant carries on business and lives for the greater part of the year in Egypt. He possesses a house, however, in Platres to which his family and he have resorted to spend the summer months for the past two years. In 1908, his family were occupying this house during the summer, and on the day on which the writ of summons in the action was issued the Defendant was in the Island, and the writ was served upon him in the Island. The Defendant remained in the Island a fortnight, then returned to Egypt, and shortly afterwards came again to the Island, where he remained with his family for some weeks."

On these facts the District Court held that it had jurisdiction to entertain the action.

The Defendant appealed.

Lanites for the Appellant.

Bucknill, K. A. and *Paschales Constantinides* for the Respondent.

The Court dismissed the appeal.

TYSER, C.J.

&
BERTRAM,
J.

Judgment: THE CHIEF JUSTICE: It is said that there is no jurisdiction in this case because there is no "residence." It is clear however from the facts as stated by the judgment of the District Court, that there was ample evidence of residence.

HARALAMBO
AUXENTIOS
v.
NIKOLA G.
PELAVAKIS

It must be remembered that "residence" is not the same as "domicile."

It is further said that the contract was to be performed in Egypt, and that the breach took place in Egypt. In my opinion that is no objection.

The cause of action is "transitory,"* and the action can be brought against the Defendant in any Court having jurisdiction over him.

I do not state this as the limit of the jurisdiction of the Court, but this is all that it is necessary to say to-day.

The appeal is dismissed with costs.

BERTRAM, J.: We may decide this question either by considering what jurisdiction is transferred to the District Court from the old Commercial Court under the Order in Council, or by considering what is the general jurisdiction which belongs to the District Court according to the comity of nations.

I prefer to consider the questions upon the latter basis, in accordance with what has already been laid down by a previous judgment of this Court. The District Court have a general "jurisdiction to hear and determine all actions . . . in which the right sought to be enforced or the wrong sought to be remedied is such as may be investigated by a Court of law, and in which the remedies sought are such as may be applied in a Court of law." (See per Tyser, J.: *Haji Symeo v. Haji Georghis* (1904) 6 C.L.R., 70).

The practice of the comity of nations as to the circumstances under which an action will be entertained against a foreigner no doubt varies, but in these Courts, where our practice and procedure is so largely based upon that of England, I think it would be convenient that we should, as far as possible, follow the rule observed in England, which has been explained in *Mouzouri v. Kissonerghi* (1909) 9 C.L.R., 1.

* For the meaning of "transitory" in this connection see the judgment of the Chief Justice in *Mouzouri v. Kissonerghi* (1909) 9 C.L.R., 1.

TYSER, C.J. In this case it is not necessary to go so far, for I believe it to be a
 &
 BERTRAM principle of universal application, that when the subject of a country
 J. sues a foreigner resident in the country in a "transitory" action,
 HARALAMBO the Courts of the country will entertain the action and it is no answer
 AUXENTIOS for the foreigner to say that, though he is for the time being resident
 v. in the country, his place of business is abroad.
 NIKOLA G.
 PELAVAKIS

As to the meaning of "resides" in Order II, rule 2, that has already
 been decided in *Mouzouri v Kissonerghi*.

Appeal dismissed.

The case of *Rex v. Fatma Ahmed and another* reported in pages 93-94
 of the original edition is no longer of any importance