

BEECHAM GROUP,

Plaintiffs,

v.

BRISTOL-MYERS COMPANY AND ANOTHER,

Defendants.

BEECHAM GROUP
v.
BRISTOL-MYERS
COMPANY
AND ANOTHER

(*Patent Action No. 1/67*).

Practice—Patent action—Conditional appearance—Writ of summons taken out in the Supreme Court, presumably based on the English Patents Act, 1949, made applicable to Cyprus by virtue of Law 40 of 1957, The Patents Law, Cap. 266, section 9 (1), which confers jurisdiction on the Supreme Court to deal with claims under the Patents Law—Conditional appearance—Application for leave to enter conditional appearance to dispute the jurisdiction of this Court—The rules of procedure applicable in the matter are not Order 16, rule 9 of the Civil Procedure Rules, obviously referring to proceedings before the District Courts—But Order 12, rule 7, of the English Rules of the Supreme Court, which provides that a defendant in an action may “with leave of the Court enter a conditional appearance” in an action—The English Rules are applicable in Cyprus by virtue of rule 3 of the Rules of Court (Transitional Provisions), 1960, made by the High Court of Justice under the provisions of Article 163 of the Constitution and published in the Official Gazette on December 17, 1960, preserving the practice and procedure in force immediately before Independence Day (viz. the 16th August 1960)—That position is to be found in section 35 of the Courts of Justice Law, Cap. 8 (since repealed)—See, also, herebelow.

Practice—Conditional appearance—Application for leave to enter conditional appearances to dispute jurisdiction of the Court—Leave granted on the following terms: appearances to stand as unconditional unless the defendants apply within three weeks to set aside the writ, or service thereof, and obtain an order to that effect—See, also, hereabove under Practice.

Patent action—Conditional appearance—See above.

Practice and Procedure—Practice and procedure applicable in Cyprus—See Rule 3 of the Rules of Court (Transitional Provisions), 1960, made by the High Court of Justice under Article 163 of

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the Constitution; and, also, section 35 of the Courts of Justice Law, Cap. 8 (since repealed)—See also, under Practice above.

Procedure—Practice and procedure applicable in Cyprus—See above.

Appearance—Conditional appearance—Leave—See above.

Conditional Appearance—Leave—Terms—See above.

Applications.

Ex Parte applications for leave to enter conditional appearance.

A. *Triantafyllides*, for the applicants-defendants.

The facts sufficiently appear in the ruling given by the Court which follows.

JOSEPHIDES, J. : The plaintiffs' claim in this case is for an injunction to restrain the defendants from infringing the plaintiffs' letters patent, and for consequential relief.

The writ of summons was taken out in this Court and the claim is presumably based on the English Patents Act, 1949. That law is made applicable to Cyprus by virtue of Law 40 of 1957, now Cap. 266, section 9 (1), which confers jurisdiction on the Supreme Court to deal with claims under the Patents Law. After the service of the writs of summons on the defendants, Mr. Triantafyllides on behalf of both defendants, before entering appearance, filed two applications before this Court for leave to enter conditional appearance to dispute the jurisdiction of this Court.

The short point before me today is which rules of procedure are applicable? Mr. Triantafyllides, in his written application stated that he relied on Order 16, rule 9, of the Civil Procedure Rules, but, obviously, those rules refer to proceedings before the District Courts. In addressing me today he referred to the Rules of Court (Transitional Provisions), 1960, made by the High Court of Justice under the provisions of Article 163 of the Constitution and published in the *Gazette* on December 17, 1960.

Rule 3 of those Rules provides that "the practice and procedure prescribed by any Law, in force immediately before Independence Day, shall, until amended, by way of variation, addition or revocation, by any Rules of Court, continue in force.....". The position with regard to the procedure applicable to

proceedings in patent actions prior to Independence is to be found in section 35 of the Courts of Justice Law, Cap. 8, (since repealed). That section provides that the civil jurisdiction conferred upon any Court shall be exercised in accordance with the procedure prescribed by any Law in force for the time being or Rules of Court made under any Law and in default thereof shall "so far as circumstances permit, be exercised in accordance with the practice and procedure observed by the Courts in England". As no Rules of Court were made either before or after Independence under our Patents Law, Cap. 266, the English practice and procedure is applicable to such proceedings, and this is to be found in the Rules of the Supreme Court of England.

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Order 12, rule 7 of the English Rules provides that a defendant to an action may "with the leave of the Court enter a conditional appearance" in the action. In the present case I am satisfied that the defendants have a *bona fide* intention to dispute the jurisdiction of the Court and I accordingly grant them leave to enter a conditional appearance on the following terms :

The appearances of both defendants are to stand as unconditional unless the defendants apply within three weeks from today to set aside the writ, or service thereof, and obtain an order to that effect.

Order accordingly.

Leave to enter a conditional appearance granted on the above terms.