

[A. LOIZOU, J.]

1976
Aug. 17

MICHEL DOUMIT,

Plaintiff.

v.

MICHEL
DOUMIT

v.

THE SHIP "COCCINELLA",

Defendant.

THE SHIP
"COCCINELLA"

(Admiralty Action No. 116/76).

5 *Admiralty—Jurisdiction—Derived from s. 19(a) of the Courts of Justice
Law, 1960 (Law 14 of 1970)—Law applicable—Section 29(2)(a)
of the Courts of Justice Law (supra) and section 1(1) of the English
Administration of Justice Act, 1956—Claim for damage to goods
agreed to be carried in a ship and to be, and in fact, delivered in
Cyprus—Is within the jurisdiction—Paragraphs (g) and (h) of
the said section 1(1)—Moreover admiralty jurisdiction of this
Court can be invoked by this action in rem under paragraphs (d)
to (r) of the aforesaid section 1(1) and under section 3(4) of the
10 1956 Act.*

*Arbitration—Contract of carriage by sea—Arbitration clause—Effect—
Rights of parties—Existence of arbitration clause does not pre-
clude plaintiff from filing an action and securing arrest of defendant
ship.*

15 *Admiralty—Arrest of vessel—Application to discharge warrant of
arrest—Existence of issues to be determined at the trial after close
of the pleadings—Not for Court to decide them at this stage—
Prima facie case made by writ of summons and affidavits—No
sufficient cause shown entitling Court to order discharge of warrant
of arrest—Application refused.*
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The plaintiffs, as owner of a cargo of benzine shipped on
board the defendant ship for carriage from Constanza to Cyprus
claimed the sum of C£451,500.000 mils against the defendant
ship by way of damages for the contamination of the said cargo
due to the fault and or neglect of the defendants.
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After filing an action for the above amount they applied *ex
parte* and obtained a warrant for the arrest of the defendant
ship.

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The defendants applied for an order directing the release of the defendant ship and they relied on the following grounds:

- (a) That this Court has no jurisdiction on the matter;
- (b) That even if it had jurisdiction there is an arbitration agreement to the effect that any dispute arising during execution of the charter party should be settled by arbitration; 5
- (c) that there was no good cause of action and therefore the plaintiff was not entitled to the arrest of the defendant ship.

Held, (1) this Court has jurisdiction to hear and determine this case inasmuch as the claim is for alleged damage to goods agreed to be carried in the defendant ship and to be, and in fact, delivered in Cyprus (see Administration of Justice Act, 1956, section 1(1) paragraphs (g) and (h) and Courts of Justice Law, 1960 sections 19(a) and 29(2)(a)). 10 15

(2) Furthermore the Admiralty Jurisdiction of this Court can be invoked by this action in rem against the ship as the claim falls within section 3(4) of the 1956 Act, being a claim arising in connection with a ship where the person who would be liable on the claim in an action in personam was, when the cause of action arose the owner or charterer of, or in possession or in control of the ship and it is a case of a claim mentioned in paragraphs (d) to (r) of subsection (1) of section 1 of the said 1956 Act. 20

(3) The existence of the arbitration clause could not preclude the plaintiff from filing the present action and securing the arrest of the defendant ship (see pp. 282–283 *post*). 25

(4) It being apparent from the material before the Court (pp. 283–284) that there are issues to be determined at the trial after the close of the pleadings it is not for this Court to decide at this stage and without hearing evidence or considering the legal meaning and effect of the various terms and conditions to be found in the bill of lading and the Standard Tanker Voyage Charter Party relied upon by the parties. There has been made out such a *prima facie* case by the writ of summons and affidavit filed both in support of the application for the arrest of the defendant ship and the affidavit filed in opposition to the application for its release that this ground cannot succeed either. 30 35 40

Application dismissed. 40

Cases referred to:

George S. Galatariotis & Sons Ltd. v. The Scandinavian Baltic and Mediterranean Shipping Corporation of Monrovia (1968) 1 C.L.R. 385 at p. 390.

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5 **Application.**

Application by defendants for an order directing the release of the defendant ship "Coccinella" which had been arrested pursuant to an order of the Court made on an *ex-parte* application by the plaintiffs.

- 10 *J. Potamitis*, for the applicants.
E. Psyllaki (Mrs.), for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

15 A. LOIZOU, J.: By this action in rem the plaintiff, as owner of a cargo of 4,007,551 metric tons of benzine 96/98 octane, shipped on board the defendant ship for carriage from Constanza to Cyprus and/or as endorsee and/or holder of the Bill of Lading No. 262, dated Constanza 15/7/1976, under which the said goods were carried, claims against the defendant ship lying at
20 Larnaca Port:—

- " (a) CY PNDS 451,500.000 mils or the equivalent of US \$ 903.000 by way of damages for contamination of the said cargo by the fault and/or neglect of the defendants their servants or agents, or
25 (b) The same amount by way of damages sustained by the plaintiff by reason of the defendant failure to properly carry keep care for, and discharge the said consignment of 4,007.551 metric tons of Benzine, or
(c) The same amount by way of damages for breach of
30 contract and/or breach of duty and/or negligence and/or otherwise of the defendants their servants or agents, or,
(d) Interest on the sum of CY PNDS 451,500.000 mils at 9% per annum from 20/7/1976 until payment.
35 (e) Costs."

On filing the said action the plaintiff applied *ex parte* for leave to issue a warrant for the arrest of the defendant ship

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"Coccinella" which was in fact issued on the terms and conditions appearing therein: they include, *inter alia*, that the Marshal should release the ship upon directions from the Registrar of this Court on the filing of a security bond by or on behalf of the ship in the sum of CY PNDS 453,000 answerable for the satisfaction of any order or judgment for the payment of money made against the ship or the owners in this action; and further the plaintiff was called upon to comply with the requirement of filing a security bond, which he did, in the sum of CY PNDS 10,000 "answerable in damages to the defendant ship and her owners against whom the present order is made." 5 10

It was then fixed on the 5th of August, 1976, before the Court in case it was decided "to show cause against the continuance in force of the order of arrest made *ex parte*". On the 5th of August, 1976, an application was made on behalf of the defendants whereby they applied "for an order directing the release of their 'Coccinella' lying in the port of Larnaca". This application was based on rules 60 and 203 of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction and on s. 32 of the Courts of Justice Law 1960, (Law 14 of 1960). The facts relied upon were set out in the affidavit of the Captain of the said ship. I was further asked to consider the said affidavit and the material contained therein as sufficient for showing cause against the continuance in force of the order of arrest, and rule accordingly by these proceedings. 15 20 25

For the sake of brevity I do not propose to reproduce in this judgment verbatim the contents of the said affidavit. It is sufficient if I say that the grounds upon which the discharge of the order of arrest and the release of the said ship is claimed are:- 30

- (a) that this Court has no jurisdiction on the matter; and consequently no warrant of arrest should have been issued, same should be discharged and the ship released unconditionally;
- (b) that even if it had jurisdiction there is an arbitration agreement in the Standard Tanker Voyage Charter Party which is incorporated in the Bill of Lading by condition 1 thereof, to the effect that any dispute arising during execution of the said Charter Party should be settled in London, owners and charterers each appointing an arbitrator, merchant or broker and 35 40

the two thus chosen if they cannot agree should nominate an umpire, merchant or broker whose decision should be final; and

- 5 (c) that there was no good cause of action and therefore the plaintiff was not entitled to the arrest of the said ship.

10 It was argued on behalf of the applicants-defendants that even if a breach of contract or civil wrong was committed by them, which is denied, such alleged breach of contract or civil wrong must have been committed in Rumania where the benzine was loaded in an alleged unclean tank outside the jurisdiction of this Court. On the other hand, it has been the case for the respondent-plaintiff that their claim, being a claim arising out of an agreement relating to the carriage of goods in a ship to 15 a Cyprus port, is one in respect of which an action can be brought in the Admiralty Division of the Supreme Court of Cyprus and also because the defendant ship was lying at Larnaca Port, that is to say within the jurisdiction of this Court.

20 This Court derives its Admiralty Jurisdiction from s. 19(a) of the Courts of Justice Law, 1960, (Law 14 of 1960), wherein it is stated that it has exclusive original jurisdiction "as a Court of Admiralty vested with and exercising the same powers and jurisdiction as those vested in or exercised by the High Court of Justice in England in its Admiralty Jurisdiction on the day immediately preceding independence day". The Law to be 25 applied in the exercise of such jurisdiction is by virtue of the provisions of sub-s. (2), para. (a) of s. 29, "subject to paragraphs (c) and (d) of sub-s. (1),—the law which was applied by the High Court of Justice in England in the exercise of its Admiralty 30 Jurisdiction on the day preceding independence day as may be modified by any Law of the Republic".

35 In the light of the aforesaid and in the absence of any Statutory provision so far, one has to refer to the Administration of Justice Act 1956 and in particular to section 1(1), paras. (g) and (h) thereof by which the High Court of England has jurisdiction in Admiralty matters to hear and determine "(g) any claim for loss of or damage to goods carried in a ship" and "(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship".

40 The present case comes within the ambit of these paragraphs and this Court has jurisdiction to hear and determine same in

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as much as the claim is for the alleged damage of goods agreed to be carried in the said ship and to be, and in fact, delivered in Cyprus.

Furthermore, the Admiralty Jurisdiction of this Court can be invoked by this action in rem against the ship as the claim falls within section 3(4) of the 1956 Act, being a claim arising in connection with a ship where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of the ship and it is a case of a claim mentioned in paragraphs (d) to (r) of sub-section (1) of section 1. 5
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The aforesaid answer the first ground argued on behalf of the applicants-defendants.

It has now to be examined whether in view of the arbitration clause hereinabove referred to, this Court could not entertain the present action and consequently should not have issued the warrant of arrest of the ship. As stated in Russel on Arbitration, 18th Edn., p. 137: 15

“ A party to a contract to refer disputes to arbitration has a perfect right to bring an action in respect of those disputes, and the Court has jurisdiction to try such disputes. Any provision to the contrary would be an ouster of the jurisdiction of the Courts. But the Court has a discretion to say whether it will try such disputes or stay the proceedings, provided the other party comes in time and otherwise complies with the provisions of the section”. (Per Lord Wright, *Heyman v. Darwins Ltd.* [1942] A.C. 356 at p. 376). 20
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This proposition has been adopted and followed in the case of *George S. Galatariotis and Sons Ltd. v. The Scandinavian Baltic and Mediterranean Shipping Corporation of Monrovia*, (1968) 1 C.L.R., p. 385, at p. 390. 30

Also, in the British Shipping Laws, vol. 1, Admiralty Practice 1964, p. 18, para. 30, one reads:—

“ If the contract of carriage contains an arbitration clause, this does not, as stated, preclude an intended plaintiff from arresting a ship. It does, however, mean that upon application by the defendant, made after appearance but before taking any other step in the action, the Court may stay the action under section 4 of the Arbitration Act, 35
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1950. It is important to remember with regard to this that the Court's power is a power to stay and not to set aside the action. Consequently, in such an event, the intended plaintiff still gets the benefit of security, in that the vessel will remain under arrest unless bail or other security is given to secure its release, but the merits of the dispute will have to be decided by the arbitrator and not by the Court."

I have, however, no application before me either to set aside the writ of summons or to stay the proceedings. The legal significance of the arbitration clause in the contract of carriage has been raised incidentally by the opposition to the warrant of arrest and as part only of the grounds for the release of the ship. What I have to consider in this instance is not how I would have exercised my discretion in the circumstances, namely to stay or not the proceedings, but whether in view of the very existence of such a clause, the jurisdiction of this Court was outright ousted and so the warrant of arrest had to be discharged, but that is not the case. The existence of the arbitration clause could not preclude the plaintiff from filing the present action and securing the arrest of the defendant ship.

It remains now to consider whether the plaintiff has, as claimed by the applicants-defendants, no good cause of action and therefore he was not entitled to the arrest of the ship. This is based on the contention (a) that the defendant delivered both the quantity and the octane content of the benzine they undertook by the Bill of Lading to carry from Constanza to Cyprus. In fact it was stated that the benzine in question was analysed by the Cyprus Oil Refinery in Cyprus on the order of the plaintiffs' agent and was found to be of 96.2 octane; and (b) that the alleged contamination claimed by the plaintiffs to have been caused by the Captain's loading of the said cargo into tanks of the ship which were not clean and contained remnants of fuel oil of a previous cargo, which is denied by the defendants, was done on the order of the charterer and/or his broker or agent and/or of the holder of the Bill of Lading, Youssef Aziz, and therefore, as the cargo was loaded on instructions from the shipper, there was no breach of contract or other act affecting the quality of the goods for which the carrier is liable.

On the other hand, the plaintiff contends that a cause of action is more than sufficiently shown from the writ of summons

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and from the affidavit filed in support of the application for the issue of the warrant of arrest. The cargo was loaded at Constanza on or about the 15th July, 1976, in good order and condition and the defendants issued and delivered clean Bill of Lading in respect thereof. By mutual agreement between the plaintiff and the defendant, the defendant vessel proceeded to Junieh instead of Cyprus where it commenced discharge on or about the 22nd July, 1976. The discharge was stopped on the same day at the receivers' request when they discovered that the cargo had been contaminated during the voyage. At the plaintiff's request and with the consent of her owners, the defendant ship finally proceeded to Cyprus where the said cargo was sold at a considerable loss because of the contamination. The plaintiff has a claim against the defendants for damages and the said claim arises out of an agreement relating to the use or hire of the said ship, namely, the Bill of Lading No. 262 dated Constanza, 15/7/76 and/or relates to the carriage of goods in the said vessel and/or is in tort in respect of goods carried in the said ship.

It is apparent from the aforesaid that there are issues to be determined at the trial after the close of the pleadings and the completion of all other procedural requirements and it is not for this Court to decide at this stage and without hearing evidence or considering the legal meaning and effect of the various terms and conditions to be found in the Bill of Lading and the Standard Tanker Voyage Charter Party relied upon by the parties or either of them. There has been made out such a *prima facie* case by the writ of summons and affidavit filed both in support of the application for leave to issue the warrant for the arrest of the defendant ship and the affidavit filed in opposition to the application for its release that this ground cannot succeed either.

Before concluding I would like to say that the insufficiency of the security of the sum of £10,000 given by the plaintiff and for which he is answerable for the issue of the said warrant of arrest raised by the counsel for the applicants in the course of his address, is left open to be determined on a separate application to be filed for that purpose.

For all the above reasons no sufficient cause has been shown entitling me to order the discharge of the warrant of arrest or the release of the ship with no conditions or on any other

conditions than those upon which the warrant has been issued.

Therefore, warrant of arrest to remain in force as ordered. Applicants-defendants to pay the cost of this application.

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Order accordingly.

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