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ACROPOL
SHIPPING
COMPANY LTD.
AND OTHERS
v.
PETROS
I ROSSIS

[HADJIANASTASSIOU, A LOIZOU, MALACHTOS, JJ.]

ACROPOL SHIPPING COMPANY LTD AND OTHERS,

*Appellants–Defendants,*

*v.*

PETROS I. ROSSIS,

*Respondent–Plaintiff*

(*Civil Appeal No* 5454)

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*Injunction—Interlocutory—Made without notice to the other party—Direction that said injunction will continue to remain in force—Not made by the Court at any stage of the hearing of the objection of the other party or when the Court reserved its ruling thereon—Said injunction continues to remain in force until after judgment of the whole action or until further order—Whether interlocutory injunction made in* ex parte *application can remain in force until the final determination of the action—Section* 9(3) *of the Civil Procedure Law, Cap* 6

*Injunction—Interlocutory—Principles governing grant—Serious question to be tried—Probability that plaintiff entitled to relief—Section* 32(1) *of the Courts of Justice Law,* 1960 *and section* 9 *of the Civil Procedure Law, Cap* 6—American Cyanamid Co *v.* Ethicon Ltd [1975] 1 *All E.R.* 504 *not followed*

*Statutes—Construction of statutes—Construction of section* 9(3) *of the Civil Procedure Law, Cap.* 6

*Civil Procedure Law, Cap* 6—*Construction of section* 9(3) *of the Law*

*Words and Phrases—"Upon hearing" in section* 9(3) *of the Civil Procedure Law, Cap* 6

The respondent–plaintiff, a shareholder of the appellant–defendant company, brought an action against the Company seeking a declaration that the resolution of the Company which was taken on October 19, 1973, for the increase of the share-holding capital was *null* and *void* He, also, filed an *ex parte* application for an interim order prohibiting the appellants–defendants from proceeding with the above resolution This application was based on sections 6 and 9 of the Civil Procedure

Law, Cap. 6 and on section 32 of the Courts of Justice Law, 1960.

On November 21, 1973 the trial Judge granted the order applied for and made it returnable on December 3, 1973. Though in granting the application the trial Judge wrote only "interim order as per application granted" in the order which was served on the appellants-defendants it was, also, added by the Registrar that the interim order would remain in force until the final determination of the action.

The appellants-defendants opposed the application and filed an opposition. After two adjournments the application was eventually fixed for hearing on December 22, 1973. The hearing lasted for two days and the Court reserved its ruling but it made no direction that the interim order should remain in force pending the delivery of the ruling. No such direction was made even at the previous adjournments of the application. On June 16, 1975 the Court delivered its reserved ruling by means of which it was directed that the interim injunction dated 21st November, 1973, should remain in force till the hearing and completion of the action or until a new order was granted by the Court. Hence the present appeal.

Counsel for the appellant contended:

(a) That the trial Judge acted contrary to the provisions of the law in granting a perpetual and not interim injunction in an *ex parte* application, because under s. 9(3) of Cap. 6 "no such order made without notice shall remain in force for a longer period than is necessary for service" of it.

(b) That the interim order which was granted without notice to the other party ceased to remain in force when the parties appeared before the Court on December 3, 1973, and objected to it because when the Court adjourned the hearing of the application or reserved the delivery of its ruling it failed to direct that the interim order should continue to remain in force.

(c) That in granting the said order the trial Court wrongly exercised its discretionary powers because it failed to examine whether the party seeking the injunction would show that there was a serious question to be

tried at the hearing and that there was a probability that the plaintiff was entitled to relief.

*Held,* (1) that assuming that the interim order granted in the *ex-parte* application was to remain in force until the hearing and final determination of the action, that order would be bad in law (see s. 9(3) of the Civil Procedure Law, Cap. 6); that as from the record it is clear that the words "until the final determination of the case" which are complained of were not written by the Judge but were inserted by the Registrar, contention (a) above cannot stand. (See *Djeredjian (Import-Export)* v. *The Chartered Bank* (1965) 1 C.L.R. 130).

(2) That having regard to the object of an interlocutory or interim injunction and the way the order of the Court, made on November 21, 1973 was framed, one could imply that it was intending to remain in force till the hearing of the cause; that once that order did not cease to remain in force, either during the adjournments or when the ruling was reserved, quite properly the Court ordered that the interim injunction should be continued until after judgment of the whole action or until further order, once the appellants-defendants challenged that order and applied to discharge it but have not succeeded. (See pp. 54-55 as to the meaning of the words "upon hearing" in section 9(3) of Cap. 6).

(3) (*After stating the principles governing the grant of an interim injunction*).

That as the trial Court in considering whether to grant the interim injunction looked not only at the plaintiff's case to see if he had made out a case satisfying it that there was a serious question to be tried at the hearing, and that on the facts before it there was a probability that the plaintiff was entitled to relief but also looked at the defendants' case to see if they might have given a good answer to it, this Court has reached the conclusion that the trial Court has properly addressed its mind to the provisions of s. 32 of the Courts of Justice Law, 1960 in granting the said interim injunction; and that, accordingly, the contention (c) of the appellant will be dismissed. (See *Preston* v. *Luck* [1884] 27 Ch. D. 497).

(4) *On the question whether in granting an interlocutory injunction the Cyprus Courts should follow the principles laid down by the House of Lords in the* American Cyanamid Co. *v.* Ethicon Ltd. [1975] 1 *All E.R.* 504 *held:*

That this is one of those individual cases in which our Courts should go by the clear and unambiguous language of section 32 of the Courts of Justice Law, 1960, rather than the principles stated in the *American Cyanamid* case (*supra*).

*Appeal dismissed.*

Cases referred to:

*Preston* v. *Luck* [1884] 27 Ch. D. 497 at p. 505;

*J. T. Stratford & Son Ltd.* v. *Lindley* [1964] 3 All E.R. 102 at p. 116;

*American Cyanamid Co.* v. *Ethicon Ltd.* [1975] 1 All E.R. 504 at pp. 509–510;

*Fellowes* v. *Fisher* [1975] 2 All E.R. 829;

*Nippon Yusen Kaisha* v. *Karageorghis and Another* [1975] 3 All E.R. 282 at p. 283;

*Djeredjian (Import–Export)* v. *The Chartered Bank* (1965) 1 C.L.R. 130;

*Queen* v. *Arkwright*, 116 E.R. 1130 at p. 1134;

*Re Green* [1882] 51 L.J. 25 at p. 40.

**Appeal.**

Appeal against the judgment of the District Court of Nicosia (Pierides Ag. D.J.) given on the 16th June, 1975 (Action No. 7264/73) whereby it was ordered that an interim order, which was made on the 21st November, 1973, should remain in force until the final determination of the action.

*L. Papaphilippou*, for the appellants.

*A. Neocleous*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by:-

HADJIANASTASSIOU, J.: This is an appeal by the defendants-respondents against an Order of the Full District Court of Nicosia dated 6th June, 1975, whereby the plaintiff-applicant was granted an interlocutory injunction against the defendants-respondents restraining them from proceeding with the resolution of the company made on October 19, 1973, until the hearing and completion of the whole action, and/or until a new Order was made.

The plaintiff, a shareholder of the said company, brought an action against the Acropol Shipping Co. Ltd., seeking a decla-

ration that the resolution of the said company which was taken on October 19, 1973 for the increase of the shareholding capital was *null* and *void*. In the meantime, on the same date, the plaintiff filed in the District Court, an *ex parte* application seeking an interim order prohibiting the respondents to proceed with any action or decision and/or with the resolution of the respondent company No. 1 by which the said decision and/or resolution the share capital of the company was increased from £1,000 to £130,000 and/or prohibiting the respondents to proceed with the issue, distribution and registration of any shares on the basis of the said decision and/or resolution, and/or from putting into effect the said decision and/or resolution. This application was supported by an affidavit sworn by Mr. Demetrakis Papapetrou, a clerk of the counsel appearing on behalf of the plaintiff and in which he deposed that the plaintiff, as a shareholder of the respondent company No. 1, was entitled, according to the Articles of Association of the said company, to one vote for each share he owned; and that according to the law the company and/or the majority of its shareholders should at any resolution and/or decision act, or decide *bona fide* for the benefit of the company as a whole. Furthermore, he claimed that unless the respondents were prohibited by order of the Court, they would proceed immediately to put into effect the said decision and/or resolution by the issue and/or distribution and/or registration of the shares referred to in the said decision and/or resolution, and to the best of his knowledge and belief, as he was informed, there existed a serious matter for trial, and a great possibility that the plaintiff was entitled to relief. Furthermore, he deposed that unless a restrictive injunction was issued, it would be difficult or impossible to do complete justice at a later stage. This application was made under the provisions of the Civil Procedure Law, Cap. 6, ss. 4 & 9; and of the Courts of Justice Law, 1960, s. 32 (Law No. 14/60).

There is no doubt that under the provisions of the Civil Procedure Law and the Courts of Justice Law, the grant of an interlocutory injunction is a remedy that is both temporary and discretionary. According to s.9(1) of Cap. 6:

> "Any order which the Court has power to make may, upon proof of urgency or other peculiar circumstances, be made on the application of any party to the action without notice to the other party".

And under subsection (3):

"No such order made without notice shall remain in force for a longer period than is necessary for service of notice of it on all persons affected by it and enabling them to appear before the Court and object to it; and every such order shall at the end of that period cease to be in force, unless the Court, upon hearing the parties or any of them, shall otherwise direct; and every such order shall be dealt with in the action as the Court thinks just".

Turning now to the Courts of Justice Law, 1960 section 32(1) reads as follows:-

"Subject to any Rules of Court every Court, in the exercise of its civil jurisdiction, may, by order, grant an injunction (interlocutory, perpetual or mandatory) or appoint a receiver in all cases is which it appears to the Court just or convenient so to do, notwithstanding that no compensation or other relief is claimed or granted together therewith:

Provided that an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage.

(2) Any interlocutory order made under subsection (1) may be made under such terms and conditions as the Court thinks just, and the Court may at any time, on reasonable cause shown discharge or vary any such order".

On November 21, 1973, the Court, having dealt with the application of the plaintiff-applicant, and having read the said affidavit exercised its discretionary powers and made an interlocutory order without notice to the other party, no doubt feeling satisfied that there was a question of urgency, and directed also that the applicant plaintiff should deposit in Court an amount of £400 in cash as a security for his being answerable in damages to the person against whom the order was sought. There was a further direction that a copy of that order should be deposited with the Registrar of Companies, and that that interlocutory order was made returnable on December 3, 1973. That order was served on the defendants-respondents after it was prepared by the Registrar of the Court.

On the date the order was returnable, the defendants-respondents gave notice of their intention to oppose the granting of the said order, and that opposition was supported by an affidavit sworn by Mr. Vasilios G. Pavlou of Pireaus on his behalf and on behalf of the rest of the defendants, in which he deposed that to the best of his knowledge and belief the interlocutory order made by the Court was unfounded in law and in fact and in any case was unjustified because the said resolution (*exhibit A*) was passed at a general meeting duly convened and taking place in accordance with the provisions of the Companies Law Cap. 113, and in accordance with the Articles of Association of the Company. Furthermore, he deposed that the increase of capital was absolutely necessary for the purpose that the defendant company No. 1 would be in a position to raise capital for the proper functioning of its business, and in particular, for the running of the company's ship and in order that all or any sum which the company was indebted to be paid for. He also alleged that even at that moment, the shareholders of the company were willing to transfer to the plaintiff a proportion of the shares allocated to them on condition that he accepted same within 7 days from the 23rd November, 1973, and paid the rest of the sum. Finally, he deposed that without prejudice to the above facts and contentions, he alleged that the security given by the plaintiff was not sufficient due to the fact that the company without funds was in danger that the ship belonging to the company would stop sailing, in which case their losses would be irrecoverable and heavy.

The opposition was based also on the Civil Procedure Rules, Order 48, r. 4; the Civil Procedure Law, Cap. 6, ss. 4 & 9, and on the Courts of Justice Law 1960, s. 32.

According to the record of the Court, on December 3, 1973, a further supplementary affidavit dated 30th November, 1973, was filed on behalf of the applicant-plaintiff, apparently in answer to the affidavit of the defendants-respondents. There was a long discussion with a view to finding an amicable settlement of the whole case, but for reasons appearing on record—and we need not refer to them—the application was adjourned on the 18th December, 1973. On that date, the Full District Court granted once again an adjournment because counsel for the plaintiff-applicant was taken ill and was unable to appear in Court. Finally, the case was adjourned to 22nd December, 1973, and the hearing of that application lasted for two days when the Court reserved its ruling but without directing that

the interim order should remain in force pending the delivery of that ruling. We should have added that the same stand was followed by the Court even when the application was adjourned two or three times earlier.

On the 16th June, 1975, the Court, after a long delay, delivered its reserved ruling, having considered the affidavits filed on behalf of each party, as well as the oral evidence, and granted an interlocutory injunction in these terms: That the interim injunction dated 21st November, 1973, should remain in force till the hearing and completion of the action, or until a new order was granted by the Court.

We think that it is convenient to state that in England, the statutory jurisdiction of the Court to grant interlocutory injunctions in advance of judgment is under the Supreme Court of Judicature (Consolidation) Act 1925 s. 45(1) which provides:

> "The High Court may grant a mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do".

(See 22 Halsbury's Statutes (3rd ed.) 717; also 21 Halsbury's Laws, 3rd ed. 348, paragraphs 728, 729, on the question of the statutory jurisdiction of the Court).

In *Preston* v. *Luck*, [1884] 27 Ch. D. 497, Cotton L.J. said at p. 505:–

> "Of course in order to entitle the plaintiffs to an interlocutory injunction though the Court is not called upon to decide finally on the right of the parties, it is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the plaintiffs are entitled to relief".

In *J. T. Stratford & Son Ltd.* v. *Lindley*, [1964] 3 All E.R. 102, Lord Upjohn, dealing with the principles which ought to guide the Courts in granting an interlocutory injunction, said at p. 116:

> "In my judgment and for these reasons the appellants do establish a *prima facie* case that the respondents have committed the tort of procuring the customers of the

appellants to break their contracts and they have failed to establish any lawful justification for doing so.

In these circumstances, the principles which ought to guide your lordships seem to me clear. An appellant seeking an interlocutory injunction must establish a *prima facie* case of some breach of duty by the respondent to him. He may even obtain a quia timet injunction in case of a threatened injury, but I need not consider that further because a *prima facie* case of an actual breach has been established. He must further establish that the respondents are threatening and intending to repeat that breach of duty, but in a case such as this it may readily be inferred and I do so in this case. This being so, an injunction may be granted if it is just and convenient so to do, the remedy being purely discretionary. The balance of convenience in these cases is always of great importance and here everything points one way. If the status quo, that is the situation as it was before the issue of the instruction is preserved the respondents suffer no immediate loss at all and, if they ultimately win, they gain their point and can re-impose the embargo. On the other hand while the embargo was operating the appellants, on the evidence, suffered a heavy loss of £1,000 a week, which they will never recover from the respondents. Plainly it is just and convenient to order an interlocutory injunction to preserve the status quo until judgment in the action so as to prevent further interference by the respondents with the contracts now made by the appellants with their customers or which they may make with their customers in the future before judgment in the action".

The other members of the House agreed with this approach. See Lord Reid at p. 107, Viscount Radcliffe at p. 108; Lord Pearce at p. 111 and Lord Donovan at p. 118.

In a recent case in England, the *American Cyanamid Co.* v. *Ethicon Ltd.* [1975] 1 All E.R. 504, the House of Lords dealt once again with the principles in granting an interlocutory injunction, and Lord Diplock said at pp. 509–510:–

> "My Lords, when an application for an interlocutory injunction to restrain a defendant from doing acts alleged to be in violation of the plaintiff's legal right is made on contested facts, the decision whether or not to grant an

interlocutory injunction has to be taken at a time when ex hypothesi the existence of the right or the violation of it, or both, is uncertain and will remain uncertain until final judgment is given in the action. It was to mitigate the risk of injustice to the plaintiff during the period before that uncertainty could be resolved that the practice arose of granting him relief by way of interlocutory injunction; but since the middle of the 19th century this has been made subject to his undertaking to pay damages to the defendant for any loss sustained by reason of the injunction if it should be held at the trial that the plaintiff had not been entitled to restrain the defendant from doing what he was threatening to do. The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The Court must weigh one need against another and determine where the balance of convenience lies.

In those cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is incomplete. It is given on affidavit and has not been tested by oral cross-examination. The purpose sought to be achieved by giving to the Court discretion to grant such injunctions would be stultified if the discretion were clogged by a technical rule forbidding its exercise if on that incomplete untested evidence the Court evaluated the chances of the plaintiff's ultimate success in the action at 50 per cent or less, but permitting its exercise if the Court evaluated his chances at more than 50 per cent.

The notion that it is incumbent on the Court to undertake what is in effect a preliminary trial of the action on evidential material different from that on which the actual

trial will be conducted, is, I think, of comparatively recent origin, though it can be supported by references in earlier cases to the need to show 'a probability that the plaintiff is entitled to relief' (*Preston* v. *Luck* [1884] 27 Ch. D. 497 at 506 per Cotton L.J.) or 'a strong *prima facie* case that the right which he seeks to protect in fact exists' (*Smith* v. *Grigg Ltd.* [1924] 1 K.B. at 659 per Atkin L.J.). These are to be contrasted with expressions in other cases indicating a much less onerous criterion, such as the need to show that there is 'certainly a case to be tried' (*Jones* v. *Pacaya Rubber and Produce Co. Ltd.* [1911] 1 K.B. 445 at 457 per Buckley L.J.) which corresponds more closely with what judges generally treated as sufficient to justify their considering the balance of convenience on applications for interlocutory injunctions, at any rate up to the time when I became a member of your Lordships' House.

An attempt had been made to reconcile these apparently differing approaches to the exercise of the discretion by holding that the need to show a probability or a strong *prima facie* case applied only to the establishment by the plaintiff of his right, and that the lesser burden of showing an arguable case to be tried applied to the alleged violation of that right by the defendant (*Donmar Productions Ltd.* v. *Bart* [1967] 2 All E.R. 338 at 339 per Ungoed Thomas J., *Harman Pictures NV.* v. *Osborne* [1967] 2 All E.R. 324 at 336 per Goff J.). The suggested distinction between what the plaintiff must establish as respects his right and what he must show as respects its violation did not long survive. It was rejected by the Court of Appeal in *Hubbard* v. *Vosper* [1972] 1 All E.R. 1023—a case in which the plaintiff's entitlement to copyright was undisputed but an injunction was refused despite the apparent weakness of the suggested defence. The Court, however, expressly deprecated any attempt to fetter the discretion of the Court by laying down any rules which would have the effect of limiting the flexibility of the remedy as a means of achieving the object that I have indicated above. Nevertheless this authority was treated by Graham J. and the Court of Appeal in the instant appeal as leaving intact the supposed rule that the Court is not entitled to take any account of the balance of convenience unless it has first been satisfied that if the case went to trial on no other evidence than is before the Court at the hearing of the application the

the plaintiff would be entitled to judgment for a permanent injunction in the same terms as the interlocutory injunction sought.

Your Lordships should in my view take this opportunity of declaring that there is no such rule. The use of such expressions as 'a probability', 'a *prima facie case*', or 'a strong *prima facie* case' in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief. The Court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words that there is a serious question to be tried.

It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages on the grant of an interlocutory injunction was that 'it aided the Court in doing that which was its great object, *viz.* abstaining from expressing any opinion upon the merits of the case until the hearing' (*Wakefield* v. *Duke of Buccleuch*) [1865] 12 L.T. 628 at 629). So unless the material available to the Court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the Court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

Finally, Lord Diplock said at p. 512:–

"I can see no ground for interfering in the learned Judge's assessment of the balance of convenience or for interfering with the discretion that he exercised by granting the injunction. In view of the fact that there are serious questions to be tried on which the available evidence is incomplete, conflicting and untested, to express an opinion now as to the prospects of success of either party would only be embarrassing to the Judge who will have eventually to try the case. The likelihood of such embarrassment provides an additional reason for not adopting the course that both Graham J. and the Court of Appeal thought they were

bound to follow, of dealing with the existing evidence in detail and giving reasoned assessments of their views as to the relative strengths of each party's cases.

I would allow the appeal and restore the order of Graham J."

See also *Fellowes* v. *Fisher* [1975] 2 All E.R. 829, where the Court of Appeal by majority, (Browne L.J. and Sir John Pennycuick, Lord Denning dissenting) followed the *Cyanamid* case (*supra*).

Thus it appears that the object of an interlocutory or interim injunction is to preserve matters in statu quo until the case can be tried, and the party applying for interlocutory injunction must always give an undertaking in damages, in case it should turn out at the hearing that he is in the wrong. Furthermore, we would add that an injunction in England is usually so framed as to continue in force only until the hearing of the cause or until further order.

In another recent case before the Court of Appeal in England, in *Nippon Yusen Kaisha* v. *Karageorgis and Another*, [1975] 3 All E.R. 282, Lord Denning M. R., dealing with the appeal of the plaintiffs against the refusal of Donaldson, J. to grant an *ex parte* application for the appointment of a receiver in respect of moneys, property and other sums held by the defendants, within the jurisdiction or for an injunction to restrain the defendants from disposing of or dealing with any of their assets within the jurisdiction, said at p. 283:–

> "We are told that an injunction of this kind has never been done before. It has never been the practice of the English Courts to seize assets of a defendant in advance of judgment, or to restrain the disposal of them. We were told that Chapman J. in chambers recently refused such an application. In this case also Donaldson J. refused. We know, of course, that the practice on the Continent of Europe is different.
>
> It seems to me that the time has come when we should revise our practice. There is no reason why the High Court or this Court should not make an order such as is asked for here. It is warranted by s. 45 of the Supreme Court of Judicature (Consolidation) Act 1925 which says the High Court may grant a mandamus or injunction or appoint a receiver by an interlocutory order in all cases

in which it appears to the Court to be just or convenient so to do. It seems to me that this is just such a case. There is a strong *prima facie* case that the hire is owing and unpaid. If an injunction is not granted, these moneys may be removed out of the jurisdiction and the shipowners will have the greatest difficulty in recovering anything. Two days ago we granted an injunction *ex parte* and we should continue it.

It seems to me plain that the injunction should be continued on this *ex parte* application and should be continued until after judgment in these proceedings, to restrain the defendants from disposing of their assets here. On notice being given, the banks, of course, will not part with the money. If the defendants wish to challenge this order, they can, of course, apply to discharge it, if they have grounds for doing so."

The first complaint of counsel in this appeal was that the learned trial Judge acted contrary to the provisions of the law in granting a perpetual and not interim injunction in an *ex parte* application, as it is shown from the order served on the defendants-respondents, because no such order made without notice should remain in force for a longer period than was necessary for service of it.

We have considered very carefully the contention of counsel and we had the occasion to consider the drawn up order which was served on the defendants-respondents and had this order been an exact reproduction of the record of the Judge, we would have no difficulty in agreeing with counsel that the said order as granted by the learned trial Judge was wrongly made because what the law lays down in s.9(3) of Cap. 6 is that no such order shall remain in force for a longer period than is necessary for service of notice of it on all persons affected by it and enables them to appear before the Court and object to it. This in our view was intended to be of a temporary nature at the stage it was granted and not to remain in force until the end of the trial of the action.

The only case in Cyprus which is on the point and which impliedly supports the view we are now taking is the case of *Djeredjian (Import-Export) Ltd., etc., through (a) Chr. P. Mitsides (b) Nicos Chr. Lacoufis* v. *The Chartered Bank*, (1965) 1 C.L.R. 130. In that case it appears from the facts that an interim

order was granted by the District Court of Famagusta in an *ex parte* application, under the provisions of s. 4 and s. 9 of the Civil Procedure Law, Cap. 6 and also under s. 32 of the Courts of Justice Law 1960. The order made was that "the defendants, their agents and/or servants were restrained from selling, mortgaging or in any way parting with certain textiles until the hearing and final determination of the action"; and was made returnable on the 16th April, 1965. On that day, as it appears from the record, now supplemented, the parties, including the present appellants, appeared through their counsel before the Court and by consent of the parties, though not expressly but by implication, the order was extended until final determination of the present appeal. The trial Court made this order:

> "application is adjourned sine die until the final determination of the appeal when a new date will be fixed".

Zekia, P., delivering the judgment of the Court of Appeal said at p. 132:

> "We are faced with a singularly important point, that is to say, whether the defendant-respondent in an action where an interim order has been obtained by *ex parte* application under the Civil Procedure Law, section 9(1), he can, on the day that the order was made returnable, have two courses: Either to show cause and discharge the order or instead take the matter direct to the Court of Appeal and keep proceedings before the trial Court in abeyance until the matter is determined by the Court of Appeal.
>
> We have considered carefully this matter and it appears to us that if in all cases this Court had contemporaneous jurisdiction with the trial Court and was ready to substitute itself for that Court it would amount to a usurpation of the functions of the trial Court and we shall be substituting and converting ourselves to a Court of first instance, whereas matters should in the first instance be adjudicated by some other Court before it comes before us and dealt by us in our appellate jurisdiction. There is no doubt that there might be instances that, without the hearing of an application of this kind by a trial Court, the matter may be taken before the Supreme Court but this is not so in the present case. It may on the face of the record, appear that an interim order obtained by *ex parte* application be bad in

law without going into the merits and facts of the case in order to discover its invalidity and then perhaps we may be entitled to entertain an appeal but when we are called upon to go into the facts and merits of the case and then adjudicate on a matter which has not already been adjudicated on its merits in a lower Court then we are of the opinion that we are usurping the functions of the Court of first instance and we are not acting in our capacity as an appellate Court.

In the circumstances, we think that this appeal does not lie. We may give on a future occasion further and fuller reasons on this point as, we consider, the matter is of some importance.

The appeal is dismissed with costs.

The interim order will continue until such time as the trial Court will go into the merits of it and give its final decision on it".

We would, therefore, reiterate, assuming always, that the interim order granted in the *ex parte* application was to remain in force until the hearing and final determination of the action, that order in our view, would be bad in law for the reasons we have given earlier. But, having had the occasion to call for the file, we are now in a position to know that it was not so and the record shows that "interim order as per application granted". From this record it is clear that the words complained of by counsel "until the final determination of the case" were not written by the Judge, but were inserted by the Registrar only. For these reasons, we would dismiss this contention of counsel.

The second complaint on behalf of the defendants-respondents was that the interim injunction granted without notice to the other party ceased to remain in force once the parties appeared before the Court on the 3rd December, 1973, and objected to it; and because the Court did not direct that the said order should continue to remain in force until the new date fixed for hearing or at any other time when it was adjourned, or when it was reserved for the delivery of the ruling.

It is true that the interim injunction was not so framed by the Court as to continue in force after that date or indeed on any other date or until the hearing of the cause, or until further

order, but the question remains whether because of such failure that order ceased to remain in force; and that the Court, after delivering its reserved ruling, was not entitled in law to continue it to restrain the defendants-respondents until the hearing of the whole action or until further order. It seems to us that having regard to the object of an interlocutory or interim injunction and the way the order of the Court was so framed, on 21.11.73, one could imply that it was intended to remain in force till the hearing of the cause. Once, therefore, that order did not cease to remain in force, either during the adjournments or when the ruling was reserved, quite properly in our view, the Court ordered that the interim injunction should be continued until after judgment of the whole action or until further order to restrain the defendants from dealing or proceeding with the resolution of the respondent company, once the defendants-respondents challenged that order and applied to discharge it but have not succeeded.

The taking of this view, we think, was warranted by subsection 3 of s. 9 of Cap. 6 which says: ... every such order shall at the end of that period cease to be in force, unless the Court, upon hearing the parties or anyone of them, shall otherwise direct. It seems to us, that the true construction of the word "upon" should be given its ordinary meaning, that is to say, that it means that the interim injunction ceases to remain in force after hearing the parties.

If authority is needed as to the meaning of the word "upon", the case of *The Queen* v. *Arkwright* reported in the English Reports 116 E.R. 1130, provides the answer. Lord Denman C.J., dealing with the construction of the words "on" or "upon" said at p. 1134:-

> "The statute of 59G. 3 requires that the order should be made on notice being given. The words 'on' or 'upon' (it has been decided) may 'either mean before the act done to which it relates, or simultaneously with the act done, or after the act done, according as reason and good sense require, with reference to the context, and the subject matter of the enactment': *Regina* v. *Humphery* (10 A. & E. 335, 370). It cannot here mean simultaneously with, for the notice is manifold, and continued for many days: If it means before, all the inconvenient consequences will follow which we have already pointed out. We must, therefore, construe it as synonymous with after; that is, the order must be made after notice given."

Furthermore, the word "hear" has been judicially interpreted to mean to hear and determine a cause or matter. In *Re Green*, [1882] L.J.R. 51(1) 25, Lord Selborne, L.C., dealing with the construction of the meaning of the word "hear" said at p. 40:–

> "There are various things to be done by him under the Act before the hearing and preparatory to it: Orders as to evidence, orders as to attendance of witnesses, notices, orders for the production of documents. Technically those are not a part of the hearing, but I entertain no doubt whatever that those things, and every other thing preliminary and antecedent to the hearing, are covered by and are included in the authority to 'hear', which I consider means to hear and finally determine, 'the matter of the representation', which I consider to be equivalent to the cause—the whole matter. Those antecedent things are in my judgment within that authority, and the 'hearing' within the meaning of these words does not appear to me to terminate till the whole matter is disposed of; therefore it includes not only the necessary antecedents, but also the necessary or proper consequences".

Lord Blackburn, speaking on the same matter in a separate judgment said at p. 44:–

> "Now comes the question what does 'hear' mean? It was disclaimed, and no doubt justly disclaimed, that it was ever intended to argue that it only meant to hear what was said, and that it did not include determining. Unless there be something which by natural intendment, or otherwise, would cut down the meaning and intention of the Legislature and make it less, I apprehend there can be no doubt that the Legislature, when they direct a particular cause to be heard in a particular Court, mean that it is to be heard and finally disposed of there. And further, when they say that it is to be heard (meaning heard and finally disposed of) in a particular Court, they mean, unless there is something in the context which either by natural interpretation or by necessary implication would cut it down, that in all matters which are not provided for that Court is to follow its ordinary procedure."

With these principles in mind, in the case in hand, the Court, upon hearing the parties, as we said earlier, delivered its reserved ruling and directed that the force of that order should continue

until the completion of the whole action and/or after a new order was made, and although we deprecate the long delay in delivering that ruling in a case of this nature, we can see no reason for interfering with the discretion of the Court in granting the said interim injunction, and we would, therefore, dismiss this contention of counsel also. But counsel further argued, that the trial Court in granting the said order wrongly exercised its discretionary powers because it failed to examine whether the party seeking the injunction would show that there was a serious question to be tried at the hearing and that there was a probability that the plaintiff was entitled to relief.

Having reviewed at length what are the principles in granting an interlocutory injunction in England and having regard to the weighty judicial pronouncements, we think that we can safely conclude that until the recent judgment of the House of Lords in the *American Cyanamid* case, an interlocutory injunction would normally be granted only when the party seeking it can show a *prima facie* case or a strong *prima facie* case and/or a probable case in support of his right and that he was likely to suffer substantive, *i.e.* irreparable injury if an injunction is not granted.

On the contrary, in Cyprus in granting an interim injunction, the Courts followed closely the principles formulated in *Preston* v. *Luck* (*supra*) that a party seeking it would show that there was a serious question to be tried at the hearing and that on the facts before the Courts there is a probability that the plaintiff was entitled to relief.

The trial Court in the case in hand, as it appears from the whole record, in considering whether to grant the interim injunction looked not only at the plaintiff's case to see if he had made out a case satisfying the Court that there was a serious question to be tried at the hearing, and that on the facts before it there was a probability that the plaintiff was entitled to relief—but also at the defendants' case to see if they might have given a good answer to it, to enable the Court to decide that there was no probable ground for his bringing the action or whether a reasonable cause was shown requiring the Court to vary, discharge or continue it. Having heard exhaustive argument by both counsel on this issue, we have reached the conclusion that the Court had properly addressed its mind to the provisions of s. 32 of the Courts of Justice Law in granting the said interim injunction because the proviso to section 32(1) says in

clear and unambiguous language that "an interlocutory injunction shall not be granted unless the Court is satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that unless an interlocutory injunction is granted it shall be difficult or impossible to do complete justice at a later stage".

We would, therefore, dismiss this contention of counsel once again. But the question still remains whether we would be prepared to follow the decision of the House of Lords in the *American Cyanamid* case, where it was stated that "the use of such expressions as 'a probability', 'a *prima facie* case' or 'a strong *prima facie* case' in the context of the exercise of a discretionary power to grant an interlocutory injunction leads to confusion as to the object sought to be achieved by this form of temporary relief".

Having given this matter our best consideration, we are of the opinion that this is one of those individual cases in which the Courts should go by the clear and unambiguous language of our Statute section 32, of the Courts of Justice Law, 1960, quoted earlier, rather than the principles stated by the House of Lords in the *American Cyanamid* case.

For the reasons we have endeavoured to explain at length, we would uphold the decision of the trial Court and dismiss the appeal with costs in favour of the plaintiff-applicant.

*Appeal dismissed with costs.*