

1981 August 8

[A. LOIZOU, J.]

CHRISTAKIS MICHAEL,

*Plaintiff,*

v.

UNITED SEA TRANSPORT CO. LTD. AS AGENTS AND/OR  
CONTRACTORS OF THE SHIP "EVANGELISTRIA"  
AND/OR EMPLOYERS OF PLAINTIFF,

*Defendants.*

*(Admiralty Action No. 43/77).*

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*Practice—Point of law—Jurisdiction—Issue of—Can be determined before the trial.*

Following the close of the pleadings the defendants applied\* for the determination prior to the trial of the question of the point of law that the Court had no jurisdiction to entertain the action as the writ, the petition, and the pleadings did not disclose any admiralty cause of action so as to bring the claim within the admiralty jurisdiction of the Court.

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The plaintiffs opposed the application on the ground that the question of jurisdiction involved facts which must be ascertained after hearing evidence.

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*Held*, that where there is a point of law which if decided one way is going to be decisive of litigation advantage ought to be

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\* The application was made under rule 89 of the Cyprus Admiralty Jurisdiction Order, 1893 which reads as follows:

"Either party may apply to the Court or Judge to decide forthwith any question of fact or of law raised by any pleading and the Court or Judge shall thereupon make such order as to him shall seem fit".

5 taken of the facilities afforded by the Rules of Court to have  
 it disposed of at the close of pleadings or very shortly after (see  
*Everett v. Ribbands* [1952] 2 Q.B. 198 at p. 206 followed in  
*Paschalis v. Ship "Tania Maria"* (1977) 1 C.L.R. 53 at p.  
 10 58) ; that the question of jurisdiction is one of the matters in  
 respect of which an order for its determination before the trial  
 can be made as it is a serious question of law by its very nature  
 and if decided in favour of the party raising its absence  
 it disposes with any further trial ; that, therefore, on the tota-  
 10 lity of the circumstances this is a proper case for the question  
 of jurisdiction to be heard first as for the purposes of deciding  
 it, it is not necessary to ascertain any facts beyond those alleged  
 in the writ of summons and the petition ; and an order to that  
 effect is made accordingly.

15 *Application granted.*

Cases referred to :

- L.C. & D. Ry. v. S.E. Ry.* 53 L.T. 111 ;
- Isaacs & Son Ltd. v. Cook* [1925] 2 K.B. 401 ;
- 20 *Western S.S. Company v. Amaral Sutherland and Co.* [1914] 3  
 K.B. 55 ;
- Paschalis v. Ship "Tania Maria"* (1977) 1 C.L.R. 53 at p. 58 ;
- Everett v. Ribbands* [1952] 2 Q.B. 198 at p. 206 ;
- Heirs of the late Theodora Panayi v. The Administrators of  
 the Estate of the late Stylianos Georghi Mandrioti* (1963)  
 25 2 C.L.R. 167 ;
- Michaelides v. Diakou* (1968) 1 C.L.R. 392 ;
- Jupiter Electrical (Overseas) Ltd. and Another v. Savvas Costa  
 Christides* (1975) 1 C.L.R. 144 ;
- 30 *Companhia de Mocambique v. British S.A. Co.* [1892] 2 Q.B. 358 ;  
 [1893] A.C. 602.

**Application.**

Application by defendants for the determination, prior to the trial of the action, of a point of law, namely that this Court has no jurisdiction to try this action, as the writ, the petition and the pleadings do not disclose any admiralty cause of action. 5

*St. McBride*, for the applicants.

*E. Vrahimi (Mrs.) with Ch. Solomonides* for *L. Papaphilippou* for the respondents.

A. LOIZOU J. gave the following ruling. By the present application the applicants-defendants apply for the determination prior to the trial of this action, of a point of law, namely that this Court has no jurisdiction to entertain this action as the writ, the petition, and the pleadings do not disclose and Admiralty cause of action so as to bring the claim within that jurisdiction of this Court. 10  
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The facts relied upon in support of this application have been confined, in the course of the hearing, to those apparent on the writ and the petition, though originally there was also reliance on the facts, set out in the affidavit of Nikiforos Panayis of Limassol, filed in connection with another interlocutory application on the 15th January 1981. 20

The respondents-plaintiffs have opposed the application of the applicants, that is the determination of the question of the jurisdiction of this Court in this case prior to the trial of this action, on the ground that this question of jurisdiction involves facts which must be ascertained after hearing evidence. 25

In reply to this contention counsel for the applicant has, in the course of the hearing made it clear that for the purpose of this application, with regard to the issue of the jurisdiction, the facts as set out in the writ and the petition should be deemed as proved and he abandoned any other facts alleged in the affidavit of the aforesaid Nikiforos Panayis. 30

Under rule 89 of the Cyprus Admiralty Jurisdiction Order, 1893 "Either party may apply to the Court or Judge to decide forthwith any question of fact or of Law raised by any pleading and the Court or Judge shall thereupon make such order as to him shall seem fit". This rule obviously, gives to a Judge a 35

discretion and corresponds in substance to Order 25 of the Old English Rules (see Annual Practice (1958) p. 571) and Order 27 of Our Civil Procedure Rules.

5 The principles governing the exercise of the Court's discretion in the matter are to be found in a number of authorities. Summing up the position it may be said that as a rule a Judge will only make the order when he sees that the object raises a serious question of law, which if decided in favour of the party objecting would dispense with any further trial, or at any rate with the  
10 trial of some substantial issue in the action (see *L.C. & D. Ry. v. S. E. Ry.* 53 *L.T.* p. 111). The order should not, however, be made in respect of matters which by reason of the obscurity either of the facts or of the law ought to be decided at the trial; only in respect of matters on which no further light will be  
15 drawn at the trial, per *Roche J., Isaacs & Son Ltd., v. Cook* [1925] 2 *K. B.* p. 401. Furthermore the order for argument before trial should not be made where there are facts in dispute. (*Western S.S. Company v. Amaral Sutherland and Co.*, [1914] 3 *K.B.* 55).

20 It is this latter principle that respondents—plaintiffs invoke; but in all fairness to them I must say that the reliance by the applicants—defendants to the facts contained in the aforementioned affidavit of Nikiforos Panayis might have given the impression that there are in this case facts in dispute. In the  
25 course of the trial, however, matters were cleared up in view of the statement of counsel for the applicants that he no longer relies on that affidavit.

In the case of *Paschalis v. The Ship "Tania Maria"* (1977) 1 C.L.R. p. 53 at p. 58 the following dictum of Romer J., in *Everett v. Ribbands* [1952] 2 *Q.B.* at p. 206 was cited with approval.  
30 It reads:

35 "Where there is a point of law which if decided one way is going to be decisive of litigation, advantage ought to be taken of the facilities afforded by the Rules of Court to have it disposed of at the close of pleadings or very shortly after".

This is indeed a facility which the applicants—defendants have taken advantage of as they ought to (see *inter alia* the

*Heirs of the late Theodora Panayi v. Administrators of the Estate of the late Stylianos Georghi Mandrioti* (1963) 2 C.L.R. 167; *Maroulla Athanassi Michaelides v. Pinelopi HjiMichael Diakou* (1968) 1 C.L.R. 392; *Jupiter Electrical (Overseas) Ltd., and another v. Savvas Costa Christides* (1975) 1 C.L.R. 144). 5  
 The question of jurisdiction has been held to be one of the matters in respect of which an order for its determination before the trial has been made as it is a serious question of law by its very nature and if decided in favour of the party raising its absence it dispenses with any further trial (see *Companhia de Mocambique v. British S.A. Co.*, [1892] 2 Q.B. 358; [1893] A.C. 602). 10

I find no merit in the objection of the respondents-plaintiffs to my exercising my discretion in favour of hearing the question of jurisdiction prior to the trial of the case. 15

On the totality of the circumstances therefore I have come to the conclusion that this is a proper case that I should hear this question of jurisdiction first as for the purposes of deciding it, it is not necessary to ascertain any facts beyond those alleged in the writ of summons and the petition; an order to that effect is made accordingly. 20

Costs of this application to be costs in cause but in any event not against the applicants-defendants.

*Application granted.*