1982 March 8

[HADJIANASTASSIOU, A. LOIZOU & MALACHTOS, JJ.]

CHRISTAKIS VARNAVIDES,

Appellant-Defendant,

v.

CHRISTOFOROS IOANNOU (PLAINTIFF IN ACTION NO. 6966/71),
SOPHOULA CHRISTOPHOROU (PLAINTIFF IN ACTION NO. 6965/71).

Respondents-Plaintiffs.

(*Civil Appeal No.* 5405).

Statutes—Retrospective operation—Section 10(1) *of the Civil Wrongs Law, Cap.* 148 *as introduced by Law* 54/78—*Is of a procedural nature and has retrospective effect.*

Civil Wrongs—Contribution—Joint tort-feasors—Husband and wife —*Section* 10(1) *of the Civil Wrongs Law, Cap.* 148, *introduced by Law* 54/78—*Is of a procedural nature and has retrospective effect—Section* 64(1) *of Cap.* 148.

The respondents-plaintiffs, who are husband and wife, brought separate actions against the appellant-defendant claiming damages for personal injuries they sustained in a collision between a car driven by the appellant and a car driven by the husband. The trial Court apportioned liability for the accident at 30% on the part of respondent 1 and 70% on the part of the appellant and awarded damages accordingly; but, relying on sections 10(1)* and 64(1)** of the Civil Wrongs Law, Cap. 148, dismissed the

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* Section 10(1) reads as follows:

"10(1) No action shall be brought in respect of any civil wrong committed before or during the subsistence of a marriage by either party thereto or any person representing his or her estate against the other party thereto or any person representing his or her estate:

Provided that any spouse may, for the protection and security of his or her own property, bring an action against the other for any civil wrong committed by him or her in connection with such property".

** Section 64(1) reads as follows:

"64(1) Where damage is suffered by any person as a result of a civil wrong, any joint wrong doers liable in respect of that damage may recover contribution from any other wrong doer who is, or would, if sued, have been, liable in respect of the same damage, whether as joint wrong doer or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought".

appellant's counterclaim against the husband for "indemnity and/or contribution to such an extent as the Court may determine in respect of any sum that the defendant may be adjudged to pay be way of damages" to the wife. The defendant appealed; and after hearing the appeal the Supreme Court reserved judgment. On October 20, 1978 there was enacted Law 54/78 by means of which section 10(1) of Cap. 148 was repealed and the new section read as follows:

"10(1) Subject to the provisions of this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married".

On February 19, 1979, counsel for the appellant filed an application for the re-opening of the hearing of the appeal to which counsel for the respondent raised no objection. At the re-opened hearing of the appeal Counsel for the appellant submitted that the new section 10(1) of Cap. 148 is of a procedural nature and, therefore, it has retrospective effect and makes feasible in law an action by one spouse against another in respect of civil wrongs committed before its enactment.

Held, that the new section 10(1) of the Civil Wrongs Law, Cap. 148 is of a procedural nature and has retrospective effect.

Application granted.

Cases referred to:

Littlewood v. *G. Wimpey & Co. Ltd.* [1953] 2 All E.R. 915;

Barber v. *Pigden* [1937] 1 K B 664;

Kammins Ballrooms Co. Ltd. v. *Zenith Investments (Torquay) Ltd.* [1970] 2 All E.R. 871;

Wilson v. *Dagnall* [1972] 2 All E.R. 44;

Attorney-General v. *Vernazza* [1960] A.C. 965.

Application.

Application by defendant for the re-opening of the hearing of an appeal, made by him against the judgment of the District Court of Nicosia (Stavrinakis, P.D.C.) dated the 31st January, 1975 (Consolidated Action Nos. 6965/71 and 6966/71) whereby he was ordered to pay to the plaintiffs general and special damages for personal injuries as well as other material losses sustained in a road traffic accident.

A. Dikigoropoullos, for the appellant.

A. Ladas, for the respondents.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment of the Court. In the present consolidated Actions Nos. 6965/71 and 6966/71, the two plaintiffs, husband and wife, brought two actions against the defendant claiming general and special damges for personal injuries received, as well as other meterial losses sustained in a road traffic accident which occurred near the Nicosia airport. The accident was allegedly due to the negligence of the defendant Christakis Varnavides. On the other hand, the defendant counterclaimed against the plaintiff in Action No. 6966/71, Christophoros Ioannou, for personal injuries received and other damages sustained.

Just before the commencement of the hearing, an agreement was reached on the following issues relating to the damages, subject always to the issue of liability which remained contested. Regarding Action No. 6966/71—Claim: £325.— general and special damages. Counterclaim: £155.— special damages. On the issue of general damages the certificate of Dr. Pelides, dated 3rd October, 1972, was produced by consent as exhibit No. 1. Regarding Action No. 6965/71 there is no counterclaim and the special damages have been agreed at £220.—. Regarding general damages, two medical certificates were produced by consent as exhibits Nos. 2 and 3, issued by Dr. HadjiKakou, dated 31st March, 1972 and by Dr. Pelides dated 3rd October, 1972, respectively.

The plaintiff, in Action No. 6965/71, Sophoula Christophorou, is the wife of the plaintiff in the other action. The two plaintiffs had received injuries as a result of a collision between their car and that of the defendant. The defendant also received personal injuries and his car was damaged. The trial Judge, having heard evidence as to the issue of liability and arguments by both counsel both as to the constitutionality of section 10 of the Civil Wrongs Law Cap. 148 and as to the interpretation of section 64(1), proceeded and dealt (a) with the issue of liability and (b) with the assessment of general damages for the plaintiff in Action No. 6965/71 and for the defendant in Action No. 6966/71.

The trial Judge had before him the evidence regarding liability and having listened to the versions of the parties and of their witnesses, made his findings of fact and relying on the evidence

of an independent witness, Marios Georghiades, (D.W. 2), reached the conclusion that both drivers were to blame for the accident which occurred during the hours of darkness on September 4th, 1971. The defendant, however, was found more to blame than the plaintiff, and the liability was apportioned at 30% on the part of the plaintiff and 70% on the part of the defendant. The trial Judge then dealt with the question of general damages for the defendant in Action No. 6966/71, Christakis Varnavides, and bearing in mind the report of Dr. Pelides and after taking into consideration the factor of pain and suffering, awarded to him the sum of £600.— as such damages. With regard to the question of general damages for the plaintiff in Action No. 6965/71, Sophoula Christophorou, a dressmaker, and having gone through the medical reports of Dr. Pelides and Dr. HadjiKakou the trial Judge had this to say at p. 43:-

> "Considering the pain and suffering the plaintiff had to put up with during the initial stages of her treatment, the inconvenience and discomfort of having her arm in plaster cast for 3 months, the increased chances of osteoarthritis, the occasional pain she experiences in her work and during changeable weather and the slight permanent bowing angulation of her arm, the damages are assessed at £750.—".

Regarding the damages the picture so far is as follows:-

"(1) The plaintiff in Action No. 6966/71 is entitled to £227.500 mils, i.e. 70% of £325.— agreed general and special damages.

(2) The defendant in the same action is entitled to £226.500 mils, i.e., 30% of £600.— general plus £115.— agreed special.

3. The plaintiff in Action No. 6965/71 is entitled to £970.— i.e., £750.— general plus £220.— agreed special".

Regarding the contribution claimed by the defendant in Action No. 6966/71, he counterclaimed the plaintiff for any amount to the extent of the plaintiff's contribution which the defendant is adjudged to pay to the plaintiff in Action No. 6965/71. Indeed, in that case the same amount is £291.— i.e. 30% of £970.—.

Then the trial Judge made this observation:

> "If the plaintiffs in the two actions were not husband and wife then there would have been no difficulty in making the order but for the provisions of sections 64(1) and 10(1) of Cap. 148, the matter is not at all easy".

Learned counsel for the defendant invited the Court at that stage to interpret the word "liable" appearing in section 64(1) of Cap. 148 in the same way as Lord Denning did in his dissenting judgment in the case of *Littlewood* v. *G. Wimpey & Co. Ltd.*, [1953] 2 All E.R. 915. The trial Judge quoted this section and observed that our section is identical to section 6(1) of the Law Reform (Married Women and Tortfeasors) Act 1935. Indeed the majority view in the *Littlewood* case was that the word "liable" in section 6(1) of the 1935 Act should be interpreted as meaning "held liable" and not "responsible at law". With that in mind, the trial Court had this to say at p. 45:-

> "There is no doubt in my mind that the interpretation given by Lord Denning circumvents many injustices caused by the said Section when taken in conjunction with other statutory provisions, but having in mind the view of the other judges on the point, I am unable to accord to the word 'liable' in section 64(1) of our Law the meaning accorded to it by Lord Denning. The word does not stand alone but is tied together with the phrase 'if sued'. The two phrases taken together can have no other meaning but 'sued to judgment'."

Then the trial Court having quoted a number of other cases concluded as follows:-

> "As the section stands, however, it is not possible for such an interpretation to be accorded to it without the actual amendment of the section but this of course is not within the domain of the Courts but that of the legislative authority.
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> In the result, the argument of the defendant that the word 'liable' in section 64(1) of Cap. 148 should be interpreted as meaning 'responsible at law', fails".

On the issue of the constitutionality of section 10(1) of the

Civil Wrongs Law Cap. 148 and after quoting a number of relevant cases, the trial Judge concluded as follows:-

> "For all the above, I am not satisfied at all that section 10(1) is contrary to the Constitution, in fact I entertain no doubt whatsoever about its constitutionality and good reason. Moreover, I consider it a reasonable and necessary differentiation serving very well the demands of our society. It may also be said that its necessity is dictated by considerations of public policy and good social order".

On appeal counsel for the appellant-defendant, Christakis Varnavides made it clear that his appeal is against so much of the said judgment as it adjudged that the defendant was not entitled to indemnity and/or contribution from the plaintiff in Action No. 69/71, Sophoula Christophorou, in respect of the amount that the defendant was adjudged to pay to the plaintiff in Action No. 6965/71.

Indeed, the ground of appeal and the reasons given are these:-

"1. That the learned trial Judge misdirected himself in construing 'who is liable' in section 64(1) of Cap. 148 to mean 'who is held liable' or 'sued to judgment' in that such construction:

(a) Is contrary to the primary rule of literal construction, and/or to the ordinary meaning of the words used and/or their grammatical construction, and/or of the principle of construction *ut res magis valeat quam pereat*.

(b) Is tantamount to a judicial paraphrase of the section in question and presumes an intention to the legislature which is not in accord with reason and justice (His Honour the trial judge does admit that this construction leads to injustice- pp. 9 letter D and 18E of his judgment).

(c) Affords to one of two wrong doers the opportunity to profit by his own wrong.

2. Without prejudice to the aforesaid and/or in the alternative and in the event of it being found that the construction placed by the learned trial judge upon the said

sections 64(1) and 10(1) of Cap. 148 was, in the circumstances, the proper one to follow, sections 10(1) and 64(1) of Cap. 148 are unconstitutional, being contrary to the provisions of Articles 23, 28 and 30 of the Constitution in that the said sections infringe the rights of property, equality and fair trial".

Having heard full argument by both counsel, we reserved judgment, but on the 19th February, 1979, Mr. Dikigoropoullos applied, on behalf of the appellant-defendant Varnavides, for the re-opening of this case.

His application was based on two points:-

(a) Whether the Court was empowered to re-open the hearing of the appeal which was concluded and judgment had been reserved; and (b) if it decides that it has authority or power to re-open it to decide whether the new Law 54/78 has retrospective effect or not and whether it would affect the merits of this case. Quite fairly, in our view, Mr. A. Ladas, counsel for the respondents-plaintiffs raised no objection to the appeal being re-opened.

Before proceeding further with the argument of Mr. Dikigoropoulos, we find it convenient to quote section 10(1) of the Civil Wrongs Law Cap. 148, which before its recent amendment by Law 54/78 enacted on 20th October, 1978, was as follows:-

"10(1) No action shall be brought in respect of any civil wrong committed before or during the subsistence of a marriage by either party thereto or any person representing his or her estate against the other party thereto or any person representing his or her estate:

Provided that any spouse may, for the protection and security of his or her own property, bring an action against the other for any civil wrong committed by him or her in connection with such property".

Indeed, the proviso to sub-section (1) of section 10 was introduced by section 4 of Law 38/53.

Section 10(1) has now been repealed and substituted by a new section which provides:-

"10(1) Τηρουμένων τῶν διατάξεων τοῦ παρόντος ἄρθρου,

ἑκάτερος τῶν συζύγων θὰ ἔχῃ τὸ αὐτὸ δικαίωμα νὰ ἐγείρῃ ἀγωγὴν ἐναντίον τοῦ ἑκατέρου, δι' ἀστικὸν ἀδίκημα, ὡς ἐὰν δὲν ἦσαν συζευγμένοι".

And in English it reads:-

"10(1) Subject to the provisions of this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married".

The question, therefore, which we must answer in this case is whether the new section 10(1) makes feasible in law an action for one spouse against another in respect of civil wrongs committed before the enactment of Law 54/78. Mr. Dikigoropoulos in effect submitted that section 10(1) of the Civil Wrongs Law Cap. 148 as it stood earlier merely set up a procedural barrier to actions between husband and wife and that its repeal removed this barrier. There is no doubt, he added, that being a procedural matter, Law 54/78 should be given retrospective effect. Counsel relied on the well-known case of *Barber* v. *Pigden*, [1937] 1 K.B. 664.

Pausing here for a moment, it appears that this case lays down according to Scott L.J. that the canon against giving a retrospective force to a statute, in the absence of specific provision, expresses no rigid or absolute rule. It does not apply to a statute dealing with procedure, nor semble, does it apply to a statute abolishing old legal fictions. Indeed, both Mr. Dikigoropoulos and Mr. Ladas did their best to assist us on the implications of the repeal of section 10(1) of Cap. 148, examined together with section 64(1) of the Civil Wrongs Law.

Mr. Ladas contended that this law has no retrospective effect and that it is clear that a right to file an action, to file a writ of summons, relates to the future and before the enactment of this Law, no spouse could file a writ of summons against the other spouse for a tort. But assuming, counsel further added, that the argument is correct and this Law has a retrospective effect, that would mean that a spouse can today bring an action against the other spouse for a tort which occurred in 1961. If that was the intention of the legislature it would have been clearly stated in the law. In addition, having dealt with the previous argument of Mr. Dikigoropoulos to the effect

that the presumption against retrospective operation does not apply to a statute which is merely procedural, counsel for the respondents further submitted that this statute is not merely procedural because a procedural statute would be one that merely regulates procedure and imposes time limits or certain conditions which have to be fulfilled in the actual filing of the documents.

Finally, counsel in advancing an argument against the retrospectivity of the statutes, said that it would affect already existing rights and it was a well known principle that even a procedural statute would not be presumed to have retrospective operation if it affects vested or already existing rights. Counsel reverted to what he said in the beginning that if this law is treated to have retrospective effect it would enable a spouse to go back a very long time and raise matters with the other spouse which the other spouse would never expect to be raised and that, in his further submission, would amount to an interference with already existing rights.

Then turning to *Barber* v. *Pigden* (supra), counsel invited the Court to take the view that this case is not really of very much help because it was dealing with a different provision altogether and a differently worded provision and the result was that section had a limited retrospective effect.

Scott, L.J. in delivering the second judgment in this case dealt with the argument of counsel on the construction of the Law Reform (Married Women and Tortfeasors) Act 1935 which was enacted a fortnight before the issue of the writ in that action, and had this to say at pp. 677, 678:–

> "I do not, however, think this argument is sound. The language of Part I discloses an intention to make a clean sweep of the old legal fiction of our common law that a woman on marrying became merged in the personality of her husband, and ceased to be a fully qualified and separate human person. The draftsmanship of the Act does indeed seem to the lawyer a little open to criticism—and possibly even to more criticism than my common law mind is likely to discern on a first consideration—particularly in regard to the difficult task of connecting the Act up with the retained parts of the 1882 Act; at any rate, Sir

Arthur Underhill's delicious little book on the Act just published raises a good many points which call for reflection. But as far as the present case is concerned, the dominant intention of the Act is clear beyond all doubt: it is to effect a drastic reform of our law in a branch where there has been too much legal fiction and too much technicality of legal procedure; and I do not think the rule against retrospective interpretation, on which Mr. Slade relies, is properly applicable to such a statute abolishing legal fictions, any more than to a merely procedural statute. The purpose of Part I of the Act is to give back to a woman, though married, the full human status allowed by the common law to a man, a maiden or a widow, of which the common law had robbed her; in short, it restores to her natural status and capacity. It does it by sweeping away a host of legal fictions—fictions which in origin were inextricably mixed up with old procedural law. It is well recognized that the cannon against retrospective interpretation does not apply to a statute dealing with adjective law, i.e. procedure, and I think that a statute abolishing old legal fictions is so nearly akin to a procedural statute that the canon can have little, if any, application. After all, the canon expresses no rigid or absolute rule. It rests on a presumption of common-sense in a well-ordered and civilized society; and that presumption does not seem germane to the root-and-branch view Parliament was obviously taking when it passed this Act, of the historical interferences by lawyers with the natural rights of a woman. Anyhow, the inhibition of the rule is a matter of degree, and must vary secundum materiam. A little consideration of this statute in my view suffices to exclude the presumption altogether".

Mr. Dikigoropoulos in reply argued that this is not an action by the wife against the husband, it is an action by a third party against the husband whose right was barred because he was claiming contribution in respect of the tort of one of the spouses and that he is under a legal fiction prevented from recovering contribution because he is deeming to be the spouse of the party against whom he claimed contribution. The third party, counsel added, has nothing to do with this. He is not married he is not a husband but he is prevented from claiming contri-

bution under the doctrine that the wife of the other spouse could not, before the abolition of the right under Law 54/78, file an action against him although the right of the appellant to file an action was there. He further added that he is stopped from recovering damages because according to what the trial Judge said the wife could not file an action and therefore he could not file an action also.

With respect to the argument of Mr. A. Ladas also, we take a different view of *Barber* v. *Pigden* (supra) and we think it is on all fours with the present case once it was decided that the Law Reform (Married Women and Tortfeasors) Act 1935 abolished the rule whereby a husband was liable for the tort of his wife and had retrospective operation, because it did no more than remove a legal fiction and that it did not interfere with a vested right. Indeed where vested rights are affected there is a presumption that the enactment is prospective as opposed to enactments dealing with procedural matters which could be given retrospective effect.

It is true that it is not always easy to distinguish between procedural and substantive enactments, using the term "substantive" to encompass laws that confer rights which cannot be taken away once they have accrued except by express operation of the law.

In *Kammins Ballrooms Co. Ltd.* v. *Zenith Investments (Torquay) Ltd.*, [1970] 2 All E.R. E.R. 871, (H.L.) it was held that section 29(3) of the Landlord and Tenant Act 1954 laid down that no application for renewal of a tenancy shall be entertained unless it is made not less than two nor more than four months after the giving of the landlord's notice under section 25 was considered as a procedural enactment and a tenant failing to observe its provisions did not inexorably forfeit his right for renewal. See also the case of *Wilson* v. *Dagnall*, [1972] 2 All E.R. 44 (C.A.), an example of an enactment altering substantive rights and its prospective focus can be furnished by that case. Indeed, it was there decided that section 4(1) of the Law Reform (Miscellaneous Provisions) Act 1971, laying down that the prospects of remarriage of a widow should be disregarded in assessing damages under the fatal accidents' Acts had prospective operation and nothing altered rights that accrued before its enactment.

Therefore, the Court could not ignore in assessing damages at a date prior to the operative date of the Act, the rights of the parties as defined by law prior to this enactment.

In *Attorney-General* v. *Vernazza*, [1960] A.C. 965, Lord Denning delivering a separate judgment had this to say at p. 978:-

> "It is, of course, clear that in the ordinary way the Court of Appeal cannot take into account a statute which has been passed in the interval since the case was decided at first instance, because the rights of litigants are generally to be determined according to the law in force at that date of the earlier proceedings, see *In re A Debtor* (*No.* 490 *of* 1935), [1936] Ch. 237, *New Brunswick Railway Co. British and French Trust Corporation Ltd.* [1939] A.C. 1. But it is different when the statute is retrospective either because it contains clear words to that effect, or because it deals with matters of procedure only, for then Parliament has shown an intention that the Act should operate on pending proceedings, and the Court of Appeal are entitled to give effect to this retrospective intent as well as a court of first instance, see *Quilter* v. *Mapleson*, 9 Q.B.D. 672 and *Stovin* v. *Fairbrass* [1919] 88 L.J. K.B. 1004. Those decisions seem to me to show that the Court of Appeal can give effect to a retrospective Act passed in the interval since the case was at first instance, no matter whether it deals with vested rights or with procedure only, for, as Harman L.J. pointed out, the retrospective Act in *Quilter* v. *Mapleson* 9 Q.B.D. 672 affected the vested right of the landlord to recover possession. And the retrospective Act in *Stovin* v. *Fairbrass* 88 L.J.K.B. 1004 affected the vested right of the statutory tenant to remain in possession.
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> Applying this principle, the Act of 1959 was, as I have said, retrospective".

For the reasons we have given, and in the light of the authorities quoted, we think it was a good thing that the old section 10(1) of the Civil Wrongs Law, Cap. 148 was removed from our Statute Book. This was meant to pave the way for the better administration of justice by removing artificial barriers that blocked the way to direct or indirect proceedings between

spouses. No one had acquired a vested interest in the subsistence of this anomaly. All that was acquired was a temporary advantage that could be enjoyed so long as the anomaly was preserved. Now it has happily been done away with, and therefore, the way has been opened for citizens to ventilate their rights without hindrance. This is what the defendant has done by seeking contribution from the wife, allegedly a joint tort-feasor and the husband has no legitimate right to complain for no right of his was taken away. It was always his duty at common law to show care to all his neighbours and that included his wife.

For all these reasons, the application of the defendant succeeds once we have reached the conclusion that the new section 10(1) of the Civil Wrongs Law was of a procedural nature and has retrospective effect.

Application granted.