

1982 May 18

[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 AND OTHERS,

*Defendants.*

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

*Practice—Pleadings—Amendment—Plaintiff will not be allowed to  
amend by setting up fresh causes of action which since issue of writ  
have become statute barred—Admiralty action—Writ issued  
before expiry of statutory limitation period and disclosing cause  
of action within admiralty jurisdiction of the Court—Proposed  
5 amendment aiming to bring case within admiralty jurisdiction  
—And became necessary due to a mistake made in a previous  
amendment—Granted in the special circumstances of this case.*

10 On February 16, 1977 the plaintiff, within the limitation period,  
filed an action against the defendants claiming damages for  
personal injuries suffered by him on board the ship "Evange-  
listria". His petition was filed on May 31, 1978 and in paragraph  
2 it was alleged that:

15 "The defendants No. 1 were the employers of the plaintiff  
at the time of the accident and they were authorised for the  
loading of the ship 'Evangelistria' as agents and/or by  
virtue of agreement with the owners and/or otherwise".

20 Following an application for amendment of the petition  
which was filed on June 15, 1981 the above paragraph was  
amended by consent and substituted by the following paragraphs:

25 "2. The defendants at all material time were the persons  
which engaged a group of stevedores including the plaintiff  
on a daily or per hour wage for the unloading of the ship  
'Evangelistria'. Consequently the plaintiff became a servant  
and/or employee of the defendants.

3. The plaintiff shall allege that the defendants at all material time were acting as independent contractors for the unloading of the said ship. Further and or in the alternative, if it was proved that the defendants did not act as contractors but as agents on any person or persons (legal or physical) the plaintiff will allege that the principals of the defendants were and are unknown and/or were never disclosed and on account of that the defendants were and are personally liable". 5

On June 19, 1981, the defendants applied for an order of the Court "that upon the facts pleaded in the petition the Supreme Court of Cyprus in its admiralty Jurisdiction has no jurisdiction to hear and determine the action". On October, 14, 1981, and before the conclusion of the hearing of defendants' application the plaintiffs applied for an amendment of the above-quoted paragraph 2 of the petition by the addition of the words "which was in the possession or under the control of the defendants", after the word "Evangelistria". The defendants opposed\* this application mainly on the ground that the amendment sought was "an attempt to set up a cause of action in admiralty that is now time barred". 10 15 20

It was clear that with the proposed amendment the plaintiff was aiming to bring his case under section 1(1)(f)\*\* of the Administration of Justice Act, 1956.

*On the application for amendment:* 25

*Held,* that considering the very special circumstances of this case, particularly the fact that the writ of summons, which was issued before the expiry of the statutory limitation period, did disclose a cause of action within the Admiralty Jurisdiction of this Court and contained the nature of the dispute, the essence of which was well known to the defendants; and that as the defendants are in no way prejudiced now as regards the prepa- 30

\* The grounds of opposition are quoted at pp. 404-5 *post*.

\*\* Section 1(1)(f) reads as follows:

"(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims (a) to (e) .....

(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act ..... of the owners, charterers or persons in possession or control of the ship ..... or of any other person for whose wrongful acts, ..... the owners ..... or persons in possession or control of a ship are responsible ....."

ration of their defence by the rectification of the mistake which was caused by some oversight due to the amendments effected to the first petition filed, which it brought about the necessity for this amendment, this is a proper case to allow the amendment applied for; accordingly the application for amendment must be granted.

*Application granted.*

Cases referred to:

- 10 *C.L. Baker Ltd. v. Medway Building & Supplies Ltd* [1958]  
1 W.L.R. 1216 at p. 1231;  
*Pourikkos v. Fevzi* (1963) 2 C.L.R. 24;  
*Courtis v. Iasonides* (1970) 1 C.L.R. 180;  
*Mahattou v. Viceroy Shipping Co. Ltd.* (1979) 1 C.L.R. 542;  
*Weldon v. Neal* [1887] 19 Q.B.D. 394;  
15 *Pontin v. Wood* [1962] 1 Q.B. 594 at p. 609;  
*Sterman v. E.W. & W.J. Moore (A Firm)* [1970] 1 Q.B. 596.

**Application.**

20 Application by plaintiff for the amendment of the petition filed in an admiralty action for damages for personal injuries suffered by him on board the ship "Evangelistria" while in the employment of defendants.

*S. Kittis*, for the applicant.

*S. Mc Bride*, for the respondents.

*Cur. adv. vult.*

25 A. LOIZOU J. read the following ruling.—This is an application by the plaintiff for amendment of the petition filed in this admiralty action in personam for damages for personal injuries allegedly suffered by him on board the ship "EVANGELISTRIA" while in the employment of defendants No. 1, hereinafter to be called the defendants as the action was discontinued against defendants No. 2 and 3.

30 The plaintiff filed this action against the present defendants on the 16th February 1977. The petition was filed on the 31st May 1978, and in paragraph 2 thereof it was alleged that:—

35 "The defendants No. 1 were the employers of the plaintiff at the time of the accident and they were authorised for the loading of the ship "EVANGELISTRIA" as agents and/or by virtue of agreement with the owners and/or otherwise".

On the 15th June 1982, the plaintiff filed an application for

the amendment of the petition which was granted by consent and in which the aforesaid paragraph 2 was substituted by the following paragraphs:

- “2. The defendants at all material time were the persons which engaged a group of stevedores including the plaintiff on a daily or per hour wage for the unloading of the ship ‘EVANGELISTRIA’. Consequently the plaintiff became a servant and/or employee of the defendants. 5
3. The plaintiff shall allege that the defendants at all material time were acting as independent contractors for the unloading of the said ship. Further and or in the alternative, if it was proved that the defendants did not act as contractors but as agents on any person or persons (legal or physical) the plaintiff will allege that the principals of the defendants were and are unknown and/or were never disclosed and on account of that the defendants were and are personally liable”. 10 15

The defendants in paragraphs 2(a) and (b) and paragraph 3 of their answer, admit that they acted as the agents of the ship “EVANGELISTRIA”. 20

On the 19th June 1981, the defendants applied for an order of the Court that “upon the facts pleaded in the petition the Supreme Court of Cyprus in its Admiralty Jurisdiction has no jurisdiction to hear and determine the action”. The defendants were heard on their application on the 10th October 1981, and the case was adjourned for the 7th November 1981, for address by Counsel of the plaintiff. In the meantime the plaintiff filed the present application for amendment of paragraph 2 of his petition by the addition of the words “which was in the possession or under the control of the defendants”, after the word “EVANGELISTRIA”. 25 30

The application was opposed on the following grounds:

- “(a) The Plaintiff is guilty of laches.
- (b) The amendment sought is not sought for the purpose of determining the real questions in controversy but to attempt (at too late a stage in the proceedings) to insert for the first time a material allegation in the pleadings so as to try and set up a cause of action. 35
- (c) The amendment sought is an attempt to set up a cause of action in admiralty that is now time barred. 40

(d) the proposed amendment is inadmissible as it prejudices the rights of the Defendants now existing.

(e) this application ought to and/or must await the outcome of the Defendants application filed on 19.6.1981 and fixed for continued hearing on 7.11.1981”.

5 The first question to be decided is whether the amendment sought is immaterial or useless (see *R.S.C. Annual Practice, 1960*, O. 28, r. 1, at p. 627). In the *Supreme Court Practice 1979*, at p. 345 (new Order 20, r. 5), it is stated that “amendments  
10 ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings (see per Jenkins, L.J., in *C. L. Baker Ltd. v. Medway Building & Supplies Ltd. [1958] 1 W.L.R., 1216 at 1231*”. It must first, therefore, be  
15 examined, whether the addition of the words “which was in the possession or under the control of the Defendants”, is necessary.

In his amended petition the plaintiff alleges in paragraph 3, thereof that the defendants were independent contractors  
20 and/or agents of undisclosed principals, and that they employed stevedores for the loading of the ship, and there is nothing to state clearly that they were “persons in possession or control of the ship”.

What is abundantly clear is that the plaintiff is aiming with  
25 the proposed amendment to bring his case under s.1(1)(f) of the *Administration of Justice Act 1956*, which provides that:-

“(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims  
30 (a) to (e)\_\_\_\_\_

(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act \_\_\_\_\_ of the owners, charterers or persons in possession or control of the  
35 ship \_\_\_\_\_ or of any other person for whose wrongful acts, \_\_\_\_\_ the owners \_\_\_\_\_ or persons in possession or control of a ship are responsible \_\_\_\_\_”.

By examining the pleadings and in particular paragraphs 2

and 3 of the petition filed on the 15th June 1981, one can see that there is nothing to bring the case within section 1(1)(f) (above) as the pleadings clearly do not disclose any admiralty cause and therefore the amendment is necessary.

The second question that is posed, is whether under the Rules this is a proper case to grant the amendment. The contention of the applicants/ plaintiffs is that they have by oversight or inadvertence omitted the words sought to be added when the Statement of Claim was previously amended, although words to that effect could be found in the original Statement of Claim. Also that they have not unreasonably delayed in applying for the amendment, as they only became aware of the need for such amendment at the hearing of the application on the question of jurisdiction and that in any case the application is made in good faith. The respondents/defendants have argued that this application has been made at too late a stage of the proceedings, and that if it is granted it will deprive them of rights which accrued before the application was made and that costs in the present case cannot adequately compensate them as they will be deprived of a complete defence, i.e. that the Admiralty Court has no jurisdiction to try the case and that any suit that may hereinafter be filed will be time-barred.

No doubt, the proceedings as originally instituted disclosed a cause of action coming within the admiralty jurisdiction of this Court. It was only after the amendment of the petition that the problem arose, hence the filing by the defendants of their application to stay the proceedings on the ground of lack of jurisdiction by this Court. The question when amendments are granted under the relevant Rules of Court has come up for consideration by this Court in a number of cases and reference may be made to the cases inter alia of *Pourikkos v. Mehmet Fevzi* (1963) 2 C.L.R. p. 24; *Courtis v. Iasonides* (1970) 1 C.L.R. p. 180, and *Mahattou v. Viceroy Shipping Co., Ltd.*, (1979) 1 C.L.R. p. 542 where at p. 55 the position has been summed up as follows:

“It has been the practice in England for a long time, in a proper case, to allow an amendment of the pleadings at any stage of the proceedings. The Court before considering whether to grant an amendment should take into consideration whether such amendment can be made with-

5 out injustice to the other side which cannot be compensated for by costs, and whether the application is either mala fide or is made with the object of unduly delaying the other partly or will, in any other way, unfairly prejudice the other party, or is irrelevant or useless”.

10 In England the corresponding rules have been revised and brought up-to-date in order to incorporate the Case Law and also in order to meet the present needs of the good administration of justice. Unfortunately that has not as yet been done in Cyprus and we have to turn to the position in England as it existed before 1962 for guidance on the matter.

15 In the *Annual Practice* 1960, at p. 628, it is stated that “Amendments which would prejudice the rights of the opposite party existing at the date of the proposed amendment are not, as a rule, admissible”.

In *Weldon v. Neal* [1887] 19 Q.B.D. 394, the plaintiff was not allowed to amend by setting up fresh causes of action which since the issue of the writ had become statute barred.

In his judgment Lord Esher, M.R. had this to say at p. 395:

20 “We must act on the settled rule of practice, which is that amendments are not admissible when they prejudice the rights of the opposite party as existing at the date of such amendments. If an amendment were allowed setting  
25 up a cause of action, which, if the writ were issued in respect thereof at the date of the amendment, would be barred by the Statute of Limitations, it would be allowing the plaintiff to take advantage of her former writ to defeat the statute and taking away an existing right from the defendant, a proceeding which, as a general rule, would be, in  
30 my opinion, improper and unjust. Under very peculiar circumstances the Court might perhaps have power to allow such an amendment, but certainly as a general rule it will not do so.

35 This case comes within that rule of practice, and there are no peculiar circumstances of any sort to constitute it an exception to such rule. For these reasons I think the order of the Divisional Court was right and should be affirmed”.

It is clear from the aforesaid judgment that however strict the principle was, the Court appeared to have power to allow an amendment "under very peculiar circumstances" as Lord Esher, M.R. put it, and I hold the view that the circumstances of the case in hand are such as to be peculiar in themselves and justify a departure from the strict rule of practice in *Weldon v. Neal* (supra). I am of the view that in the circumstances I should not allow the objection of the respondents to prevail, and I am guided for that purpose by the words of Holroyd Pearce, L.J., in *Pontin v. Wood* [1962] 1 Q.B. 594, at p. 609 where he said that the Court would give its aid "to regularising the procedure of a known genuine case commenced before the time limit expired but containing technical defects". This approach was followed by Lord Denning M.R., in *Sterman v. E.W. & W.J. Moore (A Firm)* [1970] 1 Q.B. 596, though admittedly that was a case turning on the interpretation of the new English Rules.

For all the above reasons and considering the very special circumstances of this case, particularly the fact that the writ of summons was issued before the expiry of the statutory limitation period, it did disclose a cause of action within the Admiralty Jurisdiction of this Court and contained the nature of the dispute, the essence of which was well known to the defendants, and as the defendants are in no way prejudiced now as regards the preparation of their defence by the rectification of the mistake which was caused by some oversight due to the amendments effected to the first petition filed, which it brought about the necessity for this amendment I have come to the conclusion that this is a proper case to, and I do allow the amendment applied for. Applicants, plaintiffs, to pay the costs of this application and all costs thrown away as a result of this amendment.

*Application granted. Order for costs as above.*