1985 February 27

[SAVVIDES, J.]

1. SOL FERRIES LTD. OWNERS OF F/B SOL EXPRESS

2. SOL ISLAND NAVIGATION COMPANY LTD., OWNERS OF M/V SOL GEORGHIOS,

Plaintiffs,

v.

1. NAOUM SHIPPING AGENCY LTD. AGENTS OF M/V BOUSTANY 1,

2. M/V BOUSTANY 1, NOW LYING IN THE PORT OF LIMASSOL,

Defendants.

(Admiralty Action No. 142/84).

Admiralty—Practice—Rules applicable—Not the Civil Procedure Rules but the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction and by virtue of rule 237 of these Rules the Practice of the Admiralty Division of the High Court of Justice in England as on the 15th August, 1960—Claim for damages arising from collision between ships—Defendants admitting liability for collision but denying the extent of damages and putting plaintiffs to the strict proof thereof—Application for judgment as per claim due to admissions of facts—Rule applicable is rule 6 of Order 32 of the old English R.S.C.—Not a case in which plaintiffs have satisfied the Court that there is a clear admission of the extent of the damages claimed so as to bring the case under the ambit of the aforesaid rule 6—Application dismissed.

Practice—Interlocutory applications—Rule relied upon in support of the application not applicable—Whether an irregularity of such a kind as to render the proceedings void.

The claim of the plaintiffs in this action was in respect of damages caused to their ships "Sol Georghios" and "Sol

Express" as a result of a collision which occurred between defendant 2 ship and plaintiffs' aforesaid two ships.

The defendants in their answer admitted that a collision occurred between the said ships but denied "the extent of damages as being excessive and put the plaintiffs to the strict proof thereof".

There followed an application by plaintiffs for judgment as per claim on the grounds that the facts set out in the petition were admitted by the defendants. The application was based on the Civil Procedure Rules, Order 24, rule 6 Order 48, rule 2, on the Cyprus Admiralty Jurisdiction Rules 203 and 237 and on the inherent jurisdiction of the Court.

Held, (1) that in Admiralty proceedings the Rules applicable are the Rules of the Supreme Court of Cyprus in its Admiralty jurisdiction and in all cases not provided for by such Rules, then under the provisions of rule 237 the practice of the Admiralty Division of the High Court of Justice of England, as on the 15th August 1960, so far as the same shall appear to be applicable, shall be followed (see, inter alia, *Nigerian Produce etc.* v. *Sonora Shipping and Another* (1979) 1 C.L.R. 395, *Asimenos* v. *Paraskeva* (1982) 1 C.L.R. 145); and that, therefore, the Civil Procedure Rules, are not applicable and any reference to them in support of the application is wrong; that though the rules relied upon are not the ones applicable, nevertheless, this does not amount to an irregularity of such a kind as to render the proceedings void, bearing also in mind that rule 237 of the Cyprus Admiralty Rules is also mentioned in the application; that the present application may, therefore, be examined under the provisions of the Cyprus Admiralty Rules and the relevant provisions of the English R.S.C. namely Order 32 rule 6; * that though defendants'

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* Rule 6 provides as follows:

«Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may upon such application make such order, or give such judgment, as the Court or Judge may think just».

answer is rather poorly drafted in very general terms, nevertheless, it leaves no room for doubt that though by the contents thereof the defendants admit full liability for causing the accident, they deny the extent of damages claimed and they put the plaintiffs to strict proof of such damages; that in the light of all the material before this Court this is not a case in which the applicants-plaintiffs have satisfied the Court that there is a clear admission of the extent of the amount of damages claimed, to bring their case under the ambit of Order 32, rule 6 of the English R.S.C. and, therefore, the issue as to the quantum of damages will have to be determined after the Court hears evidence in this respect.

Application dismissed.

Cases referred to:

Nigerian Produce v. *Sonora Shipping and Another* (1979) 1 C.L.R. 395;

Asimenos v. *Paraskeva* (1982) 1 C.L.R. 145;

Ellis v. *Allen* [1914] 1 Ch. 904.

Application.

Application by plaintiffs for judgment as per claim on the ground that the facts set out in the petition are admitted by the defendants.

N. Pirilides, for the applicants.

G. Yiangou, for the respondents.

Cur. adv. vult.

SAVVIDES J. read the following decision. This is an application for judgment as per claim on the ground that the facts set out in the petition are admitted by the defendants.

In this admiralty action, which is a mixed action in rem against the ship M/V BOUSTANY 1 (defendant 2) and in personam against her agents (defendants 1), plaintiffs claim against the defendants a sum of U.S. Dollars 6,800.-

in respect of damages caused to M/V SOL GEORGHIOS and F/B SOL EXPRESS belonging to plaintiffs, as a result of a collision which occurred between defendant 2 ship and plaintiffs' two aforesaid ships.

On the day fixed by the writ of summons for appearance before the Court, directions were made under rule 82 of the Admiralty Rules, requiring the parties to furnish written pleadings. In compliance with such directions, plaintiffs filed their petition whereby they allege that the collision was the result of negligence and/or breach of statutory duty by the defendants, their servants and/or agents, particulars of which are set out in paragraph 6 of the petition. Particulars of the damage caused to plaintiffs' ships to the extent of U.S. Dollars 6.800.— are set out in paragraph 7 of the petition. Under paragraph 8 the plaintiffs allege in the alternative that—

> "...the plaintiffs allege that the defendants admitted liability for all the damage caused and that the defendants on or about 13/1/1984 agreed and undertook irrevocably in writing to meet all damages suffered by the plaintiffs. The plaintiffs will refer to all documents and/or admissions concerned at the hearing of the present action".

Defendants' joint answer to plaintiffs' petition filed on 11th October, 1984, is very brief and it reads as follows:

> "1. The defendants admit the fact that a collision occurred between the said ships, as described in the petition.
>
> 2. The defendants deny the extent of damage as being excessive and put the plaintiffs to the strict proof thereof.
>
> 3. The defendants are ready to pay reasonable compensation by way of damages to plaintiffs".

On 21st November, 1984, plaintiffs filed the present application whereby they apply for:

> "(A) Judgment for the sum of U.S. Dollars 6,800 or its equivalent in Cyprus Pounds in favour of the

plaintiffs-applicants and against the defendants-respondents on the question of quantum of damages which the defendants-respondents impliedly admitted as per paragraphs 2 and 3 of their answer.

(B) An Order of the Honourable Court entering judgment in favour of the plaintiffs-applicants and against the defendants-respondents on the question of liability which the defendants-respondents admitted in their answer as per paragraph (1) of same.

(C) An Order of the Honourable Court directing payment of the above sum directly to the plaintiffs-applicants and/or their agent Neofytos Pirilides, of Limassol.

(D) Costs".

The application is supported by an affidavit sworn by Thoukis Georghiades, one of the Directors of the plaintiffs. Under paragraph 2 thereof, the allegations of negligence and breach of statutory duty by the defendants are confirmed. The rest of the affidavit reads as follows:

"3. To the best of my knowledge and information and as I am advised by our advocate, the defendants, as per paragraph 1 of their Answer, admitted the fact that a collision occurred between the said vessels as described in the Petition, i.e. admitted that same occurred by reason of the negligence and/or breach of statutory duty of the defendants and/or their servants and/or their agents.

4. To the best of my knowledge and information and as I am advised by our advocate, the plaintiffs, as per paragraphs 7 and 8 of their Petition gave particulars of the damage suffered by them and further alleged that the defendants undertook irrevocably in writing to meet all damages suffered by the plaintiffs. Furthermore all documents in support of the plaintiffs' allegations as to the extent of the damage suffered by them as well as the defendants' undertakings to

meet such damage appear on the record of the Court.

5. To the best of my knowledge and information and as I am advised by our advocate, the defendants, by paragraphs 2 and 3 of their Answer impliedly admitted both the extent of the damage suffered by the plaintiffs and the damages claimed by the plaintiffs in their Petition.

6. To the best of my knowledge and belief and as I am advised by our advocate, the Court may, according to the above admitted facts, enter judgment in favour of the plaintiffs and make such order as it thinks necessary disposing of the plaintiff's claim."

The application was opposed and the facts set out in the opposition are that the defendants admitted liabilitly only but denied the extent of the damages claimed by the plaintiffs.

The application is based on the Civil Procedure Rules, Order 24, rule 6, Order 48, rule 2, on the Cyprus Admiralty Jurisdiction Rules 203 and 237 and on the inherent jurisdiction of the Court.

By his written address counsel for applicants submitted that in view of the wording of Order 24, rule 6 of the Civil Procedure Rules on which the application is based, where admissions of fact are made, either in the pleadings or otherwise, any party may at any stage of the proceedings apply for such judgment or order, upon such admission, as he may be entitled to. The defendants, counsel contended, by paragraphs 2 and 3 of their Answer, whilst denying the extent of damage, impliedly admitted that damage was caused to the plaintiffs, and, furthermore, by failing to deny the allegations in paragraph 8 of the petition, they impliedly admitted same. The final argument of counsel for plaintiffs was that in the light of the wide provisions of Order 24, rule 6, when an admission is made "by letter of facts" which show that the defendant has no defence to the action, the making or giving of an immediate order or judgment is justified.

In his oral address in further clarification, counsel for

applicants submitted that the admissions relied upon are the allegation in paragraph 8 of the petition which has not been expressly denied and the contents of the documents annexed to the application for the issue of a warrant of arrest against defendant 2 ship and marked exhibits 'A', 'C', 'D' and 'F'. By virtue of the said documents, counsel added, the defendants irrevocably undertook to pay all the damages caused as assessed by a surveyor, copy of whose survey has already been handed over to both parties.

Counsel for the respondents-defendants, on the other hand, in his written address, reiterated his contention as set out in the opposition that the defendants admitted only liability and that they expressly denied the extent of the damages claimed and it is the duty of the applicants-plaintiffs, on whom the burden lies, to strictly prove same.

As already mentioned according to the applicants and the tenor of the argument of their counsel, reliance is sought to be placed on the Civil Procedure Rules, Order 24, rule 6 and Order 48, rule 2. It has been repeatedly pronounced by this Court that in Admiralty proceedings the Rules applicable are the Rules of the Supreme Court of Cyprus in its Admiralty jurisdiction and in all cases not provided for by such Rules, then under the provisions of rule 237, the practice of the Admiralty Division of the High Court of Justice of England, as on the 15th August, 1960, so far as the same shall appear to be applicable, shall be followed. (See inter alia, *Nigerian Produce etc.* v. *Sonora Shipping and Another* (1979) 1 C.L.R. 395, *Asimenos v. Paraskeva* (1982) 1 C.L.R. 145). The Civil Procedure Rules, therefore, are not applicable and any reference to them in support of the application is wrong.

In the present application though the rules relied upon are not the ones applicable, nevertheless, in my opinion, this does not amonut to an irregularity of such a kind as to render the proceedings void, bearing also in mind that rule 237 of the Cyprus Admiralty Rules is also mentioned in the application. The present application may, therefore, be examined under the provisions of the Cyprus Admiralty Rules and the relevant provisions of the English R.S.C.

Under rule 89 of the Cyprus Admiralty Rules, provision is made as follows:

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

Due to the general terms in which such rule is phrased, Order 32 of the English Rules (the ones in force prior to the 15th August, 1960) may also be invoked in these proceedings. Order 32, rule 6, provides as follows:

> "Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may upon such application make such order, or give such judgment, as the Court or Judge may think just".

In the notes to the Annual Practice, 1960 under Order 32, rule 6 at page 736 under the heading "or otherwise" we read:

> "These words are not confined to admissions made under rr. 1 or 4 of this Order, but are of general application, and justify the making or giving of an immediate order or judgment when an admission is made by letter of facts which show that the defendant has no defence to the action (*Ellis* v. *Allen* [1914] 1 Ch. 904)".

In fact counsel for applicants has introduced the above extract from the Annual Practice in his address and on the basis of the dictum in *Ellis* v. *Allen* (supra) submitted that the present case is a proper case for the Court to give judgment for the plaintiffs against the defendants.

In *Ellis* v. *Allen* the action was founded on a breach of a covenant in a lease agreement providing against subletting certain premises and denfendant's solicitors on the day after they had entered appearance on behalf of the

defendant wrote a letter to plaintiff's solicitors admitting that they sublet the premises and alleging that defendant's failure to obtain plaintiff's consent to sublet the premises was purely due to a mistake. In the particular facts of the case the Court found that there was a clear admission of facts which would have made it impossible for the defendant to succeed. The following is reported in the judgment of Sargant, J., at pp. 908, 909:

> "The object of the rule was to enable a party to obtain speedy judgment where the other party has made a plain admission entitling the former to succeed. I do not think r. 6 should be confined as suggested. In my judgment it applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed."

In support of his contention that defendants admitted the amount of damages incurred by plaintiffs, plaintiffs' counsel invited the Court to take cognizance of the contents of exhibits 'A', 'C', 'D', 'E' and 'F' to the application for the arrest of the defendant 2 ship.

I have perused the contents of such exhibits but in none of exhibits 'A', 'C', 'D' and 'E' there is a "plain admission" by the defendants of the exact amount of dagames caused. Exhibit 'A' is a telex dated 13th January, 1984 whereby the defendants irrevocably undertake to pay to plaintiffs any amount for damages caused after a survey is carried out by certain surveyor. Exhibit 'C' is a telex dated 15.3.1984 sent by the plaintiffs to the defendants inviting them to pay the damages not later than noon of the following day. Exhibit 'D' is a telex dated 16th March, 1984 sent by the defendants to the plaintiffs informing them that they would be calling to plaintiffs' office in the afternoon of that day for "final arrangement". Exhibit 'E' is a letter dated 10.4.84 sent by plaintiffs to defendants informing them that if they failed to settle the damages sustained by both their vessels by noon of the following day, the case would be handed over to their advocate for action.

The only document in which the amount of damages claimed is mentioned in exhibit 'F' which is a letter dated

8.5.1984 sent by plaintiffs' advocate to the defendants informing them that if they failed to pay the sum of U.S. Dollars 6,800 within two days from receipt of such letter, legal proceedings would be instituted against them. To such letter the defendants gave no reply and as a result, the action was filed on the 14th May, 1984.

I come next to the contents of the answer to see whether there exists a "plain admission" on the claim for damages. Though such answer is rather poorly drafted in very general terms, nevertheless, it leaves no room for doubt that though by the contents thereof the defendants admit full liability for causing the accident, they deny the extent of damages claimed and they put the plaintiffs to strict proof of such damages.

In the light of all the material before me I am of the opinion that this is not a case in which the applicants-plaintiffs have satisfied the Court that there is a clear admission of the extent of the amount of damages claimed, to bring their case under the ambit of Order 32, rule 6 of the R.S.C. and, therefore, the issue as to the quantum of damages will have to be determined after the Court hears evidence in this respect.

In the result this application fails and is hereby dismissed with costs in favour of respondents-defendants.

The plaintiffs are at liberty to apply for a date of hearing of the action on the matters in issue.

Application dismissed with costs in favour of respondents.