

1987 September 17

[TRIANAFYLIDES P DEMETRIADES SAVVIDES PIKIS KOURRIS JJ]

PASTELLA MARINE CO LTD ,

Appellants-Defendants,

v

NATIONAL IRANIAN TANKER CO LTD ,

Respondents-Plaintiffs

(Civil Appeal No 7380)

Injunctions — Interlocutory injunction — The Merchant Shipping (Registration of Ships Sales and Mortgages) Law 1963 (45/1963) section 30 — «Interested person» — The expression does not include mere creditors

5 *Injunctions — Interlocutory injunction — Mareva injunction — Outline of its development — The Courts of Justice Law 14/60 — The proviso to section 32(1) — Whether a mareva injunction can be issued in respect of a vessel out of the jurisdiction — Question determined in the negative notwithstanding that the ship in question was registered in Cyprus and was owned by a Cyprus Company*

10 *Injunction — Interlocutory injunctions — The Courts of Justice Law, 14/60 — The proviso to section 32(1) — An applicant must satisfy the Court that he has a visible chance of success — Claim for damages for breach of contract by a person rescinding the contract — Question whether such a person is entitled in the absence of fraudulent representation to claim damages was not examined — Moreover, the damages were not quantified — Grounds for reversing a decision granting an interlocutory injunction*

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Interpretation of Statutes — English Statutes in pari materia with a Cyprus Statute — Whether in construing the latter, the Court may resort to English authorities interpreting the former — Question determined in the affirmative

20 *Injunctions — Interlocutory injunction — The Courts of Justice Law 14/60 — The proviso to section 32(1) — The Merchant Shipping (Registration, Sales and Mortgages) Law, 1963 (45/63), section 30 — The latter should not be circumvented by an application under the former*

25 *Precedent, doctrine of — Stare decisis — Decisions of Court of co-ordinating jurisdiction — Persuasive force of — Diminishes, if Court thinks that they were wrongly decided*

The appellants, a Cyprus Offshore Company, agreed to sell their vessel M/T Bumpac Bahamas, a vessel registered in the Cyprus register of ships, to the respondents, at the price of U S \$ 9,950,000

The agreement provided for an obligation on behalf of the buyers (respondents) to deposit with the solicitors of the vendors (appellants) in London 10% of the sale price

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On 25 9 85 the respondents sought to withdraw from the contract for alleged failure on the part of the vendors to implement two of the contractual terms The respondents intimated their decision to withdraw by a telex dated 25 9 85 Sequentially they demanded the return of the said deposit (U S \$ 950,000), reserving their right to claim damages for breach of contract

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However, on the same day the respondents instituted an Admiralty Action against the appellants seeking (a) a declaration that they were entitled to possession and ownership of the ship properly classed, (b) an order directing the vendors to transfer the vessel to the buyers, and (c) damages for breach of contract

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The institution of judicial proceedings on the part of the buyers was accompanied by an application for an injunction restraining the defendants from parting, mortgaging, or in any way alienating their interest in the vessel An order was made ex parte in the terms suggested by the buyers reserving a right to the vendors to oppose the application in due course after service upon them of the proceedings

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The vendors opposed the application

Having decided that no order could be made under s 4(1) of Cap 6, the learned Judge proceeded to examine whether an order was justified under either or both of the remaining grounds propounded in support of the motion, namely s 30 of Law 45/63 and s 32(1) of Law 14/60

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The trial Judge concluded that the applicability of section 30 of Law 45/63 is not confined to petitioners having an interest in the vessel herself and that a fair construction of its provisions warranted its invocation by any creditor including one in the position of the plaintiff suing the owners of the ship for unliquidated damages In this respect the trial Judge felt free to depart from a series of first instance judgments of the Supreme Court on the ground that they were wrongly decided

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Moreover, the trial Judge concluded that an order in the nature of a mareva injunction could be made, notwithstanding that the vessel in question was out of the jurisdiction because as the remedy is an equitable one and equity acts in personam, it matters not that the property in the control of the defendants (appellants) was outside the jurisdiction, so long as those to whom the order is addressed can appropriately be restrained from parting with the property

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As a result the interim order granted ex parte was made absolute. Hence this appeal

5 Held, allowing the appeal (A) *Per Triantafyllides, P., Kourms, J. concurring* (a) In the light of the similarity between section 30 of Law 45/63 and section 30 of the Merchant Shipping Act, 1894 in England, the case law of our Supreme Court correctly followed the approach in England to the interpretation of section 30 of the Merchant Shipping Act, 1894, with the result that it is necessary for the person seeking an order under section 30 of Law 45/63 to have an interest in the ship concerned

10 (b) A «Mareva Injunction» could not be made on the present occasion as it relates to a ship which was at the material time outside the jurisdiction of our Supreme Court

15 (c) Moreover, where it is not possible in law to make an order under section 30 of Law 45/63, its provisions ought not to be circumvented by making such an order under section 32 of Law 14/60

(B) *Per Pikiis, J., Kourms, J. concurring*: (a) Resolution of the issues in this appeal requires this Court to examine the ambit and compass of both s. 30 of Law 45/63 and s. 32(1) of Law 14/60.

20 (b) The trial Judge concluded that the crucial expression in section 30 of Law 45/63 «ενδιαφερόμενον πρόσωπον» («interested person») encompasses by the tenor of its meaning every creditor and not merely one with an interest in the ship herself.

25 The word «interest» and variations of it encountered in a legal framework are apt to derive their precise meaning from the context in which they appear. The expression «interested person» is not synonymous with «plaintiff», «petitioner», «litigant». Had the legislature intended to extend the remedy conferred by s. 30 to every creditor of the owners of the ship, one would expect them to adopt a word other than «interested person», for example a plaintiff, a petitioner or litigant.

30 The distinction made by the law between persons having an interest in the ship herself and other creditors is not an arbitrary one. A ship has, in many respects, a personality of her own, a position reflected in the principles of Admiralty law that clearly distinguish between the liabilities of the vessel and her owners.

35 (c) Section 32(1) of the Courts of Justice Law reproduces s. 37(1) of its predecessor, the Courts of Justice Law, Cap. 8. In *Polish Ocean Lines and Another v. Spyropoulos and Another*, XX Part II C.L.R. 73, the Court held that the power to make an interlocutory injunction under s. 37(1) is confined to orders affecting the subject matter of the proceedings.

The reasoning of that judgment was exclusively founded on the interpretation accorded by English Courts to corresponding English legislation. With the disapproval of that line of authority by subsequent English decisions it can be argued that the foundation of the reasoning of that case has gone

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The judgment in that case cannot stand in the way of re appraisal of the ambit of the remedy conferred by the proviso to s 32(1) of Law 14/60

Such re-appraisal carried out with hindsight of developments in English case law and the illumination of the question in those cases justifies departure from the decision in *Polish Ocean Lines*. The wording of the proviso to s 32(1) does not put it beyond the purview of the law to extend the remedy to assets other than the subject matter of the action. Its historical background and the intrinsic nature of the remedy codified thereby provides additional reasons for the broader view of s 32(1)

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The discretion of the Court to make a Mareva Injunction must be exercised with great circumspection and always with due regard with the specific aims of the law, notably an aid to the process of execution designed to forestall action likely to undermine the efficacy of the judicial process

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The object of a Mareva Injunction is not to provide uncovenanted security to an unsecured creditor. More consequentially for the outcome of this appeal, it was decided in *Astani v Koushi* [1986] 2 All E R 970 that a Mareva Injunction can only issue with regard to assets within the jurisdiction. The trial Judge overlooked that the vessel being out of the jurisdiction could not be seized in execution and for that reason could not be associated with the objectives of a Mareva Injunction

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The vendors might, no doubt, be pressured because of the order, but exertion of pressure to meet a possible judgment in the cause is not a legitimate objective of an interlocutory injunction. In that situation the order would not serve to prohibit the specified conduct, the object of an injunction but bring about positive action through the medium of an interim order

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A Mareva Injunction associated as it is with the efficacy of the process of execution, is properly limited to assets within the jurisdiction

(d) There was an element of contradictoriness in the case of the buyers, who appeared to approbate and reprobate their agreement with the vendors depending on their immediate pursuits. Their deposit was and still is in the hands of the firm of solicitors who have undertaken to refund the money if the buyers are successful in proceedings contemplated by the parties in their agreement. One of the reasons for which the order had been made was to provide security for the refund of the deposit money. There was no justification for the order on that account

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A hurdle that the person invoking the proviso to s. 32(1) must necessarily overcome is to show that he has a visible chance of success. In this case, the trial Judge did not examine the question whether, in the absence of fraudulent representation, a person rescinding a contract is entitled to damages and, moreover, the respondents had not quantified the claim for damages.

It follows that this appeal would succeed, even assuming that there was power to issue the interim order applied for.

(C) *Per Demetriades, J.* In the light of the facts of this case, this appeal must succeed, but I have certain reservation as to whether an order under section 30 will not be made in cases in which a ship registered and flying the flag of Cyprus, whether lying in a Cyprus port or abroad, is the subject of an Admiralty action for questions or claims provided by section 1 of the Administration of Justice Act, 1956.

(D) *Per Savvides, J.* (a) Section 30 has been judicially considered and interpreted in numerous decisions of this Court which with the exception of the case of the ship «GEORGHIOS C» and Another v. Mitsui Sugar Ltd and Another (1976) 1 C.L.R. 105 at 109 were first instance decisions of this Court in the exercise of its original Admiralty Jurisdiction. In *Georghios C* (supra) the Court of Appeal refrained from giving a definition of the persons who qualify as «interested persons» in the context of s. 30.

I am in agreement and I fully subscribe to the interpretation given to s. 30 in the above cases and I have no difficulty in concluding that it is necessary for a person seeking an order under s. 30 to have an interest in the ship as explained in the aforesaid cases and not be a mere creditor or claimant of damages and that the respondents in this appeal did not have such an interest and, therefore, an injunction under s. 30 could not have been made and was wrongly granted.

(b) Though the ambit of the Mareva Injunction is wide, no authority was traced in support of the view that a ship not within the jurisdiction but registered and owned by a company registered within the jurisdiction can be the subject of a Mareva injunction.

Being in mind the fact that the Mareva injunction as developed applies to assets within the jurisdiction, in the circumstances of the present case it could not be made against a ship which at the material time was outside the jurisdiction of the Court.

(c) In exercising its general powers under s. 32(1) of Law 14/60 a Court should bear in mind the provisions of s. 30 of the Merchant Shipping Act which are special provisions empowering the Court to make orders prohibiting dealings with ships, in the exercise of its discretion whether it is «just and convenient» to make an order under s. 32.

Appeal allowed with costs

Cases referred to

- D S T v Raknoc* [1987] 2 All E R 769
- Cyprus Palestine Plantations v Olivier and Co*, XVI C L R 122,
- The ship Georghios C and Another v Mitsui Sugar Ltd and Another* (1976) 1 C L R 105, 5
- Frangos and Others v The Republic* (1982) 3 C L R 53,
- Tokyo Marine and Fire Insurance v Fame shipping Co Ltd* (1976) 1 C L R 333,
- Algemeen Vrachtkantoor Bv and Others v Sea Spint Navigation Co Ltd* (1976) 1 C L R 368, 10
- Botteghi v Bolt Head Navigation* (1985) 1 C L R 114,
- Misrlis v Jaber* (1978) 2 J S C 304,
- Polish Ocean Lines and Another v N Spyropoulos and Another*, 20 (Part II) C L R 73,
- Ladup Ltd v Williams and Glyn's Bank* [1985] 2 All E R 577, 15
- Roy v Hamiltons and Co* (1867) 5M 573,
- McPhail v Hamiltons and Co* (1878) 5R 1017,
- Nipon Yusen v Karageorghis* [1975] 3 All E R 282,
- Mareva Compania S A v International Bulkamers S A* [1980] 1 All E R 213, 20
- Rasu Mantma v Pertamina* [1977] 3 All E R 326,
- The Siskina* [1977] 3 All E R 326,
- Allen and Others v Jumbo Holdings and Others* [1980] 2 All E R 502,
- Barclay Johnson v Yuill* [1980] 3 All E R 190,
- The Third Chandns* [1979] 2 All E R 972, 25
- Nemitsas Ltd v Sand S Mantme Ltd and Others* (1976) 1 C L R 302,
- Linmare Shipping Co v Roustani* (1979) 1 C L R 37,
- The Portlink* [1984] 2 Lloyd's Rep 166,
- Ninemia v Trave* [1984] 1 All E R 398,
- Astani v Koushi* [1986] 2 All E R 970, 30

1 C.L.R. Pastella Marine v. Iranian Tanker

Odysseos v A Piens and Another (1982) 1 C L R 557,

Verolme Dock and Ship Building Co Ltd v Lamar Shipping Co Ltd
(1975) 11 J S C 1618

5 *Eastern Mediteranean Mantime Ltd v Nava Shipping Co Ltd* (1975)
5 J S C 666,

Gerling Konzern Allgemeine Versicherungs A G (No 1) v The Ship
«DIMITRAKIS» and Another (1976) 1 C L R 385,

London and Overseas (Sugar) Co and Another v Tempest Bay Shipping
Co Ltd and Others (1978) 1 C L R 367,

10 *Botteghi S P A v Bolt Head Navigation Co Ltd* (1985) 1 C L R 114,

Compania Portuguesa De Transportes Mantime of Lisbon v Sponsalla
Shipping Company Ltd (1987) 1 C L R 11

Appeal.

15 Appeal by respondents - defendants against the decision of a
Judge of the Supreme Court of Cyprus in its Admiralty Jurisdiction
(Loris, J.) (Admiralty Action No 212/86)* given on the 29th April,
1987 restraining them from operating, mortgaging or in any way
alienating their interest in the ship «Bumac Bahamas».

P. Sarris with P. Gross, for the appellants.

20 *L. Papaphilippou with L. Christodoulidou (Miss)*, for the
respondents.

Cur. adv. vult.

The following judgments were read

25 TRIANTAFYLLIDES P : In view of the adequate and elaborate
manner in which my brother Judge Piki J. has dealt with both the
legal and factual aspects of this case in his judgment, which I have
perused in advance, I shall give my judgment rather briefly.

I have had no difficulty in reaching the conclusion that section
30 of the Merchant Shipping (Registration of Ships, Sales and

* Reported in (1987) 1 C L R 120

Mortgages) Law, 1963 (Law 45/63) is substantially similar to section 30 of the Merchant Shipping Act, 1894, in England, and, consequently, the case-law of our Supreme Court, as it has developed till now regarding the interpretation of the said section 30 of Law 45/63, has correctly followed the approach in England to the interpretation of section 30 of the Merchant Shipping Act, 1894, with the result that it is necessary for the person seeking an order under section 30 of Law 45/63 to have an interest in the ship concerned; and as the appellants did not, in the present instance, have such an interest in the ship in question it follows that the appealed from injunction could not have been made by the trial Judge the said section 30. 5 10

As regards the making of the said injunction under section 32 of the Courts of Justice Law, 1960 (Law 14/60) there cannot be any doubt that it is an order in the nature of a «Mareva Injunction», as it has come to be known both here and in England; and in the light of the exhaustive review of relevant case law, of which we have had the benefit during the hearing of this appeal, including the recent case of *D.S.T. v. Raknoc*, [1987] 2 All E.R. 769 - which, however, is distinguishable from the present case on the basis of its own facts - I have reached the conclusion that a «Mareva Injunction» could not be made on the present occasion as it relates to a ship which was at the material time outside the jurisdiction of our Supreme Court. 15 20

Moreover, I am inclined to the view that where, as in the present instance, it is not possible in law to make an order under section 30 of Law 45/63, its provisions ought not to be circumvented by making such an order under section 32 of Law 14/60. 25

In the result this appeal should be allowed but I would like to conclude by stating that I reject as unwarranted the criticism advanced by counsel for the appellants against the way in which the learned trial Judge has dealt with the issues before him because I am of the view that he has conscientiously tried to reach a correct in his opinion conclusion in a very difficult situation and without having the help of the lengthy legal arguments which we heard in this appeal. 30 35

PIKIS J.: The appellants, a Cyprus offshore company, hereafter referred to as the «vendors», are the owners of M/T Bumpac Bahamas, a vessel registered in the Cyprus register of ships. They agreed to sell the vessel to the respondents, hereafter referred to 40

as «buyers» The agreement was concluded on 4th August, 1986 and provided for the sale of the ship at US\$9,950,000 subject to terms and conditions embodied in a written contract of the same date evidencing the transaction between the parties The
5 agreement provided that delivery would be effected at the end of August, a term varied by the agreement of the parties, postponing the day to a date in September It was a term of the agreement that delivery would be accompanied by an appropriate certificate of
10 classification of the vessel, as provided in the agreement, issued by the American Bureau of Shipping Three other terms of the agreement that deserve specific mention are (a) the obligation cast on the buyers to deposit with the solicitors of the vendors in London 10% of the sale price, (b) applicability of English law as the law of the contract, and (c) an arbitration clause providing for
15 reference to arbitration in London of any dispute arising in connection «with the interpretation and fulfilment of this contract»

On 25th September, 1985, the buyers sought to withdraw from the agreement for failure on the part of the vendors to implement
20 two terms of their contract (a) deliver the vessel at the appointed time, and (b) failure to deliver it properly classified as provided in the contract of the parties They intimated their decision to withdraw by a telex addressed to the vendors on the
aforementioned date Sequentially they demanded return of the deposit of US\$950,000 reserving a right to claim damages for
25 breach of contract On the same day the buyers initiated the present proceedings against the vendors seeking a declaration that (a) the plaintiffs were entitled to possession and ownership of the ship properly classed, and (b) an order directing the vendors to transfer the vessel to the buyers To the above they added a third
30 one for damages for breach of contract So it appears that on the self same day - 25th September, 1985 - the buyers took two seemingly inconsistent courses On the one hand they sought by their telex to rescind the contract between the parties, and on the other, by their action before the Supreme Court of Cyprus, they
35 sought its implementation praying for an order of specific performance of the agreement of the parties The institution of judicial proceedings on the part of the buyers was accompanied by an application for an injunction restraining the defendants from parting, mortgaging, or in any way alienating their interest in the
40 vessel An order was made ex parte in the terms suggested by the buyers reserving a right to the vendors to oppose the application

in due course after service upon them of the proceedings Originally the vendors resisted the jurisdiction of the Cyprus Court and disputed its competence to take cognizance of the motion Subsequently, they opposed the application for an interim injunction on several grounds They contended that an interim injunction could not be justified on any of the three heads under which it was sought, notably (a) s 4(1) of the Civil Procedure Law Cap 6, (b) s 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63), and (c) s 32 of the Courts of Justice Law (Law 14/60)

The learned trial Judge took time to reflect on the rival contentions In an elaborate Judgment he answered the questions raised in the order indicated above First he held that s 4(1) of the Civil Procedure Law was inapplicable for the ship was not the subject matter of the proceedings He reiterated that the ambit of s 4(1) of the Civil Procedure Law is confined to orders affecting the subject matter of the action His decision was based on the self-evident implications of the wording of s 4(1) and on the authority of the decision of the Court of Appeal in *Cyprus Palestine Plantations v Olivier & Co* * By the purported rescission of the contract between the parties, the buyers disclaimed, as it rightly appeared to the Judge an interest in the ship herself The ruling of the trial Court on this aspect of the case has not been challenged and is not an issue on appeal

Having decided that no order could be made under s 4(1) Cap 6, the learned Judge proceeded to examine whether an order was justified under either or both of the remaining grounds propounded in support of the motion, namely s 30 of Law 45/63 and s 32(1) of Law 14/60 After review of the case law bearing on the interpretation of s 30, and its application in practice, the Court concluded that its application is not confined to petitioners having an interest in the vessel herself and that a fair construction of its provisions warranted its invocation by any creditor including one in the position of the plaintiff suing the owners of the ship for unliquidated damages And as the buyers satisfied the other requisites of s 30 he made an order restraining the officers of the company from alienating, mortgaging or in any way parting with vendors' interest in the vessel for the period specified in the order

* *XVI CLR 122*

Neither a fair interpretation of the provisions of s. 30 nor case law bound the Court, the learned Judge noted, to limit the application of s. 30 to persons having or claiming an interest in the ship herself. In *The Ship Georghios C. and Another v. Mitsui Sugar Limited and Another** the Supreme Court in its appellate jurisdiction left the question expressly open and refrained from offering a definitive statement on the persons who qualified as «interested persons» in the context of s. 30. Several decisions of the Supreme Court given in the exercise of its original Admiralty jurisdiction favouring a contrary interpretation of s. 30 to that adopted by the learned Judge were, as he concluded, wrongly decided and for that reason felt free to depart from them. The doctrine of stare decisis does not bind Courts to follow decisions of courts of coordinate jurisdiction. The persuasive force of such pronouncements recedes or diminishes if a Court takes the view that they were wrongly decided or that they do not reflect the correct principle of the law due to oversight or error in the reasoning.** For that reason he declined to follow a series of first instance decisions of the Supreme Court deciding that the remedy conferred by s. 30 is confined to persons having an interest in the ship herself as opposed to mere creditors***.

The limitation was warranted as affirmed in several cases, on the interpretation of the expression «interested person» in the context of s. 30, a view reinforced by the interpretation accorded to corresponding provisions of the English legislation notably s. 30 of the Merchant Shipping Act 1894 wherefrom our legislation originated and purported to incorporate in our statute. Only two cases favoured the interpretation adopted by the learned trial Judge**** which were later acknowledged by the same Judge to have been wrongly decided.*****

An order in the terms of the application was also warranted by the provisions of s. 32(1) of the Courts of Justice Law (14/60).

* (1976) 1 C.L.R. 105, 109.

** See *inter alia* *Frangos and Others v. The Republic*, (1982) 3 C.L.R. 53

*** *Tokyo Marine and Fire Insurance v. Fame Shipping Co. Ltd.* (1976) 1 C.L.R. 333, *Algemeen Vrachtkantoor Bv and Others v. Sea Spint Navigation Co. Ltd.*, (1976) 1 C.L.R. 368, *Versicherung A-G v. Ship Dimitraki and Another*, (1976) 1 C.L.R. 385, *Botteghi v. Bolt Head Navigation* (1985) 1 C.L.R. 114

**** (1975) 5 J.S.C. 666 (*Nava Shipping*) (1975) 11 J.S.C. 1618 (*Lamant Shipping*)

***** *Tokyo Manne (supra)*

Section 32(1) modelled on the provisions of s. 45(1) of the English Supreme Court of Judicature (Consolidation Act) 1925 conferred jurisdiction analogous to that enjoyed by English Courts to make interim orders in the nature of what have come to be known as Mareva Injunctions. English case law established that the power of the Court to make interim injunctions is not confined to orders affecting the subject matter of the action. A wide enough power is vested in the Court to restrain dealings with any movable assets of the defendant that the Court may deem necessary in the interest of the efficacy of any judgment that may be given in the cause. In appropriate circumstances an order may be made restraining dealings with property that their removal from jurisdiction or dissipation would render a possible judgment in the cause nugatory. Consequently, the defendants could appropriately be restrained from parting with the ship, their only asset assuring that no injustice would be occasioned to the buyers from possible alienation by the vendors of their interest in the ship. That the asset, notably the vessel, was outside the jurisdiction did not appear to the Judge to raise insuperable obstacles to the exercise of the jurisdiction. The remedy of an interlocutory injunction is an equitable one the Judge pointed out and as such it is addressed to the persons having control of the assets. Equity acts in personam and so long as those to whom the order would be addressed could appropriately be restrained from parting with the property, it mattered not that the property in their control was outside the jurisdiction.

THE APPEAL

Leading counsel for the appellant strenuously argued that the trial Judge misconceived the effect and range of application of both s. 30 of Law 45/63 and s. 32(1) of Law 14/60. The facts of the case could not conceivably give rise to the invocation of the provisions of either enactment, thus we were invited to discharge the order. Introductory to the presentation of his arguments on appeal, he referred us to the facts of the case drawing our attention to the contradictory stand of the buyers who at one stroke sought to rescind and enforce the self same agreement. While their telex of 25th September, 1985, suggested their main concern was the refund of their deposit, a corollary of valid rescission of the contract, in the judicial proceedings that followed before the Supreme Court they asserted a claim for the ownership and possession of the vessel. Reference to the background of the case

was made as I comprehend the case for the appellants in order to cast doubts on the bona fides of the buyers in mounting proceedings before the Cyprus Courts and pursuing the remedies claimed therein

- 5 Developing the main theme of his appeal, counsel submitted in relation to s 30 that it is (a) modelled on the provisions of s 30 of the Merchant Shipping Act (b) it aims to reproduce and incorporate in our law the corresponding English legislation, and (c) Cyprus and English legislation pursue similar objectives,
10 namely the regulation of merchant shipping and matters associated with and relevant thereto

Counsel made a historical survey of the purposes and background to s 30 of the English legislation with a view to emphasising that from its inception the remedy conferred by s 30
15 was confined to the claims of persons having an interest in the ship herself. The predecessor of s 30 was s 65 of the Merchant Shipping Act 1894. Although the wording of the two sections of the law was not identical they were similarly worded with regard to the definition of the class of persons which could legitimately
20 invoke its provisions, notably persons interested in the ship herself as opposed to mere creditors. Two Scottish decisions (cited later in this Judgment) support the above interpretation. The absence of any English case favouring a contrary interpretation of the law and the availability of the remedy at the instance of a mere creditor
25 reinforces the view that its application is confined to persons interested in the vessel herself, a construction consonant with the grammar of the wording of section 30

Turning to the provisions of s 32(1) (Law 14/60) particularly those of its proviso counsel submitted that however liberally we
30 construe them they fall short of conferring power to make an order restraining dealings with property outside the jurisdiction. And as the vessel was beyond the jurisdiction of the Court it was incompetent on the part of the court to make any order affecting its disposal. As in the case of s 30 counsel reviewed the history of
35 s 32(1) and that of English legislation wherefrom it originated and which it aimed to reproduce

The jurisdiction vested by s 32(1) is equitable in nature and origin and first found its way in the Statute Book in the Judicature Act of 1873 providing for the fusion of Common Law Courts and
40 Courts of Equity and their jurisdictions. The provisions of the 1873

Act were virtually reproduced by s. 45(1) of the Judicature Act of 1925. Until 1975 it was judicially accepted or more appropriately predominant judicial opinion was that the remedy of an interlocutory injunction was confined to the subject matter of the proceedings. This view was disavowed by the Court of Appeal in 5
1975 in the *Karageorghis* case where it was decided that the restrictive interpretation placed upon s. 45(1) of the 1925 Judicature Act was unwarranted by the wording of the law and inconsistent with the historical background of the remedy. The decision in the *Karageorghis* case was espoused in a series of 10
subsequent English cases hardening in the process into a settled feature of English law. But there were limitations attached to it, a notable one being that it could not embrace property outside the jurisdiction. This limitation should, counsel submitted, be heeded by Cyprus Courts too; consequently, we were invited to reverse 15
the Judgment of the trial court.

The case for the Respondents:

Counsel for the respondents, while acknowledging that for the purposes of the appeal the order made was solely pegged to their claim for damages, he submitted it was warranted under both s. 30 20
of Law 45//63 and s. 32(1) of Law 14/60. The fact that the vessel was the only asset of the vendors put it in the power of the Court to restrain them dealing with her in a manner that might render the buyers remediless if successful in their action for damages. He supported the view of the trial Court that the wording of s. 30 did 25
not warrant the limitations suggested with regard to the class of persons at whose instance its provisions might properly be invoked. Irrespective of whatever had been in the mind of the legislator in enacting s. 30, the language used is the only legitimate source we may consult for deducing their intention, and that wording, 30
expressed in Greek, the language of the statute, did not limit the ambit of the law to persons having an interest in the vessel herself. A comparison of the text of the Cyprus and English legislation reveals notable differences between the wording of the two enactments reinforcing the view that we should look solely to our 35
legislation for guidance in gathering its meaning. That being the case little or no assistance could be derived from English case law or practice affecting the interpretation of s. 30. Provided it was competent for the trial Court to make an order at the instance of

the buyers, nothing he suggested was placed on record to justify interference with the exercise of the discretion vested by s 30 in the trial Court

The order was equally justified under s 32(1) of Law 14/60
 5 Counsel invited us to uphold the order under both enactments as a legitimate exercise of the discretion vested thereby in the Court Whether we put a name on an order made under the proviso to s 32(1) as they have done in England, a Mareva injunction, after the name of one of the early cases in which an extended interpretation
 10 of s 45(1) was upheld, the crucial fact is that the law confers in terms unlimited power to make an interim injunction as the justice and convenience of the case may warrant Being an equitable remedy, there could be no formal limitations to its exercise, the justice of the case being the sole consideration that should guide
 15 the Court in the exercise of its discretion So long as those who have control of the property can be bound to observe the conditions of an order it matters not that the property affected thereby is beyond the jurisdiction of the Court

Relying on the reasoning of a judgment of the District Court of
 20 Larnaca, *Misirli v Jaber*,* he submitted that the decision of the Supreme Court in *Polish Ocean Lines and Another v N Spyropoulos and Another*** should no longer bind the Courts in the interpretation of s 32(1) as the reasoning behind that decision was founded on English authority on the interpretation of
 25 corresponding English legislation since declared wrong for taking an unduly restrictive view of the relevant provisions of the law Lastly, counsel argued that the facts of the case justified the order made, although the buyers did not quantify the damage claimed, it was sufficiently itemized by affidavit evidence produced before
 30 the Court as to disclose the magnitude of the damage suffered

We have carefully considered every aspect of the case Resolution of the issues in the case requires us to examine the ambit and compass of both s 30 of Law 45/63 and s 32(1) of Law 14/60

35 *Section 30 Merchant Shipping (Registration of Ships, Sales and Mortgages) Law 1963, 45/63*

The learned trial Judge found the wording of s 30 to be free of

* (1978) 2 J S C 304 (A decision given by myself)

** 20 (Part II) C L R 73

interpretational difficulties in view of its straightforward meaning
 The crucial expression «ενδιαφερομενο προσωπο» that
 represents a fair translation of «interested person» encompasses by
 the tenor of its meaning every creditor and not merely one with an
 interest in the ship herself a meaning in no way modified by any
 other part of s 30 5

With respect, I cannot agree either with the proposition that the
meaning and effect of s 30 is because of its wording self-evident
 or that the expression «interested person» necessarily embraces
 every creditor In *Ladup Ltd v Williams and Glyn's Bank** 10
 Warner, J remarked that the word «interest» is a word of a
 notoriously elastic meaning The same is borne out by the
 definition of the word «interest» in Black's Law Dictionary**
 denoting a right or claim or legal share falling short of absolute
 ownership The word «interest» and variations of it encountered 15
 in a legal framework, are, it seems to me, apt to derive their
 precise meaning from the context in which they appear The
 expression «interested person» is to my comprehension in no way
 synonymous with a «plaintiff», a «petitioner» or «litigant» in a
 judicial cause or matter Examined in the context of s 30 and 20
 viewed in conjunction with the nature of the order that can be
 made, one solely affecting the ship, the expression «interested
 person» signifies a person having an interest in the ship herself
 Had the legislature intended to extend the remedy conferred by s
 30 to every creditor of the owners of the ship, I would expect them 25
 to adopt a word other than «interested person», for example a
 plaintiff, a petitioner or litigant

The construction put on the corresponding English legislation
 reinforces the interpretation of s 30 favoured above While I agree 30
 that the language of a Cyprus statute should be the principal guide
 to its interpretation, it is perfectly legitimate to consult English case
 law on the interpretation of a similar statute where, as in this case
 our legislature intended to reproduce an English enactment in our
 law for the achievement of similar objectives, namely the
regulation of merchant shipping and matters associated therewith, 35
 provided always that the wording of our statute admits of judicial
 exegesis as s 30 does

* [1985] 2 All E R 577

** (1979) edn p 729

Two Scottish cases namely, *Roy v Hamiltons & Co* * and *McPhail v Hamilton*** on the interpretation of s 65 of the Merchant Shipping Act of 1854 (the predecessor of s 30 of Merchant Shipping Act 1894) adopt the view that the expression «interested person» in the context of the legislation under review connotes a person interested in the ship herself. The absence of any English case suggesting invocation of the rule at the instance of anybody else cannot but reinforce the construction of s 30 as limiting the remedy given thereby to persons having an interest in the vessel

Cyprus case law favours as indicated earlier a similar approach to the interpretation of s 30 acknowledging that Cyprus and English legislation are in pari materia and are intended to serve the same purpose. Uniformity in the interpretation of statutes of different countries affecting matters of international interest such as shipping is highly desirable and makes for certainty in the law on a wider plane

The distinction made by the law between persons having an interest in the ship herself and other creditors is not an arbitrary one. A ship has in many respects a personality of her own a position reflected in the principles of Admiralty law that clearly distinguish between the liabilities of the vessel and her owners

In my judgment the application of s 30 is confined to claims made by persons having or claiming an interest in the ship herself. Consequently it was not a remedy available to the buyers plaintiffs in an action for damages against the owners of the vessel

Section 32(1) Courts of Justice Law 14/60

Section 32(1) of the Courts of Justice Law reproduces s 37(1) of its predecessor the Courts of Justice Law Cap 8. Both enactments aim to define the remedial powers of the Court to grant relief of an equitable nature, namely to issue injunctions and appoint receivers. In *Polish Ocean Lines and Another v Spyropoulos and Another**** the Court held that the power to make an interlocutory injunction under s 37(1) is confined to orders affecting the subject matter of the proceedings. Relying on

* (1867) 5M 573

** (1878) 5R 1017 p 1020

*** XX Part II C L R 73

the interpretation furnished by English Courts s. 45 of the Judicature Act of 1925 that virtually reproduced s. 25(8) of Judicature Act of 1873, (depicted in Kerr on Injunction, 4th edn. p. 2) they rejected a submission that the power of the Court to make an interim injunction extended beyond the subject matter of the action. 5

Before the decision in *Nippon Yusen v. Karageorghis** it was generally accepted that the power of the Court to make interlocutory injunctions was confined to the subject matter of the action. The limitation was rejected in the case of *Karageorghis* as a matter of construction of the provisions of s. 45(1) of the 1925 legislation and upon consideration of the equitable nature of the remedy and its historical perspective. Neither s. 45(1) nor its predecessor, s. 25(8) of the Judicature Act of 1873 were intended to confer a remedy unknown to the law. The objective was to give statutory effect to an equitable remedy in the context of the fusion of common law Courts and Courts of equity and their jurisdiction. The employment of the word «just» and the tying of the remedy of an interlocutory injunction to the justice of the case serve to emphasize the equitable character of the relief and the absence of formal constraints to its award. Moreover, considering the intention of the legislature in enacting the above law, it was legitimate to interpret it in the light of the history of the evolution of the remedy. An interlocutory order was made in that case restraining the defendant from removing funds deposited in a bank within the jurisdiction thereby ensuring that a judgment that might be given in the cause in favour of the plaintiffs would not be rendered nugatory by any action of the defendant. 10 15 20 25

I think I must acknowledge that the statutory framework and wording of s. 32(1) lend support to the view that the remedy of an interlocutory injunction is confined to the subject matter of the proceedings. The theme of s. 32(1) is the enumeration of the remedies, albeit equitable, available to the Court at the end of the proceedings necessarily related to the subject matter of the action. It is natural to assume that the extension of the powers of the Court by the proviso to s. 32(1) whereby an interlocutory injunction may be made is likewise linked to the subject matter of the proceedings; though one might argue that reference to the likelihood of impossibility to do complete justice at a later stage was intended to broaden the scope of the remedy. 30 35 40

* [1975] 3 All E.R. 282 (C.A.)

Reverting to the development of English case Law, the decision in *Karageorghis* was accepted in many subsequent cases as representing a correct appreciation of the ambit of the statutory provisions providing for the grant of interlocutory injunctions.* In
 5 *Rasu Maritima v. Pertamina*** the Court of Appeal apart from endorsing the new interpretation of s. 45(1) laid down guidelines for the exercise of the discretion while making it clear that the discretion of the Court is not limited to orders affecting money. In
 10 the *Siskina**** the House of Lords appears to have accepted the new direction as well established at least as regards foreign based defendants with assets within the jurisdiction. In *Allen and Others v. Jumbo Holdings and Others***** an interlocutory injunction was made restraining removal from the jurisdiction of an aircraft. In *Barclay Johnson v. Yuill****** it was explained that the remedy
 15 is not confined to foreign based defendants. In the *Third Chandris****** Denning, M.R. warned against the dangers of abuse of the remedy and its extension to areas wholly uncharted by the law. The English legislature took stock of developments in the case and fledged the Mareva Injunctions into a comprehensive
 20 statutory remedy by the enactment of s. 37(3) of the Supreme Court Act 1981.

On at least two occasions the Supreme Court of Cyprus in the exercise of its original Admiralty jurisdiction***** acknowledged that the power conferred by the proviso to s. 32(1) is not
 25 confined to the subject matter of the action. In so holding they trode along the lines approved in England in the case of *Karageorghis* and subsequent decisions. They reminded, however, that a Mareva Injunction is an extraordinary remedy and as such must be viewed and applied with caution.

30 The first problem facing us in this appeal is whether we should overrule the decision of the Supreme Court in *Polish Ocean Lines* (supra) and depart from the interpretation given in that case to the predecessor of s. 32(1). The reasoning of the judgment of the

* *Mareva Compania SA v International Bulkcarriers SA*, [1980] 1 All E.R. 213

** [1977] 3 All E.R. 326

*** [1977] 3 All E.R. 803

**** [1980] 2 All E.R. 502

***** [1980] 3 All E.R. 190

***** [1979] 2 All E.R. 972

***** *Nemitsas Ltd v S & S Maritime Ltd & Others*, (1976) 1 C.L.R. 302, and *Linmare Shipping Co v Roustani*, (1979) 1 C.L.R. 37

Supreme Court in the above case was exclusively founded on the interpretation accorded by English Courts to corresponding English legislation. With the disapproval of that line of authority by subsequent English decisions it can be argued that the foundation of the reasoning of that case has gone

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Bearing in mind the reasoning underlying recent English authority on the interpretation of s 45(1), the emphasis on the historical perspective in which the remedy should be viewed and applied, and given that *Polish Ocean Lines* is founded upon a premise since declared unsound, that case cannot stand in the way of reappraisal of the ambit of the remedy conferred by the proviso to s 32(1). Such re-appraisal carried out with hindsight of developments in English case law, and the illumination of the question in those cases, justified departure from the decision in *Polish Ocean Lines*. The wording of the proviso to s 32(1) does not put it beyond the purview of the law to extend the remedy to assets other than the subject matter of the action. Its historical background and the intrinsic nature of the remedy codified thereby, provide additional reasons for the broader view of s 32(1)

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Viewed from a more mundane perspective, an order in the form of a Mareva Injunction may be regarded as a powerful addition to the armoury of the law, warranted by vast technological changes in transport and the mobility associated therewith of persons and goods. The discretion of the Court to make a Mareva Injunction must be exercised with great circumspection and always with due regard with the specific aims of the law, notably an aid to the process of execution designed to forestall action likely to undermine the efficacy of the judicial process

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The object of a Mareva Injunction is not, as it was stressed in the *Portlink* or Niriemia v Trave*** to provide uncovenanted security to an unsecured creditor. More consequentially for the outcome of this appeal, it was decided in *Astiani v Koushi**** that a Mareva Injunction can only issue with regard to assets within the jurisdiction. The extra territorial extension of Mareva Injunctions, it was pointed out, would not only be oppressive to the defendant but difficult to enforce as well

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* (1984) 2 Lloyd's Rep 166

** (1984) 1 All E R 398, 409

*** (1986) 2 All E R 970

The learned trial Judge was unimpressed by the argument that a Mareva Injunction should necessarily be limited to assets within a jurisdiction taking the view that the remedy being equitable it operates in personam and on that account could not be limited in the way suggested by the vendors. The officials of the defendants could therefore be restrained from doing acts that might leave the buyers without the security of the vessel as a possible means of satisfaction of any judgment they might obtain in the proceedings under review. The learned Judge overlooked with respect, that the vessel being out of the jurisdiction could not be seized in execution and for that reason could not be associated with the objectives of a Mareva Injunction. The vendors might, no doubt be pressured because of the order to satisfy the Judgment but the exertion of pressure upon the defendants to meet a possible judgment in the cause is not a legitimate objective of an interlocutory injunction. In that situation the Order would not serve to prohibit the specified conduct, the object of an injunction but bring about positive action through the medium of an interim order.

In my judgment, a Mareva Injunction associated as it is with the efficacy of the process of execution, is properly limited to assets within the jurisdiction. Consequently, it was beyond the powers of the Court to make an order affecting an asset outside the jurisdiction.

25 *The Facts*

Assuming we were, contrary to what has been decided, free to make an interim injunction affecting assets outside the jurisdiction I would again allow the appeal in view of the facts of the case. There was, as earlier stated, an element of contradiction in the case of the buyers who appeared to approbate and reprobate their agreement with the vendors depending on their immediate pursuits. The aim of rescission is primarily to restore the status quo ante. If they were right in rescinding the agreement they would be in no danger of not being restored to their previous status. Their deposit was and still is in the hands of the firm of solicitors who have undertaken to refund the money if the buyers are successful in proceedings contemplated by the parties in their agreement. One of the reasons for which the order had been made as specifically recorded in the judgment of the trial Court, was to

provide security for the refund of the deposit money There was no justification for the order on that account The buyers run no risk on that score

Whether a party rescinding a contract is entitled to damages in the absence of fraudulent representation, is a question that was not at all canvassed or examined in the Judgment of the trial Court This was essential in order for the Court to decide whether the buyers had a visible chance of success in their claim for damages, a hurdle that the person invoking the proviso to s 32(1) must necessarily overcome before an order is made at his instance - *Odysseos v A Piers and Another* * 5 10

Another gap in the case for the buyers arises from their failure to quantify, be it approximately, the damage to which they might be entitled to if successful in the action This was necessary to enable the Court to decide whether it was just and convenient to restrain dealings with property seemingly worth nine or more million U S dollars 15

For all the above reasons, the buyers failed to establish a case for the valid exercise of the powers given to the Court by s 32(1) 20

The appeal is allowed 20

DEMETRIADES J Having heard the arguments of counsel appearing for the parties in this appeal and having read the judgments delivered by my brother Judges Triantafyllides P Savvides and Pikis JJ, I have come to the conclusion that this appeal must succeed in the light of the facts of the case 25

However, I must make it clear that I have certain reservations as to whether an order under section 30 will not be made in cases in which a ship registered and flying the flag of Cyprus, whether lying in a Cyprus port or abroad, is the subject of an Admiralty action for questions or claims provided by section 1 of the Administration of Justice Act 1956, which reads 30

«1 Admiralty jurisdiction of the High Court - (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- 35

(a) any claim to the possession or ownership of a ship or to the ownership of any share therein,

* (1982) 1 C L R 557

(b) any question arising between the co-owners of a ship as to possession, employment or earnings of that ship

(c) any claim in respect of a mortgage of or charge on a ship or any share therein,

5 (d) any claim for damage done by a ship

(e) any claim for damage received by a ship

10 (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, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other persons for whose wrongful acts neglects or defaults the owners charterers or persons in possession or control of a ship are responsible being an act, neglect or default in the navigation or management of the ship, in the loading carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship,

15 (g) any claim for loss of or damage to goods carried in a ship

20 (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship.

25 (i) any claim in the nature of salvage (including any claim arising by virtue of the application, by or under section fifty-one of the Civil Aviation Act, 1949, of the law relating to salvage to aircraft and their apparel and cargo),

(j) any claim in the nature of towage in respect of a ship or an aircraft,

(k) any claim in the nature of pilotage in respect of a ship or an aircraft

30 (l) any claim in respect of goods or materials supplied to a ship for her operation or maintenance,

(m) any claim in respect of the construction, repair or equipment of a ship or dock charges or dues,

35 (n) any claim by a master or member of the crew of a ship for wages and any claim by or in respect of a master or member of the crew of a ship for any money or property

which under any of the provisions of the Merchant Shipping Acts 1894 to 1954 is recoverable as wages or in the court and in the manner in which wages may be recovered

(o) any claim by a master shipper charterer or agent in respect of disbursements made on account of a ship 5,

(p) any claim arising out of an act which is or is claimed to be a general average act

(q) any claim arising out of bottomry

(r) any claim for the forfeiture or condemnation of a ship or of goods which are being or have been carried or have been attempted to be carried in a ship or for the restoration of a ship or any goods after seizure or for droits of Admiralty » 10

SAVVIDES J This is an appeal against an injunction granted by a Judge of this Court in Admiralty Action 212/86 in the exercise of the Admiralty Jurisdiction of the Court restraining the applicants defendants in the action - from operating, mortgaging or in any way alienating their interest in the ship «BURMBAC BAHAMAS» owned by the appellants and registered in the Cyprus Register of Ships The injunction was made on the application of the respondents - plaintiffs in the action - on a claim for - 15 20

(a) A declaration that the plaintiffs were entitled to possession of the ship fully classed under the terms and conditions of a Memorandum of Agreement dated 4th August, 1986

(b) Damages for breach of contract

(c) An order directing the defendants to transfer ownership and delivery of possession of the said vessel to the plaintiffs fully classed 25

It was common ground that the said ship was at all material times outside the jurisdiction of this Court

The learned trial Judge in a well considered and elaborate judgment granted the order sought for, both under s 30 of The Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, Law 45/63 and under the provisions of s 32 of the Courts of Justice Law, 1960 In granting the order the learned trial Judge departed from the opinion expressed in a series of decisions of the Supreme Court given in the exercise of its original Admiralty 30 35

Jurisdiction something he was entitled to do on the interpretation of the words «interested persons» mentioned in s. 30 of the law and favoured a contrary interpretation as to the meaning of such words

5 S. 30 of Law 45/63 reads as follows

«Το Ανώτατον Δικαστήριο δύναται κατά το δοκούν (μη επηρεαζομένης της ενασχόλησής οιασδήποτε ετέρας εξουσίας αυτού) κατόπιν αιτησεώς παντός ενδιαφερομένου προσώπου, να εκδώση διαταγµα απαγορεύον δια καθωρισµενον τινά χρόνον πάσαν δικαιοπραξίαν αφορώσαν εις πλοίον η µεριδίον πλοίου, δύναται δε να εκδώση το διαταγµα υπο όρους ους το Δικαστήριον ήθελε κρίνει δικαίον να επιβάλη ή να αρνηθή την εκδοσιν του διαταγµατος, ή να ακυρωση το διαταγµα εαν τουτο εξεδοθη, μετα η ανευ εξοδων, και γενικωτερον να ενεργηση ως το δικαίον της υποθέσεως ήθελεν απαιτησει, η δε Νηολογούσα Αρχη καιτοι δεν είναι διαδίκος, οφείλει να συµµορφουται προς αυτο ευθυς ως επιδοθη αυτη κεκυρωµενον αντιγραφον του διατάγµατος τουτου.»

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And in English

«The High Court may, if the Court thinks fit (without prejudice to the exercise of any other power of the Court), on the application of any interested person make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order on any term or conditions the Court may think just, or may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires, and the Registrar, without being made a party to the proceedings, shall on being served with an official copy thereof obey the same.»

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The learned trial Judge in dealing with the interpretation of the words «any interested person» as mentioned in s. 30 concluded as follows (See *National Iranian Tanker Company Ltd. v. Pastella Marine Company Ltd.* (1987) 1 C.L.R. 120, at p. 132)

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«The words 'any interested person' are quite clear and unambiguous. They need no construction. They must be applied according to their literal meaning; and this is a fortiori so if we read the relevant part of the Greek text of the Law

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which was enacted by our House of Representatives (the Greek text is the original) which provides as follows 'Κατοπι αιτησεως παντος ενδιαφερομένου προσωπου '

With respect it is quite arbitrary to construe 'any interested person' so as to convey the meaning 'of a person having an interest in the ship herself. If the legislator wanted to eliminate its meaning he could do so by omitting 'any' and adding 'a person interested in the ship'. I hold the view that 'any interested person' covers not only persons having an interest in the ship herself but also creditors and claimants of damages against the owners of the ship»

In relying also on s 32 of the Courts of Justice Law which empowers the Court to grant an injunction where it appears to the Court just or convenient to do so subject to the conditions contained therein, the learned trial Judge had this to say at pp 140-141 -

«I must not go further into the facts of this case. Suffice it to say that I am 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 in this connection it must be remembered that the plaintiffs apart from the damages which they may be entitled to recover they have deposited with the defendants almost a million American Dollars which were not returned to them so far, and unless an interlocutory injunction is granted it shall definitely be difficult if not impossible to do complete justice at a later stage, bearing in mind that the defendants have no other asset except the vessel in question

Having already held that the Mareva line can be followed in Cyprus subject to what I have stated earlier in the present decision, I hold the view that the particular facts of this case do warrant the granting of an interlocutory injunction on the said line »

I need not embark at length on the factual and legal aspects of this case as such aspects have already been dealt with at length in the elaborate judgment just delivered by my brother Judge Pikiis, J

Section 30 has been judicially considered and interpreted in numerous decisions of this Court which with the exception of the case of the ship «*GEORGIOS C*» and *Another v Mitsui Sugar Ltd and Another* (1976) 1 C L R 105 at 109 were first instance decisions of this Court in the exercise of its original Admiralty Jurisdiction. In *Georghios C (supra)* the Court of Appeal refrained

from giving a definition of the persons who qualify as «interested persons» in the context of s. 30.

In the case of *Tokio Marine v. Fame Shipping Co. Ltd.* (1976) 1 C.L.R. 333, Malachtos, J. after reviewing a number of authorities, found that the section does not apply to mere creditors or claimants of damages against the owner of the ship and that «interested person» in this section means a person who is interested in the ship herself. He referred, inter alia, to the case of *Verolme Dock and Ship Building Co. Ltd. v. Lamar Shipping Co. Ltd.* (1975) 11 J.S.C. 1618 in which he reconsidered and revised the approach taken by him on the application of s. 30 in the case of *Eastern Mediterranean Maritime Limited v. Nava Shipping Co. Ltd.* (1975) 5 J.S.C. 666. The *Tokio Marine* case (supra) was upheld in the cases of *Gerling Konzern Allgemeine Versicherungs A.G. (No. 1) v. The ship «DIMITRAKIS» and Another* (1976) 1 C.L.R. p. 385; *London and Overseas (Sugar) Co. and Another v. Tempest Bay Shipping Co. Ltd and Others* (1978) 1 C.L.R. 367; *Botteghi S.P.A. v. Bolt Head Navigation Co. Ltd.* (1985) 1 C.L.R. 114.

In the case of *Botteghi v. Bolt Head* A. Loizou, J., in granting an order under s. 30 subscribed fully to the interpretation given by Malachtos, J. in the *Tokio Marine* case. In explaining the reasons for granting an injunction in the *Botteghi* case he said the following at p. 122.

«The narrow ground upon which I grant this order stems from the fact that the defendant ship had escaped from lawful arrest effected on the strength of a warrant issued by a Court, apparently having jurisdiction in the matter and in the circumstances the applicants can be considered as having an interest in the ship in the sense of s. 30 of the Law.»

The construction of s. 30 in *Tokio Marine* was also adopted in the recent case of *Compania Portuguesa De Transportes Maritime of Lisbon v. Sponsalia Shipping Company Ltd.*, (1987) 1 C.L.R. 11, in which it was held at p. 15 that: «Section 30 has been all along held to apply to claims by persons having an interest in the ship itself such as legatees, shareholders, heirs or creditors, but not mere creditors or claimants of damages.»

I am in agreement and I fully subscribe to the interpretation given to s. 30 in the above cases and I have no difficulty in

concluding that it is necessary for a person seeking an order under s 30 to have an interest in the ship as explained in the aforesaid cases and not be a mere creditor or claimant of damages and that the respondents in this appeal did not have such an interest and therefore an injunction under s 30 could not have been made and was wrongly granted 5

I come next to consider whether an injunction could be made under s 32 of the Courts of Justice Law 1960 (Law 14/60)

The power of the Court to grant an injunction under s 32 is amongst the general powers of the Court under Part IV of the Courts of Justice Law (Law 14/60) Under such provision the Court in the exercise of its civil jurisdiction is empowered to grant an injunction «in all cases in which it appears to the Court just or convenient so to do » 10

S 32 came under judicial interpretation in a number of cases of our Supreme Court extensive reference to which is made in the case of *Botteghi v Bolt Head Navigation* (supra) This section has been applied in the same way as s 45 of the Supreme Court of Judicature (Consolidation) Act, 1925 which was interpreted in England as extending to a procedure in the nature of a Mareva injunction The introduction of this new procedure appears to have its origin in the case of *Nippon Yusen Kaisha v Karageorghis* (1975) 1 W L R 1093 in which an injunction was granted restraining removal of moneys, lodged with a bank outside the jurisdiction Lord Denning explained its aspect as follows (at pp 1094-1095) 15 20 25

«We are told an injunction of this kind has never been granted before It has never been the practice of the English courts to seize 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 it We know, of course, that the practice on the continent of Europe is different 30

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 section 45 of the Supreme Court of Judicature (Consolidation) Act 1925 which says that the High Court may grant a mandamus or injunction or appoint a receiver by an interlocutory order in all cases in which it 35 40

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 »

A few days later a similar injunction was granted in *Mareva v International Bulkcarriers* [1975] 2 Lloyd's Rep 509 from which this new procedure took its name. Developments up to 1979 are fully and succinctly discussed by Lord Denning in his book «The Due Process of Law» 1980. Ever since there has been a rapid and extensive development.

In an article in the *Journal Justice of the Peace* of April 4, 1981 under the title «Recent Developments in Mareva Injunctions» the following conclusion is drawn at pp 205 - 206

It is only since 1974 that the Mareva injunctions have been allowed to operate. But their effectiveness and success has been phenomenal. Solicitors and counsel have taken full advantage of it. It seems to be a very fair and equitable remedy. These days money can be transferred out of the country by a simple telegram and made out of the reach of the jurisdiction of the Courts. As Lord Denning says in his book, the remedy is in full operation in the USA and in the European countries (*saisie conservatoire*). Now that we are in the European Common Market, the Mareva injunction has helped in the harmonization of this procedure. The injunction can be granted in multiple situations including in personal injuries cases see *Allen v Jambo Holdings Ltd* [1980] 1 W L R 1252. The Payne committee on The Enforcement of Judgment Debts (Cmd 3909) and the Kerr Committee on The Enforcements of Debts in the EEC both had recommended such a procedure. Now the Supreme Court Bill 1981, puts the stamp of respectability to it by consolidating s 45 of the Supreme Court of Judicature (Consolidation) Act 1925 and the Mareva Injunction developments in art 37 »

Though wide its application I have not been able to trace any authority to the effect that a ship not within the jurisdiction but registered and owned by a company registered within the

jurisdiction can be the subject of a Mareva injunction. In *Botteghi v Bolt Head Navigation A Loizou J* in dealing with such situation had this to say at p 124

«By their very nature ships sailing from port to port naturally incur liabilities that may render them the subject of arrest appraisal and sale and other encumbrances in other jurisdictions. In such circumstances an injunction may not be of any effect vis a vis such claimants with different priorities. Bearing in mind that the jurisdiction of a Court in granting such remedies should not be exercised in vain, I have come to the conclusion that even if the registration and ownership of a ship could be the subject of an injunction under section 32 of the Law, I would not be prepared to exercise my discretion if I had one, in granting same. I would therefore refuse the present application to the extent that is based on the said section.»

The learned trial Judge in the present case took the view that the remedy, being equitable, operates in personam and, therefore the defendants could be restrained from alienating their interests in the ship notwithstanding the fact that the vessel was outside the jurisdiction.

Bearing in mind the fact that the Mareva injunction as developed applies to assets within the jurisdiction, in the circumstances of the present case it could not be made against a ship which at the material time was outside the jurisdiction of the Court.

Before concluding I hold the view that when an order is sought under the general powers of the Court under s 32 of Law 14/60 concerning ships the Court must bear in mind the provisions of s 30 of the Merchant Shipping Act which are special provisions empowering the Court to make orders prohibiting dealing with ships, in the exercise of its discretion whether it is «just and convenient» to make an order under s 32.

For all the above reasons this appeal should be allowed and the injunction granted be set aside.

KOURRIS J I agree with the reasons given by the President of this Court for allowing this appeal and I also agree with the additional reasons given by Pikiis, J for allowing this Appeal and I have nothing useful to add.

1 C.L.R. Pastella Marine v. Iranian Tanker

5 TRIANTAFYLLIDES P.: This appeal is allowed unanimously. The injunction against which it was made is set aside, together with the order for costs made by the trial Judge. We make no order as to the costs of the trial and we order that the respondents should pay to the appellants for the appeal the costs for one advocate in Cyprus.

*Appeal allowed.
Order for costs as above.*