*1988 April 4*

*(LORIS, J.)*

REVERSIDE NAVIGATION CO. LTD.,

*Plaintiff,*

and

1. MICHAEL ANTONY HAMBURY & CO. LTD.,
2. BANQUE DE PARTICIPATIONS ET DE PLACEMENTS S.A.,

*Defendants.*

*(Application of Defendant No. 3 in Admiralty Action No. 409/85, dated 27.2.86).*

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*Admiralty — Service out of the Jurisdiction — Party out of the Jurisdiction necessary or proper party to an action properly brought against a person within the Jurisdiction — Whether the application for leave to serve the writ or notice of the writ out of the Jurisdiction should be made after the service of the writ on the party within the Jurisdiction — Question determined in the negative — No leave required in order to issue the writ — The only necessary leave concerns the service of the writ or notice thereof out of the Jurisdiction — The Admiralty Jurisdiction Order, 1893, Rules 237 and 5, and Order II Rule I (g) of the old English Rules.*

*Admiralty — The Admiralty Jurisdiction Order, 1893, Rule 237 — The English Rules made applicable in virtue thereof are those in force on the day preceding the day of the Independence of Cyprus.*

*Admiralty — Service out of the Jurisdiction — Forum conveniens — Meaning of term — Analysis of authorities.*

*Admiralty — Service out of the Jurisdiction — Affidavit in support of application for leave to serve the writ or notice thereof out of the Jurisdiction — Full and frank disclosure — Disclosure of the existence of an Arbitration agreement, but not of the appointment of arbitrators — Omission does not amount to fraud or an attempt to deceive the Court.*

*Admiralty — Admiralty action — Arbitration agreement — The Arbitration Law, Cap. 4, section 8 — Defendant out of the Jurisdiction entered conditional appearance and applied to set aside the service on them and to stay proceedings — The application, as far as the stay is concerned, having as its basis the arbitration agreement, is premature.*

By a time-charter made in Limassol the plaintiffs chartered to defendants 1 their Cyprus vessel TRANS. Both the plaintiff and the Defendant company are shipping companies registered in Cyprus. Defendants 2 guaranteed the performance of the charterparty by defendants 1. The vessel was loaded with Gas-Oil at the port of Harcourt, in Nigeria. Following the said guarantee, the Bill of Lading was made to the order of defendants 2. The Bill of Lading was eventually changed by the substitution of the consignees, i.e. defendants 2, by defendants 3.

The plaintiffs in this action claim 1,214,816.80 U.S. Dollars balance for charter-hire payable under the Time Charter or in the alternative the same amount for damages for breach of the said Time-Charter and further damages as per paras. (c) and (d) of the indorsement of the writ.

The plaintiffs sought and obtained upon an ex-parte application leave to seal and serve on Defendants No.2 and No.3 notice of the writ of summons out of the jurisdiction in the above intituled action filed on 22.11.1985.

Defendant 3, having been served with the notice as aforesaid, filed the present application, whereby they prayed for (a) To rescind the Order whereby the leave to serve the notice was granted and to set aside the service of the notice on them, and (b) To stay proceedings.

Leg (a) of the application put forward the following grounds namely: (a) The plaintiffs failed to make a full and frank disclosure of all material facts in the affidavit in support of their application for leave to serve the notice of the writ out of the jurisdiction, in that they did not disclose the existence of an Arbitration agreement and the existence of a pending litigation in Greece, (b) Cyprus is not the forum conveniens, and (c) Failure to effect service on the Defendant within the jurisdiction (i.e. Defendant No. 1), before applying for leave to serve defendant 3 outside the jurisdiction.

Leg (b) of the application relies on the existence of an Arbitration agreement and section 8 of the Arbitration Law, Cap. 4.

Held, dismissing the first leg of the application: (1) It is not correct that the arbitration agreement and the pending proceedings in

Greece were not disclosed. Once the arbitration agreement was fully disclosed in the affidavit, the absence of direct reference therein to the appointment of the two arbitrators does not render the plaintiffs liable for fraud or to conduct amounting to an attempt to deceive the Court.

(2) The time-charter was signed in Cyprus. Defendants are within the Jurisdiction. Defendants 1 are not «bogus defendants». The action was properly brought against defendants 1. The substantive part of the old English Order II, Rule I (g) requires, consideration whether the party or parties outside the jurisdiction are necessary or proper parties to an action properly brought against a person within the jurisdiction.

The Court then has to exercise a discretion in giving or refusing leave; in exercising such discretion the Court will not go into the merits of the case except to satisfy itself that the plaintiff has a probable cause of action in respect of which the defendant sought to be served may be liable. Having considered the material placed before the Court this Court is of the view that Defendants 3 are prima facie a proper party to the action of the plaintiff against all three defendants inspite of the arbitration agreement.

The proper translation of the Latin Words «Forum conveniens» is not «convenient forum», but «appropriate forum» (Per Lord Goff of Chieveley in *Spiliada Maritime Corp. v. Cansulex Ltd.* [1986] 3 All E.R. 843 at 853 adopted). In this case Cyprus is the appropriate forum.

(3) Rule 237* of the Admiralty Jurisdiction Order, 1893, as construed in *Asimenos and Markou v. Chrysostomou and Another* (1982) 1 C.L.R. 145 makes applicable «in all cases not provided by these rules» the English Rules that were in force on the day immediately preceding the Independence of Cyprus. In this case the relevant English Rule is Order II, Rule I (g). In virtue of this Rule the application for leave to serve the writ or notice of the writ out of the Jurisdiction should be made after service on the defendant within the Jurisdiction. In Cyprus, however, what is applicable is the substantive, not the procedural part of this rule. This is due to our Rule 5. As it has been held in *Nassar v. Brasiliero* (1982) 1 C.L.R. 396 at p.397 «Under the Admiralty Rules of the Supreme Court of Cyprus and in particular rule 5, in contrast to the Civil Procedure Rules and the Admiralty Rules of the Supreme Court in England, no leave is required to issue a writ of summons for service out of the jurisdiction.

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* *Quoted at p.206 post.*

The only leave required is for the service of the writ or notice of the writ outside the jurisdiction.

Held further, dismissing the second leg of the application: The application is premature. An application under section 8 of Cap.4* should be made after appearance. In this case the applicants entered conditional appearance, in order to apply to set aside the service on them. If they had been successful, the second leg would have been without substance. Since they failed, their appearances become unconditional, and they may now apply for the stay of proceedings.

*Application dismissed with costs.*

*Cases referred to:*

*National Line v. Ship «Sunset»* (1986) 1 C.L.R. 393;

*Attorney-General and Another (No.2) v. Savvides* (1979) 1 C.L.R. 349;

*Ellinger v. Guiness, Mahou and Co.* [1939] 4 All E. R. 16;

*Ewing v. Orr Ewing* [1885] 10 App. Cas. 453;

*Logan v. Bank of Scotland and Others* [1906] 1 K.B. 141;

*Egbert v. Short* [1907] 2 Ch. 205;

*Guendjian v. Societe Tunisienne* (1983) 1 C.L.R. 588;

*Spiliada Maritime Corp. v. Cansulex Ltd.* [1986] 3 All E.R. 843;

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

*Pitria Shipping v. Georghiou* (1982) 1 C.L.R. 358;

*Nassar v. Brasiliero* (1982) 1 C.L.R. 396.

**Application.**

Application by defendant No. 3 praying (a) for the rescission of the Order of the Court dated 28.11.85 and the setting aside of the service of the notice of the writ of summons upon him and (b) for the stay of proceedings against him.

T. Papadoupoullos, for applicant-defendants No. 3.

L. Papaphilippou, for the respondent-plaintiff.

*Cur. adv. vult.*

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* *Quoted at p.200 post*

LORIS J. read the following ruling. On an ex-parte application filed by the applicants, supported by an affidavit dated 6.11.85, sworn by one of its then employees namely Demetrios Roussos, an Order was made by this Court on 28.11.85, granting leave to seal and serve on Defendants No. 2 and No. 3 notice of the writ of summons out of the jurisdiction in the above intituled action filed on 22.11.1985.

On 14.1.86, the day fixed for the appearance of the defendants before this Court, Defendant No. 1 failed to appear although duly served within the jurisdiction, whilst Defendants No. 2 and No. 3 entered conditional appearance through different advocates and applied and obtained leave to file within 45 days an application for the setting aside of the service of the notice of the writ of summons upon them.

On 27.2.86 Defendant No. 3 filed the present application, supported by an affidavit dated 24.2.86 sworn by Miss Pitroff, praying (a) for the rescission of the Order of this Court dated 28.11.85 and the setting aside of the service of the notice of the writ upon him, and (b) for the stay of proceedings, in the above intituled action, as against him.

On 5.4.86 the plaintiff filed notice of intention to oppose the aforesaid application of Defendant No. 3, supported by an affidavit sworn by one of his employees namely Stavros Tsitsirides.

Defendant No. 3 filed in support of his present application a supplementary affidavit dated 30.5.86 sworn by Miss Pitroff.

Pursuant to relevant Orders made by this Court under Rule 117 of the Cyprus Admiralty Jurisdiction Order, 1893, on the applications of the plaintiff and Defendant No. 3 respectively, Miss Pitroff, the affiant in support of applicant's application, and Mr. Stavros Tsitsirides, the affiant in support of respondent's opposition, attended this Court for cross-examination and they were so heard viva voce during the hearing of the present application.

Before proceeding to examine leg (a) of the present application, notably the prayer for the rescission of the Order of this Court dated 28.11.85 (which I am authorised to vary or rescind, on due cause shown in virtue of the provisions of rule 211 of the Cyprus Admiralty Jurisdiction Order, 1893) I intend to deal with leg (b), notably the stay of proceedings as against Defendant No. 3, as an objection was taken by the respondent-plaintiff to the effect that

applicant-Defendant No. 3 has not complied with the provisions of section 8 of our Arbitration Law, Cap. 4, which requires inter alia that an application for an order staying the proceedings should be submitted «at any time after Appearance» and in the instant case, it was submitted, Defendant No. 3 entered a «conditional appearance» only and is at the same time moving this Court to set aside the service of the notice of the writ on him outside the jurisdiction.

Section 8 of the Arbitration Law, Cap. 4 reads:

> «If any party to an arbitration agreement, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the arbitration agreement or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court to stay the proceedings, and that Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration may make an order staying the proceedings».

Independently of the provisions of s. 8 of Cap. 4 set out above, it is apparent from the facts and circumstances of this case that leg (b) of the prayer is premature. Defendant No. 3 entered on 14.1.86 a conditional appearance, and applied and obtained leave to file within 45 days an application for setting aside the service of the notice of the writ of summons upon him. This is the gist of the present application and it is covered by prayer under (a) above which I shall proceed to examine after disposing prayer under (b). If the applicant succeeds in prayer (a) and obtains a final judgment setting aside the notice of the writ of summons there is no substance in his prayer for stay of proceedings; on the other hand if the initial Order of this Court is affirmed finally, then applicant's appearance becomes unconditional and if the prerequisites of the law are present he may apply for a stay of proceedings.

For all the above reasons I hold the view that prayer under (b) is doomed to failure; and is accordingly dismissed.

Reverting now to the gist of the main application covered by prayer under (a) above; the grounds relied upon by the applicant

are set out in the body of the application and have been summed up and elaborated upon by learned counsel appearing for the applicant under three broad Heads as follows:

*Ground One:* Failure of the plaintiff-respondent to make a full and frank disclosure of all material facts in the affidavit in support of his application for leave to serve the notice of the writ out of the jurisdiction.

*Ground Two:* Cyprus, allegedly, is not the «Forum Conveniens» for the case under consideration.

*Ground Three:* Failure to effect service on the Defendant within the jurisdiction (i.e. Defendant No. 1), before applying for leave to serve the defendant outside the jurisdiction (i.e. the applicant in the present proceedings).

Before considering the grounds submitted by learned counsel for applicant, I consider it pertinent at this stage to lay stress to the fact that I am examining these grounds in connection with leg (a) of the prayer of the present application, having already dismissed prayer under (b) for the reasons above stated.

*Ground One:* The material facts which the plaintiff-respondent allegedly failed to disclose in the affidavit in support of his application for leave to serve the notice of the writ out of the jurisdiction, were stated by learned counsel appearing for applicants to be «the fact that there was existing between the parties an arbitration agreement and that arbitration proceedings have been commenced in England.» The words in inverted commas are verbatim the complaints of the applicant as stated before me orally by his learned counsel; to the above complaints another «material fact» was referred to by learned counsel for applicant in his written address in reply: (vide para. 3(b) thereof at page 6) the alleged «suppression of the existence of the proceedings before the Greek Court, with regard to the claim of the Nigerian Government and the eventual disposition of the cargo...»

With respect I am unable to agree that the aforesaid facts were not disclosed in the affidavit in support of plaintiff's application to serve the applicant out of the jurisdiction; appendix DR3 attached and referred to in the affidavit of Demetrios Roussos dated 6.11.85 is the arbitration agreement signed by Plaintiff and defendant No. 3 on 29.2.84 to which extensive reference has been made in the present proceedings before me; the four pages of the agreement

aforesaid throw ample light on the facts allegedly concealed by the applicant; apart from the arbitration agreement the said document makes extensive reference to the proceedings before the Greek Court as well as to the claims of the Nigerian Government on the cargo loaded on the aforesaid vessel of the plaintiffs at the time.

The aforesaid affidavid of Demetrios Roussos with Appendix DR3, were before me when I was examining the application of the plaintiff for leave to serve the writ out of the jurisdiction on Defendant No. 3, and in the circumstances it cannot be seriously contended that a full and frank disclosure, at least of the facts complained of by the applicant in the present proceedings, was not made.

After all, as stated in *National Line v. Ship «Sunset»* (1986) 1 *C.L.R. 393 at p. 404:*

> «An arbitration clause in a contract does not oust the jurisdiction of the Court and such clause is not a bar or defence to proceedings brought in respect of a dispute agreed to be referred to arbitration...»

I hold the view that once the arbitration agreement was fully disclosed in the affidavit, the absence of direct reference therein to the appointment of the two arbitrators does not render the plaintiffs liable for fraud *(Attorney-General & Another (No. 2) v. Savvides (1979) 1 C.L.R. 349 at p. 369, 370, 371),* or to conduct amounting to an attempt to decéive the Court *(Ellinger v. Guiness, Mahon & Co. [1939] 4 All E.R. 16, National Line v. Ship «Sunset» (supra)* at p. 407.

Ground one therefore fails.

*Ground Two*: I shall proceed to examine this ground bearing always in mind that prayer (a) of the present application is directed against the Order issued on 28.11.85, granting leave for the service of the notice of the writ on Defendant No. 3 out of the jurisdiction. .

The material facts may be briefly stated as follows: The plaintiff, a shipping company registered in Cyprus under the Companies Law Cap. 113, was at the material time the owner of Cyprus ship «TRANS».

Defendant No. 1, a shipping company registered in Cyprus as well, entered into a Time Charter dated 18.8.83 signed at Limassol (Cyprus) (vide D.R.1 attached to the affidavit of Demetrios

Roussos of 6.11.85) by virtue of which plaintiff chartered to defendant No. 1 vessel «TRANS» at a daily charter hire of 2,600 U.S. Dollars, payable in advance every 15 days by telex transfer.

The aforesaid vessel was loaded with 2,300 metric tons of gas oil at the port of Harcout, Nigeria.

Defendant No. 2 on 23.9.83 provided guarantee for the performance of the Charterparty aforesaid.

Following the above guarantee the Bill of Lading was made to the order of Defendant No. 2.

At the request of Defendant No. 1 and with the consent of all concerned, the Bill of Lading was changed on 7.10.83 to show Defendant No. 3 as consignee instead of Defendant No. 2.

The Plaintiff company claims 1,214,816.80 U.S. Dollars balance for charter-hire payable under the Time Charter or in the alternative the same amount for damages for breach of the said Time-Charter and further damages as per paras. (c) and (d) of the indorsement of the writ.

The writ was issued without leave, as no leave is required for the issue of a writ either for defendants within or outside the jurisdiction, according to the Cyprus Admiralty Rules - as it will be explained later on in the present decision.

Leave was sought for the service of notice of the writ on defendants 2 and 3 outside the jurisdiction.

In such circumstances, what the substantive part of Order 11 rule 1(g) of the old English Rules requires, is the consideration whether the party or parties outside the jurisdiction are necessary or proper parties to an action properly brought against a person within the jurisdiction.

The Court then has to exercise a discretion in giving or refusing leave; in exercising such discretion the Court will not go into the merits of the case except to satisfy itself that the plaintiff has a probable cause of action in respect of which the defendant sought to be served may be liable.

In the instant case it is clear that Defendant No. 1 was within the jurisdiction; and Time-Charter was signed in Limassol (Cyprus), that is within the jurisdiction. Independently of the breach, the time-Charter was signed within the jurisdiction; therefore the action against Defendant No. 1 was properly brought before this Court; in other words Defendant No. 1 is not and was not a «Bogus

Defendant»; and in this connection I must say that even after the hearing of the present application I was not convinced at all, that Defendant No. 1 was employed as a «Bogus Defendant», for the purposes of initiating present action.

Now Defendant No. 2 was the guarantor of the Time-Charter; I shall say no more about Defendant No. 2, as his application for setting aside the service upon him out of the jurisdiction is still pending; I shall only confine myself in saying this much about him: he is prima facie both a necessary and a proper party in the present proceedings and he is not a signatory to the arbitration agreement.

As regards Defendant No. 3, the applicant in these proceedings, he was made the consignee on the Bill of Lading with the consent of all concerned. Learned counsel for him submitted that defendant No. 3 was the owner of cargo aboard the ship of the plaintiff; he maintained that his obligations are limited to the contract of Affreightment i.e. to the Bill of Lading, which by reference, incorporates the terms of the Charterparty; this agreement, learned counsel concluded, in no way makes Defendant No. 3 signatory of the Charterparty or liable in tort.

With respect, this very able argument has to be submitted in due course before the trial Court, not before me; I am simply exercising a discretion whether there is prima facie case against Defendant No. 3, with a view to deciding whether leave was duly granted for service of the writ on defendant No. 3 out of the jurisdiction. And having considered the material placed before me, I have held that Defendant No. 3 was prima facie a proper party to the action of the plaintiff against all three defendants inspite of the arbitration agreement; I am still of the same view after having heard the present application, as an arbitration agreement does not oust the jurisdiction of the Court but it merely gives the right subject to certain formalities and conditions to apply for a stay of proceedings (vide *National Line v. Ship 'Sunset'* - supra).

In exercising the discretion, for granting leave to serve notice of the writ outside the jurisdiction generally speaking «forum conveniens» may have a bearing, although Lord Selborne in *Ewing v. Orr Ewing [1885] 10 App. Cas. 453,* at p. 506 stated that:

> «It appears also that the doctrine of forum conveniens, which in English seldom comes into consideration when jurisdiction exists apart from service or process abroad, unless there is an actual competition of suits, is in Scotland carried further, and may prevent the exercise of jurisdiction when the Court is

satisfied that the suit might have been brought and effectively prosecuted in a more convenient forum, although this may not actually have been done.»

The question of«forum conveniens»was discussed in the case of *Logan v. Bank of Scotland and Others* [1906] 1 K.B. 141 and the principles laid down therein were followed in *Egbert v. Short* [1907] 2Ch.205, but it must be borne in mind that both cases were decided on a motion that the respective actions should be dismissed on the ground that they were frivolous and vexatious and an abuse of the process of the Court, which is not the case under consideration.

A number of other cases referring to the doctrine of 'forum covneniens' are referred to in the case of *Guendjian v. Societe Tunisienne* (1983) 1 C.L.R. 588, decided by our Court of Appeal, where at pages 592 & 593 the applicability of the said doctrine as part of the English Private International Law (which is the same as Cyprus Private International Law) is commented upon, and it is clearly stated that «the said doctrine is not to be treated as being applicable, as yet, as part of English Private International Law, in the same manner as such doctrine is applied in Scotland and in the United States of America.»

In the recent case of *Spiliada Maritime Corp. v. Cansulex Ltd* [1986] 3 All E.R. 843 H.L., the House of Lords allowed the appeal against a decision of the Court of Appeal whereby they reversed a decision of Staughton J., in which he refused an application by the respondents Cansulex Ltd., to set aside leave granted ex parte to the appellants, Spiliada Maritime Corp., to serve proceedings on the respondents outside the jurisdiction.

Lord Goff of Chieveley delivering the judgment of the House, after elaborating on «forum conveniens» and «forum non conveniens» stated the following at p. 853:

«In my view 'competent' is just as bad a translation for 'competens' as 'convenient' is for 'conveniens'. The proper translation for these Latin words, so far as this plea is concerned is 'appropriate'.»

In the case under consideration, which is a case under Order 11 rule 1(g) of the old English Rules, I hold the view that this Court which has jurisdiction in this case for the reasons above stated, is also the appropriate forum in which the case can be tried more suitably for the interests of all the litigants and the ends of justice.

Ground two, therefore, fails as well.

*Ground Three:* This ground is purely procedural. The submission of the learned counsel for applicant was to the effect that the plaintiff failed to serve Defendant No. 1, within the jurisdiction first, before applying for leave to serve Defendant No. 3 out of the jurisdiction. Learned counsel maintained that the practice aforesaid violates Order 11 r. 1(g) of the old English Rules which provide that when there are defendants both within and outside the jurisdiction, the defendant within the jurisdiction must be served first.

Before proceeding to examine this submission it is necessary to deal as briefly as possible with the relevant parts of the Cyprus Admiralty Jurisdiction Order 1893 and in particular rule 237 thereof which reads as follows:

«237. In all cases not provided by these Rules, the practice of Admiralty Division of the High Court of Justice in England, so far as the same shall appear to be applicable, shall be followed.»

In *Asimenos v. Paraskeva (1982) 1 C.L.R. 145* it was held by the Full Bench of this Court, (at p. 161) that «...The Rules of the Supreme Court which were in force and applied in the Admiralty Division of the High Court of Justice of England on the day preceding the Independence Day of Cyprus (the 16th August, 1960) are the ones applicable by this Court in the exercise of its Admiralty jurisdiction to the extent contemplated by rule 237 of the Cyprus Admiralty Rules of 1893.»

The above principle was reiterated in *Pitria Shipping v. Georghiou (1982) 1 C.L.R. 358* where my learned brother Pikis, delivering the unanimous judgment of the Full Bench of this Court stated the following: (vide p. 365): «That the old English Rules of the Supreme Court are applicable, is now certain beyond peradventure in the light of the recent decision of the Full Bench in *Asimenos and Markou v. Chrysostomou and Another* (1982) 1 C.L.R. 145, authoritatively settling that the English rules applicable by virtue of r. 237 are those that were in force in 1960. This was found to be the case on a fair interpretation of s.29(2)(a) of the Courts of Justice Law - 14/60, and the unlikelihood of the House of Representatives intending to delegate any of its legislative functions to a body or authority outside the realm over which it could have no control...»

Order 11, rule 1(g) of the old English rules reads:

«1. Except in the case of a writ to which Rule IA of this Order applies, service out of the jurisdiction of a writ of summons or

notice of a writ of summons may be allowed by the Court or a Judge whenever

(a)...(b)...(c)...(d)...(e)...(f)... ...

(g) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

(h) ..... »

At this stage it is necessary to mention what is stated in the Annual Practice of 1958 in respect of sub-rule (g) under the heading Practice at p. 161:

«Practice. - Issue a writ for service within jurisdiction (0.5, r.2, (n) «Practice») making the party to be served within, and the party whom it is intended to serve without the jurisdiction, defendants. This writ would be stamped 'not for service out of the jurisdiction without order.' Serve a copy of the writ on the defendant within the jurisdiction. Then apply for leave to issue and serve a concurrent writ, or notice or writ, on the defendant out of the jurisdiction...»

It is apparent that learned counsel for applicant is relying on the above «practice», which evidently requires in the first place the service of a copy of the writ on the defendant within the jurisdition and then an application for leave to issue and serve a concurrent writ on the defendant out of the jurisdiction.

The submission of the learned counsel for applicant is to the effect that since Rules 23 and 24 of our Admiralty Rules are silent on the matter, then pursuant to our Rule 237 the old English Rules apply; and as

(I) the interpretation on sub-rule (g) of Order 11 rule 1, set out in the above cited 'practice' note in the Annual Practice, and as

(II) the English Courts have repeatedly ruled that the defendant within the jurisdiction should be served first, before an application is made for leave to issue and serve a concurrent writ or notice thereof on the defendant outside the jurisdiction, and as

(III) Defendant No. 1 in this action was served within the jurisdiction on 10.12.85 whilst the application for leave to serve notice of the writ outside the jurisdiction was submitted and granted prior to the service on Defendant No. 1,

the present application should succeed on this ground, and the Order of this Court dated 28.11.85, be set aside.

This is how I understood the submission of the learned counsel for applicant. I am in agreement with him that our Admiralty Rules which provide for service outside the Jurisdiction (Rules 23 to 27 inclusive) are silent on the issue as to whether the defendant within the jurisdiction should be served in the first place before application is made for leave to serve the defendant outside the jurisdiction. And this so because there is no provision in our Admiralty Rules similar to that of Order 11 rule 1 (g) of the old English Rules; in the circumstances I hold the view, that the substantive part of Order 11 rule 1 (g) is applicable in virtue of Regulation 237, but the procedural part thereof is not applicable owing to the provisions of Rule 5 of our Admiralty Rules; In this respect I fully indorse the statement of my learned brother Savvides J. in *Nassar v. Brasiliero (1982) 1 C.L.R. 396 at p. 397* «Under the Admiralty Rules of the Supreme Court of Cyprus and in particular rule 5, in contrast to the Civil Procedure Rules and the Admiralty Rules of the Supreme Court in England, no leave is required to issue a writ of summons for service out of the jurisdiction....»

I wish to lay stress on the fact that here, unlike England no leave is required for the issue of a writ destined to be served abroad. The only leave required is for the service of the writ or notice of the writ outside the jurisdiction. Thus once no leave is required to issue a writ either for the defendant within the jurisdiction or the defendant outside the jurisdiction the «practice» note in the Annual Practice set out above and English cases connected therewith (incidentally none was cited in support thereof, although perusal of the Annual Practice leaves no margin for doubt that the submission is correct) are not applicable in Cyprus.

In any event Defendant No. 1 was served within the jurisdiction on 10.12.85 i.e. some days after the Order granting leave for service of the notice of the writ on defendant No. 3 outside the jurisdiction, and considerable time before Defendant No. 3 entered a conditional appearance (14.1.86) and applied for leave to file the present application. In the circumstances I hold the view that the applicant was not in any way prejudicially affected by the fact that Defendant No. 1 was served with the writ of summons some twelve days after the granting of the ex-parte application for the service of the notice of the writ on defendant No. 3 outside the jurisdiction. It may as well be added here that the writ of summons against all 3 defendants was issued without leave as leave was not required - on the same day i.e. on 22.11.85.

Before concluding I feel that I should humbly repeat the observations of the Full Bench of this Court in *Asimenos v. Paraskeva (supra)* with regard to the need for the redrafting of the Rules of the Supreme Court of Cyprus in its Admiralty Jurisdiction; the present case reflects once more the difficulties that may ensue owing to the vagueness of Rules which after all have been introduced about a century ago.

In the result present application fails in its entirety and it is accordingly dismissed with costs against applicant to be assessed by the Registrar.

*Application dismissed with costs.*